

NEW LONDON PLANNING BOARD

**Discussion of draft Zoning Amendment Language
Nonconforming Provisions**

For Discussion on Tuesday, Dec 1, 2015

Description of proposed changes: Refer also to the Oct 6, Oct 20, and Nov 3rd meeting discussions.

Article II, General Provisions, #5 Height Regulations, delete refer to the Shoreland Overlay District and refer to Article XX, Nonconforming provision, or include in Article XX.

Article III, Definitions- see definitions 77, 78, 79, 102 and 103

Article XIII, Wetland Conservation Overlay District, D. Permitted Uses, (8) –delete part of (8).

Article XV Floodplain Overlay District - I. Substantial Improvement of a Nonconforming Structure- delete.

Article XVI, Shoreland Overlay District:

- ✓ Delete J 1. and J 2 and move to Article XX
- ✓ Delete J 3.
- ✓ K. Building Height, delete and move to Article XX

Article XX:

- ✓ Delete B1 and replace with the provisions from Article XVI., J 1 and J2
- ✓ Delete C1
- ✓ Keep C2 and renumber, and remove the word “All Other...”
- ✓ Delete C3

Article XXII, Streams Conservation Overlay District- delete part of (8).

NOTE: Refer to key word search of the Zoning Ordinance pertaining to “Nonconforming”. The word “nonconforming” is used 81 times in the Zoning Ordinance.

**Article II, General Provisions
5 Height, page 5**

5. Height Regulation: In all districts, Structures shall not exceed 35 feet in Height above Grade unless a Variance is approved by the Board of Adjustment except as noted to follow. Chimneys in or attached to Dwelling Units may exceed 35 feet in Height as necessary only to comply with state and federal fire codes requirements. The Board of Adjustment may grant a Special Exception for flagpoles, water Towers, chimneys, public utility Structures, and church steeples or radio Towers owned and operated by a federally-licensed amateur radio station operator in all districts. In the Agricultural and Rural Residential District and the Conservation District, the Board of Adjustment may grant a Special Exception for a silo or a windmill. In all districts, a radio Tower owned and operated by a federally-licensed amateur radio station operator up to and including 70 feet in Height is a permitted Use. In all districts, the Board of Adjustment may grant a Special Exception to allow a radio Tower owned and operated by a federally-licensed amateur radio station operator in excess of 70 feet in Height. For Nonconforming Structures located within the first 50 feet from the Normal High Water level in the Shore Land Overlay District, the Height shall not exceed 25 feet in Height above Grade except as provided in Article XVI Shore Land Overlay District, Paragraph K, Building Height.—For Nonconforming Structures located within the first 50 feet from the Normal High Water/ or use the words “Reference Line” level in the Shore Land Overlay District, the Height shall not exceed 25 feet in Height above Grade except as provided in Article XX (or this can be move to Article XX).

**ARTICLE III
DEFINITIONS (PAGES 26-29)**

77. Legal Nonconforming Building or Structure: A Legal Nonconforming Building or Structure is a Building or Structure which, in whole or in part, does not conform to the regulations of the district in which the Building or Structure is located, but existed as a Legal Building or Structure prior to the adoption of the regulation(s) that now make the Building or Structure Nonconforming.

78. Legal Nonconforming Lot: A Legal Nonconforming Lot is a Lot which, in whole or in part, does not conform to the regulations of the district in which the lot is located, but existed as a legal Lot prior to the adoption of the regulation(s) that now make the Lot Nonconforming.

79. Legal Nonconforming Use: A Legal Nonconforming Use is a Use of any Building, Structure, or land, which does not conform to the Use regulations of the Zone District in which such Use exists, but existed as a legal Use prior to the adoption of the regulation(s) that now make the Use Nonconforming.

102. Nonconforming Building or Structure: A Nonconforming Building or Structure is a Building or Structure which, in whole or in part, does not conform to the regulations of the district in which the Building or Structure is located.

103. Nonconforming Use: A Nonconforming Use is a Use of any Building, Structure, or land, which does not conform to the Use regulations of the Zone District in which such Use exists.

