

Amendment No. 4 (August 28, 2016) to the Town of Pittsfield Zoning Ordinance:

- 1. Amend zoning ordinance **article 2, Interpretation Rules and Definitions**, as follows: Insert in alphabetical order the following definitions:

**ACTIVITY, NONCONFORMING:** See NONCONFORMING ACTIVITY.

**CONFORMING LOT:**

(a) In this definition of “CONFORMING LOT,” the terms “street” and “street frontage” have the following meanings:

- (1) “Street” means a street as defined in RSA 672:13.
- (2) “Street frontage” means that portion of a LOT that fronts on a street, and “street frontage” also means the length of the front on the street.

(b) “CONFORMING LOT” means either

- (1) a LOT that is not part of any CLUSTER SUBDIVISION and that conforms to those area and street frontage standards of the zoning ordinance that would apply to creating the LOT by conventional SUBDIVISION if the LOT did not exist, or
- (2) a LOT that is part of a CLUSTER SUBDIVISION that conforms to those regulations of the zoning ordinance that would apply to creating the CLUSTER SUBDIVISION if the CLUSTER SUBDIVISION did not exist.

**LOT, CONFORMING:** See CONFORMING LOT.

**LOT, NONCONFORMING:** See NONCONFORMING LOT.

**NONCONFORMING ACTIVITY:** “NONCONFORMING ACTIVITY” means a NONCONFORMING USE that is not a STRUCTURE.

**NONCONFORMING LOT:** “NONCONFORMING LOT” means a LOT that is not a CONFORMING LOT and that is not a LOT whose boundaries or STREET boundaries were set by a VARIANCE.

**NONCONFORMING STRUCTURE:** “NONCONFORMING STRUCTURE” means a STRUCTURE that is a NONCONFORMING USE.

**STRUCTURE, NONCONFORMING:** See NONCONFORMING STRUCTURE.

2. Amend zoning ordinance **article 2, Interpretation Rules and Definitions**, as follows: In the definition of “nonconforming use”, delete the phrase “and if the use would not supersede another use”, where shown with strikethrough below:

**NONCONFORMING USE:** “NONCONFORMING USE” means a use of land or of one or more STRUCTURES such that (1) the use does not conform to one or more of those regulations of the zoning ordinance that would apply to establishing the use if the use did not exist ~~and if the use would not supersede another use~~, (2) the use existed lawfully when the regulation or regulations to which the use does not conform became effective, and (3) the use has continued to exist without abandonment since the regulation or regulations to which the use does not conform became effective. (Cohen v. Henniker, 134 N.H. 425, 593 A.2d 1145 (1991); also see article 4 for NONCONFORMING USE regulations.)

3. Amend zoning ordinance **article 3, Zoning Districts, sections 3 and 4**, as follows: Replace all (eight) citations of “article 4, Nonconforming Structures, Lots, and Uses” with “article 4, Nonconforming Uses and Lots”.
4. Amend zoning ordinance **article 3, Zoning Districts, section 4**, as follows: Replace all (two) citations of “article 4, section 2, Nonconforming Lots (Contiguous)” with “article 4, section 4, Merging Nonconforming Lots”.
5. Delete zoning ordinance **article 4, Nonconforming Structures, Lots, and Uses**, and insert in numerical order the attached new **article 4, Nonconforming Uses and Lots**.

## **Article 4. Nonconforming Uses and Lots**

### **1. Authority**

- (a) RSA 674:19;
- (b) *McKenzie v. Eaton Zoning Board of Adjustment*, 154 N.H. 773, 917 A.2d 193 (2007);
- (c) *Pike Industries v. Woodward*, 160 N.H. 259, 999 A.2d 257 (2010);
- (d) *Hurley v. Hollis*, 143 N.H. 567, 729 A.2d 998 (1999);
- (e) *Conforti v. Manchester*, 141 N.H. 78; 677 A.2d 147 (1996);
- (f) *New London Land Use Association v. New London Zoning Board of Adjustment*, 130 N.H. 510, 543 A.2d 1385 (1988);
- (g) *New London v. Leskiewicz*, 110 N.H. 462, 272 A.2d 856 (1970);
- (h) *Hampton v. Brust*, 122 N.H. 463, 446 A.2d 458 (1982);
- (i) *Grey Rocks Land Trust v. Hebron*, 136 N.H. 239, 614 A.2d 1048 (1992);
- (j) *Guy v. Temple*, 157 N.H. 642, 956 A.2d 272 (2008) (“the failure to obtain a license does not render the use unlawful in the sense intended by zoning ordinances which preserve existing lawful uses.” “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.”);
- (k) *Lawlor v. Salem*, 116 N.H. 61, 352 A.2d 721 (1976);
- (l) *Vachon v. Concord*, 112 N.H. 107, 289 A.2d 646 (1972).

### **2. Purpose**

The purposes of this article are as follows:

- (a) To encourage the discontinuance of NONCONFORMING ACTIVITIES, NONCONFORMING STRUCTURES, and NONCONFORMING LOTS. (See *McKenzie v. Eaton Zoning Board of Adjustment*, 154 N.H. 773, 917 A.2d 193 (2007).)
- (b) To provide for the transition from nonconformance to conformance.
- (c) To provide for the continuance of lawfully established nonconformance if the transition to conformance is unreasonable.

### 3. Nonconforming Uses

- (a) **Nonconforming Uses:** If a lawful use exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, said use may be continued, so long as it remains otherwise lawful and subject to other provisions of this section.
- (1) **Discontinued Use:** If a not-conforming use is discontinued for one year or superseded by a conforming use, it shall thereafter conform to the regulations of the district and the not-conforming use may not be resumed, unless approved by a VARIANCE.
  - (2) **Superseding Not-Conforming Use:** A lawful not-conforming use may be superseded by another not-conforming use provided that the Board of Adjustment determines the proposed use is no more objectionable than the existing use. In the event a new not-conforming use is allowed, the original use shall not, thereafter, be resumed.
  - (3) **Expansion:** A not-conforming use may be expanded by a VARIANCE from the Zoning Board of Adjustment.
- (b) **Nonconforming Structures:** If a STRUCTURE exists before this ordinance is effective, which does not comply with the regulations contained herein, it may remain, subject to the other provision of this ordinance.
- (1) **Repairs:** Normal repairs, renovations, and maintenance may be made to any lawful not-conforming STRUCTURE; however, if it is destroyed by any means, to the extent of more than seventy-five percent (75%) of its replacement value as determined by the Board of Selectmen, it shall not be reconstructed unless it is rebuilt within one year of destruction.
  - (2) **Additions:** Additions to lawful not-conforming BUILDINGS shall be permitted provided they do not increase the degree of nonconformance or make a new area that would be more nonconforming under the Ordinance.
  - (3) **General Safety:** Nothing in this ordinance shall prevent the strengthening or restoring to safe condition any BUILDING or part thereof upon order by any public official charged with protecting the public safety.

### 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). If the LOT or the development does not satisfy one or more of the following conditions (a) through (e), 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 *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 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 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.