

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, FEBRUARY 25, 2013

Present: Ald. Johnson (Chairman), Lennon, Swiston, Sangiolo, Yates, Baker and Kalis

Absent: Ald. Danberg

Also Present: Ald. Fischman and Linsky

Others Present: Candace Havens (Director, Planning & Development), James Freas (Chief Long Range Planner), Dori Zaleznik (Commissioner, Health & Human Services), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Alice Walkup (Senior Community Development Planner), Karyn Dean (Committee Clerk)

Planning Board: Joyce Moss (Chairman), Eunice Kim, Doug Sweet, Scott Wolf and David Banash

#316-12(3) DEPARTMENT HEADS HAVENS, LOJEK AND ZALEZNIK requesting
(#53-13) amendments to the **City Zoning Ordinance**, Chapter 30, Sections 30-11, 30-13, 30-19 and 30-21 as needed to establish parameters regarding parking requirements and maximum number of seats consistent with the Sidewalk Café Ordinance. [01/30/13 @ 5:15 PM]

ACTION: **PUBLIC HEARING CLOSED; HELD 6-0 (Ald. Baker not voting)**

NOTE: Candace Havens, Director of Planning & Development addressed the Committee and the Planning & Development Board. She reviewed the proposed changes as detailed in the Planning Memo dated February 22, 2013 that was provided with the agenda in the Friday packet. The memo can also be found online on the Zoning & Planning Committee page. **The proposed changes can be seen in the redlined versions of the sidewalk café ordinance and zoning ordinance as it pertains to this item that are attached to this report.**

Ald. Johnson then opened the public hearing. There were no speakers and so the public hearing was closed.

Planning Board Questions and Comments

Joyce Moss thought that if there was enough space, the number of allowable seats should not be limited to eight. She also asked for clarification on the need for a special permit with extra seats. Ms. Havens explained that if an establishment is considered legal by conforming use or by special permit, and is adjacent to a sidewalk, it is entitled to have up to 8 seats (or 10% of their indoor seats) on a sidewalk without triggering a parking requirement or a special permit. The reference to this is in Chapter 30, Section 13. David Banash wondered if the permit could be rescinded if a particular site did not work out as planned. Ms. Havens said that Health Inspectors go to restaurants routinely to check on compliance for other matters. If they were to see a situation that was not in compliance that would be brought to the attention of the Commissioner and appropriate action would be taken. Doug Sweet would like 4 feet of unobstructed space on a

sidewalk as a minimum requirement. His experience as a visually impaired person has been difficult with sidewalk cafés. He would also like to require businesses to move the tables and chairs inside when they are not being used. Scott Wolf wanted the standards to be updated to reflect any changes that will be made.

Working Session

The Committee reconvened for a working session as the Planning Board deliberated.

- There was concern about the reference to the widening of a sidewalk to make room for a sidewalk café. The draft ordinance does not include this, but the permit application does mention it. It simply refers applicants to the DPW for more information. Ms. Havens explained that while DPW does have the authority to widen a sidewalk, it has to be looked at contextually. The Planning Department believes it would be best to look at more village-based plans to see where sidewalk widenings might be appropriate in advance. This would be separate from the sidewalk café ordinance and would require a process that includes Traffic Council, and other criteria, to determine the best places for that to happen. Some Committee members felt this would be a project that few, if any, business owners would be interested in. It would be a significant commitment of time and resources for having only 8 or so seats. It was decided that the reference to the sidewalk widening would be deleted from the application.
- There was also concern about restaurants near residential areas and the ability of the administrative body to have the authority to put certain conditions on their permits in a site-specific manner, if necessary. In addition, there was sentiment that if any problems did occur with a particular business, the Commissioner upon hearing complaints from the public or seeing problems through their own inspectors will have the ability to revoke the permit if the problems were not remedied.
- The Committee discussed the usefulness of barriers around the sidewalks cafes such as roping, fencing or planters. The guidelines for extension of premises when alcohol is being served does require some sort of delineation of the area. If alcohol is not being served, the current draft does not require this. There are many locations wherein fencing would not work due to constraints with space. A concern for visually impaired pedestrians was expressed. It was suggested that the requirement for some sort of barrier, and what that barrier should be, could be a site specific decision.
- The other main concern was width of passageway on sidewalks making passage safe for all pedestrians with particular attention to those with disabilities. The draft ordinance is requiring 4 feet of clear passage. Perhaps mention could be made that business owners have the responsibility of keeping the furniture in the approved zone and be aware of it being pushed into the sidewalk by patrons. There was also a suggestion that the furniture be brought inside when it is not in use.
- The issue of posting or mailing notifications of pending applications was also discussed. In the case of an alcohol license, the immediate abutter is notified. There was concern

