

# ORDINANCES, LAWS, AND REGULATIONS FOR THE TOWN OF AMHERST



## MARCH 2024

ZONING ORDINANCE.....	A
LAND DEVELOPMENT REGULATIONS.....	B
NON-RESIDENTIAL SITE PLAN REVIEW REGULATIONS.....	C
HISTORIC DISTRICT REGULATIONS / RULES OF PROCEDURE .....	D
SCENIC ROADS.....	E
(RELOCATED TO CHAPTER B, PART 1).....	F
WATER POLLUTION CONTROL REGULATIONS.....	G
BUILDING CODE .....	H
STORM WATER REGULATIONS.....	I
APPLICABLE STATUTES .....	J

## Table of Contents

ARTICLE I -- PREAMBLE .....	1
Section 1.1    Purpose and Authority.....	1
ARTICLE II -- ESTABLISHMENT OF DISTRICTS .....	1
Section 2.1    Division of Town into Districts.....	1
Section 2.2    Zoning Map.....	1
Section 2.3    Interpretation of Zoning District Boundary Lines.....	2
ARTICLE III -- GENERAL ZONING PROVISIONS .....	2
Section 3.1    Nuisance Provision.....	2
Section 3.2    Non-conforming Uses and Non complying Setbacks.....	2
Section 3.3    Water Pollution Control Regulations.....	3
Section 3.4    Signs.....	3
Section 3.5    Accessory Dwelling Units.....	18
Section 3.6    Mobile Homes and Trailers.....	18
Section 3.7    Building Regulations.....	19
Section 3.8    Earth Material Removal.....	19
Section 3.9    Reduced Frontage Lots.....	21
Section 3.10    Use Group Classifications.....	23
Section 3.11    Scenic Setbacks.....	24
Section 3.12    Farming.....	25
Section 3.13    Dish Antennae.....	25
Section 3.14    Renewable Energy Systems.....	26
Section 3.15    Home Occupations.....	31
Section 3.16    Personal Wireless Service Facilities.....	34
Section 3.17    Equestrian Facilities and Events.....	47
Section 3.18    Conditional Use Permits.....	50
Section 3.19    Phasing.....	52
Section 3.20    Outdoor Lighting and Glare.....	52
ARTICLE IV -- ZONING REGULATIONS.....	56
Section 4.1    Application of Regulations.....	56
Section 4.2    Lots of Record.....	56
Section 4.3    Residential/Rural Zone (RR).....	56
Section 4.4    Northern Transitional Zone (NTZ).....	58
Section 4.5    Northern Rural Zone (NR).....	60
Section 4.6    General Office Zone (GO).....	63
Section 4.7    Commercial Zone (C).....	64
Section 4.8    Limited Commercial Zone (LC).....	67
Section 4.9    Industrial Zone.....	69
Section 4.10    Flood Plain Conservation District.....	72
Section 4.11    Wetland and Watershed Conservation District.....	82
Section 4.12    Deleted.....	89
Section 4.13    Aquifer Conservation and Wellhead Protection District.....	89
Section 4.14    Workforce Housing.....	96
Section 4.15    Historic District (HD).....	103
Section 4.16    Deleted.....	110

Section 4.17	Planned Residential Development (PRD).....	110
Section 4.18	Sexually Oriented Business. ....	115
Section 4.19	Impact Fee Ordinance.....	118
Section 4.20	Elderly Housing .....	125
ARTICLE V -- SPECIAL EXCEPTIONS .....		125
Section 5.1	General. ....	125
Section 5.2	Standards Applicable to All Special Exceptions. ....	125
ARTICLE VI -- ADMINISTRATION .....		127
Section 6.1	Enforcement. ....	127
Section 6.2	Building Permits, Certificates of Occupancy, Earth Removal Permits. ....	127
Section 6.3	Board of Adjustment. ....	129
Section 6.4	Existing Ordinances.....	131
Section 6.5	Severability Clause. ....	131
Section 6.6	Governmental Services.....	131
Section 6.7	Penalty.....	132
ARTICLE VII -- AMENDMENTS TO THE ZONING ORDINANCE.....		132
Section 7.1	General. ....	132
Section 7.2	Referral of Amendments to Planning Board.....	132
ARTICLE VIII -- MISCELLANEOUS PROVISIONS .....		132
Section 8.1	Interpretation. ....	132
Section 8.2	Short Title.....	133
Section 8.3	Effective Date.....	133
ARTICLE IX -- DEFINITIONS .....		133
Section 9.1	Meaning of Certain Words. ....	133

## SECTION A

# **ZONING ORDINANCE**

## ARTICLE I -- PREAMBLE

### **Section 1.1 Purpose and Authority.**

The regulations as set forth in this ordinance are for the purpose of promoting the public health, safety, and general welfare of the Town of Amherst as provided for by Chapter 672, New Hampshire Revised Statutes Annotated, as may be amended. (3-14-67, 3-14-89, 3-13-90, 3-9-99, 3-11-14, 3-14-17, 3-12-19)

The purpose of the Zoning Ordinance of the Town of Amherst is to implement the goals of the orderly development and growth of the Town as set forth in the Master Plan adopted in November 1980 and future revisions of the Master Plan as the needs of the Town dictate. (11-2-82)

## ARTICLE II -- ESTABLISHMENT OF DISTRICTS

### **Section 2.1 Division of Town into Districts.**

For the purpose of this ordinance, the Town of Amherst is divided into the following districts as shown on the official tax map overlays. (3-12-63, 3-8-22)

ACWP	Aquifer Conservation and Wellhead Protection Overlay District
C	Commercial Zone
FP	Flood Plain Conservation Overlay
GO	General Office
HD	Historic District Overlay
I	Industrial Zone
LC	Limited Commercial Zone
NR	Northern Rural Zone
NTR	Northern Transitional Zone
RR	Residential / Rural Zone
WWCD	Wetland and Watershed Conservation Overlay District

### **Section 2.2 Zoning Map.**

The several districts provided for in Section 2.1 above shall be bounded as shown on tax map overlays of the Town of Amherst, New Hampshire, and by the Flood Plain Conservation District overlay and the Wetlands Conservation District overlay, the Aquifer Conservation District, together with the Historic District overlay, and all amendments and explanatory matter thereon, which is hereby declared to be a part of the Zoning Ordinance. As amended (3-11-80, 3-13-84, 3-14-89)

**Section 2.3 Interpretation of Zoning District Boundary Lines.**

The zoning district boundary lines, as shown on tax map overlays are the center lines of streets and other public ways, the middle of the channel of waterways, or the center line of main tracts of railroad lines, unless otherwise indicated. Where the zoning district boundaries are so indicated that they parallel the center lines of streets and other public rights-of-way, such boundaries shall be interpreted as parallel thereto. Where an uncertainty exists as to the location of a boundary, the Board of Adjustment shall determine the exact line. (3-12-63)

**ARTICLE III -- GENERAL ZONING PROVISIONS**

**Section 3.1 Nuisance Provision.**

Any use or other establishment that may be injurious or obnoxious because of the production or emission of smoke, fumes, dust, odor, refuse material, noise, vibration, radiation, or like condition; or that endangers the health, safety, peace, or enjoyment of the community; or tending to its disturbance or annoyance is prohibited. (3-11-63)

**Section 3.2 Non-conforming Uses and Non complying Setbacks.**

- A. A PRE-EXISTING NON-CONFORMING use of land or structures may be continued although such use does not conform to the provisions of this ordinance. Structures containing preexisting non-conforming uses may be enlarged or extended subject to the following:
  - 1. If the conduct of the property owner is such that it will not substantially change the nature and the purpose of the original use and,
  - 2. The proposed change would involve no substantially different impact on the neighborhood. (3-6-73, 3-9-82, 3-14-89, 3-11-93)
- B. A NON-CONFORMING USE may be changed only to a use permitted in the district in which it is located. A permit is required for any change of use. (See Use Groups, Section 3.10) (3-6-73, 3-14-89)
- C. IF A STRUCTURE contains a non-conforming use or does not comply with Zoning setbacks and it is damaged by fire, flood, wind, or act of God, such structure may be reconstructed and used as before, provided such reconstruction is commenced within eighteen (18) months. (3-6-73, 3-14-89, 3-9-10)
- D. A STRUCTURE WHICH DOES NOT comply with zoning setbacks may be repaired or structurally altered provided the repairs or alterations do not increase the degree of non-compliance. (3-6-73, 3-14-89)
- E. STRUCTURES WHICH DO NOT COMPLY with zoning setbacks, when demolished for new construction, may be reconstructed where located before, providing there is no increase in non-compliance. (3-14-89)

## Town of Amherst Zoning Ordinance

F. EXISTING CONFORMING LOTS shall not be made non-conforming and existing non-conforming lots shall not be made more non-conforming by altering lot lines. (3-14-89)

G. A NON-CONFORMING USE which has been abandoned, vacated or discontinued for a period of eighteen (18) consecutive months, said non-conforming use shall be discontinued.

### **Section 3.3 Water Pollution Control Regulations.**

Water pollution control requirements shall be those required by laws and regulations of the State of New Hampshire as well as local ordinances. (3-6-73, 3-14-89)

NOTE: See Section G for Septic System Ordinance (3-8-22)

### **Section 3.4 Signs. (3-12-91, 3-14-23)**

#### **A. PURPOSE OF THE SIGN ORDINANCE.**

Numerous studies have identified visual clutter along roads as a distraction to drivers, which impairs the safety of all who use the roads, including vehicle passengers, bicyclists, and pedestrians, and increases the risk of property damage from automobile accidents in which distraction is a factor. Further, the town's interest in emergency responders being able to identify property locations easily while responding to emergency calls is impaired by visual clutter that makes property location signs more difficult to locate. Additionally, the Town's Master Plan identifies maintenance of the rural aesthetic of the town as a principal goal of the town's residents. Clutter along public roadways detracts from the rural aesthetic of the town, which is derived in part from views of open areas, stone walls, trees, and other vegetation with no or minimal presence of man-made materials.

The purpose of this section of the Town of Amherst Zoning Ordinance is to enhance public safety and the general welfare, provide for reasonable uniformity in the number, size, treatment and presentation of signs to reduce roadside visual clutter, and preserve the town's rural aesthetic, in a manner that complies with the constitutional rights of property owners and residents.

#### **B. CONTENT OF SIGNS.**

1. Except as set forth in this paragraph, regulation of sign content is not the purpose of this ordinance. When examples of types of allowed signs are provided, they are intended as examples only and do not restrict the content actually displayed on the sign. However, signs bearing content recognized as unprotected speech are hereby prohibited within the Town of Amherst to the fullest extent permitted by the United States and New Hampshire Constitutions and applicable laws and regulations. The Town is hereby authorized to enforce restrictions (including removal) on signs bearing unprotected speech that are visible to the public. Nothing herein shall be construed as permitting unprotected speech.
2. No Discrimination Against Non-Commercial Signs or Speech.  
The owner of any sign which is otherwise allowed under Section 3.4 may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any

## Town of Amherst Zoning Ordinance

inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary. This provision does not create a right to increase the total amount of signage on a parcel or allow the substitution of an off-site commercial message in place of an on-site commercial message.

### 3. DEFINITIONS.

Awning Sign. Any visual message incorporated into an awning attached to a building.

Banner. Any sign, painted, printed, or otherwise displayed on cloth, plastic film, or similar material.

Business Sign District. Shall include the Industrial, Commercial, and Limited Commercial Zones in the Town of Amherst and shall include those lots in the General Office Zone with frontage on NH Route 101A.

Copy-Change Sign. A sign on which the visual message may be periodically changed.

Directional Sign. A sign limited to providing directional or guide information, on the most direct or simple route, on the location of an activity, business, or event.

Free-Standing. Any sign not attached to or part of any building but separate and affixed in or upon the ground. Included are pole signs, pylon signs, and masonry wall-type signs.

General Sign District. Shall include the General Office (except for those lots included in the Business Sign District), Residential/Rural, Northern Transitional, and Northern Rural zones in the Town of Amherst.

Illuminated Sign. Any sign illuminated by electricity, gas, chemical/nuclear means, or other artificial light either from the interior or exterior of the sign and which includes reflective and phosphorescent light.

Lineal Building Frontage. The length of a ground-level straight line or lines parallel to and equaling the length of the building front that fronts on the principal public roadway. In the case of a multi-unit development, the frontage of each separate building is additive for the purpose of determining permissible sign area.

Off -Premises Sign. A sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.

Portable Sign. A sign, whether on its own trailer, wheels, motor vehicle, or otherwise, designed to be movable and not attached to the ground, a building, a structure, or another sign.

Projecting Sign. A sign which is attached to the building, wall, or structure and which extends horizontally more than fifteen (15) inches from the plane of such building, wall or structure; or a sign which is perpendicular to the face of such building, wall or structure.

## Town of Amherst Zoning Ordinance

**Representational Sign.** A three-dimensional sign built so as to physically represent the object advertised.

**Sign.** Any material, structure, or device, or part thereof, composed of lettered or pictorial matter that is located out-of-doors, or on the exterior of any building, or indoors as a window sign, displaying information when such is placed in view of the general public. Signs shall include: Any sign defined in this section or otherwise regulated under this ordinance; flags, banners, pennants, streamers, balloons, spinners or similar devices; and any other fixed or portable device or vehicle placed on a parcel of land and used as a sign to convey information to the public. Signs do not include decorations for any holiday located on private property and not within 25 feet of the travelled way of any road within the Town.

**Sign Directory.** A listing of two (2) or more separate messages, such as business identifiers, consisting of a matrix and sign components.

**Sign Structure.** The supports, uprights, bracing, and framework for the sign.

**Sign Surface Area.** The entire area within a single, continuous perimeter enclosing all elements which form an integral part of the sign. The structure supporting a sign and pole covers or architectural embellishments shall be excluded unless the structure is designed in a way to form an integral background for the display. Only one face of a double-faced, free-standing sign shall be included as surface or area of such a sign. In the case of a sign consisting of two (2) or more sides where the angle formed between any two (2) or more sides or the projections thereof exceeds thirty (30) degrees, each side shall be considered a separate sign area.

**Temporary Sign.** A sign not permanently affixed to the ground or a structure, or made of materials not designed to be durable in various weather conditions, and not intended to be moved in routine use. If the sign display area is permanent but the message displayed is subject to periodic manual changes, that sign shall not be regarded as a temporary sign.

**Travelled Way.** The paved section of a paved road, or the graded section of an unpaved road.

**Wall Sign.** A sign that is painted on or attached to the outside wall of a building with the face of the sign in the plane parallel to such wall, and not extending more than fifteen (15) inches from the face of such wall.

**Window Sign.** A sign visible from a sidewalk, street, or other public place, painted or affixed, on glass or other window material, or located inside within two (2) feet of the window, but not including graphics in connection with customary window display of products.

### D. APPLICABILITY.

Unless otherwise exempted herein, this section 3.4 applies to signs:

1. erected in or within 50 feet of the travelled way of a town road not designated as a scenic road; erected in or within 50 feet of the travelled way of a state road (to the extent the



## Town of Amherst Zoning Ordinance

requirements of this ordinance do not conflict with state laws and regulations); and erected within 50 feet of the travelled way of a publicly travelled private road used by the town to provide emergency services.

2. erected in or within 100 feet of the travelled way of a town road designated as a scenic road.
3. erected on any town property.
4. erected within the Business Sign District at any location visible to the public.
5. any other signs that are visible from roads or town properties and such signs, individually or with other signs, that may create a distraction to drivers and other users of the roads.

This section 3.4 shall not apply to signs placed or required by the state or federal government, or to signs placed or required by units of government of the town of Amherst, including its school districts. Units of government of the town of Amherst are encouraged to follow the intent of these provisions whenever possible.

### E. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or other part of this section 3.4 is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

### F. PERMITS.

1. Except as otherwise provided herein, no person shall erect, alter, or relocate any sign without first obtaining a permit from the Office of Community Development. After an initial permit is obtained and the sign erected, no permit shall be required for a sign to be repainted or repaired provided that the sign conforms to the then-applicable ordinance requirements.
2. Permit applications shall be made in writing to the Office of Community Development on forms prescribed by the Town and shall contain the applicable information requested on that form and accompanying sign specification sheet. The applicant shall pay the applicable fee, if any, at the time the application is filed.
3. Upon the filing of a completed application for a sign permit and the payment of the required fee, the Building Inspector/Code Enforcement Officer shall examine the plans, specifications, and other data submitted, and the premises on which the sign is to be erected. If it shall appear that the sign will be in compliance with the purpose and all of the applicable requirements of this ordinance, he or she shall then, within thirty (30) days, issue a permit for the erection of the proposed sign. The issuance of a permit shall not excuse the applicant from conforming to the other laws and ordinances of the Town or sign master planning provisions.
4. If the erection of the sign authorized under any such permit has not been completed within one (1) year from the date of issuance, the permit shall become null and void, but may be renewed

## Town of Amherst Zoning Ordinance

upon filing of a subsequent completed application and compliance with then-current requirements.

### G. REMOVAL OF SIGNS.

1. If the Building Inspector/Code Enforcement Officer shall find that any sign regulated in this ordinance is not used, is abandoned, unsafe or insecure, is a menace to the public, or is otherwise not in compliance with this ordinance, the Town shall give written notice to the named owner of the land upon which it is located, who shall remove the sign or remedy the cited issues within fifteen (15) days from the date of the notice. Failure to remove or repair such sign would be considered a violation of this provision. The Town may revoke any permit issued for such sign and may invoke any remedy available to it, including court action, at the property owner's expense. Signs may be removed without notice in the circumstances set forth elsewhere within this ordinance.
2. Any sign, permitted or not, placed so as to impede public access, shall be considered to be a threat to public safety and may be removed without notice at the direction of the public safety officers or Building Inspector/Code Enforcement Officer.
3. Signs placed in or within 3 feet of the travelled way of publicly travelled roads within town or on town property are subject to removal without notice. Signs placed on private property without the property owner's consent may be removed without notice by town officials, the property owner, or a person acting at the property owner's request. Temporary signs lacking identification of the person responsible for placement and removal of the sign (on the sign itself or in an approved sign application as required herein) are subject to removal without notice.

### H. REVIEW AND APPEALS.

Any person aggrieved by a decision of the Building Inspector/Code Enforcement Officer relative to the provisions of this local ordinance may appeal such decision, in writing, to the Zoning Board of Adjustment as provided in the Zoning Regulations and shall comply with all procedural requirements prescribed by such board.

### I. VIOLATIONS AND PENALTIES.

1. Any person, firm or corporation, whether as owner, lessee, agent or employee, who proceeds to erect, re-erect, construct or structurally alter any sign without first applying for and obtaining the necessary permit, or who, in any other way, violates any provision of this local ordinance shall be guilty of an offense and receive punishment as established in the RSA's, including, but not limited to, RSA 676:15 and 676:17. Continuation of the violation for multiple days shall be a separate additional violation for each additional day.
2. In case of a violation of this local ordinance, the Town and its officers may, in addition to any other remedies specifically conferred by ordinance, institute any appropriate proceedings to prevent unlawful erection, construction, reconstruction, alteration or use of any sign not in compliance with this ordinance.

## Town of Amherst Zoning Ordinance

### J. EXISTING NON-CONFORMING SIGNS.

In the event any sign lawfully erected prior to the effective date of this ordinance does not conform to the provisions herein, such shall meet the following specifications:

- A A non-conforming sign shall not be enlarged or replaced by another non-conforming sign. A non-conforming sign shall be removed or, if allowed, replaced with a conforming sign at the time of any maintenance other than minor repairs.
- B No non-conforming sign shall be permitted within a development under a sign master plan.

### K PROHIBITIONS.

These prohibitions shall apply to all signs in the Town of Amherst, whether exempted or regulated under this section:

1. No off-premises signs are allowed.
2. No sign shall be illuminated by or contain flashing, intermittent, rotating, moving lights or lettering and graphics except to show time and temperature. No sign shall be internally illuminated unless within the Business Sign District and allowed by this ordinance.
3. No sign shall impair or cause confusion of vehicular or pedestrian traffic in its design, color, placement or display characteristics. No sign shall be allowed which could be mistaken for traffic control signs or lights. No sign shall impair visibility for the motorist at a street corner or intersection by placement and location within twenty-five (25) feet of the intersection of the street or highway lines.
4. No sign shall consist of banners, pennants, ribbons, streamers, spinners or similar moving, fluttering or revolving devices (except flags and commercial banners as allowed herein).
5. No message shall be extended over more than one (1) sign placed along a street or highway unless included as an integral part of a sign master plan.
6. No signs shall be attached to fences, trees, utility poles, rocks, or other parts of a natural landscape, nor in a position that will obstruct or impair traffic or in any manner create a hazard or disturbance to the health, safety, and welfare of the general public.
7. No portable signs shall be allowed in any district.
8. No signs shall be allowed on a vehicle or trailer as a means to avoid any requirement of this ordinance or as a way to increase the allowed numbers of signs under this ordinance.
9. Representational signs are not allowed.

## Town of Amherst Zoning Ordinance

### L EXEMPT SIGNS (REQUIRE NO PERMIT).

The following types of signs may be erected and maintained without permits or fees, providing such signs comply with the other requirements of this ordinance and other conditions specifically imposed by any other applicable ordinance or regulation. No two (2) exempted signs may be combined to create a larger sign.

1. On-site signs solely for guiding traffic safely to parking spaces, loading spaces, stacking lanes, entry and exit drives, direction of traffic flow, pedestrian ways, and similar purposes, if such signs are located entirely on private property outside of the travelled way of a town or state road and do not exceed three (3) square feet per sign.
2. Property identification is an important aid to emergency responders. Accordingly, each property may have a property identification and house number not exceeding two (2) square feet, and set a minimum of ten (10) feet from an abutter's property line, as an exempt sign. Such signs shall not be illuminated. Incidental illumination because of an integral mounting location on a lamppost is allowed.
3. Signs necessary in accordance with state or local rules for regulating or defining access to private property provided the signs are less than one (1) square foot in area. This includes (for example) signs such as those indicating whether or not someone could trespass, hunt, hike, bike, or snowmobile on private property.
4. Within the General Sign District, three or fewer flags per property provided each such flag is not larger than fifty (50) square feet and is located entirely on private property at least twenty-five (25) feet from the travelled way of a road.
5. Within the Business Sign District:
  - a) A single sign per business (for example, open, closed, sale or business hours) located on premises and limited to one (1) square foot in area.
  - b) One additional business sign per business (for example, an illuminated Open sign) may be used during business hours only. The additional business sign, if illuminated, must be displayed from inside or attached to the building, except as provided for in an approved sign master plan, and may be illuminated only during the business hours of operation. Internal illumination is allowed for this sign. Any such additional business sign shall be no more than thirteen (13) inches in height and thirty-two (32) inches in width.
  - c) One flag (for example, an Open flag) per building may be displayed at the building during business hours and must be displayed at the building entrance. Such flag shall be no more than three (3) feet in height and six (6) feet in length.
  - d) Up to three flags may be displayed on a single flagpole per property provided each such flag is not larger than fifty (50) square feet and the flagpole is located entirely on private property, at least fifty (50) feet from the travelled way of a road, and is no taller than thirty (30) feet.

## Town of Amherst Zoning Ordinance

- e) Temporary signs to the extent indicated in the following section.

### M TEMPORARY SIGNS

#### 1. All Temporary Signs

- a) Temporary signs that comply with the following standards do not require a permit. All proposed Temporary Signs that do not follow these standards require a Sign Permit. The intent of this ordinance is to allow temporary signs that would not interfere with public safety or impair the rural aesthetic of the town, without requiring a permit. Accordingly, the expectation is that temporary signs other than those allowed herein will rarely comply with the purpose, intent and other requirements of this ordinance.
- b) Except as expressly allowed by this ordinance, no temporary signs shall be placed in or within three (3) feet of the travelled way of roads within the town, or on town property. Temporary signs may be placed on private property (at least three (3) feet from the travelled way of roads within the town), and only by or with the property owner's consent. All temporary signs shall be located a minimum of ten (10) feet from an abutter's property line.
- c) All Temporary Signs shall be securely constructed and properly secured and shall be placed in such a location so as to not impede or endanger vehicular or pedestrian traffic as, for example, by obscuring a clear view or by creating confusion with official street signs or signals, or by becoming a hazard if not secured.
- d) The name and contact information of the person responsible for placement and removal of the sign must be identified on the sign. This information must be legible upon viewing from three (3) feet from the sign. A valid internet address at which this information is clearly presented may be used in place of the name and contact information required above. Alternatively, a sign permit application may be filed providing information on the person responsible for placement and removal of the sign. Failure to comply with this provision may result in removal of the signs without notice.
- e) Temporary signs shall not be illuminated.

#### 2. Temporary Signs Other Than on Town Property.

The situations, numbers, sizes, and durations allowed for Temporary Signs are as follows:

- a) Allowed in the General Sign District (per property):

General Sign District Situation	Max Number & Size	Maximum Duration
Ground mounted sign	1 at 4 square feet (SF)	90 days cumulative in a 365-day period
Additional ground mounted sign for one-time event (other than those identified below)	1 at 4 SF	14 days for one time event, removal within one day after event

## Town of Amherst Zoning Ordinance

Additional ground mounted sign when there is a construction project or maintenance	1 at 4 SF	From the later of issuance of construction permit (if required) or commencement of construction to 3 days after completion, or during period of actual maintenance
Additional ground mounted sign when lot is for sale, lease, or rent	1 at 5 SF	During period for sale, lease, or rent, removal within 3 days of closing
Additional ground mounted sign when there is an on-site sale	2 at 4 SF	During the time of sale and no more than 7 days in advance of the sale, removal within one day after sale
Additional ground mounted signs coinciding with a political campaign or other matter on which residents may vote	Combined area of additional signs shall not exceed 32 SF	30-day period ending on the day of voting, removal within 5 days after voting

b) Allowed in the Business Sign District (per property):

Business Sign District Situation	Max Number & Size	Maximum Duration
A ground mounted sign for one-time event (other than those listed below)	1 at 4 square feet (SF)	14 days for one time event, removal within one day after event
A sandwich board	1 at 6 SF	When business is open
A commercial banner	1 at 16 SF (top of banner no more than 15 feet high)	90 days cumulative in 365-day period
Additional ground mounted sign when lot is for sale, lease or rent	1 at 32 SF	During period for sale, lease, or rent, removal within 3 days of closing.
Additional ground mounted sign when there is a construction project on the lot	2 at 4 SF	From the later of issuance of construction permit (if required) or commencement of construction to 3 days after completion
Additional ground mounted sign during maintenance	1 at 4 SF	During period of actual maintenance
Attached to interior of window or glass door	35% of total glass area visible from a public way	14 days
Additional signs coinciding with a political campaign or other matter on which residents may vote	Combined area of additional signs shall not exceed 32 SF	30-day period ending on the day of voting, removal within 5 days after voting

## Town of Amherst Zoning Ordinance

### 3. Temporary Signs Allowed on Town Property

- a) Town Transfer Station: Coinciding with a political campaign or other matter on which residents may vote, during the thirty (30) day period ending on the day of voting, a person may place a single sign complying with all other temporary sign requirements and not exceeding four (4) square feet at the Transfer Station entrance, off the travelled way and so as not to impede traffic or obscure signs placed by the town. Each such sign must be removed within five (5) days after voting. No permit is required for signs complying with this and all other temporary sign provisions of this ordinance.
- b) Carriage Road Common (Lot 17-17-1). Coinciding with a political campaign or other matter on which residents may vote, during the thirty (30) day period ending on the day of voting, a person may place a single sign complying with all other temporary sign requirements and not exceeding four (4) square feet on the Carriage Road Common, within twenty-five (25) feet of the Boston Post Road intersection, off the travelled way and so as not to impede traffic or obscure signs placed by the town. Each such sign must be removed within five (5) days after voting. No permit is required for signs complying with this and all other temporary sign provisions of this ordinance.

No more than two (2) temporary signs associated with the occurrence of separate special events may be placed on Carriage Road Common within twenty-five (25) feet of the Boston Post Road intersection at any one time. This number shall be reduced by the number of signs placed by the Town for a Town-sponsored event. An application for a sign permit is required for such special event signs and must be filed no earlier than thirty (30) days before the event.

- c) Huntington Common (Lot 16-14). No more than three (3) temporary signs associated with the occurrence of separate special events may be placed at Huntington Common at any one time. This number shall be reduced by the number of signs placed by the Town for a Town-sponsored event. An application for a sign permit is required and must be filed no earlier than thirty (30) days before the event.
- d) Other Town-Owned Land. A temporary sign associated with the occurrence of a special event may be placed on Town property if the event is being held on that property. An application for a sign permit is required and must be filed no earlier than thirty (30) days before the event.

### N PERMANENT SIGNS.

Within any zoning district, unless otherwise specified, the following permanent signs may be erected upon application and receipt of a permit; provided, however, that this subsection shall not serve to expand the number or area of signs otherwise allowed, and pursuant to the following:

- 1. Business Sign District. Unless otherwise specified, the following permanent sign provisions shall apply:

## Town of Amherst Zoning Ordinance

- a) The area of the freestanding sign permitted on any lot shall be two (2) square feet of sign area per lineal foot of building front, or sixty-four (64) square feet, whichever is less, excepting sign master planned developments. A minimum sign area of thirty-two (32) square feet shall be permitted on any lot regardless of building frontage.
  - b) The total number of permitted signs on a single business or industrial lot shall not exceed two (2), of which only one (1) may be free-standing, excepting sign master planned developments.
  - c) A lot with approved entrances on two (2) public roads shall be permitted a secondary sign, not on the same public road as the principal sign, provided that such sign does not exceed forty (40) square feet.
  - d) In addition to the above, one (1) wall sign shall be permitted each separated business unit, not to exceed twenty-five (25) square feet per unit.
2. General Sign District. Unless otherwise specified, the following permanent sign provisions shall apply:
- a) The total number of permitted signs on a single lot shall not exceed two (2) of which only one (1) may be free-standing, excepting sign master planned developments.
  - b) The total cumulative area of all signs permitted on such lot shall not exceed twenty-four (24) square feet, excepting wall signs for multiple tenants/units. The free-standing sign shall not exceed fourteen (14) square feet.
  - c) One wall sign, not to exceed ten (10) square feet per sign, shall be permitted for each separate unit.
3. Historic District. The Historic District Commission may from time-to-time propose for adoption content-neutral changes varying permanent sign rules within the Historic District. Any such changes shall be located within the Historic District Commission Regulations and shall be consistent with the purposes of this ordinance.

### Q SIGN STANDARDS.

This section provides guidance and standards for construction of signs requiring permits and shall serve as guidance for the construction of exempt signs. It identifies the specifications needed so that signs are constructed to ensure the community's safety.

1. General.
  - a) Signs shall be designed to be compatible with the surroundings and appropriate to the architectural character of the building on which they are placed. In particular, signs should be designed consistent with the Town's consistently expressed desire to maintain its rural character, as, for example, by incorporation of natural materials, and use of colors



## Town of Amherst Zoning Ordinance

compatible with natural surroundings which are strongly favored and may be required by the Planning Board. Sign panels and graphics should relate to and not cover architectural features, and should be in proportion to them.

- b) All signs installed after the effective date of this local ordinance shall include the sign permit number, the clearly legible property street number of the sign location, and the name and address of the owner, person, or entity responsible for general requirements and maintenance as outlined in this ordinance.
- c) All free-standing signs shall be designed and constructed in conformance with wind design requirements contained in the Building Code.
- d) All signs, including wall-mounted and projecting signs, shall be securely anchored and shall not spin or move in any manner.
- e) All signs, sign finishes, supports, and electrical work shall be kept clean, neatly painted, and free from all hazards, such as, but not limited to, faulty wiring and loose supports, braces, guys, and anchors.
- f) All projecting, free-standing or wall signs shall employ acceptable safety materials and shall not constitute a hazard to pedestrian travel or the general public.
- g) All signs shall be painted/fabricated in accordance with generally accepted standards.
- h) All signs shall be in accordance with the Building Code and shall not conflict with the Manual on Uniform Traffic Control Devices for Streets and Highways (USDOT/FHWA) or the Life Safety Code (NFPA101). All electrical wiring of signs shall conform to the National Electrical Code. (NFPA-70). Underground wiring shall conform to the National Electrical Code. (NFPA-70)
- i) Illumination. For any sign allowed to be illuminated, the illumination shall comply with the more stringent of any generally applicable outdoor lighting ordinance requirements or the following. The illumination source shall be shielded to produce no light above the horizontal plane established at the lowest direct light emitting part of the illumination source (such sources may be labeled Dark Sky Certified or Compliant). Any sign illumination source shall be of energy efficient design. No illumination source may be directed toward residential buildings on adjacent or nearby land, nor create glare perceptible to pedestrians or persons operating motor vehicles. Illumination shall be by white light with a color temperature not exceeding 3500K, with 3000K preferred. Illumination of signs is permitted only from one (1) hour before opening until one (1) hour after closing, and only when daylight is insufficient to render the sign legible.
- ii) Wall Signs.
  - a) Wall signs shall not extend beyond the ends or over the top of the walls to which attached, and shall not extend above the floor level of the second floor of the building, with a maximum height of fifteen (15) feet measured from the adjacent ground level.