**ARTICLE XIII
WETLANDS CONSERVATION OVERLAY DISTRICT (PAGES 49-55)**

D. Permitted Uses: Permitted Uses are those which will not require the erection or construction of any Structures or Buildings; will not alter the natural surface configuration by addition of fill or by dredging; and Uses that are otherwise permitted by the Zoning Ordinance. Such Uses include the following:

- (8) Alteration, expansion or improvement of existing Nonconforming Structures and Buildings, consistent with the provisions of Article XX of this Ordinance, and with cutting, clearing and erosion control plans approved by the Planning Board.

**ARTICLE XV
FLOODPLAIN OVERLAY DISTRICT (PAGES 58-62)**

~~I. Substantial Improvement of a Nonconforming Structure located within the 50 Foot Buffer in the Shore Land Overlay District: Substantial Improvement of a Nonconforming Structure located within the 50 foot buffer in the Shore Land Overlay District is governed by the specifications in Article XVI Shore Land Overlay District, paragraph H., sub-paragraph 1.~~

ARTICLE XVI
SHORE LAND OVERLAY DISTRICT (PAGES 63-70)

- ~~J. Nonconforming Buildings & Structures: Any Nonconforming Building or Structure located entirely or partly within the Waterfront Buffer of all lakes and ponds over 10 acres in size may be continued indefinitely, Altered and/or expanded provided it complies with the following applicable provisions:~~
- ~~1. If the Nonconforming Building or Structure is located entirely within the Waterfront Buffer, then alteration or repair of the Building or Structure is governed by the following:~~
 - ~~a. Alteration or repair of the Building or Structure is only permitted within the existing footprint and outside dimensions, consistent with the provisions of Article XX, Section B, 3, provided the result is a functionally equivalent use. No footprint change or vertical expansion of the existing structure shall be allowed. Any expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system shall require approval by the NH Department of Environmental Services.~~
 - ~~b. Existing decks and porches located entirely within the Waterfront Buffer may not be covered, enclosed or expanded upward or outward beyond the footprint of the existing deck or porch.~~
 - ~~c. Any Substantial Improvement of an existing Nonconforming Structure located within the boundaries of the 100 Year Floodplain must comply with the requirements of Article XV Floodplain Overlay District.~~
 - ~~d. Improvements may include a new foundation, provided that all of the following conditions are met:
 - ~~(1) The new foundation shall be constructed from a vantage point entirely outside the Waterfront Buffer, or from within the structure itself, in a manner that does not disturb any part of the Waterfront Buffer beyond the footprint of the existing building.~~
 - ~~(2) No living space or basement area is added as a result of the new foundation.~~
 - ~~(3) No change in the footprint (drip line) of the structure (within the Waterfront Buffer) will result from the new foundation.~~~~
 - ~~2. If the Nonconforming Building or Structure straddles the Waterfront Buffer, then alteration or expansion of the Building or Structure is governed by the following:~~
 - ~~a. Alteration or expansion of that portion of the Building or Structure located within the Waterfront Buffer is governed by the provisions outlined in section J.1., above.~~

- b. ~~Alteration or expansion of that portion of the Building or Structure located beyond the first 50 feet inland from the Normal High Water level is governed by the following:~~
- ~~(1) Alteration or expansion is permitted upward, and outward to the side or rear of the Structure away from the lake.~~
 - ~~(2) Existing, covered porches located beyond the Waterfront Buffer may be enclosed and converted to habitable space and may be expanded upward beyond the footprint of the existing porch.~~
 - ~~(3) Existing decks located beyond the Waterfront Buffer may be expanded, covered, enclosed and/or converted to habitable space.~~
3. ~~These provisions supersede the provisions outlined in Article XX Legal Nonconforming Uses, Nonconforming Buildings and Non-conforming Lots, Paragraph B. Nonconforming Buildings, Section 1. The provisions of Article XX Legal Nonconforming Uses, Nonconforming Buildings and Structures and Non-conforming Lots, Paragraph B. Nonconforming Buildings and Structures, Sub-paragraph 3. pertaining to Substantial Improvement, restoration, reconstruction and/or replacement apply to Article XVI Shore Land Overlay District.~~
- K. ~~Building Height: Nonconforming Structures located within the Waterfront Buffer in the Shore Land Overlay District shall not exceed 25 feet in Height above Grade.~~

