

**FOR PUBLIC HEARING, JANUARY 22, 2025**

**THIS COPY SHOWS  
HOW THE ZONING ORDINANCE WOULD READ AS AMENDED**

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Unless otherwise noted, all Appendices attached hereto and referred to herein are incorporated by reference and made a part of the Town of Franconia N.H. Zoning Ordinance as if fully set forth herein.

**PREAMBLE**

This Zoning Ordinance by application of provisions of State statutes seeks to protect existing property owners against a new use nearby which may not only be incompatible or undesirable, but may also be damaging by lowering the desirability or value of such existing owners' present property. This Ordinance shall have no effect upon the continuance of any land use existing at the time of passage, even though such use is not in conformance with the land use set forth in this Ordinance. All residents may continue present uses.

**ARTICLE I. PURPOSE**

The regulations as herein set forth are for the purpose of promoting the health, safety, and the general welfare of the community under the provisions of New Hampshire RSA 674:16, as amended.

**ARTICLE II. EFFECTIVE DATE AND AMENDMENT**

This Ordinance shall take effect upon its passage, March 10, 1970, and may thereafter be amended by a majority vote of any legal town meeting in accordance with New Hampshire RSA 675:3, as amended.

**ARTICLE III. DEFINITIONS**

The following definitions shall apply where applicable unless otherwise noted herein:

1. Accessory Building or Use — 1. A building or use located on the same lot as the principal building and the use of which is considered subordinate and customarily incidental to those of the principal building, such as detached garages, swimming pools and equipment sheds.  
2. One or two guest rooms in an owner-occupied dwelling unit for nontransient use by up to three lodgers.
2. Accessory Dwelling Unit — A residential living unit that is within or attached to a one-family residential structure or located in a separate structure and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies, as per RSA 674:71.
3. Bed and Breakfast — A one-family residential structure, occupied by the owner, with five or fewer guest rooms for transient use. No provisions for cooking or warming food in guest rooms.
4. Bedroom — As defined by the then applicable NH fire and building codes.
5. Building Coverage — The percentage of the lot covered by the footprint, or horizontal size if larger than footprint, of buildings or other structures.
6. Camper — Any recreational vehicle, motorized or not, capable of being registered and intended for short-term use only.
7. Campground — A parcel of land on which 2 or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residency, in accord with the requirements of RSA 216-I.
8. Conditional Use Permit — An approval granted by the Planning Board pursuant to RSA 674:21,II in accord with the procedures described in RSA 676:4.
9. Dwelling Unit — A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

10. Farmer's Market — A retail sales use operated by a government agency, non-profit agency, or one or more producers that primarily sells farm products and value-added farm products directly to consumers. Farmer's Markets can include indoor and outdoor display and sales.
11. Frontage — The length of the lot line bordering the street right-of-way that provides access to the lot.
12. Gambling and Gaming — To risk something of value upon a future contingent event not under one's control or influence, upon an agreement or understanding that something of value will be received in the event of a certain outcome.
13. Gambling and Gaming Facilities — Any place indoors or outdoors where gambling and gaming is conducted.
14. Gross Floor Area — The sum of the horizontal area of all floors of a building, measured from the exterior faces of the walls but not including unfinished cellars, attics, porches, garages, etc.
15. Hotel, Motel or Inn — A building or group buildings designed or intended to be used primarily for lodging accommodation for the general public for transient or nontransient use. Individual rooms do not include cooking facilities other than a mini-frig or microwave oven intended for the convenience of guests rather than meal preparation. May or may not include additional services such as restaurants, meeting rooms, entertainment and/or recreational facilities.
16. Kindred Group — A group of persons having a relationship such as a group of friends.
17. Light Industry — Manufacturing, production, assembly, packaging and/or distribution which does not involve, on the premises, the use of heat, noise, dust, vibration or odor-generating processes that are detectable off-site and above typical residential levels.
18. Lot Coverage — The percentage of the lot covered by structures, impervious surfaces or other improvements that reduce or prevent absorption of stormwater into the ground. Gravel and crushed stone are considered to be impervious. Grass, lawns and other vegetation are considered to be pervious.
19. Manufactured Housing — A structure, certified as meeting the current HUD Code requirements, which is transportable in one or more sections, is built on a permanent chassis, and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities.
20. Mixed Use Structure — A building which contains dwelling units located above the ground floor of an institutional, civic, office, commercial, or retail use.
21. Residential Structure, One-Family — A single structure that complies with all of the then applicable NH fire and building codes and contains one dwelling unit.
22. Residential Structure, Two-Family — A single structure that complies with all of the then applicable NH fire and building codes and contains two dwelling units.
23. Residential Structure, Multi-Family — A single structure that complies with all of the then applicable NH fire and buildings codes and contains three (3) or more dwelling units.
24. Senior Housing Units — Independent-living residential structures, whether detached or attached, without full-time nursing staff, specifically for households with at least one (1) resident fifty-five (55) years of age or older, each with a limit of two (2) bedrooms, which comply with all of the then applicable NH fire and buildings codes.

25. Setback — The distance between the nearest point of the property line of the parcel to the nearest point of the structure, except ordinary projections such as sills, chimneys, cornices and eaves may extend up to thirty inches into any required setback.
26. Short-Term Rental — A one-family residential structure; any dwelling unit in a two-family or multi-family residential structure; or a single dwelling unit in a one-family residential structure containing an attached accessory dwelling unit, offered to an individual, family or a single kindred group for transient use for compensation.
27. Small Wind Energy System — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kilowatts.
28. Special Use Permit — An approval granted by the Planning Board pursuant to RSA 674:21,II in accord with the procedures described in RSA 676:4.
29. Structure — Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Includes, but is not limited to, buildings, manufactured homes, deck, billboards, outdoor wood boilers (also known as outdoor wood-fired hydronic heater) as defined in RSA 125-R, small wind energy systems, or solar collection systems. Shall not include stairways and landing that are 60 sq. ft. or less and 30 inches or less above grade, signs, fences, mailboxes, light fixtures, raised garden beds, walkways, portable play equipment such as inflatable swimming pools, condenser, generator, propane tank, remote meter pedestal, or the like.
30. Transient— Describes the occupants or occupancy of a room or number of rooms in increments of less than 30 days; not as a place of principal residence.
31. Wetland — Pursuant to RSA 482-A:2,X, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
32. Workforce Housing — Housing that is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for Grafton County as published annually by the United States Department of Housing and Urban Development (HUD). “Workforce Housing” also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for Grafton County as published annually by HUD. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing as outlined in RSA 674:58-61.

#### **ARTICLE IV. DISTRICT REGULATIONS**

##### **4.01. ZONING MAP**

The zoning district boundaries shall be as shown on the official zoning map available and on display at the Town Hall. District boundaries that appear to follow streets, water courses or lot lines shall be interpreted as doing so.

**NOTE: Zoning map moved to  
Appendix C**

#### **4.02. USES**

In the districts described herein, only those uses listed as Permitted shall be allowed by right. Uses listed as allowed by Special Exception shall only be allowed by approval of the Zoning Board of Adjustment. Uses listed as allowed with a Conditional Use Permit or Special Use Permit may be allowed pursuant to the specific section of the Ordinance where the term is contained. It is the intent of this Ordinance that no other uses be allowed. Uses not mentioned are neither Permitted nor allowed by Special Exception, Conditional Use Permit or Special Use Permit.

Any change in use for any use provided for herein shall require a Change-In-Use Permit to be issued by the Board of Selectmen.

P= Permitted  
 SE = Special Exception  
 SUP = Special Use Permit

	Residential A	Residential B	Business B	Business A
One-Family Residential Structure	P	P	P	P
Accessory Dwelling Unit	SE	SE	SE	SE
Manufactured Housing	P			
Bed & Breakfast	P	P	P	P
Two-Family Residential Structure	SE	P	P	P
Multi-Family Residential Structure	SE	P	P	P
Senior Housing Unit	SE	P	P	P
Workforce Housing Unit	SE	P	P	P
Home Occupation – See Section 5.05	P	P	P	P
Short-Term Rental	P	P	P	P
Farming	P	P	P	P
Timber Harvesting	P	P	P	P
Timber Processing	SE			
Planned Unit Development	SUP	SUP		
Cluster Development	P	P		
School	SE	P	P	P
Institution	SE	P	P	P
Medical and other Professional Offices	SE	P	P	P
Fine Art Studio	SE	P	P	P
Barber Shop, Beauty Parlor	SE	P	P	P
Childcare Facility	SE	P	P	P
Insurance and Real Estate Office	SE	P	P	P
Hotel, Motel or Inn	SE	P	P	P
Campground	SE	SE	SE	SE
Restaurant	SE	P	P	P
Retail Store		SE	P	P
Wholesale and Light Industry				P
Garage and Filling Station				P
Small Wind Energy System	SE	SE	SE	SE
Excavations	SE	SE	SE	SE
Telecommunications Tower	SUP	SUP	SUP	SUP
Other Business Use not specifically listed as Permitted but so similar in nature and impact to another listed use so as to lead the Zoning Board of Adjustment to determine that issuance of a Special Exception would be reasonable.			SE	SE

**4.03. DIMENSIONAL REQUIREMENTS**

Except where specified elsewhere in this Ordinance, the following requirements shall apply:

- A. Only one principal building or one principal use shall be permitted on each lot.
- B. The minimum lot size, maximum building coverage and minimum lot frontage shall be as shown below. The maximum density shall be one dwelling unit or other principal use or principal building per minimum lot size.

District	Residential A	Residential B	Business A Dwelling	Business A Non-Dwelling	Business B Dwelling & Non-Dwelling
Minimum lot size	5 acres	3 acres	1 acre	½ acre	2 acres
Maximum building coverage	10%	10%	10%	30%	10%
Minimum lot frontage	200 ft.	150 ft.	80 ft.	80 ft.	150 ft.

- C. All structures shall be set back at least 50 feet from any right-of-way centerline and 20 feet from any side or rear lot line.
- D. If soil or slope conditions will, in the opinion of the Planning Board, adversely affect the runoff, erosion, or operation of on-site sewage disposal facilities, then greater than the District minimum acreage may be required.
- E. All one-family residential lots shall have sufficient parking space to accommodate at least two (2) full size vehicles off the street.
- F. All buildings and/or structures are restricted to a maximum height of 35 feet above the average original ground level. This limit does not apply to accessory uses such as TV and radio antennas, chimneys, flagpoles, roof-top satellite dishes, telecommunications facilities granted a Special Use Permit pursuant to Appendix A Wireless Telecommunications Facilities, or small wind energy systems.

**4.04. NON-CONFORMANCE**

**A. Right to Continue**

Any land use to the extent existing at the time of passage of this Ordinance or any amendment, but not conforming thereto, shall have the privilege of continuing in such use indefinitely or of resuming such use within two years of any discontinuance.



**B. Expansion of Nonconforming Use**

A nonconforming use shall not be altered, expanded, or changed, except that minor changes may be allowed by Special Exception provided the applicant demonstrates that the proposed expansion/alteration/change:

1. does not substantially change the nature and purpose of the original use, and must be closely related to the manner in which property was used at the time the use became nonconforming;
2. must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature or kind;
3. the expansion/alteration/change does not have a substantially different effect on the neighborhood;
4. does not involve expansion into an additional building or an additional portion of the lot except as provided in 5. below;
5. does not involve expansion of an existing building of more than ten percent (10%) of the gross floor area of the existing building at the time the use became nonconforming; and
6. does not create any additional nonconformities.

A change in operation from seasonal to year-round shall be considered an expansion of use requiring a Special Exception.

**C. Change of Nonconforming Use**

The change of a nonconforming use to another nonconforming use may be allowed by Special Exception if the Zoning Board of Adjustment finds that in addition to meeting each of the criteria in Section 7.02.B, the use is equally appropriate or more appropriate to the district than the existing nonconforming use.

**D. Expansion of Nonconforming Building**

Any building that exists at the effective date of this Ordinance or any amendment but which would not be permitted under the provisions herein may be repaired and improved provided such repairs and improvements do not increase the degree of nonconformance. A permit may be granted for the expansion of a nonconforming building provided such expansion does not increase the degree of nonconformance. This means, for example, the building may not be expanded further into a setback, and the portion of the building in a setback may not be expanded horizontally or vertically or through another means which increases its mass in the setback.

