

ZONING ORDINANCE

**ZONING ORDINANCE
TOWN OF ALBANY, NEW HAMPSHIRE**

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I. PREAMBLE

A. AUTHORITY and TITLE

Pursuant to the authority conferred by Chapters 672, 673, 674, 675, 676 and 677 of New Hampshire Revised Statutes Annotated, 1983 (formerly Chapter 31, section 60-89, and Chapter 36 of New Hampshire Revised Statutes Annotated, 1970), as amended, the following ordinance is hereby enacted by the voters of the Town of Albany, New Hampshire.

This ordinance shall be known as, and may be cited as, the Albany Zoning Ordinance, hereinafter referred to as "This Ordinance". (Amended 3/14/95)

B. PURPOSE

This Ordinance is designed to promote the health, safety and general welfare of the inhabitants of Albany, New Hampshire, to protect the value of property, to prevent the over-crowding of land and to avoid undue concentration of population.

A combination of all or a number of factors (topographical, climatological, geological, historical and geographical) creates an environment in the Town of Albany, which is and can be of specific appeal to residential, agricultural and conservation-based developments. This Ordinance, therefore, is particularly designed to protect, preserve and encourage such developments.

II. DEFINITIONS

Unless otherwise expressly stated words shall, for the purpose of This Ordinance, have the meaning as defined in this Section. Words used in the present tense shall include the future tense. The singular includes the plural, the plural includes the singular. The word "shall" is always mandatory, not discretionary.

1. **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 Albany Planning 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 directly be affected by the proposal under consideration. **RSA 672:3.** (Added 3/11/03)

2. **ACCESSORY USE:** A use subordinate to, and incidental to, the principal use of land and building.

3. **AGRICULTURE and FARMING:** The cultivation, conservation and tillage of soil, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, dairy farming, and the

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raising of livestock, bees, fur-bearing animals, fresh water fish or poultry. (Added 3/14/95)

4. **BUILDING:** Any structure enclosed and isolated by exterior walls constructed or used for a residence, business, industry, or accessory thereto, or for other public or private purposes.
5. **DWELLING:** A place to live in; a residence or house. (Added 3/14/95)
6. **RESIDENTIAL DWELLING UNIT:** A structure, or portion thereof, providing complete and independent living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons. (Amended: 3/8/83, 3/14/89, 3/14/95, 3/11/03)
 - a. **DUPLEX:** A building which houses two (2) separate dwelling units. (Added 3/14/95)
 - b. **MULTI-FAMILY DWELLING:** A building, which houses three (3) to six (6) separate dwelling units. (Added 3/14/95)
7. **EXCEPTION:** An exception is a use that would not be appropriate without any restrictions throughout a particular zone. (See Special Exception)
8. **FARM:** Any land, buildings or structures used for agriculture and farming operations. This shall include the residence or residences of the owners or occupants. (Added 3/14/95)
9. **FRONTAGE:** That portion of a lot bordering on a highway, street or right-of-way. **RSA 674:24,I.** (Added 3/14/95)
10. **LOCAL LAND USE BOARD:** A planning board, historic district commission, inspector of buildings, building code board of appeals, or zoning board of adjustment established by a local legislative body. **RSA 672:7** (Added 3/14/95)
11. **LOT:** An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the Carroll County Registry of Deeds. (Amended: 3/8/83, 3/14/95, 3/11/03)
 - a. **COMMERCIAL LOT:** Any use of a parcel of land, which involves, in whole or in part, the sale, processing or storing of merchandise or material, or, the sale of services, except as noted in This Ordinance.(Added 3/14/89; amended 3/14/95)
 - b. **LOT OF RECORD:** A distinct tract of land recorded in a legal deed, court decree, or subdivision plan filed in the Carroll County Registry of Deeds. (Added 3/14/95)

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- 12. MANUFACTURED HOUSING:** Any structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used as a single family dwelling unit with or without a permanent foundation. Manufactured housing, as defined, shall include mobile homes, but shall not include pre-site built housing. Exceptions: sectional, modular and prefabricated homes. **RSA 674:31** (Amended 3/14/95)
- 13. MASTER PLAN:** A guideline for the development of the Town that provides information and makes recommendations. It is not intended to be a rigid directive for future town planners. New Hampshire statutes instruct the Planning Board to review and modify the Master Plan periodically. **RSA 674:31** (Added 3/14/95)
- 14. NON-CONFORMING USE:** Use of land, building or premise, which is not permitted by the provisions of This Ordinance for the zone in which such land, building or premise is situated. **RSA 674:24,IV** (Added 3/14/95)
- 15. PLANNING BOARD:** The local land use board authorized by the voters of the Town of Albany on March 13, 1979 under the provisions of **RSA 673: 1, I** (formerly RSA 36:2). (Added 3/14/95)
- 16. REAR YARD:** The distance between the nearest portion of a building on a lot and the rear property line of the lot.
- 17. RIGHT-OF-WAY:** A route that is lawful to use; a strip of land over which a public road passes; a right-of-way passage, as over another's property. (Amended 3/14/95)
- 18. ROAD:** The entire width of the right-of-way, including the land on either side of the road as covered by **RSA 674:24, VII**. This includes any highway, road, street, avenue, boulevard, lane, alley, viaduct, freeway, or any other ways, that are lawfully existing and are maintained for vehicular travel. **RSA 672:13** (Amended 3/14/95)
- a. Road Line:** The line dividing the street and a lot. Where the width of a street is not established, or cannot be determined, the street line shall be considered to be twenty-five (25) feet from the center of the traveled way.
- 19. RSA:** New Hampshire Revised Statutes Annotated. (Added 3/14/95)
- 20. SCENIC ROAD:** A road that has scenic, natural, cultural or historical qualities. (Added 3/11/03)
- 21. SCENIC VISTA:** Any open area that is visible from public roads, recreational areas or abutting properties. (Added 3/11/03)
- 22. SELECTMEN:** The Albany Board of Selectmen. **RSA 672:12.** (Added 3/14/95)
- 23. SETBACK:** Every building placed on a lot shall be a minimum of twenty-five (25) feet from the lot or right-of-way line, whichever is closer, and a minimum of twenty-five (25) feet from rear and side property lines. (Amended 3/14/95, 3/11/03)

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- 24. SIDE YARD:** The distance between the nearest portion of a building on a lot and a side property line of said lot.
- 25. SPECIAL EXCEPTION:** A specific permitted use of land or buildings that is permitted when clearly defined criteria and conditions as set forth in This Ordinance are met. Special Exceptions may be granted by the Zoning Board of Adjustment in accordance with **RSA 674:33, III.** (Amended 3/13/01)
- 26. STRUCTURE:** Anything built for support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences. (Added 3/14/95. amended 3/11/03)
- a. ACCESSORY STRUCTURE:** A structure detached from the primary building on the same lot and customarily incidental and subordinate to the primary building or use. (Added: 3/11/03)
- b. PRIMARY STRUCTURE:** A structure other than the one, which is used for purposes wholly incidental or accessory to the use of another structure on the same premises. (Added 3/11/03)
- 27. SUBDIVISION:** The subdivision of a lot, tract, or parcel of land into 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 shall include re-subdivision and, when appropriate to the context, relates to the process of subdividing, or, to the land or territory subdivided. **RSA 672:14, I** (Added 3/14/95)
- 28. TRAILERS:** Commercial trailers, including box-trailers, and any other truck body (Added 3/8/12)

Recreational vehicles defined as follows:

- a. Motor home or van,** which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self propelled vehicle.
- b. Pickup camper,** which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.
- c. Recreational trailer,** which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows but not the roof overhang. It shall be designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use.

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- d. **Tent trailer**, which is a canvas or synthetic fiber folding structure, mounted on wheels and designed for travel, recreation, and vacation purposes.

29. VARIANCE: A variance is a relaxation of the terms of This Ordinance which may be granted by the ZBA where appropriate, in accordance with **RSA 674:33, I, II, III** (formerly RSA 31:72). (Amended 3/8/83, 3/14/95)

30. ZONING BOARD OF ADJUSTMENT (ZBA): The local land use board, authorized by the voters of the Town of Albany and established October 21, 1981 in accordance with **RSA 673:1, IV** (formerly RSA 31:66). (Added 3/14/95)

31. YARD SALE: The activity of selling or offering for sale items of household or personal property numbering six (6) or more, on display, on the lot on which the owner of the lot resides, provided that such activity occurs on no more than fifteen (15) days in the aggregate during any calendar year. Any use that exceeds this limitation shall be deemed a commercial use that must meet all requirements for commercial uses. The term "Yard Sale" shall include garage sales, porch sales, tag sales and other sales that meet the above definition. (Added 3/8/11)

III. LAND USES PERMITTED (Amended 3/8/83; 3/14/89; 3/14/95)

The following land uses shall be permitted in the Town of Albany, New Hampshire, providing they conform to all the requirements set forth in This Ordinance as well as all applicable regulations:

A. RESIDENTIAL ZONE

1. Location:

Residential uses shall be permitted in all sections of the Town including those areas designated as commercial and light industrial zones. (Added 3/8/83, amended 3/14/89, 3/14/95)

2. Lot Requirements:

- a. **Frontage:** Any lot situated on a state highway, town road, or a road which meets town specifications in an approved subdivision, shall have a minimum of 200 contiguous feet on such road.
- b. **Lot Size:** Each lot shall be a minimum of two (2) acres per dwelling unit. (Amended 3/14/95)
- c. As of the date of passage of this amendment, the subdivision of a lot with less than 200 contiguous feet of frontage on an existing State highway or town road shall be permitted subject to the following:

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- (1) Fifty (50) feet of contiguous frontage on a state highway or town road shall be required.
- (2) The subdivision of the lot shall be in accordance with Subdivision Regulations and Planning Board approval shall be required.
- (3) Access to the lot shall be provided by a fifty (50) foot right-of-way and shall be approved by the Selectmen.
- (4) Each lot shall be required to have two hundred (200) contiguous feet of frontage on the new right-of-way.
- (5) A fifty foot (50') right-of-way which serves as a driveway for no more than two (2) dwellings, shall not be required to be constructed in accordance with Albany Street Standards.
- (6) If the fifty (50) foot right-of-way is to serve three (3) or more dwellings, it may be constructed in phases as follows:
 - (a) When the third dwelling is built, the first two hundred (200) feet of the road shall be constructed in accordance with the Albany Street Standards.
 - (b) As subsequent dwellings are built, the road shall be extended in accordance with the Albany Street Standards so that each lot shall have a minimum of two hundred (200) feet of frontage on the new road.
(Amended 3/14/95)
- d. **Setback:** Every building placed on a lot shall be a minimum of twenty-five (25) feet from the lot or right-of-way line, whichever is closer, and a minimum of twenty-five (25) feet from the rear and side property lines. (Amended 3/13/84, 3/11/03)
- e. **Side and Rear Yards:** Every building placed on a lot shall be a minimum of 25 feet from the side and rear property lines.
- f. **Height:** A building erected on a lot shall not exceed 2 1/2 stories in height, measured from the top of the foundation. Chimney height excluded. Exception: farm buildings.

3. Uses Permitted:

- a. Single and duplex dwellings (Amended 3/14/95)
- b. Agriculture and Farming
- c. Accessory buildings for housing automobiles, equipment, supplies, pets or animals. (Amended 3/11/03)
- d. Seasonal agricultural roadside stands that are not more than 200 square feet measured by the outermost structural perimeter.
- e. Open Space Development in accordance with the Subdivision Regulations. (Amended 3/14/95)
- f. Yard sales. (Amended 3/8/11)
- g. Home Occupations in accordance with Article V. (Amended 3.14.17)

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- h. Accessory Dwelling Units (ADUs)-See addendum item G. (Amended 3/14/17)**

4. Other Uses Permitted:

The following permitted uses are subject to Site Plan Review and approval of the Planning Board. Additional conditions may be imposed by the Planning Board to assure that the use does not violate the intent of This Ordinance, is consistent with the goals established in the Town's Master Plan and the conditions set forth in the **Special Exceptions** section of This Ordinance. (Amended 3/14/95)

- a. Church, parish house, or other religious uses
- b. School
- c. Community center, hall, lodge, park or playground operated by a government unit or a non-profit organization.

B. COMMERCIAL/RESIDENTIAL ZONE:

1. Location:

As of the date of passage of this amendment, commercial/residential uses shall be permitted on both the east and west sides of Route 16 in the Town of Albany and **commercial use** shall be subject to Site Plan Review and Planning Board Approval. This zone is shown on the Albany Zoning Map, revised as of March 14, 1995, which is included as part of This Ordinance and is on file at the Town Office. (Amended 3/14/95, amended 3/11/03, **amended 3/14/17**)

Areas protected by the National Forest and those designated as nature preserves shall not be included in this commercial/residential area. Development of wetlands for commercial/residential uses shall require approval of the Conservation Commission. (Amended 3/8/83, 3/14/95, 3/11/03)

2. Lot Requirements:

- a. Lot size shall be a minimum of two (2) acres and shall have 200 contiguous feet of frontage on Route 16.
- b. Exception: As of the date of passage of this amendment, any lot of record with a minimum of fifty (50) contiguous feet of frontage on Route 16 in the Town of Albany may be used as a commercial/residential lot provided that it is sufficient in size to accommodate the proposed use as determined by criteria established in the Site Plan Review Regulations. (Amended 3/14/95)
- c. Setbacks: Every building placed on a lot shall be a minimum of twenty-five (25) feet from the lot or right-of-way line, whichever is closer, and a minimum of twenty-five (25) feet from the rear and side property lines. (Amended 3/11/03)

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3. Uses Permitted:

Stores, restaurants, service stations, laundries and travel agencies, shall be permitted provided that they are consistent with the conditions set forth in the Special Exceptions section of This Ordinance and do not violate the spirit of This Ordinance. (Amended 3/11/03)

Proposed commercial developments with new building construction in excess of 50,000 square feet shall require Town meeting approval. (Added 3/14/95)

4. Other Uses Permitted (Amended 3/8/83, 3/14/89)

The following uses may be permitted by the ZBA as a Special Exception and may be subject to additional conditions imposed by the Planning Board, Site Plan Review Regulations and approval of the Planning Board and/or may be subject to Town meeting approval, as provided by law.

