

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

DATE: Thursday, November 3, 2016

AGENDA ITEM 1: Call to Order

Chair Clayton Wood called the meeting to order at 7:04 P.M.

AGENDA ITEM 2: Roll Call

Planning board members present:

Clayton Wood (chair),
Daren Nielsen (vice-chair),
Jim Pritchard (secretary),
Pat Heffernan,
Gerard LeDuc (selectmen's ex officio member), and
Paul Nickerson (alternate)

Planning board members absent:

Roland Carter (alternate) and
Carole Richardson (alternate for the selectmen's ex officio member)

Members of the public appearing before the planning board: Hank Amsden, surveyor for Bill Miskoe, and Bill Miskoe.

"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: Application by J. William Miskoe, trustee of the J. William Miskoe Revocable Trust, 61 Thompson Road, Pittsfield NH 03263 for a Lot Line Adjustment to increase the area of the land at 33 Main Street, tax map U-3, lot 45, from 0.18 acres to 0.29 acres, and to decrease the area of the land at 37 Main Street, tax map R-45, lot 44, from 0.55 acres to 0.44 acres, both in the Commercial zoning district.

1. Review for completeness and acceptance by the board
2. Public hearing if the application is accepted by the board
3. Application review based on merit

Clayton Wood reordered the agenda to put Bill Miskoe's application for lot line adjustment, agenda item 5, ahead of the hearings on the amendments to the zoning ordinance, agenda item 3, and ahead of the hearing on the amendments to the subdivision regulations and site plan review regulations, agenda item 4.

Clayton Wood asked the board to consider Bill Miskoe's request for a waiver of the requirement of the subdivision regulations that revised application materials must be submitted at least seven days before the meeting. (Subdivision regulations, section 5, A, 5.) Bill Miskoe submitted his revised plat on paper yesterday, November 2. Hank Amsden provided an electronic PDF version about two hours before tonight's meeting.

Clayton Wood said that he had given Matt Monahan, of Central New Hampshire Regional Planning Commission, a paper copy of the plat yesterday. Matt Monahan gave the board a report earlier today.

Jim Pritchard moved to grant the waiver of the requirement of the subdivision regulations that revised application materials must be submitted at least seven days before the meeting.

Gerard LeDuc seconded the motion.

Discussion:

Clayton Wood objected to accepting the plat for completeness review, because, Clayton Wood said, the revised plat is still not recordable at the registry of deeds.

Jim Pritchard said that he had not had time to inspect the plat in detail, but, Jim Pritchard said, one obvious flaw is that some of the text is too small.

Clayton Wood said that the plat had many flaws and that he was concerned that the board would miss flaws if the board accepted the plat for completeness review. Clayton Wood said that accepting the plat for completeness review would end up taking more time than the applicant

would take if the applicant were to work with Matt Monahan, of Central New Hampshire Regional Planning Commission.

Jim Pritchard said that the abutters on the other side of Main Street are not identified on the plat and that this omission is a violation of state law. (RSA 676:4, I, (b): “Abutters shall also be identified on any plat submitted to the board.”)

Clayton Wood repeated his concern that the plat is not recordable and that the board would miss some flaw in the plat if the board were to accept the plat for completeness review tonight. Clayton Wood said that the board could work with the applicant to satisfy the applicant’s time needs.

Daren Nielsen suggested that the board use tonight’s meeting as a work session to identify all of the flaws in the plat and that the board then have a special meeting to accept the plat for completeness review.

Clayton Wood said that he was concerned that the plat was still too premature for the board to consider.

Jim Pritchard said that he opposed using the meeting as a work session to review the plat because most board members are completely unprepared. Jim Pritchard said that granting the waiver would oblige the board to give a list of everything wrong. (RSA 676:4, I, (c), (1): “Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete.”) Jim Pritchard said that he would prefer to ask the applicant how much time the applicant would need to correct the plat.

Pat Heffernan said that he agreed with Daren Nielsen. Pat Heffernan said that he saw no reason why the board could not give a list of everything wrong.