## Town of Amherst Zoning Ordinance

- b) Wall signs shall not extend more than fifteen (15) inches from the face of the buildings to which attached.
  - c) Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of seven (7) feet, six (6) inches.
  - d) Wall signs may be mounted on roofs or eaves as long as they are mounted no more than five (5) feet up from the eaves, provided that the sign height shall not exceed fifteen (15) feet when measured from the highest part of the sign to the ground directly below.
- iii) Free Standing Signs.
- a) No free-standing sign shall be located less than fifteen (15) feet from the curb, edge of pavement, or inside of sidewalk, provided the sign is not within the governmental right-of-way and is located on the applicant's property. No free-standing sign may be located less than one hundred (100) feet from any other free-standing sign.
  - b) If for any reason the property line is changed at some future date, any free-standing sign made non-conforming thereby must be relocated within ninety (90) days to conform with the minimum setback requirements.
  - c) No free-standing sign shall be more than sixty-four (64) square feet, except as provided for in an approved sign master plan.
  - d) The top of the free-standing sign shall not be more than twelve (12) feet in height above road level.
  - e) No free-standing sign shall extend over or into the public right-of-way, pedestrian walkway, or driveway; nor shall it overhang the property lines.
- iv) Awning Signs.
- a) No sign shall project from an awning.
  - b) Awning graphics may be painted or affixed flat to the surface of the front or sides, and shall indicate only the name and/or address of the enterprise or premises.
  - c) Awning graphics shall be a single line of lettering not exceeding six (6) inches in height, but if over three (3) inches in height, shall be debited against the permitted wall sign surface area.
  - d) No awning sign shall be internally illuminated.
  - e) There shall be no more than one (1) awning sign at each separate business location.

P. SIGN MASTER PLANS.

1. Where groups of three (3) or more contiguous commercial or industrial units are to be located together in a development or where a lesser number of businesses total not less than twenty thousand (20,000) square feet of gross leasable area, the development shall adopt a Sign Master Plan. The intent of this section is to protect public welfare and safety and to promote a uniform and aesthetic message presentation that is designed to provide information to the public through its design and coordination of elements, in a manner consistent with the Town's desire to maintain its rural character.
2. The development of a sign master plan shall be governed by the specifications of this section and generally reflect the requirements of the applicable sign district. Application of the sign master planning provisions should not detract from the rural character which the Town, through its adopted Master Plan, has expressed a strong desire to maintain.
3. General Requirements.
  - a) Total sign area permitted for the entire development or center shall be calculated at the rate of two (2) square feet of sign per foot of lineal building front with a maximum area of five hundred (500) square feet. The Planning Board may increase or decrease the maximum area at its discretion consistent with achieving the purposes of this ordinance. Each sign master planned development may have one (1) common free-standing sign denoting the name of the facility not exceeding eighty (80) square feet per side and with the bottom panel not less than five (5) feet above road level and a maximum height of fifteen (15) feet. All other signs shall be attached to buildings, a wall, projecting or soffit type, and coordinated in material, shape, lettering, color, and/or decorative elements. Signage, with the exception of uniform traffic control devices, shall be consistent with the general sign design of the development.
  - b) Signs shall be designed to be compatible with the surroundings and appropriate to the architectural character of the building on which they are placed. In particular, signs shall be designed consistent with the Town's consistently expressed desire to maintain its rural character. Incorporation of natural materials, and use of colors compatible with natural surroundings are strongly favored and may be required by the Planning Board. Sign panels and graphics should relate to and not cover architectural features, and should be in proportion to them.
  - c) Signs should be appropriate to the types of activities they represent.
  - d) Layout should be orderly and graphics should be of simple shape, such as rectangle, circle, or oval.
  - e) The number of colors used should be the minimum consistent with the design and must provide a reference or relationship to the enterprise or activity being advertised.
  - f) Illumination should be appropriate to the character of the sign and surroundings and shall adhere to the general illumination standards set forth above.

## Town of Amherst Zoning Ordinance

- g) Groups of related signs shall express uniformity, create a harmonious appearance, and provide visual and aesthetic coordination of the information presented to the public.
- h) Height and physical placement shall be consistent throughout the master planned area.
- i) The sign master plan, including a site plan, shall be approved by the Planning Board, at a public hearing, and detail placement, design, color coordination, visibility, information messages and compatibility with the general design of the development.

### 4. Internally illuminated signs.

- a) Internally illuminated signs shall be permitted only in the Business Sign District within the Town of Amherst, only when incorporated as an integral part of an approved sign master plan, and subject to the Planning Board's approval based on compliance with this ordinance and maintenance of the rural aesthetic of the Town. The Planning Board may reduce the limits in the following paragraphs as necessary to achieve the purposes of this ordinance.
- b) The total area of internally illuminated signage shall not exceed twenty-five (25) percent of the permitted sign area for the master planned development.
- c) Internally illuminated signs shall conform to all other applicable provisions of the Town of Amherst sign regulations with respect to design, placement, presentation, and other regulated features.
- d) Only one (1) internally illuminated sign shall be permitted per physically separated business unit and shall replace another otherwise permitted sign.
- e) One (1) free-standing internally illuminated sign shall be permitted per development and shall be equal in all other regulated aspects to the free-standing sign it shall replace excepting for the illuminated area limitation of twenty-five (25) percent as in provision (b) above.
- f) The area of the internally illuminated sign shall not exceed the area of the sign it shall replace for the business or development.
- g) No internally illuminated sign may be erected within three hundred (300) feet of any residential zone within the Town.
- h) No internally illuminated sign erected as part of a sign master plan may be illuminated until the full master plan is implemented, unless a phasing plan is approved by the Planning Board.
- i) The Planning Board may require limitations on and schedules for illumination levels, hours of illumination, and the types and characteristics of illumination sources.

**Section 3.5 Accessory Dwelling Units** (3-12-24)

- A. PURPOSE AND AUTHORITY. The Purpose of this ordinance provision is to provide for accessory dwelling units while protecting the character of the residential neighborhoods in which they are located. Accessory dwelling units shall not detract from the character of the neighborhood, nor shall they create traffic, environmental or aesthetic impacts substantially different than the impacts created by other permitted uses in the neighborhood. (3-12-19)
- B. DEFINITION. An accessory dwelling unit is a second dwelling unit incorporated within an existing or proposed single family home which is structurally integrated with the existing principal dwelling.
- C. REQUIREMENTS FOR ALL ACCESSORY DWELLING UNITS.
  - 1. The accessory dwelling unit shall occupy no more than seventy percent (70%) of the existing, gross heated floor area of the primary residence, up to a maximum of one thousand one hundred (1,100) square feet of gross floor area. Accessory dwelling units shall have no more than two (2) bedrooms.
  - 2. One (1) accessory dwelling unit may be permitted on a single lot.
  - 3. Accessory dwelling units are prohibited when associated with attached housing (i.e. townhouse or duplex buildings), condominiums or manufactured housing as defined in NH RSA 674:31.
  - 4. Subsequent conveyance of an accessory dwelling unit separate from that of the principal dwelling unit is prohibited.
  - 5. Any changes to the total number of bedrooms per lot will require a new state-approved septic plan to be placed on file with the Office of Community Development prior to the issuance of a building permit.
  - 6. Accessory dwelling units located in an accessory building, detached from the principal dwelling, may be permitted as a Conditional Use in accordance with the provisions of Section 3.18.

**Section 3.6 Mobile Homes and Trailers.**

- A. The use as a permanent residence of a house trailer or a mobile home is permitted in all zones of the Town which permit residential uses, and within and subject to the criteria of a Planned Residential Development, and subject to SECTION G, Town of Amherst Septic System Ordinance. (3-10-64, 3-10-87, 3-8-88, 3-11-03, 3-8-16)
- B. Registered recreational vehicles, as defined in RSA 259:84-a, may be stored unoccupied in all zones of the Town. (3-12-64, 3-8-16)
- C. The temporary use of a registered recreational vehicle by a person for whom a residence is being

## Town of Amherst Zoning Ordinance

built on the property may be permitted by the Building Inspector/Code Enforcement Officer. The Building Inspector/Code Enforcement Officer shall grant permission for a period not to exceed three months, excepting that he or she may renew at his or her discretion such permission at the expiration of the three-month period (3-8-16, 3-8-22).

- D. A property owner or lessee may accommodate one trailer of a nonpaying guest on their property for a period not exceeding 30 days in any one year (3-8-16).

### **Section 3.7 Building Regulations.**

- A. No building or structure shall be erected, unless in compliance with the following: (3-14-67)

1. See New Hampshire Building Code. (3-10-98, 3-9-10)
2. On all new buildings, construction must be at least seventy-five percent (75%) complete before occupied as a dwelling, as determined by the Building Inspector/Code Enforcement Officer. (3-11-80, 3-14-89, 3-8-22)
3. No building permit for a new dwelling shall be issued unless it meets State mandated minimum size requirements. (3-11-80, 3-11-86, 3-12-91)

### **Section 3.8 Earth Material Removal.**

- A. AUTHORITY.

Clay, loam, sand, gravel, minerals, and similar earth materials may be removed for either private use, or for sale from any lot parcel of land in any zoning district, except land subject to the Historic District and Wetlands and Watershed Conservation District overlays, only after a special permit for such operation has been issued by the Board of Selectmen, in accordance with the provisions of this section. (3-4-75, 11-2-82, 3-8-22)

- B. APPLICATION.

No Earth Material Removal Permit shall be issued unless application is made in writing on the forms provided for this purpose by the Town and accompanied by the payment of a fee in such amount as the Board of Selectmen may determine from time to time. The application form shall be accompanied by a plan which describes the proposed Earth Material Removal operation. (3-4-75)

- C. PROCEDURE.

1. Prior to the approval or denial of an Earth Material Removal Permit application, the Selectmen or their agent, shall hold a public hearing. The applicant and all abutters within five hundred (500) feet of the parcel or parcels proposed to have earth material removed, shall be notified of the time and place of such hearing, not less than five (5) days prior to the date affixed for said hearing. (3-4-75)
2. In order to ensure the applicant's performance in adherence with these regulations, the

## Town of Amherst Zoning Ordinance

applicant shall post a bond with the Town of Amherst in such amount as the Board of Selectmen may determine from time to time. Such bond shall not be less than five hundred dollars (\$500) per acre and shall be posted prior to the issuance of said permit. (3-4-75)

3. During the period of the permit, the Building Inspector/Code Enforcement Officer shall conduct on-site inspections of the earth material removal operation plan. Not less than sixty (60) days prior to the expiration of the permit, the Building Inspector/Code Enforcement Officer shall conduct a compliance review. This review shall indicate what action is necessary by the operator to: (3-4-75, 3-8-22)
  - a. Close out the operation within the permit period in conformance with the plan, or (3-4-75)
  - b. Be eligible to apply for a new Earth Material Removal Permit. (3-4-75, 3-8-22)
    - i. If the operator requests a new permit, the new application together with an amended operation plan shall be submitted at least forty-five (45) days prior to the expiration of the current permit. (3-4-75, 3-8-22)
    - ii. If, at the expiration of the permit, the operator has failed to carry out the reclamation of the site as required by this ordinance in conformance with the operation plan and permit, the bond posted by the operator shall be forfeited and the proceeds used to carry out the reclamation of the site. If the reclamation is performed in accordance with the operation plan, the bond shall be returned to the operator upon establishment of the cover crop for two (2) full growing seasons or earlier upon certification of the Hillsborough County Conservation District. (3-4-75)

### D. STANDARDS.

All work executed under an Earth Material Removal Permit shall conform to the following standards:

1. No excavation shall occur within fifty (50) feet of any property line, road right-of-way or zoning district boundary in which district earth material removal is not permitted and the natural vegetation shall be retained in this buffer area. (3-4-75)
2. All finished grades shall in no case be steeper than 2:1 horizontal/vertical slope. (3-4-75)
3. No land shall be excavated below the seasonal high water table except as part of a plan to develop water conservation or recreational uses. This plan must be submitted at the time of application together with a written review of the plan conducted by the Hillsborough County Conservation District. (3-4-75)
4. The excavation shall proceed in a manner which will not allow it to hold standing surface water in excess of two (2) inches in depth except as approved as part of a surface water absorption system designed to minimize surface water runoff. (3-4-75)
5. Upon completion of all excavation, the entire site shall be re-spread with loam to a depth of

## Town of Amherst Zoning Ordinance

four (4) inches or the average depth of loam prior to the commencement of excavation, whichever is less. Loam sufficient to meet this requirement shall be stockpiled on the excavation site. (3-4-75)

6. Unless a special waiver is granted at the time the permit is issued, the land area disturbed by the operation and in an un-restored condition shall not exceed a total of five (5) acres at any one time. (3-4-75)
7. When the removal of material is completed, the finished grades, as specified in the approved plan shall have a permanent cover crop established, except when ledge rock is exposed, to assure adequate drainage and prevent erosion. (3-4-75)
8. All excavating, handling, processing, and storage facilities shall be removed, the land cleared of all stumps, logs, brush, and rocks, the final grades indicated on the plan established and the site reclaimed prior to the expiration of the Earth Material Removal Permit unless application has been made and approval granted for the renewal of the permit. (3-4-75)
9. All earth material removal operations shall be maintained in a safe condition at all times. No overhanging banking, potential earth slides, or any other unsafe condition shall be permitted at any time. (3-4-75)

### E. EXCEPTIONS.

The removal of loam, sand, gravel, clay, and other similar materials from a site shall require an Earth Material Removal Permit. The following activities conducted on a lot or site shall not require an Earth Material Removal Permit:

1. The removal of less than two hundred (200) cubic yards of material. (3-4-75, 11-2-82, 3-11-03)

### **Section 3.9 Reduced Frontage Lots. (3-14-23)**

A lot which does not meet the frontage requirements of the applicable zoning district may be developed for single family or duplex residential use if such use is otherwise allowed within the district and the lot meets the requirements of this section. Such a lot will be referred to as a “reduced frontage lot” and a lot complying with the frontage requirements of the applicable zoning district as a “normal frontage lot.” In recognition of the typically higher wildlife habitat value of undeveloped areas located away from road frontages, reduced frontage lots have more stringent lot size requirements to preserve open space, wildlife habitat and wildlife corridors. These requirements shall not apply to Planned Residential Developments.

- A. Maximum Number of Reduced Frontage Lots Allowed: The maximum number of reduced frontage lots allowed upon subdivision shall depend on the size of the original lot prior to subdivision. No lot may be subdivided so as to include a reduced frontage lot unless the total original lot size prior to subdivision is at least ten (10) acres. Each additional reduced frontage lot proposed upon subdivision shall increase the required original lot size prior to subdivision by an additional ten (10) acres.



## Town of Amherst Zoning Ordinance

- B. **Minimum Lot Area:** Each reduced frontage lot shall have at least the gross area specified in the following table. In the event multifamily dwellings are permitted in the district, the minimum reduced frontage lot size below shall be multiplied by the number of dwelling units allowed. Each reduced frontage lot must also comply with the net tract area requirements of the applicable zoning district. The net tract area calculation shall exclude a fifty (50) foot wide corridor with a length from the road to the applicable proposed dwelling unit location.

<b>District</b>	<b>Minimum Reduced Frontage Lot Size (Single Family)</b>
Residential/Rural	5 acres
Northern Transitional	7 acres
Northern Rural	10 acres

- C. **Frontage.** Each reduced frontage lot shall have a minimum of fifty (50) feet of frontage on a publicly maintained road. Each reduced frontage lot must have its frontage contiguous with a normal frontage lot within the same subdivision, and each normal frontage lot of a subdivision shall be contiguous with only a single reduced frontage lot of the same subdivision.
- D. **Access.** The driveway portion of a reduced frontage lot shall be an integral portion of and attached to the back lot. No reduced frontage lot shall be approved if the proposed reduced frontage lot would be a corner lot, or its access would be within five hundred (500) feet of an existing or proposed intersection of publicly travelled roads, or if the access would not provide adequate sight distance, or if the access otherwise would present a hazardous situation to vehicular traffic or pedestrians.

No access to a reduced frontage lot shall be located within seven hundred fifty (750) feet of another access to a reduced frontage lot on the same side of the road (in the case of a cul-de-sac, (1) the seven hundred fifty (750) foot length shall be measured from the reduced frontage lot access around the outer perimeter of the cul-de-sac, (2) that entire distance shall be considered to be on the same side of the road, and (3) only cul-de-sacs compliant with the Roadway & Utility Standards may include any reduced frontage lot access driveway).

However, not more than two (2) immediately adjacent reduced frontage lots, each of which meets all of the other requirements of this section, may share a single access driveway exiting within the frontage of one or both of the lots, provided the driveway meets Town and Planning Board driveway requirements and the Planning Board is provided with documentation satisfactory to Town Counsel establishing easements, conditions of use and maintenance obligations for the common private way and providing that such common way shall never become a public road.

- E. **Setbacks.** No building shall be erected on a reduced frontage lot closer than three hundred (300) feet from an existing public road. All other setbacks shall be as required by the applicable zoning district.
- F. **Environmental Protection.** All Conditional Use Permits needed to support the proposed use of a proposed reduced frontage lot shall be sought at the same time as the subdivision including the

## Town of Amherst Zoning Ordinance

proposed reduced frontage lots. The Planning Board may deny approval of a subdivision application proposing one or more reduced frontage lots if access to or the location of any reduced frontage lot would require a Conditional Use Permit and such Conditional Use Permit is not granted prior to final action on the subdivision application. Nothing herein shall be construed as obligating the Planning Board to grant a Conditional Use Permit.

### **Section 3.10 Use Group Classifications.**

A classification system is necessary in order that appropriate fire, health, building regulations can be recognized and applied to proposed new structures or those to be altered.

- A. SCOPE. The provisions of this section shall control the classification of all buildings and structures as to use groups.
- B. The provisions of this section shall not be deemed to nullify any provisions of the Zoning Ordinance.
- C. GENERAL. All buildings and structures shall be classified with respect to use in one of the use groups listed below and such existing or proposed use shall be specified on the application for permit.
  - 1. Use Group A. Assembly
  - 2. Use Group B. Business
  - 3. Use Group E. Educational
  - 4. Use Group F. Factory and Industrial
  - 5. Use Group H. High Hazard
  - 6. Use Group I. Institutional
  - 7. Use Group M. Mercantile
  - 8. Use Group R. Residential
  - 9. Use Group S. Storage
  - 10. Use Group U. Utility and miscellaneous
- D. DOUBTFUL USE CLASSIFICATION. When a building or structure is proposed for a use not specifically provided for, the use classification shall be in the use group which it most nearly resembles; and the building or structure shall meet the health and safety requirements of that group.
- E. MIXED USES AND OCCUPANCY. When a building is proposed to be occupied for two (2) or more uses, the provision of associated codes securing the greater public health and safety shall be applied.
- F. INCIDENTAL USES. Where the use is supplemental to the main use of the building and the area devoted to such use does not occupy more than ten percent (10%) of the floor area, the building shall be classified according to the main use. (3-8-88)

**Section 3.11 Scenic Setbacks.**

A. PURPOSE. The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes.

B. REGULATIONS. To accomplish the purpose of this section, a setback requirement for all structures of one hundred (100) feet from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76)

1. Rte 122 from Hollis Town line north to Old Rte 101, Horace Greeley Highway. (3-14-00)
2. Boston Post Rd from Stearns Rd north to Route 122
3. Boston Post Rd from Beaver Brook north to Mt. Vernon Rd.
4. Mt. Vernon Rd from Boston Post Rd north to Mt. Vernon Town line
5. Amherst Street (3-9-99, 3-14-00)
6. Horace Greeley Highway from Milford Town line north to Bedford Town line. (3-9-99)
7. New Boston Rd from Boston Post Rd north to Mt. Vernon Town Line
8. Christian Hill Rd from Davis Lane to Route 13
9. Corduroy Rd from Merrimack Rd north to Boston Post Rd.
10. Merrimack Rd from Boston Post Rd north to Corduroy Rd.
11. Mack Hill Rd from Manchester Rd north to Austin Rd.
12. All scenic Roads (see Section E) 3-2-76

C. EXCEPTIONS TO SCENIC SETBACK REQUIREMENTS.

1. Any person aggrieved by the operation of this section may apply to the Board of Adjustment for a variance herefrom in like manner as in other situations where the existence of a hardship is alleged. (3-2-76)
2. In the event that a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing one hundred (100) foot setback shall not apply to such lot; however, if a lot qualifies for this exception and is also subject to Non-Residential Site Plan Review by the Planning Board, the Planning Board shall determine that appropriate provision has been provided so as to reasonably achieve the purpose of this section as set forth in Paragraph 1 above. (3-2-76)

The regulations set forth herein, are intended to apply only to the construction of new structures which take place on and after the effective date of this section. Any dwelling or other structure which was in existence at the time of passage of this section, may be enlarged, modified, or otherwise altered without the necessity of complying with the requirements of this section, provided that such alterations do not reduce the setback from the front lot line to an amount less than the setback which exists on the building to be altered. Provided further, however, that such construction or alterations must comply with any other setback

## Town of Amherst Zoning Ordinance

requirements applicable in the respective zones other than the scenic setback. (3-2-76, 3-9-82)

### **Section 3.12 Farming.**

#### A. INTENT.

1. In keeping with the goals of the Master Plan, a Right to Farm Ordinance is hereby written to encourage and protect farms and farming in the Town of Amherst. In order to protect the existing farms in the Town of Amherst and to encourage others who might want to farm, it is recognized that “the right to farm” is a natural right and is allowed to exist as a permitted use in the Town of Amherst and State Health and Sanitary Codes for intensive fowl and livestock farms.
2. The right to farm as used in this ordinance includes use of necessary equipment, farm machines, farm laborers, application of fertilizers, etc., for the purpose of producing agricultural products such as vegetables, grains, hay, fruit, trees, plants, etc. The right to farm shall also include the right to use land for grazing by animals and raising of livestock and fowl, when conducted in accordance with generally accepted agricultural practices and may take place on holidays, Sundays, weekends, night and day. (3-13-84)
3. Agricultural operations and Equestrian operations shall be conducted in accordance with the “Manual of Best Management Practices (BMP) for Agriculture in New Hampshire” published by the New Hampshire Department of Agriculture, Markets, and Food. (3-8-05)
4. Two (2) signs totaling twelve (12) square feet are permitted for farm stands.

### **Section 3.13 Dish Antennae.**

PURPOSE. To provide for the safe and aesthetically pleasing installation of dish antennae in the Town of Amherst.

#### A. STANDARDS.

1. These standards shall apply to antennae of four (4) feet in diameter or greater.
2. Only one (1) antenna shall be allowed for each lot.
3. Antennae shall be placed at least one hundred (100) feet back from front property line and shall meet the setback requirements for the particular zone in which it is located.
4. All antennae shall be securely mounted to the ground and shall not be placed on any vehicle or other movable structure.
5. The antennae shall be visually screened from the roadway and adjoining property by the use of vegetation to the maximum extent possible without impairing efficiency so that said screening is effective year-round.

6. No portion of the antenna may exceed fifteen (15) feet in height from the natural ground level.
7. Must be painted matte black or earth tones to blend with surrounding vegetation. (3-11-86)

**Section 3.14 Renewable Energy Systems. (3-11-08, 3-10-09)**

**PURPOSE.** The purpose of this ordinance is to promote the safe, effective, and efficient use of small renewable energy systems designed to reduce reliance on fossil fuels. In accordance with NH RSA 674:17(j), small renewable energy systems such as, but not limited to, solar, wind, and biomass facilities may be permitted in any Zone (except the Historic District overlay for Small Wind Energy Systems). Systems proposed within the Historic District are also subject to approval of the Historic District Commission. For purposes of this ordinance small energy systems shall be those capable of generating not more than 60 KW. Systems rated for production of more than 60 KW shall be considered commercial uses. (3-9-10)

**A. SMALL WIND ENERGY SYSTEMS.**

1. Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety, and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

2. Definitions.

Meteorological tower (met tower). Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

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

Net metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

Power grid. The transmission system, managed by ISO New England, created to balance the

## Town of Amherst Zoning Ordinance

supply and demand of electricity for consumers in New England.

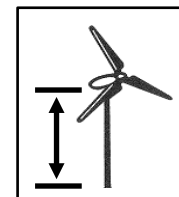
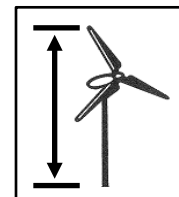
Shadow flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

Small wind energy system. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of sixty (60) kilowatts or less and will be used primarily for on-site consumption.

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

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

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



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

### 3. Procedure for Review.

- a. **Building Permit.** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed three (3) years from the date the building permit was issued.
- b. **Application.** Applications submitted to the Building Inspector shall contain a site plan with the following information:
- c. Property lines and physical dimensions of the applicant's property.
- d. Location, dimensions, and types of existing major structures on the property.
- e. Location of the proposed small wind energy system, foundations, guy anchors, and associated equipment.
- f. Tower foundation blueprints or drawings.
- g. Tower blueprints or drawings.
- h. Setback requirements as outlined in this ordinance.
- i. The right-of-way of any public road that is contiguous with the property.
- j. Any overhead utility lines.
- k. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- l. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.

## Town of Amherst Zoning Ordinance

- m. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - n. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - o. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - p. List of abutters to the applicant's property. Three sets of typed gummed labels (1" x 2.5").
4. Abutter and Regional Notification.
- In accordance with RSA 674:66, the Building Inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded thirty (30) days to submit comments to the Building Inspector prior to the issuance of the building permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.
5. Standards.
- The Building Inspector shall evaluate the application for compliance with the following standards:
- a. Setbacks. The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.
- | Minimum Setback Requirements                           |   |   |              |
|--|---|---|--------------|
| Occupied Buildings on Participating Landowner Property | Occupied Buildings on Abutting Property | Property Lines of Abutting Property and Utility Lines | Public Roads |
| 0  | 1.5                                     | 1.1   | 1.5          |
- b. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - c. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
6. Tower. The maximum tower height shall be restricted to thirty-five (35) feet above the tree canopy within three hundred (300) feet of the small wind energy system. In no situation shall the tower height exceed one hundred fifty (150) feet.
7. Sound Level. The small wind energy system shall not exceed fifty-five (55) decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
8. Shadow Flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than thirty

## Town of Amherst Zoning Ordinance

- (30) hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
9. Signs. All signs including flags, streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
  10. Code Compliance. The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
  11. Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
  12. Visual Impacts. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
    - a. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
    - b. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
    - c. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
  13. Approved Wind Generators. The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
  14. Utility Connection. If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
  15. Access. The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground. All



## Town of Amherst Zoning Ordinance

ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

16. Clearing. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

17. Abandonment.

- a. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- b. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within ninety (90) days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to:
  - i. Removal of the wind generator and tower and related above-grade structures.
  - ii. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- c. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous twelve (12) month period. After the twelve (12) months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. After review of the information provided by the owner, the Building Inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the Building Inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- d. If the owner fails to respond to the Notice of Abandonment or if, after review by the Building Inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within three (3) months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the Building Inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

18. Violation. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

19. Penalties. Any person who fails to comply with any provision of this ordinance or a building

## Town of Amherst Zoning Ordinance

permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

### **Section 3.15 Home Occupations. (3-14-95, 3-11-08)**

- A. PURPOSE AND AUTHORITY. The Purpose of this ordinance is to provide for home-based businesses while protecting the character of the residential neighborhoods in which they operate. The activities associated with home occupations are not to detract from the rural character of the Town nor shall they create traffic, environmental or aesthetic impacts substantially different than the impacts created by other permitted uses in the neighborhood.
- B. DEFINITION. An occupation or business activity which is conducted by a resident within his/her own dwelling or in a garage or barn-type outbuilding and which is clearly subordinate to the principal residential use.
- C. REQUIREMENTS FOR ALL HOME OCCUPATIONS.
1. The home occupation shall occupy no more than twenty percent (20%) of the existing, gross heated floor area of the primary residence or, if the home occupation is conducted in an outbuilding, shall not occupy an area greater than fifty percent (50%) of the existing, gross heated floor area of the primary residence. Up to a maximum of one thousand (1,000) square feet of covered area may be dedicated to the home occupation.
  2. No emissions of dust, fumes, smoke, noise (greater than sixty-five [65] decibels), vibration, light, or water attributable to the home occupation shall be allowed across the property line.
  3. No outdoor display advertising or storage of any products or materials associated with the home occupation shall be allowed except as provided below.
  4. No more than two (2) trips per day by commercial delivery vehicles (on average) shall be allowed.
- D. CLASSES OF HOME OCCUPATION.
1. Class A Home Occupation. A Class A Home Occupation has no impact on the neighborhood.
    - a. The business is not visible to the surrounding properties or the street.
    - b. Activity is carried out entirely within the residence or accessory buildings, there is no sign other than a rural delivery mailbox.
    - c. No vehicle other than the residents' personal vehicles, which are not lettered or painted to advertise the business.
    - d. The business has no employees other than the residents of the dwelling.
    - e. No clients or customers come to the house to transact business, and any deliveries are made by standard delivery truck (no large freight vehicles are involved in the day-to-day operation).
    - f. Operators of Class A Home Occupations may choose to register with the Town, using the

## Town of Amherst Zoning Ordinance

Home Occupation Registration form. A copy of the registration form, signed by the Director of Community Development, will be provided to the operator if requested. (3-8-22)

2. Class B Home Occupation. A Class B Home Occupation has minimal impact on the surrounding neighborhood.
  - a. No structural change or addition to the existing buildings indicates the business use of the property.
  - b. The business has no employees other than the residents of the dwelling.
  - c. One non-illuminated sign not to exceed six square feet per side may be displayed.
  - d. One vehicle displaying text or decoration promoting the business may be allowed.
  - e. Up to three clients or customers per day (on average) may be received.
  - f. Hours of outside operation may be 8:00 a.m. to 6:00 p.m., Monday thru Saturday.
  - g. Operators of Class B Home Occupations must register with the Town, using the Home Occupation Registration form. A copy of the registration form, signed by the Director of Community Development, will be kept on the premises in a readily accessible location. (3-8-22)
3. Class C Home Occupation. A Class C Home Occupation has minor impact on the surrounding neighborhood.
  - a. No structural change or addition to the existing buildings indicates the business use of the property.
  - b. The business has no more than two employees other than the residents of the dwelling.
  - c. One non-illuminated sign not to exceed six (6) square feet per side, may be displayed.
  - d. One vehicle displaying text or decoration promoting the business may be allowed.
  - e. Up to ten clients or customers per day (on average) may be received.
  - f. Hours of outside operation are 8:00 a.m. to 6:00 p.m., Monday thru Friday, 9:00 am to 8:00 pm Saturday.
  - g. Deliveries other than those by standard delivery truck must be received between 10:00 am and 2:00 pm.
  - h. The site must accommodate parcel pick-up and delivery with facilities for drop-off storage.
  - i. Operators of Class C Home Occupations must register with the Town, using the Home Occupation Registration form.
  - j. In addition the operator must provide documentation of the adequacy of the septic system for the proposed use, and a sketch of the property demonstrating adequate areas designated for parking of employees and clients/customers, access and turning of delivery vehicles, and safe pedestrian access for clients/customers to the business where applicable. A copy of the registration form, signed by the Director of Community Development, will be kept on the premises in a readily accessible location. (3-8-22)

### E. SPECIAL PROVISIONS.

1. Any Bed & Breakfast operated under this section of the ordinance shall be limited to a maximum of five (5) bedrooms for guest use.

## Town of Amherst Zoning Ordinance

2. Scale of operation of any Class B or C Home Occupation may be limited by the capacity of the existing septic system.
3. Adequate off-street parking must be provided for any Class B or C Home Occupation.

### F. RENEWAL OR EXPIRATION OF REGISTRATION.

1. Class B and C Home Occupation registrations and the uses provided for therein, shall automatically terminate five years after the date of issuance but shall be renewed by the Town provided that the dwelling owner shall certify that the use is in compliance with this ordinance.
2. Class B Home Occupations that grow to exceed the requirements under Section 3.15.D. 2 shall comply with the requirements of Section 3.15.D.3 within six (6) months.
3. Class C Home Occupations shall not exceed the requirements of Section 3.15.D.3 and may be directed by the Director of Community Development or designated officer to reduce the impact of the operation or move to a non-residential site within sixty (60) days. (3-8-22)
4. Home Occupation permits are not transferable.

