Pittsfield Planning Board
Town Hall, 85 Main Street
Pittsfield, NH 03263
Minutes of Public Meeting

DATE: Monday, January 22, 2018

AGENDA ITEM 1: Call to Order

Chair Clayton Wood called the meeting to order at 7:03 P.M.

AGENDA ITEM 2: Roll Call

Planning board members present:
Clayton Wood (chair),
Daren Nielsen (vice-chair),
Jim Pritchard (secretary),
Carole Richardson (selectmen's ex officio member), and
James Hetu (alternate)

Planning board members absent:
Paul Nickerson,
Adam Gauthier (alternate), and
Jim Adams (alternate for the selectmen's ex officio member)

Pittsfield town officials appearing before the planning board: Carl Anderson, selectman.

Members of the public appearing before the planning board: Dan Welch.

"Members of the public appearing before the planning board" includes only members of the public who spoke to the board. It does not include members of the public who were present but who did not speak to the board.

AGENDA ITEM 3: Public Input

James Hetu sat in place of Paul Nickerson.

No public input.

AGENDA ITEM 4: Public hearing on proposed zoning amendment 1, to adopt the State of New Hampshire's most recent definition of "agriculture"

Clayton Wood opened the public hearing on proposed zoning amendment 1 to public input.

There was no public input.

Clayton Wood closed the public hearing to public input.

Jim Pritchard moved that the final form of amendment 1 shall be as in proposed amendment 1 dated December 14, 2017.

Clayton Wood seconded the motion.

Discussion: No discussion.

Vote that the final form of amendment 1 shall be as in proposed amendment 1 dated December 14, 2017: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, James Hetu, Clayton Wood, and Carole Richardson. Voting "no": none. Abstaining: none.

Proposed zoning ordinance amendment no. 1 dated December 14, 2017, is attached at the end of this minutes document.

AGENDA ITEM 5: Public hearing on proposed zoning amendment 2, to change the permitting of home occupations and bed-and-breakfasts so that (1) home occupations will be permitted by right in the Suburban District and in the Rural District, where home occupations are now permitted as special exceptions, and (2) bed-and-breakfasts will be permitted by right in the Urban District, where bed-and-breakfasts are now permitted as special exceptions

Clayton Wood opened the public hearing on proposed zoning amendment 2 to public input.

There was no public input.

Clayton Wood closed the public hearing to public input.

Jim Pritchard moved that the final form of amendment 2 shall be as in proposed amendment 2 dated November 30, 2017.

Clayton Wood seconded the motion.

Discussion: No discussion.

Vote that the final form of amendment 2 shall be as in proposed amendment 2 dated November 30, 2017: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, James Hetu, Clayton Wood, and Carole Richardson. Voting "no": none. Abstaining: none.

Proposed zoning ordinance amendment no. 2 dated November 30, 2017, is attached at the end of this minutes document.

AGENDA ITEM 6: Public hearing on proposed zoning amendment 3, to change how article 3, section 3, (b), (6), Table of Uses and Districts, shows the permitting of home occupations from permitted by right in the Commercial District to prohibited in the Commercial District, and to change how article 3, section 3, (b), (6), Table of Uses and Districts, shows the permitting of bed-and-breakfasts from permitted as special exceptions in the Commercial District and in the Light Industrial/Commercial District to prohibited in the Commercial District and in the Light Industrial/Commercial District

Clayton Wood opened the public hearing on proposed zoning amendment 3 to public input.

Carl Anderson asked whether "in the column titled 'Comm.'" meant in the column for the Commercial District or whether it meant in the column for the Light Industrial/Commercial District.

Clayton Wood said that "in the column titled 'Comm.'" meant in the column for the Commercial District.

Carl Anderson said that single-family dwellings existed in the Commercial District. Carl Anderson asked what was the reason to prohibit these homes from having home occupations.

Clayton Wood explained that adding a home occupation to a single-family dwelling is an expansion of the single-family dwelling use, that single-family dwellings are nonconforming uses in the Commercial District (meaning that the zoning ordinance prohibits them in the Commercial District but that they may continue to exist because they lawfully preexisted the zoning ordinance), and that both the state law of nonconforming uses and the zoning ordinance itself prohibit the expansion of nonconforming uses. (New London Land Use Association v. New London Zoning Board of Adjustment, 130 N.H. 510, 543 A.2d 1385 (1988) ("expansion may not be substantial and may not render premises or property proportionally less adequate."); Hurley v. Hollis, 143 N.H. 567, 729 A.2d 998 (1999) ("'We have never permitted an expansion of a nonconforming use that involved more than the internal expansion of a business within a pre-existing structure,' *Grey Rocks Land Trust*, 136 N.H. at 244, 614 A.2d at 1051, and we will not do so here."); Pittsfield Zoning Ordinance, article 4, section 3, (a), (3) ("**Expansion:** A not-conforming use may be expanded by a VARIANCE from the Zoning Board of Adjustment.").) Clayton Wood said that the current use table entry is confusing because the table says that home occupations are permitted as special exceptions while article 4 (section 3 (a), (3)) says that adding a home occupation is prohibited. Clayton Wood said that article 4 (section 3, (a), (3)) controls in this conflict because state law (RSA 676:14) says that where local laws conflict, the more restrictive local law controls.

Carl Anderson suggested that home occupations would not be nonconforming uses if the use table listed home occupations as permitted.

Clayton Wood said that home occupations would be nonconforming uses because, by definition, home occupations are an extended use of a home. (Pittsfield Zoning Ordinance, article 2, section 3, Definitions, HOME OCCUPATION, (b): "For the purposes of subparagraph (a), a commercial use shall be deemed not occasioned by a person's residence, and thus not a HOME OCCUPATION, if that person does not reside on the LOT where he conducts the commercial use. (Gratton v. Pellegrino, 115 N.H. 619, 348 A.2d 349 (1975).).)"

Dan Welch said that the lines of the Commercial District should be redrawn to exclude single-family dwellings from the Commercial District.

Jim Pritchard and Daren Nielsen agreed.

Clayton Wood said that the use table never should have shown home occupations as permitted in the Commercial District and that home occupations would need a variance.

Dan Welch asked whether "prohibited" might not be a final absolute.

Jim Pritchard said that "prohibited" meant that the use in question would need a variance in order for the use to be established.

