

# NORTH HAMPTON ZONING ORDINANCE

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## ARTICLE I – PURPOSE AND DEFINITIONS

### SECTION 101 PURPOSE

For the purpose of promoting the health, safety, and the general welfare of the community, the following ordinance is hereby enacted by the legislative body of the Town of North Hampton (a municipal corporation in the County of Rockingham and State of New Hampshire) in official meeting convened: \*3/14/1968. The ordinance shall not apply to the Little Boar's Head Village District, which was granted exclusive Planning and Zoning authority by an act of the New Hampshire Legislature in 1937. \*3/8/2016

### SECTION 102 TITLE

This ordinance shall be known and may be cited as the “North Hampton Zoning Ordinance.” \*3/12/1968

### SECTION 103 INTERPRETATION

In the interpretation and enforcement of this Ordinance, all words other than those defined specifically below shall have the meanings implied by their context in the Ordinance or their ordinarily accepted meanings. The word “person” includes a firm, association, organization, partnership, trust company, or corporation as well as an individual. The present tense includes the future tense. The singular number includes the plural; the plural number includes the singular. The word “shall” is mandatory; the word “may” is permissive. The word “lot” includes the words “plot” or “parcel.”

### SECTION 104 DEFINITIONS \*3/08/2005

**1. Accessory Dwelling Unit:** One dwelling unit, located within a single-family principal dwelling that is clearly subordinate to the principal dwelling and meets the conditions set forth in Section 401. An Accessory Dwelling Unit shall provide independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation. \*3/13/1990, 3/14/2017

**2. Accessory Structure:** Any structure on a lot, that is detached or not from the principal structure on that lot and is or its use is incidental and subordinate to that principal structure. Garages for motor vehicles, with a footprint no greater than 1,008 square feet, attached or not to the principal structure, are not considered Accessory Structures as long as that garage is the first instance of a garage on a Lot of Record. \*3/12/2019

**3. Accessory Use:** A use customarily incidental and subordinate to the principal use and located on the same lot as the principal use.

**4. Adult and Senior Facilities or Services:** \*3/14/2017

**A. Assisted Living Facility:** A State licensed facility which combines apartment living (including studio apartments) with a variety of support services including meals, assistance with personal care, housekeeping, laundry, social and recreational programs, oversight of residents medication, 24 hour security, on-site staff to respond to emergencies. These facilities may also offer specialized care for persons with dementia or Alzheimer's Disease. See RSA 151-E:2.I.

**B. Nursing Facility:** A State licensed facility which is primarily engaged in providing 24-hour care for residents needing: (a) skilled nursing care, medical monitoring, and related services; (b) rehabilitation services for the rehabilitation of injured, chronically disabled, or sick; (c) medication administration or instruction and supervision; or (d) on a regular basis, health-related care and services (above the level of room and board) which can be made available to them only through facilities which provide 24-hour care. See RSA 151-E:2, V.

**C. Senior (Elder) Day Care Facility or Senior (Elder) Day Care Center:** non-residential facility that operates during day time hours which supports one or more of the following services including but not

limited to: health, nutritional, part time living needs of adults 55 years of age and older in professionally staffed group settings, and may also provide for the social needs for these adults.

**5. Agriculture or Agricultural Operation:** “Agriculture” and “Agricultural Operation” mean any farming activity that involves the cultivation of plants or the raising of livestock – including animals or poultry as defined in RSA 21:34-a. \*5/10/2011

**6. Area:** Area of a lot size shall be calculated from dimensions derived by the horizontal projection of the site.

**7. Basement:** A story having a portion of its clear height below finished grade.

**8. Body/Bodies of Water:** Surface Waters, defined by RSA 485-A:2 XIV, that are not “Wetlands”. The phrases “Body of Water” or “Bodies of Water” as used in this Ordinance shall include, but are not limited to, perennial and seasonal streams, rivers, brooks, lakes, ponds, tidal waters and water courses, natural or artificial. The extent of the “Body of Water” or “Bodies of Water” shall be as measured by the mean high water mark, as determined by a Certified Wetland Scientist not to include water features otherwise defined as “Wetlands”. This definition is separate and distinct from the definition of “Wetlands” found elsewhere in this Section and the two shall not be used interchangeably nor shall they be deemed synonymous. \*5/8/2012

**9. Buildable Area or Building Envelope:** That area of the contiguous uplands on a lot which is outside any setback or buffer area. \*3/12/2019

**10. Clinic:** Any establishment where human patients are examined and treated by doctors or dentists but are not hospitalized overnight, or where animals are examined and treated by veterinarian whether hospitalized overnight or not. \*3/6/1973

**11. Club:** An establishment operated for social, recreation or education purposes but open only to members and not the general public. \*3/12/1968

**12. Commercial Equestrian Stable:** Any equestrian stable where the onsite animals are housed in one or more buildings for the purpose other than personal and/or onsite agricultural use of where more than four (4) animals total on the property are boarded for a fee or other considerations. \*3/8/2016

**13. Coverage:** That percentage of the lot area covered by principal and accessory use structures.

**14. Dark Sky Standard:** The standard and/or best practice by which outdoor lighting is regulated to minimize the adverse effect of artificial outdoor light at night on the natural nighttime environment, while permitting reasonable uses of that light to enable safety utility, security, productivity, enjoyment and commerce. A standard includes but is not limited to provisions that reduce the impacts of glare, light trespass and sky glow. \*3/14/2017

**15. Duplex:** A building designed and/or used exclusively for residential purposes and containing two principal dwelling units separated by a common party wall. The common party wall shall be within interior residential space, including garage space, and shall separate this interior residential space of the two principal dwelling units. \*3/10/1992, 3/11/2014

**16. Dwelling:** Any completed structure or portion thereof designed or used exclusively for residential

purposes.

**17. Equestrian Stable:** Structure(s) and/or ground(s) whose principle use or purpose is for, but not limited to, the housing, shelter, feeding, care or exercise of equine animals. \*3/8/2016

**18. Essential Services:** The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, but not including buildings, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health, safety or general welfare.

**A.** Installation of all such services must be approved by the Planning Board, or its agent, in regards to scope, aesthetics, location, size and effect on general welfare. Approval may be conditioned upon the limiting of volume and/or units, which would affect the future welfare of the town, especially volume of natural resources, which are removed from the town by installation of essential services.

**B.** No additional quantities of water in excess of the amount of water capable of being pumped presently, or scheduled to be pumped from wells installed within six months of the effective date of this amendment, shall be conveyed by any means or allowed to be piped for use outside of the Town of North Hampton except by annual permit issued by the Select Board after Planning Board review; provided however, that on a case by case basis, Selectmen may issue such permit for a period longer than one year, but not longer than twenty years, provided that the applicant shall prove to the Selectmen's reasonable satisfaction that in such case the water use will not exceed the maximum safe yield of the water source, that the water source will not be depleted and that no aquifer, wetland, or other environmental interest will be harmed. Any independent engineering consultants used to verify or confirm the applicant's proof and data will be paid by the applicant. \*3/12/1991

**C.** Group Net-Metering as defined in Section 304.2.G is not considered an essential service. \*3/14/2017

**19. Family Day Care:** Taking care of up to six preschool children on a full-time basis and three school age children on a part-time basis as an accessory use to the principal use of the property. \*3/13/1990

**20. Family Unit:** One or more persons occupying a premise and living as a single unit, as distinguished from a group occupying a boarding house, club, fraternity or hotel, including quarters for relatives or servants or employees whose duties involve the premises on which they reside, so long as no rent is charged, utilities and kitchen shall be shared. \*3/11/1986

**21. Frontage:** The distance for which a lot abuts and is adjacent to one town accepted or maintained road within the limits of the Town of North Hampton as shown as the Official Map. \*3/12/1985

**22. Grade Plane:** A reference plane which represents the average of finished ground level adjoining the building at exterior walls. Where finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building. \*3/14/2017

**23. Group Day Care:** A child care facility taking care of more than six children on a full-time basis by at least two care givers that is licensed by the Bureau of Child Care Standards & Licensing, Division of Public Health Services of the N.H. Department of Health and Welfare. \*3/13/1990

**24. Height, Building:** The vertical distance from grade plane to the maximum height of the highest roof surface. \*3/14/2017

**25. Home Occupation:** A business or concern carried on in a dwelling unit which is clearly incidental and secondary to the use of the building for dwelling purposes, and which does not change the character thereof. 'Home Occupation' does not include those business activities carried out fully within the dwelling unit by occupants of that dwelling. \*3/14/2017

**26. Impervious Surface:** A modified surface, that cannot effectively absorb or infiltrate water, including, but not limited to, structures, roofs, decks, patios, paved asphalt, concrete driveways, paved gravel or crushed stone driveways, parking areas, and walkways, unless designed to absorb or infiltrate water. \*3/12/2019

**27. Intermittent stream:** A stream or reach of a stream that flows only at certain times of the year, as when it receives water from springs or from some surface source. \*3/10/1998

**28. Isolated Non-bordering Wetlands:** Those areas of 3,000 square feet or less which satisfy the definition of "Wetlands" but which are not within 100 feet of any other wetlands and do not abut a marsh, pond, bog, lake, river, or natural intermittent or perennial stream. \*3/10/1992, 3/10/1998, 3/08/2005

**29. Light Manufacturing:** The processing and fabrication of certain materials and products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emission which will disturb or endanger neighboring properties. Light manufacturing includes the production of the following goods: home appliances; electrical instruments; office machines; precision instruments; electronic devices; timepieces; jewelry; optical goods; musical instruments; novelties; wood products, printed material; lithographic plates; type composition, machine tools; dies and gauges; ceramics; apparel; lightweight nonferrous metal castings; film processing; light sheet metal products; plastic goods; pharmaceutical goods; and food products, but not animal slaughtering, curing, nor rendering of fats.

**30. Lot:** A certain contiguous tract or parcel of land for which there is a deed recorded at the Rockingham County Registry of Deeds. \*3/14/2017

**31. Lot, Coverage:** Areas of a lot that include buildings, parking areas, vehicular drives, pavement and any other man-made structures and surfaces that are impervious to water. All surfaces deemed to be impervious surface shall be used when calculating lot coverage area. \*3/12/2019

**32. Lot, Depth of:** A mean horizontal distance between the front and rear lot lines.

**33. Lot, Minimum Area of:** The horizontally projected area of a lot computed exclusive of any portion of the right of way of any public thoroughfare.

**34. Lot, Width of:** The mean width measured at right angles to its depth.

**35. Lot of Record:** Any lot which, individually or as a part of a subdivision, has been recorded in the Office of the Register of Deeds in Rockingham County.

**36. Manufactured Housing:** Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 feet or more in length, or when erected on site, is 720 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or



without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing placed on individual lots or in a subdivision shall be placed on a permanent foundation. All manufactured housing shall have a minimum width of 14 feet. \*3/13/1990

**37. Manufactured Housing Parks:** Any land rented for the location, either permanently or temporarily, of one or more manufactured houses, recreational vehicles, travel trailers, tent campers, or other vehicles intended for a similar purpose. \*3/13/1984

**38. Multi Family Dwelling:** A residential structure containing more than two dwelling units. \*3/13/1990

**39. Municipal Officers:** The Selectmen of the Town of North Hampton. \*3/12/1968

**40. Non-Conforming Lot:** A lot which was lawfully created, but which does not meet the minimum dimensional requirements for frontage and/or lot size within the zoning district in which the lot is located. \*3/8/2016

**41. Non-Conforming Structure:** A structure designed, converted, or adopted for a use prior to the adoption of provisions prohibiting such use in such location. \*3/12/1968

**42. Non-Conforming Use:** Non-conforming use is any use legally existing at the time of enactment of this ordinance or any of its amendments, which does not conform to the provisions of this ordinance. \*3/10/1981, 3/8/2016

**43. Perennial stream:** A stream or reach of a stream that flows continuously throughout the year and whose upper surface generally stands lower than the water table in the region adjoining the stream. \*3/10/1998

**44. Places of Worship:** A venue for any religious group that can provide written documentation that the U.S. Internal Revenue Service has determined that it qualifies for tax exempt status as a religious organization. \*5/11/2010

**45. Pre-site Built Housing:** Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. \*3/13/1990

**46. Recreational Vehicle:** Recreational Vehicle shall mean any vehicle used or so constructed as to permit its being used as a conveyance on the public streets and highways, whether licensed as such or not, and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons. A Recreational Vehicle under this ordinance shall also mean but is not limited to Tent Trailers, Travel Trailers, Truck Campers, Busses, or other sleeping facilities other than manufactured housing and/or what normally constitutes a permanent dwelling unit. \*3/13/1979

**47. Sign:** An object, including a structure, movable object, wall or image displaying any message visible to the public. Letters individually painted on or attached to a face of a building that identify only the address of the occupant are not considered a Sign. \*3/14/2017

**48. Single Dwelling:** A dwelling occupied by one family unit only. \*3/6/1973

**49. Structure:** Anything constructed or erected, the use of which requires a fixed location on or in the ground or requires an attachment to something having a fixed location on the ground. "Structure" under this definition includes, but is not limited to leach fields that are, in whole or in part, constructed above grade; septic systems, buildings, billboards, carports, porches, swimming pools, tennis courts, and building features. For the purpose of this zoning ordinance leach fields that are constructed entirely below grade, sidewalks, driveways, fences, and patios are not deemed to be structures. \*3/12/1968, 3/10/2015

**50. Temporary Sign:** Any Sign not permanently affixed to the ground or a structure. If the Sign display area is permanent but the message displayed is subject to periodic manual changes, that Sign shall not be regarded as a Temporary Sign. \*3/14/2017

**51. Temporary Structure:** Any structure not on a permanent foundation nor permanently attached to a fixed location in any manner. Said structure to be used for a specified period of time. A ground-mounted tent intended for personal use, and no greater than 150 square feet in size, shall not be considered a temporary structure. \*3/10/1981, 3/13/2018

**52. Tidal lands:** All lands submerged by mean high tide and, in addition, those areas which border on tidal waters, such as banks, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action, whose surface is at an elevation not exceeding three and one-half feet above local mean high tide and upon which grow or are capable of growing a variety of tidal plants. The occurrence of salt marsh peat at the undisturbed surface is also evidence of a tidal wetland. \*3/13/1979, 3/08/2005

**53. Wetlands:** Pursuant to RSA 482-A:2 and RSA 674:55, "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence or vegetation typically adapted for life in saturated soil conditions. \*3/10/1992, 3/08/2005

## **ARTICLE II - DISTRICT REGULATIONS**

### **SECTION 201 ZONING MAP**

#### **201.1 Zoning Map**

A map entitled "North Hampton Zoning Map" is hereby adopted as part of this Ordinance and incorporated herein. Regardless of the existence of other printed copies of the Zoning Map, which from time to time may be made or published, the Official Zoning Map which shall be located in the Office of the Selectmen shall be the final authority as to the current zoning status of the land and water areas, buildings and other structures in the Town. \*3/12/1968

#### **201.2 Zoning Districts**

The Township is divided into the districts stated in this Ordinance as shown by the district boundaries in the Zoning Map. The districts are: \*3/12/1968

**A. R-1 High Density District:** The high density district is designated for land to be used for smaller single family dwellings with minimum yard space where central water and sewer facilities are available or where the installation of these facilities is feasible. After central water and sewerage facilities to include sewerage treatment disposal plants are installed, accepted by the town, and fully operational, multiple family dwellings are permitted. \*3/10/1981

**B. R-2 Medium Density District:** The medium density district is designated for land which is to be used for medium to large single family dwellings with maximum yard space which will make possible the handling of the individual family's water and sewage disposal needs where central water and municipal

facilities are not now available or where the immediate installation of these facilities is now immediately feasible. \*3/12/1968 This district also includes areas where agriculture and other open land uses are appropriate and natural conditions make the land unsuitable for intensive development. \*3/10/2009

**C. I-B/R Industrial-Business/Residential:** The Industrial-Business/Residential District is limited to business, light industrial and certain residential uses. By establishing compact areas for such uses, better fire protection, police protection, and utilities may be provided. Performance standards and yard regulations are set forth in this ordinance to insure safe development that is compatible with adjacent uses. The purpose of this district is to encourage business growth and industrial installations in a campus like arrangement in the vicinity of important highways and other key locations. \*3/12/1985

**D. Wetlands Conservation District:** The Wetlands Conservation District is characterized in Section 501 below. This district consists of wetland areas, as defined in Sections 104.28, 52, and 53 above and a buffer zone around all such wetland areas, as defined in Section 501. The purpose of this District is described in Section 501.1, and Permitted and Prohibited Uses in the District are defined in Section 501. \*3/10/2009

**E. Conservation Land District:** The Conservation Land District consists of all land area that is permanently protected from subdivision and development by deed restrictions, easements, or other means. No structures are permitted on land within this District, except as provided by the terms of conservation restrictions on land within the District. The purpose of this District is to delineate land that has been preserved for the multiple benefits derived from conservation of land – including, but not limited to increased aquifer recharge, natural resource protection, unfragmented wildlife habitat, opportunities for passive recreation, and preservation of rural character. \*3/10/2009

### **201.3 DISTRICT BOUNDARIES**

District boundaries shown within the lines of roads, streams and transportation rights of way shall be deemed to follow the center lines. The discontinuance of roads shall not affect the location of such district boundaries. When the Building Inspector cannot definitely determine the location of a district boundary by such centerlines, by the scale or dimensions stated on the Zoning Map, or by the fact that it clearly coincides with a property line, he shall refuse action and the Board of Adjustment, upon appeal, shall interpret the location of the district boundary with reference to the scale of the Zoning Map and the purposes set forth in all relevant provisions of this Ordinance. \*3/12/1968

## **SECTION 202 DISTRICT USES** \*3/9/2004

### **202.1 District Uses**

Pursuant to RSA 674:21, the Town of North Hampton Planning Board is hereby authorized and empowered to administer the permitted uses and uses granted by special exception under the following standards. The types of uses designated as “Permitted Uses” and “Special Exceptions” in the following tables are necessarily broad and general in many cases. The Planning Board will consider specific applications for Site Plan Review or Changes of Use as described in Sections 202 and 710.

**202.2****R-1 HIGH DENSITY DISTRICT**

<b>Permitted Uses</b>	<b>Special Exceptions</b>
1. Agriculture	1. Cemeteries
2. Single-Family Dwellings	2. Home Occupations
3. Public and Parochial Schools	3. Non-Profit-Recreational Uses
4. Public Parks and Playgrounds	4. Nursery Schools
5. Places of Worship *5/11/2010	5. Water Recreation & Water Storage
6. Essential Services	6. Municipal Buildings & Libraries
7. Duplexes *3/10/1992	7. Hospitals and Clinics for Humans or Animals
8. Manufactured Housing on Individually Owned Lots, as defined in Section 302.32 of the Zoning Ordinance *3/8/1994	8. Commercial Equestrian Stables *3/8/2016
9. Accessory Dwelling Units *3/14/2017	9. Private Clubs
	10. Family Day Care *3/13/1990

**202.3****R-2 MEDIUM DENSITY DISTRICT**

<b>Permitted Uses</b>	<b>Special Exceptions</b>
1. Agriculture	1. Cemeteries
2. Single-Family Dwellings	2. Home Occupations
3. Public and Parochial Schools	3. Non-Profit-Recreational Uses
4. Public Parks and Playgrounds	4. Nursery Schools
5. Places of Worship *5/11/2010	5. Water Recreation & Water Storage
6. Essential Services	6. Municipal Buildings & Libraries
7. Manufactured Housing on Individually Owned Lots, as defined in Section 302.28 of the Zoning Ordinance *3/8/1994	7. Hospitals and Clinics for Humans or Animals
8. Accessory Dwelling Units *3/14/2017	8. Commercial Equestrian Stables *3/8/2016
	9. Private Clubs
	10. Family Day Care *3/13/1990

**202.4 INDUSTRIAL-BUSINESS/RESIDENTIAL DISTRICT (“I-B/R”)**

<b>Permitted Uses</b>	<b>Special Exceptions</b>
1. Agriculture	1. Water Recreation & Storage
2. Motels	2. Municipal Buildings & Libraries
3. Eating & Drinking Establishments	3. Multiple-Family Dwelling *3/6/1973
4. Research and Testing Laboratories	4. Light Manufacturing *3/6/1973
5. Offices	5. Public & Private Recreational Facilities*3/6/1973
6. Hospitals and Clinics for Humans or Animals	6. Planned Unit Industrial & Business Projects
7. Public Utility Buildings *3/6/1973	7. Family Day Care *3/13/1990
8. Accredited Commercial Schools *3/9/1982	8. Home Occupations
9. Essential Services *3/13/1990	9. Motor-Vehicle Refueling Facilities *3/9/2004
10. Retail Uses *3/6/1973	10. Motor-Vehicle Service Facilities, including without limitation lubrication centers, repair shops, detail and washing facilities, body shops, and tire and battery shops *3/9/2004
11. Wholesale Uses *3/6/1973	
12. Accessory Uses *3/6/1973	
13. Single Family Dwellings	
14. Group Day Care *3/13/1990	
15. Duplexes *3/10/1992	
16. Manufactured Housing on Individually Owned Lots, as defined in Section 302.32 of the Zoning Ordinance *3/8/1994	
17. Manufactured Housing Parks *3/13/1984	
18. Places of Worship *5/11/2010	
19. Accessory Dwelling Units *3/14/2017	
20. Adult and Senior Facilities or Services *3/14/2017	

**202.5 Permitted Uses – Industrial-Business/Residential (“I-B/R”) District**

**A.** North Hampton encourages business development and growth in the I-B/R District because businesses provide jobs, make a significant contribution to the tax base and serve the needs and conveniences of our citizens. Businesses in North Hampton must, however, be compatible with the Town’s environment (particularly given the fact that a number of important aquifers underlie the I-B/R District) as well as the significant number of residences in and adjacent to the I-B/R District, the safety, health, and quiet enjoyment of which must be protected and maintained.

**B.** Each such proposed permitted use shall be submitted to the Planning Board for review under the Planning Board’s Site Plan Review Regulations and, in addition, shall be reviewed under the standards of 202.5.C and 202.5.D.

**C.** The Planning Board shall determine whether any such proposed permitted use shall have or cause any unreasonably adverse effect on abutting or neighborhood residential or other uses, with respect to pollution, discharge of harmful or noxious substances, noise, dust, vibration, smoke, odors, light spillage, or other unpleasant, unhealthy or hazardous by-products of the proposed use.

**D.** The Planning Board shall determine whether any such proposed permitted use shall have any unreasonably adverse effect upon any water resource, the environment, the health or welfare of any residents, or the quality of life in or adjacent to the I-B/R District.

**202.6 Wetlands Conservation District**

Permitted Uses and Prohibited Uses in the Wetlands Conservation District are specified in Section 501. Conditional Uses in the Wetlands Conservation District are provided for as specified in Section 501. \*3/10/2009

**202.7 Conservation Land District**

Permitted Uses and Prohibited Uses are specified by conservation restrictions on each of the parcels in this District. Residential use is not permitted on land in the District, and because restrictions on land in the District are a matter of contractual agreements, rather than zoning restrictions, neither Special Exceptions nor Variances are available. \*3/10/2009

**202.8 Prohibited Uses**

Notwithstanding that each of the following uses might be deemed a specific instance of one or more Permitted Use or Special Exception listed in the tables, they are considered inconsistent with goals for development of North Hampton as expressed in the Master Plan, beyond the capacity of the Town’s infrastructure, and incompatible with criteria noted in Sections 202 and 710. They are, therefore, prohibited in all districts in North Hampton.

**A. Commercial animal husbandry facilities**, including, but not limited to, feed lots, slaughterhouses, breeding facilities, egg farms, and hog, chicken, turkey and other domestic fowl production facilities, except for production for sale at farms stands, farmers’ markets, and local food stores. \*5/10/2011

“Commercial animal husbandry facilities” does not include the following: veterinary clinics, kennels and other facilities for boarding domesticated animals, equestrian stables for recreational riding, or horse-breeding stables that stable 20 or fewer animals.

**B. Large scale distribution and logistics facilities**, including but not limited to facilities like those operated by trucking firms, by package and mail carriers such as FedEx and United Parcel Service, by major retail chains such as Wal-Mart, K Mart, and Sears and by automotive manufacturers for parts distribution.

**C. Storage of raw materials for processing and the processing of raw materials for distribution or retail sale**, including but not limited to stockpiling or storage of dirt and debris for sifting and screening in the production of loam, storage or processing of manure or other materials for production of fertilizer, stockpiling and processing materials for concrete or asphalt production.

#### **202.9 Non-Conforming Uses**

The following provisions shall apply to all non-conforming uses:

**A.** All uses existing at the time of the adoption of this Ordinance, or during the year preceding its adoption, of any buildings or premises may be continued without restriction.

**B.** A non-conforming use may be continued but may not be extended or expanded unless to a conforming use, except as permitted by the Zoning Board of Adjustment in accordance with the provisions of this Ordinance. \*3/8/2016

**C.** Any non-conforming structure damaged by fire, flood, explosion, or other casualty may be reconstructed and used as before if such reconstruction is performed within 12 months of such casualty, and if the restored structure has no greater coverage and contains no greater cubic content than before such casualty.

