



# Town of Hopkinton Planning Department

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## HOPKINTON PLANNING BOARD PUBLIC NOTICE – AGENDA NOVEMBER 14, 2023

The Hopkinton Planning Board will meet on Tuesday, November 14, 2023, at 5:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton, NH. To view or listen via computer: <https://us02web.zoom.us/j/82671381334?pwd=TmFaVGp6c1ZTSDJlNko3aVlVOUp0Zz09> or phone: (646) 558 8656 Meeting ID: 826 7138 1334.

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- I. **Call to Order/Roll Call.** (Review attendance of regular members, the seating of alternate members, and determine quorum).
  - II. **5:30 PM - Zoning Amendments/Public Hearing.** The Planning Board will hold the second of three public hearings to receive public input on proposed zoning amendments. A copy of the [full text of draft amendments](#), including related documents, may be reviewed in the Planning Office, located at Town Hall, as well as on the Town website: <https://www.hopkinton-nh.gov/planningbuilding>. Written comments should be submitted before 5 PM on Monday, 11/13/2023, to [planzone@hopkinton-nh.gov](mailto:planzone@hopkinton-nh.gov).
  - III. **Applications/Public Hearings.** Following the public hearing on proposed zoning amendments, the Planning Board will review and take action on the following applications:  
  
**GOULD HILL FARM, 656 Gould Hill Road (Tax Map 241, Lot 30), R2/R3 District:** Site Plan Review to host live music as a part of the agritourism activities at Gould Hill Farm.  
*Note: On September 12, 2023, the Planning Board accepted the application for consideration, determined that the application is not a Development of Regional Impact, and continued the application to allow time to consult the Board's attorney. The application was continued on October 17, 2023, at the Applicant's request.*
  - IV. **Conceptual Consultations.**
  - V. **Approval of Meeting Minutes and Notice of Decision of October 17, 2023, and Work Session Minutes of October 24, 2023.**
  - VI. **Other Business.**
    - a) Housing Committee Update.
    - b) Other Business.
  - VII. **Adjournment.** The next scheduled meeting/hearing is Tuesday, December 12, 2023, at 5:30 PM in the Town Hall.

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Note: If determined that the applications meet the submission requirements, a public hearing on the merits of the proposal will follow.

The Planning Board reserves the right to change the sequence of agenda items and to adjourn the meeting/public hearing at 9:30 PM. Remaining agenda items will be rescheduled for the Planning Board's next scheduled meeting/public hearing.

# DRAFT ZONING AMENDMENTS

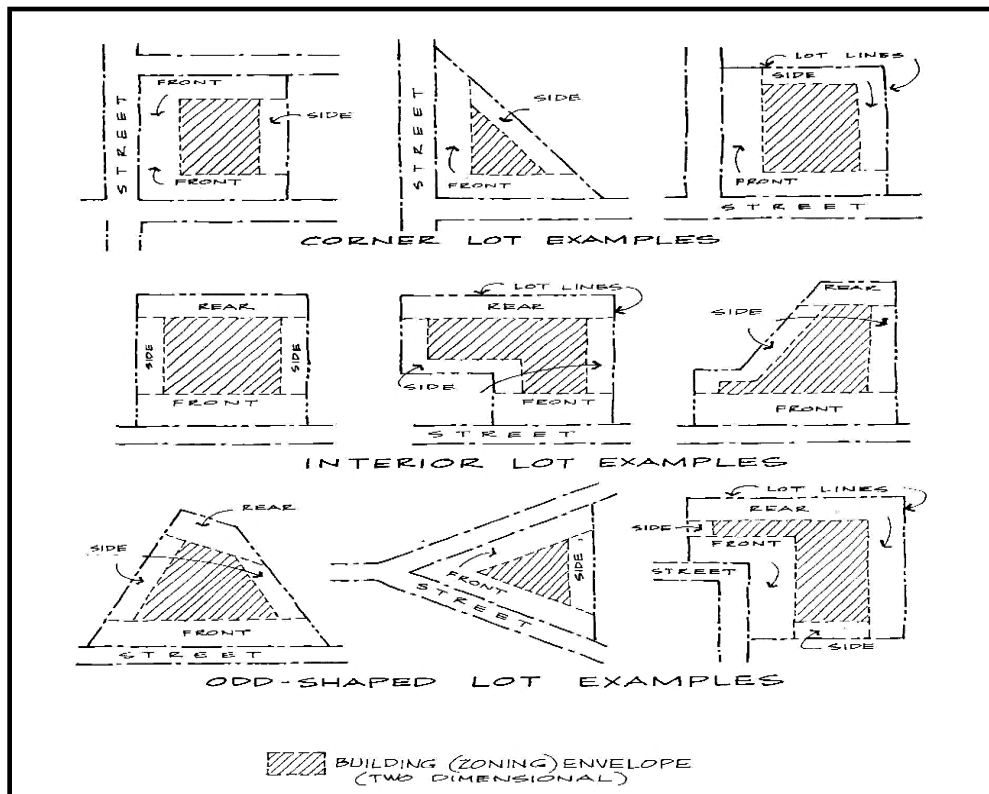
Discussion Draft, Version 2, Prepared by K. Robertson on behalf of Planning Board, September 1, 2023 (Revised 11/01/2023 to include new "Setback Graphic.")