- a. Nursery schools
- b. Clinics, hospitals, nursing homes or rest homes
- c. Public utility buildings
- d. Fire stations, municipal buildings, libraries
- e. Park and recreation areas
- f. Cemeteries
- g. Commercial greenhouses
- h. Private clubs
- i. Golf courses
- j. Riding stables
- k. Swimming pools for commercial use
- l. Motels, hotels, tourist homes, ancillary eating and drinking facilities
- m. Multi-family dwellings (Amended 3/14/17)
- n. Antique shops, gift shops
- o. Campgrounds for commercial use
- p. Excavations in accordance with **RSA 155-E** (Added 3/14/95)

C. LIGHT INDUSTRIAL ZONE (Added 3/13/90)

1. Location:

This zone begins at the intersection of Drake Hill Road and Route 16 and runs north along the easterly sideline of Route 16 to the boundary of the National Forest land; then in an easterly direction along the National Forest boundary (Tax Map #3, Lot #36) to a corner on the easterly boundary of the National Forest; then southerly following the same bearing as the said easterly National Forest boundary to its intersection with the northerly line of Tax Map 3, Lot 61; then southwesterly along the boundary of said Tax Map 3, Lot 61 to the corner of land

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now or formerly of Olson and Lake; then southeasterly along the northerly line of Lake, to the intersection of Drake Hill Road; then southerly along the westerly sideline of Drake Hill Road to the point of beginning. (Amended 3/8/94, Amended 3/14/17)

2. Lot Requirements:

Lot size shall be a minimum of two (2) acres and shall have 200 contiguous feet of frontage on a state highway, town road or a new road approved by the Selectmen, which shall be constructed in accordance with Albany Street Standards. (Amended 3/14/95)

3. Setbacks: Every building placed on a lot shall be a minimum of twenty-five (25) feet from the lot or right-of-way line, whichever is closer, and a minimum of twenty-five (25) feet from the rear and side property lines. (Added 3/11/03)

4. Site Plan Review and approval by the Planning Board shall be required.

5. Permitted Uses:

Light industrial manufacturing, assembly, finishing work, packaging, package handling, design, research and development shall be permitted provided that they are consistent with the conditions set forth in the Special Exceptions section of This Ordinance; they are in conformance with the regulations of This Ordinance as well as all other regulations of the Town; and, that the use is consistent with the goals established by the Town's Master Plan. (Amended 3/11/03)

6. Other Uses Permitted: (Amended 3/14/95)

- a. Residential
- b. Commercial

IV. GENERAL REGULATIONS

A. ACCESS ROADS

Every person who sells, or offers for sale to the public, a parcel of unimproved land for use as a building lot, now or in the future, shall, if said parcel does not have direct access to a state, town or other public road, first submit plans or blueprints to the Planning Board showing the parcel to be sold or deeded as well as all roads and/or rights-of-way giving access to said parcel from a road open to public use. If, in the opinion of the Planning Board, such roads, or rights-of-way, provide a means of practical, usable access to the parcel for the owner and for supplying of municipal services, the Planning Board shall approve the same.

B. NON--CONFORMING USES

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As of the effective date of This Ordinance, and any amendments thereto,

1. Existing Uses of land, buildings or structures in the Town of Albany may be continued and shall not be affected by the provisions of This Ordinance.
2. Any change of use of any existing building(s), or any part of any existing building(s) such as reconstruction, structural alteration or relocation, shall be in conformance with the regulations of This Ordinance as well as all other regulations of the Town. (Amended 3/8/83, 3/14/95)
3. Expansion of any non-conforming uses permitted in this Section requires the approval of the Board of Adjustment which shall first find that: (1) such an expansion or extension does not create a greater nuisance or detriment to the neighborhood and (2) the expanded uses conform with the requirements of This Ordinance as well as all other regulations of the Town. (Amended 3/8/83, 3/14/95)
4. Any non-conforming use permitted in this Section, which has been discontinued for a period of two (2) years from the effective date of This Ordinance shall not be resumed.
5. Any non-conforming use permitted in this Section, which has been damaged or destroyed by fire, accident, or other causes, may be repaired or reconstructed to its original foot print prior to such damage or destruction, provided that such work is undertaken and completed within two (2) years after such damage or destruction occurred.
6. No portion of a yard, other open space or off-street parking space that is required in connection with any structure for the purpose of complying with This Ordinance shall be included as part of a yard, open space, or off-street parking space similarly required for any other building.
7. On-site temporary structures or trailers used in conjunction with construction work are permitted **ONLY** during the period that construction work is in progress. Maximum time period permitted: six (6) months. This period may be extended by the ZBA on application.

C. THE USE AND STORAGE OF RECREATIONAL VEHICLES (Added 3/13/12)

Only one registered and road worthy recreational vehicle may be stored on a lot. For purposes of this paragraph, a "pickup camper" shall be considered to be a registered vehicle. No recreational vehicle shall be used for living, sleeping or housekeeping purposes for more than sixty (60) cumulative days per calendar year and then only if a manufacturer installed self contained wastewater system is utilized.

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V. HOME OCCUPATIONS AND HOME BUSINESS

(Amended 3/8/83, 3/14/95, 3/11/03, 3/11/08) Revised 3/13/12

- A. Intent: A home occupation, as defined below, is a permitted use. A home business may be allowed as a Special Exception by the Zoning Board of Adjustment in order to provide economic opportunity and diversity in the employment available to Town residents; to support the variety of uses characteristic of small towns, and allow for reasonable growth. At the same time, the ordinance intends to ensure that the quiet, uncrowded, and scenic features of the Town are preserved, and that neighborhood character is maintained.
- B. Home Occupation: Any use conducted entirely within a dwelling or an accessory building only by a member or members of the family domiciled therein, which is clearly incidental and secondary to the use of the dwelling as a residence and does not change the character thereof or reduce the value of any surrounding property. No home occupation shall be permitted that:
1. Changes the outside appearance of any buildings.
 2. Results in outside storage or display.
 3. Generates traffic, parking, noise, odors, smoke dust, lights, sewerage or water use in excess of what is normal in the neighborhood.
 4. Creates a hazard to person or property, results in electrical interference, or creates a nuisance.
 5. Any activity that exceeds these standards is subject to the Special Exception requirement applicable to Home Businesses.
- C. Home Business: A commercial or business activity conducted on a lot being used for residential purposes that exceeds the standards for Home Occupation requires a Special Exception as set forth in Section VII:B.1 and must meet the following requirements:
1. A Home Business shall be carried on by residents of the premises. A Home Business may have employees who do not live on the premises.
 2. It shall be clearly secondary to the use of the premises for dwelling purposes and will not alter the character of the neighborhood or reduce the value of any surrounding property.
 3. It shall result in no external evidence of the activity and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, soil, water or air pollution, excessive increases in traffic or in parking requirements, or as a result of other nuisances.

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4. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from roads and surrounding properties by natural or structural means to such an extent and in such a manner as may be specifically required and approved by the Board of Adjustment.

5. The residence or accessory buildings shall not provide window displays or other characteristics or features normally associated with commercial or business use.

6. There shall be no change in the exterior appearance of the residence or other structures on the property as a result of the use, unless specifically approved or required by the Board of Adjustment.

VI. MANUFACTURED HOMES (Added 3/13/84; amended 3/14/95)

A. Permitted Uses

The Board of Selectmen may grant a permit for a manufactured home, which shall meet the lot regulations for a single family dwelling unit as set forth in This Ordinance under Residential Zone. (Amended 3/13/84; 3/14/95)

B. Size Requirements

As of the effective date of this provision, all manufactured homes newly established within the Town of Albany, New Hampshire, shall contain a minimum floor area of five hundred (500) square feet. (Amended 3/8/83)

VII. ZONING BOARD OF ADJUSTMENT

A. CREATION

The Zoning Board of Adjustment was created on October 20, 1981 and shall be a continuing body comprised of five (5) members appointed by the Board of Selectmen and shall be known as the ZBA. Their duties, terms and powers shall conform to the provisions of RSA 673, 674, 675 and 677 as amended, or may be amended, (formerly Chapter 31). As terms expire or vacancies occur, the Selectmen shall be responsible for filling the vacancies and maintaining the membership of this Board. The ZBA shall elect its own chairman yearly or at such other intervals as may be necessary. (Amended 3/14/95)

B. POWERS and DUTIES

The ZBA is authorized to hear and decide the following:

1. SPECIAL EXCEPTIONS

The ZBA may make a Special Exception, subject to appropriate conditions and

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safeguards, as determined by the Board and as prescribed in NH RSA 674:33, I, II, III (formerly 31:72). In acting on an application for a Special Exception, the Board shall take into consideration whether or not the site is an appropriate location for such use, not only in context with the land to be dedicated to such use, but in context with the surrounding land uses. In order to determine this, the following criteria may be evaluated:

- a. **Property values:** the applicant shall present certification from a ZBA approved appraiser of property values indicating that there will be no negative impact on abutting properties as a result of the proposed special exception.
- b. **Traffic:** No traffic hazard will be created and traffic access will not alter the character of the neighborhood. The main access point shall be from a major arterial or collector and not from neighborhood streets. The ZBA may consider the comments of the Town Planner in evaluating the traffic study.
- c. **Nuisance/hazards:** The ZBA may review the operation of the development for hazards or nuisances such as resultant cinders, dusts, wastes, fumes, gases, odors, smoke, heat, electrical disturbances, vibrations, noise or hazards associated with the use and location. If the ZBA determines that any hazards or nuisances cannot be overcome and are not customarily found in residential neighborhoods, or that hazardous wastes are not being disposed of in an appropriate manner, the proposed use shall be denied. (Amended 3/14/95)
- d. **Adequacy of Private/Municipal Facilities:** The ZBA shall review the proposed facilities including drainage, sewer/septic, water, electric and other utilities to insure adequate provision to meet the needs of the proposed development. When making these determinations, the Town Engineer may be consulted.
- e. **Design and Architecture:** The design and architecture of the proposed structure shall be reviewed by the ZBA to determine its compatibility with abutting residential structures. The scale, height, color and detail shall be similar to adjacent residential structures.
- f. **Lighting:** The lighting plan shall be submitted to the ZBA for approval. No direct glare, defined as illumination beyond the property lines caused by direct or specularly reflected rays from incandescent, fluorescent or arc lighting, shall be permitted. Parking areas and walkways may be illuminated by luminaries but shall be hooded or shielded so as not to extend significantly beyond the parking and walkway areas.
- g. **Hours of Operation:** Hours of operation will be appropriate so as not to interfere with the abutting residential neighborhood by means of excess traffic in off-peak hours, unscreened lighting that disturbs residential uses and other factors that make the facility different from a residential neighborhood.

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h. Buffer Zones: A perimeter buffered area of twenty-five (25) feet adjacent to all abutting properties shall be maintained unless a greater buffer is required by the ZBA due to the intensity of the use and interference with adjacent properties. (Amended 3/14/95)

2. VARIANCES (Amended 3/14/89, 3/14/95)

The ZBA may authorize a variance from the terms of This Ordinance as prescribed in NH **RSA 674:33, I, II, III** (formerly 31:72), where it finds that all of the following criteria apply:

- a. That no diminution in value of surrounding properties would be suffered;
- b. That granting the variance would be of benefit to the public interest;
- c. That a denial of the permit would result in unnecessary hardship to the owner seeking it; "hardship": there is some characteristic of the particular land in question that makes it different from all the others in town;
- d. That by granting the variance substantial justice would be done;
- e. That the proposed use would not be contrary to the spirit of This Ordinance.

3. APPEALS TO THE ZONING BOARD OF ADJUSTMENT

- a. The ZBA shall hear and decide any case in which it is alleged there is an error or omission in any order, requirement, decision, or determination made by any official in the enforcement of This Ordinance in accordance with **RSA 676:5**. (Amended 3/14/95)
- b. A completed Application for Appeal, signed by the applicant, shall be filed with the ZBA on ZBA forms or may be submitted in writing on a separate sheet of paper. The Application shall set forth clearly and succinctly the error or omission in any administrative order of specific provision of This Ordinance from which relief is sought, the use for which the Special Exception is sought, or the details of the variance that is applied for, and the grounds on which it is claimed that the variance should be granted. (Added 3/14/95)
- c. A duly noticed Public Hearing shall be held in accordance with **RSA 676:7**. (Added 3/14/95)

VIII. REHEARING AND APPEAL PROCEDURES (added 3/14/95)

A. MOTION FOR RE-HEARING

Within twenty (20) days after any order or decision of the ZBA, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in accordance with **RSA 677:2 and 3**.

B. APPEAL FROM DECISION ON MOTION FOR RE-HEARING

Any person aggrieved by any order or decision of the ZBA or any decision of the local

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legislative body may apply to the superior court within thirty (30) days after the action complained of has been recorded, by petition, setting forth that such decision or order is illegal or unreasonable, in whole or in part, and specifying the grounds upon which the decision or order is claimed to be illegal or unreasonable. **RSA 677:4**

IX. ADMINISTRATION and ENFORCEMENT

A. BOARD OF SELECTMEN (Amended 3/14/95)

The Board of Selectmen is hereby given the power and authority to administer and enforce the provisions of This Ordinance. The Board of Selectmen shall not have the power to permit any use of land and buildings which is not in conformance with This Ordinance.

B. PERMITS (Amended 3/14/95)

As of the effective date of This Ordinance, and any amendments thereto,

1. A Building Permit shall be required for the construction of any new building or structure in the town of Albany and may be obtained from the Selectmen.
2. A Building Permit shall also be required for any change of use of any existing building(s), or structure(s), or any part of any existing building(s) or structure(s), such as reconstruction, structural alteration, relocation or expansion.