**D.** In the event that any non-conforming use, conducted in a structure or otherwise, ceases, for whatever reason, for a period of one year, or is abandoned for any period, such non-conforming use shall not be resumed. \*3/12/1968

**E.** Structures on a non-conforming lot can be expanded if the expansion meets current zoning. \*3/10/1998, 3/8/2016

**SECTION 203 DISTRICT REQUIREMENTS****203.1 Yard and Lot Requirements \*3/12/2019**

		<b>R-1</b>	<b>R-2</b>	<b>I-B/R</b>
<b>Minimum Lot Area in Square Feet</b>		87,120	87,120	87,120
<b>Minimum Frontage in Feet</b>		175	175	250
<b>Minimum Depth in Feet, Front Yard, Principal Structures</b>		30	35	50
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Principal Structures</b>		25	30	35
<b>Minimum Depth in Feet, Front Yard, Accessory Structures</b>		30	35	50
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Accessory Structures with footprint size no greater than 1,008 square feet.</b>	Lots < 2 acres	15	15	35
	Lots ≥ 2 and < 4 acres	15	15	35
	Lots ≥ 4 acres	15	15	35
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Accessory Structures with footprint size greater than 1,008 square feet but no greater than 1,440 square feet.</b>	Lots < 2 acres	NA	NA	35
	Lots ≥ 2 and < 4 acres	25	30	35
	Lots ≥ 4 acres	25	30	35
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Accessory Structures with footprint size greater than 1,440 square feet but no greater than 2,500 square feet.</b>	Lots < 2 acres	NA	NA	35
	Lots ≥ 2 and < 4 acres	NA	NA	35
	Lots ≥ 4 acres	35	35	35
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Accessory Structures with footprint size greater than 2,500 square feet but no greater than 4,000 square feet.</b>	Lots < 2 acres	NA	NA	35
	Lots ≥ 2 and < 4 acres	NA	NA	35
	Lots ≥ 4 acres	50	50	35
<b>Minimum Depth in Feet, Side Yard &amp; Rear Yard, Accessory Structures with footprint size greater than 4,000 square feet.</b>	Lots < 2 acres	NA	NA	35
	Lots ≥ 2 and < 4 acres	NA	NA	35
	Lots ≥ 4 acres	NA	NA	35
<b>Maximum Lot Coverage</b>	Lots < 2 acres	35%	35%	75%
	Lots ≥ 2 acres	25%	25%	75%

NA – Not Allowed

In addition to setback requirements, accessory structures, unless attached to the principal structure by a common interior wall, shall be sited no closer to a public road than the principal structure on that lot, whichever distance is greater. Accessory structures erected for agricultural uses shall also meet the requirements of Section 602. \*3/12/2019



**203.2** Lots which abut on more than one street shall provide the required front yards along every street.  
\*3/12/1968

**203.3** Any lot of record existing at the effective date of this ordinance shall not be merged with any adjoining lot other than by a lot merger as authorized by RSA 674:39-a. Lots merged by municipal action for assessing or taxation purposes prior to the effective date of this ordinance and without the consent of the property owner shall not be deemed to have been merged for the purposes of this Zoning Ordinance, the Town's Subdivision Regulations, or Site Plan Review Regulations.

**203.4** Any lot of record existing on March 5, 1974 may be used for the erection of a structure for a purpose that conforms to the use regulations of the district in which it is located even though the lot does not meet the minimum area requirements for said district. While one acre of contiguous upland is not required before a building permit may be issued for said lot, all such lots, shall, however, have minimum frontage, as specified in the table below, and shall meet setback requirements for said district, including wetland buffers as provided in Section 501, and setbacks for a state approved septic system plan, and for a well for potable water where public water service is not available.\*3/10/2009, \*5/11/2010

<b>Table of Frontage Requirements</b>	
<b>Lot Size (acres)</b>	<b>Minimum Frontage</b>
$\geq 3.0$	40 feet
$<3.0 \text{ \& } \geq 2.5$	50 feet
$<2.5 \text{ \& } \geq 2.0$	60 feet
$<2.0 \text{ \& } \geq 1.5$	70 feet
$<1.5 \text{ \& } \geq 1.0$	80 feet
$<1.0 \text{ \& } \geq 0.5$	90 feet
$<0.5$	100 feet

**203.5** Industrial-Business structures or uses shall not be located or conducted closer to any lot line of any other lot in any "R" District than 35 feet. \*3/5/1974

**203.6** Duplex Requirements: The minimum lot size for a duplex shall be 100,000 square feet and the lot shall contain a minimum of 60,000 square feet of contiguous non-wetland area. No additional frontage is required, other than that specified in Section 203.1-12. Any proposed duplex on an existing lot of record must have 175 feet of frontage in the R-1 district, and 250 feet of frontage in the I-B/R. The maximum number of bedrooms allowed per unit is three (3). Each dwelling unit shall have a minimum living area of 720 square feet. An adequate septic system built to standards of the N.H. Department of Environmental Services (NH DES) must be provided. \*3/10/1992, 3/11/2014, 3/10/2015

**203.7** Multiple Dwelling Lot and Yard Requirements: A Multiple Dwelling shall be located only in the I-B/R Industrial Business Residential District and shall be constructed only on a lot which meets all the lot and yard requirements for the location of structures in the I-B/R Industrial Business Residential District as set forth in Section 203.1-12. In addition, a multiple dwelling building lot must contain two acres of land for the first family unit, and for each additional family unit, there shall be an additional one hundred (100) feet frontage and an additional acre of land. \*3/9/1982

**203.8** A lot in the I-B/R District that is presently utilized for business purposes shall not be used for residential purposes. Any existing undeveloped lot may be used for either a business or residential purpose, but not both. \*3/12/1985

**203.9** No building shall be constructed on any lot that does not have frontage on a street that has been accepted by the Town of North Hampton. For the purpose of this paragraph, a street that is located in the Town of North Hampton and is under construction may be considered at the discretion of the Building Inspector to be accepted only for the issuance of building permits thereon. \*3/12/1985

**203.10** Any newly created street must at least connect with an accepted street in the Town of North Hampton. \*3/12/1985

**203.11** Industrial-Business/Residential lots located in the I-B/R zone shall include a landscaped buffer area around the perimeter of the lot. This area will be a minimum of ten feet wide along the entire property line. This landscaped area may not be used for structures, drainage structures, parking or access except where access is required and approved. \*3/10/1987

**203.12** A lot of record in any zoning district in existence before March 10, 1992, may be subdivided to allow one backlot under the following conditions:

**A.** The existing lot of record shall be five acres or more in size and have a continuous frontage of at least two hundred and fifteen feet (215 feet).

**B.** A backlot subdivision requires Planning Board approval and only one backlot shall be permitted per lot of record.

**C.** A backlot shall have a minimum frontage of forty feet (40 feet) and the remaining lot or any future lots shall have the minimum frontage required for the zoning district. The width of the backlot shall not be less than forty feet (40 feet) within two hundred feet (200 feet) of the front lot line.

**D.** A backlot shall have a minimum lot size, which is 50 percent greater than that required for the remaining lot or lots in the zoning district. \*3/10/1992

**E.** Structures or the display of merchandise (including motor vehicles) shall be permitted to be located on a backlot only in areas where the width of the lot, as measured parallel to the front lot line, is equal or greater than the minimum frontage requirement of the zoning district in which it is located. For the purpose of this section, signs shall not be considered structures. \*3/14/1995

### **203.13 Height Regulations**

**A.** No structure shall exceed 35 feet in height above average ground level unless approved by the Board of Adjustment. The Board may authorize a variance to the height regulations in any district if:

All front, side and rear yard depths are increased one foot for each additional foot of height; and fire protection is adequately provided for; or

**B.** The structure is any of the following and does not constitute a hazard to an established airport: television and radio towers, Places of Worship spires, belfries, monuments, tanks, water and fire towers, ornamental towers and spires, chimneys, elevator bulkheads, smokestacks, conveyors, and flagpoles. \*3/12/1968

### **203.14 Building Area for Dwelling Units**

Every dwelling unit shall have a minimum ground floor or lower living area of 720 square feet exclusive of porches, garages, carports, barns, sheds, unwallled areas and any similar area. This section shall apply to newly constructed buildings or units converted from other uses or units that are moved. \*3/2/1976

**203.15 Approval of Septic Systems**

A permit for new construction in any part of North Hampton will not be issued until the building inspector is provided with a septic system and leaching field site plan, approved by the New Hampshire Department of Environmental Services (NH DES), and all local requirements have been met.

**203.16 Wetlands – Minimum Lot Area**

Wetlands, but not a “Body of Water” or “Bodies of Water”, may be used to satisfy minimum lot area and setback requirements provided that, that portion which is wetland does not exceed fifty (50) percent of the minimum required lot area and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities. \*3/13/1979, 5/8/2012 For construction of a dwelling unit on lots of two acres or more, there shall be one contiguous acre of non-wetland soils, and at least one building envelope of one quarter (1/4) acre or more for the site of a house. \*3/12/1991, 3/10/2015

**203.17 Filling of Non-Wet Land**

In order that the Town may protect its ecology, water supply and natural aesthetics, the Planning Board shall use discretion in giving permits to fill any land. No land shall be filled without the consent of the Planning Board if the total amount of fill to be added is more than Five-Thousand (5000) cubic yards in volume. \*3/13/1979

**ARTICLE III - GENERAL REGULATIONS****SECTION 301 ACCESSORY STRUCTURES \*3/12/2019**

**301.1** All Accessory Structures shall be sited no closer to a public road than the principal structure on that lot unless attached to the principal structure by a common interior wall.

**301.2** Accessory Structures are permitted in the I-B/R District regardless of footprint size and shall meet all zoning and planning requirements.

**301.3** For lots less than two (2) acres in the R-1 and R-2 Districts, Accessory Structures with a footprint no greater than 1,008 square feet are permitted.

**301.4** For lots of at least two (2) but less than four (4) acres in the R-1 and R-2 Districts, Accessory Structures with a footprint no greater than 1,440 square feet are permitted.

**301.5** For lots of four (4) acres or greater in the R-1 and R-2 Districts, Accessory Structures with a footprint no greater than 4,000 square feet are permitted.

**301.6** Accessory Structures with a footprint no greater than 1,008 square feet shall require side and rear minimum setback depths of 15 feet in the R-1 District, 15 feet in the R-2 District and shall meet all other zoning and planning requirements.

**301.7** Accessory Structures with a footprint greater than 1,008 but no greater than 1,440 square feet shall require side and rear minimum setback depths of 25 feet in the R-1 District, 30 feet in the R-2 District and shall meet all other zoning and planning requirements.

**301.8** Accessory Structures with a footprint greater than 1,440 but no greater than 2,500 square feet shall require side and rear minimum setback depths of 35 feet in both the R-1 and R-2 Districts and shall meet all other zoning and planning requirements.

**301.9** Accessory Structures with a footprint greater than 2,500 square feet but no greater than 4,000 square feet shall require side and rear minimum setback depths of 50 feet in the R-1 and R-2 Districts and shall meet all other zoning and planning requirements.

**301.10** Conditional Use Permit Required. A Conditional Use Permit is required for any Accessory Structure that does not meet the previous requirements of this Section 301. The Conditional Use Permit ("CUP") review process provides abutters and other affected parties an opportunity to comment on proposed projects and also allows the Planning Board to consider reasons an applicant offers to justify a project that does not fully conform to applicable provisions of the Zoning Ordinance.

**301.11** Conditional Use Permit Review. The following process shall be used by the Planning Board in considering applications for a Conditional Use Permit under this Section:

**A.** An application shall be submitted to the Planning Board. The application shall contain details of the type and extent of the structure proposed for the property, including the proposed use of the structure. A hand-drawn approximate-to-scale rendering with accurate structure size and location measurements of proposed structure and operations shall be acceptable for the application.

**B.** The Planning Board shall conduct a public hearing for which proper notice has been given to abutters and the public. Notice standards shall be the same as those that apply to Site Plan Review Applications.

**C.** The Planning Board shall have authority to impose reasonable conditions of approval that the Board deems appropriate under the specific circumstances presented in the application process and shall provide a written notice of decision to the applicant within five (5) business days of the date of the decision.

**301.12** A Conditional Use Permit may be granted to allow an Accessory Structure on a lot provided that the following conditions are found to exist:

**A.** The Accessory Structure shall not diminish the value of surrounding properties.

**B.** The Accessory Structure shall not unreasonably adversely affect the public interests, safety, health, or welfare.

## **SECTION 302 TEMPORARY STRUCTURES**

\*3/12/1968, 3/8/1977, 3/10/1981, 3/11/1997, 3/9/1999, 3/13/2018

### **302.1 Purpose**

The purpose of this ordinance is to regulate the placement of temporary structures on lots within the Town of North Hampton. As defined in Section 104.51, a temporary structure is any structure not on a permanent foundation nor permanently attached to a fixed location in any manner. Said structure to be used for a specified period of time. A ground-mounted tent intended for personal use, and no greater than 150 square feet in size, shall not be considered a temporary structure.

### **302.2 Requirements**

**A.** Permits shall be required for all temporary structures. Prior to the placement or construction of a temporary structure, the Building Inspector shall certify to the safety of the structure.

**B.** Only one temporary structure is allowed per lot.

**C.** All temporary structures shall meet all setback requirements of permanent primary buildings within the applicable zoning district.

**D.** Any vehicle placed on a lot and used in a manner other than the purpose for which it is customarily intended, whether or not powered and whether or not inspected, shall be considered to be a temporary structure. Vehicles prohibited by this provision include, but are not limited to, those used primarily for advertising or warehousing purposes.

**E.** Lighting associated with all temporary structures shall comply with the provisions of Section 305 Outdoor Lighting.

**F.** Signage associated with all temporary structures shall comply with the provisions of Section 303 Signs.

**G.** All temporary structures must be completely removed upon expiration of their permits.

**302.3** Residing in any temporary structure, or a basement, or foundation before completion of a permanent structure shall not be permitted.

**302.4** No part of Section 302 shall apply to Manufactured Housing or to Recreational Vehicles as defined in Section 104 and regulated in Sections 407 and 408.

**302.5** All proposed temporary structures that do not fully comply with this ordinance shall require the issuance of a Conditional Use Permit by the Planning Board as authorized in RSA 674:21.

**302.6** Temporary structures may be placed in the I-B/R District for short special sales or promotions, not to exceed two weeks, by permit issued by the Building Inspector. For one property during any single calendar year, the limit on such special permits shall be three; and permits shall not be issued for consecutive two week periods. The Building Inspector shall certify to the safety of the structure before the structure may be occupied.

**302.7** Temporary structures may be placed in the I-B/R District for all permitted non-residential uses for a period not to exceed one year by Conditional Use Permit issued by the Planning Board. The Building Inspector shall certify to the safety of the structure before the structure may be occupied.

**302.8** If a temporary structure becomes unsafe or the public health, welfare or safety is endangered, the Building Inspector shall immediately revoke the permit. The unsafe structure will then be removed from the site or the unsafe conditions eliminated and/or repaired. A new permit will then be issued but only after all provisions of Section 302 have been complied with.

## **SECTION 303 SIGNS** \*3/14/2017

### **303.1 Purpose**

Signs perform important functions essential for public safety and general welfare, including communicating messages, providing information about goods and services, and orienting and directing people. Because of potential detrimental impacts, the time, place and manner of signage must be regulated to:

**A.** Prevent hazards to vehicular and pedestrian traffic,

**B.** Enhance the visual quality and aesthetics of the Route 1 corridor as stated in the first principle in the Vision Statement of the Town's Master Plan, which was developed from the results of multiple resident surveys;

**C.** Protect and enhance the historic, scenic character of the Town of North Hampton as stated in the Town's Master Plan,

**D.** Provide easy recognition and legibility of permitted signs and uses and promote visual order and clarity on streets, and

**E.** Protect property values and private/public investments in property and support businesses with effective, efficient opportunities for communication by reducing competing demands for visual attention.

### **303.2 Definitions**

**A. Sign:** An object, including a structure, movable object, wall or image displaying any message visible to the public. Letters individually painted on or attached to a face of a building that identify only the address of the occupant are not considered a Sign.

**B. Abandoned Sign:** Any Sign that:

1. Does not display a well-maintained message for 120 consecutive days,
2. The owner of which cannot be located after reasonable efforts are made,
3. No longer is fully supported for 120 consecutive days by the structure designed to support the sign, or
4. No longer advertises a bona fide business.

**C. Conditional Use:** A use that, because of special needs or characteristics, may be allowed only after the Planning Board reviews and approves an application for a Conditional Use permit for that sign.

**D. Electronic Message Board:** A Sign with a display/message composed of a series of lights that may be changed through electronic means.

**E. Feather Flag:** A lightweight portable Sign that resembles a sail or a feather, mounted on a single pole.

**F. Ground Sign:** A Sign supported by one or more uprights, poles, pylons or foundation elements in or upon the ground and not attached to a building.

**G. Inflatable Advertising Device:** An air- or helium-filled structure intended to draw attention to a particular business.

**H. Internally Lit Sign:** Any sign illuminated from within.

**I. Materially Altered:** Any change in structure, location, lighting, dimensions, shape, proportions or construction materials for the supporting structure.

**J. Monument Sign:** A freestanding Sign supported primarily by an internal structure or integrated into landscaping or other solid structural features other than supporting poles.

**K. Movable Sign:** Any Sign:

1. on any vehicle or object that moves on wheels or any other device or
2. that can be moved by picking it up and carrying it to another location.

**L. Pole or Pylon Sign:** A type of Ground Sign that is supported by or suspended from free-standing column(s). Such Signs shall meet all standards for Ground Signs.

**M. Sandwich Board Sign:** An A-frame style Sign, temporary and portable, having two sides and no more than six square feet in total surface area per side.

**N. Temporary Sign:** Any Sign not permanently affixed to the ground or a structure. If the Sign display area is permanent but the message displayed is subject to periodic manual changes, that Sign shall not be regarded as a Temporary Sign.

**O. Wall Sign:** A Sign attached to, painted upon, placed against, or supported by the exterior surface of any building.

**P. Window Sign:** A Sign affixed to the interior or exterior of a window or placed immediately behind a windowpane so as to attract attention from outside the building.

### **303.3 General Provisions**

Signs shall be permitted as designated below or in other portions of the ordinance but all Signs shall be subject to the following regulations:

**A.** No Sign shall be placed in a manner that will endanger traffic by obscuring sightlines, by confusion with safety and directional signs, by glare, or in the state or town right of way.

**B.** No Sign with flashing electric lights or movement shall be permitted.

**C.** Illuminated Signs shall be lit by steady, white light through the use of full cutoff fixtures and top-down lighting that complies with the International Dark Sky Association's dark sky standard.

**D.** No Internally Lit Sign shall be permitted in any district. Signs shall not be illuminated from within. Signs may be illuminated only by external light pursuant to Section 303.3.C above.

**E.** Unless used to identify public safety facilities, illuminated Signs shall be turned off when the business or facility is closed.

**F.** No Sign using an electronic message board shall be permitted.

**G.** No Sign that does not comply with Section 305 Outdoor Lighting, which, among other things, requires compliance with the International Dark Sky Association's dark sky standard, shall be permitted.

**H.** No excessively bright, distracting colors that could be safety hazards shall be permitted.

**I.** Businesses shall be permitted to post Signs only on the lot upon which they operate.

**J.** Feather Flags of any design are not permitted. American flags and other official flags are permitted, but a Feather Flag in the design of any such flag or in an array of any such flags, shall not be permitted.

**K.** Movable Signs such as those on wheels or vehicles shall not be permitted. Signs on a vehicle or trailer located for the purpose of advertising the business on site shall not be permitted. The only Movable Signs permitted are those in Section 303.6.C.

**L.** Signs erected, constructed or maintained upon or which project above the roofline shall not be permitted.

**M.** Inflatable Advertising Devices of any kind shall not be permitted. Individual balloons or a group of balloons are allowed if when inflated they have a dimension no greater than two feet collectively and are placed at a height no greater than 12 feet above ground level so long as said balloons do not become a safety hazard by obstructing the view of motorists. Such balloons may not be displayed longer than seven days.

**N.** All Signs authorized and/or regulated by federal, state or local law shall be exempt from this ordinance.

**O.** Warning Signs and traffic control Signs intended to protect the public health and safety are exempt from this ordinance so long as the number and placement are reasonable.

**P.** No trespassing Signs may be posted pursuant to RSA 635:4 and shall not exceed 144 square inches in size.

**Q.** A Sign designed to display the address of the parcel is not considered a Sign within the definition in this ordinance.

**R.** Mixed-use lots shall be entitled to signage based on the zone in which the conforming frontage lies.

**S.** Lots that cross zoning districts shall be entitled to signage applicable to each district in which conforming street frontage lies, and these lots shall be restricted to residential use signage only on conforming residential frontage and to commercial signage only on conforming commercial frontage.

### **303.4 Permits Required**

All permanent Signs regulated by this ordinance, whether on residential or commercial lots, shall require a Sign permit issued by the Code Enforcement Officer. Applications for a permit are available at the Town Offices, 233 Atlantic Avenue, Second Floor. The Code Enforcement Officer shall promptly process the permit application and approve or reject it and notify the applicant of the approval or the deficiencies in the application. Any application that complies with all provisions of this ordinance shall be approved.

### **303.5 Residential Lots in All Districts**

Each parcel shall be entitled to one permanent Sign not to exceed four square feet to be:

- A.** placed on the front of any building or structure,
- B.** attached to a post not to exceed four feet in height, or
- C.** placed on the ground.

No permit is required for temporary signs on residential lots.

### **303.6 Commercial Lots in the Industrial-Business/Residential ("I-B/R") District**

Each business shall be entitled to:

- A. One Wall Sign** per storefront not to exceed 24 square feet,
- B. Window signage** not to exceed 50% of total window area in aggregate.



**C. Two Movable Signs:** One sandwich board, not to exceed six square feet, and/or one flag (except a Feather Flag, which is not permitted), not to exceed nine square feet. Movable Signs must be taken in when the business is closed.

**D. One Temporary Sign,** for example, a banner, not to exceed 30 square feet, to be displayed for a maximum of 30 days. These Signs are limited to one per year.

**E. One additional Temporary Sign** not to exceed six square feet (or two additional temporary signs not to exceed three square feet each) is allowed for any property that is for sale or rent or under construction. These signs are permitted for 180 days.

**F. One Ground Sign** per lot which may be either:

**1.** A Pole or a Pylon Sign, not to exceed 32 square feet, which shall be no greater than 12 feet nor less than six feet in height as measured from the top of the Sign, or

**2.** A Monument Sign, not to exceed 60 square feet, which shall be no greater than 10 feet in height as measured from the top of the Sign, including the base, and shall be located at least 10 feet back from the property line. The maximum Sign size of 60 square feet does not include the structural support. The structural support may not be larger than 50% of the Sign. The width of the Sign shall not be greater than the width of the base. The base shall be on the ground, and the top of the base shall be no more than 12 inches above the adjacent grade.

**3.** If the commercial lot is a multitenant facility, it shall be entitled to only one multitenant Sign (as defined in 303.6.F.1 and 2 above) for the entire parcel. This Sign shall be either a Pole or a Pylon Sign not to exceed 32 square feet, or a Monument Sign, not to exceed 60 square feet, for a listing of all the businesses on that lot.

**303.7 Businesses outside the I-B/R District** shall comply with the provisions of Section 303.5.

### **303.8 Change of Tenant**

A proposed Ground, Monument, Pole, Pylon or Wall Sign that is a material alteration of an existing Sign shall require either approval of:

**A.** the Building Inspector if the proposed Sign fully conforms to the provisions of this ordinance or

**B.** the Planning Board if the proposed Sign requires a waiver from any section of this ordinance.

A new tenant's re-use of the same supporting structure and replacement with a new Sign of the same dimensions, construction materials, location, lighting or form shall not be considered materially altered.

### **303.9 Conditional Use Permit, Waivers and Appeals**

The Building Inspector may approve permits for all Sign applications that fully comply with this ordinance.

**A.** Applications for a Sign permit shall include dimensions, lighting and a photograph or to-scale rendering of the proposed Sign. Records of approved permits with the application documents shall be submitted monthly to the Planning Board.

**B.** Any proposed Sign that does not fully comply with this ordinance shall require the issuance of a Conditional Use permit by the Planning Board as authorized in RSA 674:21.

**1.** As part of the Conditional Use permitting process, applicants shall submit waiver requests for noncompliant Sign characteristics they believe are necessary to satisfy their needs.

2. No waiver shall be approved unless a majority of Planning Board members present and voting shall find that all of the following apply:

- a. It will not be detrimental to the public safety, health or welfare or injurious to other property nor contrary to the public interest.
- b. Approving the waiver will substantially secure the objectives, standards and requirements of this sign ordinance.
- c. A particular and identifiable hardship exists with respect to the applicant's premises or property that indicates the waiver should be approved.

3. The Planning Board reserves the right to approve applications for waivers as presented or with conditions the Board deems necessary.

C. Any person aggrieved by a Planning Board decision on a Conditional Use permit may appeal to the Superior Court as provided in RSA 677:15. These decisions cannot be appealed to the Zoning Board of Adjustment (RSA 676:5.III).

### **303.10 Inspection, Compliance, Notice**

The Code Enforcement Officer shall enforce compliance with this ordinance. Anyone violating any provision of the zoning ordinance shall be subject to a fine as authorized by RSA 676:17 and may also be subject to other enforcement procedures as authorized by RSA 676.

### **303.11 Nonconforming sign**

All legally existing Signs that did not conform to the provisions of this ordinance on March 7, 2017 shall be considered nonconforming.

### **303.12 Conflict**

When the regulations of this ordinance differ from those prescribed by statute, ordinance or other regulation, that provision that imposes the greater restriction or the higher standard shall govern.

### **303.13 Invalidity**

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof.

### **303.14 Message Substitution**

The message on any allowed sign may be substituted for any other message per Section 303.

303.15 Sign Regulations for R1 & R2 Districts				
Internally illuminated signs are prohibited in all districts.				
Sign Type	Maximum Number	Maximum Size per Sign	Duration	Other Restrictions
Permanent Sign*	One per lot	Four square feet	No limit	Placed on the front of a building or structure, on a post not to exceed four feet in height, or on the ground.
* A permit is required.				
Sign Regulations for the I-B/R District				
Internally illuminated signs are prohibited in all districts.				
Sign Type	Maximum Number	Maximum Size per Sign	Duration	Other Restrictions
Wall Sign*	One per storefront	24 square feet	No limit	
Window Signage*	No limit	Not to exceed 50% of total window area in aggregate	No limit	
Movable Signs	Two per storefront (sandwich board and/or flag)	Sandwich board - six square feet	Movable signs must be taken in when the business is closed.	"Flag" does not include "Feather Flag."
		Flag - nine square feet		
Temporary Signs	One per storefront	30 square feet	30 days	No more than one sign per year, per storefront.
	On a lot for sale or with property for rent or which is under construction, <b>EITHER</b>	One sign not to exceed six square feet, <b>OR</b>	180 days	
		Two signs not to exceed three square feet each		
Ground Signs*	<b>Either</b> one Pole Sign* <b>or</b> one Monument Sign* <b>per lot</b>	<b>Pole Sign</b> - 32 square feet & 6 - 12 feet in height	No limit	
		<b>Monument Sign</b> - 60 square feet & no greater than 10 feet in height	No limit	The total area of structural support may not exceed 50% of the area of the sign. Width of the sign shall not exceed the width of the base. The base of the sign shall be on the ground, and its top shall be no more than 12 inches above the adjacent grade.
* A permit is required.				