## Amendment #1:

- (a) To amend Section II, 2.1 Definitions, the word "Lot Line, Front" by omitting the last sentence that allows the owner to designate the front lot line when on a corner lot. The amendment is intended to address a conflict in the Zoning Ordinance between the definition and the Setback Graphic.
- (b) To amend Section II, 2.1 Definitions, replacing the Setback Graphic with a newer illustration to help clarify the distinctions between front, side, and rear yard setbacks.

Lot Line, Front: The property line dividing a lot from a street (right-of-way). ~~On a corner lot, the owner shall designate one street line as the front lot line.~~ See the figure titled "Setback Graphic" for more detail.

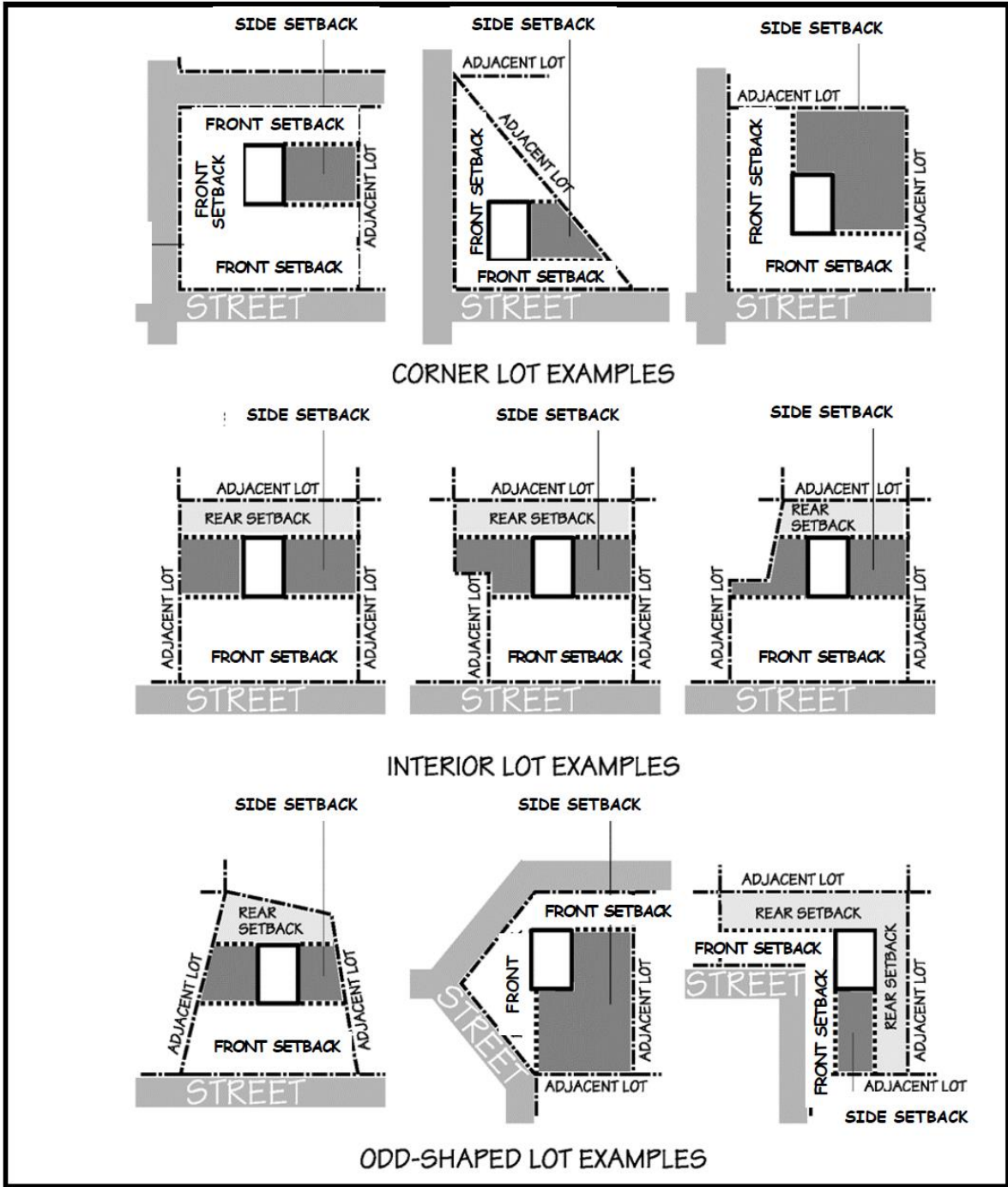
### Existing Setback Graphic



# DRAFT ZONING AMENDMENTS

Discussion Draft, Version 2, Prepared by K. Robertson on behalf of Planning Board, September 1, 2023 (Revised 11/01/2023 to include new "Setback Graphic.")

## Proposed Setback Graphic



## DRAFT ZONING AMENDMENTS

Discussion Draft, Version 2, Prepared by K. Robertson on behalf of Planning Board,  
September 1, 2023 (Revised 11/01/2023 to include new "Setback Graphic.")

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**Amendment #2:** To amend Section V, 5.2.1 Use of a Nonconforming Lot by adding the original month and year of enactment of zoning and to eliminate a requirement that an owner owning contiguous land must merge the lots for a nonconforming lot to be built upon. The amendment is being made to further comply with NH RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

5.2.1 Use of a Nonconforming Lot: A nonconforming lot may be built upon, if, at the time of the enactment of this Ordinance, **March 1964**, (or any subsequent amendment thereto, if the amendment renders the lot nonconforming) the:

- (a) Lot conformed to the then existing dimensional requirements (if any), **and the**
- ~~(b) Owner(s) of the lot owned no additional contiguous land, and a~~
- ~~(c-b) Lot has frontage of at least 50 feet.~~

~~All three conditions must be met to make the lot buildable. Should the owner(s) own contiguous land, that land shall be annexed to the nonconforming lot to the extent necessary to bring it into conformance with the present zoning standards. However, such annexation may not permit the formation of a second nonconforming lot. In such an instance, the two lots must be joined as one.~~

**Amendment #3:** To amend Section XV, Zoning Board of Adjustment, so that it is consistent with the powers and duties specifically granted to it under RSA 674:33.

See attached Section XV, Board of Adjustment.