C. ENFORCEMENT and PENALTY

1. The Board of Selectmen is hereby authorized to institute, or cause to be instituted, in the name of the Town, any and all actions, legal or equitable, that may be necessary or appropriate for the enforcement of This Ordinance.
2. C: 1 above shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of This Ordinance.
3. Any violation of any provision of This Ordinance, or any amendments thereto, is punishable by a fine of not more than two hundred seventy-five dollars (\$275.00) for each day such violation continues after the date on which the violator received written notice by registered letter from the Town that he/she is in violation of This Ordinance. Upon collection by the court, all fines plus costs and attorney's fees as may be allowed, shall be paid over to the Town of Albany. (Amended 3/11/03)

The Town may also enforce this chapter and the regulations of This Ordinance by injunction, restraining order or other appropriate action. (Amended 3/14/95)

X. AMENDMENTS

This Ordinance may be amended in accordance with the provisions of **RSA 675:3** (formerly Chapter 31:63-a) as it is, or may be, amended. (Amended 3/14/95)

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XI. SEVERABILITY

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

XII. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its adoption by the voters of the Town of Albany, New Hampshire.

XIII. ADDENDUM (Amended 3/11/03)

Contains the complete text, effective dates and amendments thereto, of the following ordinances:

- A. Comprehensive Shorelands Protection Act (Added 3/14/95)
- B. Floodplain Development (Added 3/9/93, Amended 3/13/12)
- C. Sign Ordinance (Effective 3/9/82; Adopted 3/13/84, generally amended 3/14/95)
- D. Swift River Conservation District (Added 3/9/93, amended 3/14/95)
- E. Wireless Telecommunication Facilities (Added March 13, 2001)
- F. Official Zoning Map (Revised to March 14, 1995)

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**COMPREHENSIVE SHORELANDS
PROTECTION ACT
RSA 483-B**

(Adopted 3/14/95)

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Comprehensive Shorelands Protection Act
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**ZONING ORDINANCE
COMPREHENSIVE SHORELANDS PROTECTION ACT**

I. PREAMBLE

A. PURPOSE

The General Court finds that:

1. The shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.
2. The public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of public waters and the adjacent shoreland for the greatest public benefit.
3. There is great concern throughout the state relating to utilization, protection, restoration and preservation of shorelands because of their effect on state waters.
4. Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.

B. MINIMUM STANDARDS REQUIRED

To fulfill the state's role as trustee of its waters and to promote public health, safety, and the general welfare, the general court declares that the public interest requires the establishment of standards for the subdivision, use, and development of the shorelands of the state's public waters. The development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire. These standards shall serve to:

1. Further the maintenance of safe and healthful conditions.
2. Provide for the wise utilization of water and related land resources.
3. Prevent and control water pollution.
4. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.
5. Protect buildings and lands from flooding and accelerated erosion.
6. Protect archeological and historical resources.
7. Protect commercial fishing and maritime industries.

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8. Protect freshwater and coastal wetlands.
9. Control building sites, placement of structures, and land uses.
10. Conserve shoreline cover and points of access to inland and coastal waters.
11. Preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.
12. Promote wildlife habitat, scenic beauty, and scientific study.
13. Protect public use of waters, including recreation.
14. Conserve natural beauty and open spaces.
15. Anticipate and respond to the impacts of development in shoreland areas.
16. Provide for economic development in proximity waters.

C. CONSISTENCY REQUIRED

1. All state agencies shall perform their responsibilities in a manner consistent with the intent of this chapter. State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this chapter.
2. When the standards and practices established in this chapter conflict with other local or state laws and rules, the more stringent standard shall control.
3. All agricultural activities and operations in the state as defined in **RSA 21:34-a** and as governed by **RSA 430**, including the use of animal manure, lime, wood ash, irrigation and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this chapter, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Soil Conservation Service, the United States Department of Agriculture Cooperative Extension Service and the Department of Agriculture. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property.

II. DEFINITIONS.

1. **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 local land use board. For purposes of receiving testimony only, and not for purposes of

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notification, the term "abutter" shall include any person who is able to demonstrate that his land will directly be affected by the proposal under consideration.

2. **ACCESSORY STRUCTURE:** A structure detached from the primary building on the same lot and customarily incidental and subordinate to the primary building or use, such as a pump house, gazebo or woodshed.
3. **BASAL AREA:** The cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees.
4. **COMMISSIONER:** The commissioner of the Department of Environmental Services or his designee.
5. **DEPARTMENT:** The Department of Environmental Services.
6. **DISTURBED AREA:** An area in which natural vegetation is removed, exposing the underlying soil.
7. **GROUND COVER:** Any herbaceous plant which normally grows to a mature height of 4 feet or less.
8. **LOT OF RECORD:** A parcel, the plat or description of which has been recorded at the Registry of Deeds for the county in which it is located.
9. **MAJOR PROJECT:** [Repealed 1994, effective July 1, 1994]
10. **MANUFACTURED HOME:** Means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than one hundred eighty (180) days. This includes manufactured homes located in a manufactured home park or subdivision.
11. **MUNICIPALITY:** A city, town, village district if specifically Authorized to zone by the legislature, or county in respect to unincorporated towns or unorganized places or any combination thereof pursuant to **RSA 53-A**.
12. **NATURAL WOODLAND BUFFER:** A forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.
13. **ORDINARY HIGH WATER MARK:** The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate 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. Where the ordinary high water mark is not

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easily discernible, the ordinary high water mark may be determined by the Department of Environmental Services.

- 14. PERSON:** A corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency instrumentally thereof.
- 15. PRIMARY BUILDING LINE:** A setback from the public boundary line.
- 16. PRIMARY STRUCTURE:** A structure other than the one, which is used for purposes wholly incidental or accessory to the use of another structure on the same premises.
- 17. PROTECTED SHORELAND:** For natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.
- 18. PUBLIC WATERS:** shall include:
 - a. All fresh water bodies listed in the official list of public waters published by the department pursuant to **RSA 271:20, II**, whether they are great ponds or artificial impoundments.
 - b. Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.
 - c. Rivers, meaning all year-round flowing waters of the fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7-1/2' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the Office of State Planning and delivered to the commissioner 30 days after the effective date of this act.
- 19. REGULATORY FLOODWAY:** Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- 20. VIOLATION:** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Article 4.10.5, Article 4.10.8(2)(b), or Article 4.10.7(3)(4) of this ordinance is presumed to be in violation until such time as that documentation is provided.
- 21. REFERENCE LINE:**
 - a. For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the division of water resources department.
 - b. For artificially impounded fresh water bodies, the waterline at full pond as

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determined by the elevation of the top of the impoundment structure.

- c. For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a stand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.
 - d. For rivers, the ordinary high water mark.
- 22. REMOVAL OR REMOVED:** Cut sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.
- 23. RESIDENTIAL UNIT:** A structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.
- 24. SAPLING:** Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.
- 25. SHRUB:** Any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.
- 26. STRUCTURE:** Anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.
- 27. SUBDIVISION:** Subdivision as defined in RSA 672:14.
- 28. TREE:** Any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.
- 29. URBANIZATION:** The concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for commercial or industrial use, or mixed residential, commercial, and industrial use.

III. ENFORCEMENT BY COMMISSIONER; DUTIES, WOODLAND BUFFER

- A. The commissioner, with the advice and assistance of the Office of State Planning, Department of Resources and Economic Development, and Department of Agriculture, shall enforce the provisions of this chapter.
- B. The commissioner or his designee may, for cause, enter upon any land or parcel at any reasonable time to perform oversight and enforcement duties provided for in this chapter.
- C. Relative to Forest Inventory Plans [Repealed 1994, effective July 1, 1994]
- D. To encourage coordination of state and local enforcement measures, the

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commissioner shall notify, at the time of issuance or filing, the local governing body of enforcement action taken by the state in respect to protected shoreland within the municipality by sending it copies of relevant administrative orders issued and pleadings filed.

- E. The commissioner may issue an order to any person in violation of this chapter, of rules adopted under this chapter, or of any condition of a permit issued under this chapter.

IV. PRIOR APPROVAL; PERMITS

- A. Within the protected shoreland, any person intending to:

1. Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with **RSA 155-E**.
2. Construct a water dependent structure as described in **RSA 483-B:9, II(c)** shall obtain approval and all necessary permits pursuant to **RSA 482-A**
3. Install a septic system as described in. **RSA 483-B:9, V(b)(1)-(3)** shall obtain all permits pursuant to **RSA 485-A:29**.
4. Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to **RSA 485-A:17**.
5. Subdivide land for residential or non-residential development as described in **RSA 483-1B:9 V(d) and (e)** shall obtain approval pursuant to **RSA 485-A:29**.

- B. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs 1(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

V. REPORTING -- ON-SITE INSPECTIONS -- LOCAL PARTICIPATION

The Department may devise a system whereby municipal officials may voluntarily assist with the permitting process under RSA 483-B:6 and the subsequent enforcement of permit conditions, by performing certain reporting functions relative to on-site inspections. Utilization of such reports shall be at the department's discretion, but may, when appropriate, obviate the need for further on-site review by department staff.

VI. MUNICIPAL AUTHORITY

- A. Municipalities may adopt land use control ordinances relative to all protected shorelands which are more stringent than the minimum standards contained in this chapter.

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- B. Municipalities are encouraged to adopt land use control ordinances for the shorelands of water bodies and water courses other than public waters.
- C. Municipalities in which protected shoreland is situated may enforce the provisions of this chapter by issuing cease and desist orders and by seeking injunctive relief or civil penalties as provided in **RSA 483-B:18, III (a) and (b)**. Civil penalties and fines collected by the court shall be remitted within 14 days to the treasurer of the municipality prosecuting said violations, for the use of the municipality. Any municipality electing to enforce the provisions of this chapter shall send copies of any pleading to the attorney general at the time of filing.
- D. The authority granted to municipalities under this chapter shall not be interpreted to extend to **RSA 430:28-48**.
- E. Municipalities bordering the same water body are encouraged to employ jointly a single code enforcement officer to monitor compliance.

VII. MINIMUM SHORELAND PROTECTION STANDARDS

- A. The standards in this section are designed to minimize shoreland disturbance so as to protect the public waters, while still accommodating reasonable levels of development in the protected shoreland. Development outside the protected shoreland shall conform to local zoning and local ordinances and shall not be subject to standards established in this chapter.
- B. Within the protected shoreland the following restrictions shall apply:
 - 1. The establishment or expansion of salt storage yards, automobile junk yards, and solid or hazardous waste facilities shall be prohibited.
 - 2. Primary structures shall be set back behind the primary building line. This line shall initially be set back 50 feet from the reference line. Upon the establishment of a shoreland building setback by a municipality, that standard, whether greater or lesser than 50 feet, shall define the primary building line in that municipality.
 - 3. A water dependent structure, meaning one which is a dock, wharf, pier, break-water, or other similar structure, or any part thereof, built over, on, or in the waters of the state, shall be constructed only as provided by the wetlands board pursuant to **RSA 482-A**.
 - 4. No fertilizer, except lime and wood ash, shall be used on lawns or areas with grass on residential properties.
- C. Public water facilities, including water supply intakes, pipes, water treatment facilities, pump stations, and disinfection stations shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law. Private

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water supply facilities shall not require a permit.

- D. The placement and expansion of public water and sewage treatment facilities shall be permitted by the commissioner as necessary, consistent with the purpose of this chapter and other state law.
1. Hydro-electric facilities, including, but not limited to dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, and shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.
 2. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.
 3. An existing solid waste facility, which is located within 250 feet of the reference line of public waters under this chapter may continue to operate under an existing permit, provided it does not cause degradation to an area in excess of that area under permit.
 4. No solid waste facility shall place solid waste within 250 feet of the reference line of public waters under this chapter except as expressly permitted under **RSA 483-B:9, IV-c**. However, any solid waste facility may be allowed, subject to permitting conditions under **RSA 149-M: 10**, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line of public waters under this chapter, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste water permit as issued by the Department of Environmental Services. Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.
- E. The following minimum standards shall apply to the protected shoreland provided that forestry, involving water supply reservoir water management or agriculture conducted in accordance with best management practices; shall be exempted from the provisions of this chapter:
1. Natural woodland buffer
 - a. Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and under-story, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
 - b. Within the natural woodland buffer of the protected shoreland under conditions defined in **RSA 483-B:9, V** the following prohibitions and limitations shall apply:

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- (1) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level.
- (2) Relative to pre-project inventory and forest inventory plans. (Repealed 1992, effective Jan. 1, 1993.)
- (3) Trees, saplings, shrubs and ground covers which are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations under subparagraph I b (3).
- (4) Dead, diseased, unsafe, noxious or fallen trees, saplings, shrubs, or ground covers may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph I b (3).
- (5) Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground.
- (6) Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved.
- (7) Planting efforts that are beneficial to wildlife are encouraged to be undertaken.

2. Septic Systems

- a. All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the Division of Water Supply and Pollution Control, Subsurface Systems Bureau under **RSA 485-A:29**.
- b. The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, soil conservation service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:
 - (1) Adjacent to ponds, lakes, estuaries and the open ocean
 - (a) Where the receiving soil downgradient of the leaching portions of the septic system is a porous sand and gravel material with a percolation rate faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;
 - (b) For soils with restricting layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and
 - (c) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

- (2) Adjacent to rivers, the setback shall be no less than 75 feet, and may be

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greater if approved by the commissioner.

- c. The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph 2b, to the maximum extent feasible.

3. Erosion and siltation

- a. All new structures within the protected shoreland shall be designed and constructed in accordance with the rules adopted by the Department pursuant to **RSA 541-A**, relative to terrain alteration under **RSA 485-A:17**, for controlling erosion and siltation of public waters, during and after construction.
- b. New structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.
- c. A permit pursuant to **RSA 485-A: 17, I** shall be required for improved, developed, or subdivided land within the protected shoreland whenever there is a contiguous disturbed area exceeding 50,000 square feet.