because the immediate abutter may be another business, but the next one or two over may be residences. Added to the draft ordinance was the requirement that a placard be posted on the property that announces an application is under consideration for a sidewalk café. There was agreement in Committee that notification should be mailed to residential abutters within 300 feet as well as posting a placard.

Fees/Fines

Ms. Havens reported that the Finance Committee approved the suggested fees of \$100 for the first application and \$50 for renewals. They also created a new docket item to approve fines for non-compliance and they asked the Zoning and Planning Committee for a recommendation. The Committee agreed that \$100 a day was appropriate as that was the recommendation from the Planning Department. The new docket item will go before Finance Committee at their next possible meeting.

The Planning and Development Board finished their deliberations and re-joined the Committee. The Chair reported that the P&D Board voted unanimously in favor of the proposed changes. Their report is attached.

The Committee voted to hold this item. They will review the ordinance with the suggested changes at the next regularly scheduled meeting.

Respectfully Submitted,

Marcia T. Johnson, Chairman



CITY OF NEWTON, MASSACHUSETTS

Planning and Development Board

March 1, 2013

The Honorable Marcia Johnson
Chair, Zoning and Planning Committee
Members, Zoning and Planning Committee
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Setti D. Warren
Mayor

Candace Havens
Director
Planning & Development

Anne Marie Belrose
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Members

Joyce Moss, Chair
Scott Wolf, Vice Chair
David Banash, Treasurer
Leslie Burg, CPC Liaison
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Dear Alderman Johnson and Members of the Zoning and Planning Committee:

This letter documents the voting action of the Planning and Development Board (P&D Board) and an advisory opinion the members developed on February 25, 2013.

The P&D Board members present voted unanimously to support the amendments within docketed item #316-12(3) - Candace Havens, Director of Planning & Development; John Lojek, Commissioner of Inspectional Services; and Dori Zaleznik, Commissioner of Health and Human Services, requesting to amend Sections 30-11(a)(9); 30-11(d)(9); 30-13(c)(11); and 30-13 (e)(12) to clarify that outdoor sidewalk seats permitted under the Sidewalk Café Ordinance shall not count against the 50 seat maximum number allowed by right for restaurants in Business and Mixed Use Districts and shall not trigger the need for a special permit; to amend Section 30-19(d)(13) to modify or eliminate the requirement of one parking stall for each (3) three seats of a restaurant for additional outdoor sidewalk seats permitted under the Sidewalk Café Ordinance; to amend Section 30-21 to clarify that additional outdoor sidewalk seats permitted under the Sidewalk Café Ordinance shall not increase the non-conformity of nor constitute an extension of use of a lawful pre-existing non-conforming restaurant in any district.

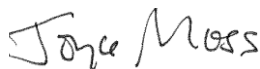
In discussing the items, several issues arose that P&D Board members feel warrant attention.

- Width of passageway – We feel strongly that the minimum width required should be four feet of clearance, rather than three feet.
- Flexibility – P&D Board members believe that attention to context needs to be built into licensing procedures to allow for unique situations in which a standard, as written, may not be adequate to address the issue under consideration. For example:
 - Even though our board agrees that a four-foot wide passageway should be required, we feel there may be spaces with minor deviations that would argue for a more nuanced approach. If, say, the passageway width for 95% of the restaurant frontage is four feet, but for 5% of it the clearance is limited to three feet, ten

inches, relevant staff should be able to allow for a reduced path of travel for that small amount of space.