**E. Nonconforming Lots**

One (1) One-Family Residential Structure shall be permitted on any vacant existing lot that existed and was of record prior to March 10, 1987, provided the setbacks for all structures are at least 50 feet from any right-of-way centerline and 20 feet from any side or rear lot line, a NHDES septic permit has been obtained, and a source of water is available on the lot with a protective radius as required by NHDES unless on a public water supply.

**ARTICLE V. ADDITIONAL PROVISIONS****5.01. APPLICABILITY OF SITE PLAN REVIEW REGULATIONS**

Each Multi-Family Residential Structure, whether it is new construction or a conversion as provided for hereinafter, and any nonresidential structure, shall be subject to Site Plan Review Regulations.

All costs associated with any consultant(s) the Planning Board may hire to assist in its review shall be the responsibility of the developer.

## 5.02. MULTI-FAMILY RESIDENTIAL STRUCTURE

All new construction of Multi-Family Residential Structures:

- A. Except as provided in Paragraph C below, the maximum number of dwelling units built shall not exceed the density limits in the District in which it is to be located.
- B. The maximum number of dwelling units in any one building shall be eight; multiple buildings may be on one lot.
- C. There shall be at least 40 feet between all Multi-Family Residential Structures within the parcel.
- D. **Multi-Family Residential Units built under a provision of the Village Mixed Use Overlay District (Section 6.05) shall meet the minimum lot size for the underlying District for the first unit, with an additional one (1) acre of land required for each dwelling unit over one (1) up to a maximum of twenty (20) dwelling units on one parcel.**

## 5.03. CONDOMINIUM CONVERSION

The ownership of Multi-Family Residential Structures may be subdivided, sold, used, and resold only when such subdivided ownership of a Dwelling Unit also includes proportional, undivided, ownership interest or sufficient common land areas so that the total of all such individual and common interests would meet all zoning requirements herein. Any such change of ownership shall be considered a subdivision, and all provisions applicable thereto shall apply.

## 5.04. RESIDENTIAL CONVERSIONS

Existing buildings on existing lots in the Residential B, Business A and Business B Districts that do not meet the minimum size requirements may be converted to a Multi-Family Residential Structures, provided parking can be provided according to Section 5.11, hereinafter, and if all other conditions of the Site Plan Review are satisfied. Requirements for water supply, septic disposal systems, fire protection, and safety must be met. The altering or changing of the footprint of the existing structure shall not be allowed except for required health and safety reasons. The number of units per structure shall not exceed four (4).

## 5.05. HOME OCCUPATIONS

Any Home Occupation shall be permitted as an accessory use in the District where allowed and shall be subject to the following restrictions and, with the exception of childcare in conformance with all of the rules of the Department of Health and Human Services, shall require Site Plan Review.

- A. The Home Occupation is clearly an accessory use to the residential use of the property and incidental to the primary use of the property as a dwelling.
- B. The Home Occupation is carried on by a resident or residents of the premises. The Home Occupation may be supplemented by not more than two (2) outside employees.

- C. The Home Occupation shall be carried on only within the principal or accessory structure, and there shall be no obviously commercial interruption of the residential appearance of the area and neighborhood.
- D. Not more than twenty-five (25) percent of the combined floor area of the dwelling house and accessory buildings shall be devoted to such Home Occupation.
- E. A Home Occupation shall be allowed one (1) sign, which shall not exceed six (6) square feet in visible area. The sign shall be flat in nature and shall require a sign permit as provided for hereinafter.
- F. No installation or use of any mechanical or electrical equipment that is not customarily incidental to the practice of the Home Occupation or not normally part of a domestic household shall be permitted, with the exception of medical and dental equipment. In addition, machinery, which is abusive to the residential atmosphere or that causes interference in radio, television, cellular phone or internet reception, shall not be permitted.
- G. The Home Occupation shall not display or create outside the buildings any external evidence of the operation of the Home Occupation, except for the permitted sign. Parking visible to passersby from the street or road or by abutters shall be limited to four (4) vehicles, including those of the dwelling occupants in Residential A and Residential B Districts. No parking shall be permitted on the street or road.
- H. Only articles made on the premises or customarily incidental to the Home Occupation shall be sold on the premises.

#### **5.06. HOTELS, MOTELS AND INNS**

All Hotels, Motels and Inns shall observe the following requirements:

- A. Have a minimum lot size of five (5) acres, with adequate area for sewage disposal, and shall meet all site plan review requirements and conditions; and
- B. Be limited to ten (10) double-occupancy "conventional sleeping units," per acre, defined as rooms having no cooking facilities and shall comply with all then applicable state regulations.
- C. Any Hotel, Motel or Inn that includes a "nonconventional sleeping unit," defined as having a room with cooking facilities, shall be considered a Multi-Family Residential Structure and, accordingly, must comply with the applicable provisions herein therefore.

#### **5.07. ACCESSORY DWELLING UNITS**

As a Special Exception, the Zoning Board of Adjustment may permit an accessory dwelling unit (ADU) to a One-Family Residential Structure in any district either as a conversion or new construction.

The purpose of this section is to increase and integrate the supply of affordable housing without the need for further land development and, with minimal negative impact on the community. This section increases flexible housing options for residents and provides elderly citizens with the opportunity to retain their homes and age in place.

Pursuant to RSA 674:33, the Zoning Board of Adjustment is hereby authorized to grant by Special Exception accessory dwelling units in accordance with the restrictions and requirements of this section. The Zoning Board of Adjustment shall grant the special exception only when the following conditions are met:

- A. A maximum of one (1) accessory dwelling unit may be permitted on property located in all zoning districts that allow One-Family Residential Structures and may be either attached or within the principal One-Family Residential Structure (“attached ADU”) or located in a separate structure (“detached ADU”).
- B. For attached ADUs, an interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
- C. All municipal regulations applicable to One-Family Residential Structures shall also apply to the combination of principal dwellings and accessory dwelling units, including but not limited to, lot and building dimensional requirements such as setbacks. A minimum of two parking spaces shall be provided for the accessory dwelling unit.
- D. The applicant for a special exception shall demonstrate adequate provisions for water supply and sewage disposal for the accessory and primary dwelling units in accordance with RSA 485-A:38. Water and wastewater systems for the units may be combined or separated.
- E. Either the principal dwelling unit or the accessory dwelling unit must be owner occupied. The owner must demonstrate that one of the units is their principal place of residence. Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership. Transfer of either dwelling unit to condominium ownership is not permitted.
- F. Accessory dwelling units shall maintain an aesthetic continuity with the principal unit as a One-Family Residential Structure. Detached ADUs which are newly constructed shall not be taller than the primary dwelling unit.
- G. An attached accessory dwelling unit size shall be no larger than one-third (1/3) the gross floor area of the principal dwelling, or 750 square feet, whichever is larger. Detached ADUs shall be no larger than one-half (1/2) the gross floor area in the principal dwelling unit or 1,000 square feet, whichever is larger; however, in no event shall the gross floor area of a detached ADU exceed 1,500 square feet.
- H. The accessory dwelling unit shall have no more than two (2) bedrooms.
- I. Detached ADUs may only be rented on a long-term basis (a minimum of 12 months). Short-term rentals of detached ADUs are prohibited.

## **5.08. LAND SUBDIVISION**

To ensure that any proposed new land subdivision will result in desirable, safe, and sanitary lot layouts compatible to adjoining land, and that streets, utilities, drainage, and public utilities shall meet Town requirements, and in order to protect the future residents of said subdivision, no land may be subdivided or developed for separate use and ownership without each lot having the prescribed street frontage for that zone along a Class V or better public street or a private street that is shown on a plat that has been approved by the Planning Board and recorded with the Grafton County Registry of Deeds, which provides the principal means of access to the property and is constructed and maintained to Town specifications. The lot size and density of development shall conform to existing Zoning Ordinance requirements, and shall allow adequate provision for current or future town water, storm drainage and sanitary sewage disposal and any other public utilities.

The specifications for construction of streets and utilities shall provide for a size and quality to require minimum subsequent Town maintenance expense and be of appropriate size, specification and measurement to service the area as then proposed and as likely to develop in the reasonable future.

#### **5.09. EXCAVATIONS**

No land shall be used for the taking of sand, gravel, rock, soil or construction aggregate for commercial purposes unless in conformance with RSA 155-E and the Excavation Regulations for the Town of Franconia.

#### **5.10. LANDFILLS AND JUNKYARDS**

Landfills and junkyards as defined in RSA 236:112, are prohibited in all districts within the Town of Franconia.

#### **5.11. PARKING**

All buildings and developments shall be served by off-street parking facilities. For hotels, motels and inns one space per room shall be required. For dwellings, the following shall apply:

- 1.5 spaces for studio or one bedroom units under 1,000 sq. ft. (rounded up for an odd number of units)
- 1.5 spaces per unit in multi-family developments with 10 units or more (rounded up for an odd number of units)
- 2 spaces for all other dwelling units

Parking shall also be as stated in other sections of this ordinance or the subdivision or site plan review regulations. The number of parking spaces required for nonresidential uses is to be determined by the Planning Board at the time of site plan and/or subdivision review. The Planning Board may at its discretion allow unpaved, unmarked parking spaces to satisfy the parking requirements.

#### **5.12. SANITARY SEWAGE**

No sanitary sewage shall be permitted to run free above ground or to be discharged in a way to be obnoxious or detrimental to the health of others. All new construction shall be served by a subsurface sewage disposal system constructed in accordance with the current standards of the New Hampshire Department of Environmental Services.

#### **5.13. NUISANCE**

Any use of property that unreasonably detracts from the health, safety, peace, and enjoyment of the neighborhood and community so as to constitute a public nuisance is hereby prohibited.

#### 5.14. TEMPORARY OCCUPANCY

A single registered camper, recreational vehicle, or tiny home on wheels on a private lot with or without a one-family residential structure may be occupied by the lot owner or nonpaying guests for up to six (6) months annually, provided that the unit is in compliance with applicable fuel system, fire, life safety, plumbing and electrical codes. Documentation of disposal of waste in compliance with NHDES regulations must be provided to the Board of Selectmen upon request.

#### 5.15. FIRE RUINS OR VACANT DILAPIDATION

No owner shall permit the continuance of fire or other ruins or vacant structures in dilapidated condition for more than one year but shall repair, remove, or destroy the structure and regrade the site to ground level so as not to constitute a public hazard.

#### 5.16. SIGNS

##### A. Permanent Signs

1. A maximum of thirty (30) square feet per business of permanent exterior sign shall be permitted on the premises where a service or product is available. This may include one freestanding sign, one or two sided. Outside dimensions of the freestanding sign, including supports, shall control. The height of any sign shall not exceed twelve feet above grade. No sign will be permitted that has interior or neon lighting. Lighting must be continuous (non-flashing), white/yellow, and directed at the sign and placed in such a way that it will not be a highway hazard. An exception is permitted for a single additional sign per business which designates open or closed, or vacancy/no vacancy. This sign type shall not exceed 3 sq. ft., may display solid nonflashing colors that are internally lighted, shall be attached flush to a building's side or to the freestanding permanent sign, and not be more than 10 feet from the ground. For Internally illuminated signs, they shall have a dark field and light message and the aggregate output of the light sources shall not exceed 500 initial lamp lumens per square foot of sign face. The only off-premise signs allowed will be a limited number of state-approved directional signs at highway intersections.
2. Businesses that are accessory to another business may have one exterior sign of not more than six square feet.
3. State and /or national flags are not to be considered signs.
4. All signs must meet state requirements.
5. All permanent signs shall require a permit to be issued by the Selectmen.

##### B. Temporary Signs are any sign not considered permanent, i.e. sandwich signs and banners.

1. Temporary signs shall be limited to a total of 64 square feet and displayed in such a manner that is not disorderly, offensive or detrimental to the public. No temporary sign shall be illuminated in any manner or cause undue distraction, confusion or hazard to vehicular or pedestrian traffic or project into or over the public right-of-way.
2. Temporary signs shall be permitted at property that is for rent or sale. Sign area shall not exceed six square feet and shall meet all other requirements of Section 5.16.A. Such signs shall be removed after completion of transaction.
3. Temporary signs may be erected or posted on the site of any construction project once work has

begun. Each sign may be no larger than thirty square feet and shall be removed promptly upon completion of work by the individual contractor.