ARTICLE XX (PAGES 82-83)
LEGAL NONCONFORMING USES, LEGAL NON-CONFORMING
BUILDINGS AND STRUCTURES, AND LEGAL NON-CONFORMING LOTS

- A. Legal Nonconforming Uses: Any Legal Nonconforming Use may be continued indefinitely subject to the following limitations:
1. Resumption after Discontinuance: When a Legal Nonconforming Use of land, Structures or Buildings has been discontinued for one year, then the land, Structures and Buildings shall be used thereafter only in conformity with this Ordinance.
 2. Change or Expansion: Any Legal Nonconforming Use shall not be changed to another Nonconforming Use. Any Legal Nonconforming Use shall not be expanded. **Note for discussion**: Suggest clarifying what is meant by the words – shall not be expanded, expanded by increasing the use, and or physical expansion of the size.
 3. Superseded by a Conforming Use: If a Legal Nonconforming Use is ~~superseded~~ (**Note suggest clarifying this, by saying changed to a conforming use**) by a conforming Use, then it shall thereafter conform to the Use regulations of this Ordinance, and the Nonconforming Use may not thereafter be resumed.
 4. Restoration, Reconstruction and/or Replacement of Buildings containing a Legal Nonconforming Use: Nothing herein shall prevent the restoration, reconstruction and/or

replacement within 3 years of a Building containing a Legal Nonconforming Use destroyed in whole or in part by fire or other natural disaster so long as this Use does not result in a new or expanded Nonconforming Use.

B. Legal Nonconforming Buildings and Structures: Any Legal Nonconforming Building or Structure may be continued indefinitely and may be ~~a~~Altered, expanded, restored, reconstructed and/or replaced subject to the following limitations: (**Note- suggest reviewing this** as generally the purpose is to not continue or allow nonconforming structures or uses to expand).

1. ~~Alterations and Expansions of Legal Nonconforming Buildings and Structures in the Shore Land Overlay District: Alterations and expansions of Legal Nonconforming Buildings and Structures located entirely or partly within the Shore Land Overlay District shall be governed by the provisions outlined in Paragraph H. Nonconforming Buildings and Structures in Article XVI Shore Land Overlay District. To be replaced with J 1 and J 2, to be renumbered.~~

J. Nonconforming Buildings & Structures: Any Nonconforming Building or Structure located entirely or partly within the Waterfront Buffer of all lakes and ponds over 10 acres in size may be continued indefinitely, Altered and/or expanded provided it complies with the following applicable provisions: (This to be renumbered)

1. If the Nonconforming Building or Structure is located entirely within the Waterfront Buffer, then alteration or repair of the Building or Structure is governed by the following:

a. Alteration or repair of the Building or Structure is only permitted within the existing footprint and outside dimensions, consistent with the provisions of Article XX, Section B, 3, provided the result is a functionally equivalent use. No footprint change or vertical expansion of the existing structure shall be allowed. Any expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system shall require approval by the NH Department of Environmental Services.

b. Existing decks and porches located entirely within the Waterfront Buffer may not be covered, enclosed or expanded upward or outward beyond the footprint of the existing deck or porch.

c. Any Substantial Improvement of an existing Nonconforming Structure located within the boundaries of the 100 Year Floodplain must comply with the requirements of Article XV Floodplain Overlay District.

d. Improvements may include a new foundation, provided that all of the following conditions are met:

(1) The new foundation shall be constructed from a vantage point entirely outside the Waterfront Buffer, or from within the structure itself, in a manner that does not disturb any part of the Waterfront Buffer beyond the footprint of the existing building.

(2) No living space or basement area is added as a result of the new

foundation.

(3) No change in the footprint (drip line) of the structure (within the Waterfront Buffer) will result from the new foundation.

2. If the Nonconforming Building or Structure straddles the Waterfront Buffer, then alteration or expansion of the Building or Structure is governed by the following:

a. Alteration or expansion of that portion of the Building or Structure located within the Waterfront Buffer is governed by the provisions outlined in section J.1., above.

b. Alteration or expansion of that portion of the Building or Structure located beyond the first 50 feet inland from the Normal High Water level is governed by the following:

(1) Alteration or expansion is permitted upward, and outward to the side or rear of the Structure away from the lake.

