

1 GENERAL

100 Legal Framework

1001 TITLE

1001.A This is the Town of East Montpelier’s Land Use and Development Regulations and constitute the town’s zoning and subdivision regulations.

This subchapter contains the legal requirements necessary to establish and authorize the LUDRs under state statute – the necessary “legalese”.

1002 AUTHORITY

1002.A East Montpelier has adopted these regulations in accordance with and as authorized by the Vermont Municipal and Regional Planning and Development Act, 24 VSA Chapter 117.

Equivalent to Section 1.1 of adopted LUDRs.

1003 PURPOSE

1003.A These regulations implement the goals and policies of the *East Montpelier Town Plan* and the Vermont Municipal and Regional Planning and Development Act as most recently amended. They are intended to:

- (1) Provide for orderly and coordinated development;
- (2) Ensure that land use and development will not adversely impact public health, safety and welfare;
- (3) Guide land use and development in a manner that is consistent with smart growth principles as defined in these regulations;
- (4) Promote land use and development that maintains or enhances quality of life and community character;
- (5) Protect natural, cultural, scenic and historic resources;
- (6) Allow for residential land uses and development as necessary to meet the housing needs of residents;
- (7) Ensure that there will be safe and adequate vehicular, pedestrian and emergency access to and within development sites;
- (8) Facilitate the adequate and efficient provision of public services and facilities;
- (9) Ensure the rate of growth does not exceed the existing capacity of, or the town’s ability to adequately provide, public services and facilities;
- (10) Promote energy conservation and efficiency, use of renewable energy and renewable energy generation for individual, on-site use;

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- (11) Establish sound development and engineering standards that result in well-constructed projects that do not burden the town or future property owners with unreasonable costs to build, maintain or repair infrastructure;
- (12) Balance the protection of property rights with the other purposes of these regulations as stated above.

This is a section the PC should review carefully and has authority to craft as appropriate to the town. Incorporates and expands upon Section 1.2 of adopted LUDRs. The purpose statement here (and where they show up elsewhere in the LUDRs) are important if your regulations are challenged in court. Purpose statements are not themselves regulatory, but a judge when asked to determine whether a provision of the regulations is valid will look to see if the provision in question is furthering one or more of the stated purposes of the regulations.

PC requested an additional purpose statement related to energy at the September 20 meeting – proposed language to be reviewed.

1004 APPLICABILITY

1004.A Unless specifically exempted in these regulations (see Subchapter 110), all development within the Town of East Montpelier requires a zoning permit or subdivision approval issued in accordance with these regulations.

Equivalent to Section 1.3 of adopted LUDRs.

1005 RELATIONSHIP WITH OTHER LAWS OR REGULATIONS

1005.A If any provision of these regulations is more restrictive than any other law, regulation or code, the provision of these regulations will apply and take precedence.

1005.B If any provision of another law, or regulation or code is more restrictive than these regulations, the provision of these regulations will be superseded and the more restrictive provision will apply.

1005.C No provision of these regulations will be interpreted to prevent the Town of East Montpelier from acting to prevent or eliminate threats to public health, safety and welfare in accordance with other town codes or ordinances and under the authority granted to the municipality by the State of Vermont.

Equivalent to Section 1.3 of adopted LUDRs.

1006 EFFECTIVE DATE

1006.A Upon adoption by the East Montpelier Selectboard or town voters, these regulations and any subsequent amendments will take effect in accordance with the procedures established in the Vermont Municipal and Regional Planning and Development Act (24 V.S.A. § 4442).

Equivalent to Section 1.4 of adopted LUDRs.

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1007 AMENDMENT OR REPEAL

1007.A The Town of East Montpelier may amend or repeal these regulations, in whole or part, at any time in accordance with the procedures established in the Vermont Municipal and Regional Planning and Development Act.

Equivalent to Section 1.4 of adopted LUDRs.

1008 SEVERABILITY

1008.A If a court of competent jurisdiction invalidates any provisions of these regulations, that decision will not affect the validity, application or enforcement of the remaining provisions of these regulations.

Equivalent to Section 1.5 of adopted LUDRs.