4. Temporary political signs shall be permitted during the political campaigns, but such signs shall be removed as required by NH law.
5. All temporary signs referred to in items 2 - 4 must be removed within two days of the completion of project or event, otherwise it will be removed by the authority of the Selectmen.
6. All other temporary signs must be removed after one year, otherwise it will be removed by the authority of the Selectmen.

### **5.17. GAMBLING AND GAMING FACILITIES**

No Gambling or Gaming Facility shall be permitted in the Town of Franconia as either a primary or accessory use. Gambling and gaming may be conducted by charitable organizations as defined in RSA 287-D:1 raising money for their own purposes, but shall not be conducted by any other person, corporation or organization for the benefit of or on behalf of a charitable organization.

### **5.18. PLANNED DEVELOPMENTS**

The Town of Franconia desires to encourage a more efficient development of land, construction of buildings and infrastructure than is generally achieved through conventional development by permitting Planned Developments. The Town of Franconia has approved and supports two approaches to Planned Developments.

- Planned Unit Development (Section 5.18.1), and
- Cluster Development (Section 5.18.2).

Any application submitted for a proposed Planned Development shall be in compliance with the guidelines as set forth in the applicable provisions of the Zoning Ordinance, Subdivision Regulations and/or Site Plan Review Regulations.

#### **5.18.1 PLANNED UNIT DEVELOPMENT**

##### **A. Planned Unit Development Objectives**

These Planned Unit Developments, also known as PUDs, are designed to promote:

1. A flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets, water, sewer, and utilities and to preserve the natural and scenic qualities of the open land in Franconia.
2. A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage pattern.
3. A more useful pattern of open space and recreation areas.
4. A development pattern in harmony with the land use density and transportation objectives of the planned development's comprehensive plan.

5. Reduction in costs of providing streets and utilities to the site.
6. Fits within the spirit of the Master Plan.

## **B. Provisions Governing Planned Unit Development**

1. Planned developments will be permitted through the granting of a special use permit from the Franconia Planning Board acting in its role as the Special Use Permit Granting Authority (SUPGA), under RSA 674:21,II.
  - a. The minimum total area for a PUD is to be 15 acres for Residential A and 10 acres for Residential B zoning districts.
  - b. Permitted uses may include and shall be limited to one-family residential structures; two-family residential structures; manufactured housing (limited to Residential A District); and inns, hotels, motels, and accessory facilities that provide for dining and recreation such as tennis, golf, biking, and skiing. These developments will normally involve more than one building and/or one parcel and therefor will require preparation of a comprehensive plan for the entire land development.
2. The maximum density in a PUD shall be one residential structure per two and one-half (2.5) acres in Residential A zone or one and one-half (1.5) acres in Residential B zone. Density shall be calculated utilizing the entire parcel, less the primary open space and the 35% set aside of secondary open space, as defined below. However, in all cases density shall also meet the minimum area requirements based on soil lot size calculations within subdivision and site plan review regulations.
  - a. Primary Open Space is defined as land that includes wetlands, steep slopes over 25%, roadways, rivers, floodplains, external buffers, and walking trails. Primary open space shall not be included within the boundaries of designated lots.
  - b. Secondary Open Space is defined as land that includes the following: scenic view easements, a 100-foot buffer zone from the edge of rivers, ponds, streams, and other wetlands, recreational purposes, tree stands, and other natural aesthetic features. Secondary open space shall not be included within the boundaries of designated lots.
3. The front lot line setback of all residential and commercial structures shall be at least 50 feet from any right-of-way centerline. The setbacks from side and rear lot lines shall be 20 feet, and there shall be at least a 40-foot separation between residential and/or commercial structures. In no case shall any structure be built closer than 20 feet from the property boundary of the subdivision. At its discretion, the Planning Board may allow multiple principal buildings on one lot, reduce required interior setbacks and reduce required frontage on internal roads.
4. Planned Unit Developments are subject to all applicable Subdivision and Site Plan Review Regulations.
5. Whenever there is a conflict or difference between the provisions of this article and those of any other article of this ordinance, the provisions of this article shall prevail for land developed under the Planned Unit Development. Subjects not covered by this article shall be governed by the respective provisions found elsewhere in this ordinance.
6. It shall be the responsibility of the developer to reimburse the Town for the cost of a review of the water supply and the wastewater collection, treatment, and disposal systems by a third-party engineer to be selected by the Town.
7. The PUD shall conform to existing zoning as applicable, and to further existing conditions and standards as outlined in the Subdivision and Site Plan Review Regulations of the Town of Franconia.



## C. Planned Unit Development Comprehensive Plan and Special Use Permit Procedures

### 1. Comprehensive Plan:

Along with an application for a special use permit, the applicant for a planned unit development shall submit a comprehensive plan for the entire parcel showing all current and future phases of development. The plan must include a narrative of purpose and objectives of the planned development and a site plan of sufficient detail to show the proposed development.

### 2. Review Procedure:

- a. The Planning Board shall review the proposed Planned Unit Development as the Special Use Permit Granting Authority (SUPGA) under the regulations of this article for a special use permit in accord with the procedures of RSA 676:4, concurrently with Franconia's Subdivision Regulations and, if applicable, the Site Plan Review Regulations.
  - b. A special use permit shall be granted if the Planning Board determines that the intent of this article as well as the specific criteria of each applicable section is met. The granting of a special use permit implies approval of the submitted comprehensive plan for the Planned Unit Development.
3. The applicant, by appropriate reservation, grant of easement or covenant, shall set aside as non-buildable, a minimum of 35% of the total area of the land within the PUD, not including the primary open space and designated lot areas.
  4. The applicant is required to construct and maintain the Planned Unit Development in accordance with the approved comprehensive plan and granted special use permit.
  5. Any future changes to an approved comprehensive plan must be reviewed by the Planning Board and a new special use permit may need to be issued from the Planning Board.

## 5.18.2 CLUSTER DEVELOPMENT

### A. Cluster Development Definition

Cluster Development is a variation of residential planning and development that permits housing units within larger site developments to be concentrated on lots with dimensions and acreage reduced from the current existing zoning requirements, in exchange for preserving larger tracts of common open space within the overall site. The objectives of Cluster Development are:

1. Preserve larger tracts of contiguous open space.
2. Preserve and protect the natural and/or scenic character of a development site, as well as the Town's overall landscape.
3. Preserve and protect environmentally sensitive and/or valuable resources such as scenic vistas, stream banks, wetlands, aquifers, agricultural land, and so on.
4. Provide more creative flexibility in the residential planning and development of larger tracts of land within the Town.
5. Minimize the visual and physical impact of development by lot configuration, while preserving the natural character and aesthetics of the site.
6. Decrease the cost of housing construction to increase housing opportunity.
7. Increase the range of housing types in town.

**B. Cluster Development Guidelines by Zoning Classification**

The Town of Franconia has two major residential zoning classifications: Residential A District with a minimum of five (5) acre lot size and Residential B District with a minimum of three (3) acre lot size. Franconia has only limited area served by municipal water available in the Residential B District areas and no municipal sewer available in either of these districts. These conditions drive the specific recommendations for each zoning classification.

**1. Residential A District With No Municipal Water**

Cluster development approval would allow the existing minimum five (5) acre lot size requirement to be reduced to a minimum lot size of two (2) acres (to accommodate individual well and septic).

Cluster development approval would allow the existing minimum 200 feet of frontage requirement to be reduced to 160 feet.

**2. Residential B District With No Municipal Water**

Cluster development approval would allow the existing minimum three (3) acre lot size requirement to be reduced to a minimum lot size of one and one-half (1.5) acres (to accommodate individual well and septic).

Cluster development approval would allow the existing minimum 150 feet of frontage requirement to be reduced to 105 feet.

**3. Residential B District With Municipal Water**

Cluster development approval would allow the existing minimum three (3) acre lot size requirement to be reduced to a minimum lot size of one (1) acre (to accommodate individual septic).

Cluster development approval would allow the existing minimum 150 feet of frontage requirement to be reduced to 105 feet.

**C. Cluster Development Requirements**

For any proposed/approved cluster development the following requirement would apply regardless of the residential zoning classification:

1. Cluster development would only be applicable in Residential A and Residential B Districts.
2. Only One-Family Residential Structures shall be allowed in Cluster Development (with the exception of Senior Housing and Workforce Housing).
3. Minimum site area size to qualify for Cluster Development consideration is fifteen (15) acres in Residential A District and ten (10) acres in Residential B District.
4. The total number of cluster lots allowed would be based on the total site acreage divided by the zoned lot size, plus any bonus lots if applicable.
5. The minimum amount of common open space in any Cluster Development proposal shall be at

least 30% of the land and shall be designed in the fewest and largest contiguous parcels as possible. This common open space shall be protected from any future development by a permanent deed restriction and shall be minimally disturbed during the tract development process. This open space shall also be reasonably accessible to residents of the Cluster Development (or to the public, if the land is being deeded to the Town).

6. Roads are not counted as part of the 30% open space calculations nor as part of minimum lot sizes.

**BONUS LOT ALLOCATION FOR APPROVED CLUSTER DEVELOPMENT**

Development Site Size	Res. B with Municipal Water	Res. B. without Municipal Water	Res. A without Municipal Water
10 to 15 acres	1 Bonus Lot	0 Bonus Lots	N/A
>15 to 30 acres	2 Bonus Lots	1 Bonus Lot	1 Bonus Lot
>30 to 50 acres	3 Bonus Lots	2 Bonus Lots	2 Bonus Lots
>50 to 100 acres	4 Bonus Lots	3 Bonus Lots	3 Bonus Lots
Over 100 acres	5 Bonus Lots	4 Bonus Lots	4 Bonus Lots

**D. Senior and Work Force Housing Option in Cluster Development**

Designated Senior and Work Force Housing Option (SWFH) will be allowed in Residential B District with municipal water. Any application submitted for Senior and Work Force Housing Option (SWFH) shall comply with the statutory provisions as set forth in the New Hampshire Planning and Land Use Regulation.

The following guidelines will apply:

1. Minimum site area size to qualify for Senior Housing or Work Force Housing is five (5) acres.
2. Up to three dwelling units per lot will be allowed for Senior Housing, e.g., one 3-unit Multi-Family Residential Structure or three One-Family Residential Structures. For Work Force Housing, up to five (5) dwelling units per one lot will be allowed, pursuant to RSA 674:58.
3. Senior and Work Force Housing shall not be eligible for bonus lots.
4. The maximum number of units for a Work Force Housing Development shall not exceed the total number of acres of the development site. The total number of units in any Work Force Housing Development shall not exceed twenty (20).

## **ARTICLE VI. OVERLAY DISTRICTS**

### **6.01. FLOOD HAZARD CONSERVATION DISTRICT**

#### **A. Purpose and Intent**

The Purpose of this district is to promote and protect the health, safety, and general welfare of the Town by providing reasonable regulations governing development and use of floodplain.

Certain areas of the Town of Franconia, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Franconia, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirement of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

If any provision of this ordinance differs or appears to conflict with any provision of other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

#### **B. District Boundaries**

The Floodplain Conservation District is determined to be those areas identified as special flood hazard areas in the "Flood Insurance Study for the County of Grafton, NH" dated February 8, 2024, together with the Flood Insurance Rate Map panels 33009C0290F, 33009C0295F, 33009C0315F, 33009C0320F, and 33009C0455F dated February 8, 2024 and 33009C0140E, 33009C0257E, 33009C0259E, 33009C0267E, 33009C0270E, 33009C0280E, 33009C0285E, 33009C0305E, and 33009C0310E dated February 20, 2008, County of Grafton, NH, issued by the Federal Emergency Management Agency. (By resolution of the Board of Selectmen, September 3, 2024, pursuant to RSA 674:57)

#### **C. Permitted Uses**

The following uses shall be permitted and shall require a permit within this district.

1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Residential accessory uses such as lawns, gardens, parking areas, and play areas.
3. Public works activities such as road crossings and utilities.

These uses shall be permitted within the Flood Hazard Conservation District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. In addition, these uses shall not adversely affect the efficiency, or unduly restrict the capacity, of the channels or floodways, raise the level of flood waters during the base flood discharge, or reduce the pooling areas of the flood plain. Any questions of adverse affect shall be determined by the Planning Board.