Jim Pritchard said that the regulations have a checklist. Jim Pritchard said that the board could use the checklist but that the applicant could use the same checklist.

Clayton Wood said that doing applicants’ applications is not the board’s job.

Pat Heffernan asked whether the board should help the applicant.

Jim Pritchard said that the board's obligation to help the applicant does not extend to doing the application.

Clayton Wood said that the applicant should work with Matt Monahan. Clayton Wood said that the board would not help the applicant if the board's review missed flaws.

Vote to grant the waiver of the requirement of the subdivision regulations that revised application materials must be submitted at least seven days before the meeting: failed 2 - 3 - 0. Voting "yes": Pat Heffernan and Gerard LeDuc. Voting "no": Jim Pritchard, Daren Nielsen, and Clayton Wood. Abstaining: none.

Bill Miskoe said that he had made his proposal to redevelop 33 and 37 Main Street last July. Bill Miskoe said that the board of selectmen had asked Bill Miskoe whether he could finish his project in 2016, and Bill Miskoe said that he had told the board of selectmen that he could finish it. Bill Miskoe said that he had paid the town the money, \$72,000, for the properties, which he bought from the town. Bill Miskoe said that the board of selectmen had delayed his project by 50 days on the transfer of title to the land. Bill Miskoe said that he had demolished the building on 33 Main Street in three weeks but that the surveyor, Hank Amsden, could not survey the two lots until the demolition was finished. Bill Miskoe said that his agreement with the board of selectmen to finish his project in 2016 remained in effect despite the delays. Bill Miskoe said that he wanted to get some tax credits in 2016 and that he needed to finish his project in 2016 in order to get these tax credits. Bill Miskoe said that he would not get his tax credits and that he would default on his agreement with the board of selectmen if he did not finish his project in 2016. Bill Miskoe said that his failure to finish his project in 2016 would be because the town would have acted in bad faith. Bill Miskoe said that he was trying to encourage other people to improve Pittsfield's downtown and that the planning board's refusal to approve his plat would discourage other people from improving Pittsfield. Bill Miskoe asked the board to approve his plat with the condition that the plat be made recordable.

Clayton Wood said that the board could not grant Bill Miskoe's request that the plat be approved, but, Clayton Wood said, the board could continue the board's consideration of the application to a time that would satisfy Bill Miskoe's time needs. Clayton Wood suggested that the board meet in two weeks to consider another revised plat. Clayton Wood urged Bill Miskoe to work with Matt Monahan in the meantime.

Hank Amsden thanked the board for acting as aggressively as the board had acted in processing the plat. Hank Amsden said that he had been very pressed for time and that he knew about many of the plat's flaws.

Clayton Wood said that the planning board would act faster than the board of selectmen had acted but that the planning board needed to take enough time to protect Bill Miskoe's investment in his plat.

Hank Amsden admitted that he had run out of time.

Clayton Wood encouraged Hank Amsden to work with Matt Monahan and to keep Jim Pritchard, the planning board's acting administrative secretary, informed of Hank Amsden's activities.

Bill Miskoe asked whether the board would schedule a meeting on November 17, 2016.

Jim Pritchard asked Bill Miskoe and Hank Amsden whether they were satisfied with the November 17, 2016, meeting date.

Hank Amsden said that he was satisfied with the November 17, 2016, meeting date.

Clayton Wood said that he was willing to take a preliminary plat to the registry of deeds to ensure that the plat would be recordable.

Pat Heffernan moved to continue consideration of the Miskoe application to November 17, 2016.

Jim Pritchard seconded the motion.

Discussion: No further discussion.

Vote to continue consideration of the Miskoe application to November 17, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.

Bill Miskoe and Hank Amsden left the meeting.

AGENDA ITEM 3: Public Hearing - Proposed Zoning Board Amendments

1. Amend Permitting Conditions for an Accessory Apartment
2. Amend "open space" Definition
3. Amend "street" Definition
4. Amend Nonconforming Structures, Lots, and Uses

No members of the public were present for the hearings on the four proposed zoning amendments.