(2) Existing, covered porches located beyond the Waterfront Buffer may be enclosed and converted to habitable space and may be expanded upward beyond the footprint of the existing porch.

(3) Existing decks located beyond the Waterfront Buffer may be expanded, covered, enclosed and/or converted to habitable space.

K. Building Height: Nonconforming Structures located within the Waterfront Buffer in the Shore Land Overlay District shall not exceed 25 feet in Height above Grade. (Need to renumber)

2. Alterations and Expansions of all other Legal Nonconforming Buildings and Structures: Any Legal Nonconforming Building may be Altered or expanded provided, however, that such alteration or expansion does not make any existing Legal Nonconforming Building a more Nonconforming Building within the terms of this Ordinance and provided that all other standards of this Ordinance are met. For example, if an existing Structure does not comply with the Front Yard setback requirement, then this Structure could not be expanded to result in a Structure with less Front Yard setback unless a Variance was approved by the Zoning Board of Adjustment. However, the Structure could be expanded upward or to the side along the existing Nonconforming setback provided that the expanded Structure complies with all other standards of this Ordinance. If the expansion constitutes a Substantial Improvement, then the resulting Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Legal Nonconforming Building or Structure Nonconforming.

3. Substantial Improvement, Restoration, Reconstruction and/or Replacement of Legal Nonconforming Buildings or Structures:

a. Legal Nonconforming Building or Structure destroyed by Fire or Other Natural Disaster: Nothing herein shall prevent the restoration, reconstruction and/or replacement within 3 years of a Legal Nonconforming Building or Structure

destroyed in whole or in part by fire or other natural disaster so long as the new Structure is a functionally equivalent use (with regard to number of Bedrooms and Dwelling Units), does not result in a Substantial Improvement (when compared to the original structure), and does not result in a more Nonconforming Building than was originally at the site.

- b. Voluntary Replacement or Substantial Improvement of a Legal Nonconforming Building or Structure:
 1. For use with ARTICLE XV Floodplain Overlay District: The Substantial Improvement or voluntary replacement of a Legal Nonconforming Building or Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Building or Structure Nonconforming. This section does not include Building Maintenance within the types of work that comprise Substantial Improvement.
 2. For use with all remaining ARTICLES of the Zoning Ordinance: The voluntary replacement or relocation of a Legal Nonconforming Building or Structure, or Alterations to a Legal Nonconforming Building or Structure that result in a 50% increase in the square footage of useable floor area (including decks, porches, basements, garages and attics, in addition to finished floor area) of that Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Building or Structure Nonconforming. For the purposes of this Section, additions to the square footage of floor area of any Structure shall be cumulative beginning with first improvement following the date of the adoption of this amendment.

C. Legal Nonconforming Lots:

- ~~1. Legal Nonconforming Lots within the Shore Land Overlay District: Development of Legal Nonconforming Lots within the Shore Land Overlay District shall be governed by the provisions outlined in Paragraph J, Legal Nonconforming Lots in Article XVI Shore Land Overlay District.~~
2. All Other Legal Nonconforming Lots: Any other Lot with less area or Frontage than required which is lawfully established, recorded and taxed as a Lot of Record before the enactment or amendment of this Ordinance, shall be deemed a conforming Lot.
3. ~~To insure maximum conformity with this Ordinance, any abutting land in common ownership with said Lot of Record may, with the approval of the Planning Board, be merged with said Lot.~~

ARTICLE XXII
STREAMS CONSERVATION OVERLAY DISTRICT (PAGES 90-93)

- F. Permitted Uses: Permitted Uses are those which will not require the erection or construction of any Structures or Buildings; will not alter the natural surface configuration by addition of fill or by dredging; and Uses that are otherwise permitted by the Zoning Ordinance. Such Uses include the following:
- (8) Alteration, expansion or improvement of existing Nonconforming Structures and Buildings, consistent with the provisions of Article XX of this Ordinance, and with cutting, clearing and erosion control plans approved by the Planning Board.

