

TOWN OF ANDOVER, NEW HAMPSHIRE  
ZONING ORDINANCE  
(Revisions through Town Meeting 2014)

**ARTICLE I**

A. Preamble

Pursuant to the authority conferred by R.S.A. 31, and for the purpose of promoting the health, safety and the general welfare of the Town of Andover, New Hampshire, the following ordinance is hereby enacted by the voters of such Town.

B. Title

This ordinance shall be known and may be cited as The Andover Zoning Ordinance of 1974." It is hereinafter referred to as "this Ordinance."

**ARTICLE II**

A. Districts - The Town of Andover is divided into four zoning districts hereinafter referred to as "Districts or Zones," as follows:

Forest and Agriculture District (Zone FA)

Agricultural and Residential (Zone AR)

Rural Residential District (Zone RR)

Village District (Zone V)

B. Zoning Map

The zoning districts listed above are bounded as shown on the map entitled "Andover Zoning Map of 1974" which map is attached to and made a part of this ordinance and is hereinafter referred to as the "Zoning Map." The official Zoning Map of the Town of Andover to be used to determine exact zoning district boundaries is drawn to a scale of one thousand feet to the inch, and shall be certified as the official Zoning Map of the Town of Andover by the Town Clerk upon adoption of this ordinance, or upon any amendment that affects the Zoning Map and, upon such certification, shall be filed with the Planning Board.

C. Boundaries

Where appropriate and unless otherwise indicated, zoning district boundaries shown on the Zoning Map are the center lines of streets and railroad and

power line rights of way, the middle of the channel of waterways or other bodies of water, or the Town Line. Where a boundary is so indicated that it parallels the center line of a street, such boundary shall be considered to be parallel thereto at the distance therefrom shown on the Zoning Map. Any boundary within 10 feet of a property line shall be considered to be coincident with such property line. Where any distance is not stated on the Zoning Map, the distance shall be determined by use of the scale on the map. In any instance in which there is doubt as to the location of a zoning district boundary, the Board of Adjustment shall determine the location of such boundary, consistent with the intent of this Ordinance and the Zoning Map.

### **ARTICLE III: INTERPETATION AND APPLICATION**

#### **A. Interpretation**

This Ordinance shall be interpreted as setting forth minimum requirements for the promotion of the public health, safety and the general welfare. In any instance in which any requirement of this Ordinance is at variance with the requirement of any other lawfully adopted rule, regulation, or ordinance, the most restrictive, or that imposing the highest standard, shall govern.

#### **B. Application**

1. This Ordinance shall apply to all structures, uses, and lots within the Town of Andover. If a lawfully established structure, use or lot is not in conformity with the provisions of this Ordinance on the effective date of this Ordinance, it may continue to exist subject to the provisions of Article VI.
2. Any use that is not listed in this Ordinance as a permitted use, or a use permitted as a special exception, is prohibited after the effective date of the ordinance, except a nonconforming use permitted pursuant to Article VI.
3. Any use proposed for a site within two zoning districts shall be governed by the stricter standards, within the discretion of the board of appeals, provided that when the use falls substantially within one of those districts, then the standards of that district shall be applied.

## ARTICLE IV: GENERAL PROVISIONS

A. Definitions - In this Ordinance the following terms have the following meanings:

**Alteration** - Any structural change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any structural in means of ingress or egress, or any enlargement or diminution of a building or structure, whether horizontally or vertically. Alteration includes the movement of a building from one location to another.

**Accessory Building** - A subordinate building incidental to and on the same lot occupied by the main building or use.\_

**Accessory Use** - A land use located on a lot which is incidental and subordinate to the main building on such lot, or to the main use of such lot.

**Building Site** - Shall mean each portion of a lot, tract or parcel of land upon which a single building is or is to be placed, sometimes called that building's "footprint".

**Campground** - A parcel of land with one or more specific sites, with or without water, electricity and sewage hookups, that has provision for the pitching of a tent or the parking of any vehicle or trailer for use as sleeping quarters for not more than 90 days.

**Dwelling** - A building designed or used as a place of residence.

**Dwelling Unit** - A dwelling or portion thereof designed or used for one family.

**Family** - One or more persons occupying a single dwelling unit, provided that unless all members are legally related, no such family shall contain over five (5) persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

**Frontage** - The distance along a lot line on a street.

**High Water Mark** - In case of a lake or pond, the normal high water mark; in the case of a river, the bank of the river in normal flow.

**Home Occupation** - Any use conducted entirely within a dwelling or an accessory building which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no outside storage or display except a permitted sign.

**Inn** - A building or buildings containing lodging units consisting of a room or suite of rooms which are offered or to be offered as sleeping accommodations for transient guests for compensation, and also containing dining facilities for such guests.

**Lot** - A parcel of land under one ownership, undivided by a street or Town Line,

with ascertainable boundaries established by deed or by lot boundary lines on a land subdivision plan filed with the Registry of Deeds. The boundary line of a lot abutting on a public right of way shall be the boundary line of the right of way, even though ownership of the land may extend beyond such boundary line.

**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 body feet or more in length, or when erected on site, is 320 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 systems contained therein. Manufactured housing as defined in this section shall not include pre-site built housing as defined herein. The term manufactured home includes park trailers, travel trailers, and other similar vehicles. The use of any such housing for human habitation shall require a certificate of occupancy from the Zoning Administrator issued under the Building Code.

**Motel** - A building or buildings containing lodging units consisting of a room or suite of rooms, each with a separate entrance and its own toilet facilities, and offered or to be offered as sleeping accommodations for transient guests for compensation.

**Nonconforming Structure. Use or Lot** - A structure, use or lot that does not conform to the regulations of the zoning district in which it is carried on or located.

**Parking Space** - An off-street space available for the parking of one motor vehicle.

**Pre-site Built Housing** - As used in this Ordinance, "pre-site built housing" means 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. The use of any such housing for human habitation shall require a certificate of occupancy from the Zoning Administrator issued under the Building Code. For the purposes of this Ordinance, pre-site built housing shall not include manufactured housing, as defined herein.

**Street** - A public thoroughfare, highway, street, road or avenue, lawfully existing and maintained for vehicular travel by the Town of Andover or the State of New Hampshire

**Structure** - Shall mean any combination of any materials, including buildings, whether portable, movable or fixed, having a roof and enclosed with exterior walls or otherwise, built for the shelter of persons or property and/or used for residential, commercial, industrial, institutional, religious, recreational, professional or other purposes. For the purposes of interpreting and applying height limitations in this Ordinance only, the term "Building" shall also include without limitation communications technology antennae, flagpoles, church steeples, decorative additions to buildings, and signs of all kinds.

**Waterfront** - Property that borders on Hopkins Pond (formerly Adder Pond), the Blackwater River, Bog Pond, Bradley Lake, The Cascade and Frazier Brooks, Elbow Pond, Highland Lake and Horseshoe Pond.

**Waterfront Lot Line** - A straight line connecting two points where each side line meets the normal high water mark or the normal flow of the river bank.

B. Signs

Signs are allowed only in accordance with the Town Sign Ordinance.

C. Agriculture and Forestry

General farming, including horticulture, dairying, livestock, poultry raising and other agricultural uses, is permitted in any district. Forestry and woodlots and accessory uses, including lumbering and the cutting of cordwood and Christmas trees, are permitted in any district.

D. Mobile Homes

Mobile homes are allowed in all districts, subject to the provisions of this Ordinance.

E. Residence Density

Only one dwelling is permitted on any one lot in any district.

F. Set Back

Set back is measured from the side or rear lot lines and on street sides from the street right of way. The following shall apply except where other sections of this Ordinance provide different measures.

