

POMFRET ZONING ORDINANCE

As Amended 12-11-73 and 3-4-75

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PART I - TITLE

1.1 This ordinance shall be known and cited as the Pomfret Zoning Ordinance. It is based on state law and all references to "sections" of the state law are to Chapter 24, Title 24 VSA.

PART II - PURPOSE

PURPOSE: The purpose of this ordinance is to regulate the orderly future growth of the Town of Pomfret, Vermont, to prevent accidents and the loss of scenic, quiet and privacy resulting from overcrowding and roadside congestion; to facilitate the orderly operation of schools and other public institutions while checking the growth in property taxes; to preserve and encourage agricultural, residential and recreational uses; to reduce the noise level and use might have on adjacent and nearby areas; to protect the value of property; to protect soil, forests, streams and other natural resources; and to provide a clean and attractive environment for all inhabitants of Pomfret; and all further purposes provided for in Title 24 VSA, Section 4302.

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PART 1 - TITLE

- 1.1 This ordinance shall be known and cited as the Pomfret Zoning Ordinance. It is based on state law and all references to "sections" of the state law are to Chapter 91, Title 24 VSA.

PART 2 - PURPOSES

- 2.1 PURPOSES: The purposes of this ordinance are: to provide for the orderly future growth of the Town of Pomfret, Vermont; to prevent accidents and the loss of peace, quiet and privacy resulting from over-crowding and roadside congestion; to facilitate the adequate provision of schools and other public requirements while checking the growth in property taxes; to preserve and encourage agricultural, residential and recreational uses; to reduce the harm that one land use might have on another and, in general, to protect the value of property; to protect soil, forests, streams and other natural resources; and to provide a clean and attractive environment for all inhabitants of Pomfret; and all further purposes provided for in Title 24 VSA, Section 4302.

PART 3 - DISTRICTS AND PERMITS

- 3.1 The entire Town of Pomfret is classified as one Rural Residential District.
- 3.2 For the purposes of this ordinance, land uses are classified as follows: Uses not Requiring a Permit, Conforming Uses Requiring a Permit, Non-conforming Uses Requiring Permits, Prohibited Uses.
- 3.3 Permits issued under the terms of this ordinance shall identify the use or occupancy and structure involved, whether conforming or non-conforming and if non-conforming shall specify particulars of the permitted variances.
- 3.4 Permits involving construction or establishment of conforming and non-conforming uses, buildings and structures under Parts 6 and 7 shall expire unless that construction begins within one year from date of issue.
- 3.5 Existing uses and structures do not require permits whether conforming or non-conforming. Upon request of a property owner, the Administrative Officer and the Board of Adjustment are required to issue permits for these existing uses and structures.

PART 4 - DEFINITIONS

- 4.1 The following definitions shall apply throughout this ordinance unless the context otherwise requires:
- 4.2 "AUSTRALIAN BALLOT": shall mean a vote on a printed form filled out in secret and deposited in a closed ballot box during the hours designated for the purpose at a duly warned Town Meeting. No discussion of the subject of the vote may take place on the day of the ...
- 4.3 "COMMENCE" or "BEGIN": shall mean any physical activity indicating the beginning of any kind of construction or emplacement of a structure, including, without limitation, clearing of land, earth movement, and bringing in construction materials, or drilling a well.
- 4.4 "COMMERCIAL SALE OR LEASE": Any transaction or agreement, written or unwritten, intending to effect sale, lease or rental, including options and conditional sales agreements, for any purpose to any person, excluding from this definition, however, transactions among members of the same family consisting of parents, children, sons-in-law or daughters-in-law by blood or adoption."
- 4.5 "CONFORMING USE": single, one-family or two family residence, agricultural buildings, home business.
- 4.6 "NON-CONFORMING USE": uses other than conforming uses.
- 4.7 "CONFORMING STRUCTURE": a building or other structure located wholly outside the setback limits.

