

CITY OF KEENE
NEW HAMPSHIRE

O-2025-26 Relating Land Use Application Fees

This Ordinance proposes to amend various sections of Article 26 of the Land Development Code (LDC) in Chapter 100 of the City of Keene Code of Ordinances as follows:

- Update Tables 26-1 and 26-2 to include additional application types, including Appeals of Zoning Written Interpretations, Floodplain Variances, Earth Excavation & Street Access Permit application types, and Change of Governmental Land Use notifications, and consolidate the list of Conditional Use Permit (CUP) applications. The purpose of this proposed change is to provide clear information about the decision authority and notice requirements for these application types.
- Amend Section 26.4.3.B to include the Earth Excavation Regulations and application procedures. This change is proposed to ensure that any proposed modifications to the Earth Excavation Regulations will go through a public hearing process with the Planning Board prior to being incorporated into City Code.
- Amend Section 26.2.4.A.1 to change the certified mailing rate to a certificate of mailing rate and amend various sections of Article 26 to remove the language specifying that mailed notices must be sent via certified mail. This change is intended to improve convenience and timeliness of notification to abutters by removing the need to sign for the notice. This proposed change will also reduce mailed notice costs for applicants.
- Amend Section 26.19.4 to include application and notice fees in the list of submittal items for Earth Excavation applications. This change is proposed to ensure consistency with other sections of the LDC.
- Add a new section detailing the procedure for Change of Governmental Land Use notifications. The intent of this proposed change is to provide clarity to potential applicants regarding the process for Planning Board review of Governmental Land Use notifications.

The attached materials include the full text of Ordinance O-2025-26 and excerpted sections of the Land Development Code that are proposed to be amended with Ordinance O-2025-26. Text that is highlighted in yellow and bolded is proposed to be added, and text that is stricken through is proposed to be deleted.



CITY OF KEENE

In the Year of Our Lord Two Thousand and _____ Twenty-Five

AN ORDINANCE Relating to Land Development Code Application Procedures

Be it ordained by the City Council of the City of Keene, as follows:

That Chapter 100 of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded and underlined text, as follows.

1. Amend Table 26-1 to include additional application types; consolidate the list of Conditional Use Permit applications; and correct Article references.

Table 26-1: Development Applications Decision Authority

Application Type		Zoning Board of Adjustment	Planning Board	Minor Project Review Committee	City Council	Historic District Commission	Joint Committee	Conservation Commission	Zoning Administrator	Community Development Dir.	City Engineer	Floodplain Administrator
Amendments to the LDC	Articles 1- 19 8 & 22 -28 <u>(Zoning Regulations)</u>				D / PH		PW					
	Articles 19 & 20 , <u>21, 25, 26.10-26.14 & 26.19</u> <u>(Planning Board regulations)</u>		D / PH		D							
	Article 22 & <u>26.15</u> <u>(HDC regulations)</u>				D	D / PH						
	<u>Articles 23-29</u>				<u>D</u>							
Zoning	Amendments to Zoning Text /Zoning Map				D / PH		PW					
	Variance / <u>Floodplain Variance</u>	D / PH										
	Special Exception	D/ PH										
	Equitable Waiver	D/ PH										
	Expand or Enlarge Non-conforming Use	D/ PH										
	Zoning Administrator Decision <u>Written Interpretation</u>								D			

	<u>Appeal of Zoning Written Interpretation</u>	<u>D/PH</u>										
Subdivision Review	Subdivision		D/ PH	PS								
	Conservation Residential Development Subdivision		D/ PH	PS								
	Boundary Line Adjustment		D									
	Voluntary Merger							D				
Site Plan Review	Administrative Planning Review								D			
	Minor Project			D / PH								
	Major Project		D/ PH	PS								
Conditional Use Permit (CUP)	Hillside Protection		D/ PH	PS							R	
	Surface Water Protection		D/ PH	PS				R				
	Telecommunications		D / PH	PS								
	Congregate Living & Social Services		D / PH	PS								
	Solar Energy System		D / PH	PS								
	<u>All Other Conditional Use Permits</u>		<u>D / PH</u>	<u>PS</u>								
Historic District	Minor Project									D		
	Major Project			PS		D / PH						
<u>Earth Excavation</u>	<u>Permit Application / Major Amendment</u>		<u>D / PH</u>	<u>PS</u>				<u>R</u>				
	<u>Minor Amendment</u>									<u>D</u>		
	<u>Permit Renewal</u>		<u>D / PH</u>							<u>D</u>		
<u>Street Access</u>	<u>Street Access</u>		<u>D</u>								<u>D</u>	
	<u>Street Access Exception Request</u>		<u>D / PH</u>								<u>D</u>	
	<u>Appeal of Decisions on Street Access Permits</u>		<u>D / PH</u>									
Other Permits	Floodplain Development											D
	Sign								D			
	<u>Change of Governmental Land Use</u>		<u>R</u>									
	<u>Street Access</u>		<u>D</u>								<u>D</u>	
	<u>Earth Excavation</u>		<u>D / PH</u>					<u>R</u>				

