

## **DRAFT**

**Updated on 1-7-2020 to reflect changes made by the Pelham Planning Board at their 1-6-2020 public hearing. Text in red indicates language changes made at the 1-6-2020 public hearing.**

**Are you in favor of Amendment No. 1 as proposed by the Planning Board of the Town of Pelham to make the following changes to the Pelham Zoning Ordinance?**

### **ARTICLE XII SPECIAL EXCEPTIONS**

[Amended March 8, 2005 ATM; Amended 3-14-06 ATM; Amended 3-11-08 ATM; Amended 3-16-17]

#### **307-73 General Requirements**

Unless otherwise specified, the ZBA shall permit a use by special exception subject to the following conditions:

- A. the use requested is listed as being permitted by special exception in Table 1 or elsewhere in this Ordinance, for the district in which the use is requested;
- B. the proposed use is consistent with the purpose and intent of the district within which it is proposed to be located;
- C. the proposed use meets all other applicable requirements under this Ordinance, and
- D. the proposed use is compatible with the character of the surrounding neighborhood or area.

#### **307-74 Additional Requirements for Accessory Dwelling Units [Amended March 8, 2005, March 14, 2017 ATM]**

Authority. NH RSA 674:71-73, Accessory Dwelling Units

##### **Purpose and Intent:**

In accordance with NH RSA 674:71-73, The purpose of this ordinance is to expand the mix of affordable housing opportunities throughout the Town by permitting the creation of secondary dwelling residences as an accessory use to existing single-family detached dwellings while maintaining the visual and functional character of single-family residential neighborhoods for the following reasons:

- I. There is a growing need for more diverse affordable housing opportunities for the citizens of New Hampshire.
- II. Demographic trends are producing more households where adult children wish to give care and support to parents in a semi-independent living arrangement.
- III. Elderly and disabled citizens are in need of independent living space for caregivers.
- IV. There are many important societal benefits associated with the creation of accessory dwelling residences, including:
  - (a) Increasing the supply of affordable housing without the need for more infrastructure or further land development.
  - (b) Benefits for aging homeowners, single parents, recent college graduates who are saddled with significant student loan debt, caregivers, and disabled persons.
  - (c) Integrating affordable housing into the community with minimal negative impact.
  - (d) Providing elderly citizens with the opportunity to live in a supportive family environment with both independence and dignity.

## Definitions.

“Accessory dwelling unit (ADU)”: A subordinate dwelling residence with complete and independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation on the same lot or attached to or contained within an existing single-family dwelling.

Rental Occupancy: Non-ownership including long term lease ownership

Criteria for Accessory Dwelling Units: The accessory dwelling unit (ADU) shall be clearly secondary to the primary dwelling.

- A. Accessory dwelling units shall not contain more than two bedrooms and shall not exceed 1000 (one thousand) square feet of living area, exclusive of entryways.
- B. An accessory dwelling unit shall not be permitted anywhere except in a single-family residence or on a lot occupied by a single-family residence. Only one ADU shall be allowed on any individual lot whether attached to, within, or detached from the primary dwelling.
- C. Accessory dwelling units shall meet the well requirements set by the Board of Health either by the primary dwelling already meeting the standard or due to the standard being met in advance of Certificate of Occupancy (CO) issuance for the ADU.
- D. Accessory dwelling units shall be allowed only when the waste disposal system, sufficient to support the septic loading requirements of both the accessory dwelling unit and principal dwelling unit, is on file and has been approved by the New Hampshire Department of Environmental Services (NHDES).
- E. In the case of a previously existing septic system, the applicant shall provide evidence that the existing sewage disposal system is in good working condition and shall also include a subsurface waste disposal system design approved by the NHDES that demonstrates the lot can accommodate the combined flows of the primary dwelling and accessory unit to be installed in the event of a system failure.
- F. The exterior of the dwelling shall be designed so it has the characteristics and appearance of a single-family residence or an accessory use customary to a single-family dwelling such as a garage or other outbuilding. The accessory dwelling unit shall have an independent means of ingress and egress meeting all applicable building code requirements to the satisfaction of the Building Inspector. No new entrance or exit to an accessory dwelling shall be constructed on the front of the single-family residence but may be in the front of a detached ADU that meets all requirements herein.
- G. An accessory dwelling unit shall be constructed within or attached to a single-family residence. A detached ADU can be allowed by Planning Board Conditional Use Permit approval (rather than by Special Exception) if it meets the following criteria:
  1. At least a 1.5-acre lot containing at least 45,000 square feet of non-hydric soils
  2. A NHDES approved septic design accommodating all bedrooms within the Primary dwelling and the ADU.
  3. No detached ADU can be constructed on land with naturally occurring slopes in excess of 20%.
  4. All setbacks as defined in Article III, Section 307-12 must be met.
  5. The Planning Board shall have discretion to approve the location of a detached ADU within the parcel of land to ensure the best placement of the ADU.
- H. The driveway shall be designed to appear as a driveway of a single-family residence. No new curb cut from the street shall be constructed except for detached ADUs when the Planning board is