- 4.8 "NON-CONFORMING STRUCTURE": a building or other structure located wholly or partially within the setback limits.
- 4.9 "EXISTING USE": any use existing at the time of adoption of this ordinance; and specifically with reference to mobile homes, the term shall mean that the structure shall have been emplaced and connected to a septic system; and with reference to all other residential structures the term shall mean that a permanent foundation and the septic system shall have been completed.
- 4.10 "HOME BUSINESS": a commercial activity carried on entirely within a building and secondary to the use of the premises as a one or two-family residence, including the letting of rooms or the furnishing of board by a resident of the premises.
- 4.11 "PERSON": an individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.
- 4.12 "RESIDENT": one who makes his principal residence in Pomfret.
- 4.13 "PLANNED DEVELOPMENT": the construction or emplacement for commercial sale or lease of two or more dwelling units within two years.
- 4.14 "SETBACK": the distances between any structure, or any part thereof, and the side property lines of the parcel on which said structure stands; also the distance from a public road or public right of way to or past said structure.
- 4.15 "SMALL LOT": any lot in individual, non-affiliated and separate ownership from surrounding properties, provided it is not less than one-eighth of an acre with a minimum width or depth of 40 feet.
- 4.16 "STRUCTURE": an assembly of materials for occupancy or use, including without limitation, a building, mobile home, camper-trailer, sign or immobile operating equipment such as a gasoline pump. For the purposes of this ordinance the term does not include pond dams, stone walls, fences, or mobile operating equipment.
- 4.17 This section stricken out.
- 4.18 "TRACT": used interchangeably and with same meaning as PARCEL or LOT --all contiguous land belonging to a person in the Town of Pomfret regardless of how or when obtained. Land in common ownership on opposite sides of a public or private right-of-way constitutes a single lot.
- 4.19 "USES" or "LAND USES": very broad terms and mean anything done with land or structures thereon.

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- 4.20 "COMMERCIAL MINING": any surface or subsurface extraction within the Township of Pomfret of any gas, liquid or solid matter, including, without limitation, natural gas, petroleum, soil, sand, gravel, stone, metals or metallic ores intended for ultimate sale by the miner or any affiliated person before or after further processing either within or outside the Township of Pomfret. Extraction by a Pomfret landowner or lessee for his own use to be used and/or consumed solely on his owned or leased premises does not constitute commercial mining for the purposes of this ordinance.
- 4.21 "ULTIMATE SALE": means the transfer of title or use for any consideration having any direct or indirect value which can be measured in monetary terms.
- 4.22 "DWELLING UNIT": without limitation, includes any one-family structure, half of a two-family structure, an apartment or any separate quarters occupied as a residence on a non-transient basis.
- 4.23 "PUBLIC NUISANCE": comprises all of the elements of meaning generally understood by the legal use of this term, including without limitation, any business, amusement, activity or land use which creates or results in any sight, sound, smell, pollution or interference with the occupations, amusements or living conditions of people in the neighborhood to such a degree of unpleasantness or in any manner to such an extent that the Board of Adjustment deems it necessary to prevent or abate the alleged nuisance because it constitutes or threatens to become a hazard to health, a danger to persons or property or to have an adverse impact on the convenience, comfort or general welfare of members of the community.
- 4.24 "COMMERCIALLY ACTIVE": This term is used in this ordinance in reference to any use of land or other activity carried on for commercial sale or lease; and it means: not having been suspended for at least one year at the time of adoption of this ordinance or its applicable amendments.

