Town of

AMHERST *Massachusetts*

PLANNING BOARD **Report to Town Meeting**

ARTICLE 7 NON-CONFORMING STRUCTURES (Planning Board)

To see if the Town will amend Section 9.200 of the Zoning Bylaw by adding the language in ***bold italics***, as follows:

9.200 Under Section 11.1, the Building Commissioner may permit the repair, alteration, reconstruction, extension or structural change of a lawful, dimensionally non-conforming single family or two family dwelling or, a portion thereof, or accessory structures thereto, provided the proposed change does not constitute a change of use under this Bylaw, and ***at least one of*** the following conditions ~~are~~ ***is*** met:

9.2000 In the case of a building non-conforming solely because of insufficient lot frontage or lot area, or both, the proposed change shall meet all dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors and maximum height.

9.2001 In the case of a dimensionally non-conforming building with sufficient lot frontage and lot area, where said building, or a portion thereof, is non-conforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

9.2002 In the case of a building non-conforming as to lot frontage and/or lot area, and non-conforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

Recommendation

The Planning Board voted 7 - 0 to recommend that Town Meeting adopt Article 7.

Background

Article 7 was requested by the Building Commissioner and property owners. It would clarify the Building Commissioner's authority to grant administrative relief to property owners proposing changes to legal non-conforming single and two-family structures.

Currently, Section 9.200 authorizes the Building Commissioner to allow alterations to non-conforming single family and two-family dwellings under two circumstances:

1) If the lot is non-conforming (lacks sufficient lot frontage or minimum lot area) and the building is otherwise conforming to dimensional requirements; or

2) If the lot is conforming, but the building is non-conforming in terms of its dimensional requirements, such as setbacks, lot coverage, floors or height.

In both cases, the proposed changes must not increase the non-conformity of the structure or constitute a change of use.

But Section 9.200 does not authorize the Building Commissioner to allow alterations to these properties when both the lot and the building are non-conforming, even when the proposed change will not increase or alter the existing non-conformity. The Building Commissioner and property owners have asked that this language be amended to authorize the Commissioner to allow properties with both kinds of non-conformity to undertake alterations, so long as the proposed changes would not make the property more non-conforming.

So, Article 7 would authorize the Building Commissioner to permit the repair, alteration, reconstruction, extension or structural change when a building is dimensionally non-conforming and is located on a lot with insufficient frontage and insufficient area and the change does not make the non-conformity worse or constitute a change in use.