**Amendment #4:** To amend Section XVII, Floodplain Development Ordinance, as necessary to comply with the requirements of the National Flood Insurance Program.

See attached Section XVII, Floodplain Development Ordinance.

**SECTION XV**  
**BOARD OF ADJUSTMENT**

**15.1 POWERS** The **Zoning Board of Adjustment** shall have the powers and duties specifically granted under RSA 674:33, **Powers of the Zoning Board of Adjustment**. The **Zoning Board of Adjustment** must hold hearings and make decisions on the following:

- a) Appeals of decisions of the administrative officer;
- b) Applications for special exceptions under the terms of this ordinance;
- c) Appeals for variances from the terms of this ordinance;
- d) Appeals of determinations of the Planning Board, which are based on the terms of this ordinance, under RSA 676:5, Appeals to the Board of Adjustment, and
- e) Applications for equitable waivers of dimensional requirements pursuant to the provisions of RSA 674:33-a, Equitable Waiver of Dimensional Requirement.

For the purposes of this Section: (a) The "administrative officer" means any official or board who has the responsibility for issuing permits or certificates under the ordinance or for enforcing the Ordinance, and may include the Building Inspector, Select Board, or other official or board with such responsibility; (b) A "decision of the administrative officer" includes any decision involving construction or use interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation, or application of the terms of the ordinance which is implicated in such enforcement proceedings.

The **Zoning Board of Adjustment** may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other matters ~~which may be required by particular appeals or applications~~ **particular appeals or applications may require**.

The board may require an applicant to reimburse the Board for expenses reasonably incurred by obtaining third party review and consultation during the review process, provided that the review and consultation does not substantially replicate a review and consultation obtained by the Planning Board.

When retaining third party services, the Board shall require detailed invoices with reasonable task descriptions for services rendered. Upon request of the applicant, the **Zoning Board of Adjustment** shall promptly provide a reasonably detailed accounting of expenses or corresponding escrow deductions, with copies of supporting documentation.