### G. PROHIBITED USES.

Home Occupation uses shall not include the following:

1. Any use that generates, stores or uses regulated hazardous substances, receives or ships hazardous materials regulated under Chapter 49 - Code of Federal Regulations, or that generates or disposes of hazardous waste as regulated under Chapter 40 - Code of Federal Regulations. This prohibition includes dry cleaning facilities, metal extraction and salvage operations, most landscaping businesses, machine shops, photo-developing operations, and laboratories.
2. Sales or repairs of automobiles, snowmobiles, jet skis or other motorized vehicles.
3. Hair or nail salons, barber, or beauty shops.
4. Medical or dental group practice clinics or veterinary clinics.
5. Clothing cleaners or dyers.
6. Banks.
7. Coffee or sandwich shops or other restaurant facilities.
8. Daycare facilities larger than a maximum of six (6) children. (3-9-10)

H. PERMITTED USES NOT REGULATED AS HOME OCCUPATIONS.

Certain activities conducted in residential zones are regulated by other parts of the Amherst Zoning Ordinance:

1. Farming and Agricultural Uses, including Farming. (Section 3-12)
2. Personal Wireless Service Facilities. (Section 3-16)
3. Equestrian Facilities and Events. (Section 3-17)
4. Non-commercial sports and recreational uses.
5. By Special Exception in certain zones:
  - a. Kennels
  - b. Sawmills
  - c. Religious Uses
  - d. Funeral Homes
  - e. Nursing Homes

**Section 3.16 Personal Wireless Service Facilities. (3-12-13)**

A. PURPOSE AND INTENT.

It is the express purpose of this Article to permit carriers to locate personal wireless service facilities within particular areas of the Town of Amherst consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town. Compatibility with the visual features of Amherst is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed Personal Wireless Service Facility. This Article enables the review of the locating and siting of Personal Wireless Service Facilities by the Town of Amherst so as to eliminate or mitigate the visual and environmental impacts of Personal Wireless Service Facilities.

The intent of this ordinance is to implement the following goals and objectives throughout the Town of Amherst, while conforming to federal and local laws and regulations:

1. Facilitate the provisions of Personal Wireless Services to the residents and businesses of Amherst;
2. Provide for the appropriate location and development of Personal Wireless Service Facilities;
3. Minimize adverse visual and environmental effects of towers and antennas through careful design and siting standards;
4. Encourage cooperation and co-location whenever possible; and,

## Town of Amherst Zoning Ordinance

5. Minimize economic impacts on adjacent property values.

### B. APPLICABILITY.

The terms of this Article and the Site Plan Review Regulations shall apply to Personal Wireless Services Facilities proposed to be located on property owned by the Town of Amherst, on privately-owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

- C. DEFINITIONS. For the purpose of this Article, the following terms shall have the meaning given herein:

Antenna. The surface from which wireless radio signals are sent and/or received by a Personal Wireless Service Facility.

Antenna Array. A collection of antennas attached to a mount to send and receive radio signals.

Average Tree Canopy Height. An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area. The AGL shall be calculated on the trees within a radius of fifty (50) feet from the proposed Tower, (trees to be removed at tower site cannot be used in calculations.) (3/13/01)

Camouflaged. A Personal Wireless Service Facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. All paint shall be flat to avoid any reflection. (3/13/01)

Carrier. A Company that provides personal wireless services also sometimes referred to as a provider.

Co-location. The use of a single mount on the ground by more than one (1) carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one (1) carrier or the same carrier with multiple licenses.

Environmental Assessment (EA). An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a Personal Wireless Service Facility is placed in certain designated areas.

Equipment Shelter. An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for Personal Wireless Service Facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

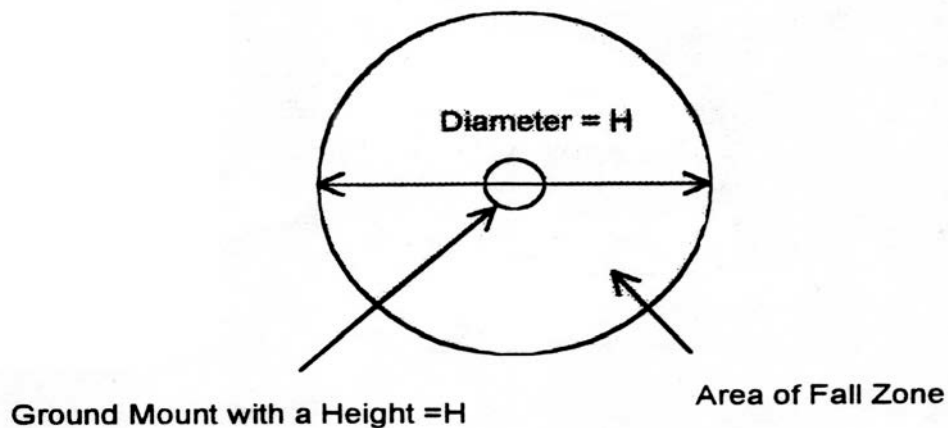
Existing Personal Wireless Service Facility. A Personal Wireless Service Facility that has received Planning Board and Building Permit approvals, and a final Certificate of Operation. To be considered an Existing Facility a current security shall be on file with the Town in accordance

with Section 3.16.H.3.

Facility. See Personal Wireless Service Facility.

Fall Zone. The area on the ground from the base of a ground mounted Personal Wireless Service Facility that forms a circle with a diameter equal to the height of the facility, including any antennas or other appurtenances, as set forth in Figure 1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. Fall zones may overlap.

**Figure 1**



Guyed Tower. A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height. The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice Tower. A type of mount with multiple legs and structural cross bracing between the legs that is self-supporting and free-standing.

Mast. A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole. A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material that is designed for the placement of antennas and arrays along the shaft.

Mount. The structure or surface upon which antennas are mounted, including the following four (4) types of mounts:

Roof-mounted. Mounted on the roof of a building.

## Town of Amherst Zoning Ordinance

Side-mounted. Mounted on the side of a building.

Ground-mounted. Mounted on the ground.

Structure-mounted. Mounted on a structure other than a building.

Personal Wireless Service Facility. Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1983 and 1996, as amended. Personal Wireless Service Facilities include a mount, antenna, equipment shelter, and other related equipment. Personal Wireless Service Facilities do not include private or non-commercial wireless communication facilities such as amateur ham radio and citizens band radio.

Personal Wireless Services. The three types of services regulated by this ordinance: commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

Radio Frequency (RF) Engineer. An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio Frequency Radiation (RFR). The emissions from personal wireless service facilities.

Security Barrier. A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation. The distance between one carrier's array of antennas and another carrier's array.

### D. DISTRICT AND FEDERAL REGULATIONS.

1. Location – Personal Wireless Service Facilities shall be permitted in all Zoning Districts in accordance with this ordinance. Applicants seeking approval for Personal Wireless Service Facilities shall first evaluate existing structures for the siting of Personal Wireless Service Facilities. Only after finding that there are no suitable existing structures pursuant to Section 3.16.E herein, shall a provider propose a new ground mounted facility.
2. Existing Structures: Policy – When available, Personal Wireless Service Facilities shall be located on existing structures, including but not limited to buildings, water towers, existing Personal Wireless Service Facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
3. Existing Structures: Burden of Proof – The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its Personal Wireless Service Facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent applicable:
  - a. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a Personal Wireless Service



## Town of Amherst Zoning Ordinance

Facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.

- b. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejections are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures that was contacted.
- c. If the applicant claims that a structure is not capable of physically supporting a Personal Wireless Service Facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the Personal Wireless Service Facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- d. Ground Mounted Facilities: Policy – New ground-mounted facilities are permitted but only when the use of existing structures and buildings are found to be not feasible. If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping, and placement within trees.
- e. Federal Requirements: All facilities must meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate such facilities.

E. USE REGULATIONS. A Personal Wireless Service Facility shall require a building permit in all cases and is permitted as follows:

1. Existing Tower Structures: Subject to the issuance of a building permit, carriers may locate a Personal Wireless Service Facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article, or on any Personal Wireless Service Facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met.
2. Reconstruction of Existing Tower Structures: An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two hundred (200) feet to exceed two hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community.
3. Existing Structures: Subject to the provisions of this Section, a carrier may locate a Personal Wireless Service Facility on an existing structure, building, utility tower or pole, or water tower.
4. Ground Mounted Facility: A new Personal Wireless Service Facility involving construction of

## Town of Amherst Zoning Ordinance

a ground mount shall require site plan review and be subject to the provisions of this Section.

**F. DIMENSIONAL REQUIREMENTS.** Personal Wireless Service Facilities erected, constructed, located, replaced, altered, or extended within the Town shall comply with the following dimensional requirements:

1. Height, Maximum: In no case shall a Personal Wireless Service Facility exceed two hundred (200) feet in height, unless the mount for the facility was greater than two hundred (200) feet in height prior to the adoption of this Section.
2. Height, Existing Structures and Utility Poles: Carriers that locate new Personal Wireless Service Facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet, or forty (40) feet at the discretion of the Planning Board, if the additional height will not materially impair the visual impacts of the site. This increase in height shall only be permitted once for each structure.
3. Height, Other Existing Structures: The height of a Personal Wireless Service Facility shall not increase the height of a structure by more than fifteen (15) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a Personal Wireless Service Facility on a building that is legally non-conforming with respect to height, provided that the provisions of this Section are met.
4. Height, Ground-Mounted Facilities: New ground-mounted Personal Wireless Service Facilities shall not project higher than twenty (20) feet above the average tree canopy height within a one hundred and fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
5. Setbacks: In addition to compliance with the minimum zoning district setback requirements, ground-mounted facilities must be set back, at a minimum, the distance equal to the fall zone, as defined in Section 3.16.C Definitions and 3.16.F Dimensional Requirements. All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located and if the fence is six (6) feet or more in height, in accordance with the appropriate Zoning Ordinances and building codes.
6. Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground-mount of a Personal Wireless Service Facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review. (Multiple fall zones may overlap.) (3-13-01)

## Town of Amherst Zoning Ordinance

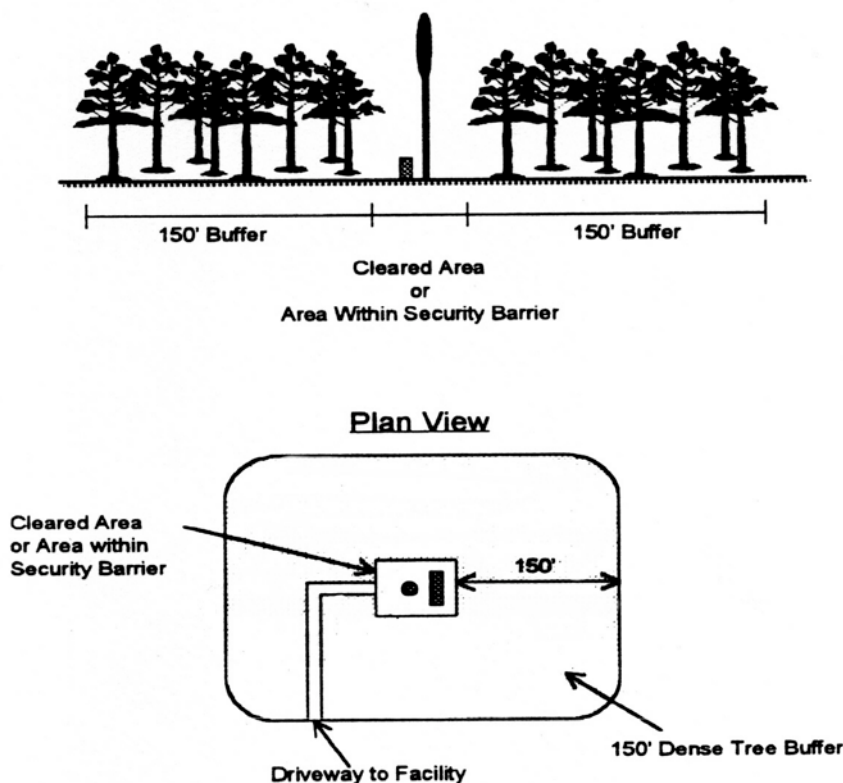
7. Fall Zone for Non-Ground Mounts: In the event that an existing structure is proposed as a mount for a Personal Wireless Service Facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, Personal Wireless Service Facilities and their equipment shelters shall not increase any non-conformities.
8. Planning Board Flexibility: Heights – In reviewing a site plan application for a Personal Wireless Service Facility, the Planning Board may permit an increase in the height of a ground mounted facility up to forty (40) feet above the average tree canopy height, if no material increase in visual or environmental impacts will result from the increased height. The visual and environmental criteria of this Section and the Site Plan Review Regulations shall be the guidelines in making this determination.

### G. PERFORMANCE AND DESIGN STANDARDS.

1. Visibility.
  - a. Visual impacts are measured on the basis of:
    - i. Change in community scale, as exhibited in relative height, mass, or proportion of the Personal Wireless Service Facility within their proposed surroundings.
    - ii. New visible elements proposed on a contrasting background.
    - iii. Different colors and textures proposed against a contrasting background.
    - iv. Use of materials that are foreign to the existing built environment.
  - b. Enhancements are measured on the basis of:
    - i. Conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
    - ii. Amount and type of landscaping and/or natural vegetation.
    - iii. Preservation of designated historic structures and districts, view corridors, vistas, and view sheds.
    - iv. Continuation of existing colors, textures, and materials.
  - c. Visibility focuses on:
    - i. Eliminating or mitigating visual impact.
    - ii. Protecting, continuing, and enhancing the existing environment.
  - d. Camouflage for Facilities on Existing Buildings or Structures – Roof Mounts: When a Personal Wireless Service 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 façade in order to limit their impact on the building's silhouette.

## Town of Amherst Zoning Ordinance

- e. Camouflage for Facilities on Existing Buildings or Structures – Side Mounts: Personal Wireless Service Facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design and materials of the building.
- f. Camouflage for Ground Mounted Facilities: All ground-mounted Personal Wireless Service Facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, and screens views of the facility in all directions, as set forth in Figure 2. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on-site conditions. The one hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.



- 2. Color: To the extent that any Personal Wireless Service Facilities extend above the height of the vegetation immediately surrounding them, they shall be of a color which blends with the background or surroundings.
- 3. Equipment Shelters – Equipment shelters for Personal Wireless Service Facilities shall be designed consistent with one of the following design standards:

## Town of Amherst Zoning Ordinance

- a. Equipment shelters shall be located in underground vaults; or
  - b. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the Personal Wireless Service Facility; or
  - c. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
  - d. If mounted on a roof top, 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.
4. Lighting, Signage, and Security.
  - a. Lighting: Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the regulatory authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the abutters and travelers on Town roads. Lighting of equipment structures and any other facilities on-site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles.
  - b. Signage: Signs shall be limited to those needed to identify the property and the owners and warn of any danger. All signs shall comply with the requirements of Article III, Section 3.4 of the Amherst Zoning Ordinance.
  - c. Security Barrier: The Planning Board shall have final authority on whether a ground mounted Personal Wireless Service Facility should be surrounded by a security barrier.
5. Historic Buildings and Districts.
  - a. Any Personal Wireless Service Facility located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
  - b. Any alteration made to an historic structure to accommodate a Personal Wireless Service Facility shall be fully reversible.
  - c. Personal Wireless Service Facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
  - d. Personal Wireless Service Facilities located in the Amherst Village Historic District are subject to review by the Historic District Commission and shall comply with the regulations of the Historic District.
6. Scenic Landscapes and Vistas – Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted Personal Wireless Service Facilities shall be surrounded by a buffer of dense tree growth as per Section 3.16.G.1.f.
7. Driveways – If available, existing entrances and driveways to serve a Personal Wireless Service Facility shall be utilized, unless the applicant can demonstrate that a new entrance and

## Town of Amherst Zoning Ordinance

driveway will result in less visual, traffic, and environmental impact. New driveways to serve a Personal Wireless Service Facility shall not exceed eighteen (18) feet in width. A gravel or crushed stone surface is encouraged.

8. Antenna Types – Any antenna array placed upon an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.
9. Ground and Roof Mounts – All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 3.16.E.2.
10. Hazardous Waste and Materials – No hazardous waste shall be discharged on the site of any Personal Wireless Service Facility. If any hazardous materials are to be used on-site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred ten percent (110%) of the volume of the hazardous materials stored or used on the site.
11. Noise – Personal Wireless Service Facilities shall not generate noise in excess of that permitted under the Amherst Noise Ordinance.
12. Radio Frequency Radiation (RFR) Standards – All equipment proposed for Personal Wireless Service Facilities shall be fully compliant with the FCC Guidelines for Evaluating and Environmental Effects of Radio frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.
13. Back-up Power Generation - All Personal Wireless Service Facilities shall have a back-up power generation source in case of power outages. The Planning Board shall approve the type of power source to be utilized which is most appropriate for each site location.

### H. MONITORING AND MAINTENANCE.

1. Maintenance – The owner of the facility shall maintain the Personal Wireless Service 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. The Building Inspector/Code Enforcement Officer has the authority to inspect approved Personal Wireless Service Facilities for compliance with the approved site plan as necessary. (3-8-22)
2. Monitoring – As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Amherst may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.

## Town of Amherst Zoning Ordinance

3. Security for Removal – Recognizing the hazardous situation presented by abandoned and unmonitored Personal Wireless Service Facilities, all owners of Personal Wireless Service Facilities shall obtain and maintain a bond or other approved form of security, in an amount set forth by the Planning Board. The Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned Personal Wireless Service Facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 3.16.J.
  - a. The amount of the security shall be based upon the removal cost plus fifteen percent (15%), provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan or at the time of Bond renewal. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.
  - b. The security shall contain the following language:
    - i. Now therefore, if the Principle (owner) well and truly complies with the requirement to remove and dispose of said tower in a timely manner in accordance with the following:
      - a) Section 3.16.J Abandonment or Discontinuation of Use, of the Personal Wireless Service Facilities,
      - b) any applicable town, state, or federal regulations; as well as,
      - c) any other conditions of approval relating to the maintenance of adequate security to insure to cover all costs related to such removal and disposal.
    - ii. The failure to provide a replacement bond no later than one hundred twenty (120) days prior to the expiration date of the within bond shall constitute a breach of the conditions of approval sufficient to permit the Planning Board to revoke the approval of the Personal Wireless Service Facility Non-residential Site Plan. In the event of such revocation, the obligation to remove shall immediately commence and the obligee shall be entitled to proceed to recover the costs of such removal from the security.

### I. PROCEDURAL REQUIREMENTS.

1. Application Process - All personal wireless service equipment installations and personal wireless service developments, except as provided elsewhere, are subject to review and site plan approval by the Planning Board. The Planning Board shall act upon the application in accordance with procedural requirements of the Non-Residential Site Plan Regulations and RSA 676:4, as amended.
2. Applicant must supply the Planning Board with the following information as part of the application:
  - a. An inventory of existing towers that are within the jurisdiction of the Town and those

## Town of Amherst Zoning Ordinance

- within two (2) miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for the co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals under this section or other organizations seeking to locate antennas within the jurisdiction of the Town, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- b. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence may consist of:
    - i. Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, including a description of the geographic area required.
    - ii. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements and why.
    - iii. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
    - iv. Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with antennae on existing towers or structures, or antennae on existing towers or structures would cause interference with the applicant's proposed antenna.
3. Plan Requirements: Each applicant requesting site plan approval under this ordinance shall submit a scaled plan showing or accompanied by the following information as part of any application package:
- a. Title block that shows the name of the development or project.
  - b. North arrow, date of plat, scale, name, address, and seal of all persons preparing the plat.
  - c. Signature block for Planning Board endorsement.
  - d. Vicinity sketch and zoning district(s).
  - e. Total area of parcel in acres and square feet.
  - f. Lot frontage.
  - g. Boundary lines and approximate dimensions and bearings.
  - h. Tax map and lot numbers.
  - i. Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
  - j. Physical features on the site and within two hundred (200) feet of the site.
  - k. Soil information.
  - l. All natural features, such as streams, ponds, wetland, etc.
  - m. Existing and proposed grades and contours and base flood elevations.
  - n. Shape, size, height, location, and width of existing and proposed structures on-site.
  - o. Existing buildings, structures, and historic resources as defined in the Historic Resource Survey, 2010, as amended, within five hundred (500) feet of the site.
  - p. Access to the site, with location and width of existing and proposed driveways.
  - q. Locations, names, right-of-way, and travel widths of any existing and proposed roads on the property and within two hundred (200) feet of the site.



## Town of Amherst Zoning Ordinance

- r. Final road profiles and cross sections for any new roads.
  - s. Locations and sizes of all utilities (i.e. electric, telephone, and water lines on the site).
  - t. Existing and proposed methods of handling stormwater runoff, and the direction of flow indicated by arrows.
  - u. Sizes and locations of all stormwater drainage lines, catch basins, drywells, drainage ditches, retentions basins, and culverts.
  - v. Location, types, and sizes of all existing and proposed landscaping and screening.
  - w. Location of any proposed lighting.
4. Review Process: Planning Board Approval and Building Permit Required - Non-residential and non-amateur Personal Wireless Service Facilities may be located within the Town of Amherst, subject to Planning Board approval and issuance of a building permit. Modifications to an existing installation which significantly alter the approved site plan shall also be subject to Planning Board approval. Construction or modification of an approved facility may not begin or continue without a valid building permit issued.
5. Once an application to the Planning Board is presented, the Town will refer the application to an independent professional consultant to determine the fee for review. The filing date of the application shall be defined as the date the application is presented and a cash deposit in the amount deemed necessary to defray the costs of the independent professional consultant review is submitted to the Town. All applications shall be assessed for a basic completeness review within thirty (30) days of the application's filing date by an outside professional consultant of the Board's choosing. All review costs are the responsibility of the applicant. Notice shall be sent if additional materials are needed by certified mail within thirty (30) days from the filing date of receipt of the application. Once notice of needed additional materials is sent, the ninety (90) or one hundred fifty (150) day clock is suspended until such materials are delivered. Incomplete applications will not be reviewed by the Planning Board. The Board must approve, approve with conditions, or deny the application in writing, within ninety (90) or (150) days of the filing date in accordance with FCC standards (Sec. 6409).
- a. Co-location applications are subject to the ninety (90) day clock.
  - b. New siting applications are subject to the one hundred fifty (150) day clock.
6. Certificate of Operation: Operation of a facility may not begin until the applicant has completed all conditions of the Planning Board approval, submitted the Security for Removal (Section 3.16.H.3), and met all building permit requirements. All Personal Wireless Service Facilities are required to submit As-built drawings and color photographs (of sufficient size and scale to document the facility) of the facility to the Town prior to the issuance of a Certificate of Operation.

### J. ABANDONMENT OR DISCONTINUATION OF USE.

1. Notification – At such time that a carrier plans to abandon or discontinue operation of a Personal Wireless Service Facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than one hundred twenty (120) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the Personal Wireless Service

## Town of Amherst Zoning Ordinance

Facility shall be considered abandoned upon such discontinuation of operations.

2. Removal – Any Personal Wireless Service Facility tower that is declared abandoned shall be considered hazardous to the public health and safety. Upon abandonment or discontinuation of use, the owner shall remove the abandoned structure and restore the site to its natural appearance within ninety (90) days from the date of abandonment or discontinuation of use. “Physically remove” shall include, but not be limited to:
  - a. Removal of antennas, mount, equipment shelters, and security barriers from the subject property.
  - b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - c. Restoring the location of the Personal Wireless Service Facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
3. Failure to Remove – If the owner of the facility does not remove the facility upon the Building Inspector/Code Enforcement Officer’s order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. (3-8-22) The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

### **Section 3.17 Equestrian Facilities and Events.** (3-10-98)

#### INTENT OF THE ORDINANCE.

The Town of Amherst recognizes that equestrian activities and facilities are an integral part of the history and rural character of the town and, as such, can contribute to achieving the goals of the Master Plan. Through the preservation of open space and agricultural practices, the commercial elements of such ventures are of value to the entire community by providing recreational, competitive and other opportunities for public benefit.

The intent of this ordinance is to allow the development of private equestrian facilities and events in the residential zones of the Town of Amherst, while seeking to preserve the rural character of the Town. The provisions of this ordinance are further intended to limit the impact of these commercial ventures on public health, safety and welfare by the establishment of minimum standards and by requiring a review of the design, operating procedures and control of impacts. The ordinance seeks to promote the health, safety and welfare of rider and animal, as well as the public.

#### A. DEFINITIONS.

Equestrian Facility. A private facility with limited and/or occasional availability to the public; primarily for the boarding, training, breeding, sale, riding, and maintenance of horses, ponies, and other equids, with or without instruction for the rider.

## Town of Amherst Zoning Ordinance

Equestrian Events. Any event of more than thirty (30) participants per day involving horses and/or other animals which are on display or engaged in competition and organized and managed in accordance with the provision of a sanctioning state or national organization.

Riding Lessons. Any lesson or activity with limited availability to the public involving the riding, training or care of horses, whether saddled or otherwise, and including the training or instruction of riders or drivers.

### B. GENERAL PROVISIONS.

1. **Applicability:** The provisions of this ordinance apply to all lessons or events involving horses that are open or available to the general public, regardless of whether there is a fee charged. Activities covered under this ordinance are allowed in all zones in the Town of Amherst. These provisions do not apply to the private ownership of horses or other farm animals not available for public use.

The ordinance shall be construed to cover and define uses permitted to equidae as a whole and not to limit permitted uses and activities to a size animal or a species or sub-species. Allowable uses and activities involve the interaction between horses and humans and can be instructional, competitive, recreational, therapeutic, training, exercise, conditioning, or as otherwise approved by the Planning Board.

2. **Prohibited Uses:** Activities, operations, or events for the purpose of livestock auctions, commercial horse sales, the sale of transport equipment and vehicles, the manufacture or sale of feed, and animal hospitals are not allowable uses permitted under this ordinance. Outdoor lighting for night-time use of arenas, tracks, and like-training or competition areas is prohibited.
3. **Equestrian Event Management.** Equestrian events consist of horse shows, trials, or competitions open to the general public. All events shall be conducted under the rules or other provision of an applicable sanctioning state or national organization. Prior to conducting such events, the owner of the property shall apply for and obtain approval under the Non-Residential Site Plan Review Regulations of the Town. At a minimum the application shall include:
  - a. Name of land owner(s).
  - b. Map and Lot numbers of the parcel(s) to be used for equestrian events.
  - c. A plan showing the parcel, abutters, existing development, and planned improvements or alterations, parking areas, and traffic access and circulation.
  - d. A detailed description of the proposed equestrian events including activities, hours of operation, number of participants, bathroom facilities, water supply, etc.
  - e. A detailed description of the measures to be implemented to ensure that the proposed activities are compatible with the neighborhood, including but not limited to traffic management, dust, and noise control, disposal of manure.
  - f. The annual schedule of equestrian events.
  - g. Provisions for access to special populations if events are open to the general public.

## Town of Amherst Zoning Ordinance

- h. A copy of the sanctioning organization's requirements for event management.
  - i. A traffic and parking plan shall designate areas for parking horse trailers and other oversize vehicles and for individual vehicles for those attending the equestrian events. All event parking shall be restricted to the designated areas and limited to the available spaces. No on-street parking shall be allowed. Traffic circulation shall ensure access for emergency vehicles at all times.
4. Riding Lessons. Riding lessons are all activities involving instruction, training, or participation in horse-back riding provided to the general public using horses not wholly owned by the individual receiving the instruction or training. Riding lessons to more than ten (10) individuals per day may be offered only by facilities approved under this ordinance. Prior to offering riding lessons to the public, the owner of the property shall apply for and obtain approval under the provision of the Non-Residential Site Plan Review Regulations of the Town. At a minimum the application shall include:
- a. Name of the land owner(s).
  - b. Map and Lot numbers of the parcel(s) to be used for riding lessons.
  - c. A plan showing the parcel, abutters, existing development, and planned improvements or alterations, parking areas, and traffic access and circulation.
  - d. A detailed description of the proposed riding lesson operations including activities, hours of operation, maximum number of hourly and daily participants, bathroom facilities, waiting/classroom areas, water supply, etc.
  - e. A detailed description of the measures to be implemented to ensure that the activities are compatible with the neighborhood, including but not limited to traffic management, dust, and noise control, disposal of manure.
  - f. The schedule of operation of the riding center.
  - g. Provisions for access to special populations if lessons are open to the general public.
  - h. A copy of an emergency response plan to manage accidents and injuries.
  - i. A traffic management plan must be prepared for any riding center offering lessons to more than 3 (three) riders per hour.

### C. OTHER PROVISIONS.

- 1. Barns or other structures used to stable horses under this ordinance shall be limited to one (1) animal per stall and one (1) stall per one (1.0) acres of pasture. Animals covered under this ordinance smaller than standard horses (fifty-eight inches [58 inches]) must be provided adequate pasture area.
- 2. Barns used to stable 5 (five) or more horses may contain up to eight hundred (800) sq. ft. of living space for a stable manager provided such space meets all applicable BOCA requirements and is issued an occupancy permit by the Town.
- 3. The restrictions on riding lessons contained in Section B.4 of this ordinance shall not apply to the owners of horses stabled or boarded at a facility not otherwise subject to this ordinance.
- 4. Nothing in this ordinance shall be construed to prohibit the private sale or maintenance of

horses or farm livestock or to prohibit, or otherwise restrict, agricultural operations.

5. Agricultural operations and Equestrian operations shall be conducted in accordance with the “Manual of Best Management Practices (BMP) for Agriculture in New Hampshire” published by the New Hampshire Department of Agriculture, Markets, and Food. (3-8-05)

### **Section 3.18 Conditional Use Permits**

#### **A. GENERAL.**

Conditional Use Permits as herein provided for shall be deemed to be permitted uses in their respective zones, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements and standards of this ordinance. All such cases are hereby declared to possess characteristics of such unique and special form that each specific use shall be considered as an individual case. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence through testimony or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.

#### **B. PLANNING BOARD TO ADMINISTER.**

Wherever a conditional use is authorized by this ordinance, the authority to administer or grant Conditional Use Permits shall be vested in the Planning Board.

#### **C. STANDARDS APPLICABLE TO ALL CONDITIONAL USE PERMITS.**

##### **1. Conditions for Conditional Use Permits.**

Before the Planning Board considers the approval of an application for a Conditional Use Permit, the applicant shall prove to the satisfaction of the Planning Board that all the following conditions have been met:

- a. That the property in question is in conformance with the dimensional requirements of the zone, or meets Planning Board standards for the reduction in dimensional requirements, and that the proposed use is consistent with the Amherst Master Plan. (3-10-15)
- b. That the proposal meets the purposes of the ordinance under which the application is proposed.
- c. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Amherst.
- d. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, water usage, septic loading, stormwater runoff or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances. (3-8-22)
- e. That the proposed use will not adversely affect the surface or ground water resources of Amherst, including but not limited to the Flood Plain Conservation District as defined in Section 4.10, the Wetland and Watershed Conservation District as defined in Section

## Town of Amherst Zoning Ordinance

4.11, and the Aquifer Conservation and Wellhead Protection District as defined in Section 4.13. (3-8-22)

- f. The applicant shall file a Non-Residential Site Plan Review application in accordance with the “Non-Residential Site Plan Review Regulations” with the Amherst Planning Board.
- g. The proposed use is consistent with the rural aesthetic and character of the town. The determination of whether rural aesthetic and character is maintained necessarily involves the exercise of discretion by the Board. Factors relevant to the determination will vary from application to application based on unique site characteristics and may include, but are not limited to, the following factors:
  - 1. the density and frontage requirements of the underlying zoning district;
  - 2. retention of views of natural features such as brooks and hills;
  - 3. retention and integration of rural heritage features such as stone walls and open fields;
  - 4. retention of mature native trees;
  - 5. use of setbacks in excess of minimum requirements and use of varied setbacks;
  - 6. use of densities and layouts that provide for views of space between proposed features from numerous locations and view angles;
  - 7. maintenance of views of natural landscapes and of distant locations;
  - 8. favoring of harmonious variation in layout and in architectural style rather than repetition; and,
  - 9. use of internal central areas such as greens, ponds, gardens, and park areas that permit the sense of a natural rural core. (3-8-22)

### 2. Conditions of Approval.

- a. The Planning Board may attach such conditions to its approval as are reasonable, necessary, and appropriate.
- b. All Conditional Use Permit uses are hereby declared to have special characteristics that shall be considered on a case-by-case basis.