Clayton Wood explained that uses that the zoning ordinance does not permit are uses that the zoning ordinance prohibits. Clayton Wood said that anyone reading the zoning ordinance carefully will see that home occupations in the Commercial District are prohibited (under article 4, section 3, (a), (3)) even though the use table says that that home occupations in the Commercial District are permitted. Clayton Wood said that the stricter regulation (article 4, section 3, (a), (3)) would control because of state law (RSA 676:14).

Jim Pritchard explained that a particular home occupation in the Commercial District might be permitted under Hampton v. Brust, 122 N.H. 463, 446 A.2d 458 (1982), in which case that home occupation would not need a variance.

Clayton Wood said that public comments at previous hearings (on November 2, 2017, and on November 30, 2017) had prompted the board to separate the changes proposed in current amendment 2 and in current amendment 3.

Jim Pritchard said that public comments at the previous hearings had made the board aware that it needs to look carefully at how the zoning district boundaries are drawn. Jim Pritchard said that he had tried to do something about the zoning district boundaries but that doing this project had been too much to get it on the ballot for March 2018.

Dan Welch asked for the board's assurance that it would work on moving the zoning district boundaries to protect the single-family dwellings now located in the Commercial District. Dan Welch asked whether putting specific lots in a different district were possible.

Jim Pritchard that that a single lot can be surrounded by a different district if this zoning is part of a comprehensive plan. Jim Pritchard thought that this process would allow protection of historic homes in the downtown. Jim Pritchard said that he was committed to redistricting the single-family dwellings in the Commercial District.

Daren Nielsen said that he too was committed to redistricting the single-family dwellings in the Commercial District.

Carole Richardson said that she had never liked amendment 3 because she did not like the word "prohibit." Carole Richardson said that the word "prohibit" turned her off and that the word "prohibit" would likely make voters vote against the amendment.

Clayton Wood and Jim Pritchard said that the zoning ordinance prohibits things. Jim Pritchard cited article 3, section 3, (b), (5):

"Uses Implicitly Prohibited: Every use that is not of a type listed in subparagraph (6), Table of Uses and Districts, that is not a radio antenna or tower permitted by article 18, Telecommunications Equipment and Facilities, and that is not permitted by article 4, Nonconforming Uses and Lots, shall be prohibited in all districts."

Jim Pritchard said that "prohibited" was a good word to use because it makes the meaning clear.

Carole Richardson said that the public will not like the word "prohibited."

Clayton Wood said that voters might resist moving the zoning district boundaries. Clayton Wood said that getting consensus on where to draw the boundaries in 1988, when the town adopted the zoning ordinance, had been difficult. Clayton Wood said that the board would certainly work on the matter.

Dan Welch said that prohibiting bed-and-breakfasts in the Commercial District made no sense because bed-and-breakfasts are commerce.

Jim Pritchard and Clayton Wood said that bed-and-breakfasts are home occupations by definition and that home occupations are principally residential, not commercial.

Daren Nielsen said that moving the zoning district boundaries might not encounter significant resistance if the board is addressing a known problem of needlessly restricting a use of single-family dwellings. Daren Nielsen said that the whole reason behind the revisions to the use table relative to home occupations and bed-and-breakfasts had been to expand the rights to establish home occupations and bed-and-breakfasts.

Jim Pritchard said that the state law is what it is and that leaving a conflicting provision in the zoning ordinance for the sake of public appearance helps no one because eventually the code enforcement officer must apply RSA 676:14 and enforce the stricter provision. Jim Pritchard said that amendment 3 had brought to light the need to correct the zoning district boundaries.

Clayton Wood asked Dan Welch to help the board determine where the zoning district boundaries should be.

Clayton Wood closed the public hearing to public input.

Jim Pritchard moved that the final form of amendment 3 shall be as in proposed amendment 3 dated November 30, 2017.

Clayton Wood seconded the motion.

Discussion: No further discussion.

Vote that the final form of amendment 3 shall be as in proposed amendment 3 dated November 30, 2017: carried 4 - 1 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, James Hetu, and Clayton Wood. Voting “no”: Carole Richardson. Abstaining: none.

Proposed zoning ordinance amendment no. 3 dated November 30, 2017, is attached at the end of this minutes document.

AGENDA ITEM 7: Public hearing on zoning amendment 4, to codify the New Hampshire state law of nonconforming uses into the zoning ordinance

Clayton Wood said that the state was encouraging the reduction and elimination of nonconforming uses.

Clayton Wood said that amendment 4 would increase the use-it-or-lose-it time of abandonment from one year to two years, first, to give people more time to reestablish an inactive nonconforming use and, second, to be consistent with the state law of abandonment of variances and special exceptions. (See RSA 674:33, I-a and IV.)

Clayton Wood said that amendment 4 would codify the state law defining what expansions are permitted and what expansions are prohibited.

Clayton Wood said that amendment 4 would give an owner guidelines to correct a nonconforming use that had changed or expanded unlawfully.

Jim Pritchard read from the proposed statement of purpose for article 4, which emphasizes that the state law of nonconforming uses controls over whatever the local zoning ordinance says, and which emphasizes that the state law of nonconforming uses is trying to reduce and eliminate nonconforming uses.

Clayton Wood opened the public hearing on proposed zoning amendment 4 to public input.

There was no public input.

Clayton Wood closed the public hearing to public input.

Jim Pritchard moved that the final form of amendment 4 shall be as in proposed amendment 4 dated December 31, 2017, with the following changes:

Article 4, section 1, (b), (5): Remove the two commas at the two ends of "and thus that the nonconforming-use status of the asphalt-production plant was not abandoned".

Article 4, section 3, (d), (2): Change "Article 4, section 3, (c), (1), (B)" to "See article 4, section 3, (c), (1), (B)".

Clayton Wood seconded the motion.

Discussion: No further discussion.

Vote that the final form of amendment 4 shall be as in proposed amendment 4 dated December 31, 2017, with the following changes:

Article 4, section 1, (b), (5): Remove the two commas at the two ends of "and thus that the nonconforming-use status of the asphalt-production plant was not abandoned".

Article 4, section 3, (d), (2): Change "Article 4, section 3, (c), (1), (B)" to "See article 4, section 3, (c), (1), (B)".

carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, James Hetu, Clayton Wood, and Carole Richardson. Voting "no": none. Abstaining: none.

Proposed zoning ordinance amendment no. 4 dated January 22, 2018, is attached at the end of this minutes document.