**15.2 MEMBERSHIP** The **Zoning Board of Adjustment** shall consist of five regular members and up to three alternate members who shall be appointed by the ~~Select Board~~ **Board of Selectmen** and be residents of the community ~~as provided by~~ **in accordance with the provisions of Chapter 673, New Hampshire Revised Statutes Annotated, as amended.** ~~under RSA 673:3 and 673:6.~~ Each person shall be appointed to a term ending three years from the date of expiration of the term of ~~his/her~~ **their** predecessor, and a person appointed to fill a vacancy shall be appointed for the unexpired term. **If no successor has been appointed at the expiration of an appointed member's term, the member shall remain until a successor has been appointed.**

Alternate members may fulfill the duties and responsibilities of a regular member when a regular member is unavailable or disqualified from consideration of a particular application. On an annual basis, the Zoning Board of Adjustment elects a chair and other officers that is consistent with the board's rules of procedure for conducting its business. The Zoning Board of Adjustment must adopt and from time to time amend, rules of procedure for the conduct of its business. The rules of procedure must establish a regular meeting schedule in order to allow for the expeditious consideration of appeals.

**15.3 RULES** The **Zoning Board of Adjustment** shall adopt rules and regulations governing meetings, hearings, fees, and other matters for the proper functioning of the Board. The Board shall adopt rules of procedure **concerning the method of conducting its business** and shall keep a record of its proceedings showing the vote, indicating such fact, and shall keep records of its examinations and other official actions. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and become a matter of public record.

**15.4 MEETINGS** Meetings of the Zoning Board of Adjustment shall be held ~~upon~~ **at** the call of the chairperson **and at such other times as the Board may determine**. All meetings, **unless otherwise posted**, shall be open to the public. **A majority of the membership of the Board shall constitute the quorum necessary in order to transact business.**

**15.5 APPLICATIONS** Applicants appealing an administrative decision, seeking a special exception, or requesting a variance or equitable waiver **must submit an application** ~~of be in writing, shall be~~ signed by the property owner/applicant, shall be accompanied by such fees as the Board deems necessary to defray its costs in processing the application, and shall be accompanied by a drawn to-scale plan of the property in question. The property plan shall contain such information as the Board determines to be necessary for it to reach a decision. In appropriate cases, the Board may require that the plan be prepared by a registered professional engineer or registered land surveyor. The application shall list the name and current mailing addresses of each abutter to the property in question.

**In accordance with the provisions of RSA 674:33, Powers of Zoning Board of Adjustment, upon receipt of an application, the Zoning Board of Adjustment shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a Zoning Board of Adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the Board may, at its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request.**

**15.7 HEARINGS** ~~Hearings before the Board shall be conducted by the Chairperson, or, in his/her absence the Acting Chairperson, who may administer oaths and compel the attendance of witnesses.~~ **A public hearing is required before the Zoning Board of Adjustment can take action on any application, whether dealing with an administrative appeal, a request for a variance, a special exception, or an equitable waiver of dimensional requirements.**

A) **15.6 PUBLIC HEARING NOTICE** Prior to exercising its appeals powers, the Zoning Board of Adjustment shall hold a public hearing on each application ~~within a reasonable time as specified in its rules.~~ **Notice of the public hearing** thereof shall be given as follows:

- 1) ~~15.6.1 Mail:~~ The applicant and all abutters, **as defined in RSA 672:3**, and holders of conservation, preservation, or agricultural preservation restrictions shall be notified of the

public hearing by verified mail, as defined in RSA 21:53, stating the time and place of the hearing, and such notice shall be given not less than five days ~~nor more than thirty days~~ before the date fixed for the hearing of the appeal.

- 2) ~~15.6.2 Public Notice:~~ A public notice of the hearing shall be posted at the Town Hall and ~~one other public place,~~ **on the Town's website** and shall be published in a newspaper of general circulation in the area not less than five days before the date fixed for the hearing of the appeal, **unless otherwise indicated in.**

~~15.6.3 Costs:~~ The cost of advertising and the cost of mailing the notices of hearing shall be payable prior to the hearing by the person making the appeal. ~~In no event shall the costs be less than two dollars (\$2.00).~~ **The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to deny the appeal without a public hearing.**

**If the Zoning Board of Adjustment finds that it cannot conclude the public hearing within the time available, it may vote to continue the hearing to a specified time and place with no additional notice required.**

- B) **POWER TO COMPEL WITNESSES** The chair of the Zoning Board of Adjustment or the acting chair may administer oaths. Whenever the Board exercises its regulatory or quasi-judicial powers, it may, at its sole discretion, compel the attendance of witnesses. All expenses incurred under this Section for compelling the attendance of a witness shall be paid by the party or parties requesting that a witness be compelled to attend a meeting of the Board.
- C) **BURDEN OF PERSUASION** At all hearings before the Board, the **applicant bears the burden of presenting sufficient evidence** ~~shall be upon the applicant~~ to establish that the administrative decision appealed from is erroneous or show that the applicant has met the conditions established for a special exception, criteria for a variance and criteria for an equitable waiver of dimensional requirements.
- D) **TESTIMONY/EVIDENCE** The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear other persons as it deems appropriate.