"R" = Recommendation "D" = Final Decision "PW" = Public Workshop "PH" = Public Hearing "PS" = Pre-submission Meeting Required

- Amend Table 26-2 to include notice requirements for additional application types and consolidate the list of Conditional Use Permit applications.

Table 26-2: Public Notice Requirements

Application Type	Notice Type			# Days ¹
	Mailed	Published	On-Site	

Amendments to Articles 1-22, 25, 26.10-26.14, and 26.19 of this LDC		•	•		10
Zoning	Amendments to Zoning Text or Zoning Map	•	•		10
	Variance / <u>Floodplain Variance</u>	•	•		5
	Special Exception	•	•		5
	Equitable Waiver	•	•		5
	Expand or Enlarge Non-Conforming Use	•	•		5
	<u>Appeal of Zoning Written Interpretation</u>	•	•		<u>5</u>
Subdivision Review	Subdivision	•	•		10
	Conservation Residential Development	•	•		10
	Boundary Line Adjustment	•			10
Site Plan Review	Minor Project	•	•		10
	Major Project	•	•		10
Conditional Use Permits	Hillside Protection	•	•	•	10
	Surface Water Protection	•	•	•	10
	Telecommunications	•	•	•	10
	Congregate Living & Social Services	•	•	•	10
	Solar Energy System	•	•	•	10
	<u>All Other Conditional Use Permits</u>	•	•	•	<u>10</u>
Historic District	Major Project	•	•	◦	5
<u>Street Access</u>	<u>Street Access Exception Request*</u>	•	•		10
	<u>Appeal of Decisions on Street Access Permits</u>	•	•		10
Other	<u>Change of Governmental Land Use</u>	•	•		<u>10</u>
	Earth Excavation Permit	•	•		10
<u>Earth Excavation</u>	<u>Application / Major Amendment</u>	•	•		<u>10</u>
	<u>Permit Renewal*</u>	•	•		<u>10</u>

° = *The requirements of on-site posting of notice for a public hearing for major project applications for a certificate of appropriateness shall be limited to proposals related to demolition of a structure in the Historic District.*

** Published notice for this application type shall only be required when the Planning Board is the reviewing body.*

¹The number of days before a public hearing or public body meeting that notice is to be issued, not including the day of posting/ postmark or day of public hearing/meeting.

3. Amend Section 26.2.4.A.1 of Article 26 to change the certified mailing rate for noticing land use applications to a Certificate of Mailing rate, as follows:

When a mailed notice is required, the applicant shall submit 2 sets of mailing labels for each abutter or person entitled to such notice in accordance with state law or the City Code of Ordinances, and a mailing fee equal to the cost of the current United States Postal Service ~~Certified Mail~~ **Certificate of Mailing** rate, at the time of application submission, unless otherwise specified in this LDC.

4. Amend Section 26.4.3.B to include the Planning Board's Earth Excavation Regulations and application procedures outlined under Article 25 & Article 26.19 of the LDC.

Articles 20, 21, and **25** and Sections 26.10-25.14 and **26.19** of Article 26 – “Subdivision Regulations,” “Site Development Standards,” **and “Earth Excavation Regulations”** and Planning Board Application Procedures. For amendments proposed to Articles 20, 21, **25**, and Sections 26.10 through 26.14 **and 26.19** of Article 26 of this LDC, the following procedures shall apply.

5. Amend Sections 26.5.4.E, 26.6.4.E, 26.7.4.E, 26.8.5.E, 26.10.5.B.7, 26.12.5.I, and 26.15.5.K, and 26.16.9.A.c of Article 26 to remove the certified mailing requirement for development applications, as follows:

Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

6. Add a new section after Section 26.19.4.E of Article 26 to require the submittal of application and notice fees for Earth Excavation Permit applications, as follows:

F. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice.

7. Add a new section after Section 26.20 of Article 26 titled “Change of Governmental Land Use,” as follows:

26.21 Change of Governmental Land Use

26.21.1 Description

In accordance with New Hampshire RSA 674:54, any substantial change in use or a substantial new use on land owned or occupied or proposed to be owned or occupied by the state, university system, the community college system of New Hampshire, or

by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature shall be considered a change of governmental land use.