PART 5 - USES NOT REQUIRING A PERMIT

- 5.1 Existing uses of land commercially active at the time of adoption of this ordinance or its applicable amendments or structures existing at adoption of this ordinance or its applicable amendments; and the maintenance, repair, replacement or conforming extension of same, provided they do not violate state laws.
- 5.2 Existing structures and/or land may be sold and resold for the same use, provided this does not create a sub-division as defined in Part 4.
- 5.3 Agricultural uses other than the building or emplacement of new structures larger than those defined in 5.4 below.
- 5.4 The construction or emplacement of a conforming new unattached accessory structure not larger than 24 feet x 24 feet x 15 feet high.
- 5.5 Continuation of existing home business.
- 5.6 Signs not exceeding 6 square feet in size may advertise an on-premises business; may be illuminated with non-flashing lights. With the consent of the land owner an off-premises sign less than 6 square feet in size, not illuminated, may be installed to provide directions to a home or agricultural business.

- 5.7 With the consent of the landowner, campers and travel-trailers may be emplaced in conforming locations for temporary use (not exceeding two months) without foundations, provided sewage disposal arrangements conform to applicable town ordinances, do not pollute streams and do not present a health hazard.
- 5.8 Change from a non-conforming to a conforming use or occupancy or location.
- 5.9 Existing non-conforming occupancies or structures destroyed by fire or other disaster may be rebuilt and occupancy resumed if reconstruction begins within one year from date of destruction.
- 5.10 Logging operations, while not requiring a permit, must be carried on in such manner as not to hazard or damage public roads or adjoining property or cause unreasonable erosion.

PART 6 - CONFORMING USES REQUIRING PERMITS

- 6.1 The uses of land or structures outlined under this Part 6 do require permits, and the Administrative Officer is required unconditionally to issue such permits without fee for uses meeting the standards set forth below:
- 6.2 Construction or emplacement of a conforming single one-family or two-family residence with customary accessory structures on a lot of not less than two acres having frontage of at least 90 feet if on a public road. Mobile homes, which must be on a foundation and have sewage systems meeting state or town requirements, are considered one-family residences and are subject to all the applicable regulations in this ordinance.
- 6.2.1 In broadest terms one of the objectives of this ordinance is to maintain or create a quantitative ratio between residential structures and dwelling units on the one side and contiguous attached land on the other. The ratio shall be not less than two acres for each residential structure and not less than one acre for each dwelling unit.
- 6.3 Construction or emplacement of conforming structures for agricultural use larger than 24 feet x 24 feet x 15 feet high.
- 6.4 New home business.
- 6.5 In accordance with 24 VSA 4406 (1) existing small lots may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements.

PART 7 - NON-CONFORMING USES REQUIRING PERMITS

- 7.1 All permitted uses other than those covered by Parts 5 and 6 are non-conforming uses and may not be commenced without a permit issued by the Administrative Officer after approval and authorization by the Board of Adjustment on the concurring vote of a majority of the members of the Board at a meeting after a duly warned public hearing. Applicants for this type of permit (fee of \$10) should fill out an "Application to the Board of Adjustment for a Zoning Permit", blank forms for which can be obtained at the Town Clerk's office.

7.1.1 The flood of 1973 has demonstrated again the damage which can be done by rushing water to roads, culverts, bridges, buildings, wells and agricultural land. A possible factor in such flooding is the breaking of a pond dam, depending upon the size and location of the pond. Accordingly, and notwithstanding the provisions of Part 5 of this ordinance, the construction of a pond, whether agricultural or recreational, does require a permit authorized by the Board of Adjustment.

7.1.2 Without a permit authorized under Part 7, no tract of real estate may be divided and transferred in title or lease in such a way as to create one or more parcels smaller than two acres, unless the deed or lease withholds from the buyer or lessee, and any successors in interest, the right to use said parcels for residential purposes.

7.2 Stationary on-premises signs greater than 6 square feet in size are considered non-conforming uses requiring permits. Such signs may be illuminated with non-flashing lights.