Front Yard - In all districts, a minimum of thirty (30) feet will be maintained between any part of any structure and the applicable street(s) right of way line(s). Orientation of the structure on the lot does not determine front yard location for the purpose of this Ordinance.

Side and Rear Yards - A distance of a minimum of fifteen (15) feet will be maintained between any part of any structure and the lot line.

G. Parking

Adequate off-street parking space shall be provided for each use, in accordance with the following minimum standards:

1. Residential Use - one off-street parking space of not less than 200 square feet for each dwelling unit.
2. Commercial Use - One square foot of off-street parking space for each square foot of floor space.

3. Motels - One off-street parking space of not less than 200 square feet for each lodging unit.
4. Assembly - Any church, theatre, auditorium, hall, restaurant or any other place of public assembly, shall have provision for at least one off-street parking place of not less than 200 square feet for every four seats.

H. Building Height

No new structure shall be constructed to a height of more than 2-1/2 stories or 35 feet above average ground level, nor shall any existing building be altered or modified so as to increase its height to more than 2-1/2 stories or 35 feet above average ground level. "Height" shall mean the topmost part of any portion of the structure or building.

I. Waterfront Property

1. Each lot created shall have a minimum waterfront lot line of 200 feet.
2. All buildings or structures erected on a waterfront lot shall meet the standards of N.H. RSA 483-B. *et sequelae*.

J. Penalties and Fees

All penalties and fees payable pursuant to this ordinance shall be paid to the Treasurer of the Town Andover, for the use of the Town.

## ARTICLE V: ZONING DISTRICT REGULATIONS

### A. Forest and Agriculture Districts (Zone FA)

The following regulations apply to the FA Districts. They are mainly districts of forest, woodlands and farms.

#### 1. Permitted Uses:

- Wood lots and tree farms
- General farming and agricultural, including horticulture, dairying, livestock, and poultry farming
- Accessory uses and buildings

#### 2. Special Exceptions:

Any of the following uses on a specific site may be permitted by the Board of Adjustment as a special exception if and to the extent that the Planning Board finds such site is an appropriate location for such use, has an adequate water supply and sewage system, and meets all applicable Local and State requirements:

- a. Single-family dwellings.
- b. Home occupations and professional offices accessory to dwellings.
- c. Sale of agricultural or woodland products.
- d. Areas and facilities for outdoor recreation not having overnight accommodations such as skiing, snowmobiling, skeet shooting and the like.
- e. Stables and trails for horseback riding.
- f. Sawmills, provided that the lot is of sufficient size and shape to assure that there will be no unreasonable emission of dust, noise, glare, fumes, vibration or smoke beyond the lot line

#### 3. Lot Frontage and Area:

Each lot created after the effective date of this ordinance shall have a minimum frontage of 250 feet and an area of at least 2 acres. Lots in existence on the effective date of this ordinance must have a minimum frontage of 50 feet in order to change the use of such lot.

### B. Agricultural and Residential Districts (Zone AR)

The following regulations apply to the AR Districts. They are mainly districts of farms, residences and woodlands.

1. Permitted Uses:

- Single family dwellings
- Any Permitted Use allowed in the FA Zone
- Sale of agricultural or woodland products
- Home occupations and professional offices accessory to dwellings

2. Special Exceptions:

Any of the following uses on a specific site may be permitted by the Board of Adjustment as a special exception if and to the extent that the Planning Board finds such site is an appropriate location for such use, has an adequate water supply and sewage system, and meets all applicable Local and State requirements:

- (a) Campgrounds, provided that they are located on a lot of at least 5 acres with 3500 square feet of land for each camping site, with setbacks along all lot boundary lines in conformity with local regulations, and provided that such campgrounds otherwise conform to all applicable local and state regulations
- (b) Summer camps for children under 18 years old.
- (c) Conference centers for educational, business, professional or scientific purposes, either with or without overnight accommodations.
- (d) Areas and facilities for outdoor recreation such as skiing, snowmobiling, skeet shooting and the like, either with or without overnight accommodations.
- (e) Stables and trails for horseback riding.
- (f) Motels and inns provided that they are located on a lot of at least 5 acres with no less than 200 square feet of habitable interior area for each lodging unit, with a minimum frontage of 250 feet, and yards along all lot boundary lines no less than 30 feet in depth
- (g) Retail sale of antiques, art, crafts and handiwork when an accessory use to a dwelling, and with outdoor display.
- (h) Cemeteries.

3. Lot Frontage and Area:

Each lot created after the effective date of this ordinance shall have a minimum frontage of 250 feet and an area of at least 2 acres. Lots in

existence on the effective date of this ordinance must have a minimum frontage of 50 feet in order to change the use of such a lot.

C. Rural Residential Districts (Zone RR)

The following regulations apply to the RR Districts. They are mainly districts of residences and woodlands.

1. Permitted Uses:

- Any Permitted Use allowed in the FA and AR Zones
- Churches, auditoriums, and other buildings for public assembly
- Accessory uses and buildings

2. Special Exceptions:

Any of the following uses on a specific site may be permitted by the Board of Adjustment as a special exception if and to the extent that the Planning Board finds such site is an appropriate location for such use, has an adequate water supply and sewage system and meets all applicable Local and State requirements:

- (a) Retail sale of antiques, art, crafts and handiwork when an accessory use to a dwelling, and with outdoor display.
- (b) Neighborhood stores for the retail sale of new goods.
- (c) Parks, playgrounds and other similar outdoor recreational areas and facilities.

3. Lot Frontage and Area:

Each lot created after the effective date of this ordinance shall have a minimum frontage of 150 feet and an area of at least one acre. Lots in existence on the effective date of this ordinance must have a minimum frontage of 50 feet in order to change the use of such lot.

D. Village Districts (Zone V)

The following regulations apply to the V Districts. They are mainly the districts of residences, commercial establishments, community buildings and neighborhood businesses.

1. Permitted Uses:

- Any Permitted Use allowed in the FA, AR and RR Zones
- Neighborhood stores for the retail sale of new goods

- Neighborhood service establishments, including appliance repairs, clothes cleaners, self service laundries and barbers
- Tourist homes in existing buildings
- Two family dwellings
- Apartments constructed by interior alterations to an existing building
- Places of public assembly for townspeople
- Antique shops
- Community buildings
- Accessory buildings and uses

2. Special Exceptions:

Any of the following uses on a specific site may be permitted by the Board of Adjustment as a special exception if and to the extent that the Planning Board finds such site is an appropriate location for such use, has an adequate water supply and sewage system, and meets all applicable Local and State requirements:

- (a) Filling station and automobile repair shops where ingress and egress of motor vehicles is approved by the Board of selectmen as not being likely to endanger vehicular and/or pedestrian traffic, and where the Planning Board finds the building design conforms with the planned development of the district.
- (b) Hospitals, rest homes and convalescent homes provided that they are located on a lot of at least two acres, plus 2000 square feet of land for each sleeping room or ward.
- (c) Public and private schools provided that they are located on a lot of at least two acres, plus 2000 square feet of land for each sleeping room.
- (d) Offices and banks.
- (e) Indoor theaters for live performances.
- (f) Manufacture of goods for retail sale on the premises.
- (g) Restaurants.

3. Lot Frontage and Area:

Each lot created after the effective date of this Ordinance shall have a minimum frontage of 150 feet and an area of at least one acre. Lots in existence on the effective date of this Ordinance must have a minimum

frontage of 50 feet in order to change the use of such lot.