#### **D. Special Provisions**

1. There shall be no expansion of present non-conforming buildings or septic systems, except to correct malfunctions of septic systems. Where replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Board of Selectmen, or their agent, with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
2. Existing non-conforming buildings within this district which are damaged (more than 50% of their market value) or destroyed, may be repaired or replaced within 180 days after such damage or destruction provided they comply with the minimum standards of the National Flood Insurance Program outlined in this ordinance.
3. Any reconstruction, rehabilitation, addition, or other improvement to an existing non-conforming building within this district costing more than 50% of the market value of the structure before the start of construction of the improvement may be permitted provided they comply with the building standards outlined in this ordinance.
4. 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 Environmental Services Department and submit copies of such notification to the Board of Selectmen, 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 Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.

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

#### **E. Data Required**

1. In special flood hazard areas, the Board of Selectmen shall review all 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 in a special flood hazard area, all new construction and substantial improvements shall:
  - a. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. Be constructed with materials resistant to flood damage;
  - c. Be constructed by methods and practices that minimize flood damages; and
  - d. Be constructed with electrical, heating, ventilation, plumbing, and air- conditioning equipment and other service facilities that are designed and/ or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
2. In special flood hazard areas, the Board of Selectmen or their agent shall determine the Base Flood

Elevation in the following order of precedence according to the data available:

- a. In zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
- b. In Zone A, the Board of Selectmen or their agent shall obtain, review, and reasonably utilize any Base Flood Elevation data available from any federal, state, or other source including data submitted for development proposals submitted to the community (i.e. subdivision, site approvals). Where a base flood elevation is not available or not known for Zone A, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade.
- c. The Town of Franconia's base flood elevation determination will be used as criteria for requiring in Zones A and Zone AE that:
- d. Residential construction. New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation.
- e. Nonresidential construction. New construction or substantial improvement of any commercial, industrial or nonresidential building (or manufactured building) shall:
  - Have the lowest floor, including basement, mechanical and utility equipment, elevated no lower than one foot above the level of the base flood elevation; or
  - Be floodproofed to a level no lower than one foot above the level of the base flood elevation, provided that all areas of the building (including basement, mechanical and utility equipment) below the required elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - 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.
- f. Recreational vehicles placed on sites within Zones A and AE shall either:
  - Be on the site for fewer than 180 consecutive days;
  - Be fully licensed, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
  - Meet all standards of this ordinance and the elevation and anchoring requirements for manufactured homes in this ordinance.
- g. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level and be securely anchored to resist flotation, 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.
- h. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements:
  - The enclosed area is unfinished or flood-resistant, usable solely for parking of vehicles, building access or storage;
  - The area is not a basement;
  - The area shall be designed to automatically equalize hydrostatic flood forces on exterior

walls by allowing for the entry and exit of floodwaters. 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 flood 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 flood openings shall be no higher than one foot above grade.

Flood openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

A licensed professional engineer or architect shall develop or review the structural design, specifications and plans for the foundation of the building and shall certify that the design and methods of construction are in accordance with accepted practices to withstand flotation, collapse, lateral movement, erosion and scour, undermining and the effects of water and wind action simultaneously on all building components during the base flood.

3. For all new or substantially improved structures located in the special flood hazard areas, the applicant shall furnish the following information to the Board of Selectmen or their agent:
  - a. The as-build elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  - b. If the structure has been floodproofed, the as-build elevation (in relation to mean sea level) to which the structure was floodproofed.
  - c. Any certification of floodproofing.

The Board of Selectmen or their agent shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

4. The Board of Selectmen or their agent 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.

## **F. Variances and Appeals**

1. Any order, requirement, decision, or determination of the Board of Selectmen, or their agent, made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I, 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.
  - d. That the variance will only permit uses which are in compliance with the minimum standards of the National Flood Insurance Program Regulations.
3. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance may result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and (ii) construction below the base flood level

increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

4. 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.

## G. Definitions

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

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Franconia subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the FHBM and is designated on the FIRM as Zone(s) A & AE.
2. "Base Flood" means the flood having a one-percent possibility of being equated or exceeded in any given year.
3. "Base Flood Elevation" (BFE) means the elevation of surface water resulting from the "base flood."
4. "Basement" means any area of a building having its floor subgrade on all sides.
5. "Building" — see "structure".
6. "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, excavating or drilling operation or storage of equipment or materials.
7. "FEMA" means the Federal Emergency Management Agency.
8. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters, or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
9. "Flood Insurance Rate Map" (FIRM) means the official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Franconia.
10. "Flood Insurance Study" means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.
11. Flood Opening means an opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA "Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures."
12. "Floodplain" or "Flood-Prone Area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
13. "Flood Proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
14. "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.
15. "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
16. "Historic Structure" means 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:
    - I. By an approved state program as determined by the Secretary of the Interior, or
    - II. Directly by the Secretary of the Interior in states without approved programs.
17. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not build so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
18. "Mean Sea Level" means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
19. "Special Flood Hazard Area" — see "Area of Special Flood Hazard".
20. "Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
21. "Substantial Damage" means 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.
22. "Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
  - b. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."
23. "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 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
24. "Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

## **6.02. AIRPORT ZONING**

- A.** The Airport Zoning Overlay District shall extend south along the eastern side of Route 116 to the Wells Road, with the boundary to be 1000 feet from, and parallel to, the center line of Route 116. This district shall allow for the inclusion of an airport.
- B.** An airport shall be any area of land, whether constructed or not, utilized as a site for the landing and taking off of aircraft, or utilized as a point of arrival or departure by air.
- C.** Aircraft shall be any machine supported for flight in the air by buoyancy or by the dynamic action of air on its surfaces.
- D.** The preparation of Airport-Approach Plans to be developed by the Aeronautics Commission as empowered by RSA 424:3 and 424:4.
- E.** No use shall be permitted within the Airport-Approach district which involves the emission of steam, smoke, dust, glare, or other obstruction to visibility which would create an unsafe approach to the airport.
- F.** Until additional regulations regarding permits and variances are adopted, those outlined in RSA 424:6 shall apply.
- G.** The Board of Selectmen shall be designated as the agency for administering and enforcing the regulations outlined herein pursuant to RSA 424:7, II.
- H.** The Zoning Board of Adjustment shall be designated as the Board of Appeals pursuant to RSA 424:7, III.
- I.** Unless otherwise specified, those provisions as outlined in Chapter 424 of the New Hampshire Revised Statutes Annotated regarding Airport Zoning shall apply.

## **6.03. AQUIFER CONSERVATION DISTRICT**

### **A. Purpose and Intent**

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

1. To protect the public health and general welfare of the citizens of the Town of Franconia;
2. To prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifer;
3. To promote future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies; and

4. To encourage uses that can appropriately and safely be located in the aquifer recharge areas.

### **B. District Boundaries**

The Aquifer Protection Overlay District is defined as stratified drift aquifers mapped by USGS and NHDES and the municipal water supply wellhead protection areas.

### **C. Aquifer District Incorrectly Delineated**

Where it is alleged that an area has been incorrectly delineated as an aquifer, or that an area not so designated meets the criteria for aquifer designation, the Planning Board shall determine whether the regulations contained herein apply.

The Planning Board shall make their judgment under this section only upon the determination by a qualified hydrogeologist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Aquifer Map is incorrect. This evidence shall be acceptable only when presented in written form by said hydrogeologist to the Planning Board. Any necessary test well(s) or other investigation shall be conducted at the expense of the landowner or the developer.

### **D. Prohibited Uses**

The following uses shall not be permitted in the Aquifer Protection Overlay District, except where permitted to continue as a nonconforming use:

1. Disposal of solid waste other than brush or stumps.
2. Subsurface storage of petroleum and other refined petroleum products except as regulated by the NH Department of Environmental Services. The placement of residential tanks underground for the storage of petroleum and other refined petroleum products shall not be allowed unless in conformance with the NH State guidelines as applicable to commercial uses.
3. Disposal of liquid or leachable wastes, except from residential subsurface disposal systems, or approved commercial or industrial systems which discharge human wastes only.
4. Industrial uses that discharge contact type process waters onsite. Non- contact cooling water is permitted.
5. Outdoor unenclosed or uncovered storage of road salt.
6. Dumping of snow containing de-icing chemicals brought from outside the Aquifer Protection District.
7. Mining of land except incidental to a permitted use.
8. Excavation of sand or gravel, except where conducted in accordance with RSA 155-E, local regulations adopted pursuant thereto and in a manner that ensures an eight-foot minimum depth to the seasonal high water table.
9. All on-site handling, disposal, storage, processing or recycling of hazardous or

toxic materials.

10. Automotive service and repair shops unless they are operated in accordance with NH State statutes, rules and regulations governing such use.
11. Junk and salvage yards.
12. Bulk storage of toxic material for resale or distribution.

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

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

1. Land development, per the Franconia Zoning Ordinance, except as prohibited in Section 6.03.D.
2. Activities designed for conservation of soil, water, plants, and wildlife.
3. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted.
4. Normal operation and maintenance of existing water bodies, and dams, splash boards, and other water control, supply and conservation devices.
5. Foot, bicycle, and/or horse paths and bridges.
6. Maintenance or repair of any existing structure, provided there is no increase in impermeable surface above the limit established in Section 6.03.F.
7. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, manure and other leachables are used appropriately at levels that will not cause groundwater contamination and are stored under shelter.

#### **F. Maximum Lot Coverage**

Within the Aquifer Protection Overlay District, no more than 15% of any one-family or two-family residential lot may be rendered impervious to groundwater infiltration. No more than 30% of any multi-family, commercial or industrial lot may be rendered impervious.

#### **G. Conditional Use Permits**

Conditional Use Permits may be granted by the Planning Board, after due public notice and public hearing, for exceeding the maximum lot coverage as stated in Section 6.03.F. The Planning Board may grant a Conditional Use Permit only after written findings of fact are made that all of the following are true:

1. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;

3. The proposed use will discharge no wastewater on site other than that typically discharged by domestic wastewater disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;
4. The proposed use complies with all other applicable sections of this Ordinance.

The Zoning Board of Adjustment may require that the applicant provide data or reports prepared by a professional engineer or qualified groundwater consultant to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment shall engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general,

the proposed use in light of the above criteria. Costs for any of the above-mentioned services shall be charged to the applicant.

#### **H. Conflicts with Other Regulations**

Where any provision of this section is in conflict with state laws or other local ordinances, the more stringent provisions shall apply.

## **6.04. WETLANDS CONSERVATION DISTRICT**

### **A. Purpose and Intent**

The purpose of this Ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas with regard to the protection of wetland ecosystems and water quality pursuant to RSA 674:21 Innovative Land Use Controls.

It is intended that this Ordinance shall:

1. Prevent the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and groundwater by sewage and other human activities;
2. Prevent the destruction or significant changes to natural wetlands, which provide flood protection;
3. Protect unique and unusual natural areas;
4. Protect residents against the dangers of increased flooding;
5. Protect wildlife habitats and maintain ecological balance;
6. Protect potential water supplies and existing aquifers and aquifer recharge areas;
7. Prevent unnecessary or excessive expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands; and
8. Encourage those low-intensity uses that can be harmoniously, appropriately, and safely located in wetlands.

### **B. District Boundaries**

#### 1. Wetland Definition

The Wetland Conservation District is defined as those wetlands 20,000 square feet and larger. The most recent National Wetlands Inventory maps produced by the US Fish & Wildlife Service and very poorly drained soils mapped by USDA Natural Resources Conservation Service provide a general indication of the location of wetlands. In case of any question, the precise location of a wetland boundary must be determined by a certified wetland scientist on the basis of additional on-site investigation consistent with NHDES Wetlands Bureau rules. All costs shall be borne by the applicant.

#### 2. Relation to Other Districts

Where the Wetlands Conservation District is superimposed over another zoning district, the more restrictive regulations shall apply.

### **C. Permitted Uses**

Permitted uses are those which are presumed to be consistent with the protection of wetland functions and values when they will not require the erection or construction of any structures or

buildings; will not alter the natural surface configuration; involve the addition of fill, dredging or draining of land; change the flow of water; result in the pollution of wetlands, surface water or groundwater; or involve substantial clearing of vegetation, except for the purposes of agriculture or forest management. Such uses may include the following provided they are allowed in the underlying district:

1. Forestry management consistent with best management practices published by the State of New Hampshire.
2. Cultivation and harvesting of crops consistent with best management practices published by the State of New Hampshire, excluding the use of fertilizers, pesticides, and herbicides.
3. Wildlife refuges.
4. Passive recreation such as hiking, fishing, hunting on foot, nonmotorized boating.
5. Conservation areas and nature trails.
6. Open spaces as permitted or required by the subdivision regulations or the zoning ordinance.

