

SECTION B

Town of Amherst Development Regulations Land Development Control

Part 1 – LAND DEVELOPMENT CONTROL REGULATIONS

Article 1 – General Provisions

101 Interpretation, Conflict, and Severability

- 101.1** These Land Development Control Regulations shall be construed broadly to promote the purposes for which they are adopted.
- 101.2** Whenever these regulations differ from those prescribed by any statute, ordinance or other regulation, that provision which imposes the greater restriction or the higher standard shall prevail.
- 101.3** If any section, clause, provision, portion or phrase of these regulations shall, for any reason, be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of these regulations.

102 Word Usage and Definitions

- 102.1** “Person” means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.
- 102.2** The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- 102.3** The words “shall” and “will” are mandatory; the word “may” is permissive.
- 102.4** For any term not defined in these regulations, the definition, if any, given in the Town of Amherst Zoning Ordinance, or applicable State Statutes shall prevail. Terms and Words not so specifically defined shall have their common meaning. In the event a conflict is found to exist between the meaning or definition of any word or term defined in this document, and the meaning or definition of any word or term also defined in the Amherst Zoning Ordinance or applicable State Statutes, the most restrictive meaning or definition shall prevail.

102.5 Term Definitions

ABUTTER – any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Board. 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 land will be directly affected by the proposal under consideration. For the purposes of receipt of notification in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.

APPROVAL - Shall mean recognition by the Planning Board, certified by written

endorsement on the plat, that the final plat submission meets the requirements of these regulations and satisfied, in the judgment of the Planning Board, all criteria of good planning and design.

APPROVAL, CONDITIONAL - Shall mean an expression by the Planning Board that the plat is approved but requires additional information or must meet specific conditions for the approval to be valid. Conditional approval does not constitute, nor should it be construed as, approval, either implied or granted, of the final plat, nor does it bind the Planning Board to approval of the final plat.

APPLICANT – means the owner and the person or persons duly authorized in writing by the Owner(s) to act on behalf of the Owner(s) in all matters concerning these regulations.

BOARD – means the Planning Board of the Town of Amherst, established under the provisions of RSA 673.

BOND - A bond filed with the Board of Selectmen whose purpose is to ensure that work specified by the Planning Board is completed satisfactorily. The amount of the bond shall be determined by the Planning Board or Department of Public Works with such assistance as deemed necessary. This amount shall be sufficient to cover all costs for completion of the work by the Town in the event that the applicant defaults. In all other respects, the action of the Board shall be governed by NH-RSA 674:36.

CERTIFIED SOIL SCIENTIST – A person qualified in soil classification and mapping who is certified and licensed under applicable laws of the State of New Hampshire.

CERTIFIED WETLAND SCIENTIST – A person qualified to identify and delineate jurisdictional wetlands that is certified and licensed under applicable laws of the State of New Hampshire.

COMMUNITY WATER SYSTEM – means a public water system designed and constructed to serve a specific subdivision, where the water is supplied from a community well within the subdivision.

CUL-DE-SAC – a street with only one outlet and having an appropriate vehicular turnaround for the safe and convenient reversal of traffic movement.

DRIVE-THROUGH FACILITY - A building, attached structure or portion thereof that provides products or services directly to a customer in a motor vehicle by means of a window or mechanical device.

DRY CLEANERS – Dry cleaners are free-standing facilities that provide laundry and tailoring services for clothing and other items.

ENGINEER/SURVEYOR – means a Professional Engineer or Surveyor licensed to practice

in the State of New Hampshire.

FINAL PLAN - The final drawing or drawings on which the sub-divider's plan of subdivision is indicated, prepared as required under the provisions of Section 211 hereof.

FRONTAGE – The distance along the lot line dividing a lot from either: a public highway, excepting limited access highways as defined by RSA 230:44 and Class VI highways; or a road shown on an approved, recorded and bonded subdivision plat. "Frontage" on cul-de-sacs shall be measured along a line parallel to the front lot line, at the appropriate front yard building setback, between the points of intersection with the side lot lines.

GOVERNMENTAL LAND USES – means those uses of land prescribed under RSA 674:54.

INVASIVE SPECIES – Any prohibited species of aquatic or terrestrial plant materials on the list of invasive species as published by the New Hampshire Department of Agriculture, as amended from time to time.

LAND; REAL ESTATE – The words "land", "lands" or "real estate" shall include lands, tenements, and all rights thereto and interests therein.

LOT – A parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law.

MASTER PLAN - Shall mean the comprehensive plan for the community.

OFF-SITE IMPROVEMENTS – means all grading, paving, construction of utilities, streets, walkways, landscaping or other appurtenances within or without a subdivision, but not on the individual lots and usually within the public right-of-way either existing or proposed.