## **ARTICLE VI: NONCONFORMING STRUCTURES OR USE**

Any lawfully established nonconforming structure or use existing on the effective date of this Ordinance may be continued, rebuilt to the original size if damaged, and reestablished if abandoned for less than one year. Such structure or use may be enlarged or extended on the same site as a permitted use in any district, subject to the provisions of this Ordinance, and provided the enlargement or extension does not exceed 50% of the total floor area of the original structure, or 50% of the total area of the lot originally allotted to the use, or both.

Any of the following changes in a lawfully established nonconforming structure or use on a specific site may be permitted by the Board of Adjustment as a special exception if and to the extent that the Planning Board finds such change is appropriate for the location, the structure and the use, that there is an adequate water supply and sewage system, and that such change meets all applicable local and state requirements:

1. Change to another nonconforming structure or use.
2. Re-establishment after abandonment for one year or more.
3. Enlargement or extension of the structure or use in excess of 50% of the total floor area of the original structure, or in excess of 50% of the total area of the lot originally allotted to the use.

Once a nonconforming structure or use has been changed to a conforming structure or use, it may not thereafter be changed to a nonconforming structure or use.

## **ARTICLE VII: BUILDING PERMITS AND CERTIFICATES OF COMPLIANCE**

A. Permit Required:

It shall be unlawful to change the nature or extent of any structure, accessory building, use or lot, or to erect, demolish, alter the size or relocate any building, in any district without first obtaining a Building Permit from the Zoning Administrator.

B. Certificate of Completion Required:

If a Building Permit is required then a Certificate of Completion is required. A Certificate of Compliance shall be issued by the Zoning Administrator upon his reasonable satisfaction that all applicable requirements of the Andover Zoning Ordinance have been met.

C. Building Permit Application:

Any person, persons, partnership or corporation intending to change the nature or extent of any structure, accessory building, use or lot, or to erect, demolish, alter the size of or relocate any structure shall first make application for a Building Permit obtained from the Andover Town Office.

1. The completed application together with the applicable fee shall be submitted to the Andover Town Office for review by the Zoning Administrator.
2. When the proposed work includes new, modified, relocated, or demolished structures or buildings, the application shall be accompanied by an accurate sketch or plan of the proposed project. The sketch or plan with a scale and North arrow, shall show the structure or building, lot lines, and the septic system and well if applicable.
3. The application shall be accompanied by a signed statement of the intended use of the new or modified buildings or structures upon completion of the proposed work.

D. The Zoning Administrator shall issue or deny a Building Permit within 30 days after receipt of a completed application by the Town Office. If a Building Permit is denied, the Zoning Administrator shall provide the applicant the reason(s) for denial in writing and transmit a copy of the application and written denial to the Board of Adjustment.

E. Requirements for a Building Permit

1. No site preparation (e.g., excavation) shall be commenced and no building or structure shall be started, no alterations shall be made to existing buildings, and no building shall be demolished or put to any different use than on the day of enactment of this Ordinance unless a Building Permit has

been issued under the terms of this Ordinance.

2. No Building Permit shall be issued except upon review by the Zoning Administrator and demonstration by the applicant that any Site Plan Review required by Town of Andover ordinances or regulations has been completed, that any other applicable provisions of the Andover Zoning Ordinance, Subdivision Regulations, and other applicable Andover regulations have been met, and that applicable state permits have been obtained.
3. No Building Permit shall be issued unless the applicable fee has been paid.
4. The applicant shall make the premises accessible to the Zoning Administrator at reasonable times for the performance of his duties.
5. No mobile home shall be moved onto any site, no alterations or additions to a mobile home or trailer shall be undertaken, and no mobile home shall be put to any different use than on the day of enactment of this Ordinance, unless a Building Permit has been issued under the terms of this ordinance.
6. A Building Permit shall remain in effect for two years from the date of issuance or until a Notification of Completion has been received by the Town Office, whichever occurs sooner. If a Notification of Completion has not been received within two years, the permit shall be considered to have been abandoned unless the applicant has obtained a time extension for the permit for a duration of one year. If a time extension is obtained and a Notification of Completion has not been received within the one year time extension, a new Building Permit shall be obtained or the Building Permit shall be considered to have been abandoned.

F. Completion of Work

1. Upon completion of work for which a Building Permit has been issued, the applicant shall file a Notification of Completion with the Town Office.
2. The Zoning Administrator shall observe completed or abandoned work and, upon his reasonable satisfaction that all requirements of the Andover Zoning Ordinance have been met, shall issue a Certificate of Completion.
3. If the Zoning Administrator determines that a Certificate of Completion cannot be issued, he shall issue a Notice of Deficiency that identifies the requirements of the Andover Zoning Ordinance that have not been met, the corrective action needed. If the Zoning Administrator issues a Notice of

Deficiency, he shall transmit a copy of the Notice of Deficiency to the Board of Adjustment.

G. Exemptions

1. Repair or Remodeling – Unless construction includes repair or replacement of structural members, a Building Permit shall not be required for remodeling or repairing if the purpose for which the building, structure, or portion thereof to be remodeled or repaired will be used is not changed, and if the building or structure is not enlarged or the use extended. Upon request, the Zoning Administrator may issue a Certificate of Exemption. Activities which do not require a Building Permit include but are not limited to painting, installing or repairing fences and stone walls, installing playground equipment, and repair or replacement of roofing, siding, or windows.
2. A Certificate of Completion is not required if a Building Permit is not required.

H. Application Forms and Fees

1. The Selectboard, in consultation with the Planning Board, shall from time to time establish fees for Building Permits and Certificates of Completion. The fees shall bear a reasonable relationship to time and skills required for necessary inspections and assessments. The fees shall be published by inclusion in Building Permit application forms.
2. The Selectboard, in consultation with the Planning Board, shall from time to time prepare, revise, and cause to be issued all application, permit, and certificate forms required for the implementation of this article.

## ARTICLE VIII: ADMINISTRATION AND ENFORCEMENT

### A. Zoning Administrator and Deputy Zoning Administrator

1. Appointment: A Zoning Administrator shall be appointed annually by the Board of Selectmen. The Zoning Administrator shall continue in office until a new appointment is made. In the event of the death, disability, resignation, disqualification or termination of the Zoning Administrator, the Selectmen shall appoint a Zoning Administrator to serve in his place. The Selectmen may, by majority vote, disqualify the Zoning Administrator at any time.
2. A Deputy Zoning Administrator may be appointed annually by the Board of Selectmen. The Deputy Zoning Administrator shall continue in office until a new appointment is made.
3. Duties of the Zoning Administrator: The Zoning Administrator is hereby empowered and shall have the duty to administer this Ordinance. He shall:
  - a. Receive applications for Building Permits.
  - b. Issue or deny Building Permits within 30 days after receipt of a completed Building Permit application at the Town Office.
  - c. As necessary review Building Permit applications, observe sites of proposed projects and study proposed locations and uses of said buildings.
  - d. Observe building construction and alterations of existing buildings to see that the terms of this Ordinance are being fulfilled.
  - e. Report observed violations of this Ordinance to the Board of Selectmen and Planning Board in writing within two business days of observing a violation.
  - f. Take such action in the enforcement of this Ordinance as may be directed by the Board of Selectmen.
4. Duties of the Deputy Zoning Administrator: The Deputy Zoning Administrator shall serve under the supervision of the Zoning Administrator, and shall perform the duties of the Zoning Administrator in his absence.
5. In the absence of a Zoning Administrator or Deputy Zoning Administrator the Board of Selectmen shall perform the duties of the Zoning Administrator.