satisfied an additional curb cut is needed. Adequate off-street parking shall be provided to support the vehicles of the primary and accessory units.

- I. There shall be no conveyance of an accessory dwelling separate from the principal dwelling unit by subdivision as that term is defined by RSA 672:14, nor shall the accessory dwelling unit have ownership separate from the owner of the lot in which the principal dwelling unit is located. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single-family residence.
- J. Either the principal or the accessory dwelling unit must be occupied by the owner of the property.
- K. Annually by April 1<sup>st</sup>, the owner of the property on which an accessory dwelling unit is located shall file with the Town Planning Department, on a form prepared by the Town, attesting that property owner resides in either the proposed dwelling unit or the accessory dwelling unit and is the property owner's primary place of residence.
- L. A maximum of three (3) non-related (by blood or marriage) tenants may occupy the Accessory Dwelling Unit
- M. Any applicable impact fees in effect at the time the Special Exception for an Accessory Dwelling Unit (ADU) is approved shall be collected at the time of building permit issuance unless the impact fees are waived by the Planning Board.
- N. Accessory Dwelling Units (ADUs) are only allowed on conforming lots as described within Article III, Section 307-12 *Table of Dimensional Requirements* and on lots within an approved Conservation Subdivision or within the MUZD, *as long as the land area described in 307-74, Criteria for Accessory Dwelling Units, section G is met.*

Compliance with statutory changes:

This ordinance has been updated to meet NH statutory changes for ADUs effective 6-30-2017. All ADUs already in existence as of 6-30-2017 with prior Special Exception or Variance approval will be governed by the revised ADU requirements as described herein.

### **307-75 Other Uses in the Residential District**

The following additional conditions apply to all other uses permitted by special exception in the Residential district.

- A. Not less than two-hundred (200) feet of frontage is provided on a major or minor thoroughfare or arterial or collector street or access to the site is provided by a right-of-way of not less than fifty (50) feet in width directly from a major or minor thoroughfare or arterial or collector street.
- B. Primary ingress and egress is provided from a major or minor thoroughfare or arterial or collector street.
- C. No off-street parking shall be located within required setbacks or between any principal building and a public right-of-way unless all such buildings and parking areas are completely screened from view.
- D. The exterior of buildings and ground shall be maintained in a manner compatible with the rural/residential character of the district.
- E. Site Plan review and approval shall be obtained from the Planning Board.

## **307-76 Additional Requirements for Home Occupations**

### **I. Purpose and Intent**

1. It is the will of the people that a harmonious balance be established between the needs of the individual who operates a home occupation and to the abutting residents.
2. Protect residential areas and property values.
3. Permit residents of the community a broad choice in the use of their property.
4. To establish criteria for home occupations.