### 3. Limits on a Conditional Use Permit.

- a. For projects requiring an associated Site Plan or Subdivision approval, such approval must be obtained within one (1) year of the Planning Board approval of the Conditional Use Permit. For all other projects, substantial construction must commence within one (1) year of the Planning Board approval of the Conditional Use Permit. (3-8-22)
- b. If, as applicable, site plan or subdivision approval is not obtained, or construction is not commenced within this period, the Conditional Use Permit approval may be extended for up to one (1) additional year upon approval of the Amherst Planning Board provided applicant has been diligent in proceeding with its project and in requesting the extension. Any extension request shall be made in writing prior to the conclusion of the original approval period and in the appropriate time for consideration by the Planning Board at a regularly scheduled public meeting. If approvals are not obtained or construction is not commenced within this extended period, as applicable, the Conditional Use Permit is declared null and void. (3-8-22)

D. PERMITS FOR CONDITIONAL USE PERMITS.

A building permit for a Conditional Use Permit use shall not be issued by the Board of Selectmen or their duly appointed representative, the Building Inspector/Code Enforcement Officer, until so directed by the Planning Board who shall first be satisfied that all the standards and conditions of this article and the ordinance have been met. (3-8-22)

**Section 3.19 Phasing (3-13-07)**

A. PURPOSE. To ensure that the rate of growth of the Town does not unreasonably interfere with the Town's capacity for planned, orderly, and tangible expansion of its services to accommodate such growth, the Planning Board, at its discretion, may require phasing of subdivisions, as provided in RSA 674:21. Prior to requiring phasing, the Planning Board shall inquire into the impact which the proposed subdivision will have on Town services and shall exercise its discretion to require phasing so as to lessen or mitigate such impact.

B. PHASING.

1. In the event that the Board decides, in its discretion, that phasing is required, then each subdivision of land for a residential use producing four (4) lots or dwelling units and not more than six (6) lots or dwelling units shall be phased over a minimum of two (2) years, with not more than fifty percent (50 %) of the dwelling units receiving building permits in a one (1) year period. Every subdivision of seven (7) lots or dwelling units but not more than nine (9) lots or dwelling units shall be phased over a minimum of three (3) years, with not more than thirty-three percent (33 %) of the dwelling units receiving building permits in a one (1) year period. Every subdivision of ten (10) lots or dwelling units but not more than twenty (20) lots or dwelling units shall be phased over a minimum of four (4) years, with not more than twenty-five (25 %) of the dwelling units receiving building permits in a one (1) year period. Other larger subdivisions shall have phasing as determined by the Board at its discretion.
2. The requirement shall apply to all forms of residential subdivision of land, as defined in RSA 672:14 (I), and RSA 674:21.
3. The Planning Board may require any subdivision to adhere to a longer phasing plan if such phasing is deemed necessary to protect the health, safety, welfare and environment of the Town.

**Section 3.20 Outdoor Lighting and Glare (3-14-23)**

A. PURPOSE AND AUTHORITY. This ordinance is adopted consistent with the New Hampshire Dark Sky Policy set forth in RSA 9-E:3 and as an innovative land use control pursuant to RSA 674:21 and shall be administered by the Planning Board. Natural dark skies are the nighttime aspect of our rural aesthetic. Light pollution and glare from inappropriate lighting degrades the rural aesthetic of the town. This ordinance is intended to enhance public safety and welfare by allowing adequate and appropriate outdoor lighting, providing for lighting that will complement the character

## Town of Amherst Zoning Ordinance

of the Town of Amherst, reducing glare, minimizing light trespass, reducing unnecessary energy consumption, and preventing the degradation of the visibility of the night sky.

- B. **GENERAL.** Outdoor lighting shall be designed to illuminate the site and parking areas without causing glare or excessive illumination on neighboring properties or streets. Lighting should be designed to enhance the attractiveness, usability, and comfort of a site. Lighting installations, including the design of poles and fixtures, should be designed with due consideration of setting, use, architecture, landscaping, existing trees, neighboring properties, and the character of the adjacent roadway. Glare from vehicle headlights shall be mitigated to the greatest extent possible through location and design of egresses, landscaping, and screening.

Illuminating Engineering Society of North America (IESNA) standards shall apply to uses and lighting limitations not specifically addressed in this ordinance, including recommended uniformity ratios and illumination levels. When any subdivision or site plan proposes installed outdoor lighting, the final plan shall contain a statement stating that the applicable provisions of this ordinance and any associated regulations shall be adhered to.

- C. **SHIELDING.** All outdoor luminaires shall be fully shielded, zero uplight luminaires, so that no direct light is projected above a horizontal plane passing through the lowest light emitting portion of the luminaire.
- D. **LIGHT TRESPASS.** Outdoor lighting shall be located, shielded, and maintained to limit light trespass onto adjacent properties and public ways.

Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and all floodlights or spotlights with a lamp or lamps rated at a total of more than 900 lumens, shall be mounted at a height equal to or less than the value  $3 + (D/3)$  where D is the distance in feet to the nearest property boundary, but not higher than the maximum mounting height specified herein.

If any flood or spotlight with a lamp or lamps rated at 900 lumens or less is aimed, directed or focused so as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduced or shielded, as necessary to eliminate such conditions.

In connection with any subdivision or site plan approval, acceptable light trespass may be required to be demonstrated by analysis satisfactory to the Planning Board in compliance with the following: horizontal illuminance at the property line shall not exceed 0.05 footcandles adjacent to a residential property and 0.1 footcandles adjacent to a nonresidential property (solely as a point of reference, full moonlight is approximately 0.03 footcandles). Driveways or other access ways to properties are allowed to have light trespass not to exceed 0.1 foot candles up to 20 feet into the public right-of-way. Properties that share a driveway or other access way or have adjoining parking areas may have lighting trespass over the shared property lines subject to the written agreement of all parties.



## Town of Amherst Zoning Ordinance

In connection with any subdivision or site plan approval, for areas adjacent to or including undeveloped land or required open space, the Planning Board may require additional light trespass and horizontal illuminance limitations to protect flora and fauna in these areas.

- E. **MAXIMUM MOUNTING HEIGHTS.** Light fixtures mounted on building exteriors shall not be placed higher than 30 feet above the ground. Light poles shall not exceed the following heights, measured from the ground to the bottom of the light fixture:
1. 20 feet in the Commercial and Industrial districts (use of shorter poles is encouraged);
  2. 15 feet in all other districts;
  3. The Planning Board may approve higher mounting heights in connection with a non-commercial sports and recreation use in districts where such uses are allowed, provided the purpose and intent of this ordinance is preserved.
- F. **LIGHTING SOURCES.** Mercury vapor outdoor lighting is prohibited. Outdoor light sources shall be of energy efficient design, with a color temperature of 3000 Kelvin or less. Outdoor light sources including any flickering or pulsing light are prohibited. Processes which create light flashes such as, but not limited to, electric arc welding, shall be confined to buildings or shielded to prevent either glare or flashes reflected from the sky.
- G. **HOURS OF OPERATION.** Outdoor lighting shall be turned off or reduced in intensity by 11:00 p.m. unless an activity being lighted extends beyond that time. Lighting of display lots such as, but not limited to, automobile sales or rental, recreational vehicle sales, or building material sales shall be turned off within (30) thirty minutes after closing at the end of the business day. Any outdoor lighting used after work/activity/event hours shall be security lighting only, reduced from the level of full illumination lighting. Similarly, lighting for parking lots shall either be turned off or noticeably reduced to security levels after the closing of business. The intention of this requirement is to reduce after-hours illumination to the greatest extent while recognizing the need for security lighting. The Planning Board may impose limitations on lighting, hours of operation, or both, consistent with the purposes of this paragraph.
- H. **WIRING.** Wiring for all outdoor lighting fixtures must be placed underground or within the associated structure.
- I. **SITE PLAN OR SUBDIVISION APPROVAL.** Uses for which subdivision or site plan approval is required shall demonstrate compliance with these requirements to the satisfaction of the Planning Board.
- J. **EXEMPTIONS.** The following are exempted from this section:
1. Installations existing prior to the enactment of this ordinance are exempt from its requirements. Alterations that would increase (by any amount), or replace twenty-five percent (25%) or more of, the existing outdoor lighting fixtures on the premises shall conform to the requirements of this ordinance.

## Town of Amherst Zoning Ordinance

2. Lighting of the American flag. Shielded lighting from above the flag is encouraged if lighting is desired.
3. Lighting required to meet state or federal requirements, if no compliant solution is available.
4. Emergency safety lighting.
5. Holiday lighting during the months of October through the following January, provided the lighting is consistent with light levels of conventional holiday lighting and does not cause hazardous glare on adjacent streets or objectionable conditions on neighboring properties.
6. Residential uses of luminaires with a lamp or lamps rated at a total of less than 1800 lumens or, in the case of flood or spot lights, with a lamp or lamps rated at less than 900 lumens (except such flood or spot lights are subject to the light trespass provisions of this ordinance). Use of fully shielded fixtures is encouraged for such installations.

Owners or operators of non-conforming fixtures or installations are encouraged to bring their outdoor lighting into voluntary compliance with these requirements.

### K. DEFINITIONS

1. Direct Light: Light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.
2. Fixture: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.
3. Lamp: The component of a luminaire that produces the actual light.
4. Luminaire: A complete lighting assembly that includes the fixture and its lamp or lamps.
5. Flood or Spotlight: Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.
6. Glare: Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see and, in extreme cases, causing momentary blindness.
7. IESNA: Illuminating Engineering Society of North America.
8. Indirect Light: Direct light that has been reflected or has scattered off other surfaces.
9. Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

## Town of Amherst Zoning Ordinance

10. Lumen: A unit of luminous flux. One foot candle is one lumen per square foot. For the purposes of this ordinance, the lumen-output values shall be the initial lumen output rating of a lamp. For reference only, 1800 lumens is approximately the light output of a 100W incandescent bulb.
11. Outdoor Lighting: The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

## ARTICLE IV -- ZONING REGULATIONS

### **Section 4.1 Application of Regulations.**

Subsequent to passage of this ordinance, buildings, or land shall hereafter be used, constructed, altered, or enlarged only in conformity with regulations specified herein for the zoning district in which it is located. (3-12-63)

### **Section 4.2 Lots of Record.**

Any lot of record (See Art. IX, Sec. 9.1, Definitions, Lot of Record) in the Town of Amherst prior to the effective date of this section may be occupied by any use permitted in its zoning district, regardless of its size, provided it meets all applicable zoning setback, building, and water pollution control regulations for the Town of Amherst. Such lots shall provide for access on a publicly or privately maintained road. (3-12-63, 3-9-92, 3-13-82, 3-13-90, 3-11-03)

### **Section 4.3 Residential/Rural Zone (RR). (3-12-63, 3-11-93, 3-10-15)**

#### A. PERMITTED USES.

1. One-family dwelling and accessory buildings or structures. (3-11-08)
2. Planned Residential Development. (See Art. IV, Sec. 4.17)
3. Farm, Agricultural or Nursery Use.
4. Roadside stand for the sale of farm produce or nursery products. (3-11-93)
5. Home Occupation. (3-11-93)
6. (Deleted 3-8-22)
7. Workforce Housing (See Section 4.14)
8. Non-commercial sports and recreation uses, subject to obtaining Planning Board site approval, which shall provide at minimum for applicable:
  - a. Setbacks,
  - b. Buffers,

## Town of Amherst Zoning Ordinance

- c. Sanitary facilities,
- d. Parking,
- e. Mitigation of traffic impact, and
- f. Adequate provision of emergency services, and subject to determination by the Planning Board of the following:
  - i. Such use shall not be the primary use of the lot;
  - ii. Such use shall be non-commercial in nature;
  - iii. Deleted (3-6-04);
  - iv. Deleted (3-6-04);
  - v. Such use shall be compatible with existing neighborhood uses;
  - vi. Such use complies with the spirit and letter of Section 3.1, Nuisance Provision; and
  - vii. No permanent buildings shall be permitted as part of such use, except for sheds to the extent necessary for storage of equipment for such use.
- g. Noise and lighting. Uses involving motor-driven objects producing sixty (60) or more decibels of sound at a range of ten feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than five hundred (500) feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m. (3-14-95)

9. Elderly Housing (See Article IV, Section 4.20) (3-10-15)

10. Accessory Dwelling Unit (3-8-16, 3-12-24)

### B. USES PERMITTED BY SPECIAL EXCEPTION RESIDENTIAL/RURAL. (3-11-93)

- 1. Religious purposes. (3-1-05)
- 2. Nursing Homes. (3-12-63)
- 3. (Deleted 3-10-2015)
- 4. (Deleted 3-8-2016)

### C. AREA AND FRONTAGE REQUIREMENTS.

- 1. The minimum lot area shall be two (2) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4.11, no flood plain as defined in Art. IV, Sec. 4.10, and no slopes greater than twenty percent (20 %). (3-5-74, 3-14-89, 3-6-04)
- 2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as a reduced frontage lot. (3-4-75, 3-10-87, 3-14-23) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

D. YARD REQUIREMENTS.

1. Each dwelling, building, or structure shall be set back at least fifty (50) feet from the front lot line, or at such distance that will be no closer than an existing structure. An addition may not be extended laterally more than a maximum of a fifty percent (50%) increase of the lineal frontage of the existing structure and must conform to any other setback requirements on the lot. (3-12-63, 3-9-82, 3-12-02, 3-11-08)
2. Except in the Historic District, each dwelling, building, or structure shall be set back at least twenty-five (25) feet from the side and rear property lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane, or public way. (3-12-63, 3-8-05, 3-11-08)
3. Any accessory buildings or structures shall be set back at least twenty (20) feet from side and rear lot lines and at least fifty (50) feet from the front lot line and not exceed twenty-two (22) feet in height. In the case of corner property, the setback distance shall be at least fifty (50) feet on each side bordering a street, lane, or public way. (3-8-22) The height requirement may be waived for farm structures. (3-12-63, 3-10-87, 3-8-05, 3-11-08) In the Historic District, a new dwelling, building, or structure shall be either at least twenty (20) feet from the side and rear property lines or no closer than twenty-five (25) feet from the principal dwelling, building, or structure on any abutting lot, whichever is greater. (3-8-05, 3-11-08, 3-12-24)
4. No new principal dwelling, building, or structure shall be constructed to a height greater than forty (40) feet. No structure shall be constructed with more than four (4) floors/levels including basement and attic levels. No new dwelling, building, or structure, or addition to an existing dwelling, building, or structure that increases the total area of the structure, shall have a floor area ratio greater than fifteen percent (15%). The aggregate floor area ratio shall be no greater than fifteen percent (15%). (3-6-04, 3-13-07, 3-11-08, 3-11-14)

E. PROHIBITED USES.

1. Aircraft landing fields. (3-10-98)

**Section 4.4 Northern Transitional Zone (NTZ).** (3-8-88)

A. GENERAL. The purpose of establishing the Northern Transitional Zone is as follows:

1. To recognize, establish, and affirm an area of the Town in which lower density development is of itself, desirable.
2. To recognize the unique scenic and natural character of a portion of Town which forms a natural entry to the Northern Rural Zone.
3. To ensure that future development in this area of Town be of a type that is compatible with the area's scenic and natural character.

## Town of Amherst Zoning Ordinance

4. That the Northern Transitional Zone shall be bounded by Horace Greeley Road on the North, NH Route 101 on the South, and the Amherst Town line on the East. The Westerly boundary is the intersection of Horace Greeley Road and NH Route 101.

### B. PERMITTED USES.

1. One-family dwelling and accessory buildings or structures. (3-8-88, 3-11-08, 3-10-15)
2. Farm, agricultural, or nursery use. (3-3-88)
3. Roadside stand for the sale of farm products or nursery products.
4. Home occupation. (3-8-88)
5. Planned Residential Development (PRD) – (See Art. IV, Sec. 4.17) In order to achieve the purpose of this section, Planned Residential Development shall be encouraged as the principal method of future development of this zone. (3-8-88)
6. (Deleted 3-8-22)
7. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking, and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
8. (Deleted 3-9-10)
9. Accessory Dwelling Unit (3-8-16, 3-12-24)

### C. AREA AND FRONTAGE REQUIREMENTS. (3-14-23)

1. The minimum lot area for any permitted use shall be three and one-half (3 ½) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4.11, no flood plain as defined in Art. IV, Sec. 4.10), and no slopes greater than twenty percent (20%). (3-6-04)
2. Each lot shall have a minimum frontage of three hundred (300) feet on the principal route of access to the lot, unless frontage has been approved and recorded as a reduced frontage lot. (3-14-23) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

### D. YARD REQUIREMENTS.

1. Each dwelling, building, or structure shall be set back at least fifty (50) feet from the front lot line, or at such distance that will be no closer than an existing structure. An addition may not

## Town of Amherst Zoning Ordinance

be extended laterally more than a maximum of a fifty percent (50%) increase of the lineal frontage of the existing structure and must conform to any other setback requirements on the lot. (3-11-08)

2. Each dwelling, building, or structure shall be set back at least forty (40) feet from the side and rear lot lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane, or public way. (3-8-05, 3-11-08)
3. Any accessory building or structure shall be set back at least thirty (30) feet from the side and rear lot lines and at least fifty (50) feet from the front lot line and shall not exceed twenty-two feet in height. This requirement may be waived for farm structures or buildings. (3-8-88, 3-11-08) In the case of corner property, the setback distance shall be at least fifty (50) feet on each side bordering a street, lane, or public way. (3-8-22)
4. No new principal dwelling, building, or structure shall be constructed to a height greater than forty (40) feet. No structure shall be constructed with more than four (4) floors/levels including basement and attic levels. No new dwelling, building, or structure, or addition to an existing dwelling, building, or structure that increases the total area of the dwelling, building, or structure shall have a floor area ratio greater than fifteen percent (15%). The aggregate floor area ratio shall be no greater than fifteen percent (15%). (3-6-04, 3-11-08, 3-11-14)

### **E. USES PERMITTED BY SPECIAL EXCEPTION NORTHERN TRANSITIONAL ZONE.**

1. Religious purposes. (3-14-89)
2. Private schools. (3-14-89)
3. Hospitals, clinics, nursing homes, and other similar uses. (3-14-89)
4. Professional offices. (3-14-89)
5. Funeral homes. (3-14-89)
6. Sawmills. (3-14-89)
7. (Deleted 3-8-2016)
8. Kennels. (3-14-89)

### **F. PROHIBITED USES.**

1. Aircraft landing fields. (3-10-98)

## **Section 4.5 Northern Rural Zone (NR). (3-2-76, 3-10-15)**

A. GENERAL. The purpose of establishing the Northern Rural Zone is the following:

## Town of Amherst Zoning Ordinance

1. To recognize, establish, and affirm an area of the Town in which lower density development is of itself, desirable. (3-11-86)
2. To recognize the unique rural, scenic, and natural character of a portion of Town which has remained essentially undeveloped and unchanged during the time that the remainder of the Town has experienced considerable physical development and change. (3-2-76)
3. To identify a portion of Town that contains extensive areas of poor soils, steep slopes, and limited accessibility which limits the type of development which is compatible with these limitations as well as the areas in which development can suitably take place. (3-2-76)
4. To ensure that future development in this area of Town be of a type that is compatible with the area's extensive physical limitations as well as its unique rural, scenic, and natural character. (3-2-76)

### B. PERMITTED USES.

1. One (1) family dwelling and accessory buildings or structures. (3-2-76, 3-11-08)
2. Farm, agricultural, or nursery use. (3-2-76)
3. Roadside Stand for the sale of farm produce or nursery products. (3-2-76)
4. Home Occupation. (11-2-82)
5. Planned Residential Development (PRD). In order to achieve the purpose of this section, Planned Residential Development shall be encouraged as the principal method of future development of this zone. (See Art. IV, Sec. 4.17) (11-2-82)
6. (Deleted 3-8-22)
7. Workforce Housing (see Section 4.14)
8. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking, and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
9. Accessory Dwelling Unit (3-8-16, 3-12-24)

### C. USES PERMITTED BY SPECIAL EXCEPTION NORTHERN RURAL ZONE.

1. Religious purposes. (3-2-76)



## Town of Amherst Zoning Ordinance

2. Private schools. (3-2-76)
3. Hospitals, clinics, nursing homes, and other similar uses. (3-2-76)
4. Professional offices. (3-2-76)
5. Funeral homes. (3-2-76)
6. Sawmills. (3-2-76, 3-9-82)
7. (Deleted 3-8-16)
8. Kennels. (11-2-82)

### D. AREA AND FRONTAGE REQUIREMENTS.

1. The lot area shall be five (5) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4.11, no flood plain as defined in Art. IV, Sec. 4.10, and no slopes greater than twenty percent (20%). (3-14-89, 3-6-04)
2. Each new lot shall have minimum frontage of three hundred (300) feet on a publicly maintained road, unless frontage has been approved and recorded as a reduced frontage lot. (3-9-82, 3-10-87, 3-14-23) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

### E. YARD REQUIREMENTS.

1. Each dwelling, building, or structure shall be set back at least fifty (50) feet from the front lot line, or at such distance that will be no closer than an existing structure. An addition may not be extended laterally more than a maximum of a fifty percent (50%) increase of the lineal frontage of the existing structure and must conform to any other setback requirements on the lot. (3-11-80, 3-9-82, 3-11-08)
2. Each dwelling, building, or structure shall be set back at least forty (40) feet from the side and rear lot lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane, or public way. (3-8-05, 3-11-08)
3. Any accessory building or structure shall be set back at least thirty (30) feet from side and rear lot lines and at least fifty (50) feet from the front lot line and shall not exceed twenty-two (22) feet in height. This height requirement may be waived for farm structures or buildings. (3-11-80, 3-9-82, 3-12-85, 3-10-87, 3-11-08) In the case of corner property, the setback distance shall be at least fifty (50) feet on each side bordering a street, lane, or public way. (3-8-22)
4. No new principal dwelling, building, or structure shall be constructed to a height greater than forty (40) feet. No structure shall be constructed with more than four (4) floors/levels including basement and attic levels. No new dwelling, building, or structure, or addition to

## Town of Amherst Zoning Ordinance

an existing dwelling, building, or structure that increases the total area of the dwelling, building, or structure, shall have a floor area ratio greater than fifteen percent (15%). The aggregate floor area ratio shall be no greater than fifteen percent (15%). (3-6-04, 3-11-08, 3-11-14)

### F. PROHIBITED USES.

1. Aircraft landing fields. (3-10-98)

## **Section 4.6 General Office Zone (GO).** (3-12-85, 3-10-15)

### A. PERMITTED USES.

1. Professional offices. (3-12-85)
2. General offices of individuals or groups for the handling of administrative functions such as but not specifically limited to: executive offices, business offices handling sales or services off the premises, including salesmen, agents or representatives of manufacturing, distributing, insurance, and wholesale companies. Specifically excluded is the retail sale of any product from the premises. (3-12-85)
3. Mixed-use development, limited to office and residential uses. (See Article IX Definitions) (3-14-89, 3-13-90)
4. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking, and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
5. Outside storage of materials and/or equipment, other than vehicles, shall be prohibited.
6. (Deleted 3-8-22)

### B. AREA AND FRONTAGE REQUIREMENTS.

1. The minimum lot area shall be one (1) acre except for a residential use which shall be two (2) acres. (3-12-85)
2. Each lot shall have a minimum frontage of two hundred (200) feet on the principal route of access to the lot. (3-12-85) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

### C. YARD AND BUILDING REQUIREMENTS. (3-12-91)

1. Each new structure shall be set back either fifty (50) or one hundred (100) feet from the edge

## Town of Amherst Zoning Ordinance

of the public road right-of-way.

- a. The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs.
  - b. The hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way.
  - c. Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line.
  - d. On corner lots, parking areas shall be screened from the highway with fences, landscaping, and natural vegetation.
2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines.
  3. Any lot bordering a residential zone or an existing residential use shall have a landscape buffer between any buildings and such residential zone or use.
  4. No structure shall be constructed to a height greater than forty (40) feet. (3-11-14)
  5. The floor area ratio shall be a maximum of twenty percent (20%).
  6. A minimum of thirty percent (30%) of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking).
  7. There shall be no more than one (1) access to any lot wherever desirable for traffic safety and consideration shall be given to combining access points where two (2) or more lots are being concurrently developed.
  8. All storage and/or equipment parking areas shall be fenced, screened, or otherwise protected from view. (3-12-91)

### D. ARCHITECTURAL DESIGN.

As a condition of final approval, the applicant must obtain the Planning Board's approval of the exterior architectural design to ensure that it is in harmony with the neighborhood and the surrounding environment. (3-12-85)

### E. PROHIBITED USES.

1. Aircraft landing fields. (3-10-98)

## **Section 4.7 Commercial Zone (C). (3-10-15)**

GENERAL PURPOSE. To provide commercial areas to serve major commercial and business needs of the general public. (3-14-78)

## Town of Amherst Zoning Ordinance

### A. PERMITTED USES. Uses which include, but are not limited to the following: (3-13-90)

1. Retail establishments. (3-12-63)
2. Hotel and motels. (3-12-63, 3-14-78)
3. Public utility building, structure or facility. (3-14-78)
4. Home occupation. (11-2-82)
5. (Deleted 3-8-22)
6. Mixed-use development. (3-14-89) (See Art. IX Definitions)
7. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking, and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
8. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA 170-E:1, 170-E:2, 204-C:72, 161-G:4, and all other applicable State Laws. (3-12-91, 3-10-92)
9. Accessory Dwelling Unit (3-8-16, 3-12-24)

### B. USES PERMITTED BY SPECIAL EXCEPTION COMMERCIAL ZONE.

1. Outside recreation establishments exclusive of outdoor theaters. (3-2-76)
2. Outside storage of equipment and materials, but not including junk yards. (3-2-76)
3. Religious uses. (3-2-76)
4. Private schools. (3-2-76)
5. Hospitals, nursing homes and other similar uses. (3-2-76)
6. (Deleted 3-8-16)
7. Kennels. (11-2-82)

C. AREA AND FRONTAGE REQUIREMENTS.

1. The minimum lot area shall be one (1) acre. (3-14-89, 3-11-97)
2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-14-78, 3-9-82) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

D. YARD AND BUILDING REQUIREMENTS.

1. Each new structure shall be set back either fifty (50) or one-hundred (100) feet from the public road right-of-way of New Hampshire Route 101A. (3-14-89, 3-10-92)
  - a. The fifty (50) foot option requires that a natural vegetation of landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs. (3-14-89, 3-10-92)
  - b. The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way. (3-14-89)
  - c. Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line. (3-14-89)
2. Each new structure shall be set back fifty (50) feet from the edge of the public road right-of-way on all roads within the Commercial Zone. (3-10-92)
3. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. (3-14-89)
4. Any lot bordering a residential zone or an existing residential use shall have a landscaped buffer between any buildings and such residential zone or use. (3-4-75)
5. No structure shall be constructed to a height greater than forty (40) feet. (3-11-86, 3-11-14)
6. The floor area ratio shall be a maximum of twenty-five (25%) percent. (3-12-85, 3-10-87)
7. A minimum of thirty (30%) percent of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking). (3-4-75)
8. There shall be no more than one (1) access to any lot wherever desirable for traffic safety, and consideration shall be given to combining access points where two (2) or more lots are being concurrently developed. (3-4-75)
9. All storage and/or equipment parking areas shall be fenced, screened, landscaped, or otherwise

protected from view. (3-14-78)

E. PROHIBITED USES.

1. Aircraft landing fields. (3-10-98)

**Section 4.8 Limited Commercial Zone (LC). (3-2-76, 3-10-15)**

GENERAL PURPOSE. To provide commercial area to serve limited commercial and business needs of the general public.

A. PERMITTED USES.

1. Retail, personal service, and business establishment of a type consistent with the purpose of this zone to serve limited commercial needs of various neighborhoods in Town. The foregoing shall include, but not necessarily be limited to:
  - a. Retail grocery, meat, produce, drugs, stationery, hardware, baked goods (3-2-76)
  - b. Barber and beauty shops (3-2-76)
  - c. Shops for the collection and distribution of clothing materials for dyeing and cleaning establishments (3-2-76)
  - d. Banks (3-2-76)
  - e. Coffee or sandwich shop (except for drive-in or fast service types) (3-2-76)
2. Business and/or professional offices for individual or group practice, including doctors and dentists (including medical or dental clinics), lawyers, counseling services, engineers, architects, planners, insurance and accountants. (3-2-76)
3. Veterinary clinic. (3-2-76)
4. Gasoline service station which may have a garage for repair to automobiles only but not to include body or fender repair, paint spraying, or used car sales lots. (3-2-76, 3-12-91)
5. Interior storage. (3-2-76, 3-8-05)
6. Interior recreational establishments. (3-2-76)
7. Home occupation. (11-2-82)
8. (Deleted 3-8-22)
9. Mixed-use development (See Art. IX Definitions). (3-14-89)
10. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may

## Town of Amherst Zoning Ordinance

be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)

11. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA: 170-E:1, 170-E:2, 204-C:72, 161-G:4 and all other applicable State Laws. (3-12-91). (3-10-92)

12. Accessory Dwelling Unit (3-8-16, 3-12-24)

### B. USES PERMITTED BY SPECIAL EXCEPTION LIMITED COMMERCIAL ZONE.

1. (Deleted 3-8-16)
2. Religious purposes. (3-8-8)
3. Kennels. (3-13-01)

### C. AREA AND FRONTAGE REQUIREMENTS.

1. The minimum lot area shall be one (1) acre. (3-2-76, 3-14-89, 3-11-97)
2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-14-78, 3-9-82, 3-10-87) Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

### D. YARD AND BUILDING REQUIREMENTS.

1. Each new structure shall be set back either fifty (50) or one-hundred (100) feet from the edge of the public road right-of way.
  - a. The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs.
  - b. The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way.
  - c. Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line.
  - d. On corner lots, parking areas shall be screened from the highway with fences, landscaping, and natural vegetation. (3-14-89)
2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. (3-14-89)

## Town of Amherst Zoning Ordinance

3. Any lot bordering a residential zone or an existing residential use shall have a landscape buffer between any buildings and residential zone or use. (3-2-76)
4. No structure shall be constructed to a height greater than forty (40) feet. (3-2-76, 3-12-85, 3-11-86, 3-11-14)
6. The floor area ratio shall be a maximum of twenty percent (20%). (3-2-76, 3-12-85, 3-10-87)
7. A minimum of thirty percent (30%) of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking). (3-4-75, 3-13-07)
8. There shall be no more than one (1) access to any lot wherever desirable for traffic safety and consideration shall be given to combining access points where two (2) or more lots are being concurrently developed. (3-2-76)
9. All storage and/or equipment parking areas shall be fenced, screened, or otherwise protected from view.

### E. PROHIBITED USES.

1. Aircraft landing fields. (3-10-98)

## **Section 4.9 Industrial Zone.**

### A. PERMITTED USES.

1. Light manufacturing. (3-12-63)
2. Assembly of previously prepared materials. (3-12-63)
3. Metal working. (3-12-63)
4. Equipment sales and service. (3-12-63)
5. Creamery, bakery, and soft drink bottling plants. (3-12-63)
6. Distribution plants, service industries and parcel delivery. (3-12-63)
7. Laboratories. (3-12-63)
8. Corporate and business offices compatible with other permitted uses in the zone and/or professional offices for individual or group practice, including doctors and dentists (including medical and dental clinics), counseling services, engineers, architects, planners, insurance, and accountants. (3-14-78, 3-10-87)
9. Wholesale business and storage. (3-14-78)



## Town of Amherst Zoning Ordinance

10. Storage yards (but not junk yards). (3-14-78)
11. Banks. (3-10-87)
12. Coffee or sandwich shops (except for fast service types). (3-10-87)
13. Veterinary clinic. (3-10-87)
14. Interior recreational establishments. (3-10-87)
15. Home occupation. (11-1-82)
16. Public utility buildings, structures, or facility. (3-14-78, 3-10-87)
17. Amateur, non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than five hundred (500) feet from any residential use but not after 9:00 p.m. (3-12-91)
18. Retail Establishments. Change of use permit from the Planning Board required for existing buildings. (3-11-97)
19. (Deleted 3-8-22)

### **B. NO LAND, BUILDING, OR STRUCTURE SHALL BE USED FOR ANY OF THE PURPOSES ENUMERATED BELOW.**

1. Manufacture or storage of explosives in bulk quantities greater than twenty-five (25) pounds. (3-12-63)
2. Fertilizer manufacture. (3-12-63)
3. Glue manufacture. (3-12-63)
4. Petroleum refining. (3-12-63)
5. Smelting of metallic ores. (3-12-63)
6. Preparation of cement, gypsum, lime or plaster of paris. (3-12-63)
7. Manufacture of acids. (3-12-63)
8. Fat rendering in preparation of grease or tallow. (3-12-63)

## Town of Amherst Zoning Ordinance

9. Animal reduction or garbage dumping except sewage disposal or incineration done by the Town of Amherst. (3-12-63)

### C. USES PERMITTED BY SPECIAL EXCEPTION INDUSTRIAL ZONE.

1. Kennels. (11-2-82)
2. Sexual oriented businesses. (3-14-00)

### D. AREA AND FRONTAGE REQUIREMENTS.

1. The minimum lot area shall be one (1) acre. (3-14-78, 3-13-84, 3-14-89)
2. Each lot shall have a minimum frontage of two hundred (200) feet on the principal route of access. (3-14-78, 3-13-84) Corner lots shall also have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

### E. YARD AND BUILDING REQUIREMENTS.

1. Each new structure shall be set back either fifty (50) or one-hundred (100) feet from the edge of the public road right-of-way. (3-14-89)
  - a. The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs. (3-14-89)
  - b. The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way. (3-14-89)
  - c. Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line. (3-14-89)
  - d. On corner lots, parking areas shall be screened from the highway with fences, landscaping and natural vegetation. (3-14-89)
2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. (3-14-89)
3. Any lot bordering a residential zone or an existing residential use shall have a landscaped buffer between any building and such residential zone or use. (3-4-75)
4. No structure shall be constructed to a height greater than fifty (50) feet. (3-4-75, 3-11-86, 3-12-91, 3-11-14, 3-12-24)
5. The floor area ratio shall be a maximum of forty percent (40%). (3-4-75, 3-10-87)

## Town of Amherst Zoning Ordinance

6. A minimum of thirty percent (30%) of the area of any lot shall remain open space and not be utilized for construction including parking. (3-4-75, 3-13-01)
  7. There shall be no outside storage of materials or equipment between the front of any buildings and the street. All storage and/or equipment parking areas shall be fenced, screened, landscaped or otherwise protected from view. (3-4-75)
- F. ACCESS. Access to any lot with frontage on Route 101A shall be by such other streets as are available and not by Route 101A unless no other access is available. (3-14-78)

### **Section 4.10 Flood Plain Conservation District. (3-10-70, 3-11-97)**

- A. GENERAL. In the interest of public health, convenience, safety, and welfare, the regulations of this district are intended to guide the use of areas of flood plain subject to flood water and to encourage the retention of open land so as to constitute a harmonious and appropriate physical development of the Town, as developed from the Master Plan. The specific intent of this district is:
1. To prevent the development of buildings and uses in areas that are unsatisfactory and hazardous due to the threat of flooding.
  2. Protection of natural flow and drainage.
- B. PURPOSE. Certain areas of the Town of Amherst, 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 Amherst, New Hampshire, has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance. (3-13-07)
- C. DEFINITION. This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Amherst, New Hampshire, Flood Plain Conservation District. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Amherst, New Hampshire, Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Hillsborough, N. H." dated Sept. 25, 2009, or as amended, together with the associated Flood Insurance Rate Maps dated Sept. 25, 2009, or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference. (3-13-07, 7-16-09, 3-12-24)

## Town of Amherst Zoning Ordinance

The following definitions shall apply only to this Floodplain development ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Amherst, NH.