B. Enforcement:

1. The Board of Selectmen shall enforce the provisions of this Ordinance, and shall be entitled to recover reasonable attorney's fees, as well as all other costs, where they prevail.
2. The Zoning Administrator shall have authority to enforce the provisions of this Ordinance.

- F. Enforcement - The Board of Selectmen shall enforce the provisions of this Ordinance, and shall be entitled to recover reasonable attorney's fees, as well as all other costs, where they prevail. ***(NOTE: THIS SECTION F WAS LEFT OVER FROM THE PRIOR UNAMENDED ORDINANCE AND SHOULD HAVE BEEN DELETED AS IT DUPLICATES (1) ABOVE***

## **ARTICLE IX: BOARD OF ADJUSTMENT**

- A. Creation - A Board of Adjustment is hereby created. Its members shall be appointed by the Selectmen in accordance with, and shall have the terms and powers conferred upon the Board of Adjustment by, the provisions of R.S.A. Chapter 31, as amended and by this ordinance.
- B. Adoption of Rules - The Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions of this ordinance and the provisions of R.S.A. Chapter 31, as amended.
- C. Interpretation - The Board of Adjustment may hear and decide a case where it is alleged that there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the administration of this Ordinance.
- D. Special Exceptions –

The Board of Adjustment may in appropriate cases, and subject to appropriate conditions and safeguards as determined by the Board of Adjustment, authorize the issue of a permit for a use as a special exception, in harmony with the general purposes and intent of this Ordinance. Any special exception must meet and comply with all of the following conditions:

1. The proposed use must be specified in Article V or Article VI as a special exception which may be permitted in the district, or must be a town or public utility building, structure or use reasonably necessary for the service of the public, and not unreasonably detrimental to the character of the district.
2. The site has been found by the Planning Board to be appropriate for the proposed use.
3. The use will not adversely affect the adjacent area.
4. There will no nuisance or serious hazard to vehicles or

pedestrians.

5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
6. The proposed use must comply with all the frontage, yard, minimum land area, sanitary protection, and parking requirements for such use or the use most similar thereto.

DI. Additional Special Exceptions –

The Board of Adjustment may also, in specific cases, and subject to appropriate conditions and safeguards, as determined by the Board of Adjustment, authorize the issue of a permit for a use as a general purpose and intent of this Ordinance, as hereinafter provided:

1. In considering an application for a permit pursuant to this paragraph DI, the Board of Adjustment shall take into consideration the following general standards:
  - (a) The uses permitted in the district in which the property is located.
  - (b) Whether the character, size, location and design of the proposed use is in harmony with the district and adjacent properties.
  - (c) Whether the proposed use will contribute to the proper development of the community and to its general welfare.
  - (d) Whether the proposed use will be hazardous, conflicting or incongruous to the neighborhood by reason of excessive traffic, assembly of persons or vehicles, proximity to travel routes or congregations of children or pedestrians.
  - (e) Whether the proposed use will be objectionable by reason of noise, lights, vibration, emissions or other factors, or will hinder or discourage the appropriate use and development of adjacent uses or impair values of adjacent properties.
2. The Board of Adjustment, before issuing any permit pursuant to this paragraph DI, must determine that the Planning Board has found that the site of the proposed use has an adequate water supply and sewage system which meet all applicable Local and State requirements and that the special exception requested otherwise complies with all the conditions specified in paragraph D of this Article VIII other than condition 1.
3. If the Board of Adjustment, after such hearing, shall determine

that the provisions of section 2 of this paragraph DI have been complied with, that the proposed use will conform to the general character of the neighborhood in which it is to be located and that, taking into consideration any conditions that may be imposed by the Board of Adjustment, the public health, morals, safety and general welfare of such neighborhood will not be impaired by the granting of such application then the Board of Adjustment shall authorize the issuance of a permit pursuant to this paragraph DI. Any such permit may be granted for a limited period or without limitation, as determined by the Board of Adjustment.

4. The fee for an application for a permit pursuant to this paragraph DI shall be the same as that for an application pursuant to paragraph D.

E. Variance –

The Board of Adjustment in appropriate cases and subject to appropriate conditions and safeguards as determined by the Board of Adjustment may authorize the issue of a permit for a variance from the terms of this Ordinance, but only where the Board of Adjustment finds all the following conditions are met:

1. No decrease in value of surrounding properties would be suffered.
2. Granting the variance must not be contrary to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner seeking it.
  - a. The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in the environment.
  - b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and specific restrictions on the property.
  - c. The variance would not injure the public or private rights of others.
4. By granting the variance, substantial justice would be done.
5. The use must not be contrary to the spirit and intent of the ordinance.

Fees - Each application for a Special Exception or a Variance shall be accompanied by payment of a fee in the amount currently required by Board of Adjustment regulations. This shall be in

addition to any fee required under Article VII.

F. Equitable Waiver of Dimensional Requirement

1. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a Zoning Ordinance enacted pursuant to RSA 674:16, the Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:
  - (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
  - (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
  - (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
  - (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.
2. In lieu of the findings required by the Board of Adjustment under subparagraphs 1(a) and (b), the owner may demonstrate to the satisfaction of the Board of Adjustment that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.
3. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Re-hearings and appeals shall be governed by RSA 677-677:2 through 14.

4. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Zoning Ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

## ARTICLE X: PERFORMANCE STANDARDS FOR COMMERCIAL USES

This Article is intended to foster high quality commercial development within the Town. This will be accomplished through the establishment of performance and design standards intended to allow development compatible with the natural environment and preexisting uses, buffer incompatible uses, and provide safe and efficient vehicular and pedestrian access. The elements of this Article relate both to uses permitted as a matter of right and to uses permitted only as special exceptions to the Ordinance. In issuing a special exception, the Board of Adjustment shall require an applicant to meet all applicable requirements set forth in this Article in addition to the specific requirements of Article VIII, Board of Adjustment, and the other sections of this Ordinance. This Article is adopted in accordance with the provisions of RSA 674:16 and 21, and is in addition to all other requirements of this Ordinance and other ordinances and regulations, now or hereafter adopted. Where this Article and another article or ordinance or regulation apply, the stricter standard shall govern.

A. Definitions. As used in this Article:

**"Buffer"** area or strip means land area upon which no buildings, structures (other than a sign otherwise permitted), roads, driveways, parking lots, storage areas, loading areas or receiving areas are placed. Said land area may be left in its natural state, or modified, planted or landscaped, as the Planning Board may permit or require, as useful to insulate the commercial use from highways and other lots adjacent to the commercial use or from which the commercial use can be observed. Unless otherwise permitted or required by the Planning Board, existing trees shall be left in said land area. Buffer depth shall be measured along a level line.

**"Commercial Use"** means all uses other than:

1. residential uses;
2. governmental functions, to the extent performed by government officials or employees;
3. livestock, animal and poultry raising;
4. forestry and tree farms;
5. occupations conducted in the home.

**"Development"** means any one or more of:

- (1) the creation of a new use (by new construction or conversion of existing structures or uses); or
- (2) the enlargement or expansion of an existing use; or (3) the parcel of land that is the location of such construction, conversion, enlargement or expansion; as the context requires.

**"Net Land Area"** means land other than bluffs, ravines, wetlands,

floodplains, and land located within Two Hundred Fifty feet (250') of the high water mark of Bog Pond, Bradley Lake, Elbow Pond, Highland Lake, Hopkins Pond, Horseshoe Pond, Cascade Brook, Frazier Brook and Blackwater River.

**"Opaque Visual Screen"** means a screen which hides completely the thing screened from the unaided human eye, as measured from all points on vertical lines from zero feet to twelve feet above ground level at all points outside the lot upon which the thing screened is located. Unless other screening options are expressly allowed or required by the Planning Board, the opaque visual screen shall consist solely of plantings, at least fifty (50) percent of which shall be evergreens.