Clayton Wood read the notice of public hearing for zoning amendment 1:

The Pittsfield Planning Board will hold public hearings pursuant to RSA 675:3, II, on four zoning ordinance amendments (numbered 1, 2, 3, and 4) proposed by the planning board. The time and place of each public hearing is **Thursday, November 3, 2016**, 7:00 PM, at the Pittsfield Town Hall, 85 Main Street, Pittsfield, NH.

Amendment No. 1, if adopted, will amend the town zoning ordinance as follows: amend the permitting conditions for an accessory apartment stated in article 2, definition of "accessory apartment," by adding the following permitting conditions:

- (1) The ACCESSORY APARTMENT shall have an interior door between the PRINCIPAL DWELLING UNIT and the ACCESSORY APARTMENT, but this door is not required to remain unlocked. (RSA 674:72, III.)
- (2) The ACCESSORY APARTMENT shall have a floor area that is less than or equal to 75 percent of the floor area of the PRINCIPAL DWELLING UNIT unless 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet. If 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet, then the ACCESSORY APARTMENT shall have a floor area that is less than or equal to 750 square feet. (See RSA 674:72, VII.) In this condition, "floor area" of a DWELLING UNIT means the sum of the

areas of all floors of the DWELLING UNIT, as measured from the exterior faces of the walls or from the center line of a wall separating the two DWELLING UNITS.

- (3) The ACCESSORY APARTMENT shall be in a DWELLING that the owner of the DWELLING occupies. The owner may occupy either the PRINCIPAL DWELLING UNIT or the ACCESSORY DWELLING UNIT. (See RSA 674:72, VI.)

The purposes of Amendment No. 1 are (1) to conform to state law (RSA 674:72, III) by requiring a door, which is not required to remain unlocked, between the principal dwelling unit and the accessory dwelling unit and (2) to impose conditions of relative size and owner occupancy in order to ensure that a permissible accessory apartment is truly accessory to the principal dwelling unit and is not half of a duplex.

Clayton Wood opened the hearing to public input. There was no public input because no members of the public were present.

Jim Pritchard moved that the final form of amendment 1 shall be as in the proposed amendment 1 dated August 28, 2016.

Gerard LeDuc seconded the motion.

Discussion: No further discussion.

Vote that the final form of amendment 1 shall be as in the proposed amendment 1 dated August 28, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.

Clayton Wood read the notice of public hearing for zoning amendment 2:

Amendment No. 2, if adopted, will amend the town zoning ordinance as follows: amend article 2, definition of "open space," to include the phrase "other than fences more than 50 years old and permanent boundary markers" as follows: **OPEN SPACE:** "OPEN SPACE" means land where no STRUCTURES other than fences more than 50 years old and permanent boundary markers are on or in the land.

The purpose of Amendment No. 2 is to permit old fences and permanent boundary markers on or in land designated as open space.

Clayton Wood opened the hearing to public input. There was no public input because no members of the public were present.

Jim Pritchard moved that the final form of amendment 2 shall be as in the proposed amendment 2 dated August 28, 2016.

Gerard LeDuc seconded the motion.

Discussion:

Daren Nielsen asked where 50 years had come from.

Jim Pritchard said that the fences should be old but not necessarily ancient.

Vote that the final form of amendment 2 shall be as in the proposed amendment 2 dated August 28, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.

Paul Nickerson referred to amendment 1, for accessory apartments, and suggested that the percentage area that an accessory apartment could have of the principal dwelling unit should be less than 75%.

The board decided to keep the percentage at 75%.

Clayton Wood read the notice of public hearing for zoning amendment 3:

Amendment No. 3, if adopted, will amend the town zoning ordinance as follows: amend article 2, definition of "street" as follows: (1) reorder the currently listed New Hampshire Supreme Court cases and (2) add the following citation of Gossler v. Miller: Gossler v. Miller, 107 N.H. 303, 221 A.2d 249 (1966) ("A sidewalk is a component part of the highway...") The purpose of Amendment No. 3 is to make clear that a sidewalk is part of the adjacent highway.