26.21.2 Initiation

The applicant for a change of governmental land use shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.21.3 Authority

The Planning Board shall have the authority to provide nonbinding recommendations relative to the conformity or nonconformity of the proposal with normally applicable land use regulations.

26.21.4 Submittal Requirements

An applicant shall submit written notification and supporting materials to the Community Development Department, which shall include the following.

- A. A written notification providing an explanation of proposed changes.
- B. Plans and specifications showing the proposed changes.
- C. A statement of the governmental nature of the use as set forth in NH RSA 674:54.
- D. A proposed construction schedule.
- E. A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel. This list shall also include the name and mailing address of the property owner and applicant.
- F. Two (2) sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and the applicant.
- G. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice.

26.21.5 Procedure

The following procedures shall apply to all notifications for a change of governmental land use.

- A. Determination of Public Hearing. Upon receipt of a notification of a change in governmental land use, the Planning Board Chair shall determine whether the proposed change in use or new use warrants a public hearing. This notification must be provided at least 60 days prior to the start of construction and 10 business days prior to the Planning Board meeting at which the public hearing will be held.
- B. Notice of Public Hearing. If the Chair determines a public hearing is warranted, the Community Development Director, or their designee, shall forward the notification for a change of governmental land use to the Planning Board for a public hearing and shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:4(I)(d).
- C. Public Hearing. A public hearing shall be held within 30 days after the receipt of the notice of governmental land use. A representative of the governmental entity which provided notice shall be available to present the materials and provide explanations to the Board.

- D. Recommendations. The Planning Board may issue nonbinding written comments relative to the conformity or nonconformity of the proposal with the normally applicable land use regulations to the applicant within 30 days after the hearing.

Jay V. Kahn, Mayor

Table 26-1: Development Applications Decision Authority

Application Type		Zoning Board of Adjustment	Planning Board	Minor Project Review Committee	City Council	Historic District Commission	Joint Committee	Conservation Commission	Zoning Administrator	Community Development Dir.	City Engineer	Floodplain Administrator
Amend-ments to the LDC	Articles 1-19 & 22-28 (Zoning Regulations)				D / PH		PW					
	Articles 19 & 20, 21, 25, 26.10-26.13 & 26.19 (Planning Board Regulations)		D / PH		D							
	Article 22 & 26.15 (HDC Regulations)				D	D / PH						
	Articles 23-29				D							
Zoning	Amendments to Zoning Text / Zoning Map				D / PH		PW					
	Variance / Floodplain Variance	D / PH										
	Special Exception	D / PH										
	Equitable Waiver	D / PH										
	Enlarge or Expand Nonconforming Use	D / PH										
	Zoning Administrator Decision Written Interpretation								D			
	Appeal of Zoning Written Interpretation	D/PH										
Sub-division Review	Subdivision		D / PH	PS								
	Conservation Residential Development Sub.		D / PH	PS								
	Boundary Line Adjustment		D									
	Voluntary Merger								D			
Site Plan Review	Administrative Planning Review									D		
	Minor Project			D / PH								
	Major Project		D / PH	PS								
Conditional Use Permit (CUP)	Hillside Protection		D / PH	PS							R	
	Surface Water Protection		D / PH	PS				R				
	All Other Conditional Use Permits		D / PH	PS								
Historic District	Minor Project	January 2025										
	Major Project			PS		D / PH						

Earth Excavation	Permit Application / Major Amendment		D / PH	PS				R			
	Minor Amendment								D		
	Permit Renewal		D / PH						D		
Street Access	Street Access		D							D	
	Street Access Exception Request		D / PH							D	
			D / PH								
Other Permits	Floodplain Development										D
	Sign							D			
	Change of Governmental Land Use		R								
	Street Access-		D							D	
	Earth Excavation-		D/PH					R			

"R" = Recommendation "D" = Final Decision "PW" = Public Workshop "PH" = Public Hearing
 "PS" = Presubmission Meeting Required

26.2 COMMON APPLICATION & REVIEW PROCEDURES

26.2.1 Applicability

The following requirements are common to many of the application review procedures in this LDC. Additional or slightly varying application and/or review requirements and procedures may be specified elsewhere in this Article or LDC.

26.2.2 Application Requirements

A. Pre-Submission Meeting

Prior to formal submittal of an application, the applicant may request a pre-submission meeting with City staff.

1. The purpose of this meeting is to review the proposed project when it is still at a conceptual stage, to identify any potential concerns with project design, and to ensure that the applicant is aware of all information that must be submitted with the application.
2. This meeting does not require a formal application or fees.