ON-SITE IMPROVEMENTS – means all grading, paving, landscaping, walkways, utilities, structures, driveways, and other appurtenances which are placed within the boundaries of and added to a lot.

OWNER – means the person or persons who hold title to the land being subdivided or upon which a site plan is being proposed. Such party(s) shall be as listed in the Hillsborough County Registry of Deeds. Where ownership is as tenants in common, all of the said tenants in common shall be required to sign any document required to be signed by the owner. Where property is owned by joint tenants with rights of survivorship, all of the joint tenants shall sign any such document.

PERFORMANCE GUARANTEE – is a security that may be accepted in lieu of a requirement that certain improvements be made before the Planning Board approves a final subdivision or site plan, or as a condition of such approval.

PLACE OF WORSHIP – A place of worship is a building, such as a church, synagogue, temple or mosque, where public worship services are held. A place of worship houses an assembly hall or sanctuary, it may also house meeting rooms, classrooms and,

occasionally, dining, catering or party facilities.

PLANNING DIRECTOR – means a duly designated planner of the Town of Amherst or, if there is none, the person designated by the Town Administrator.

PLAT – means the final plan, prepared by a Licensed Land Surveyor in accordance with RSA 674:37, on which the applicant’s plan of subdivision is presented to the Amherst Planning Board for approval and which, if approved, will be submitted in the form approved to the Registry of Deeds for recording.

PRELIMINARY PLAN - Shall mean a plan prepared as required in Section 211.0 and submitted to the Board prior to preparing the final plat

PUBLIC WATER SUPPLY – means a system for the provision to the general public of piped water for human consumption and street hydrant fire protection by a water utility licensed by the NH Public Utilities Commission.

RESTAURANT - An establishment in which food is prepared on the premises and sold to customers.

Fast food restaurant

A restaurant where food or beverage is sold for consumption on-site or off-premises within a short period of time, orders are made at a walk-up window, a drive through window or counter, payment is made prior to consumption, and packaging of food is done in disposable containers, or is otherwise not a “full service restaurant.” A fast food restaurant may provide, as secondary activities, delivery service or related retail sales items.

Full-service restaurant

A restaurant where prepared food is sold for consumption on the premises, customers are provided an individual menu, and a restaurant employee serves customers at the same table or counter where the items are consumed. A full-service restaurant may also provide, as secondary activities, delivery service, take out service (except drive-up customer service) or related retail sales items.

Take-out restaurant

A restaurant that sells prepared food for consumption entirely off the premises.

RETAIL USE - A building or part of a building where merchandise, food, articles, or things are offered or kept for sale directly to the public at retail. This also includes the following: bank, credit union, savings institution, or other finance and insurance services; real estate office.

RETAIL – SHOPPING CENTER – An integrated group of commercial establishments that is planned, developed, owned and managed as a unit. Uses in a shopping center may be in one or more buildings and on one or more lots, provided that all buildings and lots are developed with a unified approach to access and circulation, parking, truck loading, vehicular entrances and exits, drainage, utilities, and management of landscaped and buffer areas.

RIGHT-OF-WAY – A strip of land which is used for the purpose of access or egress, upon which may be located a street, sidewalk, trail or undeveloped area which is separate and distinct from the lots adjoining said right-of-way and not included within the dimensions or area of such lots.

SETBACK, MINIMUM STRUCTURE - A line parallel to the front, side, and/or rear lot line and set back from said lot line a sufficient distance as specified in the Amherst Zoning Ordinance. The yard setback measurements establish the area in which all structures must be erected or placed. No part of a building or structure shall extend across the minimum yards specified in the Amherst Zoning Ordinance.

SITE PLAN – means the drawing meeting the requirements of RSA 674:43 on which the applicant’s plan of development for nonresidential or multi-family development is presented to the Board for approval.

STREET - Listed below are the State definitions for the various types of roadways. These will be used by the Planning Board for their purposes.

Class I - Trunk Line Highways. These consist of all existing or proposed highways on the primary state highway system, excepting all portions of such highways within the compact sections of towns and cities of sixty-five hundred (6,500) inhabitants and over. The State assumes full control and pays cost of construction, reconstruction, and maintenance of its sections; the portions in compact areas are controlled by the towns and cities under Class IV highways.

Class II - State Line Highways. These consist of all existing or proposed highways on the secondary State highway system, excepting portions of such highways within the compact sections of towns and cities of sixty-five hundred (6,500) inhabitants and over, which are classified as Class IV highways. All sections improved to the satisfaction of the NHDOT Commissioner are maintained and reconstructed by the State. All unimproved sections, where no State and local funds have been expended, must be maintained by the town or city in which they are located until such are improved to the satisfaction of the NHDOT Commissioner.