B. Performance Standards.

Except where expressly limited in this section (B), the performance standards established herein shall apply to all commercial uses in any district, and shall be cumulative. The establishment of standards in this Article shall not prevent the Planning Board from adopting subdivision and site review regulations, and exercising its discretion regarding subdivisions and site review, not contrary to this Article.

1. Access and traffic facilities, appropriate to serve the transportation needs of the use in a safe and efficient manner, shall be provided. Such appropriateness shall be evaluated in light of, among other things, (a) the impact of the use on the overall transportation system, and (b) the improvements to that system necessitated by all development within the Town,
2. Adequate disposition of, and treatment of, stormwater runoff shall be provided. Stormwater management systems shall be designed to detain the twenty-five-year rainfall event, and to emulate the rate and timing of predevelopment offsite discharge. Combined offsite stormwater handling and treatment facilities may be substituted for onsite systems provided casements are obtained which allow for the construction, use and maintenance of these facilities.
3. Bluffs and ravines shall not be cleared, altered, excavated or filled within one hundred (100) feet of any wetlands, ponds, permanent or intermittent streams, bluffs or ravines; and then only if (a) necessary in order to make the development suitable for uses permitted by this Ordinance, and (b) the plan presented by the applicant ensures the maintenance of stable slopes which will not be subject to collapse or subsidence and that the clearing, altering, excavating or filling will not have an undue adverse effect on the environment.
4. This subsection (B)(4) shall not apply in the Village District. Except for openings for driveways and walkways, a minimum fifty-foot-deep buffer area shall be provided between all property lines and parking areas, service areas, loading areas, and access ways. Where property lines abut any lot not already in commercial use, the minimum depth of that buffer area shall be one hundred (100) feet. Vehicular access ways and

parking areas shall be screened sufficiently to prevent vehicular headlights from shining on abutting lots not already in commercial use. For developments which contain gross parking area in excess of 35,000 square feet, internally, a minimum of twenty (20) percent of the gross parking area shall be landscaped; and no parking shall occur within this landscaped area.

5. In the Village District, the depth of the buffer strip described below shall be equal to the average of the setbacks of adjacent buildings on the lots adjacent to either side. If a vacant lot exists on one side, it shall be considered as having a building setback of 100 feet. The requirements of this subsection (B)(5) shall not apply to development which consists solely of the conversion, within the Village District, of a building from a residential use to a commercial use without relocation or expansion. Along U. S. Route 4 and N. H. Routes 4A and 11, except for driveway and walkway openings, a buffer strip shall be provided between the edge of the highway right of way and the use. The depth of the buffer strip shall be the greater of one hundred (100) feet measured from the center line of the highway right of way or sixty (60) feet measured from such edge of the highway right of way.
6. All mechanical equipment associated with the use, whether located on the facade of a building, on a rooftop, or elsewhere on the site, and all solid waste disposal areas, shall be separated from all lot lines by an opaque visual screen.
7. In the Village District, the depth of the setback described below shall be equal to the average of the setbacks of adjacent buildings on the lots adjacent to either side; and if a vacant lot exists on one side, it shall be considered as having setbacks equal to those specified in Article IV. No storage structure or outdoor storage or outdoor operations area shall be located closer than one hundred (100) feet to (a) the front lot line, or (b) any lot line adjacent to U.S. Route 4, N.H. Route 11 or N.H. Route 4A, or (c) any lot line abutting a lot not already in commercial use; and all storage structures and all outdoor storage and all outdoor operations areas shall be separated from all lot lines by an opaque visual screen.
8. In the Village District, the depth of the setback described below shall be equal to the average of the setbacks of adjacent buildings on the lots adjacent to either side; and if a vacant lot exists on one side, it shall be considered as having setbacks equal to those specified in Article IV. No outdoor display of products for sale shall be located closer than fifty (50) feet to (a) the front lot line, or (b) any lot line adjacent to U.S. Route 4, N.H. Route 11 or N.H. Route 4A, or (c) any lot line abutting a lot not already in commercial use; and all outdoor display of products for sale shall be separated from all lot lines by an opaque visual screen.  
*Exception:* Uses consisting of the retail sale of products shall be exempt from the requirement of an opaque visual screen between the outdoor display of those products for sale and the front lot line.
9. Outside the Village District buildings shall be set back a minimum of one hundred (100) feet from all property lines, except those lot lines abutting

(a) a residential use, where building setbacks along such a line shall be one hundred fifty (150) feet, or (b) a commercial use, where building setbacks along such a line shall be fifty (50) feet, The foregoing requirement shall not apply to the following uses when the use is the only use on the lot:

1. when the building containing the use does not exceed 1600 square feet of building footprint:
    1. Barbers;
    2. Branch offices of banks;
    3. General stores;
    4. Retail sale of: antiques, arts, crafts, books, sports apparel and equipment, and similar products;
    5. Offices;
    6. Restaurants; and
  2. regardless of building footprint:
    1. Bed-and-breakfast establishments not exceeding ten guest sleeping rooms;
    2. Group day care facilities with capacity for, and actually providing care to, not exceeding ten clients;
    3. Retirement homes not exceeding ten retiree sleeping rooms.
10. In the Village District, the length of the lot line described below shall be equal to the greater of the frontage specified in Article V(O) or the average of the front lot lines of the lots adjacent to either side. The requirements of this subsection (B){10} shall not apply to development which consists solely of the conversion, within the Village District, of a building from a residential use to a commercial use without relocation or expansion. Any lot which shall front on any one or more of U.S. Route 4, N.H. Route 11 or N.H. Route 4A (hereinafter referred to singly or collectively as "the Highway") shall have a lot line abutting the street or streets upon which it fronts of not less than 500 feet in length. A lot shall be deemed to front on the Highway within the meaning of this subsection B(IO) if any one or more of the following conditions exist:
- a. any driveway serving that lot intersects the Highway; or
  - b. any walkway serving that lot intersects the Highway, or intersects a sidewalk on the Highway, or is, in the judgment of the Planning Board, an entrance walkway for lot from the Highway; or

- c. that lot is not served by a driveway, and any building on that lot faces the Highway to a greater degree than any other street.
- 11. Lighting shall be designed, maintained and operated so as not to increase offsite illumination more than two-tenths (0.2) footcandle above predevelopment levels as measured at the property line. Lighting shall be designed so as not to directly illuminate abutting lots not already in commercial use. This standard shall not apply to public street lighting.
- 12. Structures and uses shall be designed, maintained and operated so as not to result in an offsite sound level above 60 dBA as measured at the property line,
- 13. Structures and uses shall be designed, maintained and operated so as not to increase offsite smoke, odor, dust or fumes above predevelopment levels as measured at the property line.
- 14. This subsection (B)(14) shall not apply in the Village District. The total area of all impervious surfaces on a lot divided by the Net Land Area of that lot shall not exceed 25%. Impervious surfaces are those which do not absorb water, including, but not limited to, buildings, structures, parking areas, driveways, roads, walkways, any area of concrete or asphalt, and areas of outside storage of vehicles or materials.
- 15. Except in the Village District, the floor area on a lot, divided by the Net Land Area of that lot shall not exceed 35%. In the Village District, the percentage shall not exceed 50%. Floor area is the total gross area on all floors as measured to the outside surfaces of exterior walls, excluding crawl spaces, breezeways, attics without all walls being at least five (5) feet in height, attics without floors, open porches and balconies. The requirements of this subsection (B)(15) shall not apply to development, which consists solely of the conversion, within the Village District, of a building from a residential use to a commercial use without relocation or expansion.

