Vermont Superior Court
Filed 10/22/26
Environmental Division

VERMONT SUPERIOR COURT
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ENVIRONMENTAL DIVISION
Docket No. 25-ENV-00102

8 Taft Street Notice of Violation	**MERITS DECISION**

This is an appeal by Jason Struthers (Appellant) of a September 22, 2025 decision of the City of Essex Junction (City) Development Review Board (DRB) upholding a July 14, 2025 Notice of Violation (the NOV) issued to Mr. Struthers regarding the cultivation of cannabis at his property located at 8 Taft Street, Essex Junction, Vermont (the Property). Mr. Struthers timely appealed that decision to this Court.

In this matter, Appellant is self-represented. The City is represented by Claudine C. Safar, Esq. and Miles M. Stafford, Esq. Interested party Stephen Wille Padnos (Neighbor) is represented by William B. Towle, Esq.

This Court held a merits hearing on September 2, 2026 via the Zoom videoconferencing platform. All parties attended. Parties requested the opportunity to file post-trial memoranda, which were to be submitted by Friday, October 2, 2026. All parties submitted such filings. The Court subsequently took this matter under advisement.

Factual Findings

1. Appellant owns and resides at 8 Taft Street, Essex Junction, Vermont.
2. The Property is within the R-1 District as that term is defined by the Essex Land Development Code (LDC).
3. Appellant is the sole member/manager of Trichome VT, LLC, a Vermont limited liability company with a principal office at the Property.[1]
4. In 2022, Appellant applied for a Tier 1 outdoor cultivator license from the Cannabis Control Board (CCB). That application had a "Technical Checklist" completion date on June 17, 2022.
5. On July 6, 2022, the CCB reviewer recommended approval contingent upon insurance.

[1] Because Appellant is the sole member/manager of Trichome VT, LLC, the Court refers to both entities as "Appellant" despite the fact that they are legally distinct.

6. On July 29, 2022, following Appellant's receipt of commercial liability insurance, Appellant's Tier 1 outdoor cultivator license was issued.

7. The Tier 1 outdoor cultivator license allows for Appellant to cultivate up to 125 mature female plants. This maximum plant amount has remained consistent since issuance.

8. Because the Legislature directed the CCB to have a regulated market available by October 2022, the CCB informed applicants with applications for licensure under review that they could begin planting before their applications were approved if they had a pending cultivation application and were working towards finalizing that application, were operating within the scope of the license sought, and were complying with other applicable regulations.

9. The CCB reiterated this approach to the 2022 growing season at various times during the summer of 2022.

10. In May 2022, Appellant began cultivating cannabis seedlings inside the residence at the Property while his application was pending before the CCB.

11. The 2022 crop seedlings were grown from seed that Appellant lawfully obtained at the Property. The seeds were obtained through plants previously owned by Appellant under previous licenses and previous uses, including personal use. Functionally, Appellant grew plants and retained seeds from those plants. The retained seeds produced the 2022 crop. No plants that were for Appellant's personal use were a part of the 2022 crop, nor was the 2022 crop originated from clones.

12. Cannabis seeds do not contain THC and an individual can buy, sell, or gift seeds legally.

13. The 2022 crop seedlings were transferred outside in June 2022, following a hardening off period in late May 2022. They were planted in the Property's backyard.

14. Appellant put roughly 250 seedlings into the ground in June 2022.

15. The footprint for the cultivation has not changed since 2022 and Appellant was previously using the backyard area of the Property to grow hemp pursuant to a hemp license.

16. The nature of cannabis cultivation involves the culling of crop. The final plant count for that season is based on the crop after that culling has occurred. This culling is based on the sex of the plant, with male plants being culled and female plants retained. See Ex. A.

17. On August 17, 2022, a CCB Compliance Agent, Denise McCarty, conducted an initial inspection at the Property.

18. On September 29, 2022, Agent McCarty returned for a follow up inspection. This inspection noted that Appellant had 109 plants on site, below the Tier 1 limit of 125 after the cull.

19. For the 2022 growing season, Appellant did not input crops into the CCB inventory tracking form because that system did not yet exist.