7.3 A particular type of land-use included in 7.1 of this ordinance is commercial mining. It has been demonstrated in some other communities in the United States that certain types of commercial mining on any substantial scale can do serious esthetic and economic damage to the environment as well as affecting adversely the peace and tranquillity of the community. Accordingly, it is important to obtain in advance full and detailed disclosure of the applicant's plans for mining operations and post-mining clean-up. The purpose of such disclosure is to give both the community and the Board of Adjustment time and an adequate factual basis to decide whether a mining permit should be granted and what safeguards should be imposed.

7.3.1 No commercial mining may be done without a permit authorized by the Board of Adjustment after at least two duly warned public hearings and after the preparation and filing by the applicant, to the complete satisfaction of the Board of Adjustment, of all such operational plans, reports, studies and estimates as the Board of Adjustment may prescribe as appropriate to the scale and gravity of the mining project covered by the application. Without limitation, such operational plans may include a copy of the application(s) made to state and/or federal agencies; a complete operational plan, including a description of trucks, ore-carriers and other equipment and machinery, a description of buildings and a plan for clean-up and restoration after operations have ceased.

7.3.2 In the event that any person engages in commercial mining, he is required by this ordinance to perform at least the following work of current repair and/or restoration:

7.3.2(a) If damaged by excessive use or overloading of vehicles by the miner or by accident for which the miner is responsible, public roads, bridges and culverts shall be repaired promptly and placed in a condition at least as good as that prevailing before use by the miner and to meet state and/or local requirements.

7.3.2(b) Any open pit shall be left in the condition prescribed by the Board of Adjustment in the permit granted to the miner.

7.3.2(c) Mining shafts shall be back-filled with tailings or other waste or otherwise sealed off as prescribed by the Board of Adjustment.

7.3.2(d) To minimize spreading by erosion, tailings and other waste shall be confined or impounded as prescribed by the Board of Adjustment.

7.3.2(e) At the termination of mining operations all machinery and equipment above ground shall be removed. Structures above ground shall be dismantled and the land on which the structures stood shall be restored as prescribed by the Board of Adjustment.

7.3.3 For the purpose of checking compliance with this ordinance the Board of Adjustment and/or its representatives shall have at any time during normal working hours the right to enter and examine all lands, buildings and equipment in use or previously used in Pomfret by the applicant.

7.3.4 Any mining operations shall be conducted in such a manner as not to endanger the citizens of Pomfret or their homes, and violation of this provision shall render the mining permit null and void and shall be grounds for petition for a court injunction.

7.4 Without a variance, no building or structure or part thereof shall be located closer than 40 feet to the side property line or 60 feet to the edge of a public right of way or 85 feet to the center of the travelled portion of a public right of way, whichever distance is the greater. An "on-premises" sign advertising a home occupation is exempt from the public right of way setback provision but not the side property line set-back provision.

PART 8 - PROHIBITED USES

8.1 The following uses are prohibited in the Town of Pomfret:

8.1.1 Any use of land or buildings which affects adversely public health, safety, or welfare; or which is noxious or dangerous; or which pollutes streams or air; or creates any other public nuisance; or as provided in state law.

8.1.2 Outdoor signs advertising products or services off the premises of the products or services, except for direction signs to home or agricultural businesses less than 6 square feet in size. (See paragraph 5.6) Also prohibited are moving signs or signs with flashing lighting.

8.1.3(a) This subsection stricken out.

8.1.3(b) This subsection stricken out.

8.1.3(c) Attempts to circumvent the provisions and purposes of these Regulations through conveyances or transactions not "at arm's length", such as, without limitation, transactions with partially or wholly owned corporations or transactions in collusion, shall be considered null and void for purposes of administration and enforcement of these Regulations.