#### **D. Conditional Use Permits**

Conditional Use Permits may be granted by the Planning Board, after due public notice and public hearing in accord with RSA 676:4, for undertaking the following uses in the Wetlands Conservation District, when the application has been referred to the Conservation Commission for review and comment at least thirty (30) days prior to the hearing:

1. Construction, repair or maintenance of streets, roads, and other access ways and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetland.
2. Water impoundments.
3. The undertaking of a use not otherwise permitted in the Wetlands Conservation District, if it can be shown that such proposed use is consistent with the Conditional Use Permit criteria below.

#### **E. Application for Conditional Use Permit**

Application for a Conditional Use Permit shall be on forms supplied by the Planning Board and shall include a site plan on one or more sheets at a scale of 1" = 100' or larger, with information the Planning Board deems necessary to make an informed decision, which may include:

1. North arrow and date.
2. Property lines.
3. Locus map showing adjacent wetlands and other significant hydrological features.
4. Names and addresses of abutting property owners and holders of conservation restrictions and easements.

5. Wetland limit and wetland buffer.
  6. Soil types.
  7. Vegetation types.
  8. Topographic contours at no greater than 5-foot intervals.
  9. Surface drainage patterns, intermittent and year-round.
  10. Existing and proposed development, removal of vegetation, and alteration of the land surface.
  11. Computation of the area to be impacted, in square feet of surface area and cubic yards of cut and fill.
  12. Stormwater management proposed during and after construction.
- F.** The Planning Board, in consultation with the Conservation Commission, shall consider all relevant facts and circumstances, and shall find that the project is both consistent with the purposes of the Wetlands Conservation District and minimizes impacts to the wetland and buffers, including but not limited to the following:
1. The proposed activity minimizes the degradation to, or loss of, wetlands and wetland buffers, and compensates for any adverse impact to the functions and values of wetlands and wetland buffers, including but not limited to the capacity of the wetland to:
    - a. Support fish and wildlife
    - b. Prevent flooding
    - c. Supply and protect surface and ground waters
    - d. Control sediment
    - e. Control pollution
    - f. Support wetland vegetation
    - g. Promote public health and safety
    - h. Moderate fluctuations in surface water levels.
  2. The proposed activity will have no negative environmental impact to abutting or downstream property and/or hydrologically connected water and/or wetland resources, including:
    - a. Erosion
    - b. Siltation
    - c. Turbidity
    - d. Loss of fish and wildlife
    - e. Loss of unique habitat having demonstrable natural, scientific, or educational value
    - f. Loss or decrease of beneficial aquatic organisms and wetland plants.
    - g. Dangers of flooding and pollution.



- h. Destruction of the economic, aesthetic, recreational and other public and private uses and values of the wetlands to the community.
  - 3. The proposed activity or use cannot practicably be located otherwise on the site to eliminate or reduce the impact to the wetland or its buffer.
  - 4. The proposed activity utilizes applicable best management practices.
  - 5. Federal and/or state permit(s) have been received for the proposed activity in accordance with NH Code of Administrative Rules Env-Wt 100-1000 and the Federal Clean Water Act Section 404 Permit.
  - 6. Where applicable, proof of compliance with all other state and/or federal regulations has been received.
- G.** The Planning Board, in considering an application for a conditional use permit in the Wetlands Conservation District, may attach conditions to its approval including but not limited to requirements for more extensive buffers, additional plantings in areas to be revegetated, performance guarantees, and a reduction in proposed impervious surfaces.

**H. Conflict with Other Regulations**

Where any provision of this section is in conflict with state law or other local ordinances, the more stringent provision shall apply.

## **6.05. VILLAGE MIX-USE OVERLAY DISTRICT**

### **A. Purpose and Intent**

The purpose of the Village Mixed-Use Overlay (VMU) District is to protect the traditional patterns of development present in Franconia and to promote the creation of increased housing alternatives located within a walkable proximity to basic services and local business provided for in the Town of Franconia. To enhance the visual character of the Town by encouraging new construction to respect established architectural traditions; and to strengthen the Town's economy through protection and enhancement of the attractiveness of the community to residents, tourists, and visitors.

### **B. District Boundaries**

The Village Mixed-Use Overlay District is determined to be those areas identified in the official map available at the Town Hall.

Furthermore, the delineation of the VMU District's depth on the eastern side of 1-93 is defined as an 1,100' setback border from the centerline of the 1-93 northbound lanes which would run north and south, parallel to 1-93 and connecting with the north and south boundaries of the Franconia VMU District. For those lots that fall into this VMU District and that also extend beyond the 1,100' setback, for the purpose of density calculations within the VMU District, that additional acreage beyond the boundary line, may also be included in the calculations of allowable density in the VMU portion of the lot. For any additional acreage outside the VMU boundary that was used in the density calculations, this acreage may not be further developed or built on, and shall permanently remain in a natural state that would protect existing wildlife habitat.

### **C. Permitted Uses**

The following uses are Permitted in the Village Mix-Use Overlay District in addition to uses normally Permitted or allowed by Special Exception in the underlying district:

1. Conversions from one-family residential structures into two-family residential structures.
2. Conversions from one-family residential structures into multi-family residential structures, not to exceed three units.
3. Mixed-Use Structures not to exceed 2,500 gross floor area of commercial or professional space, with residential uses provided in upper floors. A minimum of one (1) residential unit must be provided in a mixed-use structure, and a maximum of three (3) residential units will be allowed.
4. Mixed-Use Parcels: Not to exceed 2,500 gross floor area of commercial or professional space, with residential uses provided on the same parcel with common ownership. A minimum of one (1) residential unit must be provided in all mixed-use parcels, and a maximum of three (3) residential units will be allowed.
5. Home Occupations.
6. Senior Centers and Elder Day Care Facilities.

7. Community and Recreational Facilities
8. Farmer's Markets

#### **D. Lot Size**

All development activities allowed under a provision of the VMU District provided in Section C above, must conform with the applicable lot size standards and other regulations as set forth in this zoning ordinance.

#### **E. Setbacks**

All development allowed under a provision of the VMU District provided above shall provide a minimum setback of fifty (50) feet from the center line of the town road on which the property has existing legal frontage. A maximum front setback of one hundred fifty (150) feet shall be required.

### **ARTICLE VII. ADMINISTRATIVE PROVISIONS**

#### **7.01. BOARD OF SELECTMEN**

It shall be the duty of the Board of Selectmen:

1. To generally administer this Ordinance;
2. To require a permit to build prior to erection or alteration of any structure and for the change of use of any structure or land, including offering the use of a dwelling unit as a Short-Term Rental; and
3. If any violation of the Ordinance occurs, the Selectmen shall institute in the name of the Town of Franconia, any appropriate action, injunction or other proceedings to prevent, restrain, correct, or abate such violation in accordance with the provisions of RSA 676:15 et seq, as amended.

#### **7.02. ZONING BOARD OF ADJUSTMENT**

##### **A. Authority**

There shall be a five-person Zoning Board of Adjustment, appointed by the Board of Selectmen as provided by state statute, who may upon application:

1. Review and decide on alleged error in construction, interpretation or application of any provision of the Ordinance in accordance with RSA 676:5, as amended, provided the appeal was filed within 30 days of the date of the decision of the administrative officer.
2. Grant or deny a Special Exception in accordance with the provisions of Section B below.
3. Grant or deny a Variance in accordance with Section C below and RSA 674:33(b), as amended.
4. Grant Equitable Waivers of Dimensional Requirements in accordance with RSA 674:33-a.

Prior to a hearing, the costs of advertising, posting, and mailing notices of the hearing shall be paid by the person making the appeal. Determinations of potential regional impact shall be made for each application in accord with RSA 35:54-58 and notification procedures followed as required in the event of a positive determination.

### **B. Special Exceptions**

A use of a building or lot may be allowed under this Ordinance upon formal application to and approval of the Zoning Board of Adjustment when such use would not be detrimental to the public health, safety and general welfare and only in cases where the word "Special Exception" in this Ordinance pertains. A Special Exception will be allowed if the following conditions are met:

1. The proposed use will be compatible with the character of the area, and will not adversely affect the surrounding property, the neighborhood, or the town, including, but not limited to, consideration of noise, air quality, noxious odors, vibration, traffic, lighting, glare, hours of operation, amount of impervious surface, or building mass.
2. Property values in the district and surrounding property will not be reduced by such a use and the use will not cause undue financial burden to the Town.
3. No nuisance or unreasonable hazard shall result to vehicles, pedestrians, property of another landowner, or the environment, including, but not limited to, traffic, air quality, or surface or groundwater quality through increased stormwater runoff or the use of toxic or hazardous substances.
4. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.

Additional criteria for Small Wind Energy Systems:

5. Small Wind Energy Systems:
  - a. Site Plan Review approval is obtained from the Planning Board for Small Wind Energy Systems serving multi-family or nonresidential uses;
  - b. The proposed use has no detrimental effect on the views or aesthetics within the neighborhood or the town;
  - c. Only one such facility or structure is planned per lot;
  - d. Abutters shall be provided 30 days notice in accord with RSA 674:66.

### **C. Variances**

As provided in RSA 674:33, as amended, a variance from the terms of this Ordinance may be legally granted by the Zoning Board of Adjustment if the following conditions are met:

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
  - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
  - (ii) The proposed use is a reasonable one.
- b. If the criteria in subsection a are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subsection 5 shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

**D. Conditions**

In authorizing a Variance or Special Exception, the Zoning Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and community.

**ARTICLE VIII. SAVING CLAUSE**

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

**APPENDIX A - WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE**

**NOTE:**

**The Wireless Telecommunications Facilities Ordinance adopted in 2001 has existed as a stand-alone document. This amendment proposes to include it with the rest of the town’s zoning provisions by making it an appendix, and replace the language with a current version.**

**SECTION I. PURPOSE**

The purpose of the Wireless Telecommunications Facilities Ordinance is to:

1. Preserve the authority of the Town of Franconia to regulate and provide for reasonable opportunity for the siting of wireless telecommunications facilities enabling the applicants to provide such services to the community quickly, effectively, and efficiently.
2. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of telecommunications facilities.
3. To further the vision and uphold the policies and recommendations of the Town of Franconia’s Master Plan.
4. Protect the historic, cultural, natural, and aesthetic resources of the town and property values therein by minimizing the adverse impacts of telecommunications facilities.
5. Locate telecommunications facilities and/or antennas in a manner which promotes the general safety, health, welfare, and quality of life of the residents of the town of Franconia and those who visit.
6. Encourage the use of collocation, camouflaged facilities, monopoles, and construction of facilities with the ability to serve multiple providers.
7. Permit the construction of new ground-mounted towers where all other reasonable opportunities have been exhausted.
8. Provide constant maintenance and safety inspections for any and all facilities.
9. Provide a mechanism for the Town to remove towers to protect the citizens from imminent harm and danger.

**SECTION II. APPLICABILITY**

The provisions of the Wireless Telecommunications Facility Ordinance apply to all construction, installation, maintenance, inspection, expansion and removal of telecommunications facilities within the town of Franconia.

The following are exempt from the provisions of this Ordinance:

1. Temporary wireless telecommunications facilities:
  - a. Used for emergency communications by public officials.
  - b. Designed for use while a permitted permanent wireless facility is under construction.
  - c. Used for a special event or conference as approved by the Selectmen.
2. Amateur (ham) radio services licensed by the F.C.C.

### **SECTION III. DEFINITIONS**

Unless as otherwise defined below, definitions for terminology utilized within the Wireless Telecommunications Facility Ordinance will be the same as the definitions used within the current State of New Hampshire RSA 12-K and the current Telecommunications Act of 1996 or in the Town of Franconia N.H. Zoning Ordinance Article III. Definitions. If any definitions within this Ordinance are defined in the current State of New Hampshire RSA 12-K and current Telecommunications Act of 1996, or as amended, the more current definition will apply.

ANSI/TIA: American National Standards Institute / Telecommunications Industry Association.

Average Tree Canopy Height: The average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet from the base location of the proposed tower prior to construction.