**SECTION 304 SOLAR ARRAYS \*3/14/2017****304.1 Purpose**

The Town of North Hampton encourages the development of Alternative Energy Systems as defined by RSA: 672:1, III-a and permitted per RSA 362-A:9. The purpose of this ordinance is to establish permitting regulation for the installation of Solar Panels and Solar Arrays within all zoning districts of the Town of North Hampton.

**304.2 Definitions**

**A. Alternative Energy Systems:** Structures, equipment, devices or construction techniques for the production of heat or electricity or other forms of energy on-site and may be attached to or separate from the principal structure.

**B. Building-Integrated Photovoltaic Solar Systems:** A solar energy system that consists of integrating photovoltaic modules into the building structure, such as the roof or the façade and which does not alter the relief of the roof.

**C. Essentially Invisible:** “Essentially Invisible” means that all aspects of a Ground-Mounted Solar Energy Array are compatible with their environs with the result that a reasonable observer either will not notice the Array under normal conditions or, in noticing the facility, will not consider it an abnormal and obtrusive feature in its surroundings.

**D. Flush-Mounted Solar Panel:** Photovoltaic panels that are installed flush to the surface of a roof and which cannot be angled or raised.

**E. Ground-Mounted Solar Array:** Solar energy structures, equipment, devices directly installed in the ground and not attached or affixed to an existing building.

**F. Net-Metering:** A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

**G. Group Net-Metering (also Community Net-Metering):** A customer-generator may elect to become a group host for the purpose of reducing or otherwise controlling the energy costs of a group of customers who are not customer-generators. The group of customers shall be default service customers of the same electric distribution utility as the host. The host shall provide a list of the group members to the Public Utilities Commission (PUC) and the electric distribution utility and shall certify that all members of the group have executed an agreement with the host regarding the utilization of kilowatt hours produced by the eligible facility and that the total historic annual load of the group members together with the host exceeds the projected annual output of the host's facility. The PUC shall verify that these group requirements have been met, shall review the executed agreements for compliance with this section, and shall register the group host. The PUC shall establish the process for registering hosts, including periodic re-registration, and the process by which changes in membership are allowed and administered. Net metering tariffs under this section shall not be made available to a customer-generator group host until such host is registered by the PUC.

**H. Photovoltaic Systems:** A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

**I. Rooftop Mounted Solar Panel:** Solar panel(s) mounted in a stationary position on a roof as modules fixed to frames which can be tilted toward the south at an optimal angle.

**J. Solar Panel:** A device for the direct conversion of solar energy into electricity.

**304.3** Building Integrated Photovoltaic Solar systems are permitted in all zoning districts within the Town of North Hampton.

**304.4** Rooftop Mounted Solar Panels are permitted in all zoning districts within the Town of North Hampton as long as the installation of Rooftop Panels does not result in building heights, including the solar panels, in excess of 35', as per Section 203.13 of these regulations.

**304.5** Building Permits shall be required for the installation of Rooftop and Flush-Mounted Solar Panels as well as Building-Integrated Photovoltaic Systems.

**304.6** Group Net-Metering is permitted in all zoning districts if and only if feasible with Rooftop Mounted Solar Panels or a Building-Integrated Photovoltaic Solar System, except as provided in Section 304.7.E below.

**304.7** Ground-Mounted Solar Arrays are permitted by conditional use permit subject to the following conditions:

**A.** The location of the Ground-Mounted Solar Array meets all applicable setback requirements for structures in the zoning district in which it is located.

**B.** The Ground-Mounted Solar Array should be sized to meet the annual average electrical utility requirements of the approved and permitted structures on the site for which the array will be erected, but may not exceed 110% of the average annual electrical utility requirements of the approved and permitted structures on the lot on which the array will be erected.

**C.** The height of the solar collector and any mounts shall not exceed 15 feet when oriented at maximum tilt.

**D.** Ground-Mounted Solar Arrays shall be Essentially Invisible, as defined in Section 304. At the time of installation, all aspects of the Array shall be compatible with their environs with the result that a reasonable observer will not notice the Array under normal conditions or, in noticing the Array, will not consider it an abnormal or obtrusive feature in its surroundings.

**E.** Group Net-Metering is allowed for ground mounted solar arrays only when the group members all are located on one lot and all of the facilities included in the Group Net-Metering agreement are under common ownership.

#### **304.8 Solar Storage**

If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure when in use and when no longer used shall be disposed of in accordance with applicable state and federal laws and regulations.

**304.9 Removal**

If a Ground-Mounted Solar Array ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collector, mount and associated equipment after the end of the 12 month period.

**SECTION 305 OUTDOOR LIGHTING** \*3/10/2009, 3/12/2019**305.1 Lighting Requirements**

All outdoor lighting installed in the Town of North Hampton, except that which is installed by a government agency, shall comply with the requirements specified below.

**305.2 Purpose**

The intent of this ordinance is to maintain the rural character of the Town of North Hampton, in part by preserving the visibility of night-time skies, and to minimize the impact of artificial lighting on nocturnal wildlife. This ordinance recognizes the importance of lighting for safety and security while encouraging energy efficiency, and promotes good neighborly relations by preventing glare from outdoor lights from intruding on nearby properties or posing a hazard to pedestrians or drivers.

**305.3 Authority**

**A.** This Article is an innovative land use control provision adopted under the authority of RSA 674:21, and is intended as an “Environmental characteristics zoning” provision as defined in RSA 674:21(I)(j).

**B.** The Planning Board may adopt regulations, in addition to or instead of existing Site Plan Review and Subdivision Regulations, needed to implement this Article, including but not limited to regulations that ensure that such lighting approved under this Article remains in compliance with applicable provisions of this Article.

**305.4 Definitions**

**A. Direct Light:** Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

**B. Fixture:** The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

**C. Lamp:** The component of a luminaire that produces the actual light.

**D. Luminaire:** A complete lighting assembly that includes the fixture and its lamp or lamps.

**E. Flood or Spotlight:** Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

**F. Glare:** Light emitting from a luminaire with intensity great enough to reduce a viewer’s ability to see and, in extreme cases, causing momentary blindness.

**G. Height of Luminaire:** The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

**H. IESNA:** Illuminating Engineering Society of North America.

**I. Indirect Light:** Direct light that has been reflected or has scattered off of other surfaces.

- J. LED:** A light-emitting diode that uses solid-state technology to convert electricity into light.
- K. Light Trespass:** The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.
- L. Lumen:** A unit of luminous flux. One foot candle is one lumen per square foot. For the purposes of this ordinance, the lumen-output values shall be the initial lumen output rating of a lamp.
- M. Outdoor Lighting:** The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.
- N. Temporary Outdoor Lighting:** The specific illumination of an outside area or object by any manmade device located outdoors that produces light by any means for a period of less than seven days with at least 180 days passing before being used again.

### **305.5 Outdoor Lighting Design**

- A.** Any luminaire emitting more than 1800 lumens (with 1,700 lumens being the typical output of a 100-watt incandescent bulb) shall be fully shielded so as to produce no light above a horizontal plane through the lowest direct light-emitting part of the luminaire. (Such fixtures usually are labeled Dark Sky Certified or Compliant.)
- B.** Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and all flood or spot lights with a lamp or lamps rated at a total of more than 900 lumens, shall be mounted at a height equal to or less than the value  $3 + (D/3)$  where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire shall not exceed 20 feet.
- C.** Any luminaire with a lamp or lamps rated at 1800 lumens or less, and all flood or spot lights with a lamp or lamps rated at 900 lumens or less, may be used without restriction to light distribution or mounting height, except that, to prevent light trespass, if any flood or spot light is aimed, directed or focused so as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduced or shielded, as necessary to eliminate such conditions. [Note: This exempts most residential front-door lights, but not so-called yard-blaster wide-area flood lighting.]
- D.** Any luminaire used to illuminate a public area such as a street or walkway shall utilize an energy efficient lamp. Mercury vapor lamps shall not be used due to their inefficiency and high operating costs and toxic mercury content. New installation of mercury vapor lighting shall not be permitted after the effective date of this ordinance, and the public shall be encouraged to remove and safely dispose of existing mercury vapor bulbs as soon as practicable.
- E.** Luminaires used in public areas such as roadway lighting, parking lots and for exterior building illumination shall be designed to provide the minimum illumination recommended by the IESNA in the most current edition of the IESNA Lighting Handbook.
- F.** If LEDs are the source of illuminance, a Correlated Color Temperature of 3000 Kelvin (3000k) or less must be used.
- G.** To protect light-sensitive wildlife habitats, such as wetlands, salt marshes and conservation land,

artificial lighting in or on the periphery of areas identified as such by the NH Fish and Game Department shall be minimized and fully shielded to prevent any emission above a horizontal plane through the lowest light-emitting part of a luminaire.

**H.** The use of timers, dimmers, and/or motion-sensors to reduce overall energy consumption and eliminate unneeded lighting, particularly after 11 p.m., shall be encouraged.

**I.** Moving, fluttering, blinking, or flashing lights or signs shall not be permitted, except as temporary seasonal holiday decorations. Neon signs are not permitted. Signs may be illuminated only by continuous direct white light with illumination confined to the area of the sign and directed downward. This requirement for direct white light prohibits internally-lit signs, which are inherently impossible to shield.

**J.** Because of the requirement for direct white light and because of the requirement of a dark sky standard, internally-lit signs are prohibited because they cannot be shielded.

**K.** Luminaires mounted on a gas station canopy shall be recessed in the ceiling of the canopy so that the lens cover is recessed or mounted flush with the ceiling of the canopy and fully shielded. Luminaires shall not be mounted on the sides or top of the canopy, and the sides or fascia of the canopy shall not be illuminated.

### **305.6 Exemptions**

**A.** Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.

**B.** All temporary emergency lighting needed by the police, fire or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this ordinance.

**C.** All hazard warning luminaires required by federal regulatory agencies are exempt from the requirements of this article, except that all such luminaires used must be red and must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.

**D.** Luminaires used primarily for signal illumination may be mounted at any height required to ensure roadway safety, regardless of lumen rating.

**E.** Seasonal holiday lighting and illumination of the American and state flags shall be exempt from the requirements of this ordinance, providing that such lighting does not produce glare on roadways and neighboring residential properties.

**F.** Installations existing prior to the enactment of this ordinance are exempt from its requirements. However, any changes to an existing lighting system, fixture replacements, or any grandfathered lighting system that is moved, must meet these standards.

### **305.7 Temporary Lighting**

**A.** Any temporary outdoor lighting for construction or other purposes that conforms to the requirements of this article shall be allowed. Non-conforming temporary outdoor lighting may be permitted by the Planning Board after considering:

- 1.** The public and/or private benefits that will result from the temporary lighting.
- 2.** Any annoyance or safety problems that may result from the use of the temporary lighting.
- 3.** The duration of the temporary non-conforming lighting.



**305.8 Conditional Use Permit, Waivers and Appeals**

**A.** Any proposed outdoor lighting that does not fully comply with this ordinance shall require the issuance of a Conditional Use Permit by the Planning Board as authorized in RSA 674:21.

- 1.** As part of the conditional use permitting process, applicants shall submit waiver requests for noncompliant outdoor lighting they believe are necessary to satisfy their needs.
- 2.** No waiver shall be approved unless a majority of Planning Board members present and voting shall find that all of the following apply:
  - a.** It will not be detrimental to the public safety, health or welfare or injurious to other property nor contrary to the public interest.
  - b.** Approving the waiver will substantially secure the objectives, standards and requirements of this ordinance.
  - c.** A particular and identifiable hardship exists with respect to the applicant's premises or property that indicates the waiver should be approved.
- 3.** The Planning Board reserves the right to approve applications for waivers as presented or with conditions the Board deems necessary.

**B.** Any person aggrieved by a Planning Board decision on a Conditional Use Permit may appeal to the Superior Court as provided in RSA 677:15. These decisions cannot be appealed to the Zoning Board of Adjustment (RSA 676:5.III).

**ARTICLE IV – SPECIFIC USE REGULATIONS****SECTION 401 ACCESSORY DWELLING UNIT \*3/14/2017, 3/13/2018**

Accessory Dwelling Units shall be permitted with a Conditional Use Permit, granted by the Planning Board, provided that they comply with the conditions set forth below.

**401.1** Accessory Dwelling Units are allowed in all zoning districts where single-family dwellings are permitted.

**401.2** Only single-family principal dwellings are eligible for Accessory Dwelling Units.

**401.3** Only one Accessory Dwelling Unit is allowed per single-family principal residence.

**401.4** The Accessory Dwelling Unit must be contained within or attached to a single-family principal dwelling and contain at least one interior door between it and the principal dwelling unit.

**401.5** The owner of the principal dwelling to which an Accessory Dwelling Unit is added must occupy one of the dwelling units.

**401.6** The size of the Accessory Dwelling Unit shall be no larger than 800 square feet.

**401.7** No more than two bedrooms are permitted in the Accessory Dwelling Unit.

**401.8** The owner shall provide evidence to the Building Inspector that water supply and septic facilities are adequate for both units according to the standards of the Town and the N.H. Department of Environmental Services (NHDES). If deemed necessary by the Building Inspector, such evidence shall be in the form of certification by a State of N.H. licensed septic system designer. The Building Inspector shall indicate his approval in writing to the Planning Board.

**401.9** The Accessory Dwelling Unit shall be designed so that the appearance of the building remains that of a single-family dwelling. The new entrance shall be located on the side or rear of the building.

## **SECTION 402 HOME OCCUPATION**

### **402.1 Purpose**

The purpose of this ordinance is to ensure that home occupations are carried out in a manner which does not change the character of and is not detrimental to the neighborhood. Any home occupation otherwise allowed as either a Permitted Use or Special Exception under the terms of this Ordinance shall be permitted as a special exception if it complies with all requirements of this section. \*3/9/1999, 3/8/2005, 3/14/2017

**402.2** The home occupation shall be carried on by a member of the family residing in the dwelling unit with not more than two employees who are not part of the family residing in the dwelling. \*3/08/2005

**402.3** The home occupation shall be carried on wholly within the principal or accessory structures.

**402.4** Exterior displays or signs other than those permitted under Section 303, exterior storage of materials, and exterior indication of the home occupation or variation from the residential character of the principal or accessory structures shall not be permitted.

**402.5** Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall not be produced.

**402.6** Articles not produced on the premises shall not be sold on the premises. \*3/12/1968

**402.7** The home occupation shall result in no detriment to property values in the vicinity or result in a change in the essential characteristics of any area or neighborhood on account of the location or scale of buildings, other structures, parking areas, access ways, or the storage or operation of associated equipment or vehicles. The home occupation shall not create a traffic safety hazard or result in a substantial increase in the level of traffic congestion in the vicinity. \*3/08/2005, 3/14/2017

## **SECTION 403 FAMILY DAY CARE**

Family day care shall be permitted as a special exception, granted by the Zoning Board of Adjustment, provided that it complies with the conditions set forth below. No Planning Board approval is required.

**403.1** The family day care shall be carried on by a member of the family residing in the dwelling unit.

**403.2** No more than six preschool children on a full-time basis and three school age children on a part-time basis shall be cared for.

**403.3** A license from the Bureau of Child Care Standards & Licensing, Division of Public Health Services of the N.H. Department of Health and Welfare is required.

**403.4** Additional considerations shall include the impact on the neighborhood, traffic impact, adequacy of drop-off and pick-up area and provision for a safe outdoor play area. \*3/13/1990

## **SECTION 404 WATER RECREATION AND WATER STORAGE FACILITIES**

**404.1** Any facility for water recreation or storage such as, but not limited to, commercial swimming pools, swimming clubs, fishing ponds, reservoirs, fish hatcheries, sewage lagoons, and farm ponds, but

excepting private swimming pools, as described in 404.2, shall comply with the following requirements:

- A.** The facility shall conform with the setback requirements of the North Hampton Zoning Ordinance.
- B.** The facility shall be enclosed by a fence no less than four feet high which prevents uncontrolled access by small children. This requirement may be waived in writing by the Planning Board.
- C.** The owner of a facility shall submit a plan to the Planning Board showing the size of the facility, proposed use, parking arrangement, and the use and location of buildings on the site, surrounding properties and their usage, and any other pertinent information or any other information requested by the Planning Board. The Planning Board, based on considerations of the health, safety, and welfare of the community, the general scheme of development of the area, and the usage of adjoining land, shall either approve or not approve said plan. No building permit shall be issued for a structure to be built in conjunction with said facility prior to Planning Board approval. A building permit shall not be required for fishing ponds, reservoirs, fish hatcheries, sewage lagoons, and farm ponds where no structures are involved.

**404.2** Private swimming pools when located on a residential lot, in association with a single family dwelling, shall not require Planning Board approval, but must meet the following requirements:

- A.** Above ground pools that are commercially prefabricated and can be readily disassembled and removed, shall not require a building permit, though any construction in conjunction with such pool shall comply with Section 706 of the Zoning Ordinance. All such pools shall be enclosed by a fence no less than four feet high which prevents uncontrolled access by small children. This requirement may be met by the use of removable ladders on pools having outside walls at least four feet high.
- B.** In ground pools and above ground pools that are not commercially prefabricated and/or cannot be readily disassembled and removed, shall require a building permit as defined in Section 706. In addition, such facility shall comply with the setback requirements of the North Hampton Zoning Ordinance, and shall be enclosed by a fence no less than four feet high which prevents uncontrolled access by small children, or have removable ladders as described in 404.2.A. \*3/5/1974

#### **SECTION 405 DUMPING AND DISPOSING OF GARBAGE**

Dumping or disposing of garbage or refuse is prohibited except in accordance with the provisions of NH RSA 149-M and New Hampshire Department of Environmental Services solid waste management rules. \*3/12/1968, 3/13/2018

#### **SECTION 406 EXCAVATIONS**

No excavation permit shall be issued except upon application to and approval by the Planning Board. All excavations must meet the requirements and standards of RSA 155:E and the North Hampton Excavation Regulations. \*3/12/1991

#### **SECTION 407 MANUFACTURED HOUSING AND RECREATIONAL VEHICLES**

Shall not be permitted elsewhere than in those areas where they are specifically identified as a permitted use in Section 202. Manufactured housing located on individually owned lots shall comply with all building codes, lot size and frontage requirements, space limitation, and other controls. The Building Inspector may permit the temporary location of manufactured housing elsewhere than those areas where permitted for a temporary purpose found by him not to be injurious or offensive to the neighborhood. Any temporary location shall be limited to the time specified in the permit. This section shall not affect the temporary placement of recreational vehicles in a manufactured housing park for a period not to exceed six months. The occupants of a single-family dwelling may, without permit, park one unoccupied

recreational vehicle on the lot where they reside. \*3/13/1984

#### **SECTION 408 TRAILER PARKS**

Trailer Parks, as defined as any land rented for the parking or temporary location of one or more manufactured houses, recreational vehicles, travel trailers, tent campers, or pickup campers, shall not be permitted unless they were in existence prior to March 8, 1955, and those trailer parks so existing shall be limited in land area to that actually being legally occupied by a manufactured house, recreational vehicle, travel trailer, tent camper, or pickup camper as of March 6, 1973; or so legally occupied any time during the twelve months immediately preceding March 6, 1973. \*3/13/1979

#### **SECTION 409 MOTOR VEHICLE REFUELING FACILITIES** \*3/9/2004

##### **409.1 Purpose**

This Section is intended to protect, preserve and promote public health, safety and welfare and to reduce environmental hazards to health, safety and welfare (including but not limited to traffic congestion and blight), insofar as they are affected by structures, equipment and premises used by and for retail outlets for refueling motorized vehicles. Pursuant to RSA 674:33.IV, this Section is further intended to define specific rules to govern decisions about granting permits for the establishment of such facilities as a Special Exception for land use in the Industrial-Business/Residential District. To achieve the above aims, this Section provides for control of the number and capacity of such facilities throughout the town.

**409.2** Upon adoption of this ordinance any facility that offers on-highway motor vehicle fuel of any kind for sale to the public shall be permitted in the Town of North Hampton only as a Special Exception and only in the Industrial-Business/Residential District.

##### **409.3 Definitions**

**A. “Motor vehicle”** includes but is not limited to cars, trucks, buses, motorcycles, motor scooters, recreational vehicles, and motor homes. It does not include aircraft, farm tractors, or construction equipment that is not licensed for travel on public roads.

**B. “Fuel”** includes, but is not limited to gasoline of all grades, diesel, ethanol, methanol, liquid propane gas, hydrogen, or any substance dispensed for use in a motor vehicle as a source of energy for such a vehicle.

**409.4** The total refueling capacity of all such facilities in the Town of North Hampton, as measured by the total number of vehicles that may receive fuel simultaneously at all these facilities combined, shall be limited to the number at the time of the adoption of this ordinance -- that is, 36 vehicles.

**409.5** The total number of tanks, underground or aboveground, that are installed for active use at all such facilities combined in the Town of North Hampton and their total capacity shall be limited to the total number and capacity, as recorded in the facility information records of the New Hampshire Department of Environmental Services, at the time of the adoption of this Section of the Zoning Ordinance -- that is, 8 tanks in total with 93,000 gallons of combined total capacity.

**409.6** If the total refueling capacity of all such facilities falls below 36 vehicles, a person may apply to the Zoning Board of Adjustment for a permit to install additional refueling capacity at a facility located in the Industrial-Business/Residential Zone only provided that the total refueling capacity shall not exceed 36 vehicles as a result of approval of the application.

**409.7** If the total number of installed, active tanks for such facilities falls below 8 or their total combined capacity falls below 93,000 gallons, a person may apply to the Zoning Board of Adjustment for a permit to install a tank or tanks to replace a tank or tanks that have been permanently closed, as determined by the facilities information records of the New Hampshire Department of Environmental Services, only in the Industrial-Business/Residential Zone and provided that the total number and combined capacity of all tanks installed for active use in the Town shall not exceed limits stated in Section 409.4 above as a result of approval of the application.

**409.8** Applications for permits under this Section 409 shall be granted only for sites with conforming frontage on Lafayette Road and at least one other town road and approved driveway permits on both Lafayette Road and at least one other town road.

**409.9** No more than two (2) such facilities shall be permitted at any one intersection, and no additional refueling facilities shall be permitted within 1,000 feet of any intersection site at which two (2) such facilities are in existence or operating.

**409.10** Installation of any new refueling system or any component of such a system, as provided in section 409.5-6 above, shall use the best available technology, equipment, and methods to protect the environment. This section is intended to cover all elements of the refueling system, aboveground and underground, from orifices used for filling storage tanks to nozzles for dispensing fuel into vehicles, and it includes but is not limited to alarms and devices for detecting leakage, recovering spilled fuel, and extinguishing fires.

**409.11** Any facility that has the capability to dispense fuel to motor vehicles, but that does not have an approved site plan for that use at the time of the adoption of this ordinance - e.g. an airport, school bus terminal, truck dispatching facility, heating oil distribution business, or construction firm – shall not sell motor-vehicle fuel to the public, unless the Zoning Board of Adjustment approves a permit for that use and the Planning Board approves a site plan for that use.

## **ARTICLE V - WATER RESOURCES PROTECTION AREA REGULATIONS**

**SECTION 501 WETLANDS CONSERVATION DISTRICT** \*3/14/1978, 3/13/1979, 3/10/1981, 3/11/87, 3/8/1988, 3/13/2001, 3/11/2003, 3/8/2005, 3/10/2009, 5/11/2010, 3/10/2015, 3/14/2017, 3/13/2018

### **501.1 Purpose**

In the interest of public health, convenience, safety and welfare, the regulations of this district are intended to guide the use of areas of wetlands with extended periods of high water tables, a buffer zone around wetlands and to accomplish the following purposes:

- A.** To control the development of structures and land uses on naturally occurring wetlands which would contribute to pollution of surface and groundwater by any means.
- B.** To prevent the destruction of natural wetlands, which provide flood protection, recharge the groundwater supply, and the augmentation of stream flow during dry periods.
- C.** To prevent unnecessary or excessive expense to the Town related to the provision and maintenance of essential services and utilities, which arise because of unwise use of wetlands.
- D.** To encourage those uses that can appropriately and safely be located in wetland areas.
- E.** To preserve wetlands for ecological reasons including, but not limited to, those cited in RSA 482-A.

- F.** To preserve and enhance those aesthetic values associated with the Wetlands of this Town.
- G.** To provide a single and consistent approach for identifying and delineating wetlands based on the most advanced professional standards and scientific analysis.

#### **501.2 Authority**

Any non-compliance with this ordinance shall require the issuance of a Conditional Use Permit by the Planning Board as authorized in RSA 674:21. Any person aggrieved by a Planning Board decision on a Conditional Use Permit may appeal to the Superior Court as provided in RSA 677:15. These Planning Board decisions cannot be appealed to the Zoning Board of Adjustment (RSA 676:5.III). \*3/13/2018

#### **501.3 Definition of District**

The Wetlands Conservation District comprises all of the following areas within the Town of North Hampton:

- A.** Tidal Lands as defined in Section 104, paragraph 52 herein. \*3/08/2005
- B.** Wetlands as defined in Section 104, paragraph 53 herein. \*3/08/2005
- C.** Isolated, Non-Bordering Wetlands as defined in Section 104, paragraph 28 herein.
- D.** All buffer zones and setback requirements around all such wetlands as described in this section (Section 501.3). \*3/10/2015

#### **501.4 Wetlands Map**

**A.** The Wetlands Map of North Hampton prepared by Normandeau Associates in 1986 as part of the New Hampshire Coastal Wetlands Mapping Program shall be used as a baseline and initial delineation of jurisdictional wetlands under this ordinance. The boundaries of the Wetlands Conservation District shall be identified by this North Hampton Wetlands Map and applicable buffer zones as revised from time to time.

**B.** In the event that a wetland area is alleged to be incorrectly designated on the Wetlands Map, the person aggrieved by such designation may request a field inspection by the Building Inspector and a wetland scientist approved by the Planning Board. If a determination is made by a field inspection, the wetland scientist shall report this in writing to the Planning Board. The Planning Board will review the report and if appropriate, will arrange to update the Wetlands map accordingly. All fees and expenses incurred by the field inspection shall be paid by the party requesting the field inspection.