Area of Special Flood Hazard is the land in the floodplain within the Town of Amherst subject to a one (1) percent or greater chance of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map. (3-13-07)

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

Base Flood Elevation (BFE) means the elevation of surface water resulting from the "base flood". (3-12-24)

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

Building. (See structure)

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials. (3-13-07)

FEMA means the Federal Emergency Management Agency.

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

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

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

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 (i.e. mudflow) and/or flood-related erosion hazards. (3-13-07)

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". (3-12-24)

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real

## Town of Amherst Zoning Ordinance

property, water and sanitation facilities, structures, and their contents.

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

Floodway. (See Regulatory Floodway)

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is:

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

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

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on-site for greater than one hundred eighty (180) consecutive days. This includes manufactured homes located in a manufactured home park or subdivision. (3-13-07)

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale. (3-13-07)

Mean Sea Level means the National Geodetic Vertical Datum (NGVD) of 1929, North American

## Town of Amherst Zoning Ordinance

Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced. (3-12-24)

New Construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (3-13-07)

Recreational Vehicle is defined as:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway means the channel of a river or other water course 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. (3-13-07)

Special Flood Hazard Areas. (See Area of Special Flood Hazard) (3-13-07)

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.

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

Substantial Damage 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 fifty percent (50%) of the market value of the structure before the damage occurred.

## Town of Amherst Zoning Ordinance

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". (3-12-24)

Violation means the failure of a structure or other development to be fully compliant with community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. (3-13-07)

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 floodplains. (3-12-24)

### D. PERMIT REQUIREMENTS

All proposed development in any special flood hazard area shall require a permit. (3-12-24)

### E. PERMITTED USES.

Any of the following uses, which may require a permit, that do not result in the erection of any structures or require the addition of fill, and that are otherwise permitted by the Zoning Ordinance.

1. Minor fences, docks, wharfs, boat houses.
2. Agriculture.
3. Forestry.
4. Recreational purposes such as accessory tennis courts, swimming pools, playing fields.
5. Golf courses.
6. Parking lots, driveways, roads.
7. Non-commercial sports and recreation uses, subject to obtaining Planning Board site approval, which shall provide at minimum for applicable:
  - i. Setbacks,
  - ii. Buffers,

## Town of Amherst Zoning Ordinance

- iii. Sanitary facilities,
  - iv. Parking,
  - v. Mitigation of traffic impact, and
  - vi. Adequate provision of emergency services, and subject to determination by the Planning Board of the following:
    - 1. Such use shall not be the primary use of the lot;
    - 2. Such use shall be non-commercial in nature;
    - 3. Deleted (3-6-04);
    - 4. Deleted (3-6-04);
    - 5. Such use shall be compatible with existing neighborhood uses;
    - 6. Such use complies with the spirit and letter of Section 3-1, Nuisance Provision.
    - 7. No permanent buildings shall be permitted as part of such use, except for sheds to the extent necessary for storage of equipment for such use; and
  - vii. noise and lighting. Uses involving motor-driven objects producing sixty (60) or more decibels of sound at a range of ten feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than five hundred (500) feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m.
  - viii. The Conservation Commission has determined, and the Planning Board agrees, that such use shall not:
    - 1. Contribute to pollution of surface or groundwater;
    - 2. Damage or destroy habitats or reproductive areas for plants, fish, and wildlife of importance;
    - 3. Eliminate, depreciate, or obstruct the commerce, recreation or aesthetic enjoyment of the public;
    - 4. Be detrimental to adequate ground water levels;
    - 5. Adversely affect stream channels and their ability to handle runoff of water; or
    - 6. Disturb or reduce the natural ability of wetlands to absorb floodwaters and salt.Uses involving motor-driven objects producing sixty (60) or more decibels of sound at a range of ten (10) feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than five hundred (500) feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m.
8. Recreational vehicles placed on sites within Zones A or AE shall be either;
- i. Be on-site for fewer than one hundred eighty (180) consecutive days;
  - ii. 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
  - iii. Meet all standards of this ordinance and the elevation and anchoring requirements for manufactured homes in this ordinance. (3-13-07, 3-12-24)

### F. BUILDING PERMIT.

The Office of Community Development shall review all building permit applications for new



## Town of Amherst Zoning Ordinance

structures or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. (3-8-22) If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall: (3-13-07)

1. Be designated (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;
  2. Be constructed with materials resistant to flood damage;
  3. Be constructed by methods and practices that minimize flood damages; and
  4. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- G. Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Office of Community Development with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding. (3-13-07, 3-8-22)
- H. For all new or substantially improved structures located in Zones A or AE, the applicant shall furnish the following information to the Office of Community Development (3-8-22):
1. The as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  2. If the structure has been flood proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood proofed.
  3. Any certification of flood proofing. (3-12-24)
- I. THE OFFICE OF COMMUNITY DEVELOPMENT shall maintain for public inspection, and shall furnish, such information upon request. (3-13-07, 3-8-22)
- J. THE OFFICE OF COMMUNITY DEVELOPMENT 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. (3-13-07, 3-8-22)

## Town of Amherst Zoning Ordinance

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Office of Community Development, 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 Office of Community Development, including notice of all scheduled hearings before the Wetlands Bureau. (3-13-07, 3-8-22)
  2. The applicant shall submit to the Office of Community Development, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained. (3-13-07, 3-8-22)
  3. Along water courses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. (3-13-07)
  4. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community. (3-13-07)
  5. The applicant shall submit to the Office of Community Development any floodway data available from Federal, State, or other sources as criteria to prove that all development located in Zone A meet the following floodway requirement: "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge." (3-13-07, 3-8-22)
- K. IN SPECIAL FLOOD HAZARD AREAS, the applicants shall determine the base flood elevation in the following order of precedence according to the data available. (3-8-22)
1. In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM or FHBM. (3-13-07)
  2. In A Zones the applicant shall submit to the Office of Community Development any base flood elevation data available from any federal, state, or other source including

## Town of Amherst Zoning Ordinance

data submitted for development proposals submitted to the community (i.e. subdivisions, 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. (3-13-07, 3-8-22, 3-12-24)

- L. The applicant's base flood elevation determination will be used as criteria for requiring in Zones A and AE that: (3-13-07, 3-8-22, 3-12-24)
1. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; (3-12-24)
  2. All new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation, or together with attendant utility and sanitary facilities, shall: (3-12-24)
    - a. Be flood-proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water; (3-13-07, 3-12-24)
    - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
    - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- M. 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 force.
- N. ALL RECREATIONAL VEHICLES placed on sites within Zones A and AE shall either: (3-13-07, 3-12-24)
1. Be on the site for fewer than one hundred eighty (180) consecutive days;
  2. 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 (3-12-24); or
  3. Meet all standards of this ordinance and the elevation and anchoring requirements for manufactured homes in this ordinance (3-12-24).
- O. FOR ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
1. The enclosed area is unfinished or flood resistant, usable solely for the parking of

## Town of Amherst Zoning Ordinance

vehicles, building access or storage;

2. The area is not a basement;
3. Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria;
  - a. A minimum of two (2) flood openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. (3-12-24)
  - b. The bottom of all openings shall be no higher than one (1) foot above grade.
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

### P. VARIANCES AND APPEALS.

1. Any order, requirement, decision or determination of the Building Inspector/Code Enforcement Official made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5. (3-8-22)
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 (3-12-24):
  - 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.
3. THE ZONING BOARD OF ADJUSTMENT shall notify the applicant in writing that:
  - a. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of Insurance coverage; and
  - b. Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
4. The community shall:
  - a. Maintain a record of all variance actions, including their justification for their issuance, and,
  - b. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator. (3-12-24)

**Section 4.11 Wetland and Watershed Conservation District.** (3-11-14)

- A. **TITLE.** The title of this District shall be the Wetland and Watershed Conservation District, and this section shall be identified as the Wetland and Watershed Conservation District Ordinance of the Town of Amherst, New Hampshire.
- B. **AUTHORITY.** This ordinance is adopted under authority granted pursuant to RSA 674:16 entitled Grant of Power and RSA 674:21 entitled Innovative Land Use Controls. In administering this Innovative Land Use Control Ordinance, the Planning Board shall enjoy the authority to grant Conditional Use Permits and Special Use Permits when an applicant is able to demonstrate to the satisfaction of the Planning Board that granting such permits will not compromise achievement of the stated purpose of this ordinance. Any appeal of a decision made by the Planning Board in administering this Innovative Land Use Control Ordinance must be made to Superior Court pursuant to the provisions of RSA 676:5, III and RSA 677:15.
- C. **PURPOSE.** The purpose of the Wetland and Watershed Conservation District is to protect the health, safety, and general welfare of the public by promoting both the most appropriate use of land and by protecting wetland and surface water ecosystems and water quality in accordance with the goals and objectives of Amherst's adopted Master Plan. Wetlands, surface waters, and associated buffers situated in the Town of Amherst are recognized as a valuable natural resource requiring careful management in order to preserve their benefits to public health, safety, and welfare. Correspondingly, the Town of Amherst hereby acknowledges wetlands, surface water, and associated buffers:
1. Prevent the destruction of or significant changes to wetland and surface waters and adjoining land which provides flood protection;
  2. Protect persons and property against the hazards of flood inundation by ensuring the continuation of the natural flow patterns of streams and other watercourses;
  3. Provide for nutrient attenuation and augmentation of stream flow during dry periods;
  4. Preserve and protect important wildlife habitat, flora, and fauna areas, including those critical to threatened and endangered species, and to maintain ecological balance;
  5. Prevent the expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of abuse or inharmonious use of land situated within the District;
  6. Protect wetlands, surface waters, and groundwater supply and recharge areas within the Town of Amherst from degradation;
  7. Mitigate the effects of structures and associated land uses which have the potential to compromise surface and groundwater supplies through the introduction of sewage, nutrients, hazardous substances, and siltation; and

## Town of Amherst Zoning Ordinance

8. Preserve and enhance those aesthetic values associated with the Wetland and Watershed Conservation District.

D. **APPLICABILITY.** Unless exempted by specific provision, all proposed development, removal of vegetation in excess of Comprehensive Shoreland Protection Act (as amended) limits, and alteration of terrain within the Wetland and Watershed Conservation District shall be subject to the provisions of this section.

E. **DEFINITIONS OF WORDS AND TERMS.** Reference shall be made to Article IX of this ordinance for the definition of words and terms used throughout this Wetland and Watershed Conservation District Ordinance.

F. **DISTRICT BOUNDARIES.**

The Wetland and Watershed Conservation District shall be comprised of all wetlands and surface waters, together with associated buffers (see definitions in Article IX), having the following dimensions (3-12-24):

1. Wetlands:

- |                               |   |
|-------------------------------|---|
| a. Water protection wetlands: | 100 feet                                |
| b. Significant wetlands:      | 50 feet                                 |
| c. Other wetlands:            | 25 feet                                 |
| d. Vernal pools (*):          | Tier One: 100 feet<br>Tier Two: 50 feet |

For the purposes of this ordinance wetlands shall be classified as follows:

- A. **Water Protection Wetlands.** Wetlands having an area greater than or equal to one (1) acre, which also have an Ecological Integrity Score greater than or equal to 6.0; a Wetland-Dependent Wildlife Habitat Score greater than or equal to 4.0; and a Groundwater Score greater than or equal to 5.0.
- B. **Significant Wetlands.** Wetlands having an area greater than or equal to one (1) acre, which also have an Ecological Integrity Score greater than or equal to 5.0; and a Wetland-Dependent Wildlife Habitat Score greater than or equal 3.0.
- C. **Other Wetlands.** All other wetlands.

When classifying wetlands for the purposes of this ordinance that extend over other properties, the size of the contiguous wetland must be determined either by physical location (with landowners' written permission) or approximated by observation as supported by topographic maps (LiDAR 2-ft contours or most precise available), remotely sensed images where appropriate (e.g. NH NAIP 2021 Color Infrared), site photographs, etc. The resulting wetland size shall be documented in a

## Town of Amherst Zoning Ordinance

written summary detailing the analysis and shall include an exhibit depicting the supporting data. (3-12-24)

\*For those lots created prior to March 11, 2014, the noted buffer widths for vernal pools shall not apply.

Vernal Pool Tiers. For the purposes of this ordinance, tier one vernal pools are those which are found to exhibit one (1) or more of the following: Fairy shrimp – presence in any life stage; or blue spotted salamanders – presence of ten (10) or more egg masses; spotted salamanders – presence of twenty (20) or more egg masses; wood frogs – presence of forty (40) or more egg masses. Tier two vernal pools are those which do not contain one (1) or more of the above species at sufficient abundance to warrant classification as a tier one vernal pool. (3- 11-14, 3-12-24)

### 2. Surface Waters:

- |                          |          |
|--------------------------|----------|
| a. Lakes and ponds:      | 100 feet |
| b. Ephemeral streams:    | 25 feet  |
| c. Intermittent streams: | 50 feet  |
| d. Perennial streams:    | 100 feet |

3. For the purposes of this ordinance, the reference line of all wetlands and surface waters shall be established by an on-ground delineation performed by a Certified Wetland Scientist (see buffer definition). All wetlands, surface waters, and vernal pools shall be field delineated and defined by a Certified Wetland Scientist.
4. The Wetland and Watershed Conservation District shall not include those wetlands which have developed as a result of the construction of storm water treatment and/or detention facilities, agricultural use, waste treatment, or other water dependent structures or uses, and manmade facilities. In the case of beaver activity, the reference line shall be determined by those areas that meet the jurisdiction of the NH Department of Environmental Services.
5. Wetlands located within New Hampshire Public Water Supply Wellhead Protection Areas, as delineated by the New Hampshire Department of Environmental Services, and wetlands within the Pennichuck Brook Watershed as shown on a plan entitled Watershed and Wetland Water Resource Map, 2013, shall be designated Public Water Protection Wetlands.
6. In order to permanently define boundaries of the Wetland and Watershed Conservation District, a durable disk or placard of a design acceptable to the Amherst Conservation Commission shall be installed and maintained along such boundaries at horizontal intervals of not more than fifty (50) feet.
7. Boundary Disputes. When any boundary of the Wetlands and Water Conservation District is disputed by either the Town of Amherst or by an applicant, the Planning Board, at the applicant's expense, may engage an independent Certified Wetland Scientist to determine the location of the Wetland and Watershed Conservation District. The independent Certified Wetland Scientist shall transmit his/her findings to the project engineer/surveyor who shall

## Town of Amherst Zoning Ordinance

add said findings to the project plan. This revised plan, showing both wetland delineation boundaries, shall be presented to the Planning Board who shall make the final determination regarding District boundaries. The Town's Certified Wetland Scientist Agent shall convey said findings to the land owner and applicant.

### G. PERMITTED USES. Each of the following uses shall be permitted by right in the Wetland and Watershed Conservation District:

1. Forestry Uses, subject to the provisions of RSA 227-J:6, as amended, and in accordance with applicable Best Management Practices.
2. Agricultural Uses, as defined by RSA 21:34-a, as amended, and in accordance with applicable Best Management Practices. The Planning Board reserves the right to reasonably regulate agricultural uses as provided for in RSA 674:32-b, as amended.
3. The installation and maintenance of water wells and surface water intake facilities and associated supply lines and appurtenances.
4. Public and private open space, conservation land, trails, wildlife refuges, parks, and passive recreational uses and other low impact uses of land consistent with the stated purpose of this ordinance.
5. Construction and maintenance of fences, footbridges, catwalks, wharves/docks, and other water dependent structures provided said structures are constructed on posts, pilings, or other means of support which do not substantially alter the existing ground surface. New construction activities may require a permit from the NHDES. For maintenance of a legally constructed structure(s) refer to RSA 482-A: 3 IV. (a), (b), (c), as amended. Maintenance of existing public and private roads, driveways, bridges, and culverts; utilities; fire protection and irrigation supply works; and stormwater management facilities.
6. Replacement or repair of any existing septic system confirmed to be in failure provided:
  - a. The system requiring replacement or repair was in place prior to the date of adoption of this ordinance;
  - b. Prior to commencement of such replacement or repair the property owner has obtained any and all required State and local construction approvals and permits; and
  - c. The planned replacement or repair will not expand the intensity of use of the structure(s) it is intended to serve.

### H. USES PERMITTED BY CONDITIONAL USE PERMIT.

Conditional Uses. Any use not identified as a permitted use under Paragraph G of this Section is recognized as having potential to adversely affect lands situated within the Wetland and Watershed Conservation District and, therefore, prove contrary to the stated purpose of this ordinance. However, the following uses of land in the Wetland and Watershed Conservation District may be permitted upon issuance of a Conditional Use Permit by the Planning Board,



## Town of Amherst Zoning Ordinance

provided the Board finds, based upon competent evidence, that such use or uses will not be expected to significantly impair the function and values of resources situated within the District and meets the other criteria set forth herein:

1. Accessory structures associated with a legally existing primary structure, provided the applicant demonstrates that no practicable alternative exists elsewhere on the lot and outside of the Wetland and Watershed Conservation District.
2. Construction of streets, roads, and other access ways, including driveways, footpaths, bridges, and utilities if essential to the productive use of land beyond the Wetland and Watershed Conservation District. These uses shall be located and constructed in such a way as to minimize the potential for detrimental impact to the District and be planned, designed, and constructed in a manner consistent with applicable State and local standards. Such construction may be permitted within the District only when no viable alternative is available.
3. Water impoundments for the purposes of creating a water body for wildlife, fire protection, stormwater management, or recreational use. Construction of impoundments for on-site detention and/or treatment of stormwater runoff in the Wetland and Watershed Conservation District, provided the Planning Board finds that it is not practical or possible to locate them outside of the District.
4. Non-conforming Uses and Structures: Expansion of a non-conforming use or structure situated within the Wetland and Watershed Conservation District may be permitted provided the Planning Board finds, in addition to the provisions outlined in Section I.2 a-g, that the proposed expansion conforms to the following additional standards:
  - a. The encroachment upon the surface water, wetland, or vernal pool is not increased;
  - b. The expansion is located as far from the surface water, wetland, or vernal pool as possible and located so as to minimize disturbance of existing vegetation within the District; and
  - c. The Planning Board finds that any potential decrease in wetland function and values resulting from the activity or use will be properly mitigated on the site. Mitigation strategies may include, but are not limited to, planting of indigenous vegetation in the District; improving existing or implementing new storm water management and treatment; removal and management on invasive species on the property; and the removal of excess impervious surfaces.
5. Other uses which the applicant is able to demonstrate to the satisfaction of the Planning Board that will not significantly interfere with wetland functions and values, water quality, or wildlife habitat pursuant to the statement of purpose of this ordinance; or in the alternative, uses that will impact wetlands functions and values; but, in the opinion of the Planning Board, are not contrary to the public interest and will result in significant public benefit provided:
  - a. Compensatory mitigation is provided such that those Wetland and Watershed Conservation District functions and values to be impacted will be off-set in whole. Such mitigation may be located on- or off-site. As a guide to the type and extent of compensatory mitigation considered, reference shall be made to the New England District Compensatory Mitigation

## Town of Amherst Zoning Ordinance

Guidance, US Army Corps of Engineers, New England District, Regulatory Division, 7-2-2010 as amended.

- b. The applicant has demonstrated avoidance and minimization to the fullest extent practical.

### I. CONDITIONAL USE PERMIT REVIEW CRITERIA.

1. The Planning Board shall, in addition to referencing the findings referenced in the preceding section, consider all relevant facts and information prior to making a decision on any application for a Conditional Use Permit; find that the proposed project is consistent with the stated Purpose of this ordinance; and find, that to the extent possible, the project avoids and minimizes impacts to land situated within the District, including but not limited to the following:
  - a. The proposed activity minimizes degradation of land situated within the District and offsets potential adverse impacts to functions and values of wetlands, surface waters, and vernal pools including but not limited to their capacity to:
    - i. Support fish and wildlife;
    - ii. Attenuate flooding;
    - iii. Supply and protect surface and ground water resources;
    - iv. Remove sediments;
    - v. Remove pollutants;
    - vi. Support wetland vegetation;
    - vii. Promote public health and safety; and
    - viii. Moderate fluctuations in surface water levels.
  - b. The proposed activity will have no significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water and/or wetland resources, including:
    - i. Increased potential for erosion, siltation, and turbidity of surface waters;
    - ii. Loss of fish and wildlife habitat;
    - iii. Loss of unique habitat having demonstrable natural, scientific, or educational value;
    - iv. Loss or decrease of beneficial aquatic organisms and wetland plants and their habitat;
    - v. Increased danger of flooding and/or transport of pollutants; and
    - vi. Destruction of the economic, aesthetic, recreational, and other public and private uses and values of the wetland to the community.
  - c. The proposed activity or use cannot practicably be located otherwise on the site to eliminate or reduce impact to the Wetland and Watershed Conservation District.
  - d. The proposed activity incorporates the use of those Best Management Practices recommended by the New Hampshire Department of Environmental Services and/or other State agencies having jurisdiction.
  - e. All applicable Federal and/or State permit(s) have been received for the proposed activity

## Town of Amherst Zoning Ordinance

in accordance with New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act, as amended.

- f. Where applicable, proof of application to all required State and/or Federal permits.
- g. Prior to making a decision in regard to the possible approval of any Conditional Use Permit application, the Planning Board shall afford the Conservation Commission an opportunity to provide written comment. In the case of applications involving land situated within the watershed of the Pennichuck Brook, the Planning Board shall also afford Pennichuck Water Works (PWW) an opportunity to review and comment on the application. Both the Conservation Commission and PWW, after consideration and review of an application for a Conditional Use Permit, may recommend the Planning Board impose conditions of approval, if deemed necessary, to mitigate the potential for adverse effects caused by the proposed activity or use.

### J. CONDITIONAL USE APPLICATION REQUIREMENTS.

Application for a Conditional Use Permit shall be made on forms supplied by the Planning Board and shall include a narrative and/or site plan containing the following information on one or more pages at a scale suitable to illustrate relevant details of the project, as well as a report demonstrating compliance with the requirements of Section I. At a minimum, each application shall depict or identify:

- 1. North arrow and date of site plan preparation;
- 2. Property lines;
- 3. The location of Wetlands and other significant hydrological features, including provisions for the protection of ecologically sensitive areas and features of the site;
- 4. Names and addresses of owners and holders of conservation restrictions and easements on abutting properties;
- 5. Limits of surface waters, wetlands, vernal pools, and Wetland and Watershed Conservation District boundaries;
- 6. Soil types;
- 7. Vegetation types;
- 8. A report detailing how the function and values of the mapped on-site wetlands were determined and evaluated;
- 9. Topographic contours at no greater than two (2) foot intervals;
- 10. Surface drainage patterns;
- 11. Existing and proposed development, removal of vegetation, and alteration of the land surface conditions;

## Town of Amherst Zoning Ordinance

12. Computation of the extent of proposed impact to land situated within the Wetland and Watershed Conservation District. The extent of aerial impacts to the District shall be measured in square feet. The extent of volumetric impacts to the District shall be measured in cubic yards;
13. Stormwater management accommodations, both existing and proposed. The applicant shall demonstrate the manner in which compliance with applicable stormwater regulations is achieved (3-8-22);
14. Erosion and sedimentation control measures proposed during construction;
15. Identification of potential risks to the District anticipated as a result of proposed site development together with proposals for mitigation;
16. A letter report issued by the New Hampshire Natural Heritage Inventory identifying any rare or endangered species known to exist within the project vicinity. In the event it is confirmed that rare or endangered species in fact exist on or immediately adjacent to the subject parcel, the applicant shall submit a proposal for mitigation of risk;
17. Identification of hazardous materials to be stored or used on-site together with a plan for proper management of same;
18. A statement acknowledging the applicant's intent to prohibit the use of lawn chemicals and deicing compounds, unless otherwise approved by the Planning Board; and
19. If required by the Planning Board, provisions for monitoring ground and surface water quality;
20. Provisions for future maintenance of the engineering design, operating, and monitoring controls to be implemented;
21. A plan showing the estimated edge of wetlands within five hundred feet (500) of the nearest impact area; these wetland areas may be mapped based upon field observations, USGS maps, or other related map information that may be available.

### **Section 4.12 Watershed Protection District - Deleted.** (3-11-14)

### **Section 4.13 Aquifer Conservation and Wellhead Protection District. (3-11-14)**

- A. **AUTHORITY.** The Town of Amherst hereby adopts this Aquifer Conservation and Wellhead Protection District Ordinance pursuant to the authority granted under RSA 674:16 and RSA 674:21.
- B. **PURPOSE.** The Aquifer Conservation and Wellhead Protection District Ordinance (ACWPD) is established for the purpose of protecting quality and quantity of groundwater resources available to be used as current and/or future drinking water supplies. This ordinance is intended to:

## Town of Amherst Zoning Ordinance

1. Maintain public health and welfare by protecting existing and potential sources of groundwater and associated recharge areas.
  2. Prevent land use practices and development that could reduce the volume of recharge available to aquifers identified as current or potential sources of drinking water.
  3. Prevent land use practices and development that could contaminate or adversely impair the quality of groundwater within aquifers identified as current or potential sources of drinking water.
  4. Provide for future growth, in accordance with the Town's Master Plan, by protecting the long-term availability of clean, safe, potable water.
  5. Identify land uses that can safely be sited in aquifer recharge areas and in the proximity of water supply wells.
- C. **APPLICABILITY.** This ordinance shall apply to all uses of land situated within the Aquifer Conservation and Wellhead Protection District, with the exception of those uses which enjoy an exemption under Section G of this ordinance.
- D. **DISTRICT BOUNDARIES.**
1. Aquifer Conservation and Wellhead Protection District boundaries are as identified on a map on file with the Office of Community Development entitled "Environmental Features" produced by the Nashua Regional Planning Commission. (3-8-22) The ACWPD is an overlay district which is superimposed over all underlying districts. Data resources used to produce the map include:
    - a. Aquifer areas that have been delineated on mapping prepared by the U.S. Geological Survey entitled, *Hydrogeology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South-Central New Hampshire*, prepared Toppin, K.W., 1987: *U.S. Geological Survey Water-Resources Investigations Report 86-4358*, and as may be amended or superseded by the U.S.G.S.
    - b. Wellhead Protection Areas associated with public water supply wells shown on the ACWPD map and as inventoried by the New Hampshire Department of Environmental Services.
  2. **Incorrectly Designated Zones.** In instances where the actual boundary of the Aquifer Conservation and Wellhead Protection District are disputed, the Planning Board, at the applicant's expense and authorization, may engage a qualified professional geologist or hydrogeologist to determine the precise location of the ACWPD boundaries. A report of the professional's findings shall be submitted to the Planning Board, which shall include but not be limited to the following:
    - a. A revised soils map of the area in question along with a written report of on-site field

## Town of Amherst Zoning Ordinance

inspection and test boring data.

- b. If the information provided to the Planning Board is accepted by the Board, the boundary of the district shall be adjusted based on the evidence provided. The Planning Board may reserve the right to withhold action on any application pending the results of an on-site inspection by the Board or its appointed agent.

E. **PERMITTED USES.** All uses permitted in the underlying district are permitted in the Aquifer Conservation and Wellhead Protection District unless identified as a prohibited use or a conditional use under this ordinance. All uses within the ACWPD shall comply with performance standards specified in Section 4.13.J unless specifically exempt under Section 4.13.G of this ordinance.

F. **PROHIBITED USES.**

1. The following uses are prohibited in the Aquifer Conservation and Wellhead Protection District:
  - a. Development or operation of a hazardous waste disposal facility, as defined under RSA 147-A, as amended;
  - b. Development or operation of a solid waste landfill, as defined under RSA 149-M, as amended;
  - c. Outdoor storage of road salt or other deicing compounds;
  - d. Development or operation of a junkyard;
  - e. Development or operation of a snow dump;
  - f. Development or operation of a wastewater or septage lagoon;
  - g. Storage of bulk petroleum products, including operation of gasoline stations;
  - h. Development or operation of a commercial animal feedlot; and
  - i. Development or operation of a dry cleaning facility, using or storing dry cleaning chemicals on-site.
2. **EXEMPTIONS.** The following uses shall be exempt from the provisions of this ordinance provided they remain in compliance with all applicable local, state, and federal requirements:
  - a. Any single or two family dwelling (3-10-15, 3-8-22);
  - b. Any business or facility where regulated substances are stored in containers having a capacity of not more than five (5) gallons;
  - c. Storage of heating fuels for on-site use or fuels for emergency electric power generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment accommodations;
  - d. Storage of motor fuel in tanks attached to vehicles fitted with permanent fuel lines to enable the fuel to be used by that vehicle;
  - e. Storage and use of office supplies;
  - f. Temporary storage of construction materials on a site where they are intended to be used;
  - g. The sale, transportation, and storage of pesticides, as defined in RSA 430:29 XXVI, as amended;
  - h. Household hazardous waste collection projects regulated under NH Code of

## Town of Amherst Zoning Ordinance

Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b);

- i. Agricultural uses as defined under RSA 21:34-a, as amended.

### G. CONDITIONAL USES.

1. Any use not prohibited under Section F, but which will require one (1) or more of the following conditions, shall only be permitted by a Conditional Use Permit issued by the Planning Board in accordance with the following sections. A Conditional Use Permit under this section shall be required for any of the following:
  - a. Storage, handling, and use of regulated substances in quantities exceeding one hundred (100) gallons or eight hundred (800) pounds dry weight at any one (1) time, provided an adequate Spill Prevention Control and Countermeasure (SPCC) Plan, is prepared in accordance with Section 4.13.J of this ordinance, and is approved by the Fire Department;
  - b. Any activities that involve blasting of bedrock;
  - c. Truck and automotive repair facilities; or
  - d. Expansion of existing non-conforming uses or structures shall be allowed when demonstrated that the expansion will result in a more conforming site or use with greater protection for groundwater resources.
2. In granting such approval the Planning Board shall find such use or uses will remain in compliance with the performance standards in Section 4.13.J of this ordinance as well as all applicable local, State, and Federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond in an amount and form acceptable to the Board, be posted to ensure compliance with terms and conditions of the Conditional Use Permit.