AGENDA ITEM 8: Selectman's Report

Carole Richardson had no selectman's report.

AGENDA ITEM 9: Members' Concerns

No board member stated any concern.

AGENDA ITEM 10: Public Input

No public input.

AGENDA ITEM 11: Adjournment

Carole Richardson moved to adjourn the meeting.

Clayton Wood seconded the motion.

Vote to adjourn the planning board meeting of January 22, 2018: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, James Hetu, Clayton Wood, and Carole Richardson. Voting "no": none. Abstaining: none. The planning board meeting of January 22, 2018, is adjourned at 7:40 P.M.

Minutes approved: February 1, 2018

_____ _____
Clayton Wood, chairman Date

I transcribed these minutes (not verbatim) on January 27, 2018, from the digital audio recording that Chairman Clayton Wood made during the meeting on January 22, 2018, and uploaded to the Internet.

_____
Jim Pritchard, planning board recorder and secretary

Attachments:
1. Proposed zoning ordinance amendment no. 1 dated December 14, 2017.
2. Proposed zoning ordinance amendment no. 2 dated November 30, 2017.
3. Proposed zoning ordinance amendment no. 3 dated November 30, 2017.
4. Proposed zoning ordinance amendment no. 4 dated January 22, 2018.

The planning board's additional and only other proposal to the town meeting, a proposed repeal (July 6, 2017) of the Town of Pittsfield building codes, is attached at the end of the planning board minutes of November 30, 2017.

Amendment No. 1 (December 14, 2017) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance, **article 2, section 3, Definitions**, definition of "AGRICULTURE", as follows: Delete the words as shown below with strikethrough, and add the words as shown below with underlining. The definition below uses strikethrough and underlining only to show what is added or deleted; the strikethrough and underlining are not included in the text of the revised definition.

AGRICULTURE: "AGRICULTURE" means agriculture as defined in RSA 21:34-a, II, effective ~~August 10, 2014~~ June 16, 2016.

Amendment No. 2 (November 30, 2017) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance, **article 3, section 3, (b), (6), Table of Uses and Districts**, as follows:

1. In the row titled “HOME OCCUPATION”, and in the column titled “Suburb.”, change the letter “E” to the letter “Y”, so as to permit home occupations by right in the Suburban District, where the zoning ordinance table of uses and districts now permits home occupations as special exceptions.

2. In the row titled “HOME OCCUPATION”, and in the column titled “Rural”, change the letter “E” to the letter “Y”, so as to permit home occupations by right in the Rural District, where the zoning ordinance table of uses and districts now permits home occupations as special exceptions.

3. In the row titled “BED-AND-BREAKFAST”, and in the column titled “Urban”, change the letter “E” to the letter “Y”, so as to permit bed-and-breakfasts by right in the Urban District, where the zoning ordinance table of uses and districts now permits bed-and-breakfasts as special exceptions.

4. In the row titled “BED-AND-BREAKFAST”, and in the column titled “Suburb.”, change the letter “E” to the letter “Y”, so as to permit bed-and-breakfasts by right in the Suburban District, where the zoning ordinance table of uses and districts now permits bed-and-breakfasts as special exceptions.

Amendment No. 3 (November 30, 2017) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance, **article 3, section 3, (b), (6), Table of Uses and Districts**, as follows:

1. In the row titled “HOME OCCUPATION”, and in the column titled “Comm.”, change the letter “Y” to the letter “N”, so as to prohibit home occupations in the Commercial District, where the zoning ordinance table of uses and districts now purports to permit home occupations by right.

2. In the row titled “BED-AND-BREAKFAST”, and in the column titled “Comm.”, change the letter “E” to the letter “N”, so as to prohibit bed-and-breakfasts in the Commercial District, where the zoning ordinance table of uses and districts now purports to permit bed-and-breakfasts as special exceptions.

3. In the row titled “BED-AND-BREAKFAST”, and in the column titled “Lt Ind./Comm.”, change the letter “E” to the letter “N”, so as to prohibit bed-and-breakfasts in the Light Industrial/Commercial District, where the zoning ordinance table of uses and districts now purports to permit bed-and-breakfasts as special exceptions.

Amendment No. 4 (January 22, 2018) to the Town of Pittsfield Zoning Ordinance:

1. Amend zoning ordinance, **article 1, section 6, (a), (2)**, as follows: Delete the words shown below with strikethrough, and add the words shown below with underlining. The sentence below uses strikethrough and underlining only to show what is added or deleted; the strikethrough and underlining are not included in the text of the revised sentence.

   The board of selectmen's charge to administer and enforce the zoning ordinance shall not interfere with any state or federal law empowering a specific administrator, for example, ~~RSA 676:13, I, (building inspector) and RSA 676:5, III, (planning board)~~ RSA 676:13, I, (building inspector); RSA 155-A:4, II, and RSA 155-A:7, I, (fire chief); and RSA 676:5, III, (planning board).

2. Amend zoning ordinance, **article 4, section 1, Authority**, as follows: Replace current article 4, section 1, Authority, with the attached new article 4, section 1, New Hampshire Statutory Law and Case Law.

3. Amend zoning ordinance, **article 4, section 2, Purpose**, as follows: Replace current article 4, section 2, Purpose, with the attached new article 4, section 2, Purpose.

4. Amend zoning ordinance, **article 4, section 3, Nonconforming Uses**, as follows: Replace current article 4, section 3, Nonconforming Uses, with the attached new article 4, section 3, Nonconforming Uses.

5. Amend zoning ordinance, **article 4, section 5, Development of Nonconforming Conventional Lots**, as follows: Delete what the attached article 4, section 5, Development of Nonconforming Conventional Lots, shows with strikethrough, and add what the attached article 4, section 5, Development of Nonconforming Conventional Lots, shows with underlining. The attached article 4, section 5, uses strikethrough and underlining only to show what is added or deleted; the strikethrough and underlining are not included in the text of the revised article 4, section 5.

Article 4. Nonconforming Uses and Lots

1. New Hampshire Statutory Law and Case Law

(a) Continuance of and Changes in Nonconforming Uses:

(1) RSA 674:19, Applicability of Zoning Ordinance:

A zoning ordinance adopted under RSA 674:16 shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.