4. Minimum Lots and Residential Development in the protected shoreland:

- a. The minimum size for new lots in areas dependent upon on-site septic systems shall be two (2) acres.
- b. For projects in areas dependent upon on-site sewage systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed one unit per 150 feet of shoreland frontage.
- c. Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.
- d. Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

5. Minimum Lots and Non-residential Development in the protected shoreland:

- a. The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted pursuant to **RSA 541-A**, but in no instance, shall lots be less than 2 acres.
- b. Non-residential development requiring on-site water and sewage shall not be constructed on lots less than 150 feet in width.

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- c. Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.
- 6. Common Owners and Residential or Non-residential Development In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on public waters.
- 7. The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria, which govern the grant of a variance by a zoning board of adjustment under **RSA 674:33, I (b)**.

VIII. NON-CONFORMING LOTS OF RECORD

Non-conforming, undeveloped lots of record that are located within the protected shoreland shall comply with the following restrictions, in addition to any local requirements:

- A. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.
- B. Building on non-conforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to docks, piers, boathouses, boat loading ramps, walkways, and other water dependent structures, consistent with state law.

IX. NON-CONFORMING STRUCTURES

- A. Except as otherwise prohibited by law, pre-existing non-conforming structures located within the protected shoreland may be repaired, improved, or expanded. An expansion that increases the sewerage load to an on-site septic system, for example, additional bedrooms, shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of an open deck or porch is permitted to a maximum of 12 feet towards the reference line.
- B. When reviewing requests for variances involving the redevelopment of sites that currently contain non-conforming structures, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the existing standards, so long as the net effect represents an improvement in the overall degree of protection provided to the public waters.

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X. SHORELAND EXEMPTIONS

- A. The governing body of the municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.
- B. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland. Such evidence shall address:
 - 1. Current and past building density
 - 2. Commercial or industrial uses
 - 3. Municipal or other public utilities
 - 4. Current municipal land use regulations, which affect the protected shoreland
 - 5. Any other information, which the commissioner may reasonably require
- C. With the advice of the Office of State Planning, the commissioner shall approve or deny the request for an exemption and shall issue written findings in support of his decision. A request for an exemption shall be approved only if the municipality demonstrates, using the evidence required under paragraph b, that special conditions of urbanization exist along the portion of the shoreland to be exempted.
- D. The state port authority may request an exemption under this section for all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 271-A.

XI. PUBLIC HEARING AND NOTICE TO ABUTTER (Repealed 1992, Effective January 1993)

XII. REHEARINGS AND APPEALS

Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in **RSA 541-A:31** for contested cases shall apply.

XIII. GIFTS - GRANTS - DONATIONS

The department is authorized to solicit, receive, and expend any gifts, grants, or donations made for the purposes of this chapter. Gifts of land or easements shall be assigned to the Department of Resources and Economic Development for management

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or assignment to another state agency or other public body, as appropriate.

XIV. ASSISTANCE TO MUNICIPALITIES; OFFICE OF STATE PLANNING

The Office of State Planning may assist municipalities with the implementation of local ordinances under this chapter, upon the request of an individual municipality.

XV. RULEMAKING

The commissioner shall adopt rules, pursuant to **RSA 541-A**, relative to:

- A. The content and structure of all forms, applications and permits to be received or issued by the department under this chapter, including information and other materials, are to be submitted by an applicant.
- B. Procedures for filing and review of requests for urbanized shoreland exemptions and standards for granting urbanized shoreland exemptions, including the time frames for decisions.
- C. Enforcement of the minimum shoreland standards, including methods and timing of inspection and coordination with municipalities.
- D. Procedures and criteria for the placement of small accessory structures such as storage sheds and gazebos, the size, placement, and construction of which is consistent with the intent of this chapter, between the reference line and the primary building line.
- E. Criteria governing the assessment of administrative fines.

XVI. PENALTIES

- A. The following shall constitute a violation of this chapter:
 - 1. Failure to comply with the provisions of this chapter
 - 2. Failure to obey an order of the commissioner or a municipality issued relative to activities regulated or prohibited by this chapter.
 - 3. Misrepresentation by any person of a material fact made in connection with any activity regulated or prohibited by this chapter.
- B. Any person who violates this chapter and any person who purchases land affected by a violation of this chapter who knew or had reason to know of the violation shall be liable for remediation or restoration of the land affected.
- C. Persons violating this chapter shall be subject to the following:
 - 1. Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person violating this chapter, a civil penalty in an amount not to exceed \$20,000 for each day of continuing

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violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

2. Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, notwithstanding **RSA 651:2**, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. Each day of violation shall constitute a separate offense.
3. The commissioner, after notice and hearing pursuant to **RSA 541-A**, may impose an administrative fine of up to \$5,000 for each offense upon any person who violates this chapter. Re-hearings and appeals relating to such fines shall be governed by **RSA 541**. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.

XVII. APPLICABILITY

The provisions of this chapter shall not apply to any applicant whose land is in a municipality that has adopted a shoreland protection ordinance under **RSA 674:16**, the provisions of which are at least as stringent as similar provisions in this chapter. The director of the Office of State Planning shall certify to the commissioner that the provisions of a local ordinance are at least as stringent as similar provisions in this chapter.

XVIII. DESIGNATED RIVERS

The provisions of this chapter shall not apply to rivers or river segments designated by the general court and approved for management and protection under **RSA 483** prior to January 1, 1993.

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(Adopted March 9, 1993, Amended 3/12/96, Amended 3/13/12)

Note: Albany FEMA Community Map # 330174 (Flood Hazard Boundary Map [FHBM] was adopted on March 12, 1996 and converted to a Flood Rate Insurance Map [FIRM] with the suffix "A" added to make Community Map #330174-A. This converted Albany to the "Regular Program" which allows additional limits of insurance. The Federal change became effective on March 1, 1995 and Albany adopted the change on March 12, 1996. Copies of the 3/1/95 letter are on file in the Selectmen's Office and Planning Board files.

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Floodplain Development
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**ZONING ORDINANCE
FLOODPLAIN ORDINANCE**

I. PREAMBLE

A. AUTHORITY

This article was added to the Zoning Ordinance by the legislative body of Albany, New Hampshire on March 9, 1993 pursuant to the authority of RSA 674:16.

B. TITLE

This provision shall be known as the Town of Albany Floodplain Ordinance.

C. PURPOSE

The regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) on its "Flood Insurance Rate Map" (FIRM) dated March 1, 1995, which is declared to be a part of this ordinance and is hereby incorporated by reference. (Amended March 12, 1996)

II. DEFINITION OF TERMS

A. GENERAL

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 Albany, NH.

1. **AREA OF SPECIAL FLOOD HAZARD:** The land in the floodplain within the Town of Albany subject to a one percent (1%) or greater possibility of flooding in any given year. This area is designated on the FIRM as Zones A and AE [Amended March 12, 1996, March 13, 2012]
2. **BASE FLOOD:** A flood having a one-percent (1%) possibility of being equaled or exceeded in any given year.
3. **BASEMENT:** Any area of a building having its floor sub-grade on all sides.
4. **BUILDING:** A structure.
5. **DEVELOPMENT:** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operation or storage of equipment and materials.
6. **FEMA:** The Federal Emergency Management Agency.

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7. **FLOOD or FLOODING:** A general and temporary condition of partial or complete inundation of normally dry land area from:
 - a. the overflow of inland or tidal waters
 - b. the unusual and rapid accumulation or run-off of surface waters from any source.

8. **FLOOD INSURANCE RATE MAP (FIRM):** 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 Albany, NH. (Amended March 12,1996)

9. **FLOODPLAIN or FLOOD-PRONE-AREA:** Any land area susceptible to being inundated by water from any source (see FLOODING).

10. **FLOOD-PROOFING:** Any combination of structural non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved property, water sanitation facilities, structures and their contents.

11. **FLOODWAY:** See REGULATORY FLOODWAY.

12. **FUNCTIONALLY DEPENDENT USE:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities. It does not include long-term storage or related manufacturing facilities.

13. **HIGHEST ADJACENT GRADE:** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

14. **HISTORIC STRUCTURE:** Any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

 - c. Individually listed on a state inventory of historic places in states with historic

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preservation programs which have been approved by the Secretary of the Interior; ..or..

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

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

- 16. **MANUFACTURED HOME:** A structure, transported in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.(Amended 3/13/12)

- 17. **MANUFACTURED HOME PARK OR SUBDIVISION:** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. (Added 3/13/12)

- 17. **MEAN SEA LEVEL:** The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

- 19. **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. (Added 3/13/12)

- 18. **100-YEAR FLOOD:** "Base flood".

- 19. **RECREATIONAL VEHICLE:** A vehicle which is:
 - a. built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;

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- c. designed to be self-propelled or permanently towable by a light duty truck;
 - d. designed primarily as temporary living quarters for camping, recreational, travel or seasonal use; not for use as a permanent dwelling. (Added: 3/8/94)
20. **REGULATORY FLOODWAY:** Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (Amended 3/13/12)
21. **SPECIAL FLOOD HAZARD AREA:** (See "Area of Special Flood Hazard). (Amended 3/13/12).
22. **STRUCTURE:** 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.
23. **START OF CONSTRUCTION:** The date the building permit was issued, provided the actual status of construction, repair, reconstruction, placement or other substantial improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of 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 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.
24. **SUBSTANTIAL DAMAGE:** 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.
25. **SUBSTANTIAL IMPROVEMENT:** Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal:
- a. the appraised value prior to the start of the initial repair or improvement, or
 - b. in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely

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necessary to assure safe living conditions or any alteration of an "historic structure", provided that the alteration will not preclude the structure's continued designation as an "historic structure".

- 28. **VIOLATION:** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Article 4.10.5, Article 4.10.8(2)(b), or Article 4.10.7(3)(4) of this ordinance is presumed to be in violation until such time as that documentation is provided. (Added 3/13/12)

- 26. **WATER SURFACE ELEVATION:** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplain.

III. PERMIT REQUIRED

All proposed development in any special flood hazard area shall require a permit from the Board of Selectmen.

IV. CONSTRUCTION REQUIREMENTS

- A. **BUILDINGS:** The Board of Selectmen shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:
 - 1. be designed (or modified) and adequately anchored to prevent 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,
 - 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.

- B. **WATER AND SEWER SYSTEMS:** Where new or replacement water and sewer systems (including onsite systems) are proposed in a special flood hazard area, the applicant shall provide the Board of Selectmen with the 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.

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V. PERMIT REQUIREMENTS

- A. For all new or substantially improved structures located in Zones A and AE, the following information shall be provided to the Board of Selectmen:
 - 1. The as-built elevation in relation to NGVD of the lowest floor (including the basement)
 - 2. Whether or not such structures contain a basement.
 - 3. If the structure has been flood-proofed and the as-built elevation (in relation to the NGVD) to which the structure was floodproofed.
 - 4. Certification of floodproofing. The Building Inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request. (Amended 3/13/12)
- B. The Board of Selectmen 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.

VI. SUBMISSION REQUIREMENTS

- A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Board of Selectmen, in addition to the copies required by RSA 482-A:3. (Amended 3/13/12)
- B. The applicant shall be required to submit copies of said notification to adjacent communities as determined by the Board of Selectmen, including notice of all scheduled hearings before the Wetlands Bureau. (Amended 3/13/12)
- C. The applicant shall submit to the Board of Selectmen certification, provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- D. The Board of Selectmen shall obtain, review and reasonably utilize any floodway data available from Federal, State or other sources, as criteria for requiring that all development located in Zone A meet the following requirement:

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

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- E. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. (Added 3/13/12)

VII. PERMIT REVIEW REQUIREMENTS

- A. In special flood hazard areas, the Board of Selectmen shall determine the 100-year flood elevation in the following order of precedence according to the data available:
 - 1) In Zone AE, refer to the elevation data provided in the Flood Insurance Study and accompanying FIRM.
 - 2) In Zone A, the Board of Selectmen shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site plans). (Revised 3/13/12)
- B. The Board of Selectmen's 100-year flood elevation determination shall be used as criteria for requiring the following in Zones A and AE: (Amended 3/13/12)
 - 1. All new construction, or substantial improvement, of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
 - 2. That all new construction, or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to, or above, the 100-year flood level; or
 - a. Be flood proofed so that the structure is watertight below the 100-year flood elevation; the walls shall be substantially impermeable to the passage of water;
 - b. Have the components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- C. Standards for the Placement of Recreational Vehicles within Floodplain: (Added March 8, 1994, Revised 3/13/12)

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

- 1. be on the site for fewer than 180 consecutive days,
- 2. be fully licensed and ready for highway use,

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3. meet all standards of the National Flood Insurance Program Regulations, Section 60.3 (b)(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of Section 60.3. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. (Revised 3/13/12)

- D. All manufactured homes to be placed, or substantially improved, within the special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at, or above, the 100-year flood elevation; and must be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top, or frame, ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

- E. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided that they meet the following requirements:
 1. the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage;
 2. the area is not a basement;
 3. the area shall be designed to automatically equalize hydrostatic flood forces of exterior walls by allowing for the entry and exit of floodwater. Designs 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) 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.
 - 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.

VIII. APPEALS

- A. All appeals and applications made to the Zoning Board of Adjustment shall be made in writing, on forms prescribed by the Zoning Board and as detailed in the Zoning Ordinance.

- B. When an application is submitted, the files should be reviewed to determine if a

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previous application was denied for the same situation. If so, the Board should determine if circumstances have changed sufficiently to warrant acceptance of a re-application.