1009 DISCLAIMER OF LIABILITY

1009.A These regulations do not create any liability on the part of the Town of East Montpelier, its officials, agents, employees, or representatives for alleged damages that result from reliance on these regulations or any lawful administrative action or decision taken under these regulations.

New section (no equivalent in adopted LUDRs) but is standard practice and language.

110 Exemptions and Limitations

This subchapter establishes what does and does not need a permit under the LUDRs, and identifies those land use activities the state has limited the town's authority to regulate.

1101 GENERAL EXEMPTIONS

1101.A Except within the Flood Hazard Overlay District, landowners do not need to obtain a zoning permit for the land use and development activities listed below. For land use and development activities within the Flood Hazard Overlay District see Section 2201.

- (1) Emergency repair and stabilization of a structure damaged by any cause to the extent necessary to protect public health and safety, and to protect the structure from the elements. Landowners must obtain a zoning permit for repair or reconstruction beyond the minimum necessary to stabilize and secure the structure.
- (2) Demolition of a damaged or destroyed structure or part of a structure (see Section 1207).
- (3) Complete demolition of a structure or part of a structure other than a historic structure in a village zoning district. Partial demolition that poses a threat to public health or safety will be considered a violation subject to the enforcement provisions of these regulations. See Section 3008 for general standards for demolition and for standards for demolition of a historic structure in a village zoning district.
- (4) Normal maintenance and repair of an existing structure other than a sign (for more information on signs see Section 3108), including interior alterations to a building, that does not change the:
 - (a) Structure's exterior dimensions, wastewater generation or use;
 - (b) Amount of floor area associated with an existing non-residential use; or
 - (c) Number of units (residential or non-residential) in the structure.
- (5) Normal maintenance and repair of sidewalks and walkways, including replacement or reconstruction within the same footprint as the original.
- (6) Normal maintenance and repair of essential services.
- (7) Landscaping, grading and excavating associated with:
 - (a) Normal maintenance and repair of roads, driveways, parking areas, sidewalks, walkways, stormwater facilities or essential services (this does not include paving an existing unpaved parking lot or driveway, which does require a zoning permit); and
 - (b) Site improvements that do not result in more than 10 cubic yards of soil being removed from or brought onto the lot within any calendar year and that do not affect existing drainage patterns on adjacent lots or public rights-of-way.
- (8) Replacement or reconstruction of an existing fence or wall that is in the same location and is not higher than the original.

- (9) A new fence or wall on a one- or two-family residential lot that (see Section 3014 for further guidance on fences and wall, including how to measure height):
 - (a) Is not more than 4 feet tall, if functioning as a retaining wall;
 - (b) Is not more than 4½ feet tall, if located in the front yard in a village zoning district, or is not more than 6½ feet tall, if located elsewhere;
 - (c) Does not extend into or obstruct a public right-of-way;
 - (d) Does not interfere with corner visibility or sight distance for vehicular traffic;
 - (e) Does not affect existing drainage patterns on adjacent lots or public rights-of-way;
 - (f) Does not pose a safety hazard;
 - (g) Is not designed to inflict physical harm; and
 - (h) Is installed so that any support posts are to the inside and the “finished” or “good” side faces out.
- (10) Snow fences installed no earlier than November 1 and removed no later than May 1.
- (11) A fuel tank on a one- or two-family residential lot that:
 - (a) Holds not more than 500 gallons;
 - (b) Meets applicable setback requirements for the zoning district; and
 - (c) Is sited, installed and secured in accordance with state and federal regulations.
- (12) Any ground-mounted HVAC system, back-up generator or similar mechanical equipment on a one- or two-family residential lot that:
 - (a) Has a footprint or is placed on a pad that does not exceed 120 square feet;
 - (b) Meets applicable setback requirements for the zoning district; and
 - (c) Is sited, installed and secured in accordance with state and federal requirements.
- (13) An above-ground swimming pool on a one- or two-family residential lot that:
 - (a) Does not exceed a horizontal width of 20 feet in any dimension or a depth of 5 feet;
 - (b) Does not have a permanent foundation;
 - (c) Meets applicable setback requirements for the zoning district; and
 - (d) That is installed and secured to prevent unauthorized access.
- (14) Up to 2 portable carports, storage covers or greenhouses on a one- or two-family residential lot that:
 - (a) Have a footprint that does not exceed 400 square feet;