**C.** If, after the field inspection, the Wetlands delineation is determined to be correct, the person aggrieved by such designation may, by written petition, appeal the designation to the Planning Board for the Board's review.

**D.** Any resident of North Hampton may, by written petition, propose to the Planning Board that additional areas be included within the Wetlands Conservation District. After informing the owners of the property proposed for inclusion in the Wetlands Conservation District and the owners of abutting property, the Planning Board shall place the proposal on the agenda of its next regularly scheduled public meeting. Before additional areas can be included within the Wetlands Conservation District, the North Hampton resident proposing such inclusion shall provide evidence, satisfactory to the Planning Board, that the subject land meets the mandatory technical criteria for Wetlands delineation identified in Section 104, paragraphs 28, 52 and 53 herein.

**E.** Any wetland delineations on Subdivision or Site Plans approved by the Planning Board, after March 10, 2015, will constitute an update to the wetlands map. \*3/10/2015

#### **501.5 Appeal of Wetlands Boundaries**

In the event of a petition pursuant to Section 501.4.B or 501.4.C, the North Hampton Planning Board may call upon the services of an independent qualified wetlands scientist to examine said area and report findings to the Planning Board for their determination of the boundary. Qualified wetland scientist shall mean a person who is qualified in soil classification and wetlands delineation and who is recommended or approved by the State of New Hampshire. The costs to the Town of such appeal shall be borne by the petitioner.

#### **501.6 Buffer Zone Requirements**

The Wetlands Conservation District also includes a buffer zone of upland area adjacent to the wetlands. The buffer zone requirement from Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands is 100 feet. Additionally, contained within the buffer zone is a 25-foot vegetative buffer located closest to the wetland boundary. For the purposes of this Section 501.6, Isolated, Non-Bordering Wetlands shall not include a vegetated swale, roadside ditch, or other drainage way; a sedimentation/detention basin or an agricultural/irrigation pond. \*3/11/2003, 3/08/2005, 3/14/2017

##### **A. Vegetative Buffer Requirements \*3/14/2017**

- 1.** Purpose: The purpose of the vegetative buffer requirement is to provide additional protection to the integrity and functionality of wetlands and surface waters for purposes such as water quality protection, wildlife habitat, and flood storage capacity.
- 2.** Definition: A vegetative buffer is defined as an area of upland that is measured perpendicularly from the outermost boundary of Tidal Lands, Wetlands, and Isolated, Non-Bordering Wetlands (as defined in Section 104) and surface waters, retained in its natural state (no disturbance to land surface or vegetation) or replanted with native non-invasive vegetation.
- 3.** The Vegetative Buffer is required for all undeveloped lots of record existing as of March 14, 2017 and for any lot created subsequently.
- 4.** Owners of developed lots of record existing prior to March 14, 2017 are encouraged to maintain or establish Vegetative Buffers, but are not required to do so except as provided in 501.6.C.3.e.

##### **B. Undeveloped lots of record**

- 1.** No structure or impermeable surface shall be permitted within 100 feet of Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands on any lot of record existing as of March 11, 2003 or on any lot created subsequently. \*3/11/2003, 3/08/2005, 3/14/2017
- 2.** Undeveloped lots of record existing prior to March 11, 2003: If the imposition of 100 foot Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands buffer setbacks causes the Buildable Area to be less than 16,000 square feet, the prior wetlands buffer zone setback requirements of 50 feet for Wetlands and Isolated, Non-Bordering Wetlands and 75 feet for Tidal Wetlands shall apply. A 25-foot vegetative buffer is required. \*3/11/2003, 3/08/2005, 3/14/2017

##### **C. Developed lots of record**

- 1.** No structure or impermeable surface shall be permitted within 100 feet of Tidal Lands or within 100 feet of Wetlands on any developed lot of record existing as of March 11, 2003 or on any lot created

subsequently. \*3/08/2005

**2.** Developed residential lots of record existing prior to March 11, 2003: If the imposition of 100 foot Tidal Lands and/or inland wetland buffer setbacks causes the Buildable Area to be less than 16,000 square feet, the prior buffer zone setback requirements of 50 feet for Wetlands and Isolated, Non-Bordering Wetlands and 75 feet for Tidal Lands shall apply. \*3/11/2003, 3/08/2005, 3/14/2017

**3.** Notwithstanding other provisions of this Section 501.6 of the Zoning Ordinance, the construction of additions to and/or extensions of existing buildings or structures shall be permitted within the 100 foot wetlands buffer zone provided that:

**a.** The dwelling or structure to be expanded existed lawfully prior to the effective date of this Section 501.6 of the Zoning Ordinance (March 11, 2003) and was constructed subject to a validly issued building permit.

**b.** The proposed construction conforms to all other applicable ordinances and regulations of the Town of North Hampton.

**c.** The footprint of any proposed new construction within the buffer does not exceed the greater of 1200 square feet or 25% of the area of the footprint of the existing heated structure within the buffer which existed prior to the effective date of this Ordinance.

**d.** Any proposed new construction of an addition or extension shall not intrude further into the wetland buffer setback than the current principal heated structure of which it is a part.

**e.** No new structures are permitted within 25 feet of a Tidal Lands, Wetlands or Isolated, Non-Bordering Wetlands boundary. \*3/14/2017

#### **501.7 Prohibited Uses in the Wetlands Conservation District**

**A.** The following uses are prohibited within the Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands or within 75 feet of their boundaries: Septic systems, leach fields or on site disposal systems.

**B.** The following uses are prohibited within the Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands or within 100 feet of their boundaries:

Storage of gasoline, fuel oil, pesticides, hazardous agricultural and other hazardous materials or road-salt stockpiles. \*3/10/2015



**501.8 Additional Permitted and Prohibited Uses in the Wetlands Conservation District**

The table below defines additional permitted and prohibited uses within the various areas (wetlands, vegetative buffer and upland) of the Wetlands Conservation District.

<b>Wetlands Conservation District Area(s)</b>	<b>Permitted Uses – Unless otherwise permitted or restricted in the following sections of this table</b>	<b>Prohibited Uses - Unless otherwise permitted or restricted in the following sections of this table</b>
<b>All regions of the Wetlands Conservation District</b>	<p><b>1A.</b> Any use otherwise permitted by the Zoning Ordinance that does not include erection of a structure and does not alter the surface configuration of the land by the addition of fill or by dredging.</p> <p><b>1B.</b> Any agriculture that will not cause soil erosion or groundwater contamination by pesticides or other hazardous materials.</p> <p><b>1C.</b> Wildlife refuge and habitat management.</p> <p><b>1D.</b> Parks and passive, non-motorized recreation uses as are consistent with the purpose and intentions of this section.</p> <p><b>1E.</b> Conservation areas and nature trails.</p>	<p>See Section 501.7</p> <p><b>2A.</b> Manure storage is not permitted within the Wetlands Conservation District.</p>
<p><b>Additional Permitted, Restricted and Prohibited uses in the: Tidal Lands</b> As defined by 104.52 <b>and Wetlands and Isolated, Non-boarding Wetlands</b> As defined by 104.53 and 104.28</p>	<p>Permitted uses are activities that do not impact, alter or change the nature of wetlands, wetland functions or the animal life or plant life within the wetlands. These activities include, but are not limited to:</p> <p><b>3A.</b> Agricultural activities which involve the harvesting of product and not listed in the prohibited use section(s).</p> <p><b>3B.</b> Cutting of live trees with a diameter of six inches or greater, measured 4 1/2 feet above the ground, provided that such partial cutting is limited to 30% of their total pre-harvest basal area. Not more than fifty (50) percent of the basal area of trees, nor more than fifty (50) percent of the total number of saplings shall be removed in any twenty (20) year period. Selection of trees for such partial cutting shall be done with the approval of the Planning Board. Partial cutting shall be done in such a way that a well distributed stand of healthy growing trees remains.</p> <p><b>3C.</b> Dead, dying, diseased, or damaged trees, saplings, or ground covers may be removed. The stumps and root systems of</p>	<p>Prohibited uses are activities that do impact, alter or change the nature of wetlands, wetland functions or the animal life or plant life within the wetlands. These activities include but are not limited to:</p> <p><b>4A.</b> Agricultural activities which involve permanently (60 days or longer) disturbing wetlands soils, water flow or other beneficial features of the wetlands.</p> <p><b>4B.</b> Existing vegetation under three (3) feet in height including ground cover shall not be removed except to provide for a single point of access to the shoreline and in case of disease.</p> <p><b>4C.</b> Stumps and their root systems shall be left intact. The removal of stumps and roots in conjunction with beaches or docks may be permitted with the approval of the New Hampshire Department of Environmental Services Wetlands Bureau based upon a determination that the removal in combination with mitigation activities will not increase the potential for erosion.</p>

	<p>the removed trees shall not be disturbed and shall remain in place. If such removal results in the creation of cleared openings, these openings shall be replanted with native species unless existing new growth is present. Dead, dying, diseased, or damaged trees and living trees that provide dens and nesting places for wildlife are encouraged to be preserved.</p> <p><b>3D.</b> Invasive species may be removed but must be replaced with native, non-invasive species.</p> <p><b>3E.</b> The erection of fences, footbridges, catwalks and wharves provided such structures are built on posts or pilings and permit the unobstructed flow of the tide and preserve the natural contour of the marshes.</p> <p><b>3F.</b> Drainage ways, streams, creeks, or other paths of normal runoff water.</p> <p><b>3G.</b> Open space permitted by the subdivision regulations and other sections of the ordinance.</p>	<p><b>4D.</b> The application of pesticides, herbicides, and fertilizers within the buffer is prohibited except in conjunction with allowed agricultural activities by state or federal regulations.</p> <p><b>4E.</b> Any other permitted activities must not have a permanent or long term (greater than 60 days) impact on the wetlands</p>
<p><b>Additional Permitted, Restricted and Prohibited uses in the: Vegetative Buffer Zone</b> As defined by 501.6.A</p>	<p><b>5A.</b> All uses permitted in the Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands.</p> <p><b>5B.</b> Uses, activities or improvements specifically allowed in the Vegetative Buffer in other sections of this ordinance, Section 501.</p>	<p><b>6A.</b> All uses prohibited in the Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands.</p> <p><b>6B.</b> No structures or impermeable surfaces that were not in existence prior to March 14, 2017 are permitted within the Vegetative Buffer.</p> <p><b>6C.</b> No mowing or other activities that impact the integrity and functionality of the Vegetative Buffer and the wetlands and surface waters unless specifically permitted for purposes such as water quality protection, wildlife habitat, and flood storage capacity.</p>
<p><b>Additional Permitted, Restricted and Prohibited uses in the: Wetlands Buffer Zone</b> As defined by 501.6</p>	<p><b>7A.</b> Uses, activities or improvements specifically allowed in the Buffer Zone in other sections of this ordinance, Section 501.</p> <p><b>7B.</b> Activities or improvements which do not degrade the function and intent of the Wetland Conservation District buffer zone.</p> <p><b>7C.</b> Permitted uses are at the discretion of building inspector and wetland scientist with the intent to satisfy the purpose of the Wetlands Conservation District.</p>	

**501.9 Conditional Use Permit for Fill in Excess of 3000 Square Feet**

A conditional use permit may be granted by the Planning Board for fill in excess of 3000 square feet of surface area, for the construction of roads and other access ways, pipelines, power lines, and other transmission lines within the district or the buffer zone, provided that all of the following conditions are found to exist:

- A. The proposed construction is essential to the productive use of land not within the wetlands;
- B. Design and construction methods will be such as to minimize detrimental impact upon the wetland site and will include restoration of the site as nearly as possible to its original grade and condition;
- C. No alternative, which does not cross a wetland or has less detrimental impact on the wetland, is feasible;
- D. All other necessary permits have been obtained.

**501.10 Conditional Use Permit for Erecting a New Structure or Expanding an Existing Structure**

Upon application to the Planning Board, a Conditional Use Permit may be granted to permit the erection of a new structure or the expansion of an existing structure located within the Wetlands Conservation District, or any buffer zones, provided that all of the following conditions are found to exist:

- A. The new structure or expansion is not otherwise prohibited under the zoning ordinance.
- B. The new structure or expansion will cause no diminution of property values in the neighborhood.  
\*3/10/2015
- C. The use for which the Conditional Use Permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District or the buffer zone.
- D. Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the Conditional Use Permit.
- E. The design and construction of the proposed use will, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance and shall not diminish the natural resource values of affected wetlands in any appreciable way. \*3/10/2009
- F. Literal enforcement of the provisions of the wetlands ordinances would result in an unnecessary hardship, meaning special conditions of the property distinguish it from other properties in the area.  
\*3/10/2015

**501.11 Conditional Use Permit for Overburden Ground Water Pumping**

A conditional use permit may be granted by the Planning Board for overburden ground water pumping at a rate in excess of 20,000 gallons per day, provided that all of the following conditions are found to exist:

- A. Such pumping is conducted in such manner as to assure no net loss of Tidal Lands, Wetlands and Isolated, Non-Bordering Wetlands within any adjacent Wetlands Conservation District.

**501.12 Other Permits**

Nothing in the above ordinance shall preclude the need to obtain any other necessary local, state or federal government permits.

**SECTION 502 WATER RESOURCES****502.1 Statement of Policy**

It shall be the policy of the Town of North Hampton to protect the quality of all water supplies within Town boundaries, especially on or near known aquifers and primary recharge areas.

**502.2 Definitions**

For the purposes of this section, toxic or hazardous materials shall be defined as any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance were discharged to land or waters of this town. Toxic or hazardous materials include without limitation all volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious waste, acid and alkalies, and include products such as pesticides, herbicides, solvents and thinners and such other substances as defined in New Hampshire Water Supply and Pollution Control rules (He-P 1901.03(v)) and in the 40 CFR 261, as amended, whichever is more restrictive.

**502.3 Use Regulation**

**A.** In all zoning districts, all runoff from impervious surfaces shall be recharged on the site and only minimum use shall be made of de-icing chemicals on all private and public roads and parking lots. Compounds used shall be free of sodium and chloride to the maximum extent possible.

**B. Prohibited Uses**

The following uses are prohibited within the Town of North Hampton:

1. The installation of underground tanks for storage of oil and petroleum products for residential purposes;
2. The installation of underground tanks for storage of oil and petroleum products for non-residential purposes, unless that tank is subject to regulation under New Hampshire Code of Administrative Rules, Part Ws 411;
3. Disposal of liquid or leachable waste (except from residential sub-surface disposal systems, or State approved commercial or industrial systems which discharge human waste only);
4. Outdoor unenclosed or uncovered storage of road salt and other de-icing chemicals;
5. Dumping of snow from outside of town boundaries if it contains road salt or de-icing chemicals;
6. Injection wells that dispose of waste in the ground;
7. Disposal of solid waste other than brush and other wood products.

**C. Conditional Uses**

The following uses are presumed to be toxic or hazardous to ground water quality and will be permitted only if and to the extent that anyone proposing to engage in any such activity can demonstrate the contrary to the Planning Board. These uses, if allowed in the underlying zoning districts, are permitted only after a Conditional Use Permit is granted by the North Hampton Planning Board.

1. Junk and salvage lots;
2. Chemical and bacteriological laboratory operation;
3. Dry Cleaning;
4. Electronic circuit manufacturing;
5. Metal plating, finishing, and polishing;
6. Motor and machinery service and assembly;
7. Painting, wood preserving and furniture stripping;
8. Photographic processing;
9. Printing;
10. On-site handling, disposal, discharge, storage, processing or recycling of toxic or hazardous materials including bulk storage of toxic materials for resale or distribution (except for routine delivery of heating

oil);

**11.** Industrial processes which discharge contact type process waters on site;

**12.** Commercial animal feed lots.

#### **D. Standards and Conditions**

After the requirements of Section 502.3.C have been met, the Planning Board may grant a Conditional Use Permit for any of the above uses, only after written findings of fact are made that all of the following are true:

**1.** The proposed user will make use of the best feasible technology to prevent any dangerous or hazardous impacts resulting from the proposed use, including but not necessarily limited to such impacts as the discharge or loss of hazardous materials resulting from corrosion, evaporation, accidental damage, spillage or vandalism.

**2.** The proposed use(s) will not detrimentally affect the quality of the water either by directly contributing to pollution or by increasing the long-term susceptibility of the water to potential pollutants.

**3.** The proposed use will not cause a significant reduction in the long-term volume or quality of water contained in the aquifers or in the storage capacity of any known aquifers over which the proposed use may be located.

#### **502.4 Planning Board Authority**

The Planning Board may require that the applicant provide data or reports prepared by a professional consultant qualified to assess any potential damage to ground water that may result from the proposed use. At the applicant's expense, the Planning Board may engage such professional assistance, as it requires to evaluate adequately such reports and to evaluate, in general, the proposed use in light of the above criteria. The Planning Board may attach to such permit any reasonable conditions for construction and/or operation, including inspections by the Building Inspector, or any other agent designated by the Planning Board, to assure continued compliance with the conditions under which the approval was granted. A fee for inspection shall be charged to the owner according to a fee schedule determined by the Selectmen.

\*3/13/1990

### **SECTION 503 AQUIFER PROTECTION DISTRICT ORDINANCE \*3/14/2006**

#### **503.1 Background**

This Aquifer Protection District Ordinance recognizes and responds to the importance of the complexity of adequately protecting our drinking water. It also recognizes the inter-related nature of our ecological systems of wetlands, uplands and fresh, tidal and salt waters.

An aquifer is any geological formation in bedrock or sand and gravel that can yield a useable amount of water. North Hampton is fortunate in having three (3) major aquifers in sand and gravel, technically known as stratified drift aquifers, of which two (2) can be utilized for water, in addition to bedrock wells. Our sand and gravel aquifers are shallow, some only fifty (50) to sixty (60) feet beneath the surface, while our bedrock aquifers are hundreds of feet deep. The majority of residential wells in town are drilled in bedrock. The primary water company in this area, the Aquarion Water Company, operates a total of sixteen (16) wells of which ten (10) are located in North Hampton; six (6) are bedrock wells and four (4) are in sand and gravel aquifers. The shallow sand and gravel aquifer wells yield markedly higher pumping volumes compared to the bedrock wells whose volume is limited by the number of fissures supplying water.

Our sand and gravel aquifers are also more subject to contamination from residential and industrial properties because of their shallow depth. The Coakley Landfill Superfund Site, part of which is located in North Hampton, is an example of groundwater pollution that contaminated residential wells in North Hampton.

Currently both types of Aquarion Water Company wells are located in the Mill Road and Winnicut Road aquifers. Our third aquifer in the Post Road/ Cherry Road area has not been drilled due to the proximity of the Coakley Landfill Superfund Site and the inter-related nature of our aquifers. Our two sand and gravel aquifers are currently being pumped at capacity. Future water needs must be supplied by additional bedrock wells in town or be supplied by neighboring towns within the Aquarion water systems or other water companies.

### **503.2 Authority and Purpose**

Pursuant to RSA 674:16-21, the Town of North Hampton adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve, and maintain potential groundwater supplies and related groundwater recharge areas identified by the Town. The objectives of the Aquifer Protection District are:

- A.** To protect the public health and general welfare of the citizens of North Hampton.
- B.** To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers and all inter-related waters in town.
- C.** To assure the availability of public and private water supplies for the present and the future growth of the Town in accordance with the Master Plan.
- D.** To encourage uses that can appropriately and safely be located in the aquifer recharge areas.
- E.** To heighten awareness of the need for annual review of the Coakley Landfill Superfund Site monitoring wells and the testing of private wells.

### **503.3 Administration**

**A. General:** The provision of the Aquifer Protection District shall be administered by the Planning Board. All development proposals (within this District), other than single or two-family residential construction not involving the subdivision of land, shall be subject to subdivision and/or site plan review and approval in accordance with Planning Board rules and regulations and this Aquifer Protection District Ordinance. Such review and approval shall precede the issuance of any building permit by the Town.

**B. Enforcement:** The Select Board shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District, pursuant to the provisions of Section 503.

### **503.4 Definitions**

**A. Animal Feedlot, Permitted:** A commercial agricultural establishment where concentration of animals are confined and fed simultaneously. Animal feedlots are prohibited by Section 202.8.A of the zoning ordinance.

**B. Aquifer:** For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding sustainable quantities of groundwater usable for municipal or private water supplies.

**C. Dwelling Unit:** A room or group of rooms located within a dwelling and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

**D. Groundwater:** Subsurface water that occurs beneath the water table in soil and geological formations.

**E. Groundwater Recharge:** The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface water, including lakes, streams and wetlands.

**F. Hydrogeologist:** A person who by education and experiences is able to quantitatively analyze and

interpret hydrology and is a licensed geologist, specializing in hydrology, in the State of New Hampshire according to Env-Ws 388.06(b).

**G. Impervious to Groundwater Infiltration:** The addition of pavement, cement or other ground cover that prevents water from flowing through to subsoil layers.

**H. Leachable Wastes:** Waste materials, including, but not limited to, solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

**I. Mining of Land:** The removal of geological materials such as topsoil, sand and gravel, metallic ores, or bedrock.

**J. Non-Conforming Use:** Use of the land, building or premise which is not a use permitted by the provisions of this ordinance for the Aquifer Protection District in which such land, building or premise is situated.

**K. Non-Municipal Well:** Any well not owned and operated by the Town of North Hampton or its agent.

**L. Recharge Area:** The land surface areas from which water reaching a location or region originates.

**M. Sludge:** Residual materials produced by the sewage treatment process.

**N. Solid Waste:** Any discarded or abandoned material including refuse, or sludge, as defined by New Hampshire Solid Waste Rules Env-Wm 101-103 & 2100-3700. Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations and from community activities.

**O. Structure:** Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground.

**P. Toxic or Hazardous Materials:** Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation: volatile organic chemicals, petroleum products and additives such as MtBE, heavy metals, and radioactive materials as defined in Groundwater Management and Groundwater Release Detection Permits, Env-Wm 1403.05. Wastes generated by, but not limited to, the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such activity can demonstrate the contrary to the satisfaction of the Planning Board:

1. Airplane, boat and motor vehicle service and repair
2. Chemical and bacteriological laboratory operation
3. Dry cleaning
4. Electronic circuit manufacturing
5. Junk and salvage lots
6. Metal plating, finishing and polishing
7. Motor and machinery service and assembly
8. On site handling, disposal, discharge, storage, processing or recycling of toxic or hazardous materials including bulk storage of toxic materials for resale or distribution (except for routine delivery of heating oils)
9. Paint production and painting, paint stripping, wood preserving and furniture

10. Pesticide and herbicide production
11. Photographic processing
12. Printing

**Q. Transmissivity:** A measure of the rate at which water will move through an aquifer. Transmissivity incorporates the hydraulic conductivity of the aquifer, aquifer thickness, water temperature and fluid properties to describe water movement.

### **503.5 District Boundaries**

#### **A. Location**

The extent of the Aquifer Protection District shall be shown on the Aquifer Protection District Map, and subsequent updates, shall be the outermost edge of the aquifers that measure in transmissivity greater than 1,000 feet squared per day. This map is to be used in conjunction with the tax map and/or other maps of the Town as an overlay district.

#### **B. Recharge Areas**

1. The indirect recharge areas are those areas that contribute to groundwater recharge of the aquifer from outside the aquifer boundaries.
2. When development is proposed in indirect recharge areas which are tributary to the Aquifer Protection District, such as areas including a tributary stream, or on slopes adjacent to the Aquifer Protection District, the Planning Board may hire, at the developer's expense, a qualified hydrogeologist to assess the potential impact on groundwater quality and recharge rates of the aquifer from such development.

#### **C. Appeals**

1. Where the bounds of the identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the aggrieved party shall hire its own NH licensed geologist specializing in hydrogeology to re-delineate the boundary and the Planning Board may have their professional hydrogeologist review and comment on the re-delineation. The review shall be paid by the aggrieved party. The following elements required in this review but not limited to:
  - a. A detailed topographic layout of the subdivision and/or area to be developed, prepared by a registered land surveyor.
  - b. The boundaries of the aquifer protection districts shall be the borders of stratified drift aquifers of 1,000 to 2,000 square feet per day transmissivity surrounding those aquifers whose transmissivity is greater than 2,000 square feet per day.
  - c. Any additional mapping, hydrogeologic reports or information which becomes available, as a result of recent or on-going scientific investigation of the location and extent of aquifers, performed by the US Geological Survey, NH State agencies or boards, or the Town of North Hampton or the agents of any of the above.
2. The Planning Board may, based upon the finding of Section 503.5.C.1 above, adjust the boundary or area designation of the Aquifer Protection District or reduce or expand the area so designated so as to more correctly define the location and extent of the aquifer on a site-specific, case-by-case basis.
3. The Planning Board shall reserve the right to withhold action on such plat or plan pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove or such further time as deemed necessary and as provided for by NH State statute.



**503.6 Use Regulations****A. Minimum Lot Size**

1. The minimum lot size within the Aquifer Protection District for each single-family dwelling unit if a residential use, or each principle building if a non-residential use, shall be two (2) acres, or 87,120 square feet, of which a minimum of one (1) acre, or 43,560 square feet, shall be non-wetland area.
2. The minimum lot size within the Aquifer Protection District for each duplex dwelling unit for residential use or other use shall be two point three (2.3) acres, or 100,000 square feet, of which a minimum of 60,000 square feet, shall be non-wetland area.

**B. Maximum Site Coverage**

1. Within the Aquifer Protection District, no more than twenty percent (20%) of a single lot or building site may be rendered impervious groundwater infiltration. To the extent feasible, all runoff impervious surfaces shall be recharged to the aquifer on-site. Recharge impoundments shall have vegetative cover for surface treatment and infiltration.
2. Maximum impervious site coverage may exceed twenty percent (20%) provided that the following performances standards are met and the plans are approved by the Planning Board or its designated agent. The developer shall submit a stormwater drainage plan. Such a plan shall provide for the retention and percolation of the runoff from a one hundred (100) year storm event, such that the post-development discharge volume to the aquifer is, at a minimum, equal to the pre-development discharge to the aquifer. Furthermore, the stormwater drainage plan shall provide for the removal of oil and gasoline from parking lot runoff by the use of treatment swales, oil/gas separators or other devices, prior to retention and percolation of the run-off.