Site Plan Review Regulations: parking and types of development requiring site plan review

Chair Helm explained that the Board had been reviewing and discussing the parking provisions and the changes to Article I (D) Types of Development requiring site plan review. The board reviewed the revised proposed format for Appendix A. Jeremy Bonin had prepared a draft. A final draft of the proposed amendments will be prepared for a public hearing in November.

Zoning Amendment discussion: Nonconforming provisions of Article XVI, Shoreland Overlay District and Article XX, Legal Nonconforming Uses, Legal Non-conforming Buildings and Structures and Legal nonconforming lots.

Chair Helm referred to the previous discussions pointing out redundancy of many sections, ambiguous and confusing language regarding nonconforming issues. He asked the Board to review the draft prepared by staff and be prepared to discuss it more at the next meeting.

Signs- Zoning Ordinance Amendment

Chair Helm explained that due to the recent Supreme Court Case decision regarding the content of signs. Towns may need to change their sign ordinances. He noted that the NHMA will be hosting a webinar on this subject and encouraged board members to participate.

Change of Use – Change of Occupancy Update

Staff provided a brief update on:

- Boundless Grace, Bible Book Store
- Landscape business at dental office of Dr. Wilson to use conference room for meetings with clients. No construction or company vehicles will be involved.

Other Items

- ✓ Discussion of amending the Planning Board meeting schedule to include Tuesday, November 3rd and Tuesday, December 1st, 2015 for discussion of zoning amendments. There will be no review of applications at these meetings.
- ✓ Chair Helm stated that if Mr. Stahlman submits a zoning petition, this will require time to review and discuss. He referred to the NHMA handout on the schedule for the March Town Meeting process.
- ✓ Notice from the Town of Henniker for a Public Hearing on Oct 14th regarding a 120 foot stealth fire-watch tower with telecommunications equipment including ground mounted supporting equipment to be constructed at 82 Faulkner Road.
- ✓ Senate Bill (SB) 146 regarding Accessory Dwelling Units (ADU). No zoning amendments will be proposed this year until the SB is completed.

- ✓ He and the other two attendees to the School Board subcommittee meeting should write a letter urging School District to have a public meeting and said they will attend future meetings.
- ✓ Encouraged Michelle Holton to talk with Carter Bascom and Kevin Johnson about the Town's interest and to better represent the Town's interests.
- ✓ Chair Helm said this new information should not change the CIP priorities.

✓ **Capital Improvement Program (CIP) - discussion of priorities and draft document**

CIP Public Hearing Scheduled:

Chair Helm referred to the draft CIP (2016-2022) which is four pages and is posted on the website. He noted that the Planning Board will be conducting a public hearing on the draft document on Nov 17th. He also explained that the Planning Board is not required to hold a public hearing on the draft CIP document, but the Planning Board believes it is important to keep residents informed and for the public to participate in the process.

Lucy St. John commented:

- ✓ She had recently talked with Norm Bernaiche, Town Assessor, who asked to keep tax map correction project a priority. She noted that this project is important to the Town.

Discussion of Editorial or other changes to the draft report:

- ✓ Phyllis Piotrow referred to "Recommendation, item C on page 4" she expressed concern about language where the tax map project and investment in heavy equipment were lumped together as one project. The Board agreed and item C on page 4 will be identified two divided into two parts.

Motion made by (Michelle Holton) AND SECONDED by (Jeremy Bonin) to approve the document with editorial comments. THE MOTION WAS APPROVED UNANIMOUSLY.

✓ **Shoreland and Tree Cutting provisions - Zoning Amendment discussion**

Chair Helm noted this is a continuation of previous discussions about the tree cutting, shoreland and nonconforming provisions of the Ordinance. He noted that the Planning Board discussed including all of the nonconforming provisions in one place in the Ordinance, including the provisions of Article XVI, Shoreland Overlay District, Section J. X

John Wilson, Lamson Lane- discussion of his draft changes for consideration

- ✓ He discussed how a couple years ago a "Working Group" has drafted some changes and this is continuation of that discussion.