- (b) Are not affixed to a permanent foundation; and
 - (c) Meets applicable setback requirements for the zoning district.
- (15) An unroofed patio or deck on a one-or two-family residential lot that:
 - (a) Has a footprint that does not exceed 200 square feet; and
 - (b) Meets applicable setback and lot coverage requirements for the zoning district.
- (16) Wheelchair ramps, uncovered entry stairs, or walkways on a one- or two-family residential lot that do not:
 - (a) Exceed 6 feet in width;
 - (b) Extend into or obstruct a public right-of-way;
 - (c) Interfere with corner visibility or sight distance for vehicular traffic; or
 - (d) Affect existing drainage patterns on adjacent lots or public rights-of-way.
- (17) Not more than 2 accessory structures not otherwise exempted under this section on any one- or two-family residential lot, each of which:
 - (a) Has a footprint that does not exceed 120 square feet;
 - (b) Is not more than 12 feet tall;
 - (c) Does not have a permanent foundation;
 - (d) Is located at least 5 feet from any other structure;
 - (e) Meets applicable setback requirements for the zoning district; and
 - (f) Is not used as a dwelling unit.
- (18) Outdoor light fixtures on a one- or two-family residential lot that:
 - (a) Have an initial output that does not exceed 3,000 lumens; and
 - (b) Are downward directed and shielded as necessary to prevent glare or light trespass beyond the property line.
- (19) Holiday light displays on a lot that are illuminated for not more than 45 consecutive days and 90 days total in any calendar year.
- (20) Signs listed in Section 3108, and street and traffic control signs.
- (21) Mailboxes, newspaper tubes, house numbers and clotheslines.
- (22) A solar energy device that:
 - (a) Will be installed on and project not more than 10 feet above the surface of a roof with a slope greater than 5%; or
 - (b) Will be installed on a roof with a slope of 5% or less.
- (23) A television antenna, radio antenna, satellite dish or similar device used to provide on-site communication service that:
 - (a) Is not more than 15 square feet in area, if a dish antenna;
 - (b) Does not extend more than 12 feet above the roofline, if attached to a

- building;
 - (c) Does not extend more than 50 feet above the ground, if a freestanding amateur radio antenna (including any support structure);
 - (d) Meets applicable setback requirements for the zoning district;
 - (e) Does not interfere with public safety communications; and
 - (f) Is installed in the least visible location where it can reasonably function.
- (24) An antenna mounted on an existing structure used for single-use local business radio dispatch purposes or for police, fire, ambulance or similar emergency dispatch purposes that does not interfere with public safety communications.
- (25) Telecommunications equipment and related site development that does not exceed a footprint of 300 square feet and a height of 10 feet.
- (26) A transit shelter that has a footprint that does not exceed 120 square feet and is not more than 12 feet tall. Road and lot line setback requirements will not apply to transit shelters. Transit shelters to be located within the road right-of-way must be approved by the East Montpelier Selectboard or the Vermont Agency of Transportation, as applicable.
- (27) Public art that does not:
- (a) Function as a commercial sign;
 - (b) Extend into or obstruct a public right-of-way unless otherwise approved by the town or state, as applicable;
 - (c) Interfere with corner visibility or sight distance for vehicular traffic;
 - (d) Affect existing drainage patterns on adjacent lots or public rights-of-way; and
 - (e) Pose a safety hazard.
- (28) A home occupation that (for home occupations that do not qualify for this exemption see Section 3204 or 3205 as applicable):
- (a) Is located within a dwelling unit;
 - (b) Occupies less than 50% of the habitable floor area of that dwelling;
 - (c) Is carried out by one or more residents of that dwelling;
 - (d) Does not have any non-resident employees working from that dwelling;
 - (e) Is not primarily a retail use (this will not include internet/mail-order businesses that do not generate customer traffic); and
 - (f) Does not have a sign.
- (29) Garage sales, yard sales, tent sales, auctions, festivals or similar activities or special events that do not occur on the lot for longer than 3 consecutive days and for more than 12 days in any calendar year.
- (30) Mobile food service that is not located on a parcel for longer than 3 consecutive days and for more than 12 days in any calendar year.