## **ARTICLE XI: GENERAL PERFORMANCE STANDARDS**

- A. If dwellings, mobile homes, or commercial, public and industrial buildings are equipped with running water, a state approved septic system shall be installed.
- B. Every building to be used as a residence shall have a minimum ground floor area of four hundred eighty (480) square feet outside measurement.
- C. New driveways shall have a maximum slope of 15%.
- D. At least 60 percent of the perimeter of a new dwelling shall have less than 5% slope within 20 feet of the dwelling.
- E. All manufactured housing and pre-site built housing proposed to be used for residential purposes shall conform to United States Department of Housing and Urban Development Standards as set forth in the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC. 5402 et seq.; 24 CFR Part 3280 and Part 3282, as both statutes and regulations shall in the future be amended from time to time.
- F. Site work for permitted construction shall not alter drainage or runoff in a manner that adversely affects public roads or adjacent lands. If the Zoning Administrator determines that there is risk of adverse effect, a Site Drainage and Runoff Management Plan may be required.

## **ARTICLE XII: PERSONAL WIRELESS SERVICE FACILITIES (PWSF)**

### **1. PURPOSE AND INTENT**

1.1 It is the express purpose of this Article:

- to permit carriers to locate Personal Wireless Service Facilities within particular areas of the Town of Andover consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town;
- to minimize adverse visual effects of communications facilities, towers, and antennas through design and siting standards, and by use of alternative structures or systems;
- to minimize environmental, economic, audible and visual impacts on adjacent properties, historical and cultural resources, and on the Town of Andover and neighboring communities;
- to preserve scenic views and vistas, including ridgelines;
- to encourage appropriate uses of historic and cultural properties;
- to reduce land use conflicts and to avoid potential damage to adjacent properties from tower failure through the use of setback requirements;
- to provide for the maintenance and on-going inspection of Personal Wireless Service Facilities, and for their removal upon abandonment or discontinuance of use;
- to maximize the use of existing approved PWSF, including buildings and structures,
- to consistently regulate PWSF needed to serve the community and region.

1.2 New ground mounted PWSF are permitted, but only when the use of existing structures and buildings is found to be infeasible. Co-location is encouraged for all PWSF applications and the review of a PWSF shall be on the basis of the site being built using all positions on the mount.

### **2. APPLICABILITY**

2.1 The terms of this Article and the Site Plan Review Regulations shall apply to Personal Wireless Service Facilities proposed to be located on all property in the Town of Andover regardless of ownership.

2.2 A building permit shall be required for the construction, alteration,

expansion or relocation of related antennas, buildings and structures. The permit shall not be issued until all approvals are obtained by the applicant.

- 2.3 The Andover Zoning Board of Adjustment shall specify the form, content and timing of application materials to be submitted by the applicant for a Special Exception. The following requirements shall be included in the items to be submitted for a complete application:
- A. The applicant shall provide a topographic map showing the location of all PWSF within a 10-mile radius of the proposed facility.
  - B. The applicant shall provide a summary of all other ground-mounted sites considered for this application, and justification for selecting the proposed site over these other sites,
  - C. A narrative describing why the proposed facility has been selected and its expected length of usefulness considering the expected growth of the service area and the transition to new technology as it becomes available.
  - D. A visual impact study of the proposed facility to include drawings and photo simulations taken from perspective locations of importance to the visual quality of the site impact area.
- 2.4 The latest fee structures for Special Exception and Site Plan Review applications shall apply for PWSF submissions.

### 3. DEFINITIONS

For the purpose of this Article, the following terms shall have the meaning given herein:

- 3.1 Antenna. The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.
- 3.2 Antenna Array. A collection of antennas attached to a mount to send and receive radio signals.
- 3.3 Average Tree Canopy Height. An average height found by inventorying the height above ground level (AGL) of all trees having a 6" caliper or more at 4' above the ground for the area delineated in Section 7.1 (F).
- 3.4 Camouflaged. A Personal Wireless Service Facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.
- 3.5 Carrier. A Company that provides personal wireless services also sometimes referred to as a provider and a company that builds PWSF provided two letters of intent from service providers are submitted showing legitimate space requests.

- 3.6 Co-location. The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.
- 3.7 Environmental Assessment (EA). An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
- 3.8 Equipment Shelter. An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for Personal Wireless Service Facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.
- 3.9 Facility. See Personal Wireless Service Facility.
- 3.10 Fall Zone. The area on the ground from the base of a ground mounted Personal Wireless Service Facility that forms a circle with a radius equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- 3.11 Guyed Tower. A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.
- 3.12 Height. The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.
- 3.13 Lattice Tower. A type of mount with multiple legs and structural cross bracing between the legs that is self-supporting and free-standing.
- 3.14 Mast. A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.
- 3.15 Monopole. A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.
- 3.16 Mount. The structure or surface upon which antennas are mounted, including the following four types of mounts-
1. Roof-mounted. Mounted on the roof of a building.
  2. Side-mounted. Mounted on the side of a building.
  3. Ground-mounted. Mounted on the ground.
  4. Structure-mounted. Mounted on a structure other than a

building.

- 3.17 Personal Wireless Service Facility (PWSF). A facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service Facilities include a mount, antenna, equipment shelter, and other related equipment.
- 3.18 Personal Wireless Services. The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.
- 3.19 Radio Frequency (RF) Engineer. An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.
- 3.20 Radio Frequency Radiation (RFR). The emissions from personal wireless service facilities.
- 3.21 Security Barrier. A wall, fence, or berm that restricts an area from unauthorized entry or trespass.
- 3.22 Separation. The distance between one carrier's array of antennas and another carrier's array.

#### 4, DISTRICT REGULATIONS

- 4.1 **Location:** New ground mounted Personal Wireless Service Facilities shall be permitted in all zoning districts as a special exception provided conformance with these standards and the other provisions of the Andover Zoning Ordinance can be met and approved by the Andover Zoning Board of Adjustment. Applicants seeking approval for Personal Wireless Service Facilities shall first evaluate existing structures for the siting of PWSF. Only after finding that there are no suitable existing structures pursuant to Section 4 herein, shall a provider propose a new -ground mounted facility. Personal Wireless Service Facilities, to be mounted on existing or modified structures, shall be permitted providing Site Plan Review approval is granted by the Andover Planning Board.
- 4.2. **Existing Structures: Policy -** Personal Wireless Service Facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
- 4.3 **Existing Structures: Burden of Proof -** The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall provide the following information to the Andover Planning Board to the extent applicable. The Planning Board shall submit their findings to the Andover Zoning Board of Adjustment prior to consideration of new

facility sites.

- A. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
- B. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post office shall be provided for each owner of existing structures that was contacted.
- C. If the applicant claims that a structure is not capable of physically supporting a PWSF, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.

4.4 Ground Mounted Facilities: Policy - If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted Personal Wireless Service Facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: the use of compatible building materials and colors, screening, landscaping, and placement within trees.

## 5 USE REGULATIONS

### 5.1 Land Use Provisions:

- A. Siting for PWSF shall be treated as a use of land and shall be subject to the Andover Zoning Ordinance as well as other Town ordinances and regulations. PWSF shall not be considered infrastructure, essential services, or public utilities as defined and used elsewhere in local and State ordinances and regulations.
- B. Personal Wireless Service Facilities may be considered either a principal or a secondary use. A different existing use or an existing structure on the same lot shall not preclude the installation of a PWSF on such lot.
- C. For the purpose of determining whether the installation of a PWSF complies with this ordinance, the dimensions of the

entire lot shall control, even though the facilities may be located on leased parcels within such lots.