20. The CCB has never issued or found Appellant to be in violation of the CCB Rules as it relates to the seeds or means by which he originated the 2022 crop, the date he began his seedlings for the 2022 growing season, or when he moved those seedlings outside, his tracking of the 2022 crop, the number of plants on-site, or any other violation of CCB Rules.

21. Appellant's Tier 1 license was renewed in 2023, 2024 and 2025.

22. Thus, as of October 5, 2022, Appellant was operating a licensed and in good standing cannabis cultivation use at the Property within its current footprint.

23. Prior to October 2022, the City's 2016 iteration of the LDC was in effect (the 2016 LDC).

24. The 2016 LDC contained no reference to cannabis cultivation.

25. In September 2022, the City undertook efforts to revise the LDC, with that revision effective October 5, 2022 (the 2022 LDC).

26. The 2022 LDC added regulations related to various types of cannabis establishments and uses, most relevant here "cannabis cultivator establishments." Under the 2022 LDC, "cannabis cultivator establishments" were allowable only in the PA District.

27. On February 26, 2025, the City adopted a revised LDC (the 2025 LDC) which imposed a 50-foot setback related to cannabis cultivation, as defined therein.

28. On July 14, 2025, the City Community Development Director issued the NOV to Appellant asserting he was in violation of 2022 LDC § 622, as it relates to operating a cannabis cultivation establishment at the Property, a prohibited use in the in the R-1 District. The NOV also noticed a violation of the 2025 LDC § 726, relating to the newly-adopted 50-foot setback related to cannabis cultivation.

29. Appellant ceased cultivation in response to the NOV and appealed to the DRB.

30. On September 22, 2025, the DRB upheld the NOV.

31. Appellant timely appealed that decision to this Court.

Discussion

Following Mr. Struthers' initial Statement of Questions, the Court restated the Questions to be posed as:

> 1. Is Appellant's cannabis cultivation a pre-existing nonconforming use precluding zoning enforcement?
> 2. Does the City's Land Development Code (LDC) related to cannabis cultivation violate Vermont law?
> 3. Whether the July 14, 2025 Notice of Violation was properly issued under the LDC, including with respect to procedure, notice, application of the ordinance, and factual basis.

In re 8 Taft St. Notice of Violation, No. 25-ENV-00102, slip op. at 4 (Vt. Super. Ct. Envtl. Div. Apr. 16, 2026) (Walsh, J.) (the April Decision)

The Court's April Decision also denied a motion for summary judgment on Question 1. "Agriculture" was prohibited in the R-1 District under the 2016 LDC. The Court's April Decision concluded that Appellant's cannabis cultivation use was not prohibited as "agriculture" in the R-1 District pursuant to the 2016 LDC. Id. at 6-8. The Court also denied Mr. Struthers' motion on whether his use constituted a preexisting nonconformity because there were insufficient facts in the record at that time to establish when the use began. Id. at 8. The Court subsequently denied motions to reconsider these conclusions and for interlocutory appeal thereof. In re 8 Taft St. Notice of Violation, No. 25-ENV-00102 (Vt. Super. Ct. Envtl. Div. May 22, 2026) (Walsh, J.); In re 8 Taft St. Notice of Violation, No, 25-ENV-00102 (Vt. Super. Ct. Envtl. Div. June 17, 2026) (Walsh, J.).

Therefore, remaining before the Court are the factual issues under Question 1 and whether Appellant's cultivation qualifies as a preexisting nonconformity and the totality of Questions 2 and 3. The Court addresses each Question.

I. Question 1: Preexisting Nonconforming Use

A preexisting nonconforming use is a "use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer." 24 V.S.A. § 4303(15) (defining "nonconforming use").[2] [P]reexisting nonconforming uses are exempted from the general requirement of complying with the current zoning regulations . . . ." In re Killington Mountain House, LLC NOV, Nos. 138-12-18 Vtec, 30-2-19 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl. Div. Nov. 17, 2020) (Durkin, J.) (citation omitted).