- C. Public Hearings and notice shall be held in compliance with RSA 676:7.
- D. Every decision of the Zoning Board of Adjustment shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

IX. VARIANCES

A. Pursuant to RSA 674:33 I (b) and as detailed in the Zoning Ordinance, the Zoning Board of Adjustment may authorize a variance where it finds that all of the following conditions, in addition to established criteria for this provision, may apply:

- 1. The proposed use will not diminish surrounding property values;
- 2. Granting the variance will be in the public interest as follows:
 - 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 shall result during the base flood discharge,
 - c. That, considering the flood hazard, the variance is necessary to afford relief.
- 3. The use will not be contrary to the spirit of this provision;
- 4. By granting the variance, substantial justice will be done;
- 5. Denial of a variance would result in unnecessary hardship to the owner.

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

- 1. the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and
- 2. such construction below the base flood level increases the risks to life and property.
- 3. such notification shall be maintained with a record of all variance actions.

C. The community shall:

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

D The Zoning Board of Adjustment may approve, approve with conditions, or deny applications for variances following the procedures outlined in this provision.

X. REHEARING

Within twenty (20) days after any decision or order of the Zoning Board of Adjustment, any party to the action or proceeding, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding or covered or included in the order in accordance with RSA 677:2-3 and as detailed in the Zoning Ordinance.

XI. MISCELLANEOUS LEGAL PROVISIONS

- A. Amendments to regulations and district boundaries set forth in this provision proposed by the Planning Board, County Commissioners or by petition of the voters, shall be acted upon in accordance with the procedures set forth in RSA 675.
- B. Should any provision of this section be declared by the courts to be invalid, such decision shall not affect the validity of the section as a whole, or any other section or provision thereof.
- C. Whenever the requirements of this section conflict with the requirements of any other lawfully adopted rules, regulations or ordinance, the most restrictive or higher standards shall apply.

Town of Albany, New Hampshire

ZONING ORDINANCE

**TOWN OF ALBANY, NEW HAMPSHIRE
SIGN ORDINANCE**

Effective: March 11, 2003

Effective as Selectmen's Ordinance: March 9, 1982
Incorporated into the Zoning Ordinance on March 13, 1984;
Amended: March 14, 1995

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I. PREAMBLE

A. AUTHORITY AND TITLE

This section has been prepared in accordance with the provisions of Chapter 31 of the New Hampshire Statutes annotated, 1955, as amended, and became effective on March 9, 1982 as a Selectmen's Ordinance. It was incorporated into and became a part of the Zoning Ordinance on March 13, 1984. This section shall be known and may be cited as the Town of Albany Sign Ordinance.

B. PURPOSE AND INTENT

The purpose of this article is to promote and protect the health, safety and general welfare of the Town and to provide for the reasonable regulation and control of signs within the Town of Albany, New Hampshire to the end that the natural beauty of the community may be preserved and enhanced by encouraging the use of street graphics which are compatible with the character of the town and which are easily readable, clear and non-distracting to traffic. (Amended 3/14/95)

C. JURISDICTION

The provisions of this article shall govern the location, erection and maintenance of all signs within the boundaries of the Town of Albany, and shall apply to all out-door signs that are visible from a public way. (Amended 3/14/95)

D. ADMINISTRATION

This ordinance shall be administered by the Selectmen, the same that are hereby granted authority to administer This Ordinance by **RSA 31:39**.

II. DEFINITIONS

All words in this section shall carry their customary dictionary meanings. Words in the present tense include the future tense, words used in the singular include the plural, words used in the plural include the singular. The word shall is always mandatory. Words or terms used specifically in this article shall have the meaning indicated in Section B. (Added 3/14/95)

1. **BUSINESS:** One enterprise, or use, which is engaged, related or connected with trade and traffic involving the sale, exchange and/or service of property of any kind on one business premise. Without limitation of the foregoing, it shall include every office use. (Amended 3/14/95)
2. **BUSINESS COMPLEX:** More than one business located on one "business premise" whose owner leases or rents a portion of the building to other businesses, (Added 3/14/95)

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3. **BUSINESS COMPLEX DIRECTORY:** Separate, small signs mounted below the business complex primary sign that identifies each business on the business premise. (Added 3/14/95)
4. **BUSINESS COMPLEX SECONDARY SIGN:** A sign located over or next to the entrance door that identifies, by name, the location of the business on the business premise. (Added 3/14/95)
5. **BUSINESS PREMISE:** One parcel of land with one or more buildings located on it that is owned by a single person, a partnership, corporation, or other legal entity whose purpose is the manufacture or sale of goods, products, services or activities. (Added 3/14/95)
6. **SELECTMEN:** The Board of Selectmen of the Town of Albany, New Hampshire, or their duly appointed designees.
7. **SIGN:** Any attached or free-standing structure, article, or similar device designed for the purpose of identifying, promoting, advertising and attracting the attention of persons not on the premises, to the business premise by means of letters, words, insignia, and/or color. (Amended 3/14/95)
 - a. **ACCESSORY SIGN:** An on-premise sign, in addition to the Primary Sign, related to the business or profession conducted, or to a commodity, service or product sold or offered upon the premises. (Amended 3/14/95)
 - b. **DIRECTIONAL SIGN:** A sign bearing only the name of the business and which gives direction and the distance to the business premise.
 - c. **GROUND SIGN:** A free-standing primary sign. (Added 3/14/95)
 - d. **PORTABLE SIGN:** Any on-premise business sign not attached to a fixed location on the property and which is permitted for 90 days. (Added 3/14/95)
 - e. **PRIMARY SIGN:** An on-premise sign identifying the name(s) of the business(es) located on the premise. (Amended 3/14/95)
 - f. **TEMPORARY SIGN:** Signs permitted for a period not to exceed thirty (30) days in any one calendar year. (Added 3/14/95),

III. APPLICATION PROCESS (Added 3/14/95)

- A. An application for any action requiring a sign permit shall be completed, signed by the owner of the business, and submitted to the selectmen on a form provided by the selectmen and must be accompanied by the permit fee of \$5.00.

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- B. On receipt of a completed application, the Selectmen shall have up to 14 days to approve or disapprove the application and respond to the applicant, in writing, by issuing the permit or advising the applicant of the reason(s) for denial.

IV. SIGN REGULATIONS

A. GENERAL PROVISIONS (Amended 3/14/95)

- 1. Lettering of a permanent nature painted on or attached to a window, wall or roof,
 - a. containing the information specified in the definition of Primary Sign shall be considered a Primary Sign;
 - b. containing information specified in the definition of Accessory Sign shall be considered an Accessory Sign.
- 2. The area of all signs shall be measured within the maximum dimensions of the message board area.
- 3. Each business premise sign designed to be read from two opposite directions shall be considered to be one sign.
- 4. Permitted signs may be lit by continuous illumination either internally or externally. To prevent night sky-pollution, externally illuminated signs shall be illuminated from above. All sources of light shall be located, directed and/or shielded in such a manner as not to be visible at any point along the property boundary, nor shall it in any way be distracting to vehicular traffic.
- 5. The source of light shall include all transparent or translucent surfaces or arc lights, incandescent and fluorescent lamps.
- 6. All surfaces of signs and their supporting structures, including those erected prior to the effective date of this ordinance, shall be maintained in a condition that is neat and attractive.
- 7. Three (3) flags shall be permitted to be displayed on a business premise.
- 8. Signs advertising professions in a residential area shall not exceed twelve (12) square feet.

B. PERMITTED SIGNS

1. PRIMARY SIGN (Amended 3/14/95)

ZONING ORDINANCE

- a. A primary sign shall be erected only on the business premise to which the sign pertains and shall be located far enough from the main thoroughfare to allow full line of sight for pedestrian and vehicular traffic entering and exiting the site and shall not unduly obstruct the visibility of other signs or property in the area.
- b. Maximum Height: eighteen (18) feet measured from the centerline of Route 16.
- c. Minimum distance from the edge of the traveled way or, as permitted by the State, shall be ten (10) feet.
- d. Minimum distance from the boundary lines of other properties shall be twenty-five (25) feet.

2. ROOF MOUNTED SIGNS:

- a. Shall be considered a primary sign
- b. Maximum height: the top edge of the sign shall not be more than four (4) feet above the roof ridge of the building or the highest point of the roof to which it is attached.

3. ACCESSORY SIGNS (Amended 3/14/95)

- a. WALL MOUNTED - Maximum number: one (1)
- b. WINDOW SIGNS - Maximum size: 25% of gross window area

V. PERMITTED SIGNAGE FOR A SINGLE BUSINESS

A. PRIMARY SIGN:

1. Maximum number on a business premise: one (1) (Amended 3/14/95)
2. Maximum Size: thirty-two (32) square feet. (Amended 3/11/03)

B. ACCESSORY SIGNS:

1. Maximum number: three (3)
2. Total maximum size: twenty-seven (27) square feet.
3. No single sign to exceed nine (9) square feet.

- C.** A total of four (4) signs are permitted on a single business premise.

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SIGN ORDINANCE

VI. PERMITTED SIGNAGE FOR A BUSINESS COMPLEX (Added 3/14/95)

A. PRIMARY SIGN:

1. Maximum number on a business complex: one (1)
2. Set back minimum:
 - a. Ten (10) feet from the edge of the traveled way or as permitted by the State.
 - b. Twenty-five (25) feet from other property boundaries.
3. STRUCTURAL SUPPORTS: maximum of two (2) posts with a maximum distance of eight (8) feet between posts.
4. Maximum Size: Thirty-two (32) square feet. (Amended 3/11/03)
5. Structural base: Shall be permitted.

B. DIRECTORY SIGNS

1. Shall be mounted between the two (2) posts in conjunction with the primary sign.
2. Maximum Number: one (1) for each business located on the premise.
3. Maximum Size: four (4) square feet

C. SECONDARY SIGN

1. One (1) Secondary Sign, attached to the face of the building below the roof line, shall be permitted per business premise.
2. Maximum size: twelve (12) square feet

D. ACCESSORY SIGNS

1. Maximum number per business premise: one (1)
2. One (1) wall mounted or one (1) window sign shall be permitted per business premise and shall be in accordance with the Primary Sign Section.

- E.** If a business within the business complex subleases a portion of their business space to a third party, the two parties shall share the total space permitted on both the Secondary Signs and the Accessory Signs.

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VII. NON-CONFORMING SIGNS

- A.** As of the effective date of This Ordinance, or amendments thereto, any existing sign in the Town of Albany may be continued and shall not be affected by This Ordinance or the Zoning Ordinance.
- B.** Any reconstruction, structural alteration or relocation of any existing sign shall require a permit, issued by the Selectmen, and shall be in conformance with This Ordinance as well as all other regulations of the Town of Albany. (Amended 3/11/03)
- C.** Free standing off-premise signs shall be assessed and taxed as structures when applicable. (Added 3/14/95, 3/11/03)
- D.** Portable, non-illuminated signs, shall be permitted and shall conform to This Ordinance. Permits for these signs shall be issued by the Selectmen as follows: (Amended 3/14/95)
 - 1. Maximum number of signs: one (1)
 - 2. Maximum size of sign: sixteen (16) square feet
 - 3. Maximum time period: ninety (90) days per year except as noted.
 - 4. Permit Fees: \$5.00 per sign

5. PERMITTED SIGNAGE

a. SALE/ LEASE

Signs advertising the sale or lease of the premises on which the sign is located shall be permitted. Such a sign shall be removed when the sale/lease is completed.

b. CONSTRUCTION IN PROGRESS

- (1) A temporary construction sign, may be erected or posted on the project site.
- (2) All of the following may be identified on the one sign: The owner, financial entity, architect, contractor or developer.
- (3) Such sign shall be removed when the project is substantially complete:

c. SEASONAL FRUIT and/or VEGETABLE STANDS

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SIGN ORDINANCE

E. Temporary, non-illuminated signs, shall be permitted and shall conform to This Ordinance. Permits for these signs shall be issued by the Selectmen as follows:
(Amended 3/14/95)

1. PERMITTED SIGNAGE

- a. Promotional signs
 - b. Garage – barn - yard sales
 - c. Church fairs - bazaars
 - d. Grand openings
 - e. Holiday signs
2. Maximum time period for display: 30 days per year, or as otherwise noted.
3. Maximum number of signs: one (1)
4. All such signs shall be removed when the advertised activity is complete.
5. Political signs, which shall be exempt from the permit fee, may be posted three (3) weeks prior to an election and shall be removed within seven (7) days after the election.

VIII. EXEMPTIONS (Amended 3/14/95)

The following shall be exempt from the terms of This Ordinance:

- A.** Signs not exceeding two (2) square feet in area and bearing only property numbers, post box numbers, names of occupants of the premises, or other non-commercial identification.
- B.** Legal notices and no trespassing signs
- C.** Directional signs to help locate facilities for disabled persons as required by the Americans with Disabilities Act of 1990. Maximum message area: four (4) square feet.
- D.** Signs in parking lots which identify aisles, handicapped spaces and reserved spaces.
- E.** Municipal or church buildings: one (1) announcement board shall be permitted. Maximum message area: twelve (12) square feet.

IX. SPECIAL EXCEPTIONS (Amended 3/14/95)

Permits for one (1) off-premise business directional sign may be granted at the discretion

ZONING ORDINANCE

of the Selectmen if it can be demonstrated that the business, because of its location within the Town of Albany, would suffer undue hardship without such sign. Maximum Size: Four (4) square feet. Permit Fee: \$5.00 per sign.

SWIFT RIVER CONSERVATION DISTRICT

Adopted March 10, 1993
Amended March 14, 1995

**ZONING ORDINANCE
Swift River Conservation District
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ZONING ORDINANCE

SWIFT RIVER CONSERVATION DISTRICT

I. PREAMBLE

A. AUTHORITY and TITLE

This article was adopted as an amendment to the Zoning Ordinance by the legislative body on March 10, 1993 and shall be known as the Town of Albany Swift River Conservation District Ordinance and shall be referred to hereinafter as DISTRICT.

B. PURPOSE

The purpose of the DISTRICT is to protect the health, safety and general welfare of the people of the Town of Albany by providing reasonable regulations governing the development and the use of the floodplains, including riparian wetlands, within the Town of Albany.