3. Some applications require attendance at a pre-submission meeting prior to application submission. Such requirement shall be specified in this LDC.

B. Submittal Requirements

1. All applications pursuant to this LDC shall be submitted in accordance with the requirements of this Article, and the established submittal requirements of the appropriate review or decision-making authority.
2. Applications pursuant to this LDC shall be filed with the appropriate review or decision-making authority, or their designee, on forms provided by the Community Development Department, or the Public Works Department for street access or service connection permits.

F. Withdrawal of Application

Unless otherwise specified in this LDC, an application may be withdrawn at any time prior to the final decision on the application. Requests for withdrawal shall be made in writing by the applicant to the appropriate review or decision-making authority. Applications to amend this LDC, including the Zoning Regulations or Zoning Map, may be withdrawn by the applicant in accordance with this Section.

G. Burden of Proof

It shall be the sole responsibility of the applicant to demonstrate that their application satisfies all applicable standards of review.

26.2.3 Staff Review

- A. Prior to consideration of an application pursuant to this LDC by a City board or commission, City staff may prepare a staff report for the application, which contains a brief summary of the proposal and a summary analysis of how the proposal relates to the applicable standards in this LDC.
 - a. Sample motions, including any suggested findings and/or conditions, may also be provided in this report.
 - b. Such staff report shall be shared with the board or commission in advance of the meeting, and shall be made available to the public.
- B. Some applications pursuant to this LDC may require review and comment from other City departments prior to a public hearing or action on the application. Comments received from City staff in other departments following their review of an application shall be forwarded to the appropriate review or decision-making authority and shall be shared in writing with the applicant as soon as they are all received.

26.2.4 Public Notice

The general public notice requirements for applications and procedures subject to this LDC, including, but not limited to, notice of public body meetings and public hearings, are included in this Section. Table 26-2 indicates the type of public notice required for applications that require public notice in accordance with state law or the City Code of Ordinances.

A. Mailed Notice

- 1. When a mailed notice is required, the applicant shall submit 2 sets of mailing labels for each abutter or person entitled to such notice in accordance with state law or the City Code of Ordinances, and a mailing fee equal to the cost of the current United States Postal Service **Certified Mail-Certificate of Mailing** rate, at the time of application submission, unless otherwise specified in this LDC.
- 2. The appropriate review authority, or their designee, shall be responsible for issuing the mailed notice.
- 3. The mailed notice shall include, at a minimum, the date, time, place, and purpose of such public hearing; the names of the applicant and property owner; and the address of the subject property. Such information shall be current to within 10-days of application submittal.
- 4. The mailed notice shall be sent to the address used for mailing local property tax bills, which may be obtained from the City of Keene Assessing Department.
- 5. The required timeframe for issuing mailed notice is specified in Table 26-2. This timeframe shall not include the day such notice is postmarked or the day of the public hearing or public meeting at which the application is first considered.

Table 26-2: Public Notice Requirements

Application Type		Notice Type			# Days ¹
		Mailed	Published	On-Site	
Zoning	Amendments to this LDC	●	●		10
	Amendments to Zoning Text or Zoning Map	●	●		10
	Variance / Floodplain Variance	●	●		5
	Special Exception	●	●		5
	Equitable Waiver	●	●		5
	Expand or Enlarge Non-conforming Use	●	●		5
	Appeal of Zoning Written Interpretation	■	■		5
Sub-division Review	Subdivision	●	●		10
	Conservation Residential Development	●	●		10
	Boundary Line Adjustment	●			10
Site Plan Review	Minor Project	●	●		10
	Major Project	●	●		10
Condi-tional Use Permit	Hillside Protection	●	●	●	10
	Surface Water Protection	●	●	●	10
	All Other Conditional Use Permits	■	■	■	10
	Tele-communications	●	●	●	10
	Congregate-Living & Social Services	●	●	●	10
	Solar Energy System	●	●	●	10
Historic District	Major Project	●	●	○	5
Street Access	Street Access Exception Request*	■	■		10
	Appeal of Decisions on Street Access Permits	■	■		10

Earth Excavation	Application / Major Amendment	●	●	10
	Permit Renewal*	●	●	10
Other	Earth Excavation- Permit	●	●	10
	Change of Governmental Land Use	●	●	10

○ = The requirements of on-site posting of notice for a public hearing for major project applications for a certificate of appropriateness shall be limited to proposals related to demolition of a structure in the Historic District.

* **Published notice for this application type shall only be required when the Planning Board is the reviewing body.**

¹The number of days before a public hearing or public body meeting that notice is to be issued, not including the day of posting/postmark or day of public hearing/meeting.