History

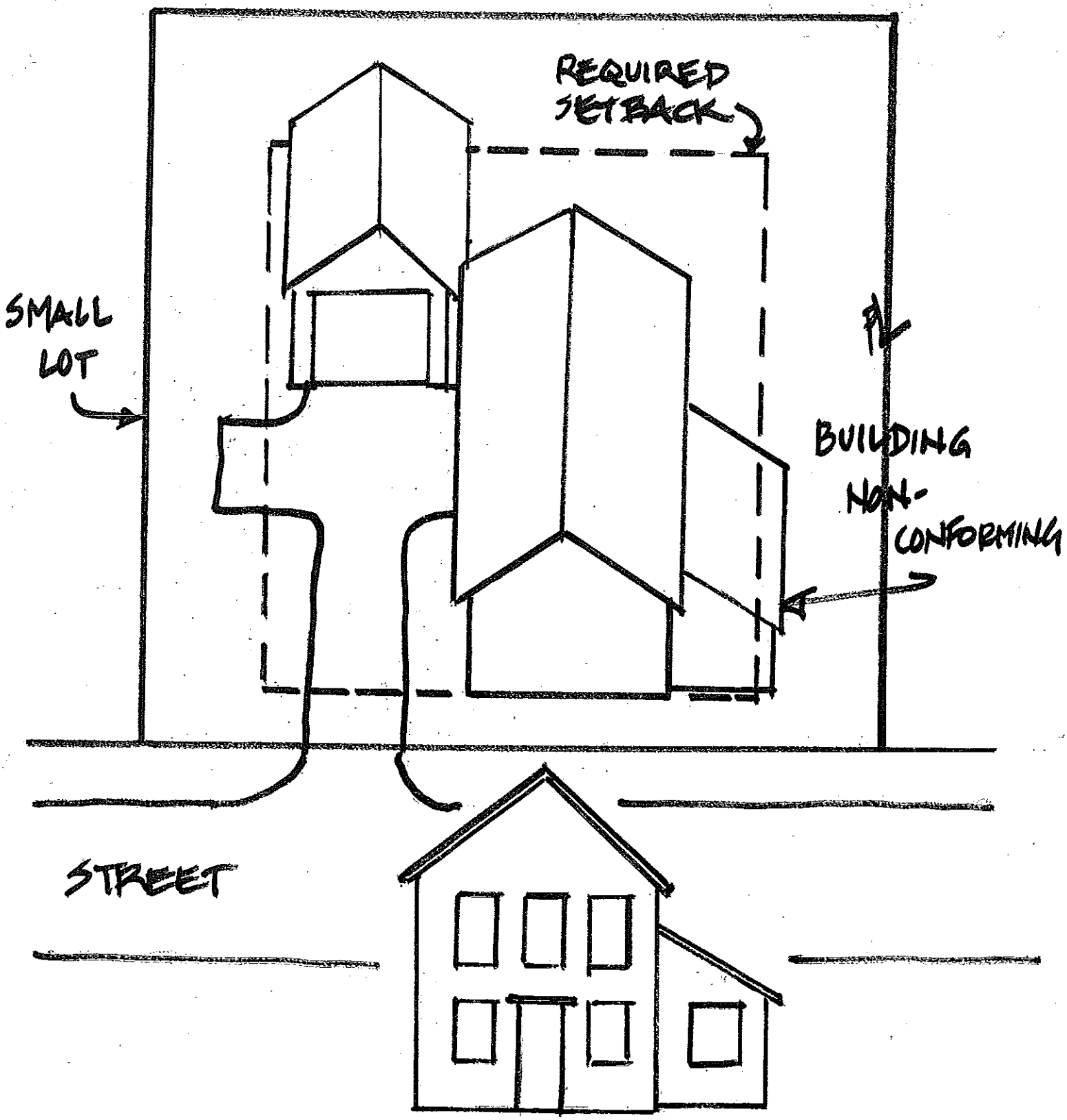
Many neighborhoods in Amherst were built before zoning regulations were created and so include properties that have small lots and buildings built closer together than the current standard requirements in the Bylaw would allow. Many of the current requirements were developed to guide suburban subdivision development, and do not comfortably regulate changes in older, densely settled neighborhoods.

Without this additional administrative relief, owners of single family or two-family residences are required to apply for and receive a Special Permit from the Zoning Board of Appeals to make minor alterations, such as modifications to an existing deck, or converting a screened porch to living space – even when a change does not make the building more non-conforming or constitute a change of use. This process can be fairly complicated, expensive, and can take up to three (3) months from application to approval.

As noted, under the existing language of Section 9.200, changes are permitted to properties when the lot or the building are non-conforming. All Article 7 would do is permit changes to occur when both circumstances are present – a common enough occurrence in Amherst. For relatively minor projects that do not increase a property's non-conformity or involve any change in use, a Special Permit represents an unnecessary burden for property owners. Such changes do not require the careful scrutiny of a permitting board, or the ability to deny the change altogether.

As Amherst's Zoning Enforcement Office, the Building Commissioner is already responsible for determining whether or not a proposed change will increase any non-conformity or might create a new use and so require an application for a land use permit. When in doubt, the Building Commissioner currently consults with Town Counsel or requires the applicant to seek a Special Permit, and that will not change.

Public Hearing

The Planning Board held a public hearing on Article 7 on September 30, 2009. There was no public comment and, after discussion, the Planning Board voted 7 - 0 to recommend that Town Meeting adopt Article 7.

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