**C. Hydrogeologic Study**

1. For development proposals within the Aquifer Protection District, a hydrogeologic study shall be performed by a NH licensed geologist specializing in hydrogeology. This study shall evaluate the development's impact on groundwater within both the parcel to be developed and the surrounding land. Beyond the property lines of said site groundwater quality shall not be degraded by polluting substances such as, but not limited to, nitrates, phosphates, bacteria, etc. Larger lots may be required based on the findings of said study.
2. This information will be required for proposed subdivisions of four lots or greater. For subdivisions of three lots or less the Planning Board will determine, on a case-by-case basis, the need for a hydrogeologic study. Particularly sensitive sites may include areas that have septic systems in close proximity to wells, including public supply wells, irrigation wells, residential wells, and monitoring wells, or may contain excessively drained soils or steep slopes.

**D. Prohibited Uses**

The following uses are prohibited in the Aquifer Protection District except where permitted to continue as a non-conforming use:

1. Disposal of solid waste.
2. Storage and disposal of hazardous waste.
3. Disposal of liquid or leachable wastes except that from one or two-family residential subsurface disposal systems, or as otherwise permitted as a conditional use.
4. Subsurface storage of heating oil or gasoline and other refined petroleum products.
5. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.

6. Outdoor unenclosed storage of road salt or other de-icing chemicals.
7. Dumping of snow containing de-icing chemicals brought from outside the district.
8. Animal feedlots – Not permitted.
9. Automotive service and repair shops, junk and salvage yards.
10. All on site handling, disposal, storage, processing or recycling of hazardous or toxic materials except for materials used for normal residential, agricultural or silvicultural activities or those related to the production and testing of drinking water.
11. Dry-cleaning, hair salons, or laundry facilities.
12. No sand or gravel excavation and other mining that is not in accordance with Article IV- Specific Use Regulations, Section 406 Excavations, and Section 9 - Prohibited Projects, 9.4, of the Excavation Regulations of the Town of North Hampton.
13. Injection wells that dispose of waste in the ground or wastewater.

#### **E. Permitted Uses**

The following activities shall be permitted provided they are conducted in accordance with the purposes and intent of this Aquifer Protection District Ordinance:

1. Land development, per the North Hampton Zoning Ordinance, except as prohibited in Section 503.6.D of this Aquifer Protection District Ordinance.
2. Activities designed for conservation of soil, water, plants and wildlife.
3. Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
4. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
5. Foot, bicycle, and/or horse paths and bridges.
6. Maintenance, repair of any existing structures.
7. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, and other leachables are applied using Best Management Practices (BMPs) at levels that will not cause groundwater contamination and are stored under shelter.
8. De-icing chemicals may be used by the road agent subject to the approval of the Select Board. Road salt contamination of our groundwater is of increasing concern in NH and care should be taken to reduce the application of de-icing chemicals on roads crossing or adjacent to our Aquifer Protection District.

#### **F. Septic System Construction**

The following more stringent requirements shall apply to all septic system construction:

1. There will be no filling of wetlands allowed to provide the minimum distance of septic to wetlands.
2. The seasonal high water table will be at least two feet below the original ground surface of the leaching field.
3. There will be at least three feet of natural permeable soil above any restrictive soil layer such as clay that prevents the infiltration of water through the layer.
4. There will be at last four feet of natural soil above bedrock.
5. There will be at least seventy-five feet setback for septic systems from wetlands as defined in the North Hampton Wetlands Conservation District.
6. Standards for fill material: Fill material consisting of organic soils or other organic materials such as tree stumps, sawdust, wood chips and bark, even with a soil matrix shall not be used. The in-place fill should have less than 15% organic soil by volume. The in-place fill should not contain more than 25% by volume of cobbles (6 inch in diameter). The in-place fill should not have more than 15% be weight of clay size (0.000078 inches and smaller) particles. The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.

**G. Conditional Use Permit**

1. The following uses are permitted as a Conditional Use Permit within the Aquifer Protection District Ordinance (in compliance with North Hampton Zoning Ordinance):

a. Industrial and commercial uses not otherwise prohibited in Section 503.6.D unless and except to the extent that anyone proposing to engage in such prohibited uses can demonstrate to the satisfaction of the Planning Board that the proposed use will not pose a threat to the aquifer.

b. Multi-family dwelling residential development. Minimum lot size to be determined by using Section 203.7 of the North Hampton Zoning Ordinance.

2. The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following are true:

a. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.

b. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.

c. The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined.

d. The proposed use complies with all other applicable paragraphs of this section.

3. The Planning Board may require that the applicant provide data or reports prepared by a professional hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board may engage such professional assistance, as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs incurred shall be the responsibility of the applicant.

**H. Design and Operations Guidelines**

Where applicable the following design and operation guidelines shall be observed within the Aquifer Protection District:

1. **Safeguards:** Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures including, but not limited to spill control provisions in the vicinity of chemical or fuel delivery points, secured storage areas for toxic or hazardous materials, and indoor storage provisions for corrodible or dissolvable materials. For operations that allow the evaporation of toxic or hazardous materials into the interiors of any structures, a close vapor recovery systems shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.

2. **Location:** Where the premises are partially outside of the Aquifer Protection District, potential pollution sources such as on-site waste disposal systems shall be located outside the Aquifer Protection District to the extent feasible.

3. **Drainage:** All runoff from impervious surfaces shall be recharged on the site, and diverted toward areas covered with vegetation for surface infiltration to the extent possible.

**4. Inspection:** All Conditional Use Permits granted under Section 503.6.G.2 may be subject to annual inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted.

#### **I. Non-Conforming Uses**

1. At the time of the adoption of this article, any non-conforming use may continue and may be maintained, repaired or improved, unless such use is determined by the Planning Board to be an imminent hazard to public health and safety. No non-conforming use may be expanded, changed to another non-conforming use, or renewed after it has been discontinued for a period of 90 days or more.

2. Any non-conforming lot of record existing before the effective date of this Article may be used in accordance with Section 503.6.E, of this Aquifer Protection District Ordinance.

3. Existing non-conforming uses may continue without expanding or changing to another non-conforming use, but must be in compliance with all applicable state and federal requirements including Env-Ws 421 Best Management Practices and Performance Standards parts c, d, e, and h, of Section 1307.

#### **J. Rules**

The Planning Board is hereby authorized and empowered to adopt rules or organization and procedures as are necessary for the efficient administration and enforcement of this ordinance.

#### **K. Violations**

Upon information from the Building Inspector, Health Officer, Code Enforcement Officer, or other duly authorized agent that the provisions of this Ordinance are being violated; the Select Board shall take immediate steps to enforce the provisions of this Ordinance as provided by the Revised Statutes Annotated of State of New Hampshire.

#### **L. Penalties**

Any person, firm or corporation violating any of the provisions of this Ordinance shall for each violation, upon conviction thereof, pay a fine of one hundred dollars (\$100.00) for each day such violation shall exist.

#### **M. Validity**

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provision, or portion of this Ordinance.

#### **N. Effective date**

This Section shall become effective upon passage at Town Meeting March 2006.

### **SECTION 504 FLOODPLAIN DEVELOPMENT ORDINANCE**

**504.1** This ordinance, adopted pursuant to the authority of RSA 674:16 shall be known as the Town of North Hampton Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of North Hampton Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Rockingham County, NH, dated May 17, 2005, or as amended," together with the associated Flood Insurance Rate Maps

dated May 17, 2005, which are declared to be a part of this ordinance and are hereby incorporated by reference. \*3/08/2005, 3/10/2015

#### **504.2 Definition of Terms**

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of North Hampton.

**A. Area of Shallow Flooding** means a designated AO zone on the Flood Insurance Rate Map (FIRM) with a one-percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.

**B. Area of Special Flood Hazard** is the land in the floodplain within the Town of North Hampton subject to a one-percent or greater possibility of flooding in any given year. The area is designated on the FIRM as zones A, AO, or VE.

**C. Base Flood** means the flood having a one-percent possibility of being equaled or exceeded in any given year.

**D. Base Flood Elevation** means the water surface elevation having a one-percent possibility of being equaled or exceeded in any given year.

**E. Basement** means any area of a building having its floor subgrade on all sides.

**F. Building** - see **Structure**.

**G. Breakaway Wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

**H. Development** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation, or storage of equipment or materials.

**I. FEMA** means the Federal Emergency Management Agency.

**J. Flood or Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. the overflow of inland or tidal waters.
2. the unusual and rapid accumulation or runoff of surface waters from any source.

**K. Flood Insurance Study** means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

**L. Flood Insurance Rate Map (FIRM)** means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of North Hampton.

**M. Floodplain or Flood-prone area** means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

**N. Flood Proofing** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

**O. Floodway** - see **Regulatory Floodway**.

**P. Functionally Dependent Use** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

**Q. Highest Adjacent Grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**R. Historic Structure** means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior, or
  - b. Directly by the Secretary of the Interior in states without approved programs.

**S. Lowest Floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**T. Manufactured Home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

**U. Manufactured Home Park or Subdivision** means a parcel (or contiguous parcel(s) of land divided into two or more manufactured homes, lots for rent or sale.

**V. Mean Sea Level** means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**W. New Construction** means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**X. Recreational Vehicle** means a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. designed to be self-propelled or permanently towable by a light duty truck; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. \*3/8/1994

**Y. Regulatory Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Z. Special Flood Hazard Area** See **Area of Special Flood Hazard**.

**AA. Structure** means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**BB. Start of Construction** includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of pilings, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

**CC. Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**DD. Substantial Improvement** means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:

1. the appraised value prior to the start of the initial repair or improvement, or
2. in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code

specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**EE. Violation** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

**FF. Water Surface Elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood-plains.

**504.3** All proposed development in any special flood hazard areas shall require a permit. The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

**A.** be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

**B.** be constructed with materials resistant to flood damage,

**C.** be constructed by methods and practices that minimize flood damages, and

**D.** be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**504.4** Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

**504.5**

**A.** For all new or substantially improved structures located in Zones A, AE, or AO, the applicant shall furnish the following information to the building inspector:

**1.** the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.

**2.** if the structure has been flood proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood proofed.

**3.** any certification of flood proofing.

**B.** For all new construction or substantially improved buildings located in Zone VE, the applicant shall furnish the Building Inspector records indicating the as-built elevation of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) in relation to mean sea level and whether or not the structure contains a basement. The Building Inspector shall maintain the above



information for public inspection, and shall furnish it upon request.

**504.6** The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

**504.7**

**A.** In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Planning Board, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Planning Board, including notice of all scheduled hearings before the Wetlands Bureau and for hearings before the Planning Board regarding Section 501 - Wetlands Conservation District.

**B.** The applicant shall submit to the Planning Board, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

**C.** The Planning Board shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

**1.** "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

**D.** Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**E.** Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

**504.8**

**A.** In special flood hazard areas the Building Inspector shall determine the base flood elevation in the following order of precedence according to the data available:

**1.** In zones AE and VE refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

**2.** In Zone A the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

**3.** In Zone A when a base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

**4.** In zone AO the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least 2 feet.

**B.** The Building Inspector's base flood elevation determination will be used as criteria for requiring in zones A, AE, and AO that:

**1.** All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation;

**2.** that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood level; or together with attendant utility and sanitary facilities, shall:

**a.** be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

**b.** have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

**c.** be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

**3.** All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

**4.** Recreational vehicles placed on sites within Zones A and AE shall either:

**a.** be on the site for fewer than 180 consecutive days,

**b.** be fully licensed and ready for highway use, or

**c.** meet all standards of Section 504.3 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 504.8.B.3. \*3/8/1994, 3/10/2015

**5.** For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

**a.** the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

**b.** the area is not a basement;

**c.** shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

**6.** Proposed structures to be located on slopes in special flood hazard areas, zone AO shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

**504.9** The following regulations shall apply to all new and substantial improvements including all manufactured homes to be placed or substantially improved in coastal high hazard areas, designated as VE on the Flood Insurance Rate Map:

**A.** All new construction or substantial improvements are to be elevated on pilings and columns so that:

**1.** The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation;

**2.** The pile or column foundation and structure attached thereto is anchored to resist floatation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

**B.** A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this item.

**C.** The space below the lowest floor must be free of obstructions or constructed with non-supporting breakaway walls, open lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be usable solely for the parking of vehicles, building access, or storage.

**D.** The use of fill for the structural support of buildings is prohibited.

**E.** Man-made alterations of sand dunes which would increase potential flood damage are prohibited.

**F.** All new construction or substantial improvements within zone VE on the FIRM shall be located landward of the reach of mean high tide.

**G.** All recreational vehicles placed on sites within Zone VE shall either: be on the site for fewer than 180 days; be fully licensed and ready for highway use; or meet all standards of Section 504.3 of this ordinance and all of the above requirements of Section 504.9.

#### **504.10 Variances and Appeals**

**A.** Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

**B.** If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

**1.** that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

**2.** that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

**3.** that the variance is the minimum necessary, considering the flood hazard, to afford relief.

**C.** The Zoning Board of Adjustment shall notify the applicant in writing that:

**1.** the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and

2. such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

**D.** The community shall:

1. Maintain a record of all variance actions, including their justification for their issuance, and
2. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## **ARTICLE VI – SPECIAL USE REGULATIONS**

### **SECTION 601 CRITICAL AND UNIQUE AREA REGULATIONS**

**601.1** The Planning Board shall adopt Regulations and Standards that will protect areas identified on the natural Resource Map having severe limitations to development or that are unique to the Town of North Hampton or the State of New Hampshire and shall administer such regulations under the "Subdivision Regulations." \*3/10/1981

#### **601.2 Historical Sites**

The purpose of this section is to preserve existing antiquities so that future generations may gain an appreciation and understanding of the Town's past. These antiques are hereafter designated as Historical Sites. A Historical Site is an area, a location, or an object, which has been registered and recorded as having historical significance. Examples of Historical Sites include, but are not limited to, buildings, cemeteries and monuments, etc. Due to the limited resources of the Town, property owners are encouraged to maintain restore, protect and identify Historical Sites. \*3/10/1981

**601.3** The Select Board shall appoint an Heritage Commission in accordance with RSA 674:44-a and RSA 674:44-b, which shall assist in the identification and recording of the above mentioned Historic Sites and shall assume the powers and duties of the Historic District Commission which it replaces. Said Heritage Commission shall consist of five members appointed by the Select Board. \*3/11/1997, 5/8/2012

### **SECTION 602 AGRICULTURE**

#### **602.1 Purpose**

Until the early 20th Century, the Town of North Hampton was a rural community of farms, and the majority of its residents grew most of the food that they and their livestock consumed. Though times have changed, the residents of North Hampton continue to value the rural aspects of the town. They wish to encourage the establishment of new farms and agricultural activities, and to facilitate the continued operation and maintenance of its existing well-managed farms. The purpose of this Section 602 Agriculture of the North Hampton Zoning Ordinance is to promote agricultural activities in Town, while ensuring that these activities are suitable for the context in which they occur.

#### **602.2 Authority**

This Article is based on the provisions and authority of New Hampshire:

RSA 21:34-a I-VI Farm, Agriculture, Farming

RSA 432:33 Right to Farm; Immunity from Suit

RSA 672:1 (III-b) Declaration and Purpose

RSA 672:1 (III-d) Declaration and Purpose

RSA 674:21 Innovative Land use Controls

RSA 674:26 Districting Under Interim Zoning Ordinance

RSA 674:32-a through c, Agricultural Uses of Land

**602.3 Definitions**

**A. Agriculture or Agricultural Operation:** “Agriculture” and “Agricultural Operation” mean any farming activity that involves the cultivation of plants or the raising of livestock – including animals or poultry as defined in RSA21:34-a.

**B. Farm Stand:** “Farm Stand” means a temporary or permanent structure located on a property and used to display and sell agricultural products.

**C. Plant Cultivation Operation:** “Plant Cultivation Operation” means an agricultural operation consisting of the cultivation and tillage of soil for the purpose of producing crops.

**D. Animal Husbandry Operation:** “Animal Husbandry Operation” means an agricultural operation concerned with the production and care of domestic animals.

**E. Farmer’s Market:** “Farmer’s Market” means an event or series of events at which two (2) or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to products of agriculture.

**F. Accessory Structure for Agriculture:** “Accessory Structure for Agriculture” is used only for agriculture purposes and shall both have the same definition as “Accessory Structure” and meet the same setback and other requirements. \*3/12/2019

**G. Animal Density:** “Animal Density” means the number of animals or poultry in an animal husbandry operation.

**H. Agricultural Product:** “Agricultural Product” means any agricultural commodity or product derived from crops grown under cultivated conditions or livestock and poultry raised for human or livestock consumption.

**602.4 Applicability**

**A.** Provided that the agricultural activity complies with all provisions of this ordinance, it is permitted in all districts in the Town of North Hampton (I-B/R, R-1 and R-2).

**B. Permitted Uses**

The following operations are permitted under this Article:

**1.** Plant Cultivation Operations consisting of:

**a.** The cultivation, conservation, and tillage of the soil;

**b.** The storage, use of, and spreading of fertilizer, lime, wood ash, sawdust, compost, animal manure, and, other lawful soil amendments;

**c.** The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to forestry or lumbering operations; berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence;

**d.** Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.

2. Animal Husbandry Operations consisting of:
  - a. The raising and sale of livestock, which shall include but not be limited to dairy cows and the production of milk, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elephus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*);
  - b. The breeding, boarding, raising, training, riding instruction, and selling of equines;
  - c. The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products;
  - d. The raising, breeding, or sale of poultry, game birds and eggs;
  - e. The raising of bees and the sale of honey;
  - f. The raising, breeding, or sale of domesticated strains of fur-bearing animals.
3. The operation of roadside Farm Stands
4. The operation of Farmer's Markets
5. Any practice on the farm incident to, or in conjunction with such farming operations, including, but not restricted to:
  - a. Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm;
  - b. The transportation to the farm of supplies and materials;
  - c. The transportation of farm workers;
  - d. Forestry or lumbering operations;
  - e. The marketing or selling at wholesale or retail, on-site and off-site, any products from the farm;
  - f. The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II (a)(4);
  - g. The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

## **602.5 General Requirements**

### **A. Public Health, Safety, and Welfare**

Nothing in this ordinance shall apply to any aspect of an Agricultural Operation determined to be injurious to public health or safety under RSA 147. Nothing in this ordinance shall be deemed to modify or limit the duties and authority of the Department of Environmental Services under RSA 485 or RSA 485-A or the Commissioner of the Department of Agriculture, Markets, and Food under Title XL.

### **B. Restrictions and Lot Size Regulations**

#### **1. Plant Cultivation Operations**

All Plant Cultivation operations may be conducted on lots of any size provided that these plant cultivation operations comply with provisions of this ordinance and the New Hampshire Department of Agriculture and Food & Markets: "*Manual of Best Management Practices (BMPs) for Agriculture.*"

#### **2. Animal Husbandry Operations (Not Otherwise Prohibited under Section 202.8)**

##### **a. Lots of Four (4) Acres or More**

All Agricultural Operations, including Animal Husbandry, may be conducted on lots consisting of four (4) acres or more provided that these Agricultural Operations comply with the provisions of this ordinance and the New Hampshire Department of Agriculture and Food & Markets: "*Manual of Best Management Practices (BMPs) for Agriculture.*"

**b. Lots of Less Than Four (4) Acres**

**i.** Roosters. Regardless of the number of animals or poultry on a lot of less than four (4) acres, husbandry of poultry that includes one (1) or more roosters shall require a Conditional Use Permit as provided under subparagraph **(iv)** below.

**ii.** Animal Husbandry Operations involving no more than four animals, no more than 12 poultry per lot, and no roosters may be conducted on lots consisting of less than four (4) acres provided that these Operations comply with the provisions of this ordinance and the New Hampshire Department of Agriculture and Food & Markets: *“Manual of Best Management Practices (BMPs) for Agriculture.”*

**iii.** Conditional Use Permit Required. Animal Husbandry Operations involving more than four (4) animals per lot or more than twelve (12) poultry per lot or one (1) or more roosters may be conducted on lots consisting of less than four (4) acres provided that these Operations comply with the provisions of this ordinance and the New Hampshire Department of Agriculture and Food & Markets: *“Manual of Best Management Practices (BMPs) for Agriculture”* and the Planning Board approves a Conditional Use Permit for these Operations.

**iv.** Conditional Use Permit Review. The following process shall be used by the Planning Board in considering applications for Conditional Use Permits under the preceding paragraph (Section 602.5.B.2.b.iii):

**a.** Application. An application shall be submitted to the Planning Board. The application shall contain details of the type and extent of the Animal Husbandry Operations proposed for the property, including the quantity and type of animals and/or poultry, location of pens or shelters, location of manure storage and plan for manure disposal. A hand-drawn approximately-to-scale rendering of proposed operations shall be acceptable for the application. \*3/8/2016

**b.** The Planning Board shall refer all applications for Conditional Use Permits under this Section to the Agriculture Commission for its advice and comments.

**c.** The Planning Board shall conduct a public hearing for which proper notice has been given to abutters and the public. Notice standards shall be the same as those that apply to Site Plan Review Applications.

**d.** The Planning Board shall have authority to impose reasonable conditions of approval that the Board deems appropriate under the specific circumstances presented in the application process and shall provide a written notice of decision to the applicant within five (5) business days of the date of the decision.

**e.** Fees. In order to encourage agricultural activities and reduce the financial burden on applicants, application fees for a conditional use permit for Animal Husbandry Operations shall be limited to the fee for certified, return-receipt-requested notifications to abutters in the Site Plan Review process.

**f.** Animal Density. Animal Density permitted on lots of less than four (4) acres shall be determined by best management practices for manure handling based on the New Hampshire Department of Agriculture manual entitled “Best Management Practices for Handling of Compost, Fertilizer and Manure,” AND The University of New Hampshire Cooperative Extension publication entitled “Guidelines for Space and Housing of Farm Animals,” by David C. Seavey and John C. Porter. In considering Animal Density the Planning Board shall give due weight to the area of contiguous upland in the parcel on which the Animal Husbandry Operation is proposed.

**g. Burden of Proof.** The burden of proof shall be on the applicant to demonstrate and specify the manner in which the operation shall be conducted in compliance with the New Hampshire Department of Agriculture and Food & Markets: *“Manual of Best Management Practices (BMPs) for Agriculture”* AND to demonstrate that the Animal Husbandry operation shall not cause pollution, soil degradation, unreasonable odor, unreasonable noise and disturbance of the peace.

### **C. Accessory Structures for Agriculture**

**1.** All structures erected to be used in the pursuit of agricultural activities and raising of animals and poultry shall be sited no closer to a public road than the principal structure on that lot unless attached to the principal structure by a common interior wall.

**2.** A Conditional Use Permit is required to allow siting in an alternate location. \*3/8/2016

**3.** Conditional Use Permit Review. The following process shall be used by the Planning Board in considering applications for Conditional Use Permits under the previous paragraph (Section 602.5.C.2):

**a.** An application shall be submitted to the Planning Board. The application shall contain details of the type and extent of the structure proposed for the property, including the proposed use of the structure. A hand-drawn approximately-to-scale rendering of the building shall be acceptable for the application.

**b.** The Planning Board shall conduct a public hearing for which proper notice has been given to abutters and the public. Notice standards shall be the same as those that apply to Site Plan Review Applications.

**c.** The Conditional Use Permit, if approved, shall not diminish the value of surrounding properties.

**d.** The Conditional Use Permit, if approved, shall not unreasonably adversely affect the public interests, safety, health, or welfare.

**e.** The Planning Board shall have authority to impose reasonable conditions of approval that the Board deems appropriate under the specific circumstances presented in the application process and shall provide a written notice of decision to the applicant within five (5) business days of the date of the decision.

**f.** Fees. In order to encourage agricultural activities and reduce the financial burden on applicants, application fees for a conditional use permit for the Accessory Structure for Agriculture location shall be limited to the fee for certified, return-receipt-requested notifications to abutters in the Site Plan Review process. \*3/8/2016

**4.** All structures erected to be used to house poultry shall be built above ground.

**5.** All structures erected to be used to house animals and poultry shall be situated on the property in a manner designed to avoid or minimize the spillage of noise, odors and other nuisances onto neighboring properties.

**6.** All structures erected to be used in the pursuit of agricultural activities shall adhere to Section 203.1-12 (Yard and Lot Requirements) and Section 203.13 (Height Regulations) of the North Hampton Zoning Ordinance.

### **D. Fencing**

Fencing shall be erected where necessary to prevent animals and poultry from intruding on abutting



properties or roadways in compliance with NH RSA 635:3-Trespassing Stock.

#### **E. Temporary Farm Stand**

1. A temporary or seasonal Farm Stand shall be a temporary and moveable structure which remains in place during the time period the agricultural products offered for sale at the Stand are in season and available. Farm Stands that are erected as permanent structures shall conform to Sections 203.1-12 (Yard and Lot Size Requirements) and 203.13 (Height Regulations) of the North Hampton Zoning Ordinance.
2. Temporary and moveable Stands shall be located at least 15 feet from nearest edge of roadway surface, providing that siting of the stand does not create a road or traffic hazard, does not impede the flow of traffic on the adjacent road, does not reduce the sight lines on the adjacent road and does not conflict with State DOT regulations;
3. Farm Stands shall be limited to 80 square feet of gross floor or ground area and shall be of a style consistent with a New England farm setting. Colors used on the stand shall be subdued and compatible with other structures on the property where the stand is located.
4. Off road parking shall be available to farm-stand customers consistent with NH DOT guidelines;
5. Agricultural signage shall comply with North Hampton Zoning Ordinance Section 303.5 if displayed on residential lots or Section 303.6 if displayed on commercial lots. \*3/14/2017
6. Items for sale at a Farm Stand shall be agricultural products grown, harvested, raised or produced by the farm owner or neighboring farm owners.

#### **602.6 Administration and Enforcement**

##### **A. General**

The Planning Board shall be responsible for the administration of this ordinance.