Camouflaged: Telecommunications facilities that are disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure, or designed to blend into the surrounding environment. Examples include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light or flag poles, and structures designed to resemble natural features such as trees or rock outcroppings.

Collocation: The placement or installation of new PWSFs on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable NH State Building Codes. "Collocation" does not include a "substantial modification."

EPA: Environmental Protection Agency.

Equipment Shelter: An enclosed structure, cabinet, shed, vault, or box near the base of a mount within which is housed equipment for PWSFs, such as batteries and electrical equipment.

FAA: Federal Aviation Administration.

Fall Zone: A safety area surrounding a telecommunication facility equaled to 200% of the tower height.

FCC: Federal Communications Commission.

Fresnel Zone: The envelope around line-of-sight radio signal which should be free of interfering objects, such as branches, to minimize interference with the signal.

Guyed Telecommunications Facility: A lattice or other telecommunications facility that is secured to the ground or other surface by diagonal cables for lateral support.

Monopole: A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below grade foundations.

Non-Conforming Telecommunications Facility: Any telecommunications facility which is not in conformance with the requirements of this Ordinance, but that existed lawfully prior to the adoption, revision, or amendment of this Ordinance.

Propagation Maps: Coverage maps that indicate the service areas of radio communications transmitting stations including but not limited to telecommunication facilities.

Provider: An entity providing telecommunications services to individuals or institutions.

PWSF: "Personal wireless service facility" or "PWSF" or "facility" means any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services.

Scenic View: A wide angle or panoramic field of sight that may include natural and/or human-made structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a faraway object, such as a mountain, or a nearby object, such as an historic building.

Side-mounted: Mounted on the side of a building or other structure.

Substantial modification: The mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

(a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or

(c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or



(d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

**Tower:** A guyed or self-supporting structure that is designed and constructed primarily for the purpose of supporting one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, internet, microwave, cellular, telephone, or similar forms of electronic communication.

**Vantage Point:** A point located on a public or private roadway, waterway, or path from which a proposed telecommunications facility will be visible.

#### **SECTION IV. SPECIAL USE PERMIT**

- A. All telecommunications facility construction and/or substantial modifications shall require a Special Use Permit from the Planning Board. Applications for collocations on existing structures are exempt from Planning Board review and are instead subject to review by the Selectmen, pursuant to Subsection VII.B of this Ordinance. The applicant shall provide and bear the expense for documentation to the Planning Board giving evidence of compliance with this Ordinance. The documents shall include, but not be limited to, the following:
1. Detail scaled plan and related documents in accordance with Subsection IV.D.
  2. Written proof, such as a license, that the proposed use/telecommunications facility complies with the FCC regulations governing telecommunications facilities.
  3. Propagation maps for the proposed tower, and drive test results supporting applicant's proposal.
  4. Listing of all alternative sites considered along with each site's research documentation including, but not limited to, location, propagation maps, conversations with landowners, and reason why you rejected the site.
  5. Results of a balloon test performed at the location and height of the proposed tower. Public notice must be provided no less than ten days prior to the balloon test. Photos must be provided and taken from various locations within a twenty (20) mile radius of the proposed tower.
  6. Engineering information detailing the size and coverage required for the facility location.
  7. For a new ground-mounted tower or antenna an inventory and map of all existing ground-mounted towers and antennas that are located within the town's jurisdiction and those within ten miles of the border thereof, including specific information about the location, height, design of each tower and/or antenna, as well as economic, regulatory, and technological feasibility for co-location on the inventoried towers and/or antennas.
  8. Written evidence demonstrating that no existing ground-mounted tower or antenna can accommodate the applicant's proposed telecommunication facilities. This evidence shall consist of substantial evidence that:

- a. No existing ground-mounted towers or antennas are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
- b. Existing ground-mounted towers or antennas are not of sufficient height to meet the applicant's engineering requirements, and why.
- c. The existing ground-mounted towers or antennas do not have sufficient structural strength to support the applicant's proposed telecommunication facility's related equipment.
- d. The applicant's proposed telecommunication facilities would cause electromagnetic interference with the telecommunication facilities located on the existing ground-mounted towers or antennas, or the telecommunication facilities located on the existing towers or antennas would cause interference with the applicant's proposed telecommunication facilities.
- e. The fees, costs, or contractual provisions required by the owner in order to share the existing ground-mounted tower or antenna are unreasonable. Costs exceeding new ground-mounted tower development are presumed to be unreasonable.
- f. The applicant can demonstrate other limiting factors that render existing ground-mounted towers and antennas unsuitable.
- g. Examples of supporting evidence to be provided by the applicant include but are not limited to propagation maps, drive test results that demonstrate need, coverage and capacity of services.

The Planning Board may have this information reviewed and independently tested and verified by an engineer hired by the Town for verification of any claims made by the applicant regarding technological limitation and feasibility for alternative locations. Cost for this review shall be borne by the applicant.

- B. When reviewing an application for Special Use Permit the Planning Board shall follow the procedures contained in RSA 676:4 Board's Procedure on Plats and in RSA Chapter 12-k.
- C. Timeline for Review:

The Planning Board shall act on Special Use Permit Applications within the time frames prescribed by Federal and State law, as those laws may be amended.

- D. Special Use Permit Application Requirements:
  1. General. A project narrative detailing the proposed structures, number of proposed antennas, their height above ground level and placement on support structure; documentation of exploration of collocation potential; details of anticipated noise to be generated; demonstration of coverage need including existing and proposed facilities of the provider to be used in conjunction with the proposed facility; statement authorizing the Franconia Planning Board and Selectmen and agents to access the site for the purpose of reviewing this application, including

for the purposes of a publicly-noticed site visit, and for performing any inspection deemed necessary by either board or their agents, to ensure conformance of the on-site improvements with the approved plan and all other applicable ordinances and regulations.

2. The application must identify the type of proposed facilities (i.e. collocation of a PWSF that does not constitute a substantial modification on an existing facility; collocation of a PWSF that constitutes a substantial modification on an existing facility; construction of a new telecommunications facility that constitutes a “small wireless facility”; or construction of a new telecommunications facility that does not constitute a “small wireless facility”) and the applicable deadline for the Town to complete its review and issue a decision.
3. Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue a Special Use permit.
4. Abutters list. A list of names and addresses of all abutters to the site, as defined by R.S.A. 672:3 as amended, as shown in the Town records not more than five days before the day of filing the application with Planning Board.
5. Site Plan. Submit on Mylar and four paper copies 24” x 36”, plus a PDF, at a minimum scale of 1 inch to 100 feet. The plan shall be prepared, stamped and signed by a land surveyor or engineer licensed in the State of New Hampshire, containing:
  - a. A locus map at a minimum scale of one inch to two thousand feet showing the approximate location of the proposed telecommunications facility in relation to existing streets, water courses and water bodies, and other landmarks.
  - b. North arrow and bar scale.
  - c. A title block with title, property owner name and address, applicant name and address, scale of plan, and name, seal and address of preparer.
  - d. Surveyed property lines of the parcel showing their bearings and distances.
  - e. Area of entire parcel in acres and square feet.
  - f. Deed reference and tax map number
  - g. Names of all abutting property owners, showing Map and Lot number as shown on the Town of Franconia Tax Maps.
  - h. Required setbacks.
  - i. Proposed lease area.
  - j. Location and layout of existing and proposed structures and buildings. GPS coordinates of the tower and distances from at least 3 separate lot lines.
  - k. Existing and proposed contours at five-foot intervals for the entire site being considered for development showing existing contours as dotted lines and finished elevations solid.
  - l. Location and size of proposed signs, fencing, landscaping, screening and lighting.
  - m. Location, width and elevations of proposed access.
  - n. Location of existing and proposed utilities.
  - o. Location, elevation, and layout of catch basins, culverts and other surface drainage features.
  - p. Location of all physical/natural features such as water bodies, water courses, wetlands, vegetation/foliage lines, soil types, rock outcroppings and stone walls.
  - r. Fall zone.
  - s. Location of all structures within 200% of the height of the proposed facility.

6. Elevation drawings of the proposed support structure, including structure height, design and proposed materials; finish; base and methods of attachment.
7. Visual impact analysis including balloon test photos and visual simulations from public roads and trails.
8. A stormwater management plan providing adequate detail to demonstrate compliance with the appropriate applicable best management practices identified in Volumes 1, 2 and 3 of the New Hampshire Stormwater Manual, current edition, published by NHDES. This shall include, for example, a drainage plan, including plans for retention and slow release of stormwater where necessary, and the location, elevation and site of all catch basins, dry wells, drainage ditches, swales, culverts, retention basins, and storm sewers. Indicate direction of flow through the use of arrows. Show the engineering calculations used to determine drainage requirements as well as the date and source for precipitation data. A plan for long-term maintenance of the stormwater facilities must be included.
9. For ground mounted PWSFs being sited within or near trees, a written report from a qualified forestry consultant providing average tree canopy height and method used to determine it.
10. Cost estimate from engineer licensed in the state of New Hampshire to form the basis for the security bond to include removal, disposal, and restoration of site in accordance with Section IX of this Ordinance.
11. Date and permit number of all required state and federal permits.
12. Listing and description of all required inspections during and after every construct stage of the project as mandated to be complaint by the various Federal and State of New Hampshire Building Codes as currently adopted.

## **SECTION V. SPECIAL USE PERMIT PERFORMANCE STANDARDS**

- A. Telecommunications Facilities must be located on land either leased to or owned by the tower owner and must have a dedicated electrical service. Towers are to be designed for collocation of wireless services to the greatest possible degree.
- B. Federal and State Requirements: All telecommunications facilities must meet or exceed current standards and requirements of the ANSI/TIA-222, RSA Chapter 12-K, FAA, FCC, the New Hampshire Building Code and any other applicable codes or other agency with the authority to regulate such facilities. If such standards and regulations are amended, the owner(s) of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the amendments. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense as outlined in Section XI of this Ordinance.
- C. Setbacks: Tower and associated guy wires and accessory facilities shall comply with all setbacks in the Town of Franconia's Zoning Ordinance, including but not limited to provisions of the Zoning District(s) in which the facility is located.

**D. Fall Zones:**

1. The fall zone of a telecommunications tower shall be no less than 200% of the height of the tower, including antennas, and vertical appurtenances in order to ensure public safety. No property line, public or private road, residential dwelling or structure, business or institutional use, or public recreational areas shall be inside the fall zone. The fall zone may cross property lines so long as the applicant secures a recorded fall zone easement from the affected property owner(s). The area of any easement(s) shall be shown on all plans submitted to the Town, and the terms of any such easement(s) shall be provided as part of the Special Use review.
2. Fall Zones for Non-Ground-Mounted Facilities: In the event that an existing structure such as a building, barn silo, church steeple, or utility pole is proposed as a mounting for a telecommunications facility, a fall zone shall not be required unless the Planning Board determines that under the circumstances a fall zone is required.

**E. Height:**

1. Height Limitations for Ground-Mounted Facilities/Towers: In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for any telecommunications facility shall not exceed twenty (20) feet above the average tree canopy height. Height shall be measured from the ground level to the highest point on the tower, including any antennae affixed thereto but not including lightning rods. Notwithstanding the above, additional height may be approved upon a finding by the Planning Board that the additional height is necessary in order to provide adequate coverage, to create an appropriate Fresnel zone, or to provide opportunities for collocation, and that the additional height will not have an adverse visual impact on the scenic character or appearance of the area.
2. Height Increase for Existing Structures and Buildings: In the event that an existing structure (other than a dedicated telecommunications tower) is proposed as a mount for a telecommunications facility, the height of the original structure shall not be increased by more than fifteen (15) feet above the highest point of a flat or mansard roof or fifteen (15) feet above the height at the midpoint between the peak and the eave of other roof styles, unless the facility is completely camouflaged (for example, a facility within a flag pole or chimney). Any increase in height shall be in scale and proportionality to the structure as originally configured. A provider may locate a telecommunications facility on a building that is legally non-conforming with respect to height, provided that the provisions of this section are met.