**The Zoning Board of Adjustment must consider the source of the evidence presented and give due weight to what is presented. The Board may base their conclusion upon their own knowledge, experience, and observations in addition to expert testimony.**

- E) **DECISIONS** ~~The Board, in accordance with the provisions of this ordinance, may reverse or affirm, wholly or partly, or may modify any such order, requirements, decision, or determination made by the Building Inspector.~~ The concurring vote of three members of the Zoning Board of Adjustment shall be necessary to reverse or **affirm, wholly or partly, or to modify any order, requirement, decision, or determination of the Select Board, Building Inspector, or Administrative Official** or to decide in favor of the appellant on any matter upon which it is required to pass or to effect any variance from the strict applications of the provisions of this ordinance.
- F) **MINUTES/NOTICE OF DECISIONS** When the Zoning Board of Adjustment votes to approve or disapprove an application or a motion for rehearing, the minutes of the meeting at which

such vote is taken, including the written decision containing the reasons and all conditions of approval, shall be placed on file in the Board's office and shall be made available for public inspection ~~within five (5) business days of such vote~~ as required in NH RSA 676:3, as amended.

- G) **REHEARING** Within 30 days after a decision of the Zoning Board of Adjustment, any party to the action or any person directly affected thereby may submit in writing a motion for rehearing in respect to any matter determined in a decision. A motion for rehearing must specify the technical error made to their detriment or produce new evidence that was unavailable at the initial public hearing. A motion for rehearing must be filed during normal business hours in the office of the Board. If the last day for filing falls on a Saturday, Sunday, or legal holiday, the motion will be deemed timely if received by the next business day. Upon filing a motion for rehearing, the Zoning Board of Adjustment must hold a public meeting, not a public hearing, within 30 days to decide to grant or deny the rehearing. If the Board decides to grant the rehearing, a new public hearing is to be scheduled with new hearing notices.
- H) **RE-APPLICATION** When an application is submitted, the files should be reviewed to determine if a previous application was denied for the same situation. If so, the Board should determine if circumstances have changed sufficiently to warrant acceptance of a reapplication. If there has not been a significant change in circumstances, then the Board should reject the application and end further consideration.

"When a material change of circumstances affecting the merits of the applications has not occurred, or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan." Fisher v. Dover, 120 N.H. 187 (1980).

## **15.8 SCOPE OF REVIEW**

**15.8.1 Administrative Appeals:** The Zoning Board of Adjustment shall hear and decide appeals from decisions or orders ~~made by an administrative official from the Building Inspector~~ concerning the administration or enforcement of this ordinance.

In exercising its powers, the Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and shall have all the powers of the administrative official from whom the appeal is taken.

Appeals to the Zoning Board of Adjustment shall be filed within a reasonable time, as specified by the Board's Rules of Procedure.

**15.8.2 Special Exceptions:** The Zoning Board of Adjustment shall hear and decide requests for special exceptions provided for in this ordinance. The Board shall grant requests for special exceptions ~~that which~~ are in harmony with the general purpose and intent of this ordinance and meet the standards of this subsection. ~~Appropriate conditions~~ As set forth in subsection 15.8.2 (b), **conditions** may be placed on special exception approvals when necessary. The Board shall deny requests for special exceptions that do not meet the standards of this Section.

- a) Special Exceptions shall meet the following standards:



- 1) ~~The requested use is specifically authorized~~ Standards provided by this ordinance for the particular ~~as a~~ use permitted by special exception;
  - 2) ~~The requested use will not create a~~ No hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials;
  - 3) ~~The requested use will not be~~ No detrimental to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;
  - 4) ~~The requested use will not create~~ No creation of a traffic safety hazard, or a substantial increase in the level of traffic congestion in the vicinity ~~or impair pedestrian safety~~;
  - 5) ~~The requested use will not create an~~ No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools;
  - 6) ~~The requested use will not create a~~ No significant increase of stormwater runoff onto adjacent property or streets;
  - 7) ~~The proposed location is appropriate for the requested use~~ An appropriate location for the proposed use;
  - 8) ~~The requested use will not adversely affect the health, and safety, or general welfare of the residents and others in the area, nor and not be detrimental to the use or development of adjacent or neighboring properties~~;
  - 9) ~~The requested use is in the public interest and is in~~ consistent with the spirit and intent of the ordinance and master plan.
- b) **Conditions of Approval:** ~~Special exception approvals may be subject to appropriate conditions, including the following:~~ In granting a special exception, the Zoning Board of Adjustment may attach conditions as it deems necessary to assure compliance with the purposes of this ordinance. Such conditions may include but are not limited to the following:
- 1) Front, side, or rear yards in excess of the minimum requirements of this ordinance;
  - 2) ~~Landscaping and/or screening of the premises from the street or adjacent property by walls, fences, or other devices~~ in excess of the minimum requirement of this ordinance;
  - 3) Modification of the exterior features, or buildings or other structures;
  - 4) ~~Limitations on the size of buildings and other structures more stringent than the~~ minimum or maximum requirements of this ordinance;
  - 5) Reasonable limitations on the number of occupants and methods and times of operation;
  - 6) Grading of the premises for proper drainage;