(2) Ray's Stateline Market, Inc. v. Pelham, 140 N.H. 139, 665 A.2d 1068 (1995):

Article V, section 307-26 of the Pelham Zoning Ordinance permits a nonconforming use to continue unless, among other things, it is "[c]hanged to another nonconforming use" or "[e]xtended." "A municipality's power to zone property to promote the health, safety, and general welfare of the community is delegated to it by the State, and the municipality must, therefore, exercise this power in conformance with the enabling legislation." *Britton v. Town of Chester,* 134 N.H. 434, 441, 595 A.2d 492, 496 (1991). With this principle in mind, we construe Article V, section 307-26 of the Pelham Zoning Ordinance to be consistent with RSA 674:19, which we have interpreted, along with its predecessor statutes, as limiting any "extension," "expansion," or "enlargement" of a nonconforming use and prohibiting its change to a "substantially different" nonconforming use. *See New London Land Use Assoc.*, 130 N.H. at 516-17, 543 A.2d at 1388; *Town of Hampton,* 122 N.H. at 468, 446 A.2d at 460-61 (interpreting prior statute).

(3) New London v. Leskiewicz, 110 N.H. 462, 272 A.2d 856 (1970):

(A) a substantial change in the nature and purpose of that original [nonconforming] use ... constitute[s] a new and impermissible use.

(B) In deciding whether the particular activity is within the scope of the established or acquired nonconforming use consideration may be given to, among others, the following factors: (1) to what extent does the use in question reflect the nature and purpose of the prevailing nonconforming use; (2) is it merely a different manner of utilizing the same use or does it constitute a use different in character, nature and kind; (3) does this use have a substantially different effect on the neighborhood.

(C) The fact that improved and more efficient or different instrumentalities are used in the operation of the use does not in itself preclude the use made from being a continuation of the prior nonconforming use providing such means are ordinarily and reasonably adapted to make the established use available to the owners and the original nature and purpose of the undertaking remain unchanged.

(4) New London Land Use Association v. New London Zoning Board of Adjustment, 130 N.H. 510, 543 A.2d 1385 (1988):

(A) Zoning, by its nature, is restrictive. Although zoning ordinances may expressly permit the continuation of nonconforming uses, such uses by their very nature violate the spirit of zoning laws. *Flanagan v. Hollis*, 112 N.H. 222, 224, 293 A.2d 328, 329 (1972). Therefore, it is the policy of zoning law to construe strictly zoning ordinance provisions which provide for the continuation of nonconforming uses. *Keene v. Blood*, 101 N.H. 466, 469, 146 A.2d 262, 264 (1958). The policy of zoning law is to carefully limit the enlargement and extension of nonconforming uses. *Arsenault v. Keene*, 104 N.H. 356, 359, 187 A.2d 60, 62 (1962); *Ackley v. Nashua*, 102 N.H. 551, 554, 163 A.2d 6, 9 (1960). The "ultimate purpose of zoning regulations [contemplates that nonconforming uses] should be reduced to conformity as completely and rapidly as possible. . . ." 82 Am. Jur. 2d *Zoning and Planning* § 191 (1976).

(B) Nonconforming uses may be expanded, where the expansion is a natural activity, closely related to the manner in which a piece of property is used at the time of the enactment of the ordinance creating the nonconforming use. *Brust*, 122 N.H. at 468, 446 A.2d at 461; *State v. Syzmanski*, 189 A.2d 514, 516 (Conn. Cir. Ct. 1962); *In Re Freid-El Corp.*, 383 A.2d 1286, 1288 (Pa. Commw. Ct. 1978); 82 Am. Jur. 2d *Zoning & Planning* § 196 (1976). However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate.

(C) the creation of a nonconforming use depends upon the configuration of specific facts at a certain point in time; therefore, in order to determine how much a nonconforming use may be expanded or changed, we must look to the facts existing when the nonconforming use was created. *L. Grossman & Sons, Inc. v. Town of Gilford*, 118 N.H. 480, 483, 387 A.2d 1178, 1180 (1978); *New London v. Leskiewicz*, 110 N.H. 462, 467, 272 A.2d 856, 860 (1970). We must also consider the extent to which the challenged use reflects the nature and purpose of the prevailing nonconforming use, whether the challenged use is merely a different manner of using the original nonconforming use or whether it constitutes a different use, and whether the challenged use will have a substantially different impact upon the neighborhood. *New London v. Leskiewicz, supra* at 468, 272 A.2d at 860.

(5) Hampton v. Brust, 122 N.H. 463, 446 A.2d 458 (1982):

We find that the existing ordinance cannot be read to prevent the defendants from developing their nonconforming use in a way that results in a mere intensification of the use that reflects a natural expansion and growth of trade. *See* 1 R. Anderson, American Law of Zoning § 6.47, at 463-66 (2d ed. 1976).

Under such circumstances, where there is no substantial change in the use's effect on the neighborhood, the landowner will be allowed to increase the volume, intensity or frequency of the nonconforming use. For example, a law firm in a building constituting a nonconforming use could increase its numbers of lawyers or clients, its internal and external use of its premises or amount of work activity. Similarly, a nonconforming restaurant could add more tables and chairs or serve more dinners.

We think that this rule conforms with the strictures of the zoning statute. RSA 31:62 provides that a zoning regulation applies, with respect to an existing structure or use, only to "alteration of a building for use for a *purpose* or in a *manner substantially different* from the use to which it was put before alteration." (Emphasis added). In this case, the arcade portion of the building cannot be expanded into a section of the building that had been a gift shop, a use different from a penny arcade.

(Emphasis added by the New Hampshire Supreme Court.)

(6) Grey Rocks Land Trust v. Hebron, 136 N.H. 239, 614 A.2d 1048 (1992):

We have never permitted an expansion of a nonconforming use that involved more than the internal expansion of a business within a pre-existing structure.

(7) Hurley v. Hollis, 143 N.H. 567, 729 A.2d 998 (1999):

While we have previously upheld an increase in the volume, intensity, or frequency of a nonconforming use that reflects the natural expansion and growth of trade and does not substantially change the use's effect on the neighborhood, we have done so only within the confines of the existing structure. *See Town of Hampton v. Brust*, 122 N.H. 463, 469, 446 A.2d 458, 461 (1982) (permitting increase of arcade machines within existing structure); *cf. Devaney v. Town of Windham*, 132 N.H. 302, 305-06, 564 A.2d 454, 456 (1989) (prohibiting landowner's addition of second story that increased volume of premises and brought structure closer to property lines as a natural expansion of nonconforming use). "We have never permitted an expansion of a nonconforming use that involved more than the internal expansion of a business within a pre-existing structure," *Grey Rocks Land Trust*, 136 N.H. at 244, 614 A.2d at 1051, and we will not do so here. *Cf. id.* (noting permissive expansion of existing structure where no abutters objected and addition would affect area less than use permissible under zoning ordinance).