##### **B. Manuals and Guideline Publications**

Copies of the New Hampshire Department of Agriculture and Food & Markets: "Manual of Best Management Practices (BMPs) for Agriculture" and the University of New Hampshire Cooperative Extension publication entitled "Guidelines for Space and Housing of Farm Animals" shall be kept on file in the Administrative Office of the Town and at the North Hampton Public Library and shall be available for public use. These publications are also available on line at:

<http://www.nh.gov/agric/divisions/markets/documents/bmp.pdf> and

[http://extension.unh.edu/resources/resource/471/Housing\\_and\\_Space\\_Guidelines\\_for\\_Livestock](http://extension.unh.edu/resources/resource/471/Housing_and_Space_Guidelines_for_Livestock).

##### **C. Complaints**

Violations to this Zoning Ordinance shall be enforced by the local code enforcement officer and/or in conjunction with provisions to resolve complaints specified in RSA 431:33-35 and in Free Mediation Complaint Resolution: New Hampshire Department of Agriculture and Food & Markets: "Manual of Best Management Practices (BMPs) for Agriculture."

##### **D. Penalties and Fines**

Any violation of this ordinance shall be subject to civil fine or criminal penalty as provided by law. The Select Board or its designee is hereby designated as the proper local authority of the Town to institute appropriate action.

**E. Conflicting Provisions**

Where these regulations are in conflict with other local, state or federal ordinances, the more stringent shall apply.

**F. Validity**

If any part of this ordinance shall be declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other part of this ordinance. \*5/10/2011

**SECTION 603 CONSERVATION SUBDIVISION DESIGN \*3/11/2008****603.1 Authority**

**A.** This ordinance is adopted pursuant to RSA 674:21.II which states that an innovative land use control ordinance may provide for administration of the ordinance, including the granting of conditional or special use permits, by the Planning Board.

**B.** All subdivisions governed by this ordinance shall require the issuance of a Conditional Use Permit by the Planning Board. The conditions that must be satisfied in order for the permit to be issued are all of the individual provisions of this ordinance. Requests for waivers from individual provisions of this ordinance must be written and the Planning Board must vote on each waiver request at a properly noticed public hearing.

**C.** Any person aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

**603.2 Purpose and Objectives**

The purpose of this regulation is to permit the implementation of innovative land use controls that preserve North Hampton's rural character and environmentally sensitive elements and that allow Conservation Subdivision design. The purpose of this Article is to:

**A.** Sustain the scenic quality and visual character of the town;

**B.** Promote the conservation, protection and sound management of the natural resource base; provide flexibility, creativity and efficiency in the location and design of residential developments, roads, facilities and infrastructure;

**C.** Encourage the permanent preservation of open space, agricultural and forested land, other natural resources including water bodies and wetlands, and historical and archeological resources;

**D.** Reduce sprawl by requiring a more efficient form of development that consumes less open land and conforms better than a conventional or grid subdivision to existing topography and natural features;

**E.** Enhance the quality of life by increasing open space and the public's access to land for walking and aesthetic enjoyment;

**F.** Promote a natural system of storm water management to minimize erosion and encourage aquifer recharge;

**G.** Implement the first General Principle of "A Vision for North Hampton" in the Master Plan of the Town of North Hampton: "As the state and region develop in the future, North Hampton should maintain

its rural New England seacoast character and heritage.”

### **603.3 Applicability**

**A.** This article represents an alternative development option for residential subdivisions. An applicant may choose to follow the provisions of this article instead of submitting an application for residential subdivision development that would be governed by Section 203.1-12, Yard and Lot Requirements, for the Town of North Hampton Zoning Ordinance.

**B.** This Article may be utilized in all zoning districts in the Town of North Hampton, including the I-B/R District, but this Article only applies to residential subdivisions. It does not apply to applications for site plan review for commercial, industrial, or retail development.

### **603.4 Subdivision approval required**

A Conservation Subdivision shall require Planning Board approval. If an applicant chooses to utilize this optional residential subdivision development ordinance, then the application for approval shall comply with the Planning Board’s subdivision regulations and procedures and the following requirements:

**A. Preliminary Consultation:** The Planning Board shall require a Preliminary Conceptual Consultation. At or prior to this meeting, the applicant shall submit a Sketch Plan. This should be done before any engineering needed for preliminary or final plans is begun. During the preliminary consultation, the Board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the Master Plan and basic requirements for the submission of a subdivision application.

**B. Design Review:** The Planning Board shall require a Design Review. At or prior to this meeting, the applicant shall submit a site analysis showing the surrounding area and the physical features and character of the site as specified by step one of the four-step design process. The design review may include more specific design and engineering details than the Preliminary Consultation and should include the four-step design process described in Section 603.10 below. Design review requires notice to abutters and other parties as identified in RSA 676:4,I(d). The Preliminary Consultation and the Design Review shall be separate and apart from formal consideration of the plan, and the time limits for the Board to act on a plan shall not apply until the formal application is submitted.

**C. Density:** The applicant shall submit a Yield Plan or Density Calculation, which shall be evaluated by and acceptable to the Planning Board.

**D. Maximum Density:** “Maximum Density” means the total number of dwelling units permitted on the Parent Lot after subdivision. Maximum Density in a subdivision under this ordinance shall not exceed the density for a conventional subdivision permitted in the underlying zoning district. The Planning Board may approve a Conservation Subdivision Design with the number of house lots allowed pursuant to the determination of Maximum Density, provided that the number of resulting house lots can be established on the Parent Lot. Allowable density shall never exceed permitted density in the underlying zoning district.

### **603.5 Criteria**

In evaluating the acceptability of proposed Conservation Open Space area(s), the Planning Board shall consider the extent to which the location and design of the area achieves these objectives:

**A. Master Plan.** The proposed development will be consistent with, and comply with, the general purpose, principles, goals, objectives, standards and provisions of the North Hampton Master Plan.

**B. Accessibility of Open Space.** The suitability of all Conservation Open Space shall be determined by the size, shape, topography and location for the proposed purpose, and shall be accessible to all intended users. Undivided Conservation Open Space shall be directly accessible to the largest practicable number of lots within the conservation subdivision.

**C. Ecosystem Function and Habitat Integrity.** Subdivisions shall be designed around both the Primary and Secondary Conservation Areas to conserve large enough contiguous blocks of land to retain ecosystem function and habitat integrity.

**D. Minimize Alteration of Natural Features.** The individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the natural, cultural and/or historic site features, and shall take those features into account in the placement of all structures.

**E. Narrow open-space strips** shall not be permitted unless the incorporation of the open-space strips provides a logical and practical link to, or expansion of, either existing or planned adjacent preserved open space, water bodies, watercourses, or trails, or serves to provide protection for natural resources.

**F. Avoid Fragmentation.** Efforts shall be made to minimize fragmentation of habitats and to provide corridors for wildlife movement among habitats.

**G. Interconnected Open Space.** Preserved Open Spaces shall be interconnected wherever possible to provide a continuous network of open-space lands within and adjoining the development. This includes connecting with preserved open space adjacent to the property.

**H. Common Open Space** shall be free of all structures except those permitted by the Planning Board as appropriate to the objectives of this ordinance and the welfare of the inhabitants of the subdivision.

#### **603.6 Flexibility**

**A.** Although this ordinance is designed to encourage flexibility and creativity consistent with the Conservation Subdivision Design concept, the following minimum standards shall apply. The minimum frontage required shall be 100 feet. The minimum lot width shall be 60 feet. No two single-family dwellings may be closer than 30 feet apart. Side setbacks shall be a minimum of 15 feet, and rear setbacks shall be a minimum of 10 feet. Front setback shall be a minimum of 30 feet. The subdivision shall meet all other dimensional criteria of the zoning ordinance and subdivision regulations except as specified in this Article.

**B.** No lot shall be permitted that will not provide adequate water supply or support a septic system, including a recharge area, except in a Conservation Subdivision for which a community water and/or septic system has been approved and approved by all agencies and boards with jurisdiction.

**C.** Upon written request by the applicant, the Planning Board may grant a waiver of one or more of the provisions of this Article as it deems appropriate, providing the Planning Board first shall determine the following:

1. The waiver is related to unique physical conditions peculiar to the proposed subdivision;
2. Granting the waiver will not be contrary to the purposes and objectives of this Article; and
3. Granting the waiver will not adversely affect the public good.

#### **603.7 Conservation Open Space Requirements**

**A.** A minimum of 50% of the Buildable Area of the Parent Lot shall be included as Conservation Open

Space.

**B.** Conservation Open Space land shall not be further subdivided or developed.

**C.** Except for easements for utilities, Conservation Open Space land shall not be used other than for Low Impact Recreation, conservation or agricultural purposes.

**D.** Notwithstanding the preceding paragraph, other uses or structures may be permitted by the Planning Board if it finds the uses in accord with this Article, its Purpose and Objectives.

### **603.8 Ownership of Conservation Open Space Areas**

Permanent provisions for the use, ownership, and maintenance of the Conservation Open Space shall be required by the Planning Board as a condition of approval in accordance with the Subdivision Regulations.

### **603.9 Protection of Conservation Open Space Areas**

**A.** All Conservation Open Space and included facilities shall be permanently protected by covenants, conservation easements, and/or deed restrictions running with the land. All such instruments shall be reviewed by Town Counsel and reviewed and approved by the Planning Board before any conveyance of individual lots to land owner(s). The Town shall hold an Executory Interest in any such easements.

**B.** Pursuant to RSA 674:21-a, the open space conservation area designation required by this ordinance shall be deemed to create a conservation restriction as defined in RSA 477:45.I which shall run with the land, and shall be enforceable by the municipality, or by the owner of any property which would be specially damaged by the violation of such restriction, regardless of whether any deed or other instrument conveying such restriction has been executed or recorded. An applicant's statement of intent to restrict development, submitted with or contained in an application that is subsequently approved shall be deemed a condition of the approval. The requirement for this statement is in addition to the requirements stated above in this ordinance for a recorded easement and deed.

### **603.10 Four-Step Design Process**

The applicant shall follow the four step design process, described below, when submitting the design for the subdivision. This four-step process shall be initiated at the design review stage and continued through the formal submission and review of an application with a full plan set.

The four-step design process includes the following elements:

#### **A. Step One: Identify Natural Resource Areas and methods to protect these areas**

**1.** Identify natural resource areas including wetlands, floodplains, steep slopes greater than 15 percent, surface water areas and groundwater resources including aquifers and wells, and existing conservation lands owned by the town or by a state or local conservation organization or a private entity.

**2.** Reference the "Conservation Audit and Stewardship Plan" by Christopher Kane, March 2007, NH Estuaries Project, and subsequent amendments as it pertains to the parcel being developed and abutting parcels.

**3.** Identify methods such as erosion and sediment control measures, riparian buffers, and protection of trees during the construction process to protect these resources from the impacts of development.

**4.** Where possible, utilize on-site infiltration of storm water to minimize runoff to abutting properties.

**B. Step Two: Locate the House Sites**

Locate potential building areas that take into account areas identified in step one and information on topography and soils.

**C. Step Three: Design Street Layout and Trails or Sidewalks**

1. Locate proposed streets and proposed trails or sidewalks in the development.
2. Incorporate wildlife-suitable culverts such as square or box culverts with a natural surface bottom to minimally disrupt wildlife habitat and passage.
3. Locate trails to connect with existing trail systems and provide sidewalks when necessary to connect with existing sidewalks and ensure pedestrian safety.

**D. Step Four: Draw Lot Lines**

Lot lines shall delineate boundaries of individual lots and shall be reasonably configured to provide clarity of ownership and ample space for the location of wells, septic systems, and other utilities as well as a building envelope for a single family home and a driveway. Driveway locations shall be shown on all plans.

**603.11 Definitions**

**A. Adjusted Tract Acreage:** The area of a parcel of land that remains after the Primary Conservation Areas have been subtracted. Note that it may contain Unbuildable Land – that is, land, for example, that was not buildable in the Parent Lot and that was not included in Conservation Open Space Areas.

**B. Buildable Area or Buildable Land:** The land area remaining from the Adjusted Tract Acreage when all Unbuildable Land is subtracted. It is the acreage on which density shall be based for both conventional and Conservation Subdivisions.

**C. Common Open Space:** Land within or related to a Conservation Subdivision development that is not individually owned, but may be fractionally owned by individual members of the development, and that is designed and intended for the common use or enjoyment of residents of the development or the public. Common Open Space is distinct from and does not include Conservation Open Space.

**D. Conceptual Consultation:** Non-binding discussions between a project developer and the Planning Board as provided in RSA 676:4 II. Conceptual consultation allows Board members to voice their concerns and suggestions about a proposed project without the necessity of providing formal public notice and is not subject to the normal time limitations on Planning Board review and approval of subdivision applications.

**E. Conservation Open Space:** Land in a Conservation Subdivision development site that is permanently set aside for public or private uses and shall never be developed. All lands within Conservation Open Space are required to be protected by both a permanent conservation easement, and deed restrictions that prohibit further subdivision and development and that set other standards safeguarding the site's special resources from changes that are not consistent with the permanent conservation purposes of this Conservation Subdivision ordinance. Primary Conservation Areas are not included in the term "Conservation Open Space." Conservation Open Space in a Conservation Subdivision shall equal at least 50% of the Buildable Area or Buildable Land of the Parent Lot being subdivided under this Article.

**F. Conventional Subdivision Plan:** Residential subdivision in which the Parent Lot is divided into house lots and streets, with the only open space typically being undevelopable wetlands, steep slopes, floodplains, and stormwater management areas.

**G. Density or Maximum Density:** The maximum number of house lots into which a parcel may realistically be subdivided under restrictions in the underlying zoning district. For purposes of calculating Maximum Density under a Conventional Subdivision Plan, applicant shall prepare, and the Planning Board shall decide whether to accept results of, either:

1. a Yield Plan or
2. a Maximum Density Calculation.

**H. Design Review:** As provided in RSA 676:4 II, non-binding discussions beyond conceptual and general discussions that involve more specific design and engineering details than Conceptual Consultation. Design Review may take the form of a visit to the site. The applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, the public, every engineer, architect, land surveyor or soil scientist whose professional seal appears on any plat submitted to the Planning Board shall be notified by certified mail, mailed at least 10 days prior to Design Review.

**I. Homeowners Association:** A private nonprofit association that is established by the developer to manage and support activities of the Conservation Subdivision. Membership in the association shall be mandatory for property owners in the Conservation Subdivision. Individual owners share common interests in open space and/or facilities and are responsible for preserving, managing and maintaining the common property, Common Open Space, and for enforcing certain covenants and restrictions. Articles of Association or Incorporation or any amendments thereto shall be subject to review by Town Counsel and review and approval by the Planning Board. As a condition of approval, the Town of North Hampton shall be granted an Executory Interest in all conservation easements burdening Conservation Open Space in Conservation Subdivisions approved under this ordinance.

**J. Low-Impact Recreation:** For the purposes of this regulation, this shall include but is not limited to activities such as hiking or birding. It shall not include the creation of formal recreation fields or structures intended for year-round use. For example, ice-skating on a natural pond is permitted, but a year-round ice-skating rink is not.

**K. Major Subdivision:** A parcel that is subdivided into four or more lots.

**L. Maximum Density Calculation:** The following mathematical method of determining the maximum number of house lots that could realistically be created on a Parent Lot:

1. Deduct from the Adjusted Tract Acreage all Unbuildable Land.
2. Reduce the resulting acreage by 10% to allow for land required for new streets.
3. Round to the nearest whole number (0.5 rounds to 1).
4. Divide this figure by the minimum lot size allowed in the underlying zoning district.
5. Dividend of “4” above equals the Maximum Density of the Parent Lot for the purposes of Conservation Subdivision.

**M. Parent Lot:** Any lot of record that existed prior to March 11, 2008, the date on which this ordinance went into effect.

**N. Preserved Open Space:** Open space protected by conservation easement.

**O. Primary Conservation Areas:** Land that may not be built on or developed pursuant to Federal, State or local law, which generally includes sensitive areas whose locations are predetermined by the boundaries of wetlands, lands that are generally inundated (under ponds, lakes, creeks, etc.); land within the 100-year floodplain; land that is excessively steep (that is, slopes exceeding 15%); or soils subject to slumping.

**P. Protected Natural Resource Areas:** Shall be consistent with the policies contained in the Open Space, Recreation, and Environmental Resources elements of North Hampton's Master Plan, and shall include areas identified by North Hampton's Conservation Audit and Stewardship Plan, such as, but not limited to: prominent ridgelines, important streams, mature woodlands, aquifer recharge areas, areas with highly permeable ('excessively drained') soil, significant wildlife habitat areas, important upland forest, meadows, pastures, farm fields, archaeological or cultural assets, water quality protection areas, and sections of an ecologically connected matrix of natural areas significant for wildlife habitat.

**Q. Sketch Plan:** A lightly drawn conceptual sketch provided by the applicant at the earliest possible time, well before formally engineered plans are drawn up.

**R. Secondary Conservation Areas:** A broad category of open space determined by the Planning Board that may include mature woodlands, prime farmlands, sites of historic, archaeological or cultural interest, or connections to greenways or trails. In delineating Secondary Conservation Areas, priorities shall involve determining more special, unique, irreplaceable, environmentally valuable, historic, or scenic characteristics of the site.

**S. Stream Corridors:** Areas of land alongside streams designated for public or private access.

**T. Tract:** An area, parcel, site, piece of land, or property, which is the subject of a subdivision or development proposal and application.

**U. Unbuildable Land:** Any land area, in addition to a Primary Conservation Area, that is unsuitable for building such as, but not limited to, wetlands, excessively steep slopes (that is, slopes exceeding 15%), rock outcroppings, pre-existing septic fields, pre-existing rights-of-way and utility easements, land under pre-existing permanent easement that prohibits future development, and footprints of common recreational facilities.

**V. Yield Plan:** A plan submitted by the applicant showing a feasible Conventional Subdivision Plan conforming to all requirements of the specific underlying zoning district in which the property is located. Such plans shall be conceptual in nature and are not intended to require significant engineering costs – that is, engineering costs that are customary for preparing a formal application for subdivision review by the Planning Board. They shall consist of conventional lot and street layouts, shall conform to the Town's regulations governing lot dimensions, buildable land, street design and, if appropriate, parking. The yield plan shall contain information about soil types as well as steep slopes that would limit development. The purpose of the Yield Plan is to determine the maximum number of house lots that could realistically be created on a tract. \*3/11/2008

### **603.12 Existing Ordinances**

Nothing contained in this ordinance shall be construed as repealing or modifying any other ordinance or regulation of this Town, except such as may be specifically repealed or modified by this ordinance, but shall be in addition thereto. Nor shall anything in this ordinance be construed as repealing or modifying any private restrictions placed upon property by covenant, deed, or other private agreement, or any



restrictive covenants running with the land to which the Town is a party, but shall be in addition thereto. Whenever provisions of this ordinance differ from those prescribed by any statute, other ordinance or other regulation or restriction, that provision which imposes the greater restriction or the higher standard shall govern.

### **603.13 Penalty**

Every person, firm or corporation violating any of the provisions of this ordinance shall be subject to all penalties and remedies available under applicable law, including but not limited to RSA 676:17 as same may be amended from time to time.

### **603.14 Saving Clause**

If any Article, section, sub-section, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of these regulations.

## **SECTION 604 INCLUSIONARY HOUSING ORDINANCE \*3/10/2009, 3/12/2013**

### **604.1 Preface**

This Inclusionary Housing Ordinance shall be in force and effect if and only if the Planning Board has found that the percentage of housing units in the Town of North Hampton's housing stock that meet legal and regulatory standards for classification as workforce housing does not equal or exceed the Town's "Fair Share" of workforce housing.

At least once per year, and no later than April 15<sup>th</sup> of each year, therefore, the Planning Board shall use the Rockingham Planning Commission's most up-to-date "Regional Housing Needs Assessment" and "Regional Fair Share Analysis," along with any other information deemed relevant, to determine:

**A.** The percentage of the Town's housing stock that should meet standards for classification as workforce housing in order for the Town to provide its Fair Share;

**B.** Whether the Town's actual percentage of workforce housing units equals or exceeds the Town's Fair Share of such housing; and

**C.** If the Town's actual percentage of workforce housing units is less than its Fair Share, the percentage of units, the "Development Fair Share", that must be guaranteed in any site plan or subdivision plan proposed under this Ordinance.

The Board's determinations shall be on record and available for inspection by the public in the Planning and Zoning Department during normal business hours.

### **604.2 Purpose**

The Town of North Hampton has a legal and moral responsibility to provide its "fair share" of "workforce housing" as defined under RSA 674:58-61. The purposes of this Article are as follows:

**A.** To provide, over time, the town's "fair share" of "workforce housing," as determined on the basis of the Rockingham Planning Commission's "Regional Housing Needs Assessment" and the Rockingham Planning Commission's "Regional Fair Share Analysis," both published from time to time, and data about the cost of housing in town relative to income standards defined under RSA 674:58-61;

**B.** To encourage and provide "realistic and reasonable opportunities" for the development of "workforce housing" as defined in RSA 674:58-61;

C. To ensure the continued affordability of workforce-housing dwelling units for home ownership and rental by low to moderate income households that are developed under provisions of this Article;

D. To meet goals related to housing set forth in the town's Master Plan; and

E. To comply with the requirements of Chapter 299, Laws of 2008, an act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61).

**604.3** In the course of implementing this Article, the Town of North Hampton has considered the region's affordable housing needs as described in the Rockingham Planning Commission's Housing Needs Assessment and the Rockingham Planning Commission's Regional Fair Share Analysis.

#### **604.4 Authority**

A. This Article is an innovative land use control provision adopted under the authority of RSA 674:21, including the conditional use permit provision of RSA 674:21, II; and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009, which states:

All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

B. The Planning Board may adopt regulations, in addition to or instead of existing Site Plan Review and Subdivision Regulations, needed to implement this Article, including but not limited to regulations that assure that applications for affordable workforce housing do in fact provide such housing and that ensure that such housing approved under this article remains affordable.

#### **604.5 Applicability**

A. Provided that the proposed development meets reasonable environmental standards and conditions for use of the land – including but not limited to standards and conditions for septic systems, wells for potable water, and storm water management - development in accordance with the provisions of this Article is permitted as a conditional use in the following districts and only in these districts:

1. Industrial-Business/Residential District ("I-B/R")
2. R-1 High Density Residential District

Taken together, these districts comprise a majority of the land area of North Hampton that is zoned to permit residential use.

#### **B. Permitted Uses**

**1. I-B/R District:** Single-family, duplexes, multi-family and manufactured housing or a mix of housing types within the same development, or a mix of commercial and multi-family housing are permitted in an application under this Article. In this respect, provisions of this article take precedence over conflicting provisions of the underlying district in which the development is approved.

**2. R-1 High Density Residential District:** Single-family housing (including manufactured housing), duplexes, or a mix of these housing types within the same development are permitted in an application

under this Article. In this respect, provisions of this article take precedence over conflicting provisions of the underlying district in which the development is approved.

### **C. Appeal**

Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

## **604.6 Procedural Requirements/ Applicant**

### **A. Notice of Intent to Build Workforce Housing**

Any person who applies to the Planning Board for approval of a development intended to qualify as workforce housing under this Article shall file a written statement of such intent as part of the application.

### **B. Waiver**

Failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61 to use the accelerated appeal mechanism and to challenge the cost of conditions of approval, but shall not preclude an appeal under other applicable laws.

### **C. Appeal**

In any appeal where the applicant has failed to file the statement required by this section, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

## **604.7 Planning Board Procedural Requirements**

### **A. Notice of conditions**

If the Planning Board approves an application to develop workforce housing subject to conditions or restrictions, within 144 hours (seven days) of that decision it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with those conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4.I (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

### **B. Submission of evidence to establish cost of complying with conditions**

Upon receiving notice of conditions and restrictions as described above, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within 60 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the Board's next meeting for which 10 days' notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the Board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

### **C. Final decision**

The Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Board, in which case it may

issue its final decision any time after the expiration of the period. If an applicant notifies the Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Board may issue its final decision without further action under this paragraph.

#### **D. Appeals**

Any person who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

#### **604.8 Definitions**

**A. Fair share:** “Fair share” means the percentage of dwelling units of specified types under RSA 674:58-61 that are required for the Town of North Hampton to demonstrate that the Town is providing the number of units of each type as indicated by the Rockingham Planning Commission’s Regional Fair Share Analysis.

**B. Development Fair Share:** The percentage of workforce housing units in a proposed subdivision that shall be equaled or exceeded for the application to qualify for review under this Inclusionary Housing Ordinance when the Planning Board has determined that this Ordinance is in force and effect. The Planning Board shall determine this percentage at least annually, as stated in the Preface above. It shall be calculated as the sum of Town's Fair Share percentage plus the product of 1.5 times the difference of the Town's Fair Share percentage of workforce housing units and the Town's actual percentage of workforce housing units (owner occupied plus renter occupied). (Development Fair Share = Town’s Fair Share Percentage + 1.5 x [Town’s Fair Share Percentage – Town’s actual percentage of workforce housing units]). By definition this percentage is a positive number when the Planning Board has determined that the Town is not providing its Fair Share of workforce housing units. The purpose of establishing this Development Fair Share standard is to ensure that, as site plans and subdivision plans are approved under this Ordinance, they tend to diminish - rather than to perpetuate or increase - any deficiency in the Town's Fair Share of workforce housing units.

**C. Affordable:** “Affordable” means housing with combined rental and utility costs or combined mortgage loan debt service, property taxes, and required insurance that do not exceed 30 percent of a household’s gross annual income.

**D. Multi-family housing:** “Multi-family housing” for the purposes of this Article, means a building or structure containing five (5) or more dwelling units with at least two (2) bedrooms in 50 percent of the units, with no more than 20 percent of those units having restrictions against children and with each unit designed for occupancy by an individual household.

**E. Reasonable and realistic opportunities for the development of workforce housing:** Opportunities to develop economically viable workforce housing within the framework of the Town’s ordinances and regulations adopted pursuant to this Article and consistent with RSA 672:1, III-e.

**F. Workforce housing/owner occupied:** Housing that is intended for sale and is affordable by a household with an income of no more than 100 percent of the median income for a four (4)-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Area (“HMFA”) or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Such dwelling units shall have at least two (2) bedrooms in 50 percent of the units,

with no more than 20 percent of those units having restrictions against children and with each unit designed for occupancy by an individual household.