- D. PWSF that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure; nor shall such facilities be deemed to be an accessory use.

5.2 A Personal Wireless Service Facility shall require a building permit in all cases and may be permitted as follows:

- A. Facilities added to Existing Tower Structures: Site Plan Review approval by the Planning Board is required. The Review shall be limited to issues relating to access, bonding, security for removal, structural integrity and appropriate camouflage of such siting. Carriers may locate a PWSF on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, full site plan review is required.
- B. Reconstruction of Existing Tower Structures: Site Plan Review approval by the Planning Board is required. An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than one hundred (100) feet to exceed one hundred (100) feet in height, The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community.
- C. Existing Structures: Site Plan Approval by the Planning Board is required. A carrier may locate a Personal Wireless Service Facility on an existing structure, building, utility tower or pole, or water tower subject to the provisions of this Article. For the purpose of this section, new structures that are conforming to all other district zoning requirements shall be considered as existing structures.
- D. Ground Mounted Facility: A Personal Wireless Service Facility involving construction of a ground mount shall require a special exception in conformance with the provisions of this Article and if approved by the Zoning Board of Adjustment a Site Plan Review approval by the Planning

Board.

- E. Town Wireless Service Facility for Public Safety: An application for the installation of a PWSF shall include a statement summarizing the Town's] interest in collocating communication equipment for public safety on the proposed structure. If the Town indicates that equipment will be beneficial, the applicant shall describe accommodation of the public communication equipment in keeping with the requirements of this ordinance.

## 6. DIMENSIONAL REQUIREMENTS

6.1 Personal Wireless Service Facilities shall comply with the following requirements:

- A. Height, Maximum: In no case shall a Personal Wireless Service Facility exceed one hundred (100) feet in height, unless the mount for the facility was greater than one hundred (100) feet in height prior to the adoption of this Article.
- B. Height. Existing Structures and Utility Poles: Carriers that locate new Personal Wireless Service Facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet if the additional height will not materially impair the visual impacts of the site. This increase in height shall only be permitted once for each structure.
- C. Height. Other Existing Structures: The height of a PWSF shall not increase the height of a structure by more than fifteen (15) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a Personal Wireless Service Facility on a building that is legally nonconforming with respect to height, provided that the provisions of this Article are met.
- D. Height. Ground-Mounted Facilities: Ground-mounted Personal Wireless Service Facilities shall not project higher than (10) ten feet above the average tree canopy height within a one hundred and fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. An inventory of tree heights surrounding the proposed site shall be provided by the Applicant.

- E. Setbacks: All Personal Wireless Service Facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located or 105% the facility height whichever is greatest. Fences shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height, in accordance with the appropriate Zoning Ordinances.
  
- F. Fail Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground-mount of a PWSF to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner. The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review.
  
- G. Fall Zone for Non-Ground Mounts. In the event that an existing structure is proposed as a mount for a PWSF, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing nonconforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities.

## 7. PERFORMANCE AND DESIGN STANDARDS

7.1 Visibility: The proposed PWSF shall have no unreasonable adverse impact upon scenic resources within the Town of Andover.

- A. Visual impacts are measured on the basis of:
  1. change in community scale, as exhibited in relative height, mass or proportion of the Personal Wireless Service Facility within their proposed surroundings.
  2. New visible elements proposed on a contrasting background.
  3. Different colors and textures proposed against a contrasting background.
  4. Use of materials that are foreign to the existing built environment.
  
- B. Visibility focuses on:

1. Eliminating or mitigating visual impact.
2. Protecting, continuing, and enhancing the existing environment.

C. Enhancements are measured on the basis of:

1. Conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
2. Amount and type of landscaping and/or natural vegetation.
3. Preservation of view corridors, vistas, and view sheds.
4. Continuation of existing colors, textures, and materials.

D. Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts: When a PWSF extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

E. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts: Personal Wireless Service Facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

F. Camouflage for Ground Mounted Facilities: All ground-mounted PWSF shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150') feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. The facility shall be screened from view in all directions by the dense buffer of trees. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty (150') foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. 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 and present a hazard to persons or property.

7.2 Color - To the extent that any Personal Wireless Service Facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings.

7.3 Equipment Shelters - Equipment shelters for PWSF shall be designed consistent with one of the following design standards:

- A. Equipment shelters shall be located in underground vaults, or
- B. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or
- C. Equipment shelters shall be camouflaged behind an effective year round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood, or
- D. If mounted on a rooftop, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

7.4 Lighting, Signage, and Security:

- A. Lighting: The mounts of PWSF shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot-candles.
- B. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town of Andover Sign Ordinance administered by the Board of Selectmen.
- C. Security Barrier: The Planning Board shall have final authority regarding the need for the installation of a security barrier surrounding a ground mounted PWSF.

7.5 Historic Buildings:

- A. Any PWSF located on or within an historic structure shall not

alter the character-defining features, distinctive construction methods, or original historic materials of the building.

- B. Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible.
  - C. Personal Wireless Service Facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
- 7.6 Scenic Landscapes and Vistas - Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted PWSF shall be surrounded by a buffer of dense tree growth as per Section 7.1 (F).
- 7.7 Driveways - If available, existing entrances and driveways to serve a PWSF shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a PWSF shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.
- 7.8 Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.
- 7.9 Ground and Roof Mounts - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof-mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 5.2 (B).
- 7.10 Hazardous Waste - No hazardous waste shall be discharged on the site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.
- 7.11 Noise - Personal Wireless Service Facilities shall not generate noise in excess of that permitted under the Andover Commercial Overlay District regulations.
- 7.12 Radio Frequency Radiation (RFR) Standards – All equipment proposed for a PWSF shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

8. PAYMENT OF COSTS

- i
- 8.1 In the event that the Town deems it necessary, the Applicant shall reimburse the town for expenses incurred to:
- A. Hire experts to provide technical understanding of the proposed new or modified PWSF and alternatives; and
  - B. Hire experts to interpret test results for radio frequency emissions, at the time of completion of the PWSF and annually thereafter.

9. MONITORING AND MAINTENANCE

- 9.1 Maintenance - The owner of the facility shall maintain the PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.
- 9.2 Monitoring - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Andover may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provides them the opportunity to accompany the Town representatives when the measurements are conducted.
- 9.3 Security for Removal - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 9.2. The amount of the security shall be based upon the removal cost plus fifteen percent (15%), provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

10. ABANDONMENT OR DISCONTINUATION OF USE

- 10.1 Notification - At such time that a carrier plans to abandon or discontinue operation of a PWSF, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations.

In the event that a carrier fails to give such notice, the PWSF shall be considered abandoned upon such discontinuation of operations.

10.2 Removal - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the PWSF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- A. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
- B. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- C. Restoring the location of the PWSF to its natural condition, except that any landscaping and grading shall remain in the after-condition.

10.3 Failure to Remove - If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

## ARTICLE XIII: FLOODPLAIN DEVELOPMENT

This article is adopted pursuant to the authority of RSA 674:16. The regulations in this article shall overlay and supplement the other regulations in this zoning ordinance. If any provision of this article differs or appears to conflict with any provision of this 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 article shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Rate Map dated April 2, 1986 which is declared to be a part of this article, and is hereby incorporated by reference.

- A. Definition of Terms: The following definitions shall apply only to this Floodplain Development Article, and shall not be affected by, the provisions of any other ordinance of the Town of Andover.

