

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

**DATE:** Thursday, November 30, 2017

**AGENDA ITEM 1:** Call to Order

Chair Clayton Wood called the meeting to order at 7:10 P.M.

**AGENDA ITEM 2:** Roll Call

Planning board members present:

Clayton Wood (chair),

Daren Nielsen (vice-chair),

Jim Pritchard (secretary),

Paul Nickerson,

Carole Richardson (selectmen's ex officio member), and

Adam Gauthier (alternate)

Planning board members absent:

James Hetu (alternate) and

Jim Adams (alternate for the selectmen's ex officio member)

Pittsfield town officials appearing before the planning board: None.

Members of the public appearing before the planning board: Daniel 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 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 and Rural Districts, where home occupations are now permitted as special exceptions; (2) bed-and-breakfasts will be permitted by right in the Urban District,

where bed-and-breakfasts are now permitted as special exceptions; and (3) bed-and-breakfasts will be prohibited in the Commercial and Light Industrial/Commercial Districts, where bed-and-breakfasts are now permitted as special exceptions

The board held the hearing on proposed amendment 2 first because member of the public Daniel Welch asked for this order and because Daniel Welch was the only member of the public present.

Clayton Wood opened the hearing to public input.

Daniel Welch said that he opposed proposed amendment 2 because it proposed to prohibit bed-and-breakfasts in the Commercial and Light Industrial/Commercial zoning districts, where the zoning ordinance table of uses and districts now purports to permit bed-and-breakfasts as special exceptions.

Jim Pritchard and Clayton Wood explained that these changes are necessary to comply with the state law of nonconforming uses because (1) home occupations and bed-and-breakfasts are by definition accessory uses of single-family dwellings, (2) existing single-family dwellings in the Commercial and Light Industrial/Commercial Districts are nonconforming uses because the zoning ordinance prohibits single-family dwellings in these two districts, and (3) the state law of nonconforming uses prohibits expanding a nonconforming use to the extent to which adding an accessory use to a principal use may expand the principal use. Clayton Wood said that enforcing the state law of nonconforming uses was important to maintaining the integrity of the zoning districts.

Jim Pritchard said that the local law of nonconforming uses had to be the same as the state law of nonconforming uses, and to prove this statement, he distributed an excerpt from *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).

Jim Pritchard said that a bed-and-breakfast might be a permitted expansion of a nonconforming use despite the zoning prohibition if the bed-and-breakfast as an addition to the single-family dwelling were very small.

Clayton Wood explained that a bed-and-breakfast might be permitted via (1) a variance under RSA 674:33, I, (b), if the property had special conditions justifying a variance or (2) rezoning the lot. Clayton Wood said that rezoning the lot would have to be done so that the rezoning would not be spot zoning.

Daniel Welch said that prohibiting a commercial activity in a single-family dwelling in the Commercial District was illogical.

Jim Pritchard, Clayton Wood, and Paul Nickerson said that a bed-and-breakfast, being an accessory use of a single-family dwelling, was expanding a use that was principally residential, not commercial.

Daniel Welch said that there were several old single-family dwellings in the Commercial District.

Jim Pritchard said that the “Y” across from home occupations and under the Commercial District in the table of uses and districts also conflicted with the state law of nonconforming uses and that this “Y” should be changed to an “N” to conform to the state law.

Clayton Wood closed the hearing to public input.

The board agreed that it would divide currently proposed amendment 2 into two separate amendments, which would be new amendment 2 and new amendment 3. The new amendment 2 would change the permitting of home occupations and bed-and-breakfasts so that (1) home occupations would be

permitted by right in the Suburban and Rural Districts, where home occupations are now permitted as special exceptions, and (2) bed-and-breakfasts would be permitted by right in the Urban District, where bed-and-breakfasts are now permitted as special exceptions. The new amendment 3 would change article 3, (b), (6), Table of Uses and Districts, to say that home occupations and bed-and-breakfasts would be prohibited in the Commercial and Light Industrial/Commercial Districts, to be consistent with the existing prohibition on single-family dwellings in these two districts.

The board did not vote on the final form of amendment 2.

**AGENDA ITEM 3:** Public hearing on the proposed repeal of all of the building code provisions that the town meeting voted to adopt under article 2 of the March 10 and 14, 1998, town meeting warrant

Clayton Wood said that the building code provisions that the board proposes to repeal are all invalid under the state building code.

Clayton Wood opened the hearing to public input.

There was no public input.

Clayton Wood closed the hearing to public input.

Jim Pritchard moved that the final form of the building-code-provision repeal shall be as in the building-code-provision repeal dated July 6, 2017.

Clayton Wood seconded the motion.

Discussion: No further discussion.

Vote that the final form of the building-code-provision repeal shall be as in the building-code-provision repeal dated July 6, 2017: carried 5 - 0 - 0.

Voting “yes”: Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none.

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

Jim Pritchard said that adopting the State of New Hampshire's most recent definition of "agriculture" was important to remain in compliance with the state's right-to-farm law, RSA 674:32-a through RSA 674:32-d.

Clayton Wood opened the hearing to public input.

There was no public input.

Clayton Wood closed the hearing to public input.

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

Clayton Wood seconded the motion.

Discussion: No further discussion.

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

**AGENDA ITEM 6:** Public hearing on zoning amendment 3 in concept, to codify into the Pittsfield Zoning Ordinance the New Hampshire Supreme Court case law on nonconforming uses

Jim Pritchard said that zoning amendment 3 in concept would become zoning amendment 4 because amendment 2 would be divided into two separate amendments.