Clayton Wood opened the hearing to public input. There was no public input because no members of the public were present.

Jim Pritchard moved that the final form of amendment 3 shall be as in the proposed amendment 3 dated August 28, 2016.

Gerard LeDuc seconded the motion.

Discussion: No further discussion.

Vote that the final form of amendment 3 shall be as in the proposed amendment 3 dated August 28, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.

Clayton Wood read the notice of public hearing for zoning amendment 4:

Amendment No. 4, if adopted, will amend the town zoning ordinance as follows:

- (1) Amend article 2, Interpretation Rules and Definitions, to add definitions for "nonconforming activity," "nonconforming structure," "conforming lot," and "nonconforming lot."
- (2) Amend article 2, definition of "nonconforming use" to delete superseding uses from the definition of "nonconforming use."
- (3) Amend article 4, Nonconforming Structures, Lots, and Uses, as follows:
 - (a) Rename the article as Nonconforming Uses and Lots.
 - (b) State the authority and purpose of the regulation of nonconforming uses and of nonconforming lots.
 - (c) Provide that the merger of every two or more lots shall be exempt from zoning requirements for area and frontage.
 - (d) Revise the requirements for building on contiguous nonconforming lots under common ownership so that contiguous nonconforming lots under common ownership cannot be separated in ownership and remain buildable.
- (4) Amend article 3, Zoning Districts, sections 3 and 4, to make citations of article 4 consistent with the amended article 4.

The main purpose of Amendment No. 4 is to close the current loophole in the current zoning requirement that contiguous nonconforming lots under common ownership must be merged in order to be buildable.

Clayton Wood opened the hearing to public input. There was no public input because no members of the public were present.

Jim Pritchard moved that the final form of amendment 4 shall be as in the proposed amendment 4 dated August 28, 2016.

Gerard LeDuc seconded the motion.

Discussion:

Clayton Wood said that amendment 4 would let the board of selectmen sell a town-owned nonconforming lot to an abutter and be assured that the property will stay with the abutter.

Vote that the final form of amendment 4 shall be as in the proposed amendment 4 dated August 28, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.

The four proposed zoning amendments are appended at the end of this minutes document.

AGENDA ITEM 4: Public Hearing - Proposed Amendments to Subdivision Regulations and Site Plan Review Regulations

No members of the public were present for the hearings on the proposed amendments to the subdivision regulations and to the site plan review regulations.

Clayton Wood read the notice of public hearing for the proposed amendments to the subdivision regulations and to the site plan review regulations:

The Pittsfield Planning Board will hold a public hearing pursuant to RSA 675:6, I, on amendments to the board's subdivision regulations and to the board's site plan review regulations. The time and place of the public hearing is **Thursday, November 3, 2016**, 7:00 PM, at the Pittsfield Town Hall, 85 Main Street, Pittsfield, NH.

The amendment to the subdivision regulations is a comprehensive revision. This amendment's greatest emphasis is on (1) stating what is required for a complete application according to RSA 676:4, I, (b); (2) establishing a design review process pursuant to RSA 676:4, II; and (3) stating how the board will conduct preapproval third-party review, but the amendment

affects the whole subdivision regulations document with a goal of making all parts of the subdivision regulations clearer and better organized.

The amendment to the site plan review regulations revises citations of the subdivision regulations to make these citations consistent with the amended subdivision regulations.