B. Published Notice

1. When published notice is required, the appropriate review authority, or their designee, shall publish notice in a newspaper of general circulation within the City, and in at least 2 public places.
2. The required timeframe for issuing published notice is specified in Table 26-2. This timeframe shall not include the day notice is posted or the day of the public hearing or public meeting at which the application is first considered.
3. At the time of application submission, the applicant shall submit a fee to cover the cost of the published notice in accordance with the LDC Fee Schedule in Appendix B of City Code of Ordinances.
4. The published notice shall include, at a minimum, the date, time, place, and purpose of such public hearing; the names of the property owner and applicant; and the address of the subject property.

25.2.5 Site Visits

- A. Submittal of an application in accordance with this Article shall be deemed as granting permission to City staff, the appropriate review or decision-making authority, or their designees, to enter onto the subject property for purposes of review.
 1. Permission to visit the property extends from the date an application is submitted until the project is formally denied or construction of an approved project is complete, a certificate of occupancy has been issued, or final security has been returned to the applicant, whichever occurs later.
 2. If an applicant wishes to place limitations upon access to the property subject to review, then the limitations shall be requested in writing at the time of application. Any such request shall include the reasons for the limitations, and the appropriate review authority shall use reasonable judgment in determining the extent to which the request may be granted.
- B. City boards and commissions may elect to conduct a formal site visit of a project site prior to the meeting at which an application will be

26.4 LAND DEVELOPMENT CODE AMENDMENTS

26.4.1 Description

The standards and requirements set forth in the City of Keene Land Development Code (also referred to as "this LDC") may be amended from time to time. The process for amending this LDC varies depending upon which article or articles are proposed to change. The process for amending the Zoning Regulations, which are contained in Articles 2 through 19 of this LDC, shall be as described in Section 26.3.

25.4.2 Authority

The City Council, after receiving a recommendation from the Planning Licenses and Development Committee, and from the Planning Board with respect to Articles 20, 21 and Sections 26.10 through 26.14 of Article 26, and from the Historic District Commission with respect to amendments to Article 22 and Section 26.15 of Article 26, shall take action on proposed amendments to this LDC.

26.4.3 Procedure

In addition to the common application and review procedures of this Article, the following procedures shall apply with respect to proposed amendments to this LDC.

- A. **Articles 1 through 19.** For amendments proposed to Articles 1 through 19 of this LDC, the same application and review procedures shall be followed as those described in Section 26.3 of this LDC, with respect to amendments to the Zoning Regulations and Zoning Map.
- B. **Articles 20, 21, 25 and Sections 26.10-25.14 and 26.19 of Article 26 - "Subdivision Regulations," "Site Development Standards," and "Earth Excavation Regulations"** and Planning Board Application Procedures. For amendments proposed to Articles 20, 21, 25, and Sections 26.10 through 26.14 and 26.19 of Article 26 of this LDC, the following procedures shall apply.

- 1. **Planning Board Public Hearing.** In

26.5 ZONING VARIANCE

26.5.1 Description

Zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of the Zoning Regulations. The purpose of the variance process is to provide a narrowly limited means by which relief may be granted from the unforeseen applications of the Zoning Regulations.

26.5.2 Initiation

The applicant for a variance shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.5.3 Authority

The Zoning Board of Adjustment has the authority to authorize variances from the provisions of the Zoning Regulations of this LDC, subject to the requirements of this Article, the Zoning Regulations, and NH RSA 674:33.

26.5.4 Submittal Requirements

An applicant for a zoning variance shall submit a completed variance application to the Community Development Department, which shall include the following.

- A.** A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed variance, including a response to each of the variance criteria.
- B.** A scaled plot plan clearly displaying the location and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C.** A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map

parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D.** 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- E.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

26.5.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for a zoning variance.

- A.** Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B.** The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C.** Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D.** The Zoning Board of Adjustment shall give reasons for all decisions on variance applications and shall make reference to the appropriate sections of the Zoning Regulations, where applicable.

26.5.6 Approval Standards

The Zoning Board of Adjustment may authorize a variance from specific requirements of the Zoning Regulations only when the Board finds that all of the following conditions apply.

26.6 ZONING SPECIAL EXCEPTION

26.6.1 Description

A special exception seeks permission to do something that the Zoning Regulations permit only under certain special circumstances. All special exceptions shall be made in harmony with the general purpose and intent of the Zoning Regulations and shall be in accordance with the rules contained therein.

26.6.2 Initiation

The applicant for a special exception shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.6.3 Authority

The Zoning Board of Adjustment shall have the authority to hear and decide special exceptions from the provisions of the Zoning Regulations of this LDC, subject to the requirements of this Section and NH RSA 674:33.