**G. Workforce housing/renter occupied:** Rental housing that is affordable by a household with an income of no more than 60 percent of the median income for a three (3)-person household for the Portsmouth-Rochester HMFA as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Article.

**H. Area Median Income (AMI):** The median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the Town of North Hampton belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.

**I. Market Rate Housing:** Any units within a development, whether the unit is to be owner or renter occupied, that are intended to be available for sale or occupancy at the prevailing market value in the area for comparable real estate transactions – as determined, if necessary, by a certified residential real estate appraiser.

#### **604.9 Density**

**A.** A site plan or subdivision plan that proposes to guarantee a percentage of workforce housing units that is equal to or greater than the Town's "Development Fair Share" of workforce housing may be granted relief by the Planning Board from the minimum lot size, frontage, front-yard, side-yard and rear-yard setback requirements in the underlying district.

**B.** When applying the Town's "Development Fair Share" percentage to the total number of units proposed in an application under this Article results in a number that is not a whole number, the required number of workforce housing units shall be rounded up to the next whole number.

**C.** Relief from minimum lot size, frontage, front-yard, side-yard and rear-yard setback requirements in the underlying district may be granted as follows:

**1.** Minimum lot size for single-family dwellings, including manufactured housing units, under this Article shall be one-third (1/3) acre of contiguous upland as long as soil conditions permit the siting of requisite septic systems and wells within the decreased lot size

**2.** Minimum lot size for duplexes under this Article shall be one-half (1/2) acre of contiguous upland as long as soil conditions permit the siting of requisite septic systems and wells within the decreased lot size.

**3.** Minimum lot size for qualifying multi-family housing – including both rental units and units under condominium ownership - under this Article shall be one (1) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the proposed lot size. Thus, the minimum lot size for a qualifying multi-family housing proposal under this Article is two (2) acres.

4. Minimum lot size for qualifying multi-family housing in mixed-use developments in the Industrial-Business Residential District - including both rental units and units under condominium ownership - under this Article shall have minimum lot sizes as follows:

a. If the multi-family housing units are in one or more discrete buildings or attached to other buildings on the site and at ground level, in addition to the lot-size requirements for those other uses of the site, the minimum lot area required for such housing units shall be one (1) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the parcel on which the development is proposed. Thus, the minimum lot area requirement on the proposed site for a qualifying mixed-use, multi-family housing proposal of this type under this Article is two (2) acres in addition to lot-size requirements for other uses of the lot.

b. If the multi-family housing units are on the upper floor or floors of buildings used for other purposes on the site, in addition to the lot-size requirements for those other uses of the site, the minimum lot area for such housing units shall be one-half (1/2) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the parcel on which the development is proposed. Thus, the minimum previously undeveloped lot area on the proposed site for a qualifying mixed-use, multi-family housing proposal of this type under this Article is one and one-half (1 1/2) acres in addition to lot-size requirements for other uses of the lot.

5. Minimum frontage for lots for all types of workforce housing units shall be 100 feet.

6. Minimum front-yard, side-yard, and rear-yard setback requirements for any structure approved under this Article shall be 15 feet.

#### **604.10 General Requirements of Workforce Housing Units**

##### **A. Architectural compatibility of all units**

The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market-rate dwellings of similar type, (i.e., workforce and market-rate multifamily units, workforce and market-rate single family homes) in the proposed development. The workforce units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from market-rate units.

##### **B. Phasing**

The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units, and occupancy permits for no more than 80 percent of all units shall be issued until all workforce housing units are certified for occupancy.

##### **C. Use of units**

No workforce housing units of any type, owner-occupied or rental, that are approved under this Article shall be leased or sublet to anyone other than the qualified owner or renter. All such units are intended for occupation as their primary residence by individuals or families whose incomes qualify them to purchase or rent these units and who have been properly qualified according to the provisions of this Article, Sections 604.11.A-B, below.

**D. Expansion or Modification of Units**

Expansion or modification of workforce housing units approved under this Article is permissible. However, two conditions shall apply in all cases:

1. Such expansion or modification shall not exempt the owner from continuing to meet applicable affordability standards; and
2. Such expansion or modification shall meet all Inclusionary Housing Ordinance restrictions current at the time it is proposed.

**604.11 Affordability****A. Affordability Monitoring Agent**

1. As a condition of approval, the applicant shall negotiate and submit written evidence that an agreement has been executed with a qualified third party, acceptable to the Planning Board, as Monitoring Agent for the development.
2. The Monitoring Agent shall review and approve all documentation required to ensure that affordability provisions of this Article are fully enforced and maintained initially and over the duration of the required period of affordability.
3. Said Agent shall not be changed without prior approval of the Planning Board.
4. Should said Agent cease to provide such services for any reason without due prior notice, the applicant, his/her successor or designee shall promptly notify the Planning Board and propose a successor Monitoring Agent for approval of the Board.
5. Said Agent shall submit annually a written report to the applicant and Planning Board that characterizes all transactions that have been reviewed by the Agent and states the sales prices or lease prices of all units subject to the Agent's purview.
6. Said Agent shall submit annually written certification that, during the reporting period, all units under his or her purview have continuously met affordability standards under this Article.

**B. Certification of Income Levels**

1. To ensure that only eligible households purchase or rent and occupy the designated workforce housing units in any development approved under this Article, the purchaser or renter of an affordable unit shall submit to the monitoring agent copies of his or her federal income tax returns for the three years immediately prior to occupancy and written certification that verifies that his or her annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance.
2. The tax returns and written certification of income and assets shall be submitted to the monitoring agent engaged by the developer of the housing units prior to the execution of any lease for any workforce-housing rental unit or execution of a purchase and sale agreement for any workforce-housing owner-occupied unit.
3. A copy of the tax returns and written certification of income and assets shall be submitted to the monitoring agent, not less than 30 days prior to the transfer of title of an owner-occupied unit or not less than 14 days prior to occupancy by the lessee of a rental unit.

**C. Assurance of Continued Affordability (Owner-occupied Units)**

1. Approval of applications to develop owner-occupied workforce-housing units offered for sale shall require that a lien, granted to the Town of North Hampton, be placed on each workforce-housing unit.
2. The initial value of the lien shall be equal to the difference between the fair market value of the unit, as determined by a certified residential real estate appraiser, and its reduced affordable sale price under this Section 604, which is indexed according to the qualifying income standards.
3. The Town's lien shall be increased over its term at a compound rate equal to the Consumer Price Index (CPI) for Shelter in the Boston metropolitan area.
4. Future maximum resale values shall be limited to the then current affordability standards for workforce housing.
5. In the event that the owner of any owner-occupied workforce-housing unit does not comply with provisions of Section 604.11.C.2-4 of this Section 604, the Town at its sole discretion may exercise its lien on the unit.
6. The combination of maintenance of the Town's lien and adherence to this Section 604's standards of affordability for workforce housing shall remain in force until such time as two criteria are satisfied, as of the filing date of any application for lien release:
  - a. **"Fair-share" criterion:** The Town has fully met its requirement for providing its "fair share" of workforce housing, and
  - b. **"First-in-first-out" criterion:** The unit in question is the first among units of its type that were approved as workforce-housing units under this Section 604, or the owner of all units that were approved earlier than the unit in question have:
    - i. Waived their right to mark their units to market prices or
    - ii. Not applied for lien release.
7. No lien release under Section 604.11.C.6 shall be granted until an owner has made an application to the Planning Board requesting a lien release and the Planning Board determines in its sole discretion that criteria (a) and (b) of Section 604.11.C.6 have been fully satisfied.

**D. Assurance of Continued Affordability (Workforce-housing Rental Units)**

1. Any increases in rent for workforce-housing rental units shall be limited to an amount that does not increase the rent to a level that exceeds the then current affordability limit under this Section 604.
2. Approval of applications to develop workforce-housing rental units shall require that a lien, granted to the Town of North Hampton, be placed on each building that includes such units.
  - a. The initial value of the lien shall be equal to the present value over a period of 20 years of the difference between the fair-market-value rental of the units and their reduced affordable rental under this Section 604.
  - b. The Town's lien shall be increased over its term at a compound rate equal to the annual rate of change in the difference between fair-market-value rental and affordable rental of the units.
  - c. In the event that the owner of any workforce-housing rental unit does not comply with provisions of Section 604.11.D.1 of this Section 604, the Town at its sole discretion may exercise its lien on the building in which this unit was approved.



3. This Section 604's standards of affordability for workforce-housing rental units shall remain in force until such time as two criteria are satisfied, as of the filing date of any application for lien release:
  - a. **"Fair-share" criterion:** The Town has fully met its requirement for providing its "fair share" of workforce housing, and
  - b. **"First-in-first-out" criterion:** The unit in question is the first among units of its type that were approved as workforce-housing units under this Section 604, or the owner of all units that were approved earlier than the unit in question have:
    - i. Waived their right to mark their units to market prices or
    - ii. Not applied for lien release.
4. No lien release under Section 604.11.D.3 shall be granted until an owner has made an application to the Planning Board requesting a lien release and the Planning Board determines in its sole discretion that criteria (a) and (b) of paragraph Section 604.11.D.3 have been fully satisfied.
5. As provided under Section 604.11.A.6 above, the Monitoring Agent shall certify at least annually that this Section 604.11.D is being enforced for all units under the Agent's purview.
6. **Transfer of ownership.** Conveyance of ownership of any rental units approved under this Section 604 shall require prior written approval of the Planning Board to ensure that any new owner understands the terms of this Section 604 and agrees to adhere to them. Such approval shall not be unreasonably withheld. A statement of this provision shall be included as a restriction on all deeds for rental units approved under this Section 604.
7. **Documentation of restrictions.** Deed restrictions, restrictive covenants, and contractual arrangements related to workforce-housing units approved under this Section 604 shall be noted on all plans filed with the Town's Planning Board and shall be registered at the Rockingham County Registry of Deeds.

#### **604.12 Administration, Compliance, and Monitoring**

- A. The Planning Board shall be responsible for administration, compliance and ensuring that monitoring requirements are met under this Section 604.
- B. **Certificate of Occupancy.** No certificate of occupancy shall be issued for a workforce-housing unit approved under this Section 604 without written confirmation of the income eligibility of the tenant or buyer of the workforce-housing unit by the monitoring agent and confirmation of the rent or price of the workforce-housing unit as documented by an executed lease or purchase and sale agreement and verified in writing by the monitoring agent.
- C. Ongoing responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of the monitoring agent, as defined in Section 604.11.A above.
- D. **Annual report.** The owner of a project containing affordable units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of affordable units have been maintained in accordance with this Section 604. Such reports shall be submitted to the monitoring agent and shall list the contract rent and occupant household incomes of all affordable housing units for the appropriate reporting period.

**E. Relationship to other ordinances and regulations.**

1. Except as specifically provided herein, no portion of this ordinance shall nullify provisions of the Zoning Ordinance - including, but not limited to, Zoning Ordinance Sections 502 and 503: Water Resources and Aquifer Protection - or of any other town ordinances which relate to environmental protection, water supply, sanitary disposal, traffic safety, or fire and life safety protection.

2. Where applicants for affordable housing propose a development of single family homes or mixed single family and multi-family homes, all provisions of the subdivision and site plan regulations shall apply, except as specifically waived by the Planning Board.

3. Where applicants for affordable housing propose a development of multi-family units, the site plan regulations shall apply except as specifically waived by the Planning Board.

**604.13 Conflict**

If any provision of this ordinance is in conflict with the provisions of other ordinances, except as specifically provided herein, the more restrictive provision shall apply. With respect to provisions relating to lot size, setbacks, or density the provisions of this ordinance shall apply.

**SECTION 605 WIRELESS TELECOMMUNICATIONS FACILITIES \*3/11/1997, 3/13/2018****605.1 Definitions**

**A. Alternative Tower Structure:** Shall mean innovative siting techniques that include man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**B. Antenna:** Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth whether it be integral to a tower, microwave or satellite dish structure.

**C. Dish:** Shall mean any parabolic or spherical microwave antenna reflecting surface structure used for telecommunications.

**D. FAA:** Shall mean the Federal Aviation Administration.

**E. FCC:** Shall mean the Federal Communications Commission.

**F. Height:** Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

**G. Preexisting Towers, Antennas and Dishes:** Shall mean any tower, antenna or dish lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

**H. Tower:** Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

**I. Wireless Telecommunications Facilities:** Shall mean any antenna, tower, or other structure, which is intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum-based transmissions/receptions.

#### **605.2 Purpose**

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

**A.** Preserve the authority of the Town of North Hampton to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to provide such services to the community quickly, effectively, and efficiently.

**B.** Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.

**C.** Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

**D.** Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.

**E.** Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon North Hampton.

**F.** Provide constant maintenance and safety inspections for any and all facilities.

**G.** Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger.

**H.** Provide for the removal or upgrade of facilities that are technologically outdated.

#### **605.3 Wireless Telecommunications Facilities District and Map**

The Wireless Telecommunications Facility District shall be an overlay district consisting of all land within 1000 feet of the center of the median on the west side of I-95, all unrestricted Town-owned land or land on which the Town owns the rights to develop such a facility, (excepting the Town Building Complex parcels on Atlantic Avenue), and land on which existing Alternative Tower Structures can be used. \*3/11/2003

#### **605.4 Permitted Uses within the Wireless Telecommunications Facilities District**

**A.** In addition to the uses permitted in the underlying zoning districts under Section 202, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Conditional Use Permit, as provided for in Section 605.7. All such uses must comply with other applicable ordinances and regulations of the Town of North Hampton. All applications for development of wireless telecommunications facilities shall submit to the full site plan review process, as specified in the Town's Site Plan Review Regulations, for the entire lot on which any

facility is proposed. \*3/11/2003

### **B. Principal or Secondary Use**

Antennas and towers may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of Telecommunications facilities as a secondary use as long as all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. \*3/11/2003

### **C. Height Requirements**

These requirements and limitations shall preempt all other height limitations as required by the Town of North Hampton Zoning Ordinance and shall apply only to telecommunications facilities.

	New Tower Construction	Co-location on Preexisting Tower	Co-location on Existing Structure
Wireless Telecommunications Facilities District	180 feet	Current Height +20%	Current Height +40 feet

### **D. Amateur Radio; Receive-Only Antennas**

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

### **E. Essential Services & Public Utilities**

Wireless telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this article.

## **605.5 Construction Performance Requirements**

### **A. Aesthetic and Lighting**

1. The guidelines in this subsection, shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements only if it determines that the goals of this ordinance are better served thereby.
2. Towers shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
3. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
4. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of

the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

5. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

6. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

### **B. Federal Requirements**

All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

### **C. Building Codes-Safety Standards**

To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

## **605.6 Additional Requirements for Wireless Telecommunications Facilities**

A. These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

### **B. Setbacks and Separation**

1. Towers must be set back a distance equal to 125% of the height of the tower from any unaffiliated structures, parking areas or lots, driveways, roads, developed areas or property lines. \*3/9/1999

2. Tower, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.

### **C. Security Fencing**

Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

### **D. Landscaping**

1. The carrier shall maintain a vegetative buffer at least as tall as the security fence, 360 degrees surrounding the facility, a minimum of twenty-five (25) feet deep starting at the fence, extending outward. The barrier shall be in keeping with the surrounding vegetation, where appropriate, and shall effectively screen the facility 365 days of the year. \*3/9/1999

2. The vegetation buffer shall be protected by a landscape easement or be within the area of the carrier's lease or ownership. The easement or lease shall specify that the trees within the buffer shall not be removed or topped unless the trees are dead or dying, present a hazard to persons or property, or as approved during site plan review. \*3/9/1999

3. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

#### **605.7 Conditional Use Permits**

##### **A. General**

All applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations. In addition, applications under this ordinance shall be required to submit the information provided for in this section.

##### **B. Issuance of Conditional Use Permits**

1. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

2. **Procedure on application:** The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations.

3. **Decisions:** Possible decisions rendered by the Planning Board, include approval, conditional approval, or denial. All decisions shall be rendered in writing, in accordance with RSA 676:3. In accordance with the National Wireless Telecommunications Siting Policy - Section 332(c)(47 U.S.C. 332(c)), a denial shall be based upon substantial evidence contained in the written record.

##### **4. Factors Considered in Granting Decisions:**

- a. Height of proposed tower or other structure does not exceed that which is essential for its intended use and public safety.
- b. Proximity of tower to residential development or zones.
- c. Nature of uses on adjacent and nearby properties.
- d. Surrounding topography.
- e. Surrounding tree coverage and foliage.
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- g. Proposed ingress and egress to the site.
- h. Availability of suitable existing towers and other structures as discussed in Section 605.7.B.6.d.
- i. Visual impacts on view sheds, ridge lines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- j. That the proposed facility/tower/dish will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or major view corridor.
- k. That the proposed facility/tower/dish is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.

5. **Plan Requirements:** Each applicant requesting a Conditional Use Permit under this ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including:

- a. A scaled elevation view; this shall be a 3-dimensional perspective color-rendered drawing of the proposed site and abutters property and buildings up to a radius of 1/2 mile.
- b. Topography
- c. Radio frequency coverage
- d. Tower height requirements
- e. Setbacks, adjacent uses (up to 200 feet away), and location of all buildings and structures within 500 feet of proposed tower
- f. Driveways and parking
- g. Fencing
- h. Landscaping

**6. Information Required:** In order to assess compliance with this ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

a. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

b. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process shall become part of the application requirements.

c. Each applicant for an antenna and or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

d. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence may consist of:

- i. Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
- ii. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
- iii. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- iv. Substantial evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- v. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- vi. Substantial evidence that the applicant can demonstrate other limiting factors that render existing

towers and structures unsuitable.

**vii.** Information on how many wireless facility sites each provider will require.

**viii.** Information on what sites outside of the Town of North Hampton are being considered for other sites.

**ix.** Information on how future technology would reduce or eliminate the need for tall antenna sites.

**x.** Information on how the siting of a wireless facility affects the ability to allow a competitor's antennas on the same property.

**xi.** Information on whether any, or all, of the wireless carriers use the system known as CMI/HIC which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones.

**xii.** Information on whether there are any of the carriers using CMI/HIC in other cities and towns.

**xiii.** Information on whether it is feasible for carriers to locate base station equipment underground.

**e.** The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of North Hampton.

#### **605.8 Security and Insurance**

**A.** Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall require the applicant to post security for the removal of abandoned or unmonitored towers consistent with Town policies. The Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable or unwilling to remove the tower in accordance with Section 605.9.

**B.** Upon construction of the tower, the Planning Board shall also require a certificate of appropriate insurance covering the constructed facilities, with ten-day notice of any changes in coverage.

#### **605.9 Removal of Abandoned Antennas and Towers**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days the Town may have the tower removed. The tower owner shall be responsible for payment of the costs associated with the tower removal. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

#### **605.10 Consultant Fees**

The Board may retain the services of a consultant qualified in wireless telecommunications services to review the application and all associated information. The Board may further require, pursuant to RSA 676:4 I(g), that the applicant reimburses the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.



**605.11 Waivers**

A. Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the North Hampton Zoning Ordinance, North Hampton Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other site features;
  - b. Availability of alternative site locations;
  - c. Geographic location of property; and
  - d. Size/magnitude of project being evaluated and availability of co-location.

**B. Conditions**

In approving waivers, the Board may impose such conditions, as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

**C. Procedures**

A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial. \*3/11/1997

**SECTION 606 SMALL WIND ENERGY SYSTEMS** \*5/11/2010, 3/13/2018**606.1 Purpose**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

**606.2 Definitions**

**A. Meteorological tower (met tower):** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**B. Modification:** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a

modification.

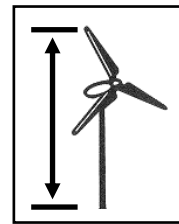
**C. Net metering:** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**D. Power grid:** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

**E. Shadow flicker:** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

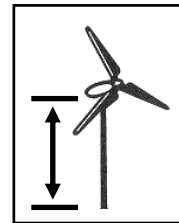
**F. Small wind energy system:** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**G. System height:** The vertical distance from the ground level to the tip of the wind turbine blade at its highest point, top of helix system or top of any other wind energy producing device permitted herein.



**H. Tower:** The monopole, guyed monopole or lattice structure that supports a wind generator.

**I. Tower height:** The height above grade of the fixed portion of the tower, excluding the wind generator.



**J. Wind generator:** Blades and/or mechanical and electrical conversion components mounted on the tower associated with the conversion of the kinetic energy of wind into rotational energy used to generate electricity.

### 606.3 Procedure for Review

#### A. Building Permit

Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

#### B. Application

Applications submitted to the Building Inspector shall contain a site plan with the following information:

1. Property lines and physical dimensions of the applicant's property.
2. Location, dimensions, and types of existing major structures on the property.
3. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
4. Tower foundation blueprints or drawings.
5. Tower blueprints or drawings.
6. Setback requirements as outlined in this ordinance.
7. The right-of-way of any public road that is contiguous with the property.
8. Any overhead utility lines.

9. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
10. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
11. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
12. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
13. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
14. List of abutters to the applicant's property.

### C. Abutter and Regional Notification

In accordance with RSA 674:66, the Building Inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the Building Inspector prior to the issuance of the building permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.

### 606.4 Standards

The Building Inspector shall evaluate the application for compliance with the following standards:

#### A. Setbacks

The setback shall be calculated by multiplying the minimum setback requirement number by the system height. The setback shall be measured from the center of the tower base to property lines, public roads, above-ground utility lines, or to the nearest point on the foundation of an occupied building.

Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.25	1.5

#### B. Tower

The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system.

1. In no situation shall the tower height exceed 150 feet.
2. All towers shall be freestanding, monopole structures.
3. Towers located in the Atlantic Flyway (in North Hampton that is point east of Mill Road) shall be considered on a case by case basis. The burden shall be on the Applicant to demonstrate that any proposed tower does not interfere with migratory water fowl.

#### C. Number

The number of small wind energy systems shall be limited to one per lot of record. The Planning Board shall have the authority to grant conditional use permits for additional systems on a single lot of record if the applicant demonstrates that:

1. Additional systems(s) do not create a nuisance to abutters.

2. The system(s) are not intended for commercial production of electricity.
3. Additional system(s) do not have a detrimental visual impact.
4. Additional system(s) do not present a hazard to public health, safety and welfare.

**D. Sound Level**

The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

**E. Shadow Flicker**

Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

**F. Signs**

All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

**G. Code Compliance**

The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

**H. Aviation**

The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

**I. Visual Impacts**

1. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
2. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
3. The color of the small wind energy system shall be painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
4. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

**J. Approved Wind Generators**

The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

**K. Utility Connection**

If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

**L. Access**

The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 10 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

**M. Clearing**

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

**606.5 Abandonment**

**A.** At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

**B.** Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to:

1. Removal of the wind generator and tower and related above-grade structures.
2. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

**C.** In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the Building Inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the Building Inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

**D.** If the owner fails to respond to the Notice of Abandonment or if, after review by the Building Inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the Building Inspector may have the small wind energy system removed at the owner's expense.

**E.** The Planning Board shall require the applicant to provide a form and amount of security acceptable to the Planning Board prior to the issuance of building permits to cover costs of the removal in the event the town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism to accommodate the rate of inflation over 15 years.

#### **606.6 Violation**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

#### **606.7 Penalties**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

**WARNING: THIS BEGINS A SECTION CONTAINING SEXUALLY  
EXPLICIT LANGUAGE**

### **SECTION 607 SEXUALLY ORIENTED BUSINESSES \*3/12/2002, 3/11/2008**

#### **607.1**

WHEREAS, there is convincing documented evidence that Sexually Oriented Businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, and a general degrading of the quality of life; and

WHEREAS, the North Hampton Planning Board wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral Ordinance that regulates the secondary effects of Sexually Oriented Businesses; and

WHEREAS, it is not the intent of the North Hampton Planning Board to condone or legitimize the distribution of obscene materials, and the North Hampton Planning Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the Town of North Hampton.

Pursuant to the authority granted by the Constitution and the Legislature of the State of New Hampshire, BE IT ENACTED BY THE PLANNING BOARD OF NORTH HAMPTON, NEW HAMPSHIRE, COUNTY OF ROCKINGHAM AS FOLLOWS:

#### **607.2 Purpose and Findings**

**A. Purpose:** It is the purpose of this Ordinance to regulate Sexually Oriented Businesses and related activities to promote the health, safety, and general welfare of the citizens of the Town of North

Hampton, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses within the Town of North Hampton. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene materials.

**B. Findings:** This ordinance is based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Town of North Hampton.

### **607.3 Definitions**

**A. SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult drive in theatre, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center as those terms are defined below.

**B. ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained, and which are intended to, or do, show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the simulating, depicting or describing of "specified sexual activities" or "specified anatomical areas."

**C. ADULT BOOKSTORE or ADULT VIDEO STORE** means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas;" or

2. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" generate 10% or more of the business's income, or account for 10% or more of inventory, or occupy 10% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

**D. ADULT CABARET** means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

1. Persons who appear in a state of nudity or semi-nudity; or

2. Live performances that are characterized by the exposure of "specified sexual activities" or by

"specified anatomical areas"; or

3. Films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

4. Persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

**E. ADULT DRIVE-IN THEATER** means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration to the persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

**F. ADULT MOTEL** means a hotel, motel or similar commercial establishment that:

1. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

**G. ADULT MOTION PICTURE THEATER** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**H. ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

**I. ESTABLISHMENT** means and includes any of the following:

1. The opening or commencement of any Sexually Oriented Business as a new business;
2. The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
3. The additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
4. The relocation of any Sexually Oriented Business; or
5. A Sexually Oriented Business or premises on which the Sexually Oriented Business is located.

**J. LICENSED DAY-CARE CENTER** means a facility licensed by the State of New Hampshire, whether situated within the Town of North Hampton or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age,



where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

**K. NUDE MODEL STUDIO** means any place where a person who appears in a state of nudity or displays "specified anatomical areas" for the purpose of being observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

**L. NUDITY or a STATE OF NUDITY** means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

**M. PREMISES** means the portion of real property upon which the Sexually Oriented Business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the Sexually Oriented Business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto.

**N. SEMI-NUDE OR SEMI-NUDITY** means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**O. SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. A principal business purpose exists if the services offered are intended to generate business income.