For a use to be a lawful preexisting nonconformity, "the use must conform to all laws, including prior zoning regulations, in existence just prior to the enactment of the new zoning ordinance." Town of Shelburn v. Kaelin, 136 Vt. 248, 251 (1978) (citing In re Chamberlin, 134 Vt. 359, 361 (1976)). Vermont, through Chamberlin, has taken the minority view of determining a use's legality as it relates to nonconforming use status. See Major & City Council of Baltimore v. Dembo, Inc., 123 Md.App. 527, 539-541 (1998) (explaining that "the majority [of cases outside of Maryland] have rejected contentions similar to those advanced by the City, i.e., that a nonconforming use is abandoned by failure to obtain a license pursuant to a licensing ordinance enacted after establishment

[2] Neighbor's post-trial briefing repeatedly cites to § 4303(15) as stating that a nonconforming use is "a use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations at the time the bylaw took effect." This is not the statutory language. The Court applies the provision as it is stated in the statute.

of the legal non-conforming use" and recognizing Chamberlin as a minority view).[3] This Court has also recognized that other jurisdictions have "tailored the general rule [of legality of the prior use] to provide an exception where the purpose of the statute that has been violated is not related to the land use or zoning." Killington Mountain House, Nos. 138-12-18 Vtec, 30-2-19 Vtec, slip op. at 8 (Nov. 17, 2020) (Durkin, J.) (citations omitted). In Killington Mountain House, this Court recognized that "most jurisdictions require that the illegality involve [] violations of statutes designed to regulate the use of land and not statutes whose purpose is totally unrelated to land use planning." Id. (internal citations and quotations omitted). That decision went on to recognize that Chamberlin did not explicitly "require a violated statute relate to land use and planning to invalidate nonconforming use status" and went on to analyze compliance with Division of Fire Safety statutes when determining whether a use could be a lawful preexisting nonconformity. Id. Thus, the Court interprets Vermont law as requiring that a use be lawful under applicable law at the time that the underlying zoning regulations were amended, even if that law is not strictly a land use or zoning law.

For the reasons set forth in the Court's April Decision, Mr. Struthers' outdoor cannabis cultivation, as a general use, was not prohibited by the 2016 LDC. It was, however, prohibited in the R-1 District by the 2022 LDC. The Question before the Court is therefore whether Mr. Struthers' use was established prior to the LDC's 2022 amendment.

Appellant started seedlings indoors at the Property in May 2022. He began the process of hardening off those seedlings later that month. Those seedlings were transplanted outside in June 2022 to the existing cultivation footprint. During this time, Appellant's application for a Tier 1 outdoor cultivator license was pending before the CCB. Following various levels of administrative review, Appellants license was formally issued on July 29, 2022. The CCB conducted inspections at the Property in August and September of 2022. No violations or enforcement actions were taken with respect to the beginning of Appellant's 2022 crop or otherwise related to the 2022 crop. Appellant's Tier 1 license has been renewed without limitations in 2023, 2024, and 2025. Thus, on the date the 2022 LDC was adopted (October 5, 2022), Appellant was operating a licensed and in good standing Tier 1 outdoor cultivation operation at the Property.

Despite being fully licensed when the 2022 LDC were adopted, Neighbor and the City assert that Appellant's 2022 growing season was not in conformance with statutory and regulatory law,

[3] The Court notes that Dembo concerned an argument related to the failure to comply with a licensing requirement that was enacted after a lawful use began, the comparison remains noteworthy in recognizing Vermont's minority view.

through the CCB Rules, and, therefore, not in conformance with "all appliable laws" in effect prior to the 2022 LDC.

First, Neighbor and the City assert that Appellant's use was "illegal from its inception" because Appellant began cultivation before the effective date of his license. Thus, they assert that the use cannot be a lawful preexisting nonconforming use. The Court is aware of no law that requires a determination of whether the land use was in conformance with all applicable law at the time the use first began. Instead, the analysis is based on the period and laws "in existence just prior to the enactment of the new zoning ordinance." Kaelin, 136 Vt. 248, 251 (citing Chamberlin, 134 Vt. 359, 361). Neither Kaelin nor Chamberlin stand for the proposition that the relevant analysis is whether the use conformed with all applicable laws at its inception.[4] The Court interprets Kaelin and Chamberlin as requiring that a use conform to all laws in effect at the time the relevant zoning regulations went into effect and not requiring a review of whether the use complied with all laws and/or licensing requirements that may have been effective on the date that the use began. For the reasons set forth above, Appellant was in conformance with licensing requirements when the 2022 LDC was adopted.