- 7) Regulation of design of access drives, sidewalks, **crosswalks**, and other traffic features;
- 8) **Off-street parking and loading spaces in excess of the minimum requirement of this ordinance;**
- 9) Regulation of the number, size, and lighting of signs more stringent than the requirements of this ordinance;
- 10) **Other performance standards.**

**15.8.3 VARIANCES** Upon submission of an appeal, the **Zoning Board of Adjustment** shall hear and decide requests to vary **may authorize a variance from the terms of this ordinance for a particular use, a parcel of land, an existing building, or a proposed building.** At ~~the~~ **a public hearing on the application**, the applicant shall present testimony and ~~other~~ evidence to establish that **all the following** five conditions for a variance have been met. ~~Testimony shall be allowed in accordance with the provisions of 15.7.2 of this Section.~~

- 1) No decrease in the value of surrounding properties ~~would~~ **will** be suffered;
- 2) Granting ~~the~~ **of a** variance ~~would~~ **will** not be contrary to the public interest;
- 3) By granting ~~the~~ **a** variance, substantial justice ~~would~~ **will** be done;
- 4) The spirit and intent of the ordinance will ~~not be broken~~ **be observed;** and by granting the variance;
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
  - (a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
    - (i) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property;
    - (ii) The proposed use is a reasonable one.
  - (b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it.

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

**15.8.3.1 Additional Findings Required by Floodplain Development Ordinance**

Where a variance is requested from the provisions of Section, XVII, Floodplain Development Ordinance, the Zoning Board of Adjustment may grant a variance as authorized by RSA

674:33. All applications must satisfy the criteria in subsection 17.9 Variances and Appeals, in addition to those required pursuant to Section 15.8.3 of this ordinance.

#### **15.8.3.2 Stipulations of Authorization**

- 1) In authorizing a variance, the Zoning Board of Adjustment may impose such conditions and stipulations as it deems necessary and proper in order to fulfill the purposes and intents of this ordinance.

**15.8.4 EQUITABLE WAIVERS** The Board shall hear and decide requests for equitable waivers when a lot or structure thereupon is discovered to be in violation of a physical layout or dimensional requirements imposed by the Zoning Ordinance. ~~The Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, To grant an equitable waivers to from the dimensional requirements of the Zoning Ordinance, if and only if the board makes all of the following findings: the applicant must prove~~s to the Board's satisfaction each and every element of the following:

- A) That the violation was unknown to the owner, owner's predecessors, owner's agent or representative, or municipal official until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyed to a bona fide purchaser for value (i.e., an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value);
- B) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bath faith on the part of any owner, owner's agent or representative, but was instead caused by a good faith error in measurement or calculation by an owner or owner's agent or an error in interpretation of the ordinance or its applicability by a municipal official in the process of issuing a permit, while that official was acting within the scope of his/her their authority;
- C) That ~~ne the physcial or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and may be created by the violation;~~
- D) ~~That there will be no diminution in the value of other property in the area;~~
- E) ~~That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and~~
- D) That due to the degree of past construction or investment, the cost to correct the violation so far outweighs the public benefit to be gained, and that it would be inequitable to require the violation to be corrected.

In lieu of the findings required by the Board under subparagraphs (a) and (b) above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more and that no enforcement action, including written notice of violation, has been initiated regarding the violation by the Town or anyone directly affected by the violation.

Waivers shall be granted under this Section only from physical layout, mathematical, or dimensional requirements (e.g., setbacks, frontage, or area) and not from use restrictions. An equitable waiver granted under this Section shall not be construed as a non-conforming use and

shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Ordinance. This Section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This Section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

**15.8.5 APPEALS OF DETERMINATIONS OF THE PLANNING BOARD** The Zoning Board of Adjustment may hear and decide appeals of a determination, construction, interpretation, or application made by the Planning Board that is based on the terms of this ordinance and which is made in the exercise of the Board's subdivision or site plan review powers. These appeals shall be treated and considered in the same manner as administrative appeals. However, decisions of the Planning Board made pursuant to administrative authority delegated pursuant to RSA 674:21, Innovative Land Use Controls, are only appealable to the Superior Court.