### H. CONDITIONAL USE PERMIT APPLICATION PROCEDURES.

1. Application for a Conditional Use Permit shall be made on forms supplied by the Planning Board and shall include a narrative and/or site plan containing the following information on one (1) or more pages at a scale suitable to illustrate relevant details of the project, as well as a report demonstrating compliance with applicable requirements of Section 4.13.I of this ordinance. As a minimum, each application shall depict or identify:
  - a. North arrow and date of site plan preparation;
  - b. Property boundaries and total parcel area;
  - c. Location of ACWPD boundaries;
  - d. Names and addresses of applicant, owners, abutters, and holders of conservation restrictions and easements on abutting properties;
  - e. Limits of wetlands, vernal pools and Wetland and Watershed Conservation District boundaries;
  - f. Soil mapping units;
  - g. Topographic contours at intervals not more than two (2) feet;
  - h. Existing and proposed development, including removal of vegetation and alteration of

## Town of Amherst Zoning Ordinance

- terrain;
- i. Stormwater management accommodations, both existing and proposed. The applicant shall demonstrate the manner in which compliance with applicable stormwater regulations is achieved (3-8-22);
  - j. Identification of potential risks to the district anticipated as a result of proposed site development together with proposals for mitigation;
  - k. Identification of hazardous materials to be stored or used on-site together with a plan for proper management of the same; and,
  - l. If required by the Planning Board, provisions for monitoring of groundwater and/or surface water quality.
2. Proposals for conditional uses, which involve regulated substances, shall also be required to submit a Spill Prevention Control and Countermeasure (SPCC) Plan to the Fire Department for review and approval. An SPCC Plan shall include:
- a. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas;
  - b. A contact list with telephone numbers (including cell phone) and email addresses of the facility response coordinator, cleanup contractors, and all appropriate Federal, State, and local agencies who must be contacted upon release to the environment;
  - c. A list of all regulated substances to be stored on the premise;
  - d. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.
3. The Planning Board shall consider all relevant facts and information prior to making a decision on any application for a Conditional Use Permit; find the proposal is consistent with the stated purpose of this ordinance; and find that to the extent possible, the project avoids and minimizes impacts to land situated within the district, including but not limited to the following:
- a. The proposed activity minimizes degradation of land situated within the district.
  - b. The proposed activity will have no significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water resources.
  - c. The proposed activity incorporates the use of those best management practices recommended by the New Hampshire Department of Environmental Services and/or other State agencies having jurisdiction.
  - d. All applicable Federal and/or State Permit(s) have been received for the proposed activity in accordance with New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act, as amended.
  - e. Prior to making a decision in regard to the possible approval of any Conditional Use Permit application, the Planning Board shall afford the Conservation Commission, as well as Pennichuck Water Works (PWW), an opportunity to review and comment on the application. Both the Conservation Commission and PWW, after consideration and review of an application for a Conditional Use Permit may recommend the Planning Board impose conditions of approval, if deemed necessary, to mitigate the potential for adverse effects caused by the proposed activity or use.



## Town of Amherst Zoning Ordinance

- I. **PERFORMANCE STANDARDS.** The following performance standards shall apply to all uses of land in the Aquifer Conservation and Wellhead Protection District unless such use or uses enjoy an exemption under Article 4.13.G of this ordinance. All uses shall comply with all applicable Town stormwater regulations. Stormwater plans shall: (3-8-22)
1. For any use that will render more than fifteen (15) percent of the total parcel area impervious, a stormwater management plan consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, as amended; published by NH Department of Environmental Services, shall be prepared and submitted to the Planning Board.
  2. Conditional uses, as defined under Article 4.13 H shall develop stormwater management and pollution prevention plans and include information consistent with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators* (US EPA, Feb 2009, as amended). The plan shall:
    - a. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development*, Section 2.1 Permanent (Post-Construction) Stormwater Management, (NHDES 2008, as amended);
    - b. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
    - c. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Environmental Site Assessment in conformance with ASTM E 1527-05; and,
    - d. Maintain a vertical separation between the bottom of a stormwater management facility which infiltrates or filters, of not less than the distance required by the applicable Best Management Practices for the stormwater facility above seasonal high water table elevation as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board. (3-8-22)
  3. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, July 2008, as amended;
  4. All regulated substances stored in containers with a capacity of more than five (5) gallons must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and the out-of-doors;
  5. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
  6. Outdoor storage areas for regulated substances, associated material, or waste must be protected from exposure to precipitation and must be located at least fifty (50) feet from surface water or

## Town of Amherst Zoning Ordinance

storm drains; and outside of protective radii of wells;

7. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
8. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one (1) container to another;
9. Prior to any land clearing or alteration of terrain, any inactive wells on the property shall be identified and must be decommissioned in accordance with Part We 604 Abandonment of Wells of the New Hampshire Water Well Board Rules, as amended. Proposed site activity shall not impact the integrity of any well located on the property.
10. Blasting activities shall be planned and conducted in a manner consistent with best management practices published by the NHDES to minimize groundwater contamination.
11. All transfers of petroleum products from delivery trucks and storage containers over five (5) gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.
12. At the option of the Planning Board, monitoring wells may be established for all industrial and commercial uses utilizing or storing hazardous or toxic materials. The number and location of monitoring wells shall be determined by the Planning Board. The required frequency and protocol for sampling and testing of groundwater shall be specified by the Planning Board.
13. Storage of pesticides, herbicides, fertilizers, manure, and other potentially dangerous leachables shall be set back from water supply wells in accordance with State regulations including Chapter PES 500, managed in accordance with NH Best Management Practices for Agriculture, and controlled in a manner determined by the Planning Board. Appropriate and applicable best management practices shall be implemented as recommended by the New Hampshire Department of Environmental Services.
14. When an industrial or commercial use within the ACWPD changes to one which involves the use, storage, or disposal of hazardous or toxic materials (regulated substances), Non-Residential Site Plan Review shall be required.
15. Not more than seventy percent (70%) of the total area of any lot or parcel shall be rendered impervious.
16. Sodium chloride salt stored and used for deicing activities shall be properly managed and applied in accordance with accepted best management practices as published by NHDES to minimize impacts to groundwater and reduce the amount necessary for public safety. Alternatives such as calcium magnesium acetate (CMA) and/or potassium acetate (KA) are

## Town of Amherst Zoning Ordinance

encouraged.

17. Floor drains are prohibited unless drain is directed to a dry well used to temporarily store fluids until such time they are legally removed.

18. An impermeable barrier membrane (minimum of 20 mil) shall be installed beneath slab floors to prevent the infiltration of any spilled liquids within the building from percolating into the ground. The Planning Board has the discretion to impose any other requirements as necessary to achieve the stated purpose.

J. EXISTING NON-CONFORMING USES. Existing non-conforming uses may continue to operate without complying with the terms of this ordinance provided that any expansion of said use shall require that a Conditional Use Permit be obtained as provided for herein. Existing non-conforming uses must be in compliance with all applicable State and Federal requirements, including Env-Wq 401, Best Management Practices Rules.

### K. ADMINISTRATION AND ENFORCEMENT

1. For uses requiring Planning Board approval under this ordinance, a narrative description of maintenance requirements for structures required to comply with performance standards shall be recorded at the Hillsborough County Registry of Deeds.
2. Periodic inspections by the Community Development Office may be required to verify compliance with performance standards. Inspections may be completed by the Community Development staff or their agents, at reasonable times with prior notice to the landowner.
3. All land in the ACWPD known to the Planning Board or designated agent as using or storing regulated substances in containers having a capacity of more than five (5) gallons shall be subject to inspections under this section unless such property enjoys an exemption pursuant to the provisions of Section 4.13.G of this ordinance.
4. The Planning Board may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Planning Board as provided for under RSA 41-9:a.
5. Any substance spills that require notification under NHDES rules and procedures shall be reported to the Fire Department and the Planning Board.

### **Section 4.14 Workforce Housing.** (3-10-15)

- A. WORKFORCE HOUSING DEVELOPMENTS are permissible upon demonstration of the conditions set forth below.
- B. PURPOSE. Provide suitable opportunities for housing that is affordable (as that term is defined in RSA 674:58) for households of limited means, without sacrificing public health, safety, and welfare.

## Town of Amherst Zoning Ordinance

Encourage creative approaches to providing affordable housing suitable for a variety of households, including (but not limited to) families, singles and seniors.

Comply with the provisions of RSA 674:58, et. seq.

- C. PRELIMINARY CONCEPTUAL CONSULTATION. The Applicant may make application for conceptual consultation to the Planning Board to construct Workforce Housing which shall include preliminary, conceptual plans, site drawings and building information sufficient for a non-binding discussion of the proposed project in accordance with RSA 676:4-II(a).
- D. DESIGN REVIEW. The Applicant may make application for design review to the Planning Board to construct Workforce Housing which shall include preliminary plans, site drawings and building information sufficient for review of the project in accordance with RSA 676:4-II(b).
- E. FINAL REVIEW. The applicant shall make application to the Planning Board to construct Workforce Housing, which shall include sufficient useful information for the Planning Board to review and determine the same as a suitable Workforce Housing application and project that meets the following criteria:
  - 1. General Criteria.
    - a. The complete Workforce Housing project shall be harmonious with its natural surroundings and compatible with neighboring developments and homes in terms of outside design, relative size, and finish.
    - b. The project shall not detract from either the ecological or the visual qualities of the environment.
    - c. The housing proposal shall be affordable in compliance with Section G.
    - d. The proposal meets the purposes of the ordinance under which the application is proposed.
    - e. There will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Amherst.
    - f. The proposed residential uses will not adversely affect nearby properties due to noise, fumes, vibration, or light. The project location shall not expose its residents to objectionable noise, fumes, vibration, or inappropriate light. (3-11-14)
    - g. The proposed use will not adversely affect the water resources of Amherst, as defined in the Aquifer Conservation and Wellhead Protection District as defined in Section 4.13 of the Amherst Zoning Ordinance.
    - h. The project shall comply with all applicable site plan and/or subdivision regulations, other than those waived hereunder.
    - i. An Applicant's request for a site density level that exceeds that provided for in the applicable district regulations is predicated on a showing that the same is required to achieve a reasonable expectation of Economic Viability (as defined herein). Accordingly, any project which is requesting such a density level shall, in addition to the demonstration of Economic Viability, also demonstrate to the satisfaction of the Planning Board the manner in which this project is promoting the purposes of this ordinance (as set forth above) and the spirit and intent of the Amherst Zoning

## Town of Amherst Zoning Ordinance

### Ordinance and the Amherst Master Plan.

#### 2. Specific Criteria

- a. Where there is an existing dwelling, the Net Tract Area shall be at least sufficient to provide a conforming conventional sized lot for the existing dwelling.
- b. The Planning Board may designate accessory dwelling units incorporated within an existing or proposed single-family home as Workforce Housing. Such designation will allow an accessory workforce dwelling unit within an existing freestanding structure if the structure can be legally adapted to such residential use and any such adaptation remains economically viable as defined herein. The total area of any workforce housing accessory dwelling unit shall not be less than six hundred (600) square feet or exceed forty five percent (45%) of the total heated living area contained within the existing residential structure. (3-12-24)
- c. The Planning Board reserves the right to modify density allowances if during its comprehensive site plan review it determines that physical land characteristics or other considerations do not support preliminary density allowances.

#### 3. Preliminary Density

Density allowances and/or total unit count that result from “Design Review” determinations are preliminary. The Planning Board may vary both density allowances and total unit count based upon Section G and Section H if the completed project analysis reveals calculations or conditions are other than those upon which the Planning Board made its determinations under Design Review (See below).

- F. ZONING DISTRICT. Once the Planning Board designates a proposed project as suitable for Workforce Housing and determines that the same is satisfactory and compliant with the above standards, that project may be located on any suitable property irrespective of the zoning district classification.
- G. MODIFIED LOT SIZE, DENSITY, SETBACKS, and OPEN SPACE: The Planning Board may modify minimum lot area, density, setbacks, and open space requirements for each project as the Planning Board determines to be necessary in the best interest of the Town. The Planning Board may grant departures from general and specific standards based on economic criteria presented by the applicant in evidence of need for such departures so as to make the construction of Workforce Housing Economically Viable as defined herein.

When deliberating modifications to zoning requirements for Workforce Housing applications, the Planning Board shall consider the following:

- a. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project. At least 25% of the total parcel area shall be open space.
- b. Setbacks shall be sufficient to buffer and protect adjacent properties. A perimeter setback of 50 feet of landscaped or natural vegetation shall provide a buffer to less dense neighborhood development.
- c. The Planning Board may waive dimensional standards of lot size, density, setbacks and open space, but only when it has been demonstrated that construction of a

## Town of Amherst Zoning Ordinance

"workforce housing project" (as that term is defined below), cannot for economic reasons be feasibly constructed because of those standards. In making such a determination, however, the Planning Board shall ensure that the project complies with the general criteria. Further, the Planning Board, in making such waiver, shall grant only the minimum waiver(s) demonstrated to be necessary to render the project economically feasible.

- i. An applicant seeking to request a waiver under this section shall apply for the same to the Planning Board according to the procedure set forth in the Subdivision/Site Plan Regulations. (3-8-22) When making that application, the applicant shall provide sufficient information to the Planning Board to demonstrate the following:
  - ii. The proposed project is incapable of being feasibly constructed within the existing area requirements specified for the applicable zoning district for economic reasons and that the limitations do not permit any other sufficient, realistic or reasonable opportunities to provide workforce housing (3-8-22); and,
  - iii. The granting of waivers will result in the project being Economically Viable and will allow for the construction of "workforce housing" units, which RSA 674:58, as amended defines as target income group(s) or lower income group(s) that the applicant defines; and,
  - iv. The applicant seeking a waiver will identify the general and specific standards for which a waiver is necessary and will provide appropriate documentation supporting the economic reasons by which the strict application of such general or specific standards causes the project to be economically infeasible to construct and,
  - v. The project design is such that it complies with all applicable standards related to environmental protection, water supply, sanitary disposal, traffic safety, and fire, and life safety protection; and,
  - vi. The applicant has provided a suitable mechanism to ensure that the proposed housing stock as constructed will be available to persons of the target income group for a period not less than twenty-five (25) years.
- d. The Planning Board may withdraw any regulatory allowances including lot size, density, setback, and other zoning or regulatory allowances for Workforce Housing before final Site Plan approval upon its determination that revocation of its voluntary measures is reasonable due to the following:
- i. A material reduction in project cost that renders unwarranted the basis for density or other allowances granted to promote Economic Viability;
  - ii. Fraud, misrepresentation of facts, or other deliberate actions that abuse or violate the intent of this ordinance;
- e. Projects that are to be constructed in a phased manner shall include construction of a proportional mix of units and amenities upon which allowances were based.
- f. Expiration of provision shall occur subject to the following:
- i. Any failure to implement development of a Workforce Housing project following site plan approval within a time frame set and approved by the Planning Board;
  - ii. Any failure to complete a Workforce Housing project within a timeframe set and approved by the Planning Board.

H. RULES AND REGULATIONS. The Planning Board may adopt appropriate rules and regulations to implement the review process contemplated hereunder. Such rules shall provide

## Town of Amherst Zoning Ordinance

for the developer and subsequent owners to restrict the sale or lease of the units through appropriate recorded covenants to those who qualify, pursuant to the definition of affordable housing contained in this Ordinance.

Existing housing units previously designated as “Affordable Housing” units that do not have appropriate recorded covenants may elect to present to the Planning Board appropriate covenants, to be approved by Planning Board, in exchange for a written waiver that allows such existing residential units to legally exceed the previously mandated 1,300 SF size limitation. (3-8-22)

I. DEFINITIONS. “Workforce Housing,” as used in this ordinance, shall constitute qualifying housing, which is for sale or lease, and is affordable.

1. “Affordable” in this context shall mean:

1. Housing intended for sale with combined mortgage loan debt service, property taxes, and required insurance that shall not exceed thirty percent (30%) of household gross annual income;
  - i. Such annual gross income for homebuyers shall be no more than one hundred percent (100%) of the median income for a four (4) person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development or as otherwise modified by state or federal law. (3-11-14).
2. Housing intended for lease with combined rental and utility costs that do not exceed thirty percent (30%) of household gross annual income;
  - i. Such annual gross income for rental housing shall be no more than sixty percent (60%) of the median income for a three (3) person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development or as otherwise modified by state or federal law. (3-11-14).

2. Except for elderly housing as defined in this ordinance, “Workforce Housing” may include “Affordable” housing as defined above, but shall not include housing developments that exclude minor children from more than twenty percent (20%) of the units, or in which more than fifty percent (50%) of the dwelling units have fewer than two (2) bedrooms. “Workforce Housing” may also include “multi-family housing,” as that term is defined in RSA 674:58, (II), (as amended) which means a building or structure containing five (5) or more dwelling units, each designed for occupancy by an individual household. (3-14-17)

“Economic Viability” is the cost-benefit relationship of an economic endeavor expressed as an Annualized Return on Investment (ROI). An Annualized ROI shall be the sole measure of Economic Viability.

1. Application approvals without “Phasing Term” shall employ the Simplified Annual ROI expressed formulaically as follows:

$$\text{Simple Annual ROI} = \left\{ \frac{\text{"Market Value" of "Completed Project"}}{\text{Total Cost of "Completed Project"}} \right\} - 1$$

2. Application approvals with a "Phasing Term" shall employ the Compound Annual ROI expressed formulaically as follows:

$$\text{Compounded Annual ROI} = \frac{\text{ROI}}{\text{Phasing Factor}}$$

Where:

$$\text{ROI} = \left\{ \frac{\text{"Market Value" of "Completed Project"}}{\text{Total Cost of "Completed Project"}} \right\}$$

$$\text{Phasing Factor} = \left\{ \left\{ \frac{\text{"Market Value" of "Completed Project"}}{\text{"Completed Project" Total Cost}} \right\}^{\left( \frac{1}{\text{Phasing Term}} \right)^*} \right\} - 1$$

\*  $\left( \frac{1}{\text{Phasing Term}} \right)$  is an exponent

The applicant shall validate to the Planning Board at the time of application that the project ROI is consistent with and proportional to the median Annualized ROI of competing and comparable properties regionally. Market analysis shall include appropriate economic adjustments for land characteristics, location, time, market conditions and other relevant project factors. The applicant shall document and present actual or projected cost of production to include, but not be limited to the true cost of land, labor, material, capital, coordination, entrepreneurial risk, and restrictiveness of covenants necessary under this ordinance.

Economic Viability shall be further subject to the following limitations by project type:

3. One-to-four family Workforce Housing units per structure, or multifamily Workforce Housing consisting of five (5) or more units per building within projects having 24 units or less that are available for rental or sale:
- The analysis shall use the formula in I.2.a, irrespective of the number of structures that are for sale and/or rental, and treat rental units as condominium units available for sale within one year of project completion.
  - The applicant shall derive and support the requisite Annualized ROI and may, as an alternative to a "real estate appraisal report", demonstrate and support an opinion of "Market Value" through "Market Analysis" together with a "Feasibility Analysis", "Cash Flow Analysis", and/or "Investment Analysis";
  - The applicant shall provide and present quality market-derived project information of sufficient quantity, which is relevant, reliable, timely, and verifiable, in a format that is suitable and useful for Planning Board determinations.



## Town of Amherst Zoning Ordinance

4. Multifamily Workforce Housing consisting of five (5) or more units per building within projects having 25 units or more, having both residential rental units or residential units for sale with or without commercial suites for rent or sale, shall support the requisite Annualized ROI with a “real estate appraisal report” as defined in RSA 310-B: 2, II, as amended.
    - i. The applicant shall derive and support the project’s requisite “Market Value” by at least one or by several of the following valuation models:
      1. Direct Sale Comparison method;
      2. Cost-of-Development method, or;
      3. Direct Capitalization of Net Operating Income method;
    - ii. The applicant may select at least one model based on the quality and quantity of market-derived information that is available, reliable, timely, and verifiable;
    - iii. The applicant shall support model conclusions with a Discounted Cash Flow (DCF) analysis, “Cash Flow Analysis”, or other such analysis determined by the Planning Board as acceptable evidence of model reliability;
    - iv. The applicant shall certify compliance with industry standard practices for the use of such models.
  5. The applicant shall provide a current land value appraisal, executed purchase contract, or purchase option contract to validate land valuation or cost, wherein appraisals shall measure current land value as though vacant and available for its highest and best use, which is economically feasible, socially acceptable, legally permissible, and physically possible at the time of application.
  3. “Cash Flow Analysis” means a study of the anticipated movement of funds into or out of an investment. (NH CHAPTER Rab 100.01: (i); as amended)
  4. “Commercial” means a type of real property which is used or intended to be used for any purpose other than one to four family residential use. (NH CHAPTER Rab 100.01: (m) as amended)
  5. “Completed Project” means the project development is sufficiently complete to have all occupancy permits.
  6. “Feasibility Analysis” means a study of the cost-benefit relationship of an endeavor. (NH CHAPTER Rab 100.01: (r); as amended)
  7. “Investment Analysis” means a study that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment. (NH CHAPTER Rab 100.01: (t); as amended)
  8. “Market Analysis” means a study of real estate market conditions for a specific type of property. (NH CHAPTER Rab 100.01: (w); as amended)
  9. “Market Value” as defined by “The Appraisal of Real Estate, 13th Ed.”, The Appraisal Institute; as amended: “The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self- interest, and assuming that neither is under undue duress.”
- J. FINAL DETERMINATION. The Planning Board may determine after testimony, examination, independent review, and deliberation of market evidence and/or independent

## Town of Amherst Zoning Ordinance

findings that the Planning Board deems useful and reliable may make one of the following findings:

1. Allow the unit density proposed by the applicant;
2. Determine that increasing the unit density is necessary to accommodate a successful implementation of Workforce Housing, or;
3. Determine that a lower unit density will not diminish the economic viability of the Workforce Housing application.

### **Section 4.15 Historic District (HD). (3-11-86, 3-13-01)**

A. HISTORIC PRESERVATION PURPOSE. The purpose of this ordinance is to promote the educational, cultural, economic, and general welfare of the public for the protection, enhancement, perpetuation, and preservation of the Historic District. It is hereby declared that it is a public purpose that the heritage of Amherst will be safeguarded by:

1. Preserving districts in Amherst which reflect elements of the cultural, social, economic, political, and architectural history;
2. Conserving property values in such districts;
3. Fostering civic beauty;
4. Strengthening the local economy;
5. Promoting the use of an historic district for the education, pleasure, and welfare of the citizens of Amherst.

B. DEFINITIONS. (3-13-01) Unless specifically defined below, words or phrases in this ordinance shall be interpreted to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

Abutter. Any person whose property is located in the Amherst Village Historic District and adjoins or is directly across the street or stream from the land under consideration by the Commission. For purposes of receiving testimony only and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his property will be directly affected by the proposal under consideration.

Alteration. Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.

Alternate Member. A member of the Commission who, at the direction of the chairperson, serves in the absence or disqualification of a regular member of the Commission.

Appearance. The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color, and texture of the building materials and the type,

## Town of Amherst Zoning Ordinance

design, and character of all windows, doors, light fixtures, signs, and appurtenant elements.

Appurtenance. Property that is situated on, but subordinate to, the structure or place, such as a hot tub, swimming pool, antennae, satellite dish, etc.

Building. Any structure that has a roof and is intended to shelter people, animals or chattel.

Building Permit (or Permit). A certificate issued by the Building Inspector/Code Enforcement Officer permitting the building, alteration, installation, repair, or change of buildings, fences (within the Historic District), land, or uses as regulated by the Zoning Ordinance. (3-11-03, 3-8-22)

Certificate of Approval (or Certificate). A certificate issued by the Historic District Commission indicating its approval of an application to alter, repair, construct, add onto, move, demolish, or change the use of a structure or a site within an Historic District.

Change of Use. A change in how a structure or place is utilized or developed, whether for industrial, commercial, residential or agricultural purposes.

Character. The aggregate of visible historic and architectural features and traits that together form the individual nature of an historic district.

Commission. Commission shall mean the Historic District Commission of the Town of Amherst, New Hampshire.

Construction. The act of adding an addition to an existing structure or the erection of a new principal accessory or structure on a lot or property.

Demolition. Any act or process that destroys in part or in whole a landmark or structure.

Designation. Act of identifying historic structures and districts subject to regulation in historic preservation ordinances or other preservation laws.

Design Guidelines (or Guidelines). Standards of appropriate design and activity developed by the Commission which offer property owners guidance in preserving the historic and architectural character of a structure, setting, or place, and which standards shall include the *Secretary of the Interior's Standards for Rehabilitation*. (See *Regulations*.)

Ex Officio Member. Any member of the Commission who holds office by virtue of an official position and who shall exercise all the powers of a regular member of the Commission.

Elevation. The orthographic projection of an object or structure on a vertical picture plane parallel to one of its sides, and usually drawn to scale.

Historic District. An area designated by ordinance of the Town of Amherst and which contains

## Town of Amherst Zoning Ordinance

within definable geographic boundaries a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.

Historic Property (or Historic Resource). Any prehistoric or historic site, place, building, structure, or object that is deemed by the Commission to have historic, cultural, social, economic, political, or architectural significance.

Maintenance. Ordinary maintenance and repair of any architectural feature that does not involve removal or a change in design, dimensions, materials or outer appearance of such feature.

Moving. Any relocation or removal of a structure on its site or to another site.

National Register of Historic Places (or National Register). Official inventory of "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture."

Orthographic Projection. A method of projection in which a three-dimensional object is represented by projecting lines perpendicular to a picture plane.

Place. An open space of land within the historic district.

Preservation. The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic structure, place, or feature.

Reconstruction. The act or process of reproducing by new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purposes of replicating its appearance at a specific period of time and in its historic location.

Regular Member. A member of the Commission who has full voting power.

Regulations. Local design guidelines and standards of review promulgated by the Commission that interpret and implement statutory requirements and are in conformance with the Historic District Zoning Overlay.

Rehabilitation. The process of returning property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Repair. Any change that is not construction, addition, demolition, moving, or alteration.

Restoration. The act or process of accurately recovering the form, features, and character of a property and its setting as it appeared at a particular period of time by means of removal of features from other periods in its history and reconstruction of missing features from the restoration period.

## Town of Amherst Zoning Ordinance

Rules of Procedure. A set of rules adopted by the Commission pursuant to RSA 676 concerning the method of conducting the Commission's business.

Scale. A certain proportionate size, extent, or degree, usually judged in relation to some standard or point of reference.

Street. Relates to and includes street, avenue, boulevard, road, lane, alley, viaduct, highway, freeway and other ways.

Structure-: Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to: buildings, fences, stone walls, gazebos, signs, backstops for tennis courts and ballparks, antennae, above ground pools and hot tubs, air conditioning units, propane tanks, playground equipment, etc.

Texture. The visual and tactile quality of a surface, apart from its color or form.

Zoning Ordinance. The laws of the Town of Amherst regulating the building, alteration, installation, repair, or change of buildings, land, or uses within the borders of the entire Town.

### C. AMHERST VILLAGE HISTORIC DISTRICT.

Pursuant to RSA Chapter 674:46, there is hereby established an historic district known as the Amherst Village Historic District, the boundaries of which are delineated on the Zoning Map on file with the Zoning Administrator.

1. Historic Significance. The Amherst Village Historic District is hereby recognized as an area of unique character, and architectural nature which can contribute significantly to the attractiveness and vitality of Amherst. It is further recognized that the character and nature of the area depends on the unity of design of the complex in which each building contributes creating a value greater than the sum of the individual contributions. The character and value of the area as the county seat and center of government of Hillsborough County from 1771 to 1879, the continuity of rich architectural expression, quality and integrity in closely related styles, materials, scale and detail in individual buildings and throughout the area and the opportunities that the area offers to maintain its historical heritage. The opportunities that the area offers are recognized as including retention of the architectural and historic values of the area. This ordinance is intended to provide for regulations of activities that would alter the exterior appearance of existing and proposed structures and for activities that would alter the use and appearance of the exterior spaces adjoining these buildings.
2. Criteria for designation of local historic districts. Criteria for the designation of local historic districts shall be the same as the National Register criteria as set forth in 36 CFR 60 ["Code of Federal Regulations," Chapter 36, Part 60 published in the *Federal Register*]. (3-13-01)
3. Procedures for designation of local historic districts. An historic district shall be considered to be superimposed over the existing zoning districts and the rules and regulations

## Town of Amherst Zoning Ordinance

applicable to an historic district shall be in addition to those applicable to the zoning districts which have been established for the area and as they may from time to time be amended. Procedures for the designation of local historic districts shall be in conformance with RSA 674:46 and other applicable statutory requirements.

### D. HISTORIC DISTRICT COMMISSION.

In order to carry out the purpose of this ordinance, a Historic District Commission known as the Amherst Historic District Commission is hereby established pursuant to RSA Chapter 673 which Historic District Commission is the successor to, and a continuation of the Historic District Commission established at the Annual Meeting in March 1970.

#### 1. Membership.

- a. The Commission shall consist of not fewer than five (5) nor more than seven (7) regular members, one (1) of whom shall be an *ex officio* member of the Board of Selectmen and one (1) of whom may be an *ex officio* member of the Planning Board. Not more than five (5) alternate members may be appointed. *Ex officio* members from the Planning Board and the Board of Selectmen shall be appointed by their respective boards. All other regular and alternate members shall be appointed by the Board of Selectmen. (3-13-01)
- b. The qualifications and terms of Commission members, the organization, election, and terms of its officers, and the scheduling of meetings shall be in accordance with the provisions of RSA Chapter 673 and any rules of procedure of the Commission not inconsistent with the State enabling statutes. At a minimum, in determining each member's qualifications, the Board of Selectmen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purposes of the Commission. (3-13-01)

#### 2. Powers and Duties.

- a. The Commission shall have all the powers and duties vested in the Historic District Commissions under RSA Chapter 674 and 675.
- b. The Commission shall adopt rules of procedure (to prescribe the method of conducting its business) and regulations (to provide design guidelines and standards of review) consistent with this ordinance and RSA Chapters 673, 674 and 676.
- c. The Commission shall seek advice from such professional, educational, cultural, and other groups of persons that may be deemed necessary in the determination of a reasonable decision. The Commission shall have the power to engage such technical assistance and consultants as may be deemed necessary to carry out the purposes of this ordinance.
- d. The Commission shall have the power to accept and use gifts, grants, and contributions in the exercise of its function.
- e. The Commission may conduct surveys of the buildings for the purposes of determining those of historic and/or architectural significance and pertinent facts about them, formulate recommendations concerning the preparation of maps, brochures and historic markers for selected historic and/or architectural sites and buildings, cooperate with and

## Town of Amherst Zoning Ordinance

advise the governing body, the Planning Board and other municipal agencies involving historic and/or architectural sites and buildings; advise owners of the buildings of the problems of preservation and restoration.

### E. CERTIFICATE OF APPROVAL REQUIRED.

1. Except as provided herein, it shall be unlawful for any owner or person (including without limitation any municipal or governmental entity) to alter, construct, repair, move, demolish, or change the use of any structure or place located within the Historic District without applying for and receiving from the Commission a Certificate of Approval for such activity. Activities which require Certificates of Approval are intended to include, but not limited to, such activities as changing the architectural detail of exterior walls, replacement or modification of windows, doors or siding, installation or removal of porches or fire escapes, roofing or chimney modification and installation of antennae or other appurtenances on or near the building exterior or similar activities for which a building permit is required. Activities which require Certificates of Approval are also intended to include, but not be limited to, such activities with regard to the balance of the site as re-grading, paving, repaving, removal of mature trees, installation or removal of fences, retaining walls, signage, on-site lighting, commercial style trash receptacles, telecommunication towers, and similar activities but are not intended to include or prevent ordinary maintenance, repair, or grounds-keeping activities. (3-8-22)

#### 2. Certificate of Approval Application Procedure.

For purposes of Administration, the Certificate of Approval application procedure involving a structure or place in an Historic District may be combined with building permits which may be required under the Zoning Ordinance and/or Building Code. Materials required as part of a Certificate of Approval application include materials necessary for such building permits as may be required under the Zoning Ordinance and/or Building Code, plus such renderings, elevations, photographs or other materials as the Historic District Commission may specify to the Building Inspector/Code Enforcement Officer as being necessary for their review and consideration. (3-8-22)

### F. REVIEW BY HISTORIC DISTRICT COMMISSION.

Prior to the issuance of a building permit for any exterior work or changes of use with respect to any property situated in an Historic District, the owner shall submit a Certificate of Approval application to the Historic District Commission for consideration. The Building Inspector/Code Enforcement Officer may issue the building permit only following approval of that application by the Historic District Commission or as provided in RSA Chapter 676:8 and 676:9. In any case in which the Building Inspector/Code Enforcement Officer is unclear as to the applicability of this ordinance to a particular case, he or she may consult with the Commission for an interpretation of the requirements of the Commission. (3-8-22)

Although the provisions of this section are not intended to impede the Building Inspector/Code Enforcement Officer in ordering the correction of unsafe conditions of an emergency

## Town of Amherst Zoning Ordinance

nature, he or she shall make every effort to coordinate his or her actions with the interests of the Commission by advising it of any such orders or actions and by involving the Commission in the review of building permits for corrective measures to the extent feasible and practical. (3-8-22)

### G. PERSONAL WIRELESS SERVICE FACILITIES.

Applications to erect personal wireless service facilities in an Historic District shall be reviewed by the Commission pursuant to its own design guidelines and standards of review as well as to Article III, Section 3-16, Paragraph G.8 of the Zoning Ordinance ("Personal Wireless Service Facilities: Historic Buildings and Districts"). (3-13-01)

### H. INTERPRETATION.

Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure or place within any Historic District nor to prevent the construction, alteration, repair, moving, or demolition of any structure under a building permit issued by the Building Inspector/Code Enforcement Officer, or any duly delegated authority, prior to the establishment of such district. (3-8-22)

### I. MATTERS TO BE CONSIDERED in passing upon appropriateness of erection, reconstruction, or restoration of structures.