- (31) Sales of vehicles, equipment or similar used personal or business goods owned by the landowner or tenant that do not occur on the lot for more than 30 days in any calendar year (calculated cumulatively if goods are offered for sale at more than one time during the year) and that are limited to not more than 3 items at any given time if displayed outside.
- (32) Use of public or private land for hunting, fishing or trapping in accordance with state regulations. Any structures with permanent foundations associated with such use and facilities supporting such activities such as firing ranges or rod and gun clubs will require a zoning permit.
- (33) Use of public or private land for noncommercial passive outdoor recreation (including paths or trails) or gardening, Any structures with permanent foundations such as signs or bridges associated with such use may still require a zoning permit. For uses within 50 feet of surface waters, see Section **Error! Reference source not found.**
- (34) Development within public road rights-of-way that is subject to approval from the town or state as applicable.

This is a section the PC should review carefully where the town has fairly broad authority to decide what does and does not need a permit under the regulations.

Replaces Section 7.2 of adopted LUDRs by incorporating, expanding and clarifying existing exemptions. Recommends increasing the size of exempt accessory structures from 80 sf & 10 ft tall to 120 sf & 12 ft tall to better accommodate size of pre-fab structures. Recommends increasing the size of exempt fences to 4½ or 6½ feet to accommodate the installation of pre-fab 4' or 6' fencing. Limits many exemptions to single- and two-family homes because all other uses will have approved site plans that should be updated as physical changes are made to the property. Exemptions 22, 23, 24, 32 and 35 are mandated by state statute, as is the clothesline exemption included in 21 (24 V.S.A. § 4413(e)-(h) and (24 V.S.A. § 4412(6)-(10)).

1102 DEVELOPMENT WITH A CERTIFICATE OF PUBLIC GOOD

1102.A In accordance with state statute, landowners do not need to obtain a zoning permit for development associated with utility, energy or telecommunications infrastructure that receives a Certificate of Public Good from the Public Utilities Commission.

Equivalent to Sections 7.2 and 4.13 of adopted LUDRs and mandated by statute (24 V.S.A. § 4413(b)).

1103 AGRICULTURE AND SILVICULTURE

1103.A In accordance with state statute, landowners do not need to obtain a zoning permit to conduct required agricultural practices or accepted silvicultural practices as defined by the State of Vermont Agency of Agriculture or Department of Forests, Parks and Recreation, respectively. The Zoning Administrator may require a landowner to submit a written determination from the applicable state agency as to whether the subject land use activity is a required agricultural or accepted silvicultural practice.

1103.B In accordance with state statute, landowners do not need to obtain a zoning permit to build a farm structure in accordance with state regulations and the following:

- (1) Landowners must submit a zoning permit application demonstrating that proposed development qualifies as an exempt farm structure, but they do not have to pay the associated application fee.
- (2) The Zoning Administrator may require landowners to provide a written determination from the Vermont Agency of Agriculture, Food and Markets as to whether proposed development qualifies as an exempt farm structure.
- (3) Farm structures, other than walls or fences used for farming purposes, must meet the setback requirements for the district unless the applicant provides the Zoning Administrator with a written waiver from the Vermont Agency of Agriculture, Food and Markets. Farm structures are not required to meet bulk or height requirements for the district.
- (4) Upon finding that the proposed development qualifies as an exempt farm structure, the Zoning Administrator will issue the landowner a letter informing the landowner that he/she may build and use the structure for farming purposes in accordance with the state's required agricultural practices without a zoning permit, but that he/she must obtain a zoning permit before using the structure for any other purpose.

Equivalent to Section 7.2 of adopted LUDRs and mandated by statute (24 V.S.A. § 4413(d)).

1104 GOVERNMENT AND COMMUNITY FACILITIES

1104.A The provisions of this section apply to the following government and community facilities:

- (1) Institutions or facilities owned and operated by the town or state;
- (2) Public and private schools or other educational institutions certified by the state;
- (3) Places of worship or religious institutions;
- (4) Public and private hospitals certified by the state; and
- (5) Waste management facilities certified by the state.