Within this DISTRICT, new structures and other alterations of existing land uses will be regulated in order to:

- a. Protect and maintain existing and potential public water supplies, including aquifers, aquifer recharge areas and surface water sources within the Town for the health and safety of the public.
- b. Prevent pollution of surface water and groundwater caused by erosion, sedimentation, nutrient and pesticide run-off, and siting of waste disposal facilities in very poorly drained or highly permeable soils.
- c. Prevent destruction or significant alteration of the natural flow pattern of water courses, natural flood plains and riparian wetlands which provide flood protection for persons and property.
- d. Prevent unnecessary or excessive expenditures of municipal funds to provide and/or maintain additional services and utilities which might be required as a result of improper development of lands within the DISTRICT.
- e. Preserve wildlife habitat and maintain ecological balances within the riparian areas of the Town.
- f. Protect the unique and unusual aesthetic features associated with streams and riparian areas in the Town of Albany which are vital to the economic and environmental well-being of the Town.
- g. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in floodplains and riparian areas.

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SWIFT RIVER CONSERVATION DISTRICT

II. DEFINITIONS

The following definitions shall apply specifically to this RIVER CONSERVATION DISTRICT ORDINANCE and shall not be affected by the provisions of any other ordinance of the Town of Albany, New Hampshire.

1. **ACCESSORY STRUCTURE:** A structure detached from the primary building on the same lot which is customarily incidental and subordinate to the primary building or use, such as a pump house, gazebo or woodshed.
2. **BASAL AREA:** The cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees.
3. **DISTURBED AREA:** An area in which natural vegetation is removed, exposing the underlying soil.
4. **GROUND COVER:** Any herbaceous plant which normally grows to a mature height of 4 feet or less. Example: low bush blueberry or viburnum.
5. **HIGH WATER MARK:** The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate 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. Where the ordinary high water mark is not easily discernible, the ordinary high water mark may be determined by the Department of Environmental Services.
6. **HUNDRED YEAR FLOODPLAIN:** An area along a river with a one percent (1%) probability of being flooded or submerged in any given year. The 100-year floodplain is detailed in the Federal Flood Insurance Rate Map for the Town of Albany.
7. **IMPERVIOUS COVER:** A cover that cannot be penetrated by moisture.
8. **LOT OF RECORD:** A parcel of land, the plat or description of which has been recorded at the Registry of Deeds for the county in which it is located.
9. **NATURAL WOODLAND VEGETATION:** Various species of trees, saplings, shrubs and ground covers in any combination and at any stage of growth.
10. **PERSON:** A corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state or any agency or instrumentality thereof.

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- 11. PRIMARY STRUCTURE:** A structure other than one which is used for purposes wholly incidental, or accessory, to the use of another structure on the same premises.

SWIFT RIVER CONSERVATION DISTRICT

- 12. REMOVAL OR REMOVED:** Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed or otherwise destructively altered.
- 13. RIPARIAN:** The land along a river or stream bank.
- 14. RIVER FRONTAGE:** The average of the distances measured along the high water mark of the river and along a straight line drawn between the points at which the high water mark intersects the side lines of the property.
- 15. SAPLING:** Any woody plant, which normally grows to a mature height greater than 20 feet but has a diameter less than 6 inches at a point 4-1/2 feet above the ground.
- 16. SHRUB:** Any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.
- 17. STRUCTURE:** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.
- 18. TREE:** Any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.

III. RIVER CONSERVATION DISTRICT

This DISTRICT shall include all land within 250 feet of the high water mark of the Swift River within the Town of Albany. Where the 100-year floodplain has been delineated on the Federal Flood Insurance Map, that boundary of the DISTRICT shall be the boundary of the 100-year floodplain, or 250 feet from the high water mark of the River, whichever distance is greater.

IV. USE REGULATIONS

The DISTRICT is an overlay, meaning that the regulations contained in this Article are in addition to those regulations applicable to the underlying zoning districts. Wherever the provision of the DISTRICT is in conflict with those of the underlying zoning districts, the more restrictive regulations shall apply.

A. USES PERMITTED

The following uses are permitted in the RIVER CONSERVATION DISTRICT, subject to the restrictions detailed under "River Buffer Zone" (section E of this Article):

ZONING ORDINANCE

1. Residential uses, including single-family dwellings and accessory structures and uses customarily associated with residential uses;
2. Group service uses by a government unit or non-profit organizations including schools, churches, community centers and recreation facilities;
3. Agricultural uses including farming, dairying, pasturage, horticulture, animal and poultry husbandry;
4. Forestry uses according to recognized soil conservation practices and consistent with the purpose and intent of this Article;
5. Parks, conservation areas, nature trails and recreation uses consistent with the purpose of this Article;
6. Sealed water supplies;
7. Forest Service Management activities on the White Mountain National Forest conducted in accordance with the Forest Land and Resource Management Plan (36 CFR 219. 1 O [e]).

B. SPECIAL EXCEPTIONS

Special Exceptions shall be granted ONLY when the following conditions are met:

1. The applicant for a special exception shall submit a plan which indicates the mitigation measures to be taken to prevent the introduction of silt, waste products or other potential pollutants to the river.
2. The granting of the special exception would neither violate the purpose and the intent of this Article nor would it recreate a public health or safety hazard.

C. CONDITIONS FOR SPECIAL EXCEPTIONS

The following uses may be granted by special exception provided that the conditions in B, above, are met:

1. Launching areas for non-motorized boats;
2. Campgrounds;
3. Construction of farm, forest or recreational service roads;
4. Signs accessory to permitted uses.

V. RIVERBANK BUFFER ZONE

The land within 150 feet of the high water mark of the river and its' year-round tributaries within the DISTRICT shall be designated as the Riverbank Buffer Zone. The purpose of this buffer zone shall be to protect the quality of public waters by minimizing erosion,

ZONING ORDINANCE

preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining a healthy tree canopy and understory, preserving fish, bird and wildlife habitats, and respecting the overall natural condition of the riverbank.

- A. Within the Riverbank Buffer Zone, bulk storage of chemicals shall be limited to heating fuel storage tanks normally accessory to residential use of the land.
- B. Excavations in the Riverbank Buffer Zone shall be limited to those normally accessory to uses permitted in the DISTRICT.
- C. Within the Riverbank Buffer Zone, fertilizer application shall be limited to the use of lime or wood ash on residential properties.
- D. Within the Riverbank Buffer Zone, dumping or disposal of snow and ice shall be limited to snow and ice collected from roadways or parking areas located within the Riverbank Buffer Zone.
- E. A cover of natural vegetation shall be maintained in the Riverbank Buffer Zone.
- F. Where natural woodland vegetation exists, the following shall apply:
 - 1. No more than fifty percent (50%) of the basal area of trees, and no more than fifty percent (50%) of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the fifty percent (50%) level.
 - 2. Trees, saplings, shrubs and ground covers which are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations under the Riverbank Buffer Zone section of This Ordinance..
 - 3. Dead, diseased, unsafe, noxious or fallen trees, saplings, shrubs or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under the Riverbank Buffer Zone section of This Ordinance.
 - 4. Stumps and their root systems which are located within fifty feet (50') of the high water mark of the river should not be removed. They should be left intact in the ground.
 - 5. Dead and living trees that provide dens and nesting places for wildlife should not be removed. They should be preserved.
 - 6. Plantings of natural vegetation that are beneficial to wildlife are encouraged.

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SWIFT RIVER CONSERVATION DISTRICT

VI. SUBSURFACE WASTE DISPOSAL SYSTEMS

- A.** All new and replacement subsurface waste disposal systems in the DISTRICT must be designed and installed in accordance with the Department of Environmental Services, Division of Water Supply and Pollution Control publication Subdivision and Individual Disposal System Design Rules.
- B.** All new and replacement septic tanks and leach fields shall be set back from the high watermark of the river and its year-round tributaries within the DISTRICT at least the following distances based on information contained in an Order 1 Soil Map or a High Intensity Soil (HIS) map prepared by a certified soil scientist:
 - 1. One hundred twenty-five feet (125') where the soils map indicates the presence of porous sand and gravel materials with a permeability of greater than 6 inches, (+6) per hour;
 - 2. One hundred feet (100') where the soils map indicates the presence of soils with restrictive layers within eighteen inches (18") of the natural soil surface; or
 - 3. Seventy-five feet (75') where the soils map indicates the presence of all other types of soils.

VII. EROSION AND SEDIMENTATION CONTROL

- A.** All construction and/or development activities in the DISTRICT shall incorporate design standards for erosion and sedimentation control which, at a minimum, reflect the recommendations of the publication Storm Water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire prepared by the Rockingham County Conservation District, prepared for the Department of Environmental Services in cooperation with the USDA Soils Conservation Service, August 1992.
- B.** Creating a contiguous disturbed area in excess of 100,000 square feet requires a permit from the Department of Environmental Services pursuant to RSA 485-A:17, I.

VIII. MINIMUM LOT REQUIREMENTS

- A.** The minimum lot size for new lots in the DISTRICT located in areas dependent on on-site sewage disposal systems shall be determined by soil type using the model developed by the ad hoc Committee for Soil Based Lot Size for the Department of Environmental Services, or 2 acres, whichever is greater.
- B.** New lots requiring on-site water and sewage disposal systems within the DISTRICT shall have a minimum river frontage of 150 feet (150').

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SWIFT RIVER CONSERVATION DISTRICT

IX. SETBACKS

- A. No primary structure shall be located within one hundred fifty feet (150') of the high water mark of the river or its year-round tributaries within the DISTRICT.
- B. Accessory structures, excluding automobile garages, may be located within the 150 foot (150') setback, but no closer than 50 feet (50') to the high water mark of the river or its' year-round tributaries within the DISTRICT, as a special exception, provided:
 - 1. The location and construction of the structure is consistent with the intent of the ordinance to maintain a vegetated buffer,
 - 2. The structure is required as a shelter either for humans, equipment, or firewood; or
 - 3. The structure is accessory to a permitted use within the DISTRICT.

X. CLUSTER OR OPEN SPACE DEVELOPMENT

The grouping of residential dwellings on a parcel within the DISTRICT is permitted and encouraged to the extent that valuable river resources and open spaces are retained. Such developments should meet the following provisions:

- A. The density of the tract as a whole shall be equal to that density achieved by conventional rules. The remaining area in the tract, not built upon, shall be reserved as a common area.
- B. A minimum of sixty percent (60%) of the total parcel shall remain as permanent open space which shall be in a conservation easement in perpetuity.
- C. Parcel coverage by impervious cover including building footprint, impervious roadway or other impervious cover shall not exceed twenty percent (20%) of the parcel.

XI. NON-CONFORMING LOTS OF RECORD, STRUCTURES AND USES

A. NON-CONFORMING LOTS OF RECORD

Existing, individual, undeveloped, non-conforming lots of record within the DISTRICT may be used for the purpose of constructing a single family residential dwelling unit and related facilities, including, but non limited to decks, walkways and other water dependent structures in accordance with the following:

- 1. All leach fields shall meet the setback requirements of Section F.2. In the event that the leach field cannot physically be located on the lot in conformity with this ordinance, the owner shall be required to acquire additional land, or a permanent

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easement to such land, for this purpose, in so far as practicable. Should additional undeveloped land not be available, allowable sewage loading shall be reduced by decreasing the number of bedrooms, toilet facilities and other wastewater generating facilities to bring the proposed development as close to compliance as feasible.

2. Holding tanks are permitted as an option.

B. NON-CONFORMING STRUCTURES

Existing non-conforming structures, which do not comply with the dimensional requirements of This Ordinance may remain in use. No change in such a structure is permitted which would result in increasing the non-conformity with these requirements.

C. NON-CONFORMING USES

Existing uses which are non-conforming under This Ordinance may continue until the use ceases to be active, or, is discontinued for a period of one year. An existing non-conforming use may not be changed to another non-conforming use. Existing non-conforming uses shall be required to meet the natural buffer, drainage and related water quality protection requirements of This Ordinance to the maximum extent feasible.

XII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

- A.** Where the requirements of this ordinance are different from those promulgated by the State of New Hampshire, the more restrictive requirement shall govern.
- B.** Enforcement of the requirements of This Ordinance will be in accordance with the Administration and Enforcement section of the Albany Zoning Ordinance.

Town of Albany, New Hampshire

ZONING ORDINANCE

**WIRELESS TELECOMMUNICATIONS
FACILITIES**

Amended: March 11, 2003

Adopted: March 13, 2001

**ZONING ORDINANCE
WIRELESS TELECOMMUNICATIONS FACILITIES
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ZONING ORDINANCE

I. PREAMBLE

A. PURPOSE AND INTENT

The purpose of This Ordinance is to preserve the authority of the Town of Albany to regulate and provide opportunity for the siting of wireless telecommunications facilities while preserving the rural, scenic and environmental qualities of the Town as stated in the Town's Master Plan. The intent and goal of This Ordinance is to permit wireless telecommunications in the Town of Albany and to:

1. Avoid and mitigate adverse impacts such facilities may create, including, but not limited to, the following impacts: visual, environmental, historical, flight corridors, health, safety and prosperity.
2. Reduce adverse impacts on environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
3. Promote collocation when such collocation minimizes the adverse impacts listed in a and b above.
4. Permit the siting of facilities on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.
5. Require use of existing structures whenever possible.
6. Require that facilities be constructed and maintained safely.
7. Encourage wireless telecommunication facilities to provide a blanket of coverage for the Town of Albany, not just nearby corridors, incorporating the goals listed above.
8. Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense, to protect the citizens from imminent harm and danger.

II. DEFINITIONS

- A. ANTENNA** - Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications (PCS), pager network, or any other communications through the sending and/or receiving of electro-magnetic waves of any bandwidth.