1. The Historic District Commission or Board of Adjustment, on appeal, shall only consider exterior arrangement or features. The Historic District Commission or Board of Adjustment, on appeal, shall consider the following criteria in passing upon an application for a Certificate of Approval. For purposes of this section, *The Secretary of the Interior's Standards for Rehabilitation* are incorporated herein. (3-13-01)
  - a. The special character of the area.
  - b. The historical and/or architectural value of the building/s, structure/s, and its setting, and also as it relates to its setting and to the welfare of the community.
  - c. The compatibility of exterior design, arrangement, texture, and materials proposed to be used in relationship to the existing building or structure and its setting or, if new construction, to the surrounding area.
  - d. The general size and scale of new construction in relation to the existing surroundings including consideration of such factors as the building's overall height, width, street front, number of stories, type of roofs, facade, openings (windows and doors), and architectural details.
  - e. The economic activity of the building and the needs of that activity as it relates to the welfare of the community.
2. Exceptions. The Building Inspector/Code Enforcement Officer is not required to forward the following applications to the Historic District Commission for their review, provided the proposed project complies with the stipulations specified: (3-8-22)



## Town of Amherst Zoning Ordinance

- a. Ordinary maintenance and repair of any exterior architectural feature which does not involve a change in design, material, or outer appearance thereof; including but not limited to maintenance and repair of firewalls, roofs, chimneys, and temporary removal of shutters.
- b. Storm doors and storm windows providing that the original architectural features are not removed or destroyed.
- c. Painting or repainting of a building/s or structure/s in any color.

### J. ENFORCEMENT.

This ordinance shall be enforced in accordance with the provisions of Article VI of the Zoning Ordinance, and violators shall be subject to the penalty provisions contained therein.

### K. REMEDIES.

In the case of any violation of this ordinance or regulations adopted hereunder, the Commission, in addition to other remedies, may institute any appropriate action or proceedings to prevent, restrain, correct, or abate such violation.

### L. APPEAL.

Any person aggrieved by a decision of the Historic District Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment. Upon appeal, the Zoning Board of Adjustment shall review the decision of the Historic District Commission to determine whether the decision conforms to the provisions under this ordinance and the rules of procedure and regulations adopted hereunder. (3-13-01)

### M. VALIDITY.

If any section, subsection, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### N. EFFECTIVE DATE.

This ordinance shall take effect upon adoption. (3-11-86)

### **Section 4.16 Integrated Innovative Housing Ordinance (IIHO) Deleted (3-10-20)**

### **Section 4.17 Planned Residential Development (PRD).** (11-2-82, 3-8-22)

ALLOWED BY CONDITIONAL USE PERMIT. (3-6-04, 3-14-17)

- A. PURPOSE. Planned Residential Development allows an alternative to the land development pattern permitted in the Residential/Rural, Northern Rural, Northern Transitional, and

## Town of Amherst Zoning Ordinance

Commercial Zones. Consistent with the goals of the Town's Master Plan, it is intended to encourage the preservation of open space and the Town's rural aesthetic and, at the same time, provide for a greater variety of housing types and affordability in the Town of Amherst at somewhat greater densities than permitted elsewhere in the Zoning Ordinance, without causing a significant increase in the town-wide population density or strain on natural resources or public facilities and infrastructure. It is envisioned that in a PRD, dwelling units will be constructed in clusters which are harmonious with neighborhood developments and housing, and with natural surroundings. This section is adopted as an innovative land use control pursuant to RSA 674:21.

- B. REQUIREMENTS. An applicant for approval of a proposed PRD shall make application to the Planning Board as a Conditional Use Permit but otherwise in the same fashion and with the information specified in the Subdivision Regulations and as set forth below.
1. Solely as an aid to the Board, the applicant shall present a "proposed baseline density" plan demonstrating the dwelling unit development density supported by the subject property when statute, ordinance, and regulation requirements are observed without waiver, including, but not limited to, zoning lot size requirements, frontage requirements, wetland and wetland buffer restrictions, septic system reserved areas, wellhead exclusion areas, avoidance of building on steep slopes and in floodplains, and provisions for stormwater management features outside of wetland buffers. The applicant shall be prepared to demonstrate that the baseline density plan is economically feasible (e.g. does not require unreasonably expensive or elaborate infrastructure). The baseline density plan shall have sufficient detail to aid the Board in reaching its own determination of a reasonable and feasible baseline density but need not include all the detail required of a final plan. The Board may have such plans reviewed for compliance with statutes, ordinances, regulations, and for feasibility by a third party at the applicant's expense.
  2. The applicant shall submit plans and other documentation for its proposed PRD development in compliance with the following:
    - a. The plan shall maintain the rural aesthetic and character of the town as a whole as consistently valued by its residents, including in the Master Plan. The determination of whether rural aesthetic and character is maintained necessarily involves the exercise of discretion by the Board. Factors relevant to the determination will vary from application to application based on unique site characteristics and may include, but are not limited to, the following factors:
      1. the density and frontage requirements of the underlying zoning district;
      2. the density of the clustered units;
      3. retention of views of natural features such as brooks and hills both from existing roads and residences and from housing units proposed for the PRD;
      4. retention and integration of rural heritage features such as stone walls and open fields;
      5. retention of mature native trees between housing units and in the development in general;
      6. use of setbacks in excess of minimum requirements and use of varied setbacks;
      7. use of densities and layouts that provide for views of space between units from numerous locations and view angles along adjacent and approaching roads;
      8. maintenance of views of natural landscapes and of distant locations from existing roads and from proposed PRD units;

## Town of Amherst Zoning Ordinance

9. favoring of harmonious variation in layout and in architectural style rather than repetition;
  10. lot placement in clusters set back from public roads, rather than along frontage of such roads, so as to maintain the presence and views of natural landscapes; and,
  11. use of internal central areas such as greens, ponds, gardens, and park areas that permit the sense of a natural core within the cluster.
- b. The plan shall preserve open space as required herein and shall provide the documentation the applicant proposes to record to ensure the open space is permanently protected and, except as set forth below, accessible to the public.
  - c. The plan shall include a variety of housing types to accommodate the Master Plan purposes of encouraging a diversity of people, a variety of age groups of different interests, backgrounds, and economic levels. The application shall describe and provide satisfactory documentation demonstrating how any permissible and applicable restrictions on housing ownership will be administered and maintained. Any such restrictions shall comply with applicable federal and state laws to be approved.
  - d. The plan shall depict dwelling units constructed in clusters that are harmonious with natural surroundings. Clusters shall detract neither from the ecological and visual qualities of the environment, nor from the value of the neighborhood, environment or the Town. Clusters are intended to replace the use of traditional lots with full road frontage rather than be used in addition to such lots.
  - e. The plan shall describe how the overall site design and amenities enhance the quality of living for, and provide benefit to, the residents of the development and, in general, the neighborhood and the Town.
  - f. The plan shall meet the conditions for issuance of a Conditional Use Permit set forth in Section 3.18 of the Zoning Ordinance.

### C. BOARD DETERMINATION.

1. The Board shall determine the reasonable and feasible baseline density for the subject property, which shall not be more than the number of dwelling units that could be feasibly constructed on the subject property if applicable statute, ordinance, and regulation requirements are observed without waiver, and which may be different from applicant's proposed baseline density.
2. The Board shall determine whether the proposed PRD, namely the subdivision plan or layout, and number, type, and design of the proposed housing is suitable to the neighborhood within which it is to be located and is consistent with the Master Plan and its objectives. (3-14-89) The Board shall be guided by the objectives and standards set forth in the Purpose and Requirements sections above in making its determination.
3. In doing so, the Planning Board in its discretion may, but is not required to, allow a dwelling unit density greater than the reasonable and feasible baseline density for the subject property, to the degree the applicant's proposal provides benefits to the residents and the Town commensurate with any such increased density. For purposes of this density determination, the Board shall count each proposed Accessory Dwelling Unit as a separate dwelling unit. Whether to award such an increase in density, and, if so, the degree or amount of the increased density allowed (within the limitations established herein) are discretionary decisions of the Board and are not a right of the applicant.
4. In no case shall the Board permit a dwelling unit density increase of more than 25% above

## Town of Amherst Zoning Ordinance

the reasonable and feasible baseline density it has determined for the subject property. There shall be no presumption that 25% or any lesser density increase is required to be granted. The 25% maximum increase is an absolute cap that shall not be exceeded.

5. This limitation on dwelling unit density increase in a PRD is implemented for the following reasons:
  - a. To provide appropriate incentive levels to applicants to propose PRDs. A PRD may reduce an applicant's cost of development by reducing per lot infrastructure and site development costs, and thereby provide an incentive to propose a PRD in lieu of a traditional subdivision. This incentive may be present even in the absence of increased dwelling unit density. A limitation helps to ensure the Town is not providing unnecessary or excessive incentives.
  - b. To ensure the level of development allowed is at a level that is harmonious with the requirements of the underlying zoning district.
  - c. To guard against potential harm to natural resources (including to wildlife habitat and water resources) from excessive development density.
6. If the Board is satisfied that the application conforms to the requirements of this and other applicable sections of the ordinance and regulations, the Board may grant approval subject to such additional reasonable conditions and limitations as it shall deem appropriate. (3-14-17)

D. (Deleted 3-10-15)

E. (Deleted 3-10-15).

### D. PERMITTED USES.

1. There may be permitted in any PRD, single family detached and single family attached, and multi-unit structures of any type without regard to dwelling unit configuration or form of ownership. It is envisioned that the housing types may have different internal configurations, but will have an external appearance that complements and is in general harmony with the natural surroundings of the PRD. The maximum height of any dwelling structure shall be thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. For the purposes of this ordinance, the following definitions shall apply:
  - i. Single Family Detached Dwelling Unit - any dwelling designed for and occupied by not more than one (1) family and which is not attached to any other dwelling unit by any means.
  - ii. Single Family Attached Dwelling Unit - a single family dwelling attached to one other single family dwelling by a common vertical wall or shared ceiling/floor.
  - iii. Multi-unit Structure - a building which contains from three (3) to six (6) dwelling units, each occupied by a single family.
2. The Board shall approve the mix of housing types, number of dwelling units and structures, and the number of bedrooms for each dwelling unit. These shall be determined at the Final Review and be noted on the Final Plat.

E. OPEN SPACE.

Land in the PRD that is not covered by buildings, septic systems, wells, paved areas, service areas, signs, or other structures, and that is not set aside as private yards, patios, gardens, sidewalks, or other walkways for the residents may be designated as open space. The area of the open space shall be at least forty percent (40%) of the total area of the PRD tract. To be counted toward the 40% requirement, such land shall have a shape, dimension, character, and location suitable to assure its use for park, recreation, conservation, or agricultural purposes. In evaluating the adequacy of the open space proposed to be provided, including for purposes of determining whether to award and the amount of any density increase to be allowed in the PRD, the Board may consider the nature of the open space including, by way of example only, whether or not the proposed open space would have been accessible and developable if not set aside.

Open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Any such conservation or agricultural uses shall have such protections memorialized in an easement to the Town or a "qualified organization" as set forth in RSA 36-A:4-a. The applicant shall provide commensurate levels of protection for recreation or park uses.

Provisions shall be made for the open space to be held in common, equally, by all the owners of the PRD. The open space shall be readily accessible to the public except to the extent that (1) the liability protections provided by RSA 212:34 and RSA 508:14 would not apply; (2) the applicant chooses to restrict public access to designated trails and areas of the open space, provided the Board agrees such restrictions are reasonable; or (3) if necessary for proper conservation or agricultural purposes. Any such proposed restrictions shall be specified in the application.

No building or construction (including, but not limited to, structures, wells, septic systems, or stormwater management features) shall take place in the open space except as is (1) consistent with the permitted uses of conservation, agriculture, recreation or parks (including permitted public access); (2) in the best interest of the Town; and (3) with the permission of the Planning Board. Harvesting of trees in the open space is permitted if it is done according to a forestry plan incorporating Best Management Practices and with the expressed permission of the Planning Board. (3-13-84)

F. (Deleted 3-10-15)

F. ARCHITECTURAL DESIGN.

The applicant shall obtain the Board's approval of the external architectural design of the PRD to ensure that it complies with the goals of harmonious existence with the neighborhood and the environment as stated in the PURPOSE section and is otherwise consistent with the goals of the Master Plan. The approval of the architectural design shall be a part of the Final Review approval.

G. LIMITATION OF SUBDIVISION.

A subdivision approved under this ordinance shall not be further subdivided and a note to this

effect shall be placed on the Final Plan.

H. (Deleted 3-10-15)

#### **Section 4.18 Sexually Oriented Business.**

##### **A. PURPOSE AND INTENT.**

It is the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Amherst and, it is the intent to promote the health, safety, and general welfare of the Citizens of the Town of Amherst and, it is the intent of this article that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and, the provisions of this Article have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material. The nature of the proposed use shall not be sufficient grounds to support a finding that the use does not meet the criteria set forth in Section 5.2.

##### **B. DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES.**

A sexually oriented business is any place of business at which any of the following activities is conducted:

Adult Bookstore or Adult Video Store. A commercial establishment that devotes more than fifteen percent (15%) of the total display, shelf, rack, wall, table, stand, or floor area, utilized for the display and sale of the following; the establishment, as one of its principal business purposes, offers for sale or rental any form of consideration, any one or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which depict or describe "specified sexual activities" or "specified anatomical areas" or meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or, Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-6:1, other than birth control devices. A commercial establishment may have other principal business purposes that do not involve the offerings for sale or rental of material depicting or describing "specified sexual conduct or activities" and still be categorized as "Adult Video/Book Store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "Adult Video/Book Store" so long as one of its principal business purposes is offering for sale or rental for consideration to specified material which depict or describe "specified sexual conduct or activities" or "specified anatomical areas". An adult bookstore or adult video store is not an establishment that sells books or periodicals as an incidental (less than fifteen percent

## Town of Amherst Zoning Ordinance

[15%] of total display area) or accessory part of its principal stock and trade.

Specified sexual conduct or activities. Meaning the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

Specified anatomical areas. Meaning and including any of the following: The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, or sodomy; masturbation, actual or simulated; or excretory function as part of or in connection with any of the activities set forth herein.

Adult Motion Picture Theatre. An establishment with a capacity of five (5) or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1, for observation by patrons. For subsections C, D, E, and F a “substantial portion of the total presentation time” shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any fifty-six (56) consecutive day period.

Adult Motion Picture Arcade. Any place to which the Public is permitted or invited wherein coin or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct”, as set forth in RSA 571-6:1.

Adult Drive-In Theatre. An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

Adult Cabaret. A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1, and /or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or” sexual conduct” as set forth in RSA 571-B:1.

Adult Motel. A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of “harmful to minors” and/or

## Town of Amherst Zoning Ordinance

“sexual conduct” as set forth in RSA 571-B:1.

Adult Theatre. A theatre, concert hall, auditorium, or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

Nude Model Studio. A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct”, as set forth in RSA 571-B:1.

Sexual Encounter Center. A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or
3. Where the activities are characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct”, as set forth in RSA 571-B:1.

### C. ALLOWED LOCATIONS AND LOCATION RESTRICTIONS OF SEXUALLY ORIENTED BUSINESSES.

1. Sexually oriented businesses, as defined above, shall be permitted only in the Industrial Zone, by Special Exception, provided that all other regulations, requirements, and restrictions for the zone in which the sexually oriented business is to be located are met; and no sexually oriented business shall be permitted within one thousand (1,000) feet of another existing sexually oriented business or one which a building permit has been applied for; and,
2. No sexually oriented business shall be permitted within seven hundred fifty (750) feet of any other zoning boundary.
3. No sexually oriented business shall be permitted within seven hundred fifty (750) feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, State approved day care center, or public sports/recreation parks; and no sexually oriented business shall be permitted within seven hundred fifty (750) feet of the Town boundaries; and,
4. No sexually oriented business shall be permitted within one thousand (1,000) feet of another existing sexually oriented business on the date of the passage of this article and, no sexually oriented business shall be permitted within a building, premise, structure, or other facility that



## Town of Amherst Zoning Ordinance

contains a sexually oriented business as defined in Section 4.18.B above.

5. The Zoning Board of Adjustment shall grant the Special Exception provided the applicant demonstrates facts sufficient to support a finding that the conditions for the granting of a Special Exception within the underlying zoning district and Article 5 Special Exceptions have been met.

### D. MEASURE OF DISTANCE.

The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between each of the businesses.

### E. ADDITIONAL REASONABLE REGULATIONS.

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor parking lighting, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics in the “Non-Residential Site Plan Review Regulations of the Town of Amherst, New Hampshire”, and to avoid site development layout which may result in negative environmental impacts.

### F. SEVERABILITY.

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

## **Section 4.19 Impact Fee Ordinance.**

- A. PURPOSE. This ordinance is enacted pursuant to RSA 674:16, (II), 674:17, and 674:21, and in order to:
  1. Promote the public health, safety, and welfare, and prosperity (3-10-09);
  2. Provide for adequate and appropriate facilities are available to individuals who may come to be located in the Town of Amherst;
  3. Help meet the needs occasioned by development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage, and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space;

B. SCOPE.

The regulatory scope of this ordinance is intended to implement and be consistent with the Town of Amherst's Master Plan and Capital Improvements Program as well as to allocate a fair and equitable share of the cost of public capital facilities (including school construction) to new development, and require that new development contribute its proportionate share of funds necessary to accommodate its impact on those public facilities. It is intended to apply to all forms of development identified in RSA 674:21 (V).

C. DEFINITIONS.

New Development. Any activity that results in:

- a. The creation of a new dwelling unit or dwelling units;
- b. The conversion of a non-residential use to a dwelling unit or dwelling units;
- c. Construction of new non-residential facilities and/or accessory structures;
- d. The conversion of a residential use to non-residential use.
- e. New Development does not include:
  - i. The reconstruction of a residential or non-residential structure that has been destroyed by fire or natural disaster, provided there is no change in the number of dwelling units or size of the structure;
  - ii. The replacement of a manufactured home with another manufactured home provided there is no change in the number of dwelling units or size of the structure.

Public Capital Facilities. Facilities and equipment which are owned and operated by the Town of Amherst, the Amherst School System, or cooperatively with other municipalities and which have a useful life of no less than five (5) years. Public capital facilities do not include the costs associated with the operation, maintenance, or repair of such facilities, or with facility replacements that do not increase the capacity or level of service, but do include reasonable costs for planning, engineering, design, land acquisition, and other reasonable costs associated with such facilities.

Impact Fee. A fee or assessment imposed upon new development, including subdivision, building construction, or other land-use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to: water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including public open space. This definition is intended to be the same as that set forth in RSA 674:21, (V), and, in the event of an amendment of that section, such amendment shall be incorporated into the within definition so that the within definition and the statutory definition are identical. (3-8-22)

D. AUTHORITY TO ASSESS IMPACT FEES.

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. Except for regulations establishing Impact Fee Formulae, the Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance so long as the same are consistent with the regulations contained herein.

E. AUTHORITY TO ESTABLISH IMPACT FEE FORMULAE.

Impact fee formulas shall be adopted by the Board of Selectmen, in the manner and subject to the criteria set forth herein.

F. IMPACT FEE SCHEDULES.

1. Impact Fee Formula Methodology.

a. General Considerations.

- i. The amount of any impact fee formula shall be a proportional share of municipal capital improvement costs which are reasonably related to the capital needs created by new development, and to the benefits accruing to the new development from the capital improvements financed by the fee.
- ii. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.
- iii. In the case of development created by a change of use, redevelopment, expansion, or modification of an existing use, the capital facilities fee shall be based upon the net positive increase in the impact created by the new use as compared to that which was or would have been assessed for the previous use.

2. Computation of Impact Fees.

- a. Amount of impact fees and type of facilities: The amount of the impact fees shall be determined using the values contained in the Impact Fee Schedules for the following types of facilities:
  - i. Stormwater, drainage, and flood control facilities.
  - ii. Public road systems and rights-of-way.
  - iii. Municipal office facilities.
  - iv. Public school facilities.
  - v. The municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality may be a member or any other cooperative joint governmental venture.
  - vi. Public safety facilities.
  - vii. Solid waste collection, transfer, recycling, processing, and disposal facilities.
  - viii. Public library facilities.

## Town of Amherst Zoning Ordinance

- ix. Public recreational facilities not including public open space.
- x. Sewer and water facilities, if any.

- 3. Impact fee schedules shall be established and reviewed as set forth in this Section and Sections 4.19.G below. In the case of change of use, redevelopment, or expansion or modification of an existing use which constitutes new development, the impact fees shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. (3-10-09)

G. **IMPACT FEE ESTABLISHMENT PROCEDURE.** The Selectmen shall prepare a report describing a methodology or basis for calculating impact fee assessments and an Impact Fee Schedule, in accordance with RSA 674:21, and this ordinance. The Selectmen shall conduct a public hearing on the proposed schedule, and shall consider all comments received prior to finalizing the Schedule. The Selectmen, upon such finalization, shall then submit the schedule to the Planning Board for their review and recommendation. The Board of Selectmen at a regular meeting shall accept or modify the proposed schedule which may include modifications consistent with the recommendations of the Planning Board. The Impact Fee Schedule shall be in effect when a majority of the Board of Selectmen approves the schedule. (3-10-09, 3-10-20)

- 1. (Deleted 3-10-20)

H. **Review of Impact Fees.** The Selectmen may review and revise an Impact Fee Schedule whenever circumstances warrant and shall review an established Impact Fee Schedule, at a minimum, on an annual basis and shall modify the Impact Fee Schedule if it finds that new data is available that will refine the schedule. This may include the replacement of figures used in the Impact Fee Schedule with more accurate or recent projections, data and figures, as well as modifications in the Capital Improvements Program. The Selectmen shall submit the Impact Fee Schedule to the Planning Board for their review and recommendation before the adoption of any revised schedule.

I. **Termination of Impact Fees.**

- 1. Impact fees shall terminate when the Board finds that the appropriate conditions for assessment are no longer present. (3-10-09)
- 2. The Board of Selectmen may also by majority vote terminate an Impact Fee Schedule in effect, whenever there is occasion to do so. This may be done only after soliciting recommendations from the Planning Board, and after conducting a public hearing.

J. **Administration of Impact Fees.**

- 1. **Accounting for Impact Fees.** Each impact fee shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Selectmen and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected to meet. In the event that bonds or other debt instruments have been issued for public capital facilities which were constructed in anticipation of new development, or are issued for advanced provision of capital facilities identified in this ordinance, impact fees may be used to pay debt

## Town of Amherst Zoning Ordinance

service on such bonds or similar debt instruments. Each fee collected under a specific Impact Fee Schedule shall not be commingled with any other impact fee accounts or any other funds. (3-10-09)

2. **Assessment of Impact Fees.** All impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with new development. Impact fees shall be intended to reflect the effect of development upon municipal facilities at the time of the issuance of the building permit.
3. **Collection of Impact Fees.** Impact fees shall be collected at the time a Certificate of Occupancy is issued. If no Certificate of Occupancy is required, impact fees shall be collected when the development is ready for its intended use. The Selectmen and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees in effect at the time of subdivision plat or site plan approval by the planning board. If an alternate schedule of payment is established, the Selectmen may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of the assessed impact fees.
4. **Refund of Unused Impact Fees.** If, within six (6) years of the collection of an impact fee pursuant to this ordinance, any portion of such impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest, to the owner of record of the property. Whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within said six (6) year period. (3-10-09)
5. **Maintaining Records of Impact Fees and Related Projects -** The Town Treasurer shall have custody of all accounts and shall pay out the same only upon written orders of the Board of Selectmen. At the end of each fiscal year, the Town Treasurer shall prepare a report, showing a full account of all impact fee transactions during the year and deliver same to the Board of Selectmen, the Planning Board, and the same shall be available to the public. (3-10-09)

### K. Waiver and Appeal of Fees.

1. Any person may request from the Planning Board, a full or partial waiver of impact fee payments required by this ordinance where it can be shown that, due to unique and/or mitigating circumstances, the impact of the particular new development is demonstrated to be nonexistent or less than anticipated.
2. On-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, including but not limited to, extension of water and sewer mains or the construction of roads or other infrastructure, which would have to be completed

## Town of Amherst Zoning Ordinance

by the developer regardless of the capital facilities fee provisions, shall not be considered eligible for waiver under this ordinance.

### L. Credits.

1. Land or Improvement Construction in Kind in Lieu of Payment: Land for capital facilities and/or public capital facility improvements may be offered by the fee-payer as total or partial payment of the required fee. The offer must be determined to represent an identifiable dollar value computed in a manner acceptable to the Planning Board.

### M. Applicability.

1. This ordinance shall not be deemed to affect the existing authority of the Planning Board over subdivisions and site plans, including, but not limited to the authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a).

### N. Off-site Improvements.

1. Definition of Off-site Improvement. "Off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the Planning Board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. (3-14-23)
2. Imposition of Off-site Improvements Exaction. Off-site improvements for site specific applications shall be assessed on a case-by-case basis and shall be in addition to other impact fees imposed pursuant to this ordinance. Upon receipt of an application that may necessitate any off-site improvement, the Planning Board shall request the Department of Public Works to identify off-site highway, drainage, sewer and water upgrades necessitated by the development and an estimate of the costs of those upgrades. If the Department requires outside engineering support in identifying and estimating the cost of such upgrades, the applicant shall bear the reasonable expense of such support. In a case in which it is determined that such an improvement is necessary for the proper operation of the project, the Planning Board shall so notify the applicant. (3-14-23)
3. Determination of Proportionate Share of Off-Site Improvement Cost(s). The Planning Board shall determine the proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the improvements financed by the exaction. The Planning Board may, at the expense of the applicant, obtain a study by a consultant of its own choosing to advise on the proportionate share the Planning Board should have contributed by the applicant for the off-site improvements. The applicant shall provide its recommendations on and support for the proportionate share it believes is appropriate. The Planning Board shall determine the proportionate share and impose exactions it determines are necessary in conjunction with approval of the application.

## Town of Amherst Zoning Ordinance

Payment of the exaction shall be a condition precedent of the Planning Board's approval. (3-14-23)

4. Reimbursement for Contributions in Excess of Proportionate Share. The applicant shall be assessed his/her proportionate share of the cost of the project. In cases where it is determined that an improvement is necessary for the proper functioning of a new development but the applicant, for whatever reason, is determined to contribute more than his/her proportionate share to the improvement under this section, and, therefore, that the improvement will also accommodate other future development, the Selectmen, at the request and expense of the applicant, may establish a separate, project related impact fee that assesses other new development for their proportionate share of the improvement to reimburse the applicant for such disproportionate contribution. Such future impact fees shall provide for the payment to the original applicant, with any interest.

### O. Applicability of Impact Fees.

1. Any person or agent, who after the effective date of this ordinance, seeks to undertake new development within the Town of Amherst, New Hampshire, by applying for site plan approval, subdivision approval or a building permit and which is not covered under an exemption pursuant to RSA 674:39, is hereby required to pay the appropriate impact fees in the manner set forth in this ordinance, in accordance with any Impact Fee Schedule adopted by the Board of Selectmen. (3-10-20)
2. No new building permit for an activity requiring payment of one or more impact fee(s) pursuant to this ordinance shall be issued unless and until the impact fee(s) hereby required have been assessed and/or otherwise agreed upon, and no Certificate of Occupancy or other permission for the use of said new development project shall be issued until the same have been paid or otherwise discharged.

### P. Other Assessments Unaffected.

Payment of an impact fee does not restrict the Town or the Planning Board from requiring other payments from the applicant, including without limitation such payments relating to the cost of the extensions of water and sewer mains or the construction or improvement of roads or streets or other infrastructure and facilities specifically benefitting the development which are required by the subdivision or site plan review regulations or as otherwise permitted by law.

### Q. Premature and Scattered Development.

Nothing in this ordinance shall be construed so as to limit the existing authority of the Amherst Planning Board to provide against development which is scattered or premature, which requires an excessive expenditure of public funds, or otherwise violates the Town of Amherst's Site Plan Review Regulations, Subdivision Regulations, or Zoning Ordinance.

## Town of Amherst Zoning Ordinance

### R. Severability.

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### S. Effective Date.

This ordinance shall become effective on the date of its passage, subject to the limitations imposed by RSA 676:12.