- Or, perhaps there is an unusual sidewalk layout which may allow for a different configuration of tables and chairs on the sidewalk. An example is a sidewalk that dead ends, which would not require the same passageway width since you do not have to walk around it, and therefore could allow for a layout of tables and chairs that fills the sidewalk space from the restaurant to the curb.
- Following from the concept of a context-appropriate layout, there might be a restaurant that could easily accommodate ten seats on the sidewalk. The license review should allow some degree of flexibility in case the eight chair limit (or 10% of the total seating capacity) could be slightly exceeded with minimal negative impacts on the community.
- Finally, context is especially appropriate for restaurants in primarily residential areas. While we believe that enforcement of the noise ordinance will address such concerns, we also think that each restaurant's annual alcohol license hearing can provide a forum for public feedback on the compatibility of sidewalk café seating in residential areas.
- Seating Area Barriers – P&D Board members also believe that barriers surrounding the seating area must be substantial, such as a fence enclosure or a structure with low-to-the ground bars that can be felt by the cane of individuals who have visual impairments. A rope is not sufficient in providing warning to someone with low vision that there is seating on the sidewalk. For establishments that do not serve alcohol and therefore do not need full enclosures, we recommend the use of fences or similar barriers that would be placed at either end of the seating area, providing warning to pedestrians walking parallel to the restaurant that there is an outdoor seating area.
- Café Furniture Storage – During those periods when the sidewalk café furniture is not being used regularly, the outdoor furniture should not be stored on the sidewalk, because doing so would create another hazard for pedestrians with low vision.

Respectfully submitted on behalf of the Planning & Development Board,



Joyce Moss, AICP
Chairman

Cc: Planning & Development Board
Candace Havens, Director of Planning & Development

Sec. 26-30. ~~Licenses-Permits~~ for cafe furniture on sidewalks.

(a) The ~~C~~ommissioner of ~~public works~~Health and Human Services (the "Commissioner"), or his or her designee, may grant revocable ~~licenses-permits~~ for the placement of certain cafe furniture upon designated areas of the public sidewalk. The Commissioner shall consult with the Fire, Police, Public Works, Inspectional Services, and Planning Departments prior to granting or denying a permit under this section. Permits shall be issued in accordance with the following standards:

(1) ~~Licenses-Permits~~ may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the ~~license~~permit. ~~Such cafe furniture may be placed upon the sidewalk only during the business hours of the licensed party.~~ All cafe furniture and trash receptacles ~~must be removed at the end of each business day and in addition,~~ must be removed at any time upon the request of the ~~C~~ommissioner or his designee when he determines, ~~in his sole discretion,~~ that public works operations or ~~that~~ the public convenience and welfare require such removal.

(2) ~~Licenses-Permits~~ may ~~only~~ allow for the placement of tables, chairs, ~~and/or benches,~~ shade umbrellas, barriers and other appurtenances as may be approved or otherwise required by the Commissioner or other Department. in consultation with the Commissioner. ~~Shade umbrellas or tables which have shade umbrellas attached thereto shall not be allowed. The number and type of such tables, chairs and benches shall be subject to the approval of the commissioner.~~ All such tables, chairs, and/or benches, shade umbrellas and

other appurtenances shall be temporarily placed upon the sidewalk surface and shall not be affixed thereto. Any shade umbrellas shall be fastened, weighted and otherwise secured while in use.

(3) The number, type and placement of such tables, chairs, benches, shade umbrellas, barriers and other appurtenances shall be subject to the approval of the Commissioner, in consultation with other appropriate Departments of the City, and in conformity with any applicable zoning ordinances. Subject to the discretion of the Commissioner, after consultation with the Fire, Police, Public Works, Inspectional Services and Planning Departments, permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.

(4) Licenses Permits may only be granted in those circumstances where the Commissioner, or his or her designee, of public works, after consultation with the chief of police, has determined that the placement of such cafe furniture would not interfere with adequate pedestrian passage upon the public sidewalk at the site, taking into account the flow and level of pedestrian traffic and the location of other fixtures upon the sidewalk including, but not limited to, utility poles, newspaper vending boxes and the like. In making such determination, the Commissioner, or his or her designee, may consult with the Inspectional Services Department and the Commission on Disability. In no event shall a license permit be granted in circumstances where the placement of such cafe furniture would result in a pedestrian

designee, under this section.