1104.B Landowners must obtain a zoning permit, and site plan approval if applicable, for development associated with a government or community facility, unless otherwise exempted under these regulations.

1104.C Development associated with a government or community facility must meet the same standards as comparable types of private development unless the applicant demonstrates that meeting the standard(s) will interfere with the intended function or use of the government or community facility in accordance with state statute.

Equivalent to Section 4.13 of adopted LUDRs and mandated by statute (24 V.S.A. § 4413(a)).

1105 **GROUP HOMES**

1105.A In accordance with state statute, landowners do not need to obtain a zoning permit to use a lawful single-family dwelling as a group home that will:

- (1) Not serve more than 8 residents who have a handicap or disability (facilities accommodating more residents will be considered assisted living or residential treatment facilities);
- (2) Not be located closer than 1,000 feet from another existing or permitted group home as measured from property line to property line; and
- (3) Be operated under state licensing or registration.

1105.B Landowners must obtain a zoning permit for home construction or other associated development to the same extent as would be required if the property was occupied by any household.

Equivalent to Section 4.9 of adopted LUDRs and mandated by statute (24 V.S.A. § 4412(1)(G)).

120 **Prior Applications, Approvals and Uses**

This subchapter addresses how to administer the LUDRs to existing land uses and development as they change over time and when the regulations themselves are amended.

1201 **PRIOR APPLICATIONS**

1201.A The Zoning Administrator and Development Review Board will review applications based on the regulations in effect at the time the Zoning Administrator determined that the filed application was complete.

No comparable language in adopted LUDRs, however it's not a change as this is a standard zoning practice and interpretation.

1202 **PRIOR PERMITS AND APPROVALS**

1202.A Zoning Permits Issued Prior to Amendment or Adoption of these Regulations. If the Zoning Administrator lawfully issued a zoning permit before the Town of East Montpelier adopted or amended these regulations, an applicant will not need a new or amended permit for the project. If such an applicant does not substantially complete the development or receive an extension before that permit expires, the applicant will need to apply for a new zoning permit, including any development approvals as applicable, under the regulations in effect at the time of the new application.

1202.B Prior Zoning Permits for Phased Projects. If an applicant received approval for a phased project before the Town of East Montpelier adopted or amended these regulations, the Zoning Administrator will issue permits for the development as approved irrespective of any change in the regulations. However, if such an applicant does not substantially complete the phased project as a whole within the timeframe specified in the approval, the applicant will need to apply for a new zoning permit, including any development approvals as applicable, under the regulations in effect at the time of the new application.

1202.C Prior Development Approvals. If an applicant does not obtain a zoning permit for proposed development, other than a subdivision, that the Development Review Board approved within 12 months of receiving that development approval, the approval will expire and the applicant will need to apply for a new approval under the regulations in effect at the time of the new application. (Note: An applicant may request a delay in effect for a zoning permit and/or development approval in accordance with Subsection 4203.B.)

1202.D Effect of Change in Ownership. Zoning permits and development approvals remain valid irrespective of any change in ownership of the property.

1202.E Lawfully Recorded Subdivision Plats. If an applicant lawfully recorded an approved subdivision plat in the East Montpelier land records, that plat will remain valid and will not expire irrespective of any change in these regulations or in ownership of the property.

Includes provisions from Section 7.3 of adopted LUDRs and adds further clarifying provisions. Subsection D is standard zoning practice and Subsection E is mandated by statute (24 V.S.A. § 4463(b)).

1203 CHANGE OF USE

1203.A **Change within a Use Definition.** A landowner will not need to obtain a zoning permit or development approval for a change of use if both uses fall under the same use definition (e.g., a retail sales use like a clothing store to a retail sales use like a home furnishings store). Other site development associated with the change of use may require a permit or approval (e.g., new or modified signage, outdoor lighting, parking, etc.).