Even if the Court were to analyze whether Appellant's cultivation prior to licensure under § 4303(15), the facts before the Court do not indicate that Appellant's use prior to licensure was per se improper. The Legislature directed the CCB to have a regulated market with available cannabis products by October 2022. The licensing process also began in 2022. The Chair of the CCB, who was Chair in 2022 as well, told applicants with pending cultivation applications that, in light of this October 2022 directive, if grower applicants began planting while their applications were pending, within the scope of the license sought, and otherwise following CCB regulations that the CCB would not "punish [the grower] for the time it takes [the CCB] to review your application." Ex. N at 2. He continued, "Bottom line: if you have a pending application: act like you have your license and we will too." Id.

[4] In Chamberlin, the landowner began a junkyard at his subject property and at all times was subject to a state licensing requirement. 134 Vt. 359, 361-362. At no point during the 15 years landowner operated the junkyard did he obtain licensing. Id. As such, when the municipality adopted local zoning, the junkyard was without the necessary state licensing. Id. Neighbor and the City interpret this case to stand for the principle that a land use that required licensing at its inception but did not have it will never be entitled to preexisting nonconforming status. That is not the holding in Chamberlin and is not how it has been interpreted by Kaelin. The facts before the Court in this case are inapposite to those in Chamberlin because Appellant's use was fully licensed when the 2022 LDC were enacted. Because Appellant's cannabis cultivation use was properly licensed with the CCB at the time that the 2022 LDC were enacted, it was in conformance with state law "in existence just prior to the enactment of the zoning ordinance" and the Court need not look back to the use's inception. Kaelin, 136 Vt. at 251 (citing Chamberlin, 134 Vt. 359, 361).

While it is true that Appellant began cultivating prior to the effective date of his license, the CCB had an industry wide de facto policy for the 2022 growing season allowing the advance planting in light of the unique circumstances of beginning the cannabis market from scratch with the directive to be operational by October 2022. In the 4 years since Appellant began cultivating while his application was pending the CCB has not pursued enforcement of Appellant, or any other licensee applicant, for operating within the CCB's directive for growing during this period.[5] Thus, while not strictly compliant with Chapter 33, these narrow circumstances do not require the conclusion that Appellant's operation from May to July 29, 2022 was not in conformance with the laws, ordinances and regulations in effect as interpreted and enforced by the entity responsible for such enforcement, the CCB. This policy for the 2022 crop year further stands in support of the Court's conclusion that the relevant analysis under § 4303(15) is whether the use was in conformance when the bylaws were amended, not on the date the activity was initiated.

Next, Neighbor and the City assert that Appellant's 2022 growing season violated CCB Rule 2.2.15, related to the purchase of cannabis or cannabis products from an unlicensed entity, CCB Rule 2.2.6, requiring the tracking of commercial cannabis in the state inventory tracking system, and CCB Rule 2.3.9, prohibiting a plant grown for personal use from supplying cannabis to the regulated market and from being entered in the state inventory tracking system. Thus, they assert that Appellant was not in conformance with applicable laws at the time the 2022 LDC was adopted.

As an initial matter, the Court believes that it goes beyond the scope of our jurisdiction to opine upon whether Appellant's operations violated the CCB Rules. This Court has jurisdiction over those matters narrowly defined by 4 V.S.A. § 34. The interpretation and enforcement of the CCB Rules are not within the scope of this Court's jurisdiction. While § 4303(15) references conformity with other applicable laws, the provision is not similar to 25 V.S.A. § 4412, at issue in In re Ranney Dairy Farm, LLC, which the Vermont Supreme Court concluded the language therein granted this Court jurisdiction over the question of whether a permit applicant had an easement or other right of way to a subdivision because the statute required a determination of whether an applicant had a "permanent easement or right-of-way." 2024 VT 66, ¶ 10. Clearly the Court can take evidence as to whether a landowner has relevant licensure or if a regulatory body had pursued violations against that landowner. Interpreting a statutory or regulatory scheme outside of this Court's jurisdiction to determine if a landowner complies with that scheme goes a step beyond that analysis, however. Thus,

[5] Clearly the CCB is well aware of this operation because the Chair and a Compliance Agent both testified at the Court's merits hearing on this topic.

the Court believes it beyond the scope of this Court's jurisdiction to determine whether Appellant is or was in violation of the CCB Rules.