(e) All applicants holding alcohol licenses pursuant to M.G.L. c. 138 who wish to serve alcohol to patrons at sidewalk café seating under this section shall comply with c. 138 and the Rules and Regulations of the Board of License Commissioners.

(f) Pending the approval of a permit application, all applicants shall post a placard on the licensed premises notifying the public of the pending application. Such placard, provided by the Department of Health and Human Services, shall be readily visible to the public.

(eg) All ~~licenses~~ permits granted pursuant hereto must include the following provisions:

(1) That the ~~licensed~~ permitted party shall place exterior trash receptacles in the sidewalk area and, at its expense, properly dispose of the trash deposited therein.

(2) That the ~~licensed~~ permitted party shall be responsible for the clean-up of trash and debris from the sidewalk area and the neighboring area within a radius of twenty-five feet (25') of the sidewalk area affected by the ~~license~~ permit.

(fh) Notice of violation: The ~~e~~Commissioner of public works, or his or her designee, shall review all complaints concerning purported violations of the terms and conditions of any permit issued under this section. Prior to the imposition of any penalty, the Commissioner shall provide reasonable notice to the permit holder of the violations of the terms of the permit, and provide

regulations necessary to implement and facilitate enforcement this section.

(m) Enforcement: The Health and Human Services Department, Inspectional Services Department, and Police Department shall have the authority to enforce this section.

(n) Severability: If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.

(Ord. No. T-305, 11-1-93; Ord. No. X-175, 05-26-05)

(b) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (a) which are permitted are:

- (1) Office;
- (2) Bank, excluding drive-in facilities;
- (3) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
- (4) Dwelling units above the first floor;
- (5) Accessory parking facilities;
- (6) Other uses similar or accessory to those authorized by section 30-11(b).

(c) In all business districts, no building, structure or alteration, enlargement or extension thereof located within three hundred (300) feet of a great pond as defined under the Massachusetts General Laws, chapter 131, section 1 shall be permitted other than under the procedure set forth in section 30-23 herein concerning site plan approval, with particular concern to the preservation of public view, enjoyment and access to said great pond. (Rev. Ords. 1973, §24-9).

(d) *Special Permits.* In Business Districts 1, 2, 3 and 4, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Hospital, sanitarium, convalescent or rest home;
- (2) Broadcasting studio;
- (3) Laboratory;
- (4) Hotel/motel;
- (5) Funeral home;
- (6) Job printing establishment using more than three thousand (3,000) square feet for work and storage;
- (7) Non-accessory parking facilities or multi-level accessory parking facilities;
- (8) Multi-family dwelling;
- (9) Restaurant having over fifty (50) seats, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances,** which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation shall not apply to a hotel or motel restaurant;

- (2) Garage repair shop;
- (3) Indoor motor vehicles sales and service facility and areas for the outdoor sales, service, display or storage of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of the vehicles as the board of aldermen shall approve;
- (4) Areas for outside storage, display and sale of goods and materials; provided, that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting as the board of aldermen shall approve;
- (5) Fast food establishment, drive-in food establishment;
- (6) Place of amusement or place of assembly, whether indoor or outdoor;
- (7) Veterinary hospital;
- (8) Other uses similar or accessory to those authorized by section 30-11(g).

(h) *Allowed Uses in Business 5 Districts.* In all Business 5 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Offices for professional purposes or for business purposes, excluding the retail sale of tangible personal property from a stock of goods on the premises;
- (2) Bank, trust company or other banking institution;
- (3) Other uses similar or accessory to those authorized by section 30-11(h).

(i) *Special Permits in Business 5 Districts.* In all Business 5 Districts, the board of aldermen may grant a special permit in accordance with the procedures provided in section 30-24 for the construction, alteration, enlargement, extension or reconstruction of buildings or structures and for the use of buildings, structures or land for one or more of the following purposes:

- (1) Hospital, sanitarium, convalescent or rest home or other like institution;
- (2) Library, museum or other cultural institution;
- (3) Radio or television transmission station or broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;
- (4) Laboratory or research facility; provided, that the facility is exclusively for research purposes with no manufacturing on the premises, and further provided that no recombinant DNA research or technology is involved;

75, 3-5-90; Ord. No. T-183, 11-4-91; Ord. No. V-44, 11-20-95; Ord. No. V-87, 7-8-96; Ord. No. V-156, 1-5-98; Ord. No. V-173, 5-18-98; Ord. No. W-2, 7-10-00; Ord. No. X-20, 5-6-02; Ord. No. Z-16, 12-17-07)

Sec. 30-13. Mixed Use Districts.