1203.B **Change from One Use Definition to Another.** A landowner must obtain a zoning permit, and any development approvals as applicable, for a change of use if the two uses do not fall under the same use definition (e.g., a personal service use like a barber shop to a restaurant use like a coffee shop).

Compare to Section 3.4 of adopted LUDRs. Proposed language is a change from adopted. It allows for a change of use within a use definition without requiring a new zoning permit or development approvals for that use. The reason for the recommended change is to promote economic development by streamlining permitting process when businesses change over or evolve on an existing commercial/industrial site.

1204 EXPANSION OF USE

1204.A **Nonresidential Uses.** A landowner must obtain a zoning permit, and any development approvals as applicable, to expand a non-residential use to occupy additional space in a building or on a lot.

1204.B **Residential Uses.** A landowner must obtain a zoning permit, and any development approvals as applicable, to increase the number of bedrooms in a dwelling unit. Provided there is no increase in the number of bedrooms, a landowner will not need to obtain a zoning permit to expand a residential use to occupy existing space in the building.

Compare to Section 1.3 of adopted LUDRs. Proposed language is a change from adopted. It allows for expansion of habitable space within a dwelling provided the number of bedrooms does not increase (that would trigger state wastewater permitting) without a zoning permit, which a strict interpretation of adopted language would currently require. It continues the requirement that expansion of a nonresidential use would require a permit. The reason for this change is that many residents would not realize that a permit was needed to convert unused space within their home to habitable space, thus creating potential future problems when the home needs to be sold or transferred.

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1205 DISCONTINUED USES

1205.A Nonresidential Uses. A landowner must obtain a new zoning permit in accordance with these regulations, and any development approvals as applicable, to resume a lawful non-residential use (if the use is nonconforming, see Section 1302) that has been discontinued for more than 12 months except:

- (1) If the landowner has had to discontinue a non-residential use as result of damage to the structure in which it is housed, the owner may re-establish the use once the structure has been repaired or rebuilt in accordance with Section 1207.
- (2) The Zoning Administrator may extend the period of discontinuance for a conforming use to a total of not more than 3 years if the landowner demonstrates that he/she is actively marketing the property or business for sale or lease.

1205.B Residential Uses. A landowner will not need to obtain a zoning permit to resume residential use of a lawful vacant dwelling unit provided there is no increase in the number of bedrooms in the dwelling unit (if the use is nonconforming, see Section 1302).

The adopted LUDRs are largely silent on discontinued uses with the exception of nonconforming uses (Section 3.10) and conditional uses that have been replaced with another use (Section 3.4). Proposed language provides clarity and follows standard zoning practice and interpretation.

1206 ABANDONED DEVELOPMENT

1206.A If the development authorized by a zoning permit is abandoned without being completed prior to the expiration of the zoning permit authorizing the development, a landowner must demolish or secure any partially completed structures, remove all structural materials from the site, restore the site to a natural grade, and re-establish groundcover to prevent erosion prior to the zoning permit expiring.

The language in the adopted LUDRs related to abandoned development is internally inconsistent and needs to be clarified. Section 3.2 states that unoccupied structures that are substantially incomplete 1 year after issuance of a zoning permit will be considered abandoned. Section 7.3 suggests that work authorized by a zoning permit only needs to be "substantially commenced" within 1 year. The proposed addition/change of language will tie into a proposed change to the zoning permit provisions to establish a deadline for completion rather than commencement of work. The reason for this change is to provide the town with the ability to enforce against an unsafe or unsightly development site where construction was started and not completed in a timely manner.

1207 DAMAGED OR DESTROYED STRUCTURES

1207.A Action Required Immediately. A landowner must act promptly to stabilize and secure a structure that was damaged or destroyed by any cause as necessary to protect public health and safety.

1207.B Action Required within 6 Months. Within 6 months of a structure being damaged or destroyed by any cause, a landowner must either:

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- (1) Stabilize and secure the structure as necessary to protect the structure from the elements and to protect public health and safety, if the structure will be reconstructed; or
- (2) Demolish the structure, remove all structural materials and debris from the site, restore the site to a natural grade, and re-establish groundcover to prevent erosion. As per Paragraph 1101.A(2), no zoning permit is required for demolition of a damaged or destroyed structure. (See Section 3008 for guidance on demolition.)