### **II. Minor Home Occupations [Amended 3-8-05 ATM, Amended 3-14-06 ATM, Amended 3-11-08 ATM]**

A Minor Home Occupation is an accessory use of a home or accessory structure for the purpose of conducting business activities by a resident of that home. Minor Home Occupations are those businesses limited to home office uses that are unobtrusive to the neighborhood residents and that do not have adverse impacts to abutting properties. Minor Home Occupations expressly do not include retail uses, landscaping, the parking or storage of tractor trailers, auto body, auto repair or small engine repair or maintenance, or other uses which involve the visible storage on the property of business-related equipment, automobiles or the parts thereof. Businesses with increased impact on septic systems such as hair salons or pet grooming facilities are not considered Minor Home Occupations. [Amended 3-8-05 ATM, Amended 3-11-08 ATM]

1. The occupation does not utilize more than 25% of the living area of the primary dwelling (if the business is conducted within the dwelling unit) or more than 25% of the total square footage footprint of all structures upon the property (if it is located within an accessory structure). [Amended 3-11-08 ATM]
2. A maximum of one on site non-resident employee.
3. Any use that may be objectionable, noxious or injurious by reason of the production or emission of odor, dust, smoke refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval. [Amended 3-14-06 by ballot ATM, Art. 6]
4. No increase in traffic volumes beyond what is normally generated within the neighborhood.
5. One (1) sign which advertises the minor home occupation is permitted. It shall not exceed 1.5 sq. ft. in area and shall not be directly illuminated. The sign must be of a design and color appropriate for a residential setting. In the event a second minor home occupation exists within the same dwelling, and where the additional business meets all provisions of the section, an additional sign of identical size and design is permitted. No more than two (2) signs may be used for any combination of minor home occupations conducted within the boundaries of any individual lot. A sign permit is required for each sign. [Added 3-14-06 by ballot ATM, Art. 6]
6. A maximum of one registered vehicle related to the business may be kept in view. All other business-related equipment must be garaged.

7. Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.
8. The display for sale of three (3) or more vehicles per any twelve (12) month period shall be considered a general home occupation and shall not be permitted without zoning relief and Planning Board site plan review and approval. [Amended 3-8-05 ATM, Amended 3-10-09 ATM, Art. 4]
9. Not permitted in a duplex or multi-family dwelling. [Added by ballot 3-11-08 ATM]

Minor Home Occupations are permitted as an accessory use without the approval of any Town board or official in all Zoning Districts within which residential uses are permitted.

### III. General Home Occupations

A general home occupation is an accessory use of a home or accessory structure for the purpose of conducting any non-agricultural business activity by a resident of that home that meets the following conditions and for which a Special Exception is required.

1. The occupation is clearly secondary and subordinate to the primary residential use and shall not change the residential character of the neighborhood.
2. It shall not consume more than 49% (forty-nine percent) of the gross residential living space including accessory structures and shall not change the residential character of the property. [Amended 3-10-09 ATM, Art. 4]
3. A maximum of two on-site non-resident employees.
4. Not permitted in a duplex or multi-family dwelling.
5. One sign which advertises the business is permitted. It shall be unlighted and shall not exceed three square feet.
6. All outdoor storage, display, and any other external indication of the business activity shall be screened from neighboring view.
7. Any use that may be objectionable, noxious or injurious by reason of the production of emission of odor, dust, smoke, refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage, or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval.
8. A maximum of two registered vehicles related to the business may be kept in view. All other business-related equipment must be garaged and screened from neighboring view.
9. Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.
10. Customer parking shall be provided off-street and may not be located within the required front, side or rear setbacks of the property.
11. No retail sales other than those that are incidental to and customarily associated with business use for which the permit was issued.

12. An accessory structure built or converted for home occupation purposes shall be a size, style and type that is compatible with the surrounding neighborhood and capable of reversion to uses that are customarily accessory to residential.
13. Where the proposed General Home Occupation shall result in an increase of the amount of waste water to be discharged it shall be shown by the applicant that there is subsurface waste water disposal system that has been approved by the New Hampshire Water Supply and Pollution Control Commission (NHWSPCC) or that a system adequate for the proposed use shall be installed as a condition of issuing a Special Exception.
14. The BOA may impose any other reasonable conditions on the home occupation that are necessary to protect the residential character of the neighborhood.
15. Site plan review and approval shall be obtained from the Planning Board.

Note that upon passage, references to ADUs within Article V *Permitted Uses*, 307-18 Principal Permitted Uses by District, table 2 will be updated to reflect changes to this article, **ARTICLE XII SPECIAL EXCEPTIONS**