(8) Seabrook v. D'Agata, 116 N.H. 472, 362 A.2d 182 (1976):

We do not agree that the defendants' enclosure of the carport constitutes "an expansion of the non-conforming use". We interpret that phrase to indicate an expansion in the nonconforming features of the dwelling, rather than an addition which entirely conforms to the zoning ordinance...

(9) Hampstead v. Capano, 122 N.H. 144, 441 A.2d 1180 (1982), holding (A) that the property owners did not need a variance to build front-entrance steps to their existing house even though the steps would violate setback regulations, because the owners needed the steps to access their house and because the steps were such a minor addition that they would not change the nature and purpose of the house, but (B) that the property owners did need a variance to build a sun deck that would violate setback regulations, because the sun deck would be a substantially different use.

(10) Devaney v. Windham, 132 N.H. 302, 564 A.2d 454 (1989):

> The plaintiff, Robert Devaney, appeals the Superior Court's (*Mangones*, J.) order affirming the zoning board of adjustment's (ZBA) denial of both a variance and a rehearing and its granting of the defendant Town of Windham's (the Town) request for injunctive relief. The injunction requires the plaintiff to return his home to "exterior dimensions which substantially comport with dimensional requirements of the Town of Windham zoning ordinance." We affirm.
>
> . . .
>
> Although a natural expansion of a nonconforming use may be allowed, any permitted expansion is limited. *See New London, supra* at 516-17, 543 A.2d at 1388. The property owner must show that the expansion is not so great that it constitutes an entirely new use, thus violating the intent of the town's zoning ordinance. *See Town of Hampton v. Brust,* 122 N.H. 463, 468, 446 A.2d 458, 460-61 (1982). It is an impossible stretch of the imagination to call plaintiff's construction on his camp a natural expansion when it increased the volume of the premises substantially, added eight to ten feet to the premises' height via a new second story and brought the premises closer to the property lines.

(11) Stevens v. Rye, 122 N.H. 688, 448 A.2d 426 (1982):

> RSA 31:62 protects existing non-conforming uses unless the proposed use is an "alteration of a building for use for a *purpose* or in a manner *substantially different* from the use to which it was put before alteration." RSA 31:62. (Emphasis added.) *See Town of Hampton v. Brust,* 122 N.H. 463, 468, 446 A.2d 458, 460 (1982). The proposed use in the instant case would change an automobile garage into a "bath shop" and plumbing supplies showroom. We conclude that the new use would represent a "*substantial change* in the *nature* and *purpose* of the original use." *Id.* at 468, 446 A.2d at 460 (emphasis in original); *see New London v. Leskiewicz,* 110 N.H. 462, 466, 272 A.2d 856, 860 (1970). The trial court's determination that the proposed use was as well suited or more appropriate to the area as the previous use had been is irrelevant. Because the proposed use is a significant change from the pre-existing non-conforming use, we must reject the trial court's conclusion that the Dufresnes' use was a permissible expansion of an existing non-conforming use.
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> (Emphasis added by the New Hampshire Supreme Court.)

(b) Abandonment of Nonconforming Uses:

(1) New London v. Leskiewicz, 110 N.H. 462, 272 A.2d 856 (1970):

> (A) a substantial change in the nature and purpose of that original [nonconforming] use ... constitute[s] a new and impermissible use.
>
> (B) In deciding whether the particular activity is within the scope of the established or acquired nonconforming use consideration may be given to, among others, the following factors: (1) to what extent does the use in question reflect the nature and purpose of the prevailing nonconforming use; (2) is it merely a different manner of utilizing the same use or does it

constitute a use different in character, nature and kind; (3) does this use have a substantially different effect on the neighborhood.

(C) The fact that improved and more efficient or different instrumentalities are used in the operation of the use does not in itself preclude the use made from being a continuation of the prior nonconforming use providing such means are ordinarily and reasonably adapted to make the established use available to the owners and the original nature and purpose of the undertaking remain unchanged.

(2) Lawlor v. Salem, 116 N.H. 61, 352 A.2d 721 (1976):

Abandonment depends upon the concurrence of two factors: (1) an intention to abandon or relinquish the use, and (2) some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use.

(3) Guy v. Temple, 157 N.H. 642, 956 A.2d 272 (2008):

we agree with the majority of courts that the failure to obtain a license designed to regulate an activity will not adversely affect the previously determined nonconforming status of the land upon which such an activity is being conducted.

Because the rule [that failing to obtain a license designed to regulate an activity will not adversely affect the activity's previously determined nonconforming status] is founded upon the distinction between zoning and licensing laws, however, the rationale supporting its application weakens when the licensing scheme offended "so meaningfully curtail[s] the use to which land may be employed ... as to be deemed the equivalent of an ordinance which regulates the utilization of land."

. . .

[Thus,] it is at least conceivable that a licensing scheme could be so closely aligned with zoning regulations that failure to comply with its terms might rise to the level of an abandonment of a pre-existing nonconforming use.

(4) McKenzie v. Eaton Zoning Board of Adjustment, 154 N.H. 773, 917 A.2d 193 (2007), upholding a zoning ordinance provision

(A) that "precludes a consideration of a property owner's subjective intent when determining whether the owner has abandoned a destroyed nonconforming use or structure" and

(B) that says, "Any structure damaged by fire, deterioration, or other casualty to the extent of seventy-five (75) per cent or more of the floor area in square feet and is not reconstructed within one (1) year shall constitute discontinuance and abandonment under Article VI, 1.a. above and shall not be reconstructed or used except in conformity with this ordinance."

(5) Pike Industries v. Woodward, 160 N.H. 259, 999 A.2d 257 (2010), finding that an asphalt-production plant continued to be used and thus that the nonconforming-use status of the asphalt-production plant was not abandoned

(A) when the zoning ordinance defined abandonment as discontinuance for one year or more regardless of the property owner's intent,

(B) when the asphalt-production plant produced no asphalt for more than one year, but

(C) when the owner maintained the asphalt-production plant ready to produce asphalt.