26.6.4 Submittal Requirements

An applicant for a special exception shall submit a completed special exception application to the Community Development Department, which shall include the following.

- A.** A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed special exception, including a response to each of the special exception criteria.
- B.** A scaled plot plan clearly displaying the location and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C.** A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map

parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D.** 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- E.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

26.6.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for a special exception.

- A.** Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B.** The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C.** Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D.** The Zoning Board of Adjustment shall give reasons for all decisions on special exception applications and shall make reference to the appropriate sections of the Zoning Regulations, where applicable.

26.7 EXPANSION OR ENLARGEMENT OF A NONCONFORMING USE

26.7.1 Description

A nonconforming use of a structure or land may be expanded or enlarged with approval from the Zoning Board of Adjustment, provided such expansion or enlargement does not violate any of the basic zone dimensional requirements of the zoning district in which it is located.

26.7.2 Initiation

The applicant seeking approval to expand or enlarge a nonconforming use shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.7.3 Authority

The Zoning Board of Adjustment shall have the authority to hear and decide on applications to expand or enlarge a nonconforming use.

26.7.4 Submittal Requirements

An applicant shall submit a completed application to the Community Development Department, which shall include the following.

- A. A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed expansion or enlargement of a nonconforming use, including a response to each of the relevant approval standards.
- B. A scaled plot plan clearly displaying the location and dimensions of all existing structures and open spaces, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C. A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the

street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D. 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- E. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

26.7.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications to expand or enlarge a nonconforming use.

- A. Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B. The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C. Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.

26.7.6 Approval Standards

The Zoning Board of Adjustment may approve an application for an expansion or enlargement of a nonconforming use, only when the Board finds that all of the following conditions apply.

- A. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.
- B. There will be no nuisance or serious hazard to vehicles or pedestrians.

26.8 EQUITABLE WAIVER OF ZONING DIMENSIONAL REQUIREMENTS

26.8.1 Description

In situations where a lot or structure is discovered to be in violation of a physical layout or dimensional requirement of the Zoning Ordinance, and such lot or structure is not legally nonconforming, a waiver from the requirement may be sought under certain conditions.

26.8.2 Applicability

- A. An equitable waiver shall only apply to waivers from physical layout, mathematical or dimensional requirements, and shall not apply to use restrictions.
- B. An equitable waiver shall not be construed as a nonconforming use and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Zoning Regulations.

26.8.3 Initiation

The applicant for an equitable waiver of dimensional requirements shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.8.4 Authority

The Zoning Board of Adjustment shall have the power to hear and decide on equitable waivers of zoning dimensional requirements, subject to the requirements of this Section and NH RSA 674:33-a.

26.8.5 Submittal Requirements

An applicant for an equitable waiver of dimensional requirements shall submit a completed application to the Community Development Department, which shall include the following materials.

- A. A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed waiver, a response to each of the equitable waiver criteria.
- B. A scaled plot plan clearly displaying the

locations and dimensions of all structures and open spaces on the lot in question and on the adjacent lots.

- C. A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- D. 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- E. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

26.8.6 Procedure

In addition to the common application and review procedures of this Article and NH RSA 676:5 through 676:7, the following review and approval procedures shall apply to applications for an equitable waiver of dimensional requirements.

- A. Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B. The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C. Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D. The Zoning Board of Adjustment shall give reasons for all decisions on equitable waiver of dimensional requirements applications and shall make reference to the appropriate sections of the Zoning Regulations, where applicable.

- c. A proposed conditions plan (at a scale of 1-in = 100-ft or at a larger scale) showing all parcels affected by the proposal, and depicting the following information.
 - i. Owner names and tax map parcel numbers for all direct abutters.
 - ii. Boundaries and acreage of the proposed lots subject to review.
 - iii. Location of any existing structures or site features, driveways, parking areas, public streets, rights-of-way, easements, surface waters (including wetland areas delineated by a NH certified wetland scientist), precautionary and prohibitive slopes, 100-year floodplain and floodways delineation, and wooded and vegetated areas that are displayed on the existing conditions plan, and are proposed to remain.
 - iv. The location of proposed structures and site features, lot lines, public streets, rights-of-way, easements, driveways and parking areas.
 - 3. Any additional information the Planning Board, or its designee, may reasonably deem necessary to determine compliance with the applicable regulations of this LDC.
 - 4. Any technical reports prepared by a NH licensed engineer or qualified professional, which may be required or reasonably requested by the Planning Board, or its designee, based on the nature and scope of the proposal. Such reports may include, but are not limited to drainage, traffic, and/or soils analyses.
 - 5. A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
 - 6. 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
 - 7. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~
- C. Conservation Residential Development Subdivision Applications**
- In addition to the submittal requirements for a subdivision or boundary line adjustment in Section 26.10.5.B, a completed application for a proposed conservation residential development subdivision shall include the following.
- 1. An overview plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file), which displays the entire tract and any existing public roads, public or private protected lands, woodlands areas, surface waters, and precautionary or prohibitive slopes located within 200-ft of the tract.
 - 2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in Section 20.3 of this LDC.
 - 3. A proposed conditions plan including the following.
 - a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.
 - b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.
 - c. The location and dimensions of any