**15.9 FINDINGS OF FACT** The Zoning Board of Adjustment shall present findings of fact for all its decisions and shall enter such findings in its records.

**15.10 REPRESENTATIONS** Representations made at the public hearing or material submitted to the Zoning Board of Adjustment by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking, or uses which are subject to regulation pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or variance of any approval.

**15.11 MODIFICATIONS** The granting of any appeal by the Board shall not exempt the applicant from any provision of this ordinance not specifically ruled upon by the Board or specifically set forth as expected in this particular case from a provision of this ordinance. It shall be unlawful for any owner or person to reconstruct, convert, or alter a structure or change the use, increase the intensity of use, or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Board in authorizing a special exception or variance without appealing to the Board as a new case over which the Board shall have complete administrative power to deny, approve or modify.

**15.12 EXPIRATION/ABANDONMENT OR DISCONTINUANCE OF A SPECIAL EXCEPTIONS AND VARIANCES** Unless otherwise specified in a decision granting the special exception or variance in questions, a special exception or variance granted by the Zoning Board of Adjustment shall expire if:

- A) The special exception or variance is not used within two years following the date of a final decision granting such special exception or variance; or use or construction authorized by the granting of a special exception or variance has not commenced within a two-year period from the date of the decision of the Zoning Board of Adjustment, or in the event of an appeal to the courts or Housing Appeals Board for the project to which it relates, within a two-year period from the date of the judgment, then the special exception or variance shall be deemed to have expired and the Zoning Board of Adjustment's decision rendered null and void.
- B) The special exception or variance is discontinued for a period of two years or more following the date of the final decision granting such special exceptions or variances. Upon request, submitted prior to the date of expiration, the Zoning Board of Adjustment may extend the period of validity of a special exception for one additional year provided that the applicant presents evidence of a good faith effort made to commence the use or construction so authorized by special exception or variance, that the delay in commencement was beyond the applicant's control, and that the circumstances relating to

the property and the surrounding neighborhood have not changed substantially since the date of the original decision. Once an extension has been granted, should the use or construction so authorized by special exception or variance not be commenced within the one-year extension period, then the special exception or variance shall be deemed to have expired, and the Zoning Board of Adjustment's decision rendered null and void.

- C) If a special exception is abandoned or discontinued for a period of 2 years, or it is succeeded by another use, then the special exception shall be deemed to have expired and cannot be re-established without a new application process and the affirmative decision of the Zoning Board of Adjustment.

The provisions of paragraph 15.12 shall apply only to special exceptions and variances granted after the effective date of this paragraph. *Note: Effective date March 13, 2007.*

(~~strikethrough text~~ means delete text, **highlighted text** means add text).

## **SECTION XVII**

### **FLOODPLAIN DEVELOPMENT ORDINANCE**

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its "Flood Insurance Study of the County of Merrimack, NH" dated April 19, 2010 **or as amended**, together with the associated Flood Insurance Rate Maps dated April 19, 2010 **or as amended**, and are declared to be part of the Hopkinton Floodplain Development Ordinance.

#### **17.1 DEFINITION OF TERMS**

**17.1.A.1 Area of Special Flood Hazard** is the land in the flood plain with a community subject to a one percent or greater chance of flooding in any given year. The area is designated a Zone(s) "A" and "AE" on the Flood Insurance Rate Map.

**17.1.B.1 Base Flood** means the flood having a one percent chance of being equaled or exceed in any given year.

**17.1.B.2 Base Flood Elevation**" (BFE) means the elevation of surface water resulting from the "base flood."

**17.1.B.3 Basement** means any area of the building having its floor subgrade (below ground level) on all sides.

**17.1.B.4 Building** See "Structure".

**17.1.D.1 Development** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**17.1.F.1 FEMA** means the Federal Emergency Management Agency.

**17.1.F.2 Flood or Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

~~**17.1.F.3 Flood, 100-Year** See "Base Flood".~~

**17.1.F.4 Flood Insurance Elevation Study** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-rated erosion hazards.

**17.1.F.5 Flood Insurance Rate Map (FIRM)** means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

~~17.1.F.6 Flood Insurance Study See "Flood Elevation Study".~~

17.1.F.7 Floodplain or Flood-prone Area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

17.1.F.8 Flood Opening means an opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA "Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures."

17.1.F.9 Flood Proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

17.1.F.10 Floodway See "Regulatory Floodway".

~~17.1.F.11 Functional Dependent Use means 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 facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, or ship building and ship repairs facilities, but does not include long-term storage or related manufactured facilities.~~

17.1.H.1 Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

17.1.H.2 Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (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.