Assuming, however, that this Court has jurisdiction to review compliance with these Rules in the context of § 4303(15), there is no evidence that Appellant has violated these provisions during the 2022 growing season.

First, to the extent Neighbor asserts that Appellant used seeds purchased from an unlicensed seller or from Appellant's personal medical marijuana license, the CCB Compliance Agent testified that, because cannabis seeds contain no THC, they can be sold or bought lawfully through various means; in effect, seeds are not regulated. Thus, the Court finds no violation of CCB Rule 2.2.15 during the 2022 growing season relating to the seed source.

Second, there is no support for the City's assertion that the 2022 crop was sourced from clones of plants for personal use. No plants grown for personal use were included in the 2022 crop, including clones of any such plants. The 2022 crop was grown from seed. These seeds harvested from plants Appellant lawfully obtained in 2015. Thus, the Court fines no violation of CCB Rule 2.3.9 during the 2022 growing season based on this assertion.

Finally, the CCB Rules require crop tracking through the state's inventory tracking system. The underlying tracking system did not exist for the 2022 season, and therefore, Appellant did not do so for the 2022 growing season. Because the tracking system did not yet exist, Appellant could not be in violation of the requirement to use that system.

Thus, the Court finds there to be no violations in existence at the time the 2022 LDC were adopted. This conclusion is supported by the trial testimony of two CCB witnesses. The CCB was and is clearly aware of Appellant's operations generally and in the 2022 growing season. There is no evidence of the CCB noticing violations or pursuing enforcement for activities in the 2022 growing season. Lastly, even if there was a violation at some point prior to the 2022 LDC's enactment, by virtue of the CCB's inspection in August and September 2022 and the lack of enforcement action against Appellant, any potential violation was cured when the 2022 LDC was enacted.

Finally, both the City and Neighbor also assert that federal law prohibits the manufacture and distribution of cannabis. Thus, they argue that at all times, despite Vermont legalizing cannabis and the cannabis industry as defined and regulated by Vermont laws, Appellant's cultivation was illegal under federal law and cannot be a preexisting nonconforming use. They base this assertion on § 4303(15), which states that a nonconforming use is one that is "in conformance with all applicable laws, ordinances, and regulations" when the at-issue regulations were enacted.

The application of federal law through § 4303(15) to a cannabis use as regulated by the State is contrary to the rules of statutory interpretation. When interpreting a statute, the Court is directed that "statutes that deal with the same subject matter should be construed together to harmonize them." In re G.T., 170 Vt. 507, 517 (2000) (citing In re 1650 Cases of Seized Liquor, 168 Vt. 314, 321 (1998) (we "consider the purpose of the statute and look to the broad subject matter of the laws, its effects, consequences and reason and spirit of the law")). Second, "statutes should be construed so as to not reach absurd results manifestly unintended by the Legislature." Id. (citing Roddy v. Roddy, 168 Vt. 343, 347 (1998)).

The Vermont Legislature has legalized the cannabis industry and cannabis as a product. It has created a system and administration for regulating that industry and product in Vermont. See 7 V.S.A. Ch. 33 (Cannabis Establishments). The Legislature has further undertaken steps to define how cannabis uses shall be regulated by municipal zoning laws. See 7 V.S.A. § 869(f). The Legislature is well aware that federal law regarding cannabis cultivation and distribution is contrary to Vermont law. Each of the Vermont's Legislative actions are contrary to the federal law prohibiting cannabis' manufacture and distribution. Because Vermont has undertaken significant efforts to create a cannabis industry in the state despite federal law, we must read 7 V.S.A. Chapter 33 in harmony with 24 V.S.A. § 4303(15). In so doing, the Court must conclude that the fact that the cannabis cultivation use is prohibited by federal law does not preclude Appellant's use from being a "nonconforming use" as defined § 4303(15) for municipal land use purposes. This is because it is clearly the Legislature's intent to create a regulated cannabis industry and market contrary to federal law. To conclude otherwise would lead to imposing federal laws in the Vermont land use context the Legislature has explicitly diverged from. Put another way, federal law is contrary to Vermont law. It is the clear intent of the Vermont Legislature to allow for a cannabis industry and establishments as regulated by state law contrary to federal law. It would be absurd to undermine that intent through § 4303(15) and impose compliance with federal laws in this context.