**ZONING ORDINANCE
WIRELESS TELECOMMUNICATIONS FACILITIES**

- B. COLLOCATION** - Shall mean locating wireless facilities of more than one company on one location.
- C. EQUIPMENT SHELTER** - An enclosed structure, cabinet, shed, vault, or box near the base of the wireless telecommunication facility within which are housed equipment for those facilities such as battery and electrical equipment.
- D. EXCEPTION** – An exception is a use that would not be appropriate without any restrictions throughout a particular zone. (See Special Exception).
- E. FALL ZONE** - The area on the ground within a prescribed radius from the base of a wireless telecommunications facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice), collapsing material or the collapse of the tower itself.
- F. HEIGHT** - Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- G. INNOVATIVE SITING TECHNIQUES** - Antennas which that are mounted on the roof, or side of a structure, including but not limited to man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of the antennas.
- H. RFR** - Shall mean Radio Frequency Radiation.
- I. SCENIC ROAD** - Shall mean a road that has scenic, natural, cultural or historic qualities.
- J. SCENIC VISTA** - Shall mean any open area that is visible from public roads, recreational areas, or abutting properties.
- K. SPECIAL EXCEPTION** – The ZBA, in appropriate cases and subject to appropriate conditions and safeguards, may make special exceptions to the terms of This Ordinance in accordance with RSA 674:33, III provided that specific provisions for such exceptions are made in This Ordinance.
- L. TOWER** - shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers or monopole towers.
 - 1. **Lattice Tower** – shall mean a tower that tapers from a large base to a small top and uses a crisscross type of bracing, called lattice, by the tower industry.

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WIRELESS TELECOMMUNICATIONS FACILITIES

- 2. **Monopole** – shall mean a tower that is much smaller in cross section at the base than the lattice type and appears on the horizon like a bare telephone pole. The antennas as usually flush mounted.
- 3. **Guyed Tower** – shall mean a tall thin tower that depends on cables to hold it upright.
- M. **VARIANCE** – A waiver or relaxation of particular requirements when strict enforcement would cause undue hardship because of circumstances unique to the property.
- N. **WIRELESS TELECOMMUNICATIONS FACILITIES** - Shall mean any facility which provides commercial mobile wireless services, unlicensed wireless services and common carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996.

III. APPLICABILITY.

The terms of This Ordinance and the Site Plan Review Regulations shall apply to all wireless telecommunications facilities proposed to be located on property within the Town of Albany, 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.

- A. All Applications are subject to a Site Plan Review by the Albany Planning Board in accordance with the terms of this Ordinance and Albany Site Plan Review Regulations and are subject to approval by the Albany Board of Selectmen.
- B. All requests for a variance must go before the Zoning Board of Adjustment.

IV. DISTRICT REGULATIONS.

- A. **Location:** Wireless telecommunications facilities shall be permitted in the commercial and light industrial areas only. Applicants seeking approval for a wireless telecommunications facility shall first evaluate existing structures for the siting of the facility. Only after finding that there are no suitable existing structures shall a provider propose a new ground mounted facility.

No Wireless Telecommunications Tower Facility shall be located any closer than two miles, measured horizontally, of any other wireless communication facility tower.

- B. **Existing Structures Policy:** Wireless telecommunications facilities shall be located on existing structures including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.

ZONING ORDINANCE

WIRELESS TELECOMMUNICATIONS FACILITIES

C. Existing Structures Burden of Proof: The applicant shall submit to the Planning Board a list of all existing structures within the Town of Albany as well as within a 20-mile radius of Albany on which it may be suitable to location its wireless telecommunications facility. (Amended 3/11/03)

1. The Planning Board shall make inquiries of the property owners of these existing structures to ascertain if there is a possibility of collocation of the proposed facility on the existing structure.
2. If the applicant claims that the structure is not capable of physically supporting a wireless telecommunications facility, the claim must be certified by an independently licensed professional structural engineer hired by the Town of Albany and paid for by the applicant.
3. 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.

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

E. Locations for Ground Mounted Facilities: Ground mounted wireless telecommunications facilities shall not be permitted:

1. Within residential zones
2. Within the building setbacks designated in the Town's Zoning Ordinance for town or state roads for the zoning district in which the facility is located plus the Fall Zone area plus one hundred (100) feet
3. Within one hundred (100) feet of town or state roads plus the "fall zone" (125% of the height of the facility, including any antennas or other appurtenances).
4. Within 250 feet of a scenic road or sited in a manner which is readily visible from a scenic road or vista.

V. USE REGULATIONS

All wireless telecommunications facilities shall, in all cases, require a building permit and a Wireless Telecommunications Facility Permit issued by the Board of Selectmen and may be permitted as follows:

A. Existing Tower Structures: Subject to the issuance of a building permit that includes review by the Planning Board, which review shall be limited to the determination that

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the height of the mount is not increased, a security barrier exists, the area of security barrier is not increased and the siting is consistent with the standards set forth in the Dimensional Requirements of This Ordinance. Carriers may locate a wireless telecommunications facility on any guyed tower, lattice tower, mast or monopole in existence prior to the adoption of This Ordinance, or on any wireless telecommunications facility previously approved under the provisions of This Ordinance so long as the co-location complies with the approved site plan. This provision applies only so long as the height of the mount is not increased, a security barrier already exists and the area of the security barrier is not increased. Otherwise, a full Site Plan Review is required.

- B. Reconstruction of Existing Tower Structures:** An existing guyed tower, lattice tower, mast or monopole in existence prior to the adoption of This Ordinance may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize collocation so long as the standards of this Ordinance are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing to exceed the tree canopy by more than twenty-five (25) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site Plan Review is required.
- C. Existing Structures:** Subject to the provisions of This Ordinance and Site Plan Review and except as otherwise prohibited under the Dimensional Requirements section of This Ordinance, a carrier may locate a wireless telecommunications facility on an existing structure, building, utility tower or pole or water tower.
- D. Ground Mounted Facility:** A wireless telecommunications facility involving construction of a ground mount shall require Site Plan Review and be subject to the provisions of This Ordinance.

VI. DIMENSIONAL REQUIREMENTS

All wireless telecommunications facilities shall comply with the following requirements. These requirements shall supersede any and all other applicable standards found elsewhere in the Albany Zoning Ordinances and Regulations that are less strict.

- A. Maximum Height:** In no case shall a wireless telecommunications facility exceed one hundred (100) feet. The Planning Board will consider a 15-foot extension provided that the applicant can demonstrate the technical necessity of such extension and provided that the Performance and Design Standards of This Ordinance are met. The applicant will pay for the town to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity. Technical considerations include, but are not limited to, the availability of alternative sites, collocation and improved reception and coverage within the Town. The Planning Board shall not grant the extension for any siting within scenic vistas designated by the Planning Board.
- B. Height, Existing Structures and Utility Poles:** Carriers that locate new wireless telecommunications facilities on water towers, electric transmission and distribution

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towers, utility poles and similar existing utility structures, guyed towers, lattice towers, and monopoles may be permitted with no increase in height.

- C. Height, Other Existing Structures:** The height of a wireless telecommunications facility shall not increase the height of a structure unless the facility is completely camouflaged. For example, a facility completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a wireless telecommunications facility on a building that is legally non-conforming with respect to height, provided that the provisions of This Ordinance are met.
- D. Setbacks:** All wireless telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
- E. Fall Zone for Ground Mounted Towers:** In order to ensure public safety, the minimum distance from the base of any ground-mount of wireless telecommunications facilities to any property line, public road, habitable dwelling, business or institution, or public recreational area shall be, at a minimum, equal to 125% of the height as defined in This Ordinance.

VII. PERFORMANCE AND DESIGN STANDARDS

In order to preserve the character of the existing developed and natural environments within the Town of Albany, and to minimize any detrimental visual impact that wireless telecommunications facilities might have, all wireless telecommunications facilities will adhere to the following requirements:

- A.** Towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts.
 - 1. Wireless telecommunications facilities shall not be located within open areas that are visible from public roads, recreational areas, or abutting properties.
 - 2. Wireless telecommunications facilities shall not be visible above the ridge line from public roads, recreational areas, designated scenic vistas or abutting property.
- B.** The design of the towers, ground mounts, antennas, buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural background and surrounding environment.
- C.** If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. To the extent that any component of a wireless telecommunications facility extends above

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the height of the vegetation immediately surrounding it, it shall be of a color which blends with the background or surroundings, including guy wires.

Wireless telecommunications facilities which are side mounted shall blend with the existing buildings architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

- D.** The mounts of the wireless telecommunications facility shall be lighted only if required by the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Board of Selectmen may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candles measurements at the property line shall be 0.0 initial foot candles.

- E.** Towers or ground-mounted facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the facilities from adjacent properties and public roads.

The carrier shall provide and maintain a vegetative buffer at least as tall as the fence, 360 degrees surrounding the facility including the security fence, a minimum of twenty-five (25) feet deep starting at the fence. The barrier shall be in keeping with the surrounding vegetation and shall effectively screen the facility 365 days of the year.

Existing mature tree growth, natural vegetation and natural landforms on the site shall be preserved to the maximum extent possible.

The 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, present a hazard to persons or property, or as approved during Site Plan Review.

- F.** In the interest of public safety, towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind except as needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements the Albany Sign Ordinance.
- G.** Towers shall be enclosed by security fencing located inside the landscaped buffer. The fencing shall be at least 8 feet in height and equipped with appropriate anti-climbing devices.
- H.** Equipment shelters shall be located in underground vaults; or the shelters shall be designed so that the shelters are architecturally consistent, with respect to materials

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and appearance, to the buildings in the area of the wireless telecommunications facility; or

1. 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
 2. 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 a part of the original structure.
 3. All utilities to the site from existing utilities shall be underground.
- I. Security Barrier: A security barrier is required for all wireless telecommunications facilities.
- J. Access for motorized vehicles to sites where wireless telecommunications facilities are located shall conform to the State or Town requirements relating to driveways. Access from a State road requires a DOT Driveway Permit; access from a Town road requires a Town Driveway Permit.

Existing entrances and driveways to serve a wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.

Install a curve in the driveway, close to the state or town road, so that the wireless telecommunications facility is not visible from the corridor.

New driveways to serve a wireless telecommunications facility shall not exceed twelve feet in width. A 1-1/2" crushed gravel surface is required.

All driveways, either new or existing, shall be gated just after the curve.

- K. 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 unless the Planning Board finds a larger antenna array does not materially impair the visual impact of the siting.
- L. All ground mounts shall be of a monopole-type mount. Lattice towers, guyed towers and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under District Regulations.
- M. No hazardous waste shall be discharged on the site of any wireless telecommunications facility. If any hazardous materials are to be used on site, there shall be

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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 site.

- N.** Wireless telecommunications facilities shall not generate noise in excess of that permitted under the Site Plan Review Regulations.
- O.** Radio Frequency Radiation (RFR) Standards: All equipment proposed for a wireless telecommunications facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published August 1, 1996, and all subsequent amendments.
- P.** To ensure the safety and structural integrity of wireless telecommunications facilities and antennas, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards of wireless telecommunications facilities that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer licensed in New Hampshire and thereafter shall provide certifying reports to the town every five (5) years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. The Town of Albany reserves the right to have the Albany Fire Chief, or, at the expense of the owner of the facility, contract with a structural engineer, licensed in New Hampshire, of their choice, inspect the facility yearly. If, upon inspection, the Town concludes that a facility fails to comply with such codes and standards and constitutes as a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have thirty (30) days to bring such facility into compliance with such standards. If the owner fails to bring such facility into compliance within thirty (30) days such action shall constitute grounds for the removal of the facility in accordance with the Monitoring and Maintenance section of This Ordinance at the owners expense through execution of the posted security required by Performance and Design Standards section of This Ordinance.
- Q.** All wireless telecommunications facilities must meet or exceed current standards and regulations of the Federal Aviation Authority (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate facilities and antennas. If such standards and regulations are changed, then the owners of the facilities governed by this Ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with such revised standards and regulations shall constitute grounds for removal of the facilities in accordance with the Monitoring and Maintenance section of This Ordinance and at the owner's expense through the execution of the posted security required by Performance and Design Standards section of This Ordinance.
- R.** A full written disclosure of all materials in the sealed transmitters located at the base

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of the tower must be submitted. The applicant must pay for any training required in handling any potential problem created by any hazardous materials in the transmitter.

VIII. MONITORING AND MAINTENANCE

- A.** The owner of the facility shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and the security barrier, and maintenance of the buffer areas and landscaping.
- B.** As part of the issuance of the Site Plan approval or building permit, the owner shall agree that the Town of Albany may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town of Albany 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.
- C.** Recognizing the hazardous situation presented by abandoned and unmonitored wireless telecommunications facilities, the Selectmen shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Monitoring and Maintenance section of This Ordinance. The amount of the security shall be based upon the removal cost plus fifteen (15) per cent, provided by the applicant. Every five (5) years the cost and removal shall be certified by an independent professional civil engineer licensed in New Hampshire. 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. It shall be a condition of any approval granted under This Ordinance that the name and address of the facility owner shall be accurately reported to the Town at all times during the life of the facility. All transfers of ownership shall be reported in writing to the Town before such transfer occurs.

IX. ABANDONMENT OR DISCONTINUATION OF USE

- A.** Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- B.** Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations.
- C.** Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the wireless telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. This shall include, but not be limited to:

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1. Removal of the antennas, mount, equipment shelters and security barriers from the subject property.
 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 3. Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- D.** If the owner of the facility does not remove the facility upon the Board of Selectmen's order, the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action. The carrier shall be fined one hundred (100) dollars a day starting on the 91st day after declaration until the facility is removed.

X. APPLICATION PROCEDURE

- A.** An application to erect wireless telecommunications facilities in Albany shall first be made to the Board of Selectmen of the Town of Albany who will advise the applicant whether or not it is subject to Site Plan Review. If a Site Plan Review is required, the applicant will be advised to submit a Site Plan Review application to the Albany Planning Board. If a Special Exception or a Variance is required, the Selectmen will advise the applicant to submit a ZBA hearing. Application to the Zoning Board of Adjustment at the same time they submit the application for a Site Plan Review. In the interest of both parties, when possible, both Boards will hear the two applications on the same evening.

