



## WRITTEN ZONING INTERPRETATION

**Applicant:** Jared Goodell  
**Code Reference(s):** 19.2.2 of the Keene Land Development Code (LDC)  
**Date of Decision:** August 15, 2025  
**Subject:** ZBA-2025-10 Relating to the applicability of Use Standards to Enlargement or Expansion of a Nonconforming Use.

Dear Mr. Goodell,

We are in receipt of your application for a written interpretation of the City of Keene Zoning Regulations. Your request asks whether the Zoning Board of Adjustment (ZBA) can apply the use standards for a use that is legally nonconforming when determining whether the conditions listed in Section 19.2.2, Subsection B have been met for the enlargement or expansion of that use.

The LDC defines a nonconforming use as "the use of a structure or land that at one time was a permitted use within a zoning district but as a result of subsequent amendments to the Zoning Regulations, is no longer allowed." In other words, a nonconforming use is allowed to continue indefinitely as long as it legally existed at one time, and the use is not discontinued or abandoned. However, when a nonconforming use is substantially changed or expanded, it must be brought into compliance with all applicable regulations. NH RSA 674:19 states "*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 alternation 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.*"

The LDC Applicability Section in Article 1 states that the provisions of the LDC shall apply to **all** land, buildings, structures, and uses located within Keene. This section further states: "**Except for non-conformances allowed pursuant to Article 19, no structure may be erected, converted, enlarged, reconstructed, moved or altered; no land or structures may be used or changed; and no lots of record established by subdivision or otherwise, that do not conform with all applicable regulations of this LDC.**" (emphasis added)

Based on the sections cited above, use standards cannot be applied to a nonconforming use that legally existed prior to the adoption of those use standards. However, the use standards may be applied if the nonconforming use is substantially changed or expanded. The expansion of a nonconforming use is allowed as detailed in Section 19.2.2 of the LDC, provided such enlargement or expansion does not violate any of the basic zone dimensional requirements of the zoning district in which it is located, and the property owner has obtained approval from the ZBA. This section goes on to list three conditions that the ZBA must find have been met in order

for an enlargement or expansion of a nonconforming use to be allowed. These conditions are as follows:

1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise would be injurious, obnoxious or offensive to the neighborhood.
2. There will be no nuisance or serious hazard to vehicles or pedestrians.
3. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

The burden is on the applicant to demonstrate that these three criteria have been met. In determining whether these criteria have been met, during its deliberation, the ZBA must exercise its judgement to determine which, if any, use standards or other zoning regulations should be applied to an expansion or enlargement of a nonconforming use. Zoning regulations that would outright prohibit the use or its expansion should not be applied; however, all other zoning requirements should be applied just as they would to any other use.

Your application poses a hypothetical situation regarding a 4,500-sf restaurant in the Neighborhood Business District. Section 8.3.2 "Commercial Uses," Section AC "Restaurant," includes a use standard which states that "In the Neighborhood Business District, a restaurant shall occupy less than 3,500-sf in gross floor area."

"Whether a proposed use would constitute a substantial change in the nature or purpose of the preexisting nonconforming use turns upon the facts and circumstances of the particular case." Dovaro 12 Atl., LLC v. Town of Hampton, 158 N.H. 222, 228 (2009). Therefore, while I appreciate your question is to clarify how the Zoning Regulations are to be understood, I am unable to fully advise on your hypothetical without knowing all facts and circumstances. Additionally, as stated above, an expansion or enlargement of a nonconforming use would only be permitted if the ZBA determined that the three criteria in Section 19.2.2 were met. As Zoning Administrator, I would not have the authority to determine whether those criteria have been met.

**In accordance with NH RSA 676:5 and Section 27.2 of the LDC, any aggrieved party may appeal this administrative decision to the Zoning Board of Adjustment within 30 days of the date of decision.**

If you have any questions about this decision, please do not hesitate to contact me at (603) 352-5440.

Thank you,



Mari Brunner  
Zoning Administrator/ Senior Planner