This conclusion is further necessary when considering the broader impacts Neighbor and the City's argument would have at the statewide industry level. Functionally, it would preclude any otherwise lawful cannabis establishment or use from every obtaining preexisting nonconforming status because of federal law directly contrary to Vermont law. This would undermine the Legislature's clear intent of creating a regulated cannabis industry in the state by undermining land use protections afforded to other lawful uses.

While municipalities may choose to regulate cannabis establishments for land use purposes through zoning, they are not required to do so, nor was there a period requiring them to enact relevant

zoning regulations. Thus, it is highly likely that a significant number of otherwise legal cannabis establishments were founded and began their use in locations where the use was allowable under relevant local zoning. In any other context, such use would be, with consideration to the relevant zoning regulations, entitled to preexisting nonconforming status and allowed to continue as defined by those regulations.

To follow Neighbor and the City's logic, these cannabis land uses would therefore become zoning violations upon the enactment of relevant zoning regulations. Assuming it would be impossible to cure those violations, the use and establishment would need to cease operations to become compliant with zoning, much like what Appellant was required to do here during this litigation. Municipalities could therefore functionally shut down otherwise lawful cannabis establishments through local zoning because those establishments would be contrary to local zoning and federal law and without the protection of preexisting nonconforming status. The Court is not aware of any other land use presently lawful in the State of Vermont that would be exposed to such uncertainty and inconsistency in land use planning and regulation. Thus, to adopt Neighbor and the City's assertion as to federal law applicable here would violate the rule of land use and zoning ordinance interpretation requiring that "zoning ordinances are to be strictly construed in view of the fact that they are in derogation of common law property rights, and that when exemptions appear in favor of the property owner, the exemptions shall be construed in favor of the owner." Glabach v. Sardelli, 132 Vt. 490, 494 (1974) *overruled in part on other grounds*, 158 Vt. 561; see also Committee to Save the Bishop's House, Inc. v. Med. Ctr. Hosp. of Vt., Inc., 137 Vt. 142, 152 (1979) ("[L]egislation in derogation of common law property rights will be strictly construed.") (citations omitted).

For these reasons, the Court concludes that Appellant's use does not lose its preexisting nonconforming use status by virtue of being contrary to federal law.

For all the above reasons, Appellant's outdoor cannabis cultivation was a use that "did conform to all applicable laws, ordinances, and regulations prior to the enactment" of the 2022 LDC and it is a preexisting nonconforming use of the Property. Thus, the Court concludes that Appellant's outdoor cannabis cultivation use pursuant to his Tier 1 license is a preexisting nonconforming use and may continue at the Property at the scope of its original footprint unless and until it loses that status pursuant to relevant law.[6]

[6] At trial, the parties agreed that the concept of abandonment of the preexisting nonconforming use was not at issue as it relates to Appellant's use and his cessation of that use following the issuance of the NOV. Counsel for both the City and Neighbor represented on the record that they did not seek to assert abandonment in this appeal. Thus, there is no dispute. Appellant has not abandoned the preexisting nonconforming use by virtue of ceasing the use in response to the NOV. This cessation was prudent and appropriate given the circumstances and, given Appellant's pursuit of this appeal in order to continue this preexisting use, there is clearly no intent on his part to abandon the use.