In accordance with New Hampshire State Statute Chapter 12-K:(originally RSA 240:12 -J) 3, IV (a), at the time of application to construct a Wireless Telecommunications Facility, the applicant shall provide the Albany Board of Selectmen and the Office of State Planning, a copy of their license from the Federal Communications Commission (FCC) proving that they are eligible to deploy their systems in this geographical area and that this deployment falls under the jurisdiction of the Federal Telecommunications Act of 1996; or a copy of their contract with a person with such a license, and a copy of that license.

- B.** The application shall contain a scaled plan including a scaled elevation view, surrounding topography, surrounding tree cover and natural vegetation, radio frequency coverage, setbacks, fall zone, design of the facility and construction materials, design characteristics that will avoid visual obtrusiveness, landscaping, fencing, parking access roads, adjacent uses and any other information the Planning Board deems necessary to access compliance with This Ordinance.

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In addition, the applicant shall provide the following information:

1. The applicant shall submit written proof that the proposed use/facility complies with FCC regulations on radio frequency (RF) exposure guidelines.
 2. The applicant shall submit written proof of legal authority to use the proposed site.
 3. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirement of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Planning Board prior to the beginning of the federal thirty (30) day comment period and the Town process, shall become part of the application requirements.
 4. Each applicant for a facility shall provide to the Planning Board an inventory, including a map, of its existing facilities that are within the jurisdiction of the Town of Albany and those within two (2) miles of the border thereof, including specific information about the location, height, and design of each facility as well as economic and technological feasibility for collocation on the inventoried facilities. The Planning Board may share such information with other applicants applying for approvals of conditional use permits under This Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
 5. Each applicant for a facility shall provide a list of any additional towers which may be required in Albany for completion of their planned wireless telecommunications coverage.
 6. The applicant shall submit written proof that other locations within the jurisdiction of the Town of Albany and those within two (2) miles of the border thereof have been evaluated and provide sufficient evidence as to why no other sites are suitable for the erection of this wireless telecommunications facility.
- C.** If the applicant is proposing to build a tower or other ground mounted structure, the applicant shall submit written evidence demonstrating why no existing structure can accommodate the applicant's proposed facility. This evidence must be substantial and can address such issues as location within the required geographic area, required height, electromagnetic interference, unreasonable financial requirements, etc.
- D.** The applicant proposing to build a tower or ground mounted structure shall submit an

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agreement with the Town that allows for collocation of additional facilities upon the new structure by a future applicant to the extent such collocation can exist while minimizing adverse impacts noted in the Purpose and Intent of This Ordinance. Such statements shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is grounds for denial.

- E. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitation and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant.
- F. The applicant shall submit a completed Site Plan Review Checklist for a Wireless Telecommunications Facility. Any items on the checklist which the applicant feels do not apply should be addressed, in writing, as part of the application.

XI. VARIANCES

- A. Where the Zoning Board of Adjustment finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the terms of District Regulations, or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve Variances to these regulations. The Zoning Board of Adjustment shall not approve any Variances unless a majority of those present and voting shall find that all of the following apply:
 - 1. The granting of the Variance will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
 - 2. The Variance will not, in any manner, be inconsistent with the provisions of the Albany Zoning Ordinance or the Albany Master Plan.
 - 3. Such Variances will substantially secure the objectives, standards, and requirements of these regulations.
 - 4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a Variance.
- B. In approving a Variance, the Zoning Board of Adjustment may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- C. A petition for a Variance shall be submitted in writing by the applicant with the application for Zoning Board of Adjustment review. The petition shall state fully the grounds for the Variance and all of the facts relied upon by the applicant. Failure to

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submit a petition in writing shall require automatic denial.

XII. ENFORCEMENT

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the Albany Zoning Ordinance.

XIII. SAVING CLAUSE

If any provision of This Ordinance is found to be unenforceable or unlawful by a court of competent jurisdiction, This Ordinance shall be considered savable and such a finding shall not be construed to invalidate the remainder of This Ordinance.

Commercial Dog Kennels

Adopted: March 14, 2006

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Commercial Dog Kennels

I. PREAMBLE

A. AUTHORITY AND TITLE

1. This ordinance is adopted by the Albany Planning Board and legislative assembly of the town of Albany under the authority of New Hampshire Revised Statutes Annotated (RSA) 675:3.
2. This ordinance shall be considered enacted following a majority vote of the board and subsequent majority vote of the town of Albany legislative assembly, provided that the ordinance is read at two (2) successive public hearings preceding the town meeting at which the vote is to be taken. The ordinance shall be filed with the Town Administrative Assistant.
3. Nothing in this amendment shall be construed to have authority prior to its adoption.

B. PURPOSE AND INTENT

The purpose of this dog ordinance is to permit commercial dog kennels in the town of Albany and to:

1. Promote and protect the health, safety and general welfare of the Town.
2. Provide for the reasonable regulation and control of commercial dog kennels in the Town.
3. Avoid and mitigate adverse impacts of kennels may create, including, but not limited to, visual, auditory, olfactory, and environmental impacts.
4. To minimize the Town of Albany's liability for damage done by dogs owned by private citizens.
5. To prevent dogs from being a nuisance and/or menace.
6. To ensure humane and responsible treatment of dogs.

II. DEFINITIONS

- A.** Commercial Dog Kennels: as defined in RSA 466:5, III
- B.** Breeder: as defined in RSA 466:6-a, V
- C.** Nuisance: as defined in RSA 466:31, II
- D.** Menace: as defined in RSA 466:31, II
- E.** For the purpose of this policy, "board" shall be defined as the Albany Planning Board.
- F.** For the purpose of this policy, "dog kennel" shall be defined as a structure the primary purpose of which is the commercial raising, training, or care of dogs.

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- G.** For the purpose of this policy, “applicant” shall be defined as the party or parties applying for permission to build and operate a dog kennel as defined herein.
- H.** For the purpose of this policy, “setback” shall be defined as distance from adjacent boundary lines in which a primary or other structure cannot be erected.

III. APPLICATION PROCESS

- A. Application:** Shall be made to the board and requires Site Plan Review. Approval in writing that the design of the proposed facility will meet all fire and safety standards is required from the Albany Fire Chief. Upon approval the applicant may apply to the Board of Selectmen for a building permit. Upon a satisfactory inspection of the final project by the Selectmen and the Fire Chief, a Certificate of Occupancy will be issued. No dogs will be allowed in the kennel until a Certificate of Occupancy has been issued.
- B.** The application shall contain a scaled plan including a scaled elevation view, surrounding topography, surrounding tree cover and natural vegetation, setbacks, fall zone, design of the facility and construction materials, design characteristics that will avoid visual obtrusiveness, landscaping, fencing, parking access roads, adjacent uses and any other information that Planning Board deems necessary to access compliance with this Ordinance.
- C.** The applicant shall submit the engineer information detailing the size and coverage required for the facility location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitation and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant.
- D.** The applicant shall submit a completed Site Plan Review Checklist for a Dog Kennel. Any items on the checklist which the applicant feels do not apply should be addressed, in writing, as part of the application.

IV. DISTRICTION REGULATIONS

- A. Zone:** Allowed in Commercial-Residential zone only.

V. DIMENSIONAL REQUIREMENTS

All dog kennels shall comply with the following requirements. These requirements shall supersede any and all other applicable standards found elsewhere in the Albany Zoning Ordinance and Regulations there are less strict.

- A. Parcel size:** A kennel of up to 10 dogs over the age of 4 months requires a minimum of 5 acres. A kennel of 11 or more dogs over the age of 4 months requires a minimum of 10 acres.
- B. Setbacks:** Shall be 100 feet from all property lines.

VI. PERFORMANCE AND DESIGN STANDARDS

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In order to preserve the character of the existing developed and natural environments within the town of Albany, and to minimize any detrimental visual, auditory, olfactory and environmental impact that dog kennels might have, all dog kennels shall adhere to following requirements:

- A. Septic:** A state-approved Septic system or an approved addition to a pre-existing septic system is required.
- B. Drainage:** A licensed engineer, to be paid for by the applicant, and selected by the Planning Board, shall be required to address drainage issues.
- C. Design:**
 - 1. The building shall be specially designed as soundproof as possible to prevent disturbance to neighboring properties.
 - a. This will prevent nuisance barking as defined in RSA 466:31(b)
 - b. The kennel shall not generate noise in excess of that permitted under Site Plan Review Regulations.
 - c. A vegetative buffer or landscaping shall be erected that effectively screens the view and reduce noise effects from kennel to abutting properties and public roads. Town permission is needed to cut or remove any of the vegetative buffer.
 - 2. Outside runs should be designed with high fences to prevent winter climb-out by the dogs on accumulated snow.
 - a. A secondary chain-link fence of at least 10 feet shall surround the kennel building entrance to prevent the escape of dogs while being taken to (or from) the kennel building.
 - b. At the discretion of the board, construction of some type of additional barrier by the applicant may be required to prevent dogs from seeing situations that might cause periods of excess barking.
 - c. When the dogs are outside in their runs, they shall be provided with access to shelter to provide them from the sun, rain, and snow. The runs shall be separated by barriers of at least 6 feet in height, topped by a chain-link fence.
 - 3. Commercial dog kennel facilities shall be structurally sound and maintained in good repair. Indoor housing facilities should be adequately ventilated and have ample natural or artificial light and heat.
 - 4. The temperature within the kennel building shall not be allowed to rise or fall above or below accepted standards for dog care.
 - 5. If dogs are for any reason confined by chains, such chains shall be so attached that they cannot become entangled with the chains of other dogs or other objects. Chains will be of a size commonly used for the size of the dogs involved, and shall be attached to the dog by means of a well-fitted collar. Such chains shall be at least three times the length of the dog as measured from the tip of its nose to the base of its tail.
 - 6. Enclosure shall be of sufficient size to allow each dog to turn around fully and stand, sit, and lie in a comfortable, normal position. The floors

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of the enclosure shall be constructed so as to prevent injury to the dog's legs and feet.

7. Disposal facilities shall be provided by the applicant to minimize vermin, infestation, odors, and disease hazards.
8. Adequate storage and refrigeration shall be provided to protect food supplies against contamination, deterioration, and vermin.
9. There shall be sufficient room in the driveway/parking area to turn a tractor-trailer around with parked cars in place, without having to back into the unloading area from the highway or road serving the parcel.
10. Disposal of all dead dogs by the applicant shall be off-premise.

VII. MONITORING AND MAINTENANCE

- A. As part of issuance of site plan approval or building permit, the applicant shall agree to a review by the Code Enforcement Officer on an annual basis.
- B. Plans for dog training such as obedience, scent, or attack training are to be approved by the board.

VIII. ENFORCEMENT:

- A. The Albany Selectmen's dog ordinance shall also apply to the above Commercial Dog Kennel Regulations. All state RSAs that apply to dog kennels shall also apply.
- B. This shall be in accordance with Chapter 466 of the New Hampshire RSAs, and the Albany Zoning Ordinance
- C. Wherever the requirements of this section conflict with the requirements of any other legally adopted rules, regulations, or ordinance, the most restrictive or higher standards shall apply.

IX. SAVINGS CLAUSE:

- A. If part of this ordinance shall be invalidated, this should not be construed to invalidate the remainder of the ordinance.

Accessory Dwelling Units (ADUs)

G. Accessory Dwelling Units (ADUs)

Section 1. Definitions: As used in this article, the following term shall have the meaning indicated: Accessory Dwelling Unit. An "accessory dwelling unit" (or "ADU") is a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

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Section 2. Provisions.

An attached accessory dwelling unit shall be permitted in all zoning districts that permit single family dwellings, subject to the following:

- A. Only one (1) ADU shall be permitted for each single-family dwelling. An ADU is not allowed in two-family or multifamily dwellings or in any nonresidential buildings.
- B. The original single-family dwelling shall not be a mobile home or condominium.
- C. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single-family dwelling. The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).
- D. The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation.
- E. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single-family dwelling.
- F. The ADU shall have an independent means of ingress and egress, or shall have ingress and egress through a common space such as a shared hallway to an exterior door.
- G. The ADU shall be attached to the principal dwelling unit. In order to be considered an attached ADU there must be a common wall between the principal dwelling unit and the ADU.
- H. Detached accessory dwelling units are prohibited.
- I. Either the ADU or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property. The owner shall provide documentation demonstrating to the satisfaction of the Town that one of the units is his or her principal place of residence.
- J. The ADU shall not exceed 800 square feet in habitable floor area.
- K. An ADU shall be provided a minimum of two (2) off-street parking spaces without creation of an additional driveway or curb cut.
- L. An ADU shall make provision for adequate water supply and sewage disposal service in compliance with RSA 485-A:38 and regulations adopted by the New Hampshire Department of Environmental Services.
- M. The ADU shall be limited to a 2-bedroom maximum and 2 persons per bedroom maximum.

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- N. The ADU shall match in design and aesthetic appearance to the principal dwelling and neighborhood. The front face of the primary dwelling structure is to continue to appear as a one-family dwelling after any alterations to the structure are made to accommodate the ADU. Any additional separate entrances must be located so as to preserve the appearance of a one-family dwelling.
- O. An ADU created under this ordinance shall qualify as meeting the provisions of RSA 674:59; units for workforce housing.
- P. No new exterior entrance shall be constructed at the front of a residence for access to the ADU.
- Q. A property owner must obtain a building permit as required by the Town prior to creation of an ADU within or attached to the principal residence.
- R. All land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit.
- S. Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

Section 3. Minimum Lot Dimension Requirements: An attached ADU shall not be required to meet additional lot area requirements other than already provided for the principal dwelling unit. An ADU shall comply with all lot setback requirements. (Added 3/14/17)