Clayton Wood said that he remained convinced that the board should proceed with zoning amendment 4.

Jim Pritchard read from H. Bernard Waugh's treatise Grandfathered - The Law of Nonconforming Uses and Vested Rights (2009 edition), chapter 4, section 4-B, page 19:

"The Court's test in the New London case, using words like 'substantial' and 'a natural activity,' may seem about as easy to grab hold of as a greased pig. The best approach is to look at the decided cases:"

Clayton Wood said that the board was proposing to extend the use-it-or-lose-it abandonment time from one year to two years in order to be consistent with the two-year use-it-or-lose-it abandonment time that RSA 674:33, I-a, and RSA 674:33, IV, specify for variances and special exceptions. Clayton Wood said that code enforcement should act on nonconforming uses abandoned after two years.

Clayton Wood opened the hearing to public input.

There was no public input.

Clayton Wood closed the hearing to public input.

Paul Nickerson said that the board should proceed with amendment 4.

Jim Pritchard said that the board should proceed with amendment 4 because the state law of nonconforming uses is the controlling law in town and because amendment 4 would make that state law accessible to the townspeople.

Daren Nielsen said that a problem in Pittsfield zoning is that code enforcement is poor.

Jim Pritchard said that making the law accessible would empower the townspeople to know when the code enforcement is not doing its job and that the voters could then hold the board of selectmen accountable.

Daren Nielsen asked about the mechanism for code enforcement.

Jim Pritchard cited the zoning ordinance, article 1, section 6, Administrator:

**6. Administrator**

(a) The board of selectmen shall have charge of administering and enforcing the zoning ordinance except as follows:

(1) If the zoning ordinance explicitly designates a specific administrator for a specified part of the zoning ordinance, then that administrator shall administer that part of the zoning ordinance.

(2) 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).

(b) The board of selectmen may authorize an agent to administer and enforce the zoning ordinance on the board's behalf and may revoke that authorization at any time. Such an authorization or revocation shall be effective if and only if the board's minutes record the board's vote to authorize or revoke.

Jim Pritchard said that article 1, section 6, Administrator, excluded the board of selectmen from zoning-compliance decisions in cases requiring a building permit (article 1, section 6, (a), (2)) but would enable the board of selectmen to act as the code enforcement officer to handle complaints if the board of selectmen wanted to handle complaints.

Paul Nickerson said that the town needed better code enforcement.

The board agreed that it would write the proposed article 4 so as to give a person in violation 35 days to submit a plan to eliminate the violation and 95 days (60 days beyond the first 35 days) to eliminate the violation.

The board discussed the town's enforcement.

Adam Gauthier asked about a permit that was granted for a nonconforming use on a property with a nonconforming use in violation.

Jim Pritchard said that the permit in question was for a use separate from the nonconforming use in violation.

Paul Nickerson asked about the planning board's enforcement authority.

Clayton Wood said that the planning board is not an enforcement authority except in rare cases, such as described in RSA 676:4-a, Revocation of Recorded Approval.

The board discussed the process of applications to the planning board.

The board discussed scheduling hearings on new zoning amendments 2, 3, and 4.

**AGENDA ITEM 7:** Approval of the minutes of the November 16, 2017, meeting

Jim Pritchard moved to approve the minutes of November 16, 2017, as written in draft.

Carole Richardson seconded the motion.

No board member stated any problems in the draft minutes.

Vote to approve the minutes of November 16, 2017, as written in draft: carried 4 - 0 - 1. Voting “yes”: Jim Pritchard, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: Daren Nielsen.

**AGENDA ITEM 8:** Members’ Concerns

No board member stated any concern.

**AGENDA ITEM 9:** Adjournment

Clayton Wood moved to adjourn the meeting.

Jim Pritchard seconded the motion.

Vote to adjourn the planning board meeting of November 30, 2017: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Carole Richardson. Voting “no”: none. Abstaining: none. The planning board meeting of November 30, 2017, is adjourned at 8:58 P.M.

Minutes approved: December 7, 2017

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Clayton Wood, chairman

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Date

I transcribed these minutes (not verbatim) on December 2, 2017, from the digital audio recording that Chairman Clayton Wood made during the meeting on November 30, 2017, and uploaded to the Internet.

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Jim Pritchard, planning board recorder and secretary

Attachment: Repeal (July 6, 2017) of the Town of Pittsfield building codes

Zoning amendment 1 dated June 1, 2017, is not attached because it had an error and a corrected version will be put to a new hearing on January 4, 2018. The error was in the amendment's citation of **article 2, Interpretation Rules and Definitions, AGRICULTURE**. The correct citation is **article 2, section 3, Definitions, definition of "AGRICULTURE"**.

Repeal (July 6, 2017) of the Town of Pittsfield building codes:

Repeal all of the building code provisions that the town meeting voted to adopt under article 2 of the March 10 and 14, 1998, town meeting warrant, which are as follows:

1. The BOCA National Building Code 1996 Edition and the BOCA Basic Fire Protection Code 1996 Edition and the NFPA 101 Life Safety Code 1997 Edition.
2. The CABO one and two family dwelling code 1995 Edition as referenced in the BOCA National Building Code noted above.
3. The National Electric Code, ANSI/NFPA 70, as adopted by the National Fire Protection Association, Inc. and approved by the American National Standards Institute, 1996 Edition.
4. The BOCA National Plumbing Code, as recommended and maintained by the Building Officials and Code Administrators International, Inc., 1993 Edition.
5. The provisions for simplified adoption of updates of the above mentioned national codes, as allowed by RSA 674:52, VI, in effect on March 10, 1998.