In reaching this conclusion, the Court notes that Neighbor has sincerely held concerns about this use and its impact on Neighbor and his enjoyment of his property. The Court takes this opportunity to recognize a real impact and express that this Court is tasked with determining whether Appellant's licensed cannabis cultivation use, may continue within the context of relevant Vermont statutes, regulations, and relevant case law and apply that law as required.. The Court does not reach the conclusions in this Decision lightly

II. Question 3: NOV Issuance, 50-foot Setback

For the foregoing reasons, the Court concludes that Appellant's cannabis cultivation use pursuant to the terms of his Tier 1 license is a preexisting nonconforming use that may continue at its original footprint. This preexisting nonconforming use predates the 2025 LDC's adoption of a 50-foot setback distance "between the cannabis plant canopy and a property boundary or edge of a highway" for outdoor cannabis cultivation. See 2025 LDC at 236. The use's footprint pre-date the 2025 LDC amendment and has remained consistent since its inception. The 50-foot setback is not applicable to Appellant's preexisting nonconforming use.

The basic principles of zoning and land use law dictate that the setback may not be imposed against the use as a dimensional requirement because the use's dimensions predate the amendment. A "nonconforming lot or parcel" is a lot or parcel "that do[es] not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws . . . ." 24 V.S.A. § 4303(13). While the Court understands that the City and Appellant disputed whether the underlying cannabis cultivation was a lawful land use, it is not disputed that there was no canopy-related setback imposed prior to the 2025 LDC. Thus, the Court concludes that the footprint is a preexisting nonconformity that is not subject to the 50-foot setback. [7]

To the extent that Question 3 raises any other issues related to the procedural issuance (i.e., whether the NOV complied with the relevant statutory and LDC requirements for its issuance, unrelated to the underlying merits) of the NOV, Appellant has failed to raise any other argument that the NOV was somehow procedurally deficient under the requirements of 24 V.S.A. § 4451(a) or the LDC. Thus, while this issue is largely moot by the Court's conclusion that the use and footprint are

[7] That this setback is contemplated by statute does not alter this conclusion. The statute upon which it is based, 7 V.S.A. § 869(f), is permissive and not mandatory. It is not a retrospective statute. Neddo as Next Friend to Z.N. v. Monsanto Co., 2025 VT .64, ¶ 29 (citations omitted); see also Agency of Nat. Res. v. Godnick, 164 Vt. 588, 595 (1994) ("Retrospective laws are defined as those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past."). It also does not authorize a municipality to adopt a bylaw that would be retrospectively applied, in clear violation of the law governing preexisting nonconformities in the land use context.

both preexisting nonconforming uses that may not give rise to a zoning violation, there are no independent bases to void the NOV on procedural grounds.

III. Question 2: LDC Compliance with State Law

Through Question 2, Appellant has presented an as-applied challenge to whether the LDC violates 7 V.S.A. § 869(d)(1), which requires that "a municipality shall not . . . prohibit the operation of a cannabis establishment within the municipality pursuant to . . . a bylaw adopted pursuant to 24 V.S.A. § 4414, or regulate a cannabis establishment in a manner that has the effect or prohibiting the operation of a cannabis establishment."

Because the Court has concluded that the 2022 LDC and 2025 LDC are not applicable to Appellant's preexisting nonconforming use and footprint, this issue is **MOOT.** Thus, this Question is no longer within the scope of this Court's jurisdiction and is **DISMISSED**.[8]

Conclusion

For the foregoing reasons, the Court concludes that Appellant's cannabis cultivation use is a preexisting nonconformity that may continue at the Property pursuant to the terms of Appellant's Tier 1 license. The remaining issues before the Court relating to the LDC's conformance with state law and the original bases for the issuance of the NOV are **MOOT**. Thus, the NOV is **VOIDED**.

This concludes the matter before the Court. A Judgment Order accompanies this Decision. Electronically signed October 22, 2026 pursuant to V.R.E.F. 9(D).

Tom Walsh

Thomas G. Walsh, Judge
Superior Court, Environmental Division

[8] At trial, the Court received evidence that there is at least one, and possibly a few more, properties in the PA District that could comply with the LDC's requirements regarding cannabis cultivator establishments. Because the Court concludes that this issue is no longer properly before the Court, we need not address whether these few propertiesare sufficient to comply § 869(d)(1).