- D.** Elevations (3 color copies on 22" x 34" sized paper or larger size, 1-color copy on 11"x17" paper and an electronic pdf file) showing the visual appearance and architectural details of all proposed structures, with proposed façade height and length dimensions, construction materials, finishes, and colors clearly labeled. Landscaping should not be included on elevations.
- E.** Additional color representations, simulations, or renderings of a proposed development may be required by the respective decision-making authority, during the review process.
- F.** Any additional information the respective decision-making authority may reasonably deem necessary to determine compliance with the applicable regulations of this LDC.
- G.** A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- H.** 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- I.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~

26.12.6 Submittal Requirement Exemptions

- A.** An applicant may make a request to the Community Development Director, or their designee, to exempt their application from specific submittal requirements.
- B.** Any exemption granted by the Community Development Director, or their designee, shall be evaluated and approved by the respective decision-making authority during its review of application completeness. If the Planning Board or Minor Project Review Committee determines the exempted material is necessary to complete its review of the application, they may deny the exemption request and determine the application to be incomplete.
- C.** If a requested exemption is not granted by the Community Development Director, or their designee, the applicant may appeal the decision to the Planning Board, in the case of major site plan applications, or the Minor Project Review Committee, in the case of minor site plan applications, prior to the respective decision-making authority's determination of application completeness.

26.12.7 Application Submittal Deadline

A. Major Site Plan Application

A completed major site plan application shall be submitted to the Community Development Director, or their designee, no later than 26 business days prior to the Planning Board meeting date at which the applicant desires the application to be reviewed.

B. Minor Site Plan Application

A completed minor site plan application shall be submitted to the Community Development Director, or their designee, no later than 14 business days prior to the Minor Project Review Committee meeting date at which the applicant desires the application to be reviewed.

- a. Owner names and tax map parcel numbers for all direct abutters.
 - b. Boundaries and acreage of the lot(s) subject to review.
 - c. Location of any existing structures or site features, driveways, parking area, wooded or vegetated areas, public streets, rights-of-way, and easements that are displayed on the existing conditions plan, which will not be altered or relocated.
 - d. The location of proposed structures and site features, driveways, parking areas, public streets, rights-of-way, easements, and landscaping.
- C.** Elevations at a maximum scale of ¼-in = 1-ft (3 color copies on 22" x 34" or larger paper, 1-color copy on 11"x17" paper, and an electronic pdf file) showing the visual appearance and architectural details of all proposed structures, as well as any portions of the existing structure proposed for demolition or removal. Such drawings shall include proposed façade height and length dimensions, construction materials, finishes, and colors clearly labeled. Landscaping should not be included on elevations.
- D.** Additional color representations, simulations, or renderings of a proposed development may be required by the Community Development Director, or their designee, or the Historic District Commission during the review process.
- E.** Samples of mortar and/or brick for projects proposing new or replacement mortar and/or brick.
- F.** Manufacturer specifications (i.e. cut-sheets) for any proposed building materials, exterior lighting fixtures, windows and doors, mechanical equipment or other site elements (e.g. benches, railings). The applicant shall specify the proposed type, color and finish, if applicable, and if missing from the manufacturer specifications.
- G.** Manufacturer specifications (i.e. cut-sheets) for cleaning products, if applicable.
- H.** Photographs, renderings, and/or line sketches to visually demonstrate the scale, massing, and visual appearance of neighboring structures.
- I.** Major project applications shall include a list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- J.** Major project applications shall include 2 sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and their authorized agent.
- K.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, ~~which shall be Certified Mail.~~
- L.** Other information as deemed necessary by the Community Development Director, or their designee, or the Historic District Commission to complete the review of the application.

26.15.6 Submittal Requirement Exemptions

- A.** An applicant may make a request to the Community Development Director, or their designee, to exempt their application from specific submittal requirements.
- B.** For minor project applications, the Community Development Director, or their designee, shall have the authority to approve such exemption requests, based on the nature and scope of the proposal.
 - 1.** If a requested exemption is not granted by the Community Development Director, or their designee, the applicant may appeal the decision to the Historic District Commission prior to the Commission's

5. Analysis of Important Habitat. All applicants for an earth excavation permit shall provide an environmental review of the excavation site obtained from the NH Natural Heritage Bureau, to determine if any lands within the excavation site are listed in the NH Natural Heritage Database as containing rare, endangered or threatened species, species of special concern, or exemplary natural communities.