(c) Vesting of Nonconforming Uses:

(1) RSA 674:39, Five-Year Exemption:

I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that:

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;

(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 5-year exemption described in paragraph I. The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a).

(2) Piper v. Meredith, 110 N.H. 291, 266 A.2d 103 (1970):

(A) This court has adopted the rule, which prevails in many other jurisdictions, that an owner, who, relying in good faith on the absence of any regulation which would prohibit his proposed project, has made substantial construction on the property or has incurred substantial liabilities relating directly thereto, or both, acquires a vested right to complete his project in spite of the subsequent adoption of an ordinance prohibiting the same. *Winn* v. *Corporation,* 100 N.H. 280, 281, 124 A.2d 211, 213; *Bosse* v. *Portsmouth,* 107 N.H. 523, 532, 226 A.2d 99, 105; 8 McQuillin, Municipal Corporations *s.* 25.157 (1965 rev. vol.).

In determining whether plaintiffs had acquired such a vested right, the master properly excluded the acquisition price of the land and its lessened value for uses other than that intended by the plaintiffs. Money spent for the purchase of land does not change its use nor create a right to use it for an intended, but not executed, use when restrictions are imposed. It is, rather, the amount of money spent on improvements to change the use of the land in a tangible way which if substantial enough and done in good faith will create a vested right which cannot be affected by the enactment of a restrictive ordinance. *City of Rutland* v. *Keiffer,* 124 Vt. 357, 365, 205 A.2d 400, 405. 8A McQuillin, Municipal Corporations *s.* 25.181 (supp).

(B) the plaintiffs took a "calculated risk" in proceeding with the project, that is, that they were not relying in good faith on the nonadoption of the ordinance.

(3) AWL Power, Inc. v. Rochester, 148 N.H. 603, 813 A.2d 517 (2002):

Under RSA 674:39, I, a developer who commences "active or substantial" construction within one year of his project's approval gains a four-year exemption from changes in a municipality's zoning ordinances. RSA 674:39, I. To gain a permanent vested right, however, the developer must still meet the "substantial construction" standard within this exemption period. *Id*. Because the developer triggered the statutory four-year exemption with its work on the project in 1987 and 1988, we need only determine whether the developer's construction was sufficient to permanently vest its common law right to complete the plan.

The correct standard for "substantial construction" vesting considers not only construction measured against the entire plan, but also whether the amount of completed construction is *per se substantial* in amount, value or worth. Whether or not construction is substantial thus depends upon the facts and circumstances of each case. *Piper,* 110 N.H. at 300. In cases where construction expenditures amount to large sums, construction need not "be judged by comparison to the ultimate cost" of the project. *Piper,* 110 N.H. at 303 (Grimes, J., dissenting).

(4) Thomas v. Hooksett, 153 N.H. 717, 903 A.2d 963 (2006):

> Although [code enforcement officer] Ken Andrews and [planning board member] Charles Watson informed Boisvert and Cumberland Farms that the [building] permit would be valid as long as construction began within six months following issuance of the permit on January 5, 2004, both Boisvert and Cumberland Farms should have been aware that those representations were incorrect. Pursuant to RSA 674:39, Boisvert had one year from the date of the issuance of our opinion in *Hooksett Conservation Comm'n* to begin "active and substantial" development of the property in order to secure protection from the zoning changes. The trial court correctly noted that "[s]ince a statute squarely addressed the issue about which Boisvert was concerned, he was on notice that any representations by town officials to the contrary were materially incorrect, and therefore his reliance was not reasonable."

(d) RSA 676:12, I and VI, Certain Building Permits to Be Withheld prior to Zoning Amendments:

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:
(a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7; and
(b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

VI. The provisions of paragraph I shall not apply to any plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this paragraph shall also apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.

(e) Unlawfully Established Not-Conforming Uses:

(1) North Hampton v. Sanderson, 131 N.H. 614, 557 A.2d 643 (1989):

> The law is well established that a nonconforming use is permissible only where it legally exists at the date of the adoption of the zoning ordinance. *Town of Derry v. Simonsen*, 117 N.H. 1010, 1016, 380 A.2d 1101, 1105 (1977); *Arsenault v. Keene*, 104 N.H. 356, 358, 187 A.2d 60, 62 (1962). This rule of law is based on the principle that "'[p]rovisions which except existing uses are intended to favor uses which were both existing and lawful, not to aid users who have succeeded in evading previous restrictions.'" *Town of Derry, supra* at 1016, 380 A.2d at 1105 (quoting *Arsenault, supra* at 359-60, 187 A.2d at 62-63).

(2) Dumais v. Somersworth, 101 N.H. 111, 134 A.2d 700 (1957):

> While it is true that vested rights may be acquired by the expenditure of substantial sums in reliance on a permit properly issued before amendment of an ordinance, this rule does not extend to cases where the issuing official exceeded his authority by issuing a permit in violation of an ordinance then in effect.

(3) Hermer v. Dover, 106 N.H. 534, 215 A.2d 693 (1965):

> A person is charged with knowledge of the zoning restrictions placed on his property, and thus he obtains no vested rights by a building permit issued under a mistake of fact or in violation of law.

(f) Not-Conforming Uses That Endanger Public Health or Safety:

(1) Fischer v. Building Code Review Board, 154 N.H. 585, 914 A.2d 1234 (2006):

> There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community. . . . It would be a sad commentary on the law, if municipalities were powerless to compel the adoption of the best methods for protecting life in such cases simply because the confessedly faulty method in use was the method provided by law at the time of its construction. *City of Seattle v. Hinckley*, 40 Wash. 468, 82 P. 747, 748-49 (Wash. 1905).

(2) RSA 155-B:2, Repair or Removal of Hazardous Building:

> The governing body of any city or town may order the owner of any hazardous building within the municipality to correct the hazardous condition of such building or to raze or remove the same.

(g) Burden of Proof:

(1) New London v. Leskiewicz, 110 N.H. 462, 272 A.2d 856 (1970):

> The burden of establishing that the [purportedly nonconforming] use in question is fundamentally the same use and not a new and impermissible one is on the party asserting it. This is in accordance with the general policy of zoning to carefully limit the extension and enlargement of nonconforming uses.