**P. SPECIFIED ANATOMICAL AREAS** means:

1. The human male genitals in a discernibly turgid state even if fully and opaquely covered;
2. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

**Q. SPECIFIED SEXUAL ACTIVITIES** means and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated; or
4. Excretory functions as part of or in connection with any of the activities set forth in 1 through 3 above.

#### **607.4 Location Restrictions**

Sexually Oriented Businesses shall be permitted in the I-B/R Zone (See official Town of North Hampton Zoning Map). Sexually Oriented Businesses are subject to all of the ordinances, regulations, requirements, and restrictions which pertain to the North Hampton I-B/R Zone, in addition to those set forth in this Ordinance.

**A. The Sexually Oriented Business may not be operated within:**

1. 500 feet of the property line of a Places of Worship, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
2. 500 feet of the property line of a public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;
3. 1,500 feet of the property line of a public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, or other similar public recreation land which is under the control, operation, or management of the Town or any of its Departments, Boards or Commissions;
4. 1,850 feet of the property lines of the Town “Municipal Complex” (Town Offices, Town Hall, Town Library, and Fire and Police Stations) located on Atlantic Avenue;
5. 300 feet of the property line of a lot used for residential purposes within the I-B/R zone, or zoned for residential use outside the I-B/R zone and devoted to a residential use as defined in the zoning code; or
6. 300 feet of any posted school bus stop;
7. 1,500 feet of the property line of another Sexually Oriented Business.
8. 300 feet of a town border.
9. 500 feet of the property line of any child-oriented business on a list of such businesses available for public inspection in the Planning and Zoning Office.
  - a. The Legislative Body shall adopt the list of child-oriented businesses at least quadrennially.
  - b. Town Staff Members in the Planning and Zoning Office shall prepare a map of the Town locating all child-oriented businesses that appear on the list and depicting all areas in which Sexually Oriented Businesses are prohibited under this Section 607.4.A.9. This map shall be available to the public in the Planning and Zoning Office.
  - c. The Planning Board shall review the list of child-oriented businesses at least annually; determine whether changes in local child-oriented business establishments warrant revision of the list, and as appropriate recommend that the Legislative Body adopt a revised list at Town Meeting.
  - d. At least quadrennially, the Planning Board shall prepare and place on the Town Warrant a list of child-oriented businesses for adoption by the Legislative Body. Should the Legislative Body fail to adopt the proposed list, the then current map of areas in which Sexually Oriented Businesses are prohibited shall remain in effect until the Legislative Body at a subsequent Town Meeting adopts a new list.
  - e. Examples of types of child-oriented businesses that may be placed on the list and map include, but are not limited to:

- i. clothing and shoe stores for minors,
  - ii. dance, gymnastics or martial arts studios that offer classes for minors;
  - iii. arts or crafts studios that offer classes for minors,
  - iv. learning centers (e.g., Sylvan Learning Center) that provide educational services for minors,
  - v. day-care centers for minors,
  - vi. facilities specifically for minors' activities or functions (e.g., Chuck E. Cheese's, game arcades),
  - vii. retail stores that sell products that focus on minors as customers (e.g., toy stores or hobby shops).
- \*3/11/2008

Sample List of Child-oriented Businesses (as of 15 November 2007):

<b>Child Orientated Businesses in North Hampton</b>	<b>Address</b>	<b>Map &amp; Lot</b>
Kids N Toe	112 Lafayette Road	013-026
MastersCenters/Karate, Martial Arts, Yoga	106 Lafayette Road	013-026
Learning Express	Lafayette Crossing	007-053
Wicked Fun Art	Fern Crossing	007-115
Brain Waves Learning Center	18 Lafayette Road	003-098-001
Atlantic Karate Training Center	18 Lafayette Road	003-098-001
Neal's N Gauging Trains	14 Lafayette Road	003-096
Imprint's Day School	2 Lafayette Road	003-089
Junior Gym	14 Lafayette Road	003-096
Karate – Mike Worobel Martial Arts	14 Lafayette Road	003-096
Stevens Miniature Golf	178 Lafayette Road	017-084-001
Luff Miniature Golf & Driving Range	22 North Road	017-108

**B.** Sexually Oriented Business may not be operated in the same building, structure, or portion thereof, containing another Sexually Oriented Business.

**C.** For the purpose of this Ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the premises of a Places of Worship, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or licensed day care center or other protected area described in this Section.

**D.** For purposes of 607.4.A of this Section, the distance between any two Sexually Oriented Business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

**E. Site Plan Approval**

Site Plan Approval, including change of use approval, by the North Hampton Planning Board shall be a prerequisite for the establishment of a Sexually Oriented Business or expansion or change from one or more types of sexually oriented business to another. The Planning Board may impose reasonable restrictions pursuant to RSA 674:43, including but not limited to buffers, outdoor lighting, signs, parking,

ingress and egress, pedestrian movement, landscaping, building aesthetics, as well as measures to ensure that displays of merchandise conform to NH RSA 571-B.

#### **F. Public Nuisance Per Se**

Violation of the use provisions of this Ordinance is declared to be a public nuisance per se, which shall be abated by the Town of North Hampton by way of civil abatement procedures.

#### **G. Limiting Clause**

Nothing in this Ordinance is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any Town of North Hampton Ordinance or statute of the State of New Hampshire regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

### **607.5 Exterior Portions of Sexually Oriented Businesses**

**A.** It shall be unlawful for an owner or operator of a Sexually Oriented Business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

**B.** It shall be unlawful for the owner or operator of a Sexually Oriented business to allow the exterior portion of the Sexually Oriented Business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Ordinance, or other provisions of the North Hampton Zoning Ordinance.

**C.** It shall be unlawful for the owner or operator of a Sexually Oriented Business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a Sexually Oriented Business if the following conditions are met:

- 1.** The establishment is a part of a commercial multi-unit center; and
- 2.** The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

**D.** Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a Sexually Oriented Business.

### **607.6 Signage**

**A.** Signage shall comply in all respects with all ordinances, codes or regulations governing signs, except that notwithstanding any other Town of North Hampton Ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any Sexually Oriented Business or any other person to erect, construct, or maintain any sign for the Sexually Oriented Business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

**B.** No sign containing obscene material shall be permitted. Material is “obscene” if, considered as a whole, to the average person:

- 1.** When applying the contemporary standards of the county within which the obscenity offense was committed, the predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts,
- 2.** It depicts or describes sexual conduct in a manner so explicit as to be patently offensive, and
- 3.** It lacks serious literary, artistic, political or scientific value. \*3/14/2017

**607.7 Separability**

If any section, subsection, sentence, clause, phrase or any portion of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

**607.8 Effective Date**

This Ordinance shall be enforced from and after passage by the 2002 Town Meeting.

**ARTICLE VII – ADMINISTRATION****SECTION 701 VALIDITY AND WHEN EFFECTIVE**

The invalidity of any section or provisions of this ordinance shall not invalidate any other section or provision thereof. This ordinance shall take effect upon its passage. \*3/6/1973

**SECTION 702 AMENDMENTS**

This ordinance may be amended in the manner prescribed in New Hampshire Revised Statutes Annotated, Chapter 31, Section 63-a and 63-b and subsequent amendments. \*3/6/1973

**SECTION 703 CONFLICT**

When the regulations made under the authority hereof differ from those prescribed by statute, ordinance or other regulation, that provision which imposes the greater restriction or the higher standard shall govern. \*3/6/1973

**SECTION 704 ENFORCEMENT**

**704.1** The enforcement of this Ordinance by the Building Inspector/Code Enforcement Officer in a consistent, fair, and nondiscriminatory manner is a critical element of zoning and public trust. Failure to do so will often result in a disservice to the public and frustration of the purposes of the Ordinance. Frequently, the Building Inspector/Code Enforcement Officer is the only administrative officer of the Town to whom is reserved the lawful capacity to enter upon, inspect and observe the actions of a private landowner, and the effect that certain actions may have on the private rights of abutters, other landowners, and the citizens of the Town.

**704.2** Variances, Special Exceptions and other orders or relief issued, made or granted, by the Zoning Board of Adjustment must be strictly construed, for reason that such are often based upon the representations made by an applicant and the case-specific intent of the language of the order of denial or relief granted. Authority to make changes or modifications specific to any order of denial, or relief, rests solely with the Zoning Board of Adjustment, which shall hold a Public Hearing to consider a new request for relief, properly filed by an Applicant in connection with any such prior order.

**704.3** The issuance of Building Permits and Certificates of Occupancy are tools used to secure compliance with zoning ordinances. The Building Permit application is intended to solicit information so that the Code Enforcement Officer can determine whether the proposed building and/or building site meets or complies with all municipal requirements and conditions of relief. Occupancy Certificates are used to enable the Town to ensure compliance with all regulations and conditions of relief post-construction, but prior to a building and/or building site's intended use.

**704.4** If, in the perspective of an Applicant, the Code Enforcement Officer/Building Inspector inappropriately acts with respect to the issuance of a permit or certificate, an administrative appeal may be filed with the Zoning Board of Adjustment pursuant to RSA 676:5; and/or a private right of action

may be brought by an aggrieved party pursuant to RSA 676:15. \*5/8/2012

## **SECTION 705 FINES**

Any person violating any of the provisions of this ordinance shall be subject to a fine as provided in RSA 676:17, as amended. \*3/12/1991

## **SECTION 706 PERMITS**

**706.1** No person shall commence in any part of North Hampton, construction, alteration, installation, electrical or plumbing work, removal, or demolition of a building or structure without obtaining a written permit for the same from the Building Inspector or other duly authorized enforcing agency and paying a fee in accordance with the fee schedule that can be obtained at the Building Inspector's office. Said fees shall be turned over to the Town Treasurer. The provision of this section shall not apply to maintenance work performed for the sole purpose of preserving, protecting or refurbishing when such maintenance involves no structural changes, no alteration to electrical wiring or plumbing systems, and any material removed is replaced with like material. Construction shall conform to the following national codes current editions, and as amended:

- International Building Code (IBD)
  - International Residential Code (IRC)
  - International Mechanical Code (IMC)
  - National Electric Code (NEC) (NFPA 70, NFPA 1 and NFPA 101)
  - International Plumbing Code
  - International Energy Conservation Code (IECC) \*3/08/2005
- In the event of conflicting codes, the most restrictive will prevail. \*3/10/1998

**706.2** No person shall commence installation, additions to or alterations of mobile homes in any existing trailer park without obtaining a written permit for the same from the Building Inspector and paying a fee. In cases where no legally constructed slab has been located under an existing mobile home and where possible, replacement mobile homes shall be located a minimum of 24 feet from all other mobile homes. In no case shall a replacement mobile home be located any closer to surrounding mobile homes, if the mobile home which was removed was closer than 24 feet to any other mobile home. \*3/10/1998

### **706.3 Footings Inspection**

**A.** All construction involving a permanent foundation may be required, at the discretion of the Building Inspector, to have a footing tie-in survey. This survey, with the results signed and sealed by a Licensed Land Surveyor, must be submitted to the Building Inspector before a Final Inspection will be scheduled.

**B.** Preliminary results must be available before foundation walls are constructed. Footing tie-in surveys should be scheduled to coincide with footing layout and construction so that the results are available for review by the Building Inspector before foundation walls are constructed. The results of the footing tie-in survey do not have to be formally presented in order for construction to continue but can be:

1. Conducted in the presence of the Building Inspector;
2. Written and presented informally (by fax, note, or letter) when requesting permission to construct foundation walls; or
3. Posted at the site for a scheduled Footing Inspection before commencing further construction.

### **706.4 Foundations require two (2) Inspections**

**A.** Footing Inspection

**B.** Foundation Wall Dam proofing/Backfill Inspection \*3/12/1991, 3/9/1999

**706.5 Permit Fees**

**A.** Where permit fees are mentioned in these ordinances, those fees shall be as set and published by the Select Board. \*3/9/1999

**B.** For any construction, installation, or alteration the permit fee shall be based on a fair estimate of the total cost or value of such work. \*3/10/1981, 3/9/1999

**706.6 Building or Structure Removal**

**A.** For any removal of a building or structure from one lot to another, the fee shall be based on the estimated condition after removal. \*3/10/1981, 3/9/1999

**B.** For any removal of a building or structure to a new location within the same lot, the fee shall be based on the estimated cost of moving, of new foundations and of work necessary to put the building or structure in usable condition in its new location. \*3/10/1981, 3/9/1999

**706.7 Demolition Fee**

**A.** For any demolition of a building or structure a fee shall be charged. \*3/2/1976, 3/9/1999

**706.8 Permit Renewals**

Building Permits are valid for one year. If construction has started, work is progressing, and the work is being inspected, the permit shall be valid until Final Inspection even if the period is more than a year. If no activity has taken place within the first year the permit shall be deemed abandoned and invalid after the year has passed. A twelve-month extension may be granted if application is made within the first twelve months of issuance of the original permit. \*3/10/1981, 3/9/1999

**706.9** For any construction, installation, or alteration of any new or existing sign that requires a permit, the minimum permit fee shall be based on a fair estimate for the total cost or value of such work. \*3/10/1981, 3/9/1999

**706.10** For the repair of any existing conventional waste disposal system, the minimum fee for a permit will be as set by the Select Board. \*3/10/1981, 3/9/1999

**706.11** Construction without permit. If construction is commenced prior to obtaining the necessary permits, the Building Inspector may assess a double fee for late filing. \*3/9/1982

**SECTION 707 CERTIFICATE OF OCCUPANCY**

**707.1** Occupancy and use of the building hereafter erected, structurally altered or moved, or any change in the use of the existing building, shall be unlawful unless a certificate of occupancy shall have been issued by the Building Inspector.

**707.2** No certificate of occupancy shall be issued for any special exception use of a building unless such use has been authorized by the Board of Adjustment. Every certificate of occupancy for which a special exception use has been authorized, or in connection with which a variance has been granted by the Board of Adjustment, shall contain, or have attached, a detailed statement of such special exception use or variance and of any condition to which the same is subject. \*3/11/2014

**707.3** Application for a certificate of occupancy for a new building or for an existing building which has been altered shall be made on forms provided by the Building Inspector, after the erection or alteration of such building or part thereof has been completed in conformity with the provisions of this ordinance or any duly secured special exception or variance. Such certificate shall be issued within ten

(10) days after receipt of said application, but only if all requirements of this and all other applicable ordinances or codes are complied with.

**707.4** Every certificate of occupancy shall state that the building or proposed use of a building complies with all provisions of law, and of this ordinance, of all other applicable codes or ordinances of the Town and, if applicable, with all provisions of any variance or requirements set forth for the special exception uses authorized by the Board of Adjustment.

**707.5** Upon written request by the owner, and upon payment of such fee as may be prescribed from time to time, the Building Inspector and Fire Inspector shall, after inspection, issue a Certificate of Occupancy for any building or use thereof, existing at the time of adoption of this ordinance, certifying the conformity of such use, (Including, if applicable, the number of employees) and of any structures or any lot with the provisions of this ordinance. \*3/10/1981

## **SECTION 708 DEMOLITION REVIEW** \*3/11/2014

### **708.1 Purpose**

To support identification, preservation, and documentation of North Hampton's historically significant structures, as well as, to clarify and formalize landowners' demolition rights. This ordinance therefore establishes time limits for the demolition permitting process, and encourages open dialogue between property owners and the Heritage Commission for documenting and potentially preserving buildings deemed historically significant. Participation in the demolition review process defined hereunder is voluntary on the part of any property owner seeking a demolition permit.

### **708.2 Definitions**

As used in this section, the following words or phrases shall have the meanings set forth below, except when the context in which they are used requires a different meaning.

**A. Building:** Building is defined as in the International Building Code and the International Residential Code, "any structure used or intended for supporting or sheltering any use or occupancy."

**B. Demolition Review Committee:** A subcommittee of the North Hampton Heritage Commission comprised of three (3) members of the Commission and two (2) alternates appointed by the Chair of the Commission.

**C. Demolition:** The act of pulling down, destroying, removing, or razing a building or commencing the work of total or substantial destruction with the intent of completing the same. It is not the intent of this article to include interior destruction which does not alter the exterior appearance of the building or structure.

**D. Code Enforcement Officer:** For the purposes of this article, this refers to the Code Enforcement Officer who is authorized to interpret and administer the building and/or zoning codes.

**E. Appurtenances:** Any element or feature of local historical or cultural significance.

### **708.3 Criterion**

Any building or part of a building in the Town of North Hampton will fall under the terms of this article where:

The building or substantial appurtenances to it are found by the Code Enforcement Officer to have been constructed more than fifty (50) years before the date of application for a demolition permit.



**708.4 Procedure**

When an application for a demolition permit or a building permit involving demolition, or a site plan review involving demolition is made, or a formal written application is submitted to the Code Enforcement Officer for a determination under this article, the Code Enforcement Officer will determine whether the building, or section of the building, meets the above criteria. If it does, the Code Enforcement Officer shall:

**A.** Notify the applicant in writing within five (5) business days of the filing that the demolition must be reviewed before proceeding and that the delay will not exceed 30 business days from the date of filing to the date on which demolition may begin.

**B.** Forward a copy of the application to each member of the Demolition Review Committee within five (5) business days of the date of filing. Demolition Review Committee must plan their review to be completed within 30 business days from the original date of filing.

**C.** Within five (5) business days of the Demolition Review Committee's receipt of a copy of the demolition application, the Committee shall issue a preliminary recommendation regarding granting a demolition permit.

**1.** If the Committee issues a recommendation, in writing, in favor of granting a demolition permit, a demolition permit may be issued without further action by the Committee.

**2.** If the Committee issues a recommendation, in writing, against granting a permit for demolition, no permit shall be issued until a more thorough investigation is undertaken and a final written recommendation is provided by the Committee to the Code Enforcement Officer -- except that in no event shall a permit be delayed more than 30 business days from the original date of filing outlined in Section 708.4.A.

**D.** During the review period, the Committee shall meet with the property owner, if the property owner has elected to participate, and conduct such public meeting(s) and investigation(s) as it may determine to be necessary in the formulation of its written recommendation regarding granting a demolition permit. The Committee shall consider the following criteria in its deliberation:

**1.** The building, or part of a building, is of such interest or quality that it would meet national, state or local criteria for designation as a historic, cultural, or architectural landmark.

**2.** The building or, part of a building, is of such unusual or uncommon design, texture, or materials that it could not be reproduced or, if it could be reproduced, could be reproduced only with great difficulty and expense.

**3.** The building or, part of a building is of such architectural or historic interest that its removal would be to the detriment of the public interest.

**4.** Retention of the building or, part of a building, would help preserve and protect an historic place or area of historic interest in the town.

**708.5 Demolition Review Committee Responsibilities**

It is the responsibility of the Demolition Review Committee to:

**A.** Make a decision within five (5) business days of receipt of the demolition application as to whether the building might be of historical or architectural significance.

**B.** Notify the Code Enforcement Officer in writing within two (2) business days of decision if the building is found to be not significant and demolition can proceed.

**C.** Notify the Code Enforcement Officer in writing within two (2) business days of decision if the building is found to be potentially historically or architecturally significant.

**D.** Establish a date and location for a public meeting to occur within twelve (12) business days of determination of potential significance. A notice of public meeting shall be posted in two (2) prominent places and the Town website within two (2) business days of decision. A public meeting, if deemed necessary, shall be properly posted and completed within 30 business days from the original date of filing established in Section 708.4.A above.

**E.** Hold the public meeting to hear all public testimony regarding demolition of the building. The applicant or representative of the applicant proposing the demolition shall be invited to attend the public meeting to hear the concerns or alternatives that are proposed by members of the public. Applicant shall be notified by certified mail, return receipt requested.

**F.** Notify the applicant and the Code Enforcement Officer within two (2) business days following the public meeting that the demolition may proceed if the building is found not to be significant.

**G.** If after the public meeting the Committee determines that the building is significant and its loss potentially detrimental to the community, a meeting shall be held between the Demolition Review Committee and the applicant (or applicant's representative) to discuss alternatives to the demolition. This meeting shall be scheduled within 30 business days from the original date of filing established in 708.4.A above, unless the applicant agrees in writing to extend the deadline.

#### **708.6 Demolition**

**A.** If no alternatives to demolition have been identified and agreed to by the applicant after the meeting provided for in the preceding Section 708.5.G, the applicant is free to proceed with demolition provided a permit is issued. Prior to demolition, the Demolition Review Committee shall make a good faith effort to photographically document the exterior, and if permitted by the applicant, the interior of the building. The Committee shall also encourage the applicant to salvage significant architectural materials, components, and appurtenances of the building.

**B.** Nothing in this article shall be construed to prevent immediate demolition where the public safety is at stake and the building has been determined by the Code Enforcement Officer to be a public hazard and demolition is the only viable recourse.

### **SECTION 709 NOTICE OF ACTION**

**709.1** Notice of the issuance of Building Permit(s) and Certificate(s) of Occupancy by the Building Inspector/Code Enforcement Officer shall:

**A.** be placed on record by the Building Inspector/Code Enforcement Officer with the Town Administrative Assistant, AND

**B.** shall be entered into, and published on, the Town Website by the Building Inspector/Code Enforcement Officer at the time of issuance, AND

**C.** the Applicant shall place a sign on the property's frontage, for which a Building Permit or Certificate of Occupancy has been issued, indicating that such action has been taken, and notifying members of the public of their opportunity to appeal.

**709.2** The said sign is to be posted within 48 hours of the Building Permit or Certificate of Occupancy being issued. Said sign shall remain exhibited on the property until the appeal period expires. Failure to post the Building Permit or Certificate of Occupancy within 48 hours or to maintain the posting for the required appeal period may result in an extension of the posting period and/or revocation of the Building Permit or Certificate of Occupancy at the discretion of the Building Inspector/Code Enforcement Officer. The right of a person, aggrieved by any such action(s) taken by the Building Inspector/Code Enforcement Officer, to appeal shall extend for a period of thirty (30) days from the issuance of the Building Permit or Certificate of Occupancy. All Appeals shall be filed with the Zoning Board of Adjustment, and shall be administered and processed as provided in this Ordinance. \*5/8/2012, 3/11/2014

## **SECTION 710 EXCEPTION**

### **710.1 Exception**

An Exception is a use that would not be appropriate generally or without restriction throughout a particular zone but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a particular zone as exception, only if specific provisions for such exception are made in this Zoning Ordinance, and if the exception is approved by the Zoning Board of Adjustment. \*3/2/1976

### **710.2 Special Exceptions**

Standards for the Zoning Board of Adjustment (ZBA) in Applying and Considering Applications for Special Exceptions.

**A.** In instances where standards for a listed Special Exception are defined in the Zoning Ordinance, the ZBA shall apply those standards.

**B.** In instances where specific standards are not defined for a listed Special Exception, the ZBA shall apply the following standards:

- 1.** The Special Exception, if approved, shall not diminish the value of surrounding properties.
- 2.** The Special Exception, if approved, shall not unreasonably adversely affect the public interests, safety, health, or welfare. The ZBA shall consider whether the proposed Special Exception may cause abutting or neighboring lots, or the I-B/R District generally, to be subjected to any form of pollution or discharge of harmful or noxious substances, noise, dust, vibration, smoke, odors, light spillage, or other unpleasant, unhealthy or hazardous by-products of the proposed business which threatens to adversely and unreasonably affect the environment, welfare of residents, or quality of life in and adjacent to the I-B/R District.

**C.** Notwithstanding approval by the ZBA of an application for a Special Exception, in cases where a site plan is normally required, the Planning Board shall independently review a Site Plan for the proposed use.

## **SECTION 711 VARIANCE**

A variance is a relaxing of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the Ordinance will result in unnecessary or undue hardship. The Zoning Board of Adjustment shall have the power to authorize upon appeal in specific cases such variance from the terms of this Ordinance, as will not be contrary to public interest, where owing to special conditions, a literal enforcement of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done. \*3/6/1973

**SECTION 712 ZONING BOARD OF ADJUSTMENT**

**712.1** The Zoning Board of Adjustment (ZBA) shall be elected pursuant to the provisions of RSA 673, as amended. The ZBA shall be made up of five members, each elected for a term of three years. The terms shall be staggered so no more than two members are elected annually except when required to fill vacancies. The ZBA may have up to five alternates. The Select Board shall appoint the alternates until all non-alternate members of the ZBA have been elected by the Legislative Body. After all non-alternate members of the ZBA have been elected by the Legislative Body; the ZBA shall appoint its alternates. The ZBA shall conform in membership and term of office according to the provisions of RSA 673, as amended. The ZBA shall have the powers and duties specifically granted to it under RSA 674:33. The ZBA shall act always subject to the rule that it shall give due consideration to promoting the public health, safety, morals, convenience, and welfare, and conserving property values, that it shall permit no building to use injurious, noxious, offensive odors detrimental to the neighborhood and that it shall prescribe appropriate conditions and safeguards in each case. \*3/12/1991, 3/11/2008

**712.2 Public Notice of Permits**

A statement of all rulings and permits required and issued hereunder shall be posted by the issuing board or officers, within three days of the date of issuance, on the Bulletin Board of the Town Hall of said town, or such other public place or places as may be fixed from time to time by vote of the town. \*3/6/1973

**712.3 Appeals to Zoning Board of Adjustment**

Any person aggrieved or any officer, department, board or bureau of the Town affected by any decision of the Building Inspector may appeal to the Zoning Board of Adjustment within a reasonable time, which shall never be construed as less than thirty days from the date of the posting of the statement of a permit or ruling issued by the Building Inspector hereunder. The Zoning Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, by posting such notice on the bulletin board of the Town Hall and causing same to be published in a newspaper circulated in the town, at least seven days before said hearing, and shall mail notice to all parties in interest, at least seven days before said hearing, and shall decide the appeal within a reasonable time. Upon the hearing any party may appear by agent or attorney. \*3/6/1973

**712.4 Appeals from Decisions of Zoning Board of Adjustment**

Any person aggrieved by any decision of the Zoning Board of Adjustment, or any decision of the legislative body of the Town in regard to its plan of zoning, or any taxpayer, or any officer, department, board or bureau of the Town may apply to the Superior Court within thirty days after the action complained of has been recorded, by a sworn petition, setting forth that such decision is illegal or unreasonable, in whole or in part, specifying the grounds upon which the same is claimed to be illegal or unreasonable. \*3/6/1973