1207.C **Zoning Permit Required.** Landowners must obtain a zoning permit to repair or reconstruct a damaged or destroyed structure, but they do not have to pay the associated application fee if a complete application for repair or reconstruction is filed within 12 months of the structure being damaged or destroyed.

1207.D **Extension of Period to Act.** The Zoning Administrator may extend the deadline to act specified in Subsection 1207.B or Subsection 1207.C to not more than 24 months in the case of a declared disaster or upon the landowner demonstrating that the deadline cannot be met due to factors beyond his or her control (e.g. legal or insurance processes).

1207.E **Nonconforming Structures.** If a nonconforming structure is damaged or destroyed, a landowner may rebuild in accordance with the provisions of this section and may resume use the structure in accordance with Paragraph 1205.A(1) provided that:

- (1) The structure as reconstructed is not more nonconforming than the original structure; and
- (2) The landowner submits a complete application for a zoning permit for reconstruction within 12 months of the structure being damaged or destroyed (fee to be waived in accordance with Subsection 1207.C).

Compare to Section 3.2 of adopted LUDRs. Proposed language would require a permit for all reconstruction (currently a permit is only required if there will be a change in dimensions of the structure). It also extends the period of time the property owner has to commence reconstruction (currently work must commence in one year and be completed in two, which may be difficult for some due to insurance or legal issues) and provides an extension of deadlines for special circumstances like clean-up following a declared disaster. The reason for the changes is keep a paper trail of the work done, which will ultimately benefit the owner when the time comes to sell or transfer the property, and better accommodate the needs of owners having to deal with insurance companies, banks, etc.

130 Nonconformities

This subchapter addresses pre-existing land uses and development that were legal but due to adoption or amendment of the LUDRs are no longer in conformance with current regulations.

1301 NONCONFORMING STRUCTURES

1301.A **General.** A nonconforming structure that lawfully existed when the Town of East Montpelier adopted or amended these regulations may continue to exist unchanged indefinitely.

1301.B **Use.** A landowner may obtain a zoning permit, and any applicable development approvals, to use a nonconforming structure for any land use allowed in the zoning district.

1301.C **Repair and Maintenance.** A landowner may undertake normal repair and maintenance of a nonconforming structure without a zoning permit in accordance with Paragraph 1101.A(4).

1301.D **Additions.** The Zoning Administrator may issue a zoning permit for development that would authorize changes to the exterior dimensions of a nonconforming structure provided that the proposed development:

- (1) Will not result in any portion of the nonconforming structure encroaching further beyond the existing nonconforming building line or height;
- (2) Will not convert a nonconforming porch, deck or similar feature to enclosed and/or conditioned building space;
- (3) Is not subject to conditions from prior approvals or permits that would otherwise restrict the proposed development; and
- (4) Would not otherwise require a development approval from the Development Review Board.

1301.E **Code or Accessibility Improvements.** The Zoning Administrator may issue a zoning permit for development that would authorize changes to the exterior dimensions of a nonconforming structure, including further encroachments beyond the existing nonconforming building line or height, to the minimum extent necessary to comply with building code, energy code or accessibility requirements.

1301.F **Damaged or Destroyed Structures.** A landowner may obtain a zoning permit to repair or reconstruct a nonconforming structure that has been unintentionally damaged or destroyed by any cause in accordance with Section **Error! Reference source not found.** and provided that the repair or reconstruction does not change the exterior dimensions of the structure in a manner that would result in the repaired or reconstructed structure or portion of the structure encroaching further beyond the previous nonconforming building line or height.

Largely equivalent to Section 3.10 of adopted LUDRs. Proposed language would allow the ZA to approve expansions of a nonconforming structure to meet code requirements rather than requiring the applicant to get a conditional use approval. The reason for this change is to streamline the permitting

process and it recognizes that these types of improvements are being imposed by other regulatory entities and are mandatory to allow continued use of the building. The ZA's decision can always be appealed to the DRB.

1302 NONCONFORMING USES

1302.A **General.** A nonconforming use that lawfully existed when the Town of East Montpelier adopted or amended these regulations may continue to exist in its current location and configuration unchanged indefinitely.