(2) Devaney v. Windham, 132 N.H. 302, 564 A.2d 454 (1989):

> The property owner must show that the expansion is not so great that it constitutes an entirely new use, thus violating the intent of the town’s zoning ordinance.

(h) Development of Nonconforming Lots Contiguous to Other Lots under Common Ownership:

Vachon v. Concord, 112 N.H. 107, 289 A.2d 646 (1972), upholding the following zoning ordinance provision:

In any district in which structures are permitted, a structure may be erected on each lot which was a lot-of-record at the date of adoption or amendment of this ordinance, even though such lot fails to meet the requirements for area or width, or both, that are applicable in the district, provided such lot is not of continuous frontage with other lots in the same ownership . . . .

(i) Library References:

(1) *Grandfathered - The Law of Nonconforming Uses and Vested Rights* (2009 edition), H. Bernard Waugh, Jr.

(2) *New Hampshire Practice* (2010 edition), volume 15, chapters 8 and 11, Peter J. Loughlin.

2. Purpose

The purposes of this article are as follows:

(a) To codify the New Hampshire state law of NONCONFORMING USES into the zoning ordinance. (Article 4, section 1, (a), (2), quoting Ray's Stateline Market, Inc. v. Pelham, 140 N.H. 139, 665 A.2d 1068 (1995).)

(b) To encourage the discontinuance of NONCONFORMING USES. (Article 4, section 1, (a), (4), (A), quoting New London Land Use Association v. New London Zoning Board of Adjustment, 130 N.H. 510, 543 A.2d 1385 (1988) ("The 'ultimate purpose of zoning regulations [contemplates that nonconforming uses] should be reduced to conformity as completely and rapidly as possible. . . .'"); McKenzie v. Eaton Zoning Board of Adjustment, 154 N.H. 773, 917 A.2d 193 (2007) ("It is well established both in this state and in others that a legitimate purpose of zoning is the reduction and elimination of nonconforming uses.").)

(c) To encourage the elimination or reduction of nonconformance of NONCONFORMING LOTS. (See article 4, section 1, (h), citing Vachon v. Concord, 112 N.H. 107, 289 A.2d 646 (1972).)

(d) To provide for the continuance of lawfully established nonconformance if the transition to conformance is unreasonable. (See RSA 674:19, which provides for the continuance of NONCONFORMING USES but says nothing about the development of NONCONFORMING LOTS.)

3. Nonconforming Uses

(a) Continuance of Nonconforming Activities: Every NONCONFORMING ACTIVITY may continue to exist upon the following conditions:

(1) The NONCONFORMING ACTIVITY shall not change to have a purpose, character, or effect on the neighborhood that differs substantially from the purpose, character, or effect on the neighborhood that the NONCONFORMING ACTIVITY had when it was first nonconforming. (Article 4, section 1, (a), (3) and (4).)

(2) The NONCONFORMING ACTIVITY shall not expand into any indoor or outdoor space that the NONCONFORMING ACTIVITY has not occupied as a NONCONFORMING ACTIVITY. (Article 4, section 1, (a), (5), (6), and (7).)

(3) The NONCONFORMING ACTIVITY shall not expand into any indoor or outdoor space that the NONCONFORMING ACTIVITY vacated and never reoccupied during the following two years. (See article 4, section 1, (b), (4), and article 4, section 1, (a), (5), (6), and (7).)

(4) The NONCONFORMING ACTIVITY shall not expand so as to render premises or property proportionally less adequate. (Article 4, section 1, (a), (4), (B).)

(5) The NONCONFORMING ACTIVITY shall have no discontinuance of two years or more. (See article 4, section 1, (b), (4) and (5).)

(b) Abandonment of Nonconforming Activities: Every NONCONFORMING ACTIVITY that satisfies either of the following conditions (1) and (2) shall be deemed abandoned and shall be prohibited:

(1) The NONCONFORMING ACTIVITY shall be deemed abandoned and shall be prohibited if it violates one or more of the conditions in paragraph (a), (1) through (4), and if

(A) within 35 days after the earliest date when the zoning ordinance administrator sends the owner of the NONCONFORMING ACTIVITY a certified-mail notice of the violation, the owner has not submitted a written plan to eliminate the violation or

(B) within 95 days after the earliest date when the zoning ordinance administrator sends the owner of the NONCONFORMING ACTIVITY a certified-mail notice of the violation, the owner has not eliminated the violation.

(See article 4, section 1, (b), (1), (A), and article 4, section 1, (b), (2) and (3).)

(2) The NONCONFORMING ACTIVITY shall be deemed abandoned and shall be prohibited if it has a discontinuance of two years or more. (See article 4, section 3, (a), (5), and article 4, section 1, (b), (4) and (5).)

(c) Continuance of Nonconforming Structures: Every NONCONFORMING STRUCTURE may continue to exist upon the following conditions:

(1) The NONCONFORMING STRUCTURE may be maintained or renovated and may be repaired or rebuilt after any damage if the maintenance, renovations, repairs, and rebuilding satisfy the following conditions (A) and (B):

(A) Maintenance, renovations, repairs, and rebuilding shall not give the NONCONFORMING STRUCTURE a purpose, character, or effect on the neighborhood that differs substantially from the purpose, character, or effect on the neighborhood that the NONCONFORMING STRUCTURE had when it was first nonconforming. (Article 4, section 1, (a), (3) and (4).)

(B) Repairs and rebuilding after the NONCONFORMING STRUCTURE has sustained damage greater than or equal to 75% of the NONCONFORMING STRUCTURE'S PRINCIPAL FLOOR AREA shall be in substantial progress within two years after the date of the NONCONFORMING STRUCTURE'S damage. (See article 4, section 1, (b), (4), and article 4, section 1, (c), Vesting of Nonconforming Uses.)

(2) The NONCONFORMING STRUCTURE may have additions to its nonconforming parts if the additions satisfy the following conditions (A) through (C):

(A) The additions shall not give the NONCONFORMING STRUCTURE a purpose, character, or effect on the neighborhood that differs substantially from the purpose, character, or effect on the neighborhood that the NONCONFORMING STRUCTURE had when it was first nonconforming. (Article 4, section 1, (a), (3) and (4).)

(B) The additions in total since the NONCONFORMING STRUCTURE was first nonconforming shall not be substantial. (Article 4, section 1, (a), (4), (B).)