(a) *Allowed Uses in Mixed Use 1 Districts.* In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises;
- (5) Uses similar or accessory to those authorized by section 30-13(a).

(b) *Special Permits in Mixed Use 1 Districts.* In Mixed Use 1 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Retail store, provided that a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area;
- (2) Wholesale business;
- (3) Storage or distribution facility;
- (4) Service establishment;
- (5) Restaurants and businesses which hold a Common Victualler—All Alcoholic, or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area;
- (6) Inside sales, service, display or storage of motor vehicles;

- (7) Personal services;
- (8) Retail dry cleaning or laundry;
- (9) Service establishments;
- (10) Job printing under 3,000 square feet;
- (11) Restaurants having not more than 50 seats, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances;**
- (12) Bakery, the products of which are sold at retail and only on the premises;
- (13) Dwelling units above the first floor, provided that the first floor is used for an allowed use described above;
- (14) Accessory parking facilities, provided they are limited to a single level;
- (15) Uses similar or accessory to those authorized by section 30-13(c).

(d) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (c) herein which are permitted are:

- (1) Office;
- (2) Research and development facility;
- (3) Bank, excluding drive-in facilities;
- (4) Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
- (5) Dwelling units above the first floor;
- (6) Accessory parking facilities;
- (7) Uses similar or accessory to those authorized by section 30-13(d).

(e) *Special Permits in Mixed Use 2.* In all Mixed Use 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Assembly or fabrication of materials manufactured off-premises in a building not exceeding 10,000 square feet of gross floor area;
- (2) Sanitarium, convalescent or rest home;

(b) Applicability. No land shall be used and no building shall be erected, enlarged, or used in any district in the city, except as provided hereinafter, unless off-street parking and loading facilities are provided in accordance with the requirements of this section.

The regulations of this section shall not apply to parking or loading facilities in existence or for which building permits have been issued prior to the date of adoption of this section, which conformed to all applicable regulations in effect when established, except that where parking or loading facilities are increased in capacity after the adoption of this section, the expanded portion thereof shall be constructed in accordance with the regulations of this section.

(c) General Regulations.

(1) No reduction in the number of off-street parking stalls which are required by this section shall be allowed and no existing off-street parking stalls shall be eliminated unless replaced by an equal number of off-street parking stalls designed in accordance with the requirements of this section; provided, that this subparagraph shall not operate to prevent the elimination of existing parking stalls which are in excess of the number required by this section excluding the provision of subparagraphs (c)(2) and (c)(3) of this section.

(2) a) Whenever an enlargement or extension of the gross floor area in a building or structure or a change in use from one type of use to another, as those types of uses are set out in subparagraph (d) of this section, of a building or structure or portion thereof, increases the parking requirements for such building or structure under the provisions of subparagraph (d) of this section, the provisions of this section shall be complied with in accordance with the following formula: $A - B + C =$ required number of parking stalls, provided that this number shall not exceed "A",

"A" being the number of off-street parking stalls required under this section;

"B" being the number of off-street parking stalls which would have been required under the provisions of this section to the building or structure and the use thereof prior to the date of the enlargement, extension or change of use of said building or structure;

"C" being the number of off-street parking stalls located on the premises, or adjacent premises of the owner, or located off-site with the permission of the board of aldermen, prior to the date of the enlargement, extension or change of use of said building or structure.

b) In the case of a change in use of churches, synagogues, theaters, halls, clubs, funeral homes, restaurants, other places serving food and other places of amusement or assembly, the number of off-street parking stalls which would be required for the new use or uses shall be determined by the existing floor area of the existing structure and not the seating capacity thereof. When such building or structure is located in a business, manufacturing or mixed use district, the number of off-street parking stalls which would have been required for such building or structure prior to the date of the enlargement, extension or change of use ("B" of the formula set forth above), shall be calculated under subparagraph 30-19(d)(10) or (11), whichever results in a greater parking requirement.