**F. Camouflaging:**

1. Any tower that breaks a ridge line or has the sky as a backdrop when viewed from a public or private road may be required to be camouflaged if the Planning Board determines that it creates a visual impact as defined in Section VIII. The design and manufacturer to be approved by the Planning Board. If the tower will meet these criteria in the event future collocation is utilized, it may also be required to be camouflaged when constructed.
2. In order to comply with the Master Plan, to the greatest extent feasible, all telecommunications facilities shall be designed to blend into the surrounding environment through the use of existing vegetation, landscaping and screening, the use of compatible materials and colors, or

other camouflaging techniques. Equipment shelters shall be camouflaged or made architecturally harmonious with surrounding structures to the greatest practical degree. Such camouflage may be achieved with planting or fencing, as approved by the Planning Board. 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 part of the original structure. Any easement or lease shall specify that any trees providing required screening shall be maintained and shall not be removed or trimmed, unless the trees are dead or dying and present a hazard to persons or property, or approval is granted by the Planning Board. The Planning Board may require replacement of the tree(s) if such removal compromises the purpose of the camouflage as determined by the Planning Board.

3. Roof-Mounts: When any telecommunications facility 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.
4. Side-Mounts: Telecommunications facilities that are side-mounted shall be camouflaged to the greatest practical degree.

G. Lighting:

1. Telecommunications facilities shall not be illuminated by artificial means and shall not display lights unless such lighting is specifically required by the FAA or other federal or state authority.
2. Ground Lighting: Emergency, safety, or security ground lighting may be utilized when there are people at the site. All ground lighting shall be shielded and directed downward towards the facility and away from neighboring properties.

H. Bulk, Height, and Glare: All telecommunications facilities shall be designed in such a manner as to minimize the visual impact of the facility height, mass, and guy wire supports for the intended use. Materials utilized for the exterior of any structure shall be of a type, style, and location so as to minimize glare and to minimize visual impact from any historic or scenic view, public vantage point, or abutting properties.

I. Finish: Telecommunications facilities shall have a corrosion resistant matte finish unless otherwise required. The Planning Board may require the telecommunications facility to be painted or otherwise camouflaged to minimize the adverse visual impact.

J. Fencing: The area around any ground-mounted telecommunications facility and communications equipment shall be completely fenced and gated for security. Fencing shall be at a minimum of 6' in height and chosen to minimize visual impact and be consistent with its intended safety purpose.

K. Signs: All facilities shall be identified with a sign no greater than six (6) square feet stating the name of the facility's owner and a 24-hour emergency telephone number, posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs and the federal telecommunications facility registration plate, where applicable, shall be posted on the fence as required to meet federal requirements. No commercial signs or lettering shall be placed on the tower or facility.

- L. Noise: The Planning Board may impose conditions to minimize the effect of noise from the operation of machinery or equipment upon nearby properties.
- M. Access: If available, existing entrances and driveways shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual and environmental impact. New driveways shall conform to the Town's requirements relating to driveways, minimize disturbances to the natural contour of the land and be located within existing forest or forest fringe areas and not in open fields. Erosion control for the design, construction, and maintenance of driveways shall follow the Sediment and Erosion Control Standards of the Town of Franconia, New Hampshire Subdivision Regulations.
- N. Utilities: Utility or service lines for telecommunications facilities shall be underground. The Planning Board may waive this requirement if obvious barriers make it unreasonable to place the utilities underground.
- O. Landscaping: Existing growth and natural landforms on the site and immediate area surrounding the compound shall be preserved to the maximum extent possible.
- P. Fire Protection: A letter must be provided from the Fire Chief or designee documenting approval of road access and a protocol for ensuring emergency access to the site if needed.
- Q. Additional Requirements for Telecommunications Facilities:
  - 1. Use of trees for constructing telecommunications facilities is prohibited.
  - 2. The use of DAS (distributed antenna system) or other alternative technologies shall be thoroughly studied and determined to be infeasible before the construction of any new towers is approved.
  - 3. Lattice Towers are not permitted. A waiver may be approved if the applicant is able to demonstrate that no practicable alternative exists pursuant to Section XIV of this Ordinance.
  - 4. The antenna radiated power density shall be the minimum necessary, and in no instance shall exceed the maximum safety range prescribed by the FCC, EPA and/or the Department of Health and Human Services.
  - 5. The radiated power shall not adversely affect reception of radio and television signals or other electronic equipment.
  - 6. Antenna Type: Narrow-profile antenna arrays are recommended and required for new ground-mounted facilities, the collocation of facilities, and facilities mounted on existing structures and buildings.
  - 7. The applicant proposing to build a new ground-mounted tower or antenna shall submit an agreement with the Town that allows for the maximum allowance of collocation upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town, and grounds for a denial.

## **SECTION VI. STRUCTURAL DESIGN REVIEW AND INSPECTIONS**

- A. The design of the telecommunications facility, including but not limited to the tower, appurtenant structures and any attachments to the tower shall be designed by a New Hampshire licensed

professional engineer to the applicable sections of the New Hampshire State Building Code. The design engineer will certify to the wind category utilized as being the correct wind category for the location and that the design is in conformance with the New Hampshire State Building Code. The plans must be stamped by the professional engineer.

- B. The Planning Board may require review of the completed design of the telecommunications facility, including but not limited to the tower and any attachments, by a third-party New Hampshire licensed professional engineer selected by the Planning Board and paid for by the Applicant. The third-party professional engineer will certify to the Franconia Planning Board that the design meets or exceeds the current NH State Building Code and that the wind category utilized in the design is appropriate for the location.

## **SECTION VII. COLLOCATION**

- A. Whether the applicant is applying for a new tower, or for a substantial modification of an existing tower, the applicant must demonstrate in their application to the satisfaction of the Planning Board that the telecommunications facility cannot be collocated on an existing or approved facility or structure for one of the following reasons:
1. **Structural or Spatial Capacity:** The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved facility, as documented by a structural engineer licensed in the State of New Hampshire. Additionally, the existing or approved telecommunications facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
  2. **Radio Frequency Interference:** The proposed antennas and equipment, alone or together with existing facilities, equipment, and/or antennas, would create radio frequency interference (RFI) in violation of federal standards or requirements as documented by a qualified radio frequency engineer.
  3. **Radio Frequency Radiation:** The proposed antennas and equipment, alone or together with existing facilities, equipment, and/or antennas, would create radio frequency radiation (RFR) in violation of federal standards or requirements without unreasonable modification or mitigation measures.
  4. **Aesthetics:** Locating the needed equipment upon an existing or approved facility would have an unacceptable impact upon aesthetics.
  5. **Coverage:** There are no existing or approved telecommunications facilities in the area in which coverage is sought.
  6. **Other:** Other specific unforeseen reasons make it unreasonable or not feasible to locate the planned equipment upon an existing or approved telecommunications facility.
- B. When not associated with a substantial modification, a request for collocation only does not require a Special Use Permit and may be submitted directly to the Selectmen on the town's Building Permit application for review and approval. Collocations must comply with all applicable codes and regulations including the Town's Building Code and be located and constructed in such a manner as to ensure public safety.



The Selectmen must complete its review and issue a written decision within 45 days of receiving an application for a collocation. Within 15 days of receiving an application, the Selectmen may notify the applicant of deficiencies in the application and identify what information or documents need to be provided. If the applicant provides the requested information within 15 days, the Selectmen must issue their decision within 45 days of the date the Selectmen originally received the application. If the applicant does not provide the requested information within the 15 days, the 45-day deadline is extended by the same period it takes the applicant to provide the requested information.

### **SECTION VIII. EVALUATION OF VISUAL IMPACT**

Upon review of the applicant's visual analysis, supporting materials, public hearing testimony, and balloon test results, the Planning Board shall evaluate the visual impact of the proposed facility in order to determine if the design minimizes its visual presence in the landscape. The Planning Board may require changes to the design in order to further minimize the visual impact of the proposed telecommunication facility. The Planning Board shall consider, but not be limited to, the following in making their determination:

1. The amount of time and time of year during which the proposed facility will be viewed by the traveling public on a public highway, public trail, or public water body.
2. The frequency of the view of the proposed facility by the traveling public.
3. The degree to which the view of the proposed facility is screened by existing and/or proposed vegetation, the topography of the land, and existing structures.
4. Background features in the line of sight to the proposed facility that either obscure the facility or make it more conspicuous from all angles of view.
5. The distance of the telecommunications facility from key vantage points and the proportion of which the facility will be visible above the skyline or tree line.
6. The number of members of the traveling public or residents of Franconia and neighboring towns who will be affected by the alteration of the scenic character of the area.
7. The sensitivity or unique value of any particular view affected by the proposed facility; and
8. Significant disruption of any view that provides context to an historic or scenic resource.

### **SECTION IX. SECURITY FOR TOWERS AND SIMILAR STRUCTURES**

Whenever the Planning Board, Zoning Board of Adjustment or Board of Selectmen approve an application to construct a tower or similar structure which, if abandoned and unmaintained, could present a hazard to health or safety from a potential fall or collapse, including but not limited to broadcast antennas or towers, telecommunications towers, or small wind energy systems, the respective Board may require the applicant to provide a bond or other security to the Town in an amount sufficient to cover the costs of removal and disposal of such structure. The Board shall set the form and amount of the security. Any engineer, attorney, or other consultant engaged by the Board to determine the adequacy of the form and amount of security shall be at the applicant's expense.

**SECTION X. MONITORING AND MAINTENANCE**

- A. The owner of a telecommunications tower, including tower structure, and antenna(s) and accessory equipment shall ensure that it is maintained, and its condition assessed in compliance with the guidelines recommended as set forth under current standards of ANSI/TIA-222 and shall be scheduled as follows:
1. Guyed structures every three years.
  2. Self-supporting tower every 5 years.
  3. Additionally, after severe wind and/or other extreme loading conditions as determined by the Building Inspector or Selectmen or their designee.
- B. Inspections shall be conducted by a professional engineer, licensed in the State of New Hampshire and approved by the Town, at the owner's expense. The engineer shall submit a written report to the Selectmen, or their designated representative, within 30 days of the inspection. If the report concludes that a structure is not in compliance with the applicable NH State Building Code, then, upon notice of the deficiency, the owner shall have thirty (30) days to bring the structure into compliance. Failure to take remedial action shall constitute abandonment and grounds for removal, and the tower(s) shall be removed and disposed of at the owner's expense through the execution of the posted security bond.
- C. The owner of the telecommunications facility shall maintain the telecommunications facility 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.
- D. Unless an alternative schedule is approved or required by the Selectmen, the owner of the telecommunications facility shall inspect the driveway and stormwater facilities at least once in the spring and once in the fall and after major storm events as determined by the Town and perform any needed maintenance and/or repair to ensure proper functioning.
- E. The Town shall verify, at the tower owner's expense, that the propagation of the cellular signal is at least equal to the signal defined in the application for the telecommunications facility. Such verification will be completed once in each maintenance cycle.

**SECTION XI. ABANDONMENT OR DISCONTINUATION OF USE**

- A. Notification: At such time that a carrier or owner plans to abandon or discontinue operation of a telecommunications facility, the carrier or owner will notify the Town by Certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given not less than ninety (90) days from the date of abandonment or discontinuation of operations. In the event that a carrier or owner fails to give such notice, the wireless telecommunications facility shall be considered abandoned if not operated for twelve (12) months.
- B. Removal: Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
1. Removal of antennas, mount, equipment shelters, and security barriers from the subject property.

2. Proper disposal of waste materials from the site in accordance with local and state solid waste disposal regulations.
  3. Restoring the location to its natural condition.
- C. Failure to Remove: If the owner of the facility does not remove the facility, then the 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 then dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Selectmen. If the abandoned facility is not removed within ninety (90) days, the Selectmen may execute the security bond to pay for this action.

## **SECTION XII. FINAL APPROVAL**

Upon receipt of the certification from the third-party professional engineer if required, the Franconia Selectmen shall issue a Building Permit subject to any conditions identified by the Franconia Planning Board and the Franconia Building Inspector.

The Town may retain a third-party professional engineer(s), licensed in the State of New Hampshire, at the applicant's expense, to monitor the project and perform inspections required to certify to the Selectmen and Building Inspector that the construction of the telecommunications facility, including but not limited to, the tower, foundation, appurtenant structures and the attachments complies with the design and is compliant with the applicable Federal and New Hampshire Building Codes as currently adopted. The engineer(s) will be certified for the specific inspection they are performing. The engineer will verify to the Selectmen and Building Inspector the finished tower foundation is in the correct location as detailed in the applicant's application prior to work continuing. The engineer(s) will provide the Selectmen and Building Inspector with copies of the inspection report on each inspection within 10 days after the inspection is complete.