**Area of special flood hazard** is the land in the flood plain within the Town of Andover subject to a one percent or greater chance of flooding in any given year. The area is designated as Zone A on the Flood Insurance Rate Map.

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

**Basement**: Any area of a building having its floor subgrade on all sides.

**Building**: see Structure-Development: 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 operations or storage of equipment or materials.

**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 operations or storage of equipment or materials

**FEMA**: The Federal Emergency Management Agency.

**Flood or Flooding**: 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.

**Flood Insurance Rate Map (FIRM)**: An official map incorporated with this ordinance, on which FEMA has delineated with the special flood hazard areas and the risk premium zones applicable to the Town of Andover.

**Flood Insurance Study**: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-

related erosion hazards.

**Floodplain or Flood-Prone Area:** Any land area susceptible to being inundated by water from any source (see definition of Flooding.)

**Flood Proofing:** 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.

**Floodway:** see Regulatory Floodway.

**Functionally Dependent Use:** 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.

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

**Historic Structure:** Any structure that is:

- a) 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;
- b) 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;
- c) 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
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1) By an approved state program as determined by the Secretary of the Interior, or
  - 2) Directly by the Secretary of the Interior in states without approved programs.

**Lowest Floor:** 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.

**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 attached 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 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

**Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level:** The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

**100-year Flood:** see Base Flood.

**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

**Recreational Vehicle:** 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 a temporary living quarters for recreational, camping, travel or seasonal use.

**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.

**Special Flood Hazard Area:** An area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, AO, AI -30, AE, A99, AH, VO, VI-30, VE, V, M, or E. (See Area of Special Flood Hazard)

**Structure:** For floodplain management purposes, a walled and roofed building, including a gas or liquefied storage tank, that is principally above ground, as well as a manufactured home.

**Start of Construction:** This 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 footings, the installation of piles, 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.

**Substantial Damage:** Is damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement:** Is 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:

- a) the appraised value prior to the start of the initial repair or improvement or
- b) 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".

**Violation** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in sections B or H(2b) is presumed to be in violation until such time as that documentation is provided.

**Water Surface Elevation:** Is the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

- B. All proposed development in any special flood hazard areas shall require a permit.
- C. The Zoning Administrator 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:

- 1) 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,
- 2) be constructed with materials resistant to flood damage,
- 3) be constructed by methods and practices that minimize flood damages,
- 4) 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.

D. 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 Zoning Administrator 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 onsite waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

E. For all new or substantially improved structures located in the special flood hazard areas, the applicant shall furnish the following information to the Zoning Administrator:

- a) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b) if the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed.
- c) any certification of flood-proofing.

The Zoning Administrator shall maintain for public inspection, and shall furnish such information upon request.

F. The Zoning Administrator 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.

G.

1. 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 Zoning Administrator, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities] as determined by the Zoning Administrator, including notice of all scheduled hearings before the Wetlands Bureau.

- 2) The applicant shall submit to the Zoning Administrator, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- 3) The Zoning Administrator 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:

*"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."*

H.

- 1) In Zone A the Zoning Administrator shall obtain, review, and reasonably utilize any 100 year 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).
- 2) The Zoning Administrator's 100 year flood elevation determination will be used as criteria for requiring in Zone A that:
  - a) all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;
  - b) that all new construction or substantial improvements of nonresidential structures have the lowest floor {including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
    - i) be flood-proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

- iii) 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.
- c) 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 100 year 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.
- d) Recreational vehicles placed on sites within Zone A shall either:
  - (1) be on the site for fewer than 180 consecutive days,
  - (2) be fully licensed and ready for highway use, or
  - (3) meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c)(6) of Section 60.3.
- e) 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:
  - (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
  - (2) the area is not a basement;
  - (3) 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.

- I. Any order, requirement, decision or determination of the Zoning Administrator made under this article may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- J. If the applicant, under appeal, requests a variance as authorized by RSA 674:33,1 (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - a) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - b) 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.
  - c) that the variance is the minimum necessary, considering the flood hazard, to afford relief

The Zoning Board of Adjustment shall notify the applicant in writing that: (i) 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 (ii) 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.

The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## ARTICLE XIV: SMALL WIND ENERGY SYSTEMS ORDINANCE

### A. 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.

### B. Definitions:

**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.

**Modification.** Any change to the small wind energy system that materially alters the size, type, height, or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

**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.

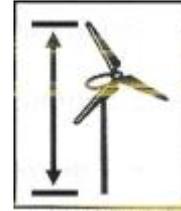
**Power grid.** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

**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.

**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.

**System height.** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

**Tower.** The monopole, guyed monopole or lattice structure that supports a wind generator.



**Tower height.** The height above grade of the fixed portion of the tower, excluding the wind generator.



**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. Procedure for Review:

1. Site Plan Review: Small wind energy systems and met towers are allowed uses in all zoning districts where structures of any sort are allowed pending Site Plan Review by the planning board, and issuance of a building permit by the Zoning Administrator. No small wind energy system shall be erected, constructed, or installed without first receiving Site Plan approval and a building permit from the Zoning Administrator. 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.
2. Site Plan Review Applications submitted to the Planning Board shall contain a site plan with the following information:
  - i) Property lines and physical dimensions of the applicant's property.
  - ii) Location, dimensions, and types of existing major structures on the property.
  - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - iv) Tower foundation blueprints or drawings.
  - v) Tower blueprints or drawings.
  - vi) Setback requirements as outlined in this ordinance.
  - vii) The right-of-way of any public road that is contiguous with the property.

- viii) Any overhead utility lines.
  - ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - x) 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.
  - xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xiv) List of abutters to the applicant's property.
3. Building Permit Application: The building permit application shall consist of copies of the Site Plan Review application and Site Plan Approval issued by the planning board.
  4. Abutter and Regional Notification: In accordance with RSA 674:66, the Zoning Administrator 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 Zoning Administrator prior to the issuance of the building permit. The Zoning Administrator shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Zoning Administrator shall follow the procedures set forth in RSA 36:57, IV.

D. Standards:

1. The Planning Board 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 and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

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	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements
- b. Tower: In no situation shall the tower height exceed 150 feet.
- c. 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.
- d. 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.
- e. 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.
- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. 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.
- h. Visual Impacts: 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.

- i) 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.
  - ii) The color of the small wind energy system shall be 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.
  - iii) 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.
- i. 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.
  - j. 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.
  - k. 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 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

E. Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Zoning Administrator by certified U.S. mail of the proposed date of abandonment or discontinuation of use.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within one year 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 Zoning Administrator.

"Physically remove" shall include, but not be limited to:

- a. Removal of the wind generator and tower and related above-grade structures.
  - b. 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.
3. 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 Zoning Administrator 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 Zoning Administrator 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 Zoning Administrator shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
  4. If the owner fails to respond to the Notice of Abandonment or if, after review by the Zoning Administrator, 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 Zoning Administrator may pursue legal action to have the small wind energy system removed at the owner's expense.

F. 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.

G. Penalties:

Any person who fails to comply with any provision of this ordinance or a Site Plan Approval issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

**ARTICLE XV: AMENDMENT**

This Ordinance may be amended in accordance with the provisions of R.S.A. Chapter 31, as amended.

**ARTICLE XVI: PENALTY**

Every person, firm, or corporation violating any of the provisions of this Ordinance, upon conviction thereof, shall be fined not more than the amount then permitted by applicable state statute, N.H. RSA 676:17, or its successor or amended form.

**ARTICLE XVII: SAVING CLAUSE**

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision.

**ARTICLE XVIII: EFFECTIVE DATE**

This Ordinance takes effect immediately upon its passage.