- ✓ Noted that the draft prepared by staff had some appealing provisions, but it was too comprehensive, and thus he is just suggesting some minor changes to the provisions.
Discussed the handout he prepared showing proposed changes and clarification he thought the Board should consider.
- ✓ Explained how difficult and time-consuming the review had become in that there is so much detail and need for fixing in the language

Chair Helm asked the Board to review Dr. Wilson's draft in more detail for discussion at the November 3rd Work Session. Take out I-3.

✓ **Tree Cutting Zoning Amendment discussion.**

Chair Helm stated that the Planning Board has been reviewing changes to the tree cutting provisions. The Board was asked to review the draft provisions prepared by Jeremy Bonin and be prepared to continue the discussion at the Nov 3rd meeting. Jeremy Bonin said that New London tree cutting points were greater than the state point requirements. Suggested changes to include points for shrubs and bushes. Suggested changes which would allow residents to remove trees without Planning Board or Conservation Commission approval as long as they maintain the 50 points. Some sort of mechanism would need to be established to document what is there before the tree cutting is done. Jeremy Bonin suggested that the resident would still need to file an application but if it is a conforming tree-cutting application, it does not need to come before the Board.

John Wilson states this was abused and that tonight's application by Pleasant Lake Cottages was a good example. Chair Helm pointed out the difference between an approval and enforcement.

✓ **Nonconforming provisions - Zoning Amendment discussion**

Chair Helm referred to the handout of draft Zoning Amendments language regarding the Nonconforming provisions for discussion dated Oct 20th. He explained that the Planning Board and ZBA recognize the need for some changes to these provisions, and reorganization of the text. He asked that members to review the draft as this will be discussed at the Nov 3rd meeting.

John Wilson asked Jeremy Bonin if he thought putting all the nonconforming provisions in one zoning Article, would this be easier for people who use the Zoning Ordinance. Jeremy Bonin confirmed that the current Zoning language is difficult to understand and he thinks the proposed changes would be better.

✓ **Planning Board Meeting Calendar draft for October 2015 to Feb 2016.**



Sue Andrews commented:

- ✓ Thought the Planning Board would want to be informed of what was going on relative to temporary access areas.
- ✓ Asked if the section on “funnel development (Section E.) Is removed as suggested by John Wilson, what controls if any would the Planning Board have and if the lot sizing would remain the same, and if the ordinance would be sufficient to retain strength.

Charlie Foss commented:

- ✓ Need to have compliance, the Town doesn't want any situation like the Byrne property on Little Sunapee Lake.

Jack Sheehan commented:

- ✓ Tree count is important to maintaining the water quality of the lakes.
- ✓ Question on issue of diseased trees, and would they need to replace the vegetation.

Jeff Hollinger commented:

- ✓ Asked if it wouldn't be better to have more control since we are in an area with so many lakes which make the area so vibrant and thought the town would want to have the final say.
- ✓ Asked if there could be some allowance language to allow people to replace with shrubs, tree cutting discussion. If people can count shrubs they will cut the trees.
- ✓ Stated that we should not weaken any provision and that our lakes are the most important resource.
- ✓ It is the Board's job is to protect our resources and the lakes are these are important resources to the Town.

Deb Stanley commented:

- ✓ Agreed the tree cutting application process is good in that it makes them aware of what they are cutting.

June Fichter commented:

- ✓ Shrubs and ground cover should be combined within the point system. Suggest that a certain % of the site and waterfront should be left in a natural state and that ground cover should not be removed.
- ✓ The town should consider the educational aspect of making people aware that the quality of the water is declining.



Nonconforming Provisions Discussion

- ✓ Chair Helm referred to the draft dated Nov 3, for discussion, noting this discussion will be continued to the Dec 1st meeting.
- ✓ Ms. St. John shared Janet Kidder's comment received via email, as Ms. Kidder was not in attendance. Janet Kidder stated in her email that non-conforming uses shall not be made more non-conforming covers the whole gamut of issues. It is simple and easy to understand and it has worked in the past.
- ✓ Ms. St. John said it has been her experience that communities do not like to have non-conforming structures and non-conforming uses expanded.

Other Business

- ✓ Stahlman-Greaney Subdivision mylar signed by the Planning Board members.