8.1.4 All planned developments (see section 4.13 of this ordinance).

8.1.5 In accordance with 4406(2) and notwithstanding the provisions of Section 3.2 of these Regulations, land having no frontage on a public road may not be transferred in ownership unless (a) the grantee already has through other adjoining property access to a public road; (b) the grantee permanently waives in a written instrument recorded with the Town Clerk all right to use said land for any purpose requiring access to a public road; or (c) the grantor with the approval of the Commission conveys with said land access to a public road by a permanent easement or right-of-way at least 20 feet in width. Where there appears to be a reasonable possibility that such transfer of land and/or its subsequent use may lead to future requests that the Town of Pomfret assume responsibility for the construction, maintenance or winter plowing of roads along said rights-of-way, the Commission may withhold its approval of the development pending the construction of said roads in accordance with standards provided in PART 7 of the Pomfret Subdivision Regulations as applied by the Pomfret Planning Commission, all at the expense of the developer-seller.

8.1.6 In sub-dividing land, thus creating new property lines, it is a violation of this ordinance to place any point on said new line(s) closer than 40 feet to any existing structure or part thereof.

8.1.7 In those cases where one or more existing residential structures stand on a parcel of land no action may be taken (whether transfer of a portion of the land, the modification of an existing structure(s) or the construction or emplacement of one or more additional residential structures) which will have the final effect of reducing the ratio of all the land in said parcel to all of said structures (both existing and new) below two acres per residential structure or one acre per dwelling unit.

PART 9 - ADMINISTRATION - GENERAL

9.1 Administration of this ordinance shall be as required by Vermont statutes. All references to sections of state law are to Chapter 91, Title 24 VSA.

- 9.2 Complete records of all zoning proceedings shall be kept available to the public at the Town Clerk's office.

PART 10 - ADMINISTRATIVE OFFICER

- 10.1 The Administrative Officer shall be appointed for a term of 3 years by the Planning Commission with the approval of the Selectmen in accordance with the provisions of Section 4442.

- 10.2 The Administrative Officer's principal duties shall be:

10.2.1 To receive applications for zoning permits under Part 6 and to issue same, administering this ordinance and the statutes of Vermont literally, with no power to permit any nonconforming land use.

10.2.2 Answers to applications for permits under Part 6 shall be mailed within 15 days of receipt of same and failure to act within said period shall constitute a decision in favor of the applicant.

10.2.3 Permits under Part 7 shall be issued by the Administrative Officer only upon approval and authorization by the Board of Adjustment.

10.2.4 Permits shall be issued to provide one copy each for the applicant, the Town Clerk, the Board of Listers and the Administrative Officer.

10.2.5 To the best of his ability, to be aware of any violation of this ordinance and the applicable statutes, and in the name of Pomfret to institute appropriate action to prevent or correct such violation.

10.2.6 To submit annually to the Board of Selectmen a resume of his proceedings.

PART 11 - BOARD OF ADJUSTMENT

- 11.1 The Board of Adjustment shall consist of not less than three nor more than nine members appointed by the Board of Selectmen, and shall follow the procedure and shall have the powers set forth in Section 4462.

- 11.2 Principal duties of the Board of Adjustment shall be:

11.2.1 To receive, hold hearings, and decide upon applications for permits for non-conforming uses under Part 7.

11.2.2 To receive, hold hearings, and decide upon applications for variances.

11.2.3 To hear and decide appeals from rulings by the Administrative Officer. At any time, any interested person, as defined in Section 4464, may appeal any decision or act taken, or any failure to act, under this ordinance by filing a notice of appeal with the secretary of the Board of Adjustment and paying a fee of \$10. Such notice must be filed within 15 days of such decision and a copy of such notice shall be filed with such officer. Forms for appeals can be obtained at the Town Clerk's office.

11.3 Before authorizing a permit under Part 7 the Board of Adjustment shall find that the proposed use conforms with the Town Plan and by-laws then in effect; and further that said use will not:

11.3.1 Unreasonably burden the town to provide to the site municipal services, including but not limited to: highway maintenance, fire and police protection, and school bus service.

11.3.2 Create a health hazard because of inadequacy of water supply and sanitary facilities or for other reasons.

11.3.3 Create a pedestrian or vehicular hazard or congestion because of inadequate parking, loading or storage facilities or other factors.