Clayton Wood and Jim Pritchard said that the Miskoe application had alerted them to a few problems remaining in the proposed subdivision regulations. These problems are as follows:

1. The list of requirements for a recordable plat, proposed article 4, section 1, (d), (1) through (16), does not say that the plat must be drawn with permanent black ink. RSA 478:1-a does not list permanent black ink as a requirement for a recordable plat, but the Merrimack County Registry of Deeds requires permanent black ink.
2. The definition of the application fee, article 4, section 3, Fees, paragraph (a), does not state the \$100 fee to cover the board's routine administrative costs in processing an application.
3. The regulation for recording fees, article 4, section 3, Fees, subparagraph (c), (2), implies that the applicant must pay the recording fee before the board gives the plat final approval. The board's practice is that the applicant pays the recording fee after final approval.

Jim Pritchard said that, in addition, the master plan committee wanted a regulation for the appropriateness of development relative to the highway's functional classification. The regulation that Jim Pritchard suggested is as follows:

“The planning board shall determine and consider the traffic volume and the speed limit for which the highway on which development is proposed is designed, and the board shall disapprove development that is not appropriate to the traffic volume and the speed limit for which the highway is designed.”

Jim Pritchard proposed to insert this regulation at article 8, section 7, (c).

Gerard LeDuc said that the regulation should be made clear that the planning board is not trying to regulate speed limits.

Daren Nielsen said that “appropriate to the traffic volume and the speed limit for which the highway is designed” seemed vague.

Jim Pritchard said that “appropriate to the traffic volume and the speed limit for which the highway is designed” is not rigorously defined but not hopelessly vague either. Jim Pritchard said that the board could get guidance from the highway agent on the appropriateness of development relative to a highway’s design traffic volume and speed limit.

The board agreed to schedule another hearing on the proposed subdivision regulations revised to address the above deficiencies.

Jim Pritchard moved to have a hearing on revised subdivision regulations on December 1, 2016.

Gerard LeDuc seconded the motion.

Vote to have a hearing on revised subdivision regulations on December 1, 2016: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting “no”: none. Abstaining: none.

AGENDA ITEM 6: Approval of the Minutes of the October 6, 2016 Meeting

Jim Pritchard moved to approve the minutes of October 6, 2016, as written in draft.

Gerard LeDuc seconded the motion.

Discussion:

No board member stated any problems in the draft minutes.

Vote to approve the minutes of October 6, 2016, as written in draft: carried 4 - 0 - 1. Voting “yes”: Jim Pritchard, Daren Nielsen, Pat Heffernan, and Clayton Wood. Voting “no”: none. Abstaining: Gerard LeDuc.

AGENDA ITEM ADDED: Selectmen’s Report

Gerard LeDuc said that budget season had started and that the board of selectmen had set the tax rate. The town's part of the tax-rate increase will be \$1.74/\$1000. The school's part of the tax-rate increase will be \$.66/\$1000. The total increase in the tax rate will be \$2.40/\$1000.

Gerard LeDuc said that the high school has 29 seniors and that 6 will not graduate.

Gerard LeDuc said that Epsom was locked into an indefinite contract with Pembroke Academy.

Gerard LeDuc said that the town employees had paid to have the inside walls of the town hall painted and that prison labor had done the work.

AGENDA ITEM 7: Members Concerns

Clayton Wood thanked the board for its handling of the Miskoe application. Clayton Wood said that rushing the application would not have helped Bill Miskoe. Clayton Wood said that the third-party-review process helps the applicants and preserves the board's impartiality.

AGENDA ITEM 8: Public Input

No public input.

AGENDA ITEM 9: Adjournment

Pat Heffernan moved to adjourn the meeting.

Jim Pritchard seconded the motion.

Vote to adjourn the planning board meeting of November 3, 2016: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none. The planning board meeting of November 3, 2016, is adjourned at 8:26 P.M.

Minutes approved:

Clayton Wood, Chairman

Date

I transcribed these minutes (not verbatim) on November 5, 2016, from notes that I made during the planning board meeting on November 3, 2016, and from the digital audio recording that Chairman Clayton Wood made during the meeting and uploaded to the Internet.

Jim Pritchard, planning board recorder and secretary

Attachments:

1. Zoning amendment 1 dated August 28, 2016.
2. Zoning amendment 2 dated August 28, 2016.
3. Zoning amendment 3 dated August 28, 2016.
4. Zoning amendment 4 dated August 28, 2016.