Class III - Recreational Roads. These consist of all such roads leading to, and within, State reservations designated by Legislature. The State Highway Department assumes full control of reconstruction and maintenance of such roads during the recreational season.

Class IV & V - Town and City Streets. These consist of all highways within the compact sections of towns and cities of sixty-five hundred (6,500) inhabitants and over. Extensions of Class I and Class II highways through these areas are included in this classification.

Class VI - Rural Highways. These consist of all other existing public ways, including highways discontinued as open highways, highways closed subject to gates and bars, and

highways not maintained in suitable condition for travel for five (5) years or more.

Scenic Roads. These are special town designations of Class IV, V and VI highways which have been designated according to NH RSA 231:158 and to which special rules apply.

SUBDIVIDER - The owner of record of the land to be subdivided, including any subsequent owner of record making any subdivision of such land or any part thereof, or the agent of any such owner.

SUBDIVISION - Shall mean the division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this chapter.

SUBDIVISION, MAJOR – means a proposal for a parcel of land involving either greater than four (4) home sites or greater than ten (10) acres.

SUBDIVISION, MINOR - The subdivision of land into three (3) or fewer lots, with no potential for re-subdivision, and requiring no new roads, utilities, or other municipal improvements.

SURFACE WATER - means streams, lakes, ponds, marshes, watercourses and other bodies of water, natural or artificial, including all water remaining on the surface after rainfall or melting of snow.

TEMPORARY TURN-AROUND – That portion of a platted street intended for future extension, constructed in order to allow vehicles to reverse direction on a temporary basis.

WETLANDS – are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to: swamps, bogs, marshes, ponds, and lakes.

Methods for identifying and mapping wetlands shall utilize the publications Corps of Engineers Wetlands Delineation Manual, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, April 2004. A Certified Wetland Scientist shall perform wetland delineation.

103 Amendment

The Planning Board may amend these regulations from time to time in accordance with the provisions of RSA 675:6.

104 Effective Date

These regulations shall take effect upon their adoption by the Planning Board.

105 Review of Developments of Regional Impact

105.1 Purpose. The purpose of this section is to:

- A. Provide timely notice to potentially affected municipalities concerning proposed developments, which are likely to have impacts beyond the boundaries of the Town of Amherst.
- B. Provide opportunities for the regional planning commission and the potentially affected municipalities to furnish timely input to the Town of Amherst.
- C. Encourage the Town of Amherst to consider the interests of other potentially affected municipalities.
- D. Fulfill the statutory requirements of RSA 36:54 through 36:58.

105.2 Definition

For the purpose of this section, “development of regional impact” means any proposal before a local land use board which in the determination of such local board could reasonably be expected to impact on a neighboring municipality.

105.3 Review Required

The Amherst Planning Board, upon receipt of an application for development or a Comprehensive Planning Application, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact. Failure of the Planning Board to vote specifically on an application to determine if a project meets the criteria of Developments of Regional Impact shall result in a determination being made that the proposal is not a Development of Regional Impact.

105.4 Procedure

- a. Upon determination that a proposed development has a potential regional impact, the Amherst Planning Board shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony.
- b. Within 72 hours of reaching a decision regarding a development of regional impact, the Amherst Planning Board shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made.
- c. At least 14 days prior to public hearing, the Amherst Planning Board shall notify, by certified mail, all affected municipalities and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the development.

105.5 Applicability

The provisions of this section shall supersede any contrary or inconsistent provisions of local land use regulations enacted under RSA 155-E and RSA 674.

106 Other regulations, ordinances and statutes

106.1 In addition to complying with the regulations established herein, the applicant shall comply with all other applicable regulations, ordinances and statutes of the Town, the State of New Hampshire, and the United States Government.

106.2 As the result of any development within the Town of Amherst, any areas devoted for use as a “stump dump”, shall be duly noted and outlined on plans submitted to the Planning Board.

107.0 Scenic Roads

Where the Town or utility companies develop along or off of any Scenic Road, duly designated under RSA 231:157, the development shall be undertaken with the full compliance of the RSA. Required public hearings under this provision may take place simultaneously with the required public hearing for site plan or subdivision approval.

108.0 Access to Property

Upon submitting an application to the Planning Board, conceptual or otherwise, the applicant shall grant site access to the Board and/or designee, provided that written or oral notice is given indicating when such site visit will occur.

109.0 Review of Developments Affected by Municipal Boundaries

Any site plan or subdivision application submitted to the Amherst Planning Board for review and consideration which contains land(s) situated in more than one municipality shall be subject to the requirements and procedures contained in RSA 674:53 Land Affected by Municipal Boundaries.