(C) The additions shall not render the LOT proportionally less adequate. (Article 4, section 1, (a), (4), (B).)

(See Seabrook v. D'Agata, 116 N.H. 472, 362 A.2d 182 (1976); Hampstead v. Capano, 122 N.H. 144, 441 A.2d 1180 (1982); Colby v. Rye, 122 N.H. 991, 453 A.2d 1270 (1982); Devaney v. Windham, 132 N.H. 302, 564 A.2d 454 (1989); and Granite State Minerals, Inc. v. Portsmouth, 134 N.H. 408, 593 A.2d 1142 (1991), for examples of permissible and impermissible additions; also see *Grandfathered - The Law of Nonconforming Uses and Vested Rights* (2009 edition), H. Bernard Waugh, Jr., chapter 8, page 34, for summaries of the Seabrook v. D'Agata through Granite State Minerals v. Portsmouth cases.)

(3) The NONCONFORMING STRUCTURE may have additions to its conforming parts if the additions satisfy the following conditions (A) and (B):

(A) The additions shall not give the NONCONFORMING STRUCTURE a purpose, character, or effect on the neighborhood that differs substantially from the purpose, character, or effect on the neighborhood that the NONCONFORMING STRUCTURE had when it was first nonconforming. (Article 4, section 1, (a), (3) and (4).)

(B) The additions shall create no nonconformance to the zoning ordinance except that an addition may create a nonconformance if the addition satisfies the conditions in subparagraph (2), for additions to nonconforming parts of the NONCONFORMING STRUCTURE. (Article 4, section 1, (a), (8) and (9).)

(d) Abandonment of Nonconforming Structures: Every NONCONFORMING STRUCTURE that satisfies either of the following conditions (1) and (2) shall be deemed abandoned and shall be prohibited:

(1) The NONCONFORMING STRUCTURE shall be deemed abandoned and shall be prohibited if it violates one or more of the conditions in paragraph (c), (1), (A); paragraph (c), (2); or paragraph (c), (3), and if

(A) within 35 days after the earliest date when the zoning ordinance administrator sends the owner of the NONCONFORMING STRUCTURE a certified-mail notice of the violation, the owner has not submitted a written plan to eliminate the violation or

(B) within 95 days after the earliest date when the zoning ordinance administrator sends the owner of the NONCONFORMING STRUCTURE a certified-mail notice of the violation, the owner has not eliminated the violation.

(See article 4, section 1, (b), (1), (A), and article 4, section 1, (b), (2) and (3).)

(2) The NONCONFORMING STRUCTURE shall be deemed abandoned and shall be prohibited if it has sustained damage greater than or equal to 75% of the NONCONFORMING STRUCTURE'S PRINCIPAL FLOOR AREA and if the NONCONFORMING STRUCTURE is not in substantial rebuilding within two years after the date of the NONCONFORMING STRUCTURE'S damage. (See article 4, section 3, (c), (1), (B); article 4, section 1, (b), (4); and article 4, section 1, (c), Vesting of Nonconforming Uses.)

(e) Public-Taking Not-Conforming Structures: Every lawfully existing STRUCTURE that becomes a not-conforming STRUCTURE because of an eminent-domain taking or that increases its nonconformance because of an eminent-domain taking shall be treated as a NONCONFORMING STRUCTURE under the zoning ordinance. (Article 4, section 1, (c), (2), (A), first paragraph quoted.)

(f) Repair or Removal of Hazardous Buildings: Under RSA chapter 155-B, Hazardous and Dilapidated Buildings, the board of selectmen may order the owner of any hazardous building within the municipality to correct the hazardous condition of such building or to raze or remove the same. (RSA 155-B:2 and article 4, section 1, (f).)

4. Merging Nonconforming Lots

Every LOT created by merging two or more LOTS shall be exempt from the requirements of article 3, section 4, (b), (1), and article 3, section 4, (c), (1).

5. Development of Nonconforming Conventional Lots

Every NONCONFORMING LOT that is not part of any CLUSTER SUBDIVISION may be developed with STRUCTURES or uses if the LOT and the development satisfy the following conditions (a) through ~~(e)~~ (f). If the LOT or the development does not satisfy one or more of the following conditions (a) through ~~(e)~~ (f), then the LOT may be developed with STRUCTURES or uses as provided in article 4, section 3, Nonconforming Uses, or RSA 674:39, Five-Year Exemption.

(a) The subject LOT is not CONTIGUOUS to any other LOT under common ownership. (See article 4, section 1, (h), citing Vachon v. Concord, 112 N.H. 107, 289 A.2d 646 (1972).)

(b) The subject LOT has not been CONTIGUOUS to any other LOT under common ownership since the date when the subject LOT was first ~~a NONCONFORMING LOT~~ nonconforming or since the effective date of adoption of this condition (March 14, 2017), whichever date is later.

(c) The subject LOT satisfies one of the following conditions (1) through (4). In conditions (1) through (4), creating a LOT means creating or moving the boundary of the LOT or the boundary of any STREET abutting the LOT.

(1) (A) The subject LOT was lawfully created by a plan or deed recorded at the Merrimack County Registry of Deeds or Rockingham County Registry of Deeds before the effective date of adoption of the zoning ordinance (March 8, 1988), or

(B) the subject LOT was created by planning board approval of a SUBDIVISION plat showing the subject LOT before the effective date of adoption of the zoning ordinance (March 8, 1988).

(2) (A) The subject LOT was created on or after the effective date of adoption of the zoning ordinance (March 8, 1988), and

(B) the subject LOT was a CONFORMING LOT relative to those regulations of the zoning ordinance that were in effect on the date when the subject LOT was created.

(3) The subject LOT was created by an eminent-domain taking.

(4) The subject LOT was created by one or more mergers of two or more LOTS that include at least one LOT that satisfies either condition (1), (2), or (3).

(d) The subject LOT satisfies the requirements of RSA 674:41 for ~~the issuance of~~ issuing building permits.

(e) ~~Establishing any use on the subject LOT shall conform to those regulations of the zoning ordinance that would apply to establishing the use if the subject LOT were a CONFORMING LOT.~~ The subject LOT satisfies the requirements of the state fire code for issuing building permits. (RSA 155-A:4, II.)

(f) Establishing any use on the subject LOT shall conform to those regulations of the zoning ordinance that would apply to establishing the use if the subject LOT were a CONFORMING LOT.