### T. Any aggrieved party may appeal any decision under this ordinance in accordance with NH RSA 674:21, (V)(f).

## **Section 4.20 Elderly Housing**

- A. Single or multi- unit residential developments which comply with the Federal Definition of Elderly Housing are allowed by Conditional Use Permit (Section 3.18) and shall be required to meet any standards set forth in that section, subject to the following:
1. Each structure may be a single dwelling unit or a cluster of units containing from two (2) to twelve (12) dwelling units.
  2. (Deleted 3-8-16)
  3. (Deleted 3-8-22)
  4. Ancillary facilities such as community meeting rooms, site management offices, and rooms for limited healthcare services are allowed.
  5. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation.
  6. Setbacks shall comply with the underlying zoning district. (3-10-15)

## **ARTICLE V -- SPECIAL EXCEPTIONS**

### **Section 5.1 General.**

Special exceptions as herein provided for shall be deemed to be permitted uses in their respective zones, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements and standards of this ordinance. All such cases are hereby declared to possess characteristics of such unique and special form that each specific use shall be considered as an individual case. (3-12-63)

### **Section 5.2 Standards Applicable to All Special Exceptions.**

#### A. CONDITIONS FOR SPECIAL EXCEPTIONS.

1. Before the Board of Adjustment considers the approval of an application for a special exception, the applicant shall prove to the satisfaction of the Board of Adjustment that all the



## Town of Amherst Zoning Ordinance

following conditions have been met:

1. That the property in question is in conformance with the dimensional requirements of the zone; and that the minimum lot area shall contain no wetland as defined in Art. IV, Sec. 4.11; no flood plain as defined in Art. IV, Sec. 4.10; and no slopes greater than twenty percent (20%); and that the use is compatible with the Amherst Master Plan. (3-13-07)
  2. That there is safe vehicular and pedestrian access to and from the site.
  3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and of the Town of Amherst.
  4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than the existing use of the property.
  5. That the applicant describe in writing and on a scaled drawing, the location and size of the use, the nature and intensity of operations involved, the tract size, parking areas, and other physical land features of the site in question.
  6. That the proposed use will not adversely affect the ground water resources of Amherst, in particular the Aquifer Conservation and Wellhead Protection District as defined in Section 4-13 of the Amherst Zoning Ordinance. (3-8-22)
2. Response to each of the above conditions shall be provided in writing on forms available in the Office of Community Development. (3-8-22)
  3. The Board of Adjustment may seek additional recommendations of the Amherst Planning Board. The applicant shall file a Non-Residential Site Plan Review application in accordance with Section C of the Amherst Zoning Ordinance with the Amherst Planning Board. (3-10-92)

### B. CONDITIONS OF APPROVAL.

The Board of Adjustment may attach such conditions to its approval as are reasonable, necessary and appropriate. All special exceptions uses are hereby declared to have special characteristics that shall be considered on a case-by-case basis. To ensure compliance with the spirit of the Zoning Ordinance, such conditions shall not conflict with the review and approval of the Planning Board. (3-10-92)

### C. LIMITS ON A SPECIAL EXCEPTION.

Substantial construction, or occupancy if no construction is involved, must commence within one (1) year of the Board of Adjustment approval of the special exception. If construction or occupancy is not commenced within this period, the special exception approval is declared null and void. (3-10-92)

### D. PERMITS FOR SPECIAL EXCEPTIONS.

A permit for a special exception use shall not be issued by the Board of Selectmen or their duly appointed representative, the Building Inspector/Code Enforcement Officer, until so directed by the Board of Adjustment who shall first be satisfied that all of the standards and conditions of this

article and the ordinance have been met. (3-12-63, 3-8-22)

## **ARTICLE VI--ADMINISTRATION**

### **Section 6.1 Enforcement.**

This ordinance shall be enforced by the Board of Selectmen and the Board of Selectmen is hereby given power and authority to enforce the provisions of this ordinance. The Board of Selectmen is further empowered to confer upon an administrative official appointed by the Board of Selectmen, such official to also constitute Inspector of Buildings within the definition of 673:1, ii (as amended), the duty of administering the provisions of this ordinance in accordance with RSA 673:1, ii and 676:17, v (as amended) or as otherwise authorized by RSA. (3-12-63, 3-11-14)

### **Section 6.2 Building Permits, Certificates of Occupancy, Earth Removal Permits.**

#### **A. BUILDING PERMITS.**

1. No building or structure shall hereafter be erected or structurally altered, including the placement of a mobile home, until a building permit has been issued by the Selectmen or their authorized agents, the Building Inspector/Code Enforcement Officer stating that the building or structure, and use of land shall comply with the ordinances and regulations of the Town. (See the *Ordinances, Laws, and Regulations of the Town of Amherst*. Section H: Building Code for additional information.) (3-14-78, 3-9-10, 3-11-14, 3-8-22)
2. No permits shall be issued to any lot upon which there is outstanding a recorded violation of the rules, regulations or ordinances of the Town of Amherst, excepting any permit required to correct such violation.
3. Deleted. (3-9-99, 3-8-05, 3-11-14)

#### **B. CERTIFICATE OF OCCUPANCY.**

1. No building or structure hereafter erected or structurally altered shall be occupied or used until a Certificate of Occupancy has been issued by the Selectmen, or their authorized agents, the Building Inspector/Code Enforcement Officer. The certificate shall be issued only after the Building Inspector/Code Enforcement Officer makes a finding that the building or structure has been constructed, arranged, structurally altered, or is to be used in conformance with the provisions of this ordinance and all other health, safety and building laws, and that construction be in accordance with all representations made as part of the application for and granting of the building permit. (3-14-78, 3-11-14, 3-8-22)
2. As-Built plans shall be submitted prior to the issuance of a Certificate of Occupancy for all new commercial and industrial construction, and may be required for other types of construction, as determined by the Building Inspector/Code Enforcement Officer. (3-11-14, 3-8-22)

## Town of Amherst Zoning Ordinance

3. Uses and Certificate of Occupancy. No change shall be made in the use of a building or part thereof now or hereafter erected or structurally altered, or in the use of land now or hereafter occupied, nor shall any use of a building or land be undertaken, without a Certificate of Occupancy having first been issued by the Selectmen, or their authorized agents, the Building Inspector/Code Enforcement Officer. No such certificate shall be issued to make such change or undertake such use unless it is in conformity with the provisions of this ordinance or amendments thereto hereafter duly enacted. (3-14-78, 3-8-22)

### C. EARTH MATERIAL REMOVAL.

No earth material as defined in Section 3.8 hereof shall be removed unless a permit has been applied for and obtained in a fashion consistent with the provisions of Section 3.8 hereof. (3-14-78)

1. The Board of Selectmen, or the Building Inspector/Code Enforcement Officer, may require of any applicant for a permit such sketches, drawings, plot plans, or other materials as are deemed necessary to make a decision as to compliance with the provisions of this ordinance. They may require plans, details, specifications for new structures to have been prepared, or sealed, by a licensed architect or engineer. (3-12-63, 3-13-84, 3-8-22)
2. If an applicant requests a permit to undertake an activity on a lot non-conforming in size and frontage as otherwise required by this ordinance and is making application under Article IV, Section 4.2 of this ordinance, such applicant shall file as part of his application, the date of the recording and the Registry of Deeds reference number of the recording of the non-conforming lot. (3-12-63)
3. (Deleted 3-8-2016)
4. All permits issued under the provision of this ordinance shall expire and become invalid two years from the date of issuance of the permit. (3-14-78)

### D. ADMINISTRATION

1. The Building Inspector/Code Enforcement Officer shall be a salaried employee of the Town and shall be paid a salary as determined by the Selectmen and approved by the Town as part of the annual budget. (3-8-22)
2. Effective this date, all non-residential site plans approved by the Planning Board shall expire four (4) years from the date of Planning Board approval. This expiration date shall not apply to plats that are exempt or vested because of the operation of RSA 674:39. (3-14-89, 3-9-10)
3. Upon receipt of the application for a permit with sufficient information to clearly establish the nature and extent of the proposed activity, the Building Inspector/Code Enforcement Officer shall determine whether the proposed activity or use constitutes a permitted use within the provisions of this ordinance or whether a special exception or a variance is required. (3-14-78, 3-8-22)

## Town of Amherst Zoning Ordinance

- a. If the proposed use requires a special exception or a variance, the Building Inspector/Code Enforcement Officer shall refer the application for permit to the Board of Adjustment for action. (3-14-78, 3-8-22)
- b. Consistent with State Statues, public utility structures proposed for the Town of Amherst shall obtain building permits and meet zoning requirements. (3-13-84, 3-8-22)

### **Section 6.3 Board of Adjustment.**

- A. ESTABLISHMENT. In accordance with the provisions of the New Hampshire Revised Statutes Annotated 1955, Chapter 673 as amended and as hereinafter provided, a Board of Adjustment is established. (3-12-63)
- B. ORGANIZATION.
  1. The Board of Adjustment shall consist of five (5) members. (3-12-63, 3-8-16)
  2. The members of the Board of Adjustment shall be elected at the annual Town Meeting. (3-5-74, 3-12-96)
  3. Vacancies in the Board, occurring other than through the expiration of a term, shall be filled in accordance with RSA 673:12.
  4. Members of the Board of Adjustment shall serve without compensation. (3-12-63)
  5. The Board shall have five (5) alternate members to be appointed by the Board of Adjustment in accordance with RSA 673:6 II-a. (3-8-16)
- C. POWERS. The Board of Adjustment shall perform all the duties and have all the powers provided by the New Hampshire Revised Statutes Annotated 1955 as Amended and as hereinafter provided. (3-12-63)
- D. MEETINGS. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. All meetings shall be open to the public. (3-12-63) The Board shall keep a record of proceedings showing the vote upon every question. (3-12-63) Every rule or regulation, and every order, requirement, decision, or determination of the Board of Adjustment shall immediately be filed in the office of the Board of Adjustment and shall become a public record. (3-12-63)

The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the administrative office, or to decide in favor of the appellant, or to decide any matter upon which it is required to pass, or to effect any variance from the strict application of provisions of this ordinance. (3-12-63)

Upon receipt of an application, the Zoning Board of Adjustment shall begin formal consideration and shall approve or disapprove such applicant within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If the Zoning Board of Adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the Board may, in its discretion, deny that application without prejudice, in which case the applicant

## Town of Amherst Zoning Ordinance

may submit a new application for the same or substantially similar request for relief. When an application is denied on the merits, for any further application it must be found by the Board of Adjustment that a material change of circumstances affecting the merits of the application has occurred or the application is for a use that materially differs in nature and degree from its predecessor. If this is not determined, the Board of Adjustment may not lawfully reach the merits of the application. (3-6-73, 3-8-22, 3-14-23)

### E. PROCEDURE ON PERMITS for special exceptions, variances, equitable waivers of dimensional requirements and appeals of administrative decisions. (3-8-22)

1. The Board of Adjustment shall not authorize the issuance of a permit until after a hearing on the application is held.
2. Upon receipt from the Office of Community Development of an application for a special exception, variance, equitable waiver of dimensional requirements or appeal of an administrative decision, the Board of Adjustment shall hold a public hearing. (3-12-91, 3-8-22) Notice thereof shall be given as follows:
  - a. The applicant and all of the abutters shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be mailed not less than five (5) days before the date fixed for the hearing of the appeal.
  - b. A public notice of the hearing shall be published in a newspaper of the general circulation in the area, not less than five (5) days before the date fixed for the hearing of the appeal.
  - c. The public hearing shall be held within thirty (30) days of the receipt of the notice of the appeal.
  - d. Any party may appear in person or by his agent or attorney at the hearing of an appeal.
  - e. The cost of advertising and costs of mailing the notices of hearing shall be payable by the person making the appeal prior to the hearing. (3-9-82)

### F. Conditions for the Granting of a Variance. (3-10-64)

1. The Board of Adjustment may grant a variance from the terms of the Zoning Ordinance in accordance with RSA 674:33.

### G. Time Limits of Special Exceptions and Variances.

If, after a permit has been authorized by the Board of Adjustment as a result of a request for a special exception or variance, such permit has not been obtained within two (2) years from the date of such authorization, then such authorization shall become null and void; and no permit shall be issued thereunder. (3-4-75, 3-9-82, 3-10-15)

#### Scheduled Termination of Special Exceptions and Variances (3-10-20)

Pursuant to RSA 674:33 I-a. (b), and RSA 674:33 IV. (c), all variances and special exceptions that were authorized by the Amherst Zoning Board of Adjustment pursuant to the Amherst Zoning Ordinance and RSA 674:33 before August 19, 2013, and that have not been exercised, shall terminate according to the following procedure:

## Town of Amherst Zoning Ordinance

1. Upon adoption of this amendment, the Planning Board shall post notice of the termination in Town Hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice.
2. The notice shall state that special exceptions and variances authorized before August 19, 2013, are scheduled to terminate, but shall be valid if exercised within two years of the expiration date of the notice or as further extended by the Zoning Board of Adjustment for good cause.

### H. APPEAL FROM ORDER OF THE BOARD OF ADJUSTMENT.

Within thirty (30) days after any order or decision handed down by the Board of Adjustment, any party to the action or proceedings of the Board of Adjustment, or any person directly affected thereby, may move for a re-hearing and thereafter, if necessary, appeal by petition to the Superior Court in accordance with the provisions of the laws of the State of New Hampshire and may pursue such remedies as are therein provided for said party. (3-12-63, 3-8-05)

### I. RULES OF PROCEDURE.

The Board of Adjustment shall adopt and promulgate rules of procedure for the guidance of all persons having business before the Board of Adjustment. Said rules shall not be inconsistent with the provisions of the Statutes of the State of New Hampshire nor with the provisions of this ordinance. (3-12-63)

### J. COSTS.

Any person appearing before the Zoning Board of Adjustment may be represented by counsel, but the costs of retaining such counsel shall be borne by the party retaining them, and not by the Town of Amherst. (3-12-63)

### **Section 6.4 Existing Ordinances.**

All existing ordinances or parts thereof inconsistent with the provisions of this ordinance are repealed upon passage of this ordinance. (3-12-63)

### **Section 6.5 Severability Clause.**

If any section, subsection, sentence, clause, phrase, or other part of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. (3-12-63)

### **Section 6.6 Governmental Services.**

No provision of this ordinance shall be interpreted as to prevent the Town of Amherst from providing for or performing any existing or necessary governmental, education, or protective services. (3-12-63)

**Section 6.7 Penalty.**

In accordance with RSA 676:17, as amended, any person, firm, or corporation violating the provisions of this ordinance is punishable by a civil fine of up to two hundred seventy-five dollars (\$275) per day, for every day after the conviction date that the violation continues, or after the date on which the violator received written notice from the municipality that is in violation, whichever date is earlier. (3-11-86)

**ARTICLE VII -- AMENDMENTS TO THE ZONING ORDINANCE**

**Section 7.1 General.**

This ordinance may be amended in conformance with the New Hampshire State Statutes. (3-12-63) This ordinance is intended to be consistent with NHRSA enabling legislation and to the extent that any portion hereof is or shall become inconsistent with said enabling legislation this ordinance shall be invalid to that extent. (3-5-74)

**Section 7.2 Referral of Amendments to Planning Board.**

Upon the petition of twenty-five (25) voters for an amendment to the Zoning Ordinance, the Planning Board shall proceed and submit the amendment or amendments to the voters of the Town as prescribed in RSA 675:4. The Planning Board may not reject the amendment or amendments proposed by petition but shall submit the proposed amendment or amendments to the voters as offered by the petition. The petitioners shall submit the proposed amendment or amendments to the Zoning Ordinance in correct form as determined by the Selectmen. The following question shall be submitted to the voters: "Are you in favor of the adoption of the amendment to the Zoning Ordinance as proposed by petition of the voters of this Town?". The approval or disapproval of the Planning Board shall also be noted on the ballot immediately following the question. In the event that there shall be more than a single proposed amendment to be submitted to the voters at any given meeting, the issue as to the several amendments shall be put in the following manner: "Are you in favor of the adoption of Amendment No..... as proposed by petition of the voters for this Town?". (Here insert topical description of substance of amendment.) The approval or disapproval of the Planning Board shall also be noted on the ballot immediately following the question. An amendment proposed by petition shall be submitted to the voters at an annual Town or Village District meeting. (11-2-82)

**ARTICLE VIII -- MISCELLANEOUS PROVISIONS**

**Section 8.1 Interpretation.**

In their interpretation and application, the provisions of this ordinance shall be held as the minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern. (3-8-22)

**Section 8.2 Short Title.**

This ordinance shall be known and may be cited as "The Town of Amherst Zoning Ordinance." (3-8-22)

**Section 8.3 Effective Date.**

This ordinance shall take effect immediately upon adoption.

**ARTICLE IX -- DEFINITIONS**

**Section 9.1 Meaning of Certain Words.** (3-8-22)

The following terms, unless specifically indicated to the contrary in the ordinance, shall mean the following:

Abutter. Any person or persons holding legal title to land which adjoins or is directly across the street or stream from land under consideration. (3-12-63, 3-9-82)

Accessory Dwelling Unit. A second dwelling unit incorporated within an existing or proposed single family home which is structurally integrated with the existing principal dwelling. An accessory dwelling unit located in an accessory building, detached from the principal dwelling, may be permitted as a Conditional Use in accordance with the provisions of Section 3.18. (3-8-16, 3-14-17, 3-12-19, 3-8-22, 3-12-24)

Accessory Building. A detached building or structure on the same lot with the primary building, the use of which is clearly incidental to that of the primary building or use of the land. (3-12-63, 3-11-08)

Apartment. A room or set of rooms arranged for occupancy as a dwelling and containing a kitchen or cooking range. (3-14-89)

Aquifer. A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water. (3-13-84, 3-11-14)

Best Management Practices. A method or technique that has consistently shown results superior to those achieved with other means and that is used as a benchmark. In addition, a "best" practice can evolve to become better as improvements are discovered. BMP's derived from public agencies or other sources shall be utilized as guidelines, the Planning Board may approve an alternative method if it is found to achieve a similar result.

The most recent editions of the following publications are considered Best Management Practices:

- A. Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire prepared by the New Hampshire Department of Resources and Economic Development;
- B. Manual of Best Management Practices for Agriculture in New Hampshire as prepared by the Agricultural Best Management Practices Task Force and the USDA Natural Resources



## Town of Amherst Zoning Ordinance

- Conservation Service for the New Hampshire Department of Agriculture;
- C. New Hampshire Stormwater Manual, NH Department of Environmental Services, Volumes 1 - 3 (3-8-22);
  - D. Manual of Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials prepared by the New Hampshire Department of Environmental Services (3-11-14); and,
  - E. Best Management Wetlands Practices (BMWPs) for Agriculture prepared by the NH Department of Agriculture, Markets and Food. (3-8-22)

**Building.** Any structure or dwelling greater than 32 square feet that has a roof and is intended to shelter people, animals, equipment or other chattel. (3-12-63, 3-11-08, 3-10-15)

**Buffer.** An upland area adjacent to a wetland or surface water of a specific dimension measured outward on a horizontal plane from the reference line or the delineated edge of wetland as applicable. (3-11-14)

**Bulk Petroleum Plant or Terminal.** Means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container. (3-11-14)

**Cabin.** A building used or rented for the purpose of overnight sleeping accommodations, generally on a transient basis. (3-12-63)

**Certified Soil Scientist.** A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists pursuant to RSA 310-A:84, I & II. (3-11-14)

**Certified Wetland Scientist.** A person qualified to delineate wetland boundaries and prepare wetland maps who is certified by the State of New Hampshire Board of Natural Scientists pursuant to RSA 310-A:84, II-a & II-b. (3-11-14)

**Commercial Animal Feedlot.** Are agricultural operations where animals are kept and raised in confined situations; generally congregate animals, feed, manure, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures. This operation is a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- A. Animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period, and
- B. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (3-11-14)

**Community Water System.** A public water system having at least fifteen (15) service connections used by year-round residents or that regularly serves at least twenty-five (25) year-round residents. (3-11-14)

**Development.** Any man-made change to improved or unimproved land, including but not limited to

## Town of Amherst Zoning Ordinance

buildings, structures, utilities and similar improvements, or alteration of the land surface that results in the removal of vegetation in excess of what is permitted under the Comprehensive Shoreland Protection Act – RSA 483-B, as amended. (3-11-14)

Distribution Center. A facility, or part of a facility, where goods or products are stored on-site temporarily for the primary purpose of shipping and/or delivery to a consumer. Such facilities may include automated systems, office space, and a pick and pack area to be used by employees for sorting and packaging goods and products for shipping and/or delivery from available on-site inventory. Distribution Center includes fulfillment by third parties for the above stated purposes. Distribution Center excludes shipping and/or delivery to retailers and businesses (business to business and wholesalers). Distribution Center is not defined as Warehouse, as defined in Section 9.1. Distribution Center is not defined as a Retail use that may have an accessory Delivery component. (3-14-23)

Driveway. A private lane from the public road traversing private property, ordinarily leading to a single residence. (3-10-87)

Dwelling. A structure or building that is designed or used as a place of residence for one family. (3-12-63, 3-11-08)

Dwelling Unit. A structure or building or part of a structure or building used as a place of residence for one family. (3-12-63, 3-11-08)

Family. One (1) or more persons who live as a single housekeeping unit in a dwelling unit. (3-12-63)

Flashing Sign. Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color at all times when in use including any revolving illuminated sign. (3-6-73)

Floodway. 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 one foot. (9-22-79)

Floor Area Ratio. The ratio of gross floor area to the total lot area. (3-4-75)

Frontage. The continuous distance of any property line of a lot which abuts a legally accessible public street as classified by RSA 229:5, or a private road approved by the Planning Board. (3-6-04)

Garage Type Sales. Limited to a maximum of ten (10) days a year. The sum of the horizontal area of the several floors of a building and its accessory buildings on the same lot, measured from the exterior faces of the walls, and not including cellars, attics, porches, etc. not used as part of the principal use. (3-4-73)

Gasoline Station. Means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale. (3-11-14)

Groundwater. Subsurface water that occurs beneath the water table in soils and geologic formations. (3-11-14)

## Town of Amherst Zoning Ordinance

Hazardous or Toxic Material or Liquids. Materials or liquids that pose a threat, present or future, to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with section 3001 of the Resource Conservation and Recovery Act of 1976, and as may be amended from time-to-time. (3-13-84)

Home Occupation. An occupation or business activity which is conducted by a resident within his/her own dwelling or in a garage or barn-type outbuilding and which is clearly subordinate to the principal residential use. (3-2-80, 11-2-82, 3-10-92, 3-11-93, 3-8-94, 3-14-95, 3-8-22)

Hotel/Motel. Structure/s which provide transients with temporary sleeping accommodations and do not include individual units which provide housekeeping accommodations in more than ten percent (10%) of the units.

House Trailer. A unit similar to a mobile home which is equipped with some or all of the following: running water, sanitary facilities, bath facilities, and toilet. (3-12-68)

Impervious. Not readily permitting the infiltration of water, including packed gravel surfaces such as parking areas, driveways or traveled ways. (3-11-14)

Impervious Surface. A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present; earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with substances stored on them are not considered impervious surfaces. (3-11-14)

Inn. A structure intended or designed to be used or which is used for sleeping purposes or paying guests and where a general kitchen and/or dining room may or may not be provided. (3-12-63)

Junkyard. An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, as defined in RSA 236:112, as amended. The word does not include any motor vehicle dealers registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:126. (3-11-14)

Kennel. Any lot or premises on which four (4) or more dogs, other than personal pets, at least four (4) months of age, are kept, boarded, or trained whether in special structures or runways or not. The foregoing definition shall specifically exclude veterinary clinics. (11-2-82, 3-8-22)

Lot. A tract of land occupied or capable of being occupied by a building or use and by accessory uses, including the open space provided for in this ordinance. (3-12-63)

Lot of Record. A distinct tract of land recorded in a legal deed and plan filed in the records of Hillsborough County, New Hampshire. (3-12-63)

Minimal Impact Crossing. Minimal impact means the least environmentally damaging practicable alternative.

Mixed Use Development. Any proposed or existing commercial development may have incorporated, a

## Town of Amherst Zoning Ordinance

mixed use factor, consisting of residential units up to a maximum of twenty-five (25%) percent of the approved gross square footage of the commercial development. The residential units may be either attached or detached from the commercial structure/s and may have a maximum of one bedroom per five hundred (500) square feet of gross residential floor area. Such proposals are subject to Planning Board site review and all applicable health and safety requirements. (3-14-89)

Mobile Home. A dwelling accommodation designed to permit movement as a vehicle with or without wheels or skids in place and which is equipped with running water, sanitary facilities, bath facilities and toilet.

Multi-Family Housing. A structure containing more than two (2) dwelling units, whether or not such development includes a subdivision or resubdivision of the site. (3-13-90, 3-8-22)

Net Tract Area. The total area of a parcel of land less wetlands, floodplain and steep slopes over twenty (20) percent. (3-10-15)

Non-Conforming Use. A structure or land area that is lawfully occupied by a use that does not conform to the specifications of this ordinance. (3-12-63)

Open Space. As stated in Article IV, the Commercial, Limited Commercial and Industrial Zone shall not be utilized for construction, storage or parking/drives. (3-13-01)

Open Space Development. (Eliminated 11-2-82, 3-14-89)

Open Space Plan. Moved to Article IV, Section 4.16

Outdoor Storage. Storage of materials not protected from the elements by a roof, walls, and a floor with an Impervious Surface. (3-11-14)

Parking Space. An off-street space available for the parking of one motor vehicle and having an area of not less than 9' x 18' not including the driveways and passageways appurtenant thereto and giving access thereto and having direct access to a public way. (3-12-63, 3-12-85)

Planned Residential Development (PRD) (11-2-82) Moved to Art. IV, Sec. 4.17

Positive Limiting Barrier. A depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow of and contain spilled substances within the perimeter of the impervious area. These are typically constructed and maintained to contain small spills or releases (five [5] to fifteen [15] gallons). (3-11-14)

Primary Recharge Area. The area immediately overlying the stratified drift aquifer and adjacent areas of stratified drift which may not have sufficient thickness to be part of the Aquifer. The boundary of the primary recharge area is the contact between stratified drift and adjacent till or bedrock. (3-13-84)

Principal Route of Access. A principal route of access within the meaning of this ordinance shall be deemed to consist of any road, street, highway which is maintained. (3-3-75)

## Town of Amherst Zoning Ordinance

Private Road. A road constructed to the Town of Amherst Subdivision Standards but that may have a reduced width right-of-way and roadway surface. The Planning Board shall require adequate covenants, restrictions, and agreements including a Home Owners Association to ensure that the Town will have no liability or responsibility to maintain said road.

Private Road. A road or road system layout, on private property, from the public road to the development. Such private property and private road shall be permanently encumbered with deed restrictions, satisfactory to Town Counsel, which shall insure that the private road does not become a Town road. (3-10-87)

Professional Office. A professional office shall be one, or a combination of the following type: doctors, dentist, lawyers, engineers, surgeons, veterinary clinic, accountants, architects.

Public Water Protection Wetlands. Wetlands identified in Section 4.11 for their critical role in protecting water supplies.

Recreation. (3-11-14) All recreational uses other than passive.

Recreation, passive. (3-11-14) Those recreational pursuits which can be carried out with little alteration or disruption to the area in which they are performed. Such uses include but are not limited to hiking, picnicking, jogging, bicycling, and horseback riding. Motorized vehicles uses are not included.

Reduced Frontage Lot. A lot meeting the requirements of Section 3.9 of the Town of Amherst Zoning Ordinance. (3-14-23)

Reference Line (for ponds, lakes and streams). The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. The following physical characteristics should be considered when making an *ordinary high water mark* determination, to the extent that they can be identified and are deemed reasonably reliable: Natural line impressed on the back, sediment sorting, shelving, leaf litter disturbed or washed away, changes in the character of soil, scour, destruction of terrestrial vegetation, deposition, presence of litter and debris, multiple observed flow events, wracking, bed and banks, vegetation matted down-bent or absent, water staining, or change in plant community. (3-11-14)

Regulated Substance. Any of the following, with the exclusion of ammonia; sodium hypochlorite; sodium hydroxide; acetic acid; sulfuric acid; potassium hydroxide; potassium permanganate; propane or other liquefied fuels which exist as gases at normal atmospheric temperature and pressure; oil as defined in RSA 146-A:2, III; any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and any substance listed in 40 CFR 302, 7-1-05 edition, as amended. (3-11-14)

Sanitary Protective Radius. The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Dw 373.12 and Env-Dw 372.14 (for other Community Water Systems), as amended. (3-11-14)

## Town of Amherst Zoning Ordinance

Seasonal. Any non-residential use which is intended to operate only during specific periods of the year. Such use may include temporary structures. Seasonal uses shall be subject to site plan review. Planning Board may also require removal of any temporary buildings or other structures during the off-season. (3-11-93)

Seasonal High Water Table. The depth from the mineral soil surface to the upper-most soil horizon that contains two percent (2%) or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed hydrogeologist, soil scientist, wetlands scientist, engineer, or other qualified professional approved by the Planning Board. (3-11-14)

Secondary Containment. A structure such as a berm or dike with an impervious surface which is adequate to hold at least one hundred ten percent (110%) of the volume of the largest regulated substance container stored within. (3-11-14)

Secondary Recharge Area. The land adjacent to primary recharge area from which ground water moves down a gradient into the aquifer. (3-11-84)

Shopping Center. A group of businesses centrally arranged and identified by a common ground sign. (3-13-90)

Sign. (3-12-63) See Section 3-4 (3-12-91)

Sign Advertising. (3-12-63) See Section 3-4, Off premise Signs (3-12-91)

Snow Dump. For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas situated beyond the ACWPD, is placed for disposal. (3-11-14)

Special Exception Use. A use which because of its unique characteristics requires individual consideration in each case before it can become permitted in the Zone enumerated. (3-12-63)

Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. (Crawl spaces, unfinished and unoccupied attic spaces, cellars when not to be occupied shall not be considered a story.) (3-11-86)

Stratified-Drift Aquifer. A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay which contains sufficient saturated permeable material to yield significant quantities of water to wells. (3-11-14)

Stream Classification. For the purposes of this ordinance, streams shall be classified as follows:

- A. Ephemeral stream. A watercourse that is located above the water table year round and is not fed by groundwater with runoff from rainfall and snowmelt being the primary source of stream flow such that the stream has flowing water only during, and for a short duration after, precipitation or spring thaw events.
- B. Intermittent stream. A watercourse that is fed by groundwater for limited periods of the year, with

## Town of Amherst Zoning Ordinance

runoff from rainfall and snowmelt being supplemental sources of flow, such that it typically does not contain flowing water during drier portions of the year.

- C. Perennial stream. A watercourse that is in the groundwater table for the majority of the year such that groundwater is the primary source of flow with runoff from rainfall and snowmelt as supplemental sources of flow such that it contains flowing water throughout a typical year. (3-11-14)

Structure. Anything constructed, erected, or assembled for occupancy or use, such as, but not limited to, a building, dwelling, stadium, platform, shelter, swimming pools, sports courts, or the like. The term structure shall not include: a/ fences or retaining walls; b/ radio towers or antennae which are for the exclusive use of amateur radio service and they shall be limited to a total height of 150 feet; or c/ structures smaller than 32 square feet. (3-12-63, 3-9-82, 3-12-85, 3-11-08, 3-10-15)

Structure, Height of. The vertical distance from the average finished grade adjoining the walls of the structure to the peak of the roof, exclusive of chimneys or cupolas. Height shall be measured from the average finished grade within five (5) feet of the front of the building, to the peak of the roof, exclusive of chimneys or cupolas. (3-11-14)

Surface Waters. Those portions of waters of the state, as defined by RSA 482-A:4 and Part Env-Wt 101.97, as amended, of the New Hampshire Code of Administrative Rules which have standing or flowing water at or on the surface of the ground. This includes but is not limited to streams, lakes, ponds, and wetlands, including marshes, water-courses and other bodies of water, natural or artificial. (3-11-14)

Temporary Structure. Any structure greater than 32 square feet designed to be movable or disassembled, which does not permanently alter the land or buildings on the lot. Temporary structures shall not have utilities or plumbing. Such structures shall be subject to ordinary requirements of the zone (setbacks, floor area ratio, green space, height, etc.) and may require non-residential site review. (3-11-93, 3-10-15)

Turnaround. The end area of a cul-de-sac used to reverse direction. (3-14-89)

Utility. Any public service subscribed to by an owner and/or tenant of a site which does not require surface transportation. (11-2-85)

Vernal Pool. Defined under Part Env-Wt 104.44, as amended, of the New Hampshire Code of Administrative Rules as a surface water or wetland, including an area intentionally created for purposes of compensatory mitigation, which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which (3-12-24):

- A. Is not the result of on-going anthropogenic activities that are not intended to provide compensatory mitigation, including but not limited to:
  - 1. Gravel pit operations in a pit that has been mined at least every other year; and
  - 2. Logging and agricultural operations conducted in accordance with all applicable New Hampshire statutes and rules; and

## Town of Amherst Zoning Ordinance

### B. Typically exhibits the following characteristics:

1. Cycles annually from flooded to dry conditions although the hydro-period, area and shape of may vary from year to year;
2. Forms in a shallow depression or basin;
3. Has no permanently flowing outlet;
4. Holds water for at least 2 continuous months following spring ice-out;
5. Lacks a viable fish population; and
6. Supports one or more Primary Vernal Pool Indicators, or three or more Secondary Vernal Pool Indicators. (3-11-14)

Vernal Pool -- Primary Vernal Pool Indicators. Defined under Part Env-Wt 103.64, as amended, primary vernal pool indicators means the presence or physical evidence of breeding by marbled salamander, wood frog, spotted salamander, Jefferson-blue spotted salamander complex, or fairy shrimp. (3-11-14, 3-12-24)

Vernal Pool -- Secondary Vernal Pool Indicators. Defined under Part Env-Wt 104.15, as amended, secondary vernal pool indicators means physical evidence used by wildlife biologists or Certified Wetland Scientists who are familiar with vernal pool habitats as evidence of the presence of a Vernal Pool, if Primary Vernal Pool Indicators are absent and other Vernal Pool characteristics suggest Vernal Pool habitat. Secondary Vernal Pool Indicators include, but are not limited to, caddisfly larvae and cases (Limnephilidae, Phryganeidae, or Polycentropodidae), clam shrimp and their shells (Laevicaudata, Spinicaudata), fingernail clams and their shells (Sphaeriidae), aquatic beetle larvae (Dytiscidae, Gyrinidae, Haliplidae, and Hydrophilidae), dragonfly larvae and exuviae (Aeshnidae, Libellulidae), spire- shaped snails and their shells (Physidae, Lymnaeidae), flat-spire snails and their shells (Planorbidae), damselfly larvae and exuviae (Coenagrionidae, Lestidae), and true fly larvae and pupae (Culicidae, Chaoboridae, and Chironomidae) and those identified in the third edition of "Identifying and Documenting Vernal Pools in New Hampshire" published by NHF&G, as amended. (3-11-14, 3-12-24)

Veterinary Clinic. A structure in which small animals or pets are given medical or surgical treatment and are cared for during the time of such treatment only. (3-8-22)

Warehouse. A facility, or part of a facility, used primarily for storing goods, wares, commodities and merchandise, whether for the owner thereof or for others, and whether it is a public or private warehouse operation, or act in relation thereto. Warehouse shall include shipping and/or delivery to retailers and businesses (business to business and wholesalers). Warehouse shall exclude Distribution Center as defined in Section 9.1. (3-14-23)

Watercourse. Any Surface Water that, pursuant to Part Env-Wt 101.107, as amended, of the New Hampshire Code of Administrative Rules:



## Town of Amherst Zoning Ordinance

- A. Develops and maintains a defined scoured channel, with evidence of sediment transport, that:
1. Is greater than seventy-five (75) feet in length; or
  2. Is of any length and connected to another jurisdictional area at either end; and
- B. Is not a drainage swale. (3-11-14)

Water Dependent Structures. A structure such as a dock, wharf, pier, breakwater, manmade beach, boathouse, retaining wall, boat launch ramp, bridge, culvert, or other structure, or any part thereof, built, on, or in the surface waters of the State. (3-11-14)

Water Resource Management Plan. A written plan containing maps, base line data, and provisions for the protection of surface water, ground water and important wildlife resources associated with a development project.

Wellhead Protection Area. The surface and subsurface area surrounding a water well or wellfield supplying a community water system, through which contaminants are likely to move toward and reach such water well or wellfield. (3-11-14)

Wetland(s). Defined under RSA 482-A:2, X, as amended, as an area that is inundated or saturated by surface water or ground water 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. Wetlands include swamps, marshes, bogs, and similar areas. The reference line of all wetlands shall be delineated in accordance with the methodology prescribed in the following reference document: US Army Corps of Engineers, 2012, as amended. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0) (3-12-24)

Wetland scores for classifying water protection and significant wetlands shall be determined using Stone et al, 2015 (Updated with Mapping Tools, April 2023), as amended. Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire (NH Method). UNH Cooperative Extension. (3-12-24)