17.1.L.1 Lowest Floor means the lower 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 enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

17.1.M1 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 flood plain management purposes the

term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

17.1.M2 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.

17.1.M3 Mean Sea Level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, **North American Vertical Datum (NAVD) of 1988**, or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

17.1.N.1 New Construction means, for the purpose of determining insurance rates, structure 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.

17.1.R.1 Recreation Vehicle means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

17.1.R.2 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 one foot at any point. These areas are designated as floodways on the Flood Insurance Rate Maps.

17.1.R.3 Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

17.1.S.1 Special Flood Hazard Area ~~means an area having special flood mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FIRM as Zone “A” or “AE”.~~  
(See Area of Special Flood Hazard)

17.1.S.2 Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within the time limit designated by the Hopkinton Zoning Ordinance. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; or 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 not part of the main structure.

17.1.S.3 Structure means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured



home.

17.1.S.4 Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

17.1.S.5 Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (ii) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." ~~means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) 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 a building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places.~~

17.1.V.1 Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b) (5), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) is presumed to be in violation until such time as the documentation is provided.

17.1.W.1 Water Surface Elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, ~~(or the datum, where specified)~~ of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

17.2 All proposed development in any special flood hazard areas shall require a permit.

17.3 The Building Inspector 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 in a special flood hazard area ~~flood-prone~~ area, all new construction and substantial improvements shall (i) 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, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) 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.

17.4 Where new and replacement water and sewer systems (including on-site systems) are

proposed in flood-prone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage 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.

17.5 The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been flood-proofed, the as built elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.

17.6 The Building Inspector shall review proposed developments to assure 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. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

17.7 In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.

Within the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.

Along watercourses that have a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment that would result in any increase in flood levels within the community during the base flood discharge. In Zone "A" the Building Inspector shall obtain, review, and reasonably utilize any floodway data available from a Federal, State, or other source as criteria for requiring that development meet the floodway requirement of this section.

Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone "A1-30" and "AE" on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other 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.

The building inspector 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 allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

17.8

- (1) In special flood hazard areas the Building Inspector shall determine the **base flood elevation** ~~100-year flood elevation~~ in the following order of precedence according to the data available.
  - (a) In Zone "AE" refer to the elevation provided in the communities Flood Insurance Study and accompanying FIRM ~~or FHBM~~.
  - (b) In "~~A~~" **zones Zone A** the Building Inspector shall obtain, review, and reasonably utilize any **base flood elevation** ~~100-year flood elevation~~ data available from Federal, State, development proposals submitted to the community (example subdivisions, site approvals, etc.) or other source. **Where a base flood elevation is not available or not known for Zone A, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade.**
- (2) The Building Inspector's **base flood elevation** ~~100-year flood elevation~~ determination will be used as criteria for requiring in Zones "AE" and "A" that:
  - (a) All new construction and substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the **base flood elevation** ~~100-year flood level~~;
  - (b) That all new construction and substantial improvement of non-residential structures have the lowest floor (including basement) elevated to or above the **base flood elevation** ~~100-year flood level~~; or together with attendant utility and sanitary facilities, shall:
    - (i) Be flood-proofed so that below the **base flood elevation** ~~100-year flood elevation~~ the structure is watertight with walls substantially impermeable to the passage of water;
    - (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (iii) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
  - (c) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
  - (d) Recreation vehicles placed on sites within Zones "AE" and "A" shall be either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed, **on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions and ready for highway use**, or (iii) meet all standards of **this ordinance Section 60.3 (b) (1) of the National Flood Insurance Program Regulations** and the Elevation and Anchoring Requirements for "Manufactured Homes" in **this ordinance paragraph (c) of Section 60.3**;
  - (e) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided the enclosed areas meet

the following requirements: (1) the enclosed area is unfinished or flood resistant, useable solely for parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two **flood** openings have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all **flood** openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

~~(f) Proposed structures to be located on slopes in Special Flood Hazard Areas, Zones "AH" and "AO", shall include adequate drainage paths to guide flood waters around and away from the proposed structures.~~

#### 17.9 Variances and Appeals:

- (1) Any order, requirement, decision or determination of the Building Inspector made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- (2) If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I ~~(b)~~, the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - (a) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - (b) That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - (c) That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

#### **(4) The community shall:**

- (a) Maintain a record of all variance actions, including their justification for the issuance, and**
- (b) Report such variances issued to FEMA's Federal Insurance Administrator.**

The Floodplain Development Ordinance was adopted under Article 7 at the Hopkinton, N.H. Town Meeting held March 9, 1988.

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