Upon receipt of an unconditioned certification from the third-party New Hampshire-licensed professional engineer that the construction of the tower and the attachments are in compliance with the New Hampshire Building Code and certification from the Franconia Planning Board Chairman and the Franconia Selectmen Chairman that all conditions of the Special Use approval and Building Permit have been complied with, the Franconia Building Official shall issue a Certificate of Occupancy.

The adding of any additional appurtenant structures, attachments or extension of the tower requires the above certification before the Selectmen will issue a Building Permit and the Building Inspector issues a Certificate of Occupancy for the modifications or attachments.

## **SECTION XIII. WAIVERS**

- A. General. This section only applies to Appendix A Wireless Telecommunications Facilities Ordinance and no other section of Franconia's Zoning Ordinance. Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with a particular requirement of Wireless Telecommunications Facilities Ordinance, or the purposes of this Ordinance may be served to a greater extent by an alternative proposal, it may approve waivers to this Ordinance. The purpose of granting waivers under this Ordinance shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by this Ordinance. The Planning Board shall not approve any waiver unless a majority of those present and voting find that all of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
  2. The waiver will not, in any manner, vary the intent of the Wireless Telecommunications Facilities Ordinance, the Town master plan, or official maps.
  3. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include but not be limited to the following:
    - a. Topography and other site features.
    - b. Availability of alternative site locations.
    - c. Geographic location of the property.
    - d. Size/magnitude of the project being evaluated and availability of collocation.
    - e. Whether the absence of a waiver would otherwise actually prohibit or effectively prohibit the applicant from providing services.
- B. Conditions. In approving waivers, the Planning Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of this Ordinance.
- C. Procedures. A request for any such waiver shall be submitted in writing by the applicant with the application for Planning Board review. The request shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit the request in writing shall require an automatic denial.

#### **SECTION XIV. FACILITIES INSTALLED PRIOR TO EFFECTIVE DATE**

All telecommunication facilities, towers and antennas legally installed prior to the effective date of the Ordinance shall be considered permitted, nonconforming uses and structures and may be utilized for siting consistent with the terms of this Ordinance.

#### **SECTION XV. APPEALS**

Appeals regarding the decision of the Planning Board for the Special Use Permit, must be appealed to the New Hampshire Superior Court as provided by RSA 676:5(III) and RSA 677:15.

**APPENDIX B – SOLAR ORDINANCE**

**NOTE:**  
**The Solar Ordinance adopted in 2022 has existed as a stand-alone document. This amendment proposes to include it with the rest of the town’s zoning provisions by making it an appendix, and revise the language as shown below.**

**A. AUTHORITY, PURPOSE AND GOALS**

This Ordinance is enacted in accordance with RSA 674:17(I)(j) and the purposes outlined in RSA 672:1-III-a as amended. The purpose of this Ordinance is to accommodate solar energy collection systems and distributed generation resources in appropriate locations, while protecting the public’s health, safety and welfare. The Town of Franconia intends to facilitate the state and national goals of developing clean, safe, renewable energy resources in accordance with the enumerated policies of NH RSA 374-G and 362-F and RSA 477:49-51. This Ordinance aims to promote the accommodation of distributed, on-site residential and nonresidential solar energy systems, while maintaining Franconia’s scenic vistas and rural character.

This Ordinance establishes guidelines for the siting of solar collection systems and fulfills the following goals:

1. Preserve the authority of the Town of Franconia to regulate and to provide for reasonable opportunity for the siting of solar collection systems.
2. Allow solar collection systems for on-site use by right.
3. Reduce any adverse impact commercial solar collection systems may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, agriculturally significant locations, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
4. Provide for the removal of abandoned commercial facilities that are no longer in operation.

**B. DEFINITIONS**

**Commercial Solar:** A use of land that consists of one or more free-standing ground mounted solar collection systems that is less than 5 acres in solar land coverage.

**Community Solar:** A system on one property that provides electricity to a group of properties.

**Ground Mount:** A solar collection system and associated mounting hardware that is affixed to or placed upon the ground including, but not limited to fixed, passive or active tracking systems.

**Large Commercial Solar:** A use of land that consists of one or more free-standing ground mounted solar collection systems that is comprised of 5 to 25 acres in solar land coverage.

Municipal Solar: Solar to provide Town facilities with power.

Nameplate Solar Panel Rating: Equals the amount of energy the panels produce under industry standard test conditions.

Nonresidential Solar: Any ground mounted solar collection system primarily for on-site nonresidential use, and consisting of one or more free-standing ground solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power.

Residential Solar: Any ground mounted or roof mounted solar collection system primarily for on-site residential use, and consisting of one or more free-standing ground or roof mounted solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power.

Roof Mount: A solar collection system that is structurally mounted to the roof of a building or other permitted structure. For the purposes of calculating array sizes or solar land coverage under the solar definitions in this section, roof mounted portions shall not be included.

Solar Collection System (SCS): Includes all equipment required to harvest solar energy to generate electricity or hot water. The Solar Collection System includes energy storage devices, power conditioning equipment, transfer equipment, and parts related to the function of those items. Solar Collection Systems include only equipment up to (but not including) the stage that connection is made to the utility grid or site service point.

Solar Land Coverage: Is defined exclusively for the purpose of calculating the footprint of the land area occupied by the components of a solar array. The Solar Land Coverage is the land area that encompasses all components of the solar collection system including but not limited to mounting equipment, panels and ancillary components of the system. This definition does not include access roads or fencing.

**C. PRINCIPAL OR SECONDARY USE**

An existing use or an existing structure on the lot shall not preclude the installation of a solar collection system on such lot. Solar collection systems may be located on leased parcels within lots. Solar collection systems that are constructed 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.

**D. USES PERMITTED BY RIGHT AND USES ALLOWED BY SPECIAL EXCEPTION**

Solar Collection Systems (SCS)	Res. A	Res. B	Bus. A	Bus. B
Roof Mount SCS	P	P	P	P
Residential Solar	P	P	P	P
Nonresidential Solar	P	P	P	P
Commercial/Large Commercial	SE	SE	SE	SE
Community Solar	SE	SE	SE	SE

**E. SETBACKS AND HEIGHT**

Setbacks

Ground mounted solar collection systems shall be considered structures and shall comply with the building setback requirements from lot lines and road rights-of-way for the entire system, including panels, in the applicable zoning district. Tracking systems shall have the setback measured from the point and time where the array is closest to the lot line or road right-of-way. No portion of a system may cross into the setback. If a ground mounted or tracking system is located in a specific overlay district, it should be subject to all requirements of that district.

Height Regulations

Roof mounted solar collection systems as defined in this Ordinance shall not increase the height of the existing structure by more than 5 feet and shall not extend beyond the exterior perimeter of the building other than required for ancillary equipment.

Ground mounted solar collection systems shall not rise more than 25 feet from the ground measured from the surface of the existing grade to the top of the collector at its highest point.

**F. PERFORMANCE REQUIREMENTS FOR RESIDENTIAL AND NONRESIDENTIAL ROOFTOP AND FREE-STANDING SOLAR COLLECTION SYSTEMS**

1. Building Permit - All residential and nonresidential solar collection systems are required to obtain a solar building permit.
2. Electrical Requirements – All systems not connected to the grid shall be inspected by a licensed Master Electrician at the applicant’s cost and approved by the chief of the Franconia Fire Department.
3. All Solar Energy Systems using a reflector to enhance solar access production shall mitigate the glare from the reflector to ensure that it does not affect other properties and roadways. Measures to eliminate glare include selective placement of the system, screening, modifying the orientation of the system, reducing use of the reflector system, or other remedies.
4. Free-standing Nonresidential Solar Energy Systems shall require Site Plan Approval from the Planning Board. The Planning Board may at its discretion require locating the SES away from the public right-of-way or require providing screening by adding or using present vegetation to blend the system into the surrounding area. Other options such as fencing may also be considered.

**G. PERFORMANCE REQUIREMENTS FOR COMMUNITY, MUNICIPAL AND COMMERCIAL SOLAR COLLECTION SYSTEMS**

1. Electrical Requirements – Grid-tied systems shall file a copy of a final approved utility interconnection agreement with the Town of Franconia prior to operation of the system. All systems not connected to the grid shall be inspected by a licensed Master Electrician at the applicant’s cost and approved by the chief of the Franconia Fire Department.

2. Building Permit Requirements - All community, municipal and commercial solar collection systems are required to obtain a solar building permit.
3. Utilities –All electrical lines associated with the system will be underground or mounted on standard utility poles.
4. Stormwater
  - a. Ground mounted systems that are required to secure a New Hampshire Department of Environmental Services Alteration of Terrain (AoT) Permit in accordance with NH RSA 485-A:17 shall secure such permit accordingly.
    - i. The final Permit issued by NH DES shall be incorporated by reference into the final Town approval and shall be enforceable by the Town in accordance with this Zoning Ordinance.
    - ii. No further local review of stormwater and erosion control shall be required where a project is required to secure the NHDES AoT Permit.
  - b. Where ground mounted systems do not require a NHDES AoT Permit, the following shall apply:
    - i. Ground mounted systems that require land clearing and grubbing of mature forested cover to accommodate more than 30% of the solar land coverage area, provided such area of clearing and grubbing is also larger than 1 acre for the proposed system, shall include a management plan for stormwater that is directly related to the impact of the solar collection system.
    - ii. Ground mounted systems where the solar land coverage area is larger than 1 acre and located on slopes of greater than 5% shall include a management plan for stormwater.
  - c. Requirements for all Commercial Systems
    - i. All ground mounted systems shall be constructed in accordance with Best Management Practices for erosion and sedimentation control during the preconstruction, construction, and post-construction restoration period.
    - ii. Post construction, for the purposes of enhancing natural stormwater management, site conditions, and plantings post-construction shall ensure that areas of soil compaction have been restored to more natural conditions. Plantings shall be native species and are recommended to be beneficial habitat for songbirds, pollinators and/or foraging species in order to maintain a healthy surface and subsurface habitat that can attenuate stormwater.
5. Glare – Potential glare onto abutting structures and roadways, estimating the interaction of sun to panel angle, the time of year, and visibility locations shall be reviewed. Reasonable mitigation, including but not limited to, angle of panels, antireflective coatings, and additional specific screening may be required.
6. Lighting – On-site lighting shall be minimal and limited to access and safety requirements only. All lighting shall be downcast and shielded from abutting properties.
7. Buffer – As deemed appropriate, buffering shall be incorporated into the local landscape so that



effective screening is provided along public ways and from abutting views. The use of existing or created topography is encouraged to reduce visual impacts.

8. Fencing – Commercial solar collection facilities shall be surrounded by a fence setback from property lines in conformance with the zoning district regulations for front, side, and rear yards.
  
9. Emergency Response – Access to and information regarding the site shall be provided to the Franconia Fire Department. Applicant shall conduct a site orientation tour upon request of the Fire Department at a mutually-agreed time.
  
10. Site Plan Review – All Commercial Solar Collection Systems shall require Site Plan Approval by the Planning Board.
  
11. Abandonment and Decommissioning – Solar Collection Systems shall be deemed to be abandoned if operations have discontinued for more than 6 months without written consent of the Town. An abandoned system shall be removed and the site restored within six (6) months of abandonment. A bond may be required to pay for the cost of removal.

**H. SPECIAL EXCEPTION CONDITIONS APPLICABLE TO COMMERCIAL SOLAR COLLECTION SYSTEMS**

1. Factors considered in review
  - a. Potential glare impact on abutting structures or roadways
  - b. Height of the proposed Commercial Solar Collection System
  - c. Ingress and egress to the site
  - d. Surrounding topography
  - e. Suitability of perimeter fencing
  
2. Additional criteria for granting a Special Exception.
  - a. The use will not materially endanger the public health or safety.
  - b. Required modifications at or beyond the utility interconnection point.
  - c. Required screening shall be maintained during the operative lifetime of the Solar Collection System.
  - d. In granting a Special Exception pursuant to this section, the Zoning Board of Adjustment may impose any reasonable conditions or restrictions deemed necessary to carry out the intended purpose of this Ordinance.
  
3. Information Required – Each applicant for a Special Exception shall submit a site plan and further information including a system layout, rated nameplate capacity, solar land coverage, equipment specifications, electrical requirements, glare analysis, setbacks, lighting, visual buffering, stormwater management plan, if applicable, and a decommissioning plan.