Amendment No. 1 (August 28, 2016) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance **article 2, Interpretation Rules and Definitions,**

ACCESSORY APARTMENT, as follows: Renumber current subparagraph (c), (2), as subparagraph (c), (5), and insert new subparagraphs (c), (2), (3), and (4), as shown but without the underlining:

ACCESSORY APARTMENT:

- (a) In this definition of “ACCESSORY APARTMENT,” “house” means a DETACHED DWELLING.
- (b) “ACCESSORY APARTMENT” means the ACCESSORY DWELLING UNIT in a house that contains one PRINCIPAL DWELLING UNIT, one ACCESSORY DWELLING UNIT, and no other DWELLING UNITS.
- (c) Except as provided in article 4, section 3, Nonconforming Uses, every permissible ACCESSORY APARTMENT shall satisfy the following conditions and all other applicable conditions in the zoning ordinance:
 - (1) The ACCESSORY APARTMENT shall share a common wall with or be under the same roof with the PRINCIPAL DWELLING UNIT.
 - (2) The ACCESSORY APARTMENT shall have an interior door between the PRINCIPAL DWELLING UNIT and the ACCESSORY APARTMENT, but this door is not required to remain unlocked. (RSA 674:72, III.)
 - (3) The ACCESSORY APARTMENT shall have a floor area that is less than or equal to 75 percent of the floor area of the PRINCIPAL DWELLING UNIT unless 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet. If 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet, then the ACCESSORY APARTMENT shall have a floor area that is less than or equal to 750 square feet. (See RSA 674:72, VII.) In this condition, “floor area” of a DWELLING UNIT means the sum of the areas of all floors of the DWELLING UNIT, as measured from the exterior faces of the walls or from the center line of a wall separating the two DWELLING UNITS.
 - (4) The ACCESSORY APARTMENT shall be in a DWELLING that the owner of the DWELLING occupies. The owner may occupy either the PRINCIPAL DWELLING UNIT or the ACCESSORY DWELLING UNIT. (See RSA 674:72, VI.)
 - (5) The ACCESSORY APARTMENT shall not be rented.

Amendment No. 2 (August 28, 2016) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance **article 2, Interpretation Rules and Definitions**, OPEN SPACE, as follows: Add the phrase “other than fences more than 50 years old and permanent boundary markers”, as shown but without the underlining:

OPEN SPACE: “OPEN SPACE” means land where no STRUCTURES other than fences more than 50 years old and permanent boundary markers are on or in the land.

Amendment No. 3 (August 28, 2016) to the Town of Pittsfield Zoning Ordinance:

Amend zoning ordinance **article 2, Interpretation Rules and Definitions**, STREET, as follows: Reorder the currently listed New Hampshire Supreme Court cases and add Gossler v. Miller, as shown but without the underlining:

STREET: “STREET” means either

(a) a highway as defined in RSA 229:1 or

(b) a road dedicated to the public use but not accepted by the city or town in which the road is located.

(See Holbrook v. Dow, 116 N.H. 701, 366 A.2d 476 (1976) (“We are of the opinion that in their usual meaning the words ‘the Northerly sideline of said Route 107’ refer to the northerly sideline of the highway layout or right of way and not to the edge of the pavement.”); Gossler v. Miller, 107 N.H. 303, 221 A.2d 249 (1966) (“A sidewalk is a component part of the highway...”); Hersh v. Plonski, 156 N.H. 511, 938 A.2d 98 (2007) (“If the intent to dedicate ‘is to be gathered from writings, they must clearly manifest the intent to dedicate.’”); Polizzo v. Hampton, 126 N.H. 398, 494 A.2d 254 (1985) (“An offer of dedication of a street may be made in several ways, among them by the filing of a subdivision plan with a planning board.”); State v. Atherton, 16 N.H. 203 (1844).)

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.