- (7) Parking stalls shall be provided on the premises of an elderly housing with services facility, including residential care facilities and elderly congregate living facilities, on the basis of the following:
- a) fifty one-hundredths (0.50) parking stall per dwelling unit, except when the board of aldermen determines that adequate transportation services are available, it may grant a special permit to reduce the requirement to a minimum of twenty-five one-hundredths (0.25) parking stall per dwelling unit;
 - b) twenty-five one-hundredths (0.25) parking stall per nursing home bed;
 - c) thirty-three one-hundredths (0.33) parking stall per employee on the largest shift.
- (8) One stall for each three (3) beds in a hospital or sanitarium and one stall for each three (3) employees on the largest shift.
- (9) One stall for each four (4) beds in a convalescent or rest home or other institution devoted to the board, care or treatment of humans and one stall for each three (3) employees on the largest shift.
- (10) One stall for each 300 square feet or fraction thereof of gross floor area for use in any bank, post office, retail store, sales room, showroom or service establishment. In addition, one (1) stall shall be provided for each three (3) employees on the largest shift.
- (11) One stall for each 250 square feet or fraction thereof of gross floor area, up to 20,000 square feet, and one stall for each 333 square feet or fraction thereof of gross floor area in excess of 20,000 square feet, in any office or professional building, except that parking requirements for gross floor area used for medical offices shall be regulated under subparagraph (12) below.
- (12) One stall for each 200 square feet or fraction thereof of gross floor area used for medical offices, except that where such medical offices are in buildings used in conjunction with a hospital and located on the hospital property or abutting land, the number of parking stalls may be one-half of the requirements specified. In addition, one (1) stall shall be provided for each three (3) employees in any laboratory or pharmacy included within such building.
- (13) One stall for each three (3) seats, permanent or otherwise, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances**, for patron use of restaurants and other places serving food or beverages and of theaters, halls, clubs, auditoriums and other places of amusement or assembly and one stall for each three (3) employees to be employed or anticipated to be employed on the largest shift. Places of assembly or amusement shall also provide one parking stall for each forty-five (45) square feet of gross floor area used for meeting function purposes when such space is customarily used concurrently with the seating space. In the case of such uses in conjunction with a hotel or motor hotel and in the same or an abutting building, the parking stall requirements with respect to patron use of restaurants and other places serving food or beverages shall be one-half (1/2) and with respect to patron use of theaters, halls, clubs, auditoriums and other places of amusement or assembly shall be one-fourth (1/4) of the preceding requirements.

- a) Any building or structure or the use of any building, structure or land existing in violation of the ordinances in force at the time this chapter or any corresponding provision of any prior ordinance was adopted;
- b) Any nonconforming building or structure not used for a period of two (2) years or any nonconforming use abandoned for a period of two (2) years; and
- c) Any nonconforming use which is changed to a conforming use. No reversion to a nonconforming use shall be permitted thereafter.

(b) A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided, that a special permit is obtained from the board of aldermen in accordance with the procedure provided in section 30-24. In granting such a permit, the board of aldermen shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this paragraph, the word "establishment" shall include buildings, structures and lands.

(c) Regardless of whether there are increases in the nonconforming nature of a structure, the board of aldermen deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to chapter 40A, section 6 of the General Laws. The following alterations, enlargements, reconstruction of or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that (1) relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming, (2) the resulting changes on the nonconforming side will be no closer than five feet to the side or rear property line, (3) the resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the two adjacent lots, (4) the resulting construction will meet all building and fire safety codes, and (5) the *de minimis* relief provided in this section shall not apply to buildings in which the nonconformity is due solely to FAR requirements set out in section 30-15(u) Table A, nor shall it be used to increase the FAR beyond that shown in Table A:

- (1) Dormers that do not extend above the height of the existing roof peak and do not add more than four hundred (400) square feet of floor area;
- (2) Decks or deck additions or porches less than two hundred (200) square feet in size;
- (3) First floor additions in the side and rear setbacks which do not total more than two hundred (200) square feet in size;
- (4) Second floor additions which do not total more than four hundred (400) square feet in size;
- (5) Enclosing an existing porch of any size;