11.3.4 Lead to or be subject to flooding, ponding, or soil erosion at the proposed site.

11.3.5 Create a public nuisance or adversely affect the character of the area as well as the comfort, convenience and general welfare of the community.

11.4 In considering an appeal for a variance under paragraph 11.2.2, the Board of Adjustment shall be guided by the standards set forth in Section 4468 as well as the provisions of this ordinance, with particular reference to paragraph 11.3 and sub-paragraphs 11.3.1 - 11.3.5.

11.5 Hearings conducted by the Board relative to non-conforming uses (Part 7) shall be duly warned and shall be held within 60 days of receipt of the applications. Decisions on these applications shall be rendered within 45 days after completion of the relevant hearings, and failure to act within this period shall constitute a decision in favor of the applicant and the Administrative Officer shall be deemed to have authorization to issue the permit applied for.

11.6 Hearings on appeals shall be duly warned and the appellant shall receive a copy of the warning at least 15 days prior to the hearing. Such hearings shall be held within 60 days of the filing of notice of appeal. Decisions on appeals must be rendered within 45 days after completing the relevant hearings, and failure to act within this period shall constitute a decision in favor of the appellant and the Administrative Officer shall be deemed to have authorization to issue the permit applied for.

11.7 All decisions by the Board of Adjustment, whether on applications

or appeals, shall be reached by the concurrence of a majority of the Board present and eligible to vote on the application or appeal after a duly warned public hearing. Only those members of the Board who were present at said public hearing are eligible to vote on said application or appeal. Such decisions shall be in writing, setting forth the findings on which the decision is based. Decisions shall not be arbitrary or discriminatory.

11.8 The Board of Adjustment may reject an appeal without hearing only in accordance with 4470 (b).

11.9 At its sole discretion, the Board of Adjustment may retain the services of attorneys, engineers or other specialists; and shall impose an appropriate application fee considering estimated or actual costs thereof.

11.10 In approving applications for permits under Part 7 or in granting appeals under 11.2.2 and 11.2.3, the Board of Adjustment may impose such reasonable conditions or performance standards (for work in progress as well as current repair of damage or wear of public facilities and, additionally, final restoration and clean-up) as it may deem necessary to implement the purposes and relevant provisions of this ordinance and to safeguard public welfare.

11.10.1 To assure the execution of imposed conditions or performance standards the Board of Adjustment may require the posting of a bond or bonds of such source, terms, and size as it deems appropriate to the scope and gravity of the project under consideration.

11.10.2 Where the applicant is a corporation and the project under consideration seems likely to run over a number of years, the Board of Adjustment may require, as a condition-precedent, the filing of a plan of operations satisfactory in scope and detail to the Board of Adjustment and may further require an agreement both by the applicant and its top parent company, if any, that the plan will be adhered to faithfully.

11.11 Any interested person, as defined in Section 4464, may appeal to a decision by the Board of Adjustment to the superior court of the county in which is located the property at issue in the decision. The appeal shall be taken in accordance with Section 4471 and further references therein. Written notice of such appeal must be filed with the secretary of the Board of Adjustment within thirty (30) days of the date of entry of the decision against which the appeal is to be taken.

PART 12 - VIOLATIONS AND PENALTIES

12.1 Any person who violates any provision of this ordinance may be fined not more than \$50 for each day the violation is in effect, provided however that the offender must have had at least 7 days notice that a violation exists. This notice shall be sent to the offender by certified mail, return receipt requested.

PART 13 - AMENDMENTS

- 13.1 This ordinance can be amended in accordance with the applicable provisions of Chapter 91, 24 VSA.
- 13.2 An amendment may be submitted by the Board of Selectmen or by a petition of 5 per cent of the legal voters.

PART 14 - VALIDITY:

- 14.1 If any section or provision of this ordinance is adjudged to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the ordinance as a whole or of any part other than the portion so adjudicated.