1302.B **Relocation.** A landowner must not move a nonconforming use from one location to another where it would also be a nonconforming use.

1302.C **Resumption.** A landowner must not resume a nonconforming use that he/she abandoned, discontinued or replaced with another use for more than 12 months. If a nonconforming use is located in a structure that is damaged or destroyed by any cause, the landowner may resume the use once the structure is repaired or rebuilt in accordance with Section 1207.

1302.D **Minor Expansion.** The Zoning Administrator may issue a zoning permit to allow a landowner to extend or expand a nonconforming use to:

- (1) Fully occupy space within the associated structure as that structure existed when the use became nonconforming;
- (2) Occupy up to 25% more floor area than when the use became nonconforming in another structure or in a lawful addition to the existing structure.

1302.E **Major Expansion.** The Development Review Board may approve a greater extension or expansion of a nonconforming use as a conditional use upon the applicant demonstrating the proposed extension or expansion will not result in greater adverse impacts on the character of the area.

1302.F **Change of Use.** The Development Review Board may approve the change of one nonconforming use to another nonconforming use as a conditional use upon the applicant demonstrating that the proposed nonconforming use will be less intensive in nature, have fewer off-site impacts and will be more compatible with the character of the area than the existing nonconforming use.

Largely equivalent to Section 3.10 of adopted LUDRs. Proposed language would allow the ZA to approve a minor expansion of a nonconforming use (currently that would require conditional use approval from DRB). The reason for the change is to streamline the permitting process and support business growth and economic development.

1303 NONCONFORMING LOTS

1303.A **General.** A nonconforming lot may continue to exist unchanged indefinitely.

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- 1303.B **Merger.** If a nonconforming lot comes into common ownership with one or more contiguous lots, East Montpelier will not deem the lot merged with the contiguous lot(s) for the purposes of these regulations (a property owner may choose to merge contiguous lots in accordance with Subsection 4307.C).
- 1303.C **Lot Size.** In accordance with statute, a landowner may develop a lot that does not meet the minimum lot size for the zoning district in accordance with all other applicable provisions of these regulations provided that the lot:
- (1) Is legally subdivided and able to be conveyed separate from any other lot;
 - (2) Existed as of the effective date of these regulations;
 - (3) Is at least $\frac{1}{8}$ acre (5,445 square feet) in area; and
 - (4) Is not less than 40 feet wide or deep.
- 1303.D **Lot Frontage.** A landowner with a lot that does not meet the minimum lot frontage for the zoning district:
- (1) May develop that lot in accordance with all other applicable provisions of these regulations provided that:
 - (a) The lot has access to a public or private road that is maintained year-round over a permanent easement or right-of-way at least 20 feet in width; and
 - (b) Access to the proposed development will conform to the requirements of Sections 3002 and 3009.
 - (2) Must not subdivide that lot unless:
 - (a) The lot has access to a public or private road that is maintained year-round over a permanent easement or right-of-way at least 50 feet in width; and
 - (b) Access to the subdivided lots will conform to the requirements of Sections 3002 and 3009.

Equivalent to Section 3.9 with additional language currently in Section 3.3 of adopted LUDRs. Subsection C is mandated by statute (24 V.S.A. § 4412(2)). Proposed language would no longer require merger of a nonconforming lot with a contiguous lot under common ownership. This will tie in with provisions related to still requiring setback requirements even where a property line is between two lots under common ownership. The goal is to encourage owners to properly merge lots through a legal merger process rather than simply treating them as merged for zoning purposes when they in fact have not been legally merged. The reason for this change is that treating lots as merged for zoning purposes can result in development that becomes nonconforming in the future if the lots are sold separately.

PC did not resolve whether or not to require lot merger at the September 20 meeting – issue needs further discussion.

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1304 CREATION OF A NONCONFORMITY

1304.A East Montpelier prohibits any development that would create a nonconformity except that a public project that requires the transfer or taking of land (e.g., road widening) may create a nonconformity.

No comparable language in adopted LUDRs, however it's not a change as this is a standard zoning practice and interpretation.