- a.** If lands within the analysis area are included in the NH Natural Heritage Database, a natural resource inventory for both vegetation and wildlife shall be completed by a forest ecologist, wildlife biologist, or other qualified professional, to verify the presence and/or significance of the important habitat and to determine whether the excavation will cause an adverse impact, degradation, or fragmentation of said important habitat.

6. Miscellaneous Information. Applicants for an earth excavation permit shall provide to the Planning Board any and all additional information that the Board may reasonably deem necessary in order to complete a site-specific review of the excavation site and to determine whether the proposed excavation complies with NH RSA 155-E, and the Earth Excavation Regulations in Article 24 of this LDC.

F. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice.

26.19.5 Submittal Requirement Exemptions

An applicant for an Earth Excavation permit may request the Community Development Director, or their designee, to exempt their application from any of the submission requirements referenced in Section 26.19.

- A.** Requests for exemption shall be made to the Community Development Director in writing prior to the submission of a completed

application and shall include an explanation of why the specified information is not relevant to the Planning Board's determination whether the applicant complies with NH RSA 155-E, the Earth Excavation Regulations in Article 25 of this LDC.

7. The Community Development Director, or their designee, may grant an exemption of the submittal requirements if they find that the information is not relevant to the Planning Board's determination of whether the applicant complies with NH RSA 155-E and the Earth Excavation Regulations in Article 25 of this LDC. Factors to consider in determining whether to grant an exemption include consideration of the size, scale, scope, and nature of the proposed excavation project.

8. Any exemption granted by the Community Development Director, or their designee, must be confirmed by the Planning Board during its completeness review of the application. The Board may consult City staff and/or a consultant retained by the Board in accordance with Section 26.19.7, prior to confirmation. If the Planning Board deems the information relevant to its decision on the merits of the application, then the applicant shall provide said information prior to the Planning Board making a finding that the application is complete.

26.19.6 Application Submittal Deadline

A completed earth excavation permit application shall be submitted to the Community Development Director, or their designee, no later than 26 business days prior to the Planning Board meeting date at which the applicant desires the application to be reviewed.

26.19.7 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for Earth Excavation Permits.

A. Presubmission Meeting. Applicants for earth

26.21 CHANGE OF GOVERNMENTAL LAND USE

26.21.1 Description

In accordance with New Hampshire RSA 674:54, any substantial change in use or a substantial new use on land owned or occupied or proposed to be owned or occupied by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature shall be considered a change of governmental land use.

26.21.2 Initiation

The applicant for a change of governmental land use shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

26.21.3 Authority

The Planning Board shall have the authority to provide nonbinding recommendations relative to the conformity or nonconformity of the proposal with normally applicable land use regulations.

26.21.4 Submittal Requirements

An applicant shall submit written notification and supporting materials to the Community Development Department, which shall include the following.

- A. A written notification providing an explanation of proposed changes.
- B. Plans and specifications showing the proposed changes.
- C. A statement of the governmental nature of the use as set forth in NH RSA 674:54.
- D. A proposed construction schedule.
- E. A list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel. This list shall

also include the name and mailing address of the property owner and applicant.

- F. Two (2) sets of mailing labels for each abutter and others requiring notice, including the owner of the subject property and the applicant.
- G. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice.

26.21.5 Procedure

The following procedures shall apply to all notifications for a change of governmental land use.

- A. **Determination of Public Hearing.** Upon receipt of a notification of a change in governmental land use, the Planning Board Chair shall determine whether the proposed change in use or new use warrants a public hearing. This notification must be provided at least 60 days prior to the start of construction and 10 business days prior to the Planning Board meeting at which the public hearing will be held.
- B. **Notice of Public Hearing.** If the Chair determines a public hearing is warranted, the Community Development Director, or their designee, shall forward the notification for a change of governmental land use to the Planning Board for a public hearing and shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:4(l)(d).
- C. **Public Hearing.** A public hearing shall be held within 30 days after the receipt of the notice of governmental land use. A representative of the governmental entity which provided notice shall be available to present the materials and provide explanations to the Board.
- D. **Recommendations.** The Planning Board may issue nonbinding written comments relative to the conformity or nonconformity of the proposal with the normally applicable land use regulations to the applicant within 30 days after the hearing.