

**Town of Deerfield  
New Hampshire**

**ZONING  
ORDINANCE**

**2008**

# ZONING ORDINANCE TOWN OF DEERFIELD, NEW HAMPSHIRE

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## **ARTICLE I PREAMBLE AND TITLE**

### **Section 101 Preamble**

Pursuant to the authority conferred by Chapter 674, Sections 16-23, New Hampshire Revised Statutes Annotated, 1955, as amended, in conformity with a Comprehensive Plan and for the purposes of lessening congestion in the streets; securing safety from fires, panic and other dangers; promoting health and general welfare; providing adequate light and air; preventing overcrowding of the land; avoiding undue concentration of population; facilitating the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks; and assuring proper use of natural resources and other public requirements, now therefore the following ordinance is hereby enacted by the voters in the Town of Deerfield, New Hampshire, in official Town Meeting convened.

### **Section 102 Title**

This ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Deerfield, New Hampshire."

**ARTICLE II            ESTABLISHMENTS OF DISTRICTS AND DISTRICT  
REGULATIONS**

**Section 201    Establishment of Districts**

The Town of Deerfield is hereby divided into the following districts as shown on the official zoning maps:

**AR    Agricultural-Residential District**

The Floodplain District shall be considered as an overlay of the above-listed districts. The floodplain development regulations cited in Section 211 shall be applicable within the Floodplain District.

**Section 202    The Zoning Map**

The districts as established in Section 201 are shown on a map entitled "Town of Deerfield Zoning Map" dated March 1987 and as amended on file in the offices of the Town of Deerfield, which maps are part of this ordinance. For purposes of identification the date of adoption and the signatures of the members of the Planning Board on the date of adoption are indicated.

**Section 203    Rules for Interpretation of District Boundaries**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center of streets, highways, or alleys shall be construed to following such centerlines.
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following town lines shall be construed as following such town lines.
- D. Boundaries indicated, as following railroad or utility rights-of-way shall be construed to follow the centerline of the right-of-way.
- E. Boundaries indicated as following shore lines shall be construed to follow such shore lines, to the high water lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.
- F. In cases not covered by A. through E. above, the Zoning Board of Adjustment shall resolve district boundary questions.

**Section 204    District Objectives and Land Use Control**

The following tables set forth the objectives of each of the districts hereby established and the provisions of the regulations that apply respectively in each district. Any use designated as a "Permitted Use" in a particular district may be commenced in such district pursuant to Section 205 of this ordinance. Any use designated as a "Special Exception" in a particular district may be commenced in such district pursuant to

Section 206 of this ordinance. Explanations of the terms lots, classification of lots, dimension requirements, accessory uses and application of District Regulations are found in Sections 204 through 324, inclusive.

## **Table 204.1**

### **"AR" AGRICULTURAL-RESIDENTIAL**

#### **Objective and Characteristics**

To encourage and maintain an area of rural-agricultural character with a lot residential density.

#### **Permitted Uses**

1. Agricultural
2. Single Family Dwelling
3. Two Family Dwelling
4. Seasonal Dwelling
5. Accessory Use Outbuildings
6. Home Occupation (Section 320)
7. Manufactured Housing (Article IV)
8. Portable Saw Mills
9. Family Day Care Home
10. Bed & Breakfast
11. Senior Housing up to twenty (20) units requiring Planning Board Approval under provision of RSA 676.4.
12. Accessory Apartment

#### **Allowed By Special Exception**

1. Meeting Hall (Legion, V.F.W., etc.)
2. Multifamily Dwellings (Section 310)
3. Lumberyards/Permanent Saw Mills
4. Light Manufacturing
5. Establishments Selling at Wholesale/Retail
6. Church
7. Convalescent and Nursing Home
8. Outdoor Recreational Facilities
9. Public Utility Facilities
10. Municipal Facilities
11. Excavation of Natural Materials
12. Day Care Facilities Larger than Family Day Care Home (as defined in this Ordinance), Kindergarten, Nursery School
13. Docks, open decks, and stairways located within wetlands setbacks.
14. Aircraft Take Offs and Landing Strips as an accessory to a dwelling.
15. Home Occupations which generate hazardous waste.
16. Kennel

## Areas and Dimensions

<u>Minimum Lot Size</u>		<u>Minimum Yard Dimensions in Feet</u>		
Area Per Dwelling Unit In Acres	Frontage in Feet	Front	Each Side	Rear
3	200	40	37.5	37.5

### Section 205 Permitted Uses

Permitted uses are those uses that are allowed, providing the standards established by this ordinance are met.

### Section 206 Special Exceptions

**206.1 General Provision:** Certain uses of land and buildings may be allowed as a special exception only by approval of the Board of Adjustment, if the standards contained in this ordinance are complied with. Before allowing such special exception, the Board of Adjustment shall first determine that the proposed use will conform to such requirements including:

- A. Required Plan. A plan for the proposed development of a site for a special exception shall be submitted with the application and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the Board may deem necessary to determine if the proposed use meets the requirements of this ordinance.
- B. Expiration. A permit for a special exception shall be deemed to authorize only one particular use and shall expire if the use shall cease for more than one year for any reason, and a new application shall be submitted for continuance for such special exception.
- C. Existing Violations. No permit shall be issued for a special exception for a property where there is an existing violation of this ordinance unless the granting of the special exception will correct the violation.
- D. Criteria for a Special Exception. In order for a special exception to be granted the proposed use or structure shall meet the following criteria;
  1. Shall not adversely affect the capacity of existing or planned community facilities.
  2. Shall be an appropriate location for the use or structure with respect to the character of the surrounding area, and shall fulfill all requirements for local, state and federal permit or approval.
  3. Shall not create a substantial increase in traffic in the vicinity.
  4. Shall not create a safety hazard due to:
    - a. Condition or design of roads in the immediate vicinity.
    - b. Location of driveway or parking.
    - c. Danger of fire, explosion or release of toxic fumes or material.
    - d. Equipment or activity which poses substantial danger to children, if in a residential area or proximate to a school or day care facility larger than family care home as defined in this ordinance.
  5. Shall not create a substantial increase in water onto adjacent property or roads.

6. Shall not create a "nuisance" in the vicinity due to noise, vibration, odor, glare or unsightly outside storage of material or equipment and shall be in conformity with other uses and/or structures in the vicinity.

**206.2 Standards Applicable to Special Exceptions:** If deemed necessary to protect the best interests of the surrounding property, the neighborhood, or the town as a whole, the Board of Adjustment shall impose standards which may include the following:

- A. Increasing the required lot size or yard dimensions in order to protect the adjacent properties.
- B. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent properties.
- C. Requiring suitable on-site landscaping and screening where necessary to reduce noise and glare and to maintain the property in character and keeping with the surrounding area.
- D. Specifying a time limit for initiation of construction, alteration, or enlargement of a structure to house an exception.
- E. Requiring that any future enlargement or alteration of use be accomplished only with the approval of the Board of Adjustment.
- F. Specifying standards for operation of this special exception so that it will be no more objectionable to the neighborhood by reasons of noise, odors, vibrations, flashing lights or hours of operation than will be the operation of a permitted use at that site.
- G. Requiring such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of this ordinance and to protect the best interests of the surrounding property and the neighborhood.
- H. In addition to the above criteria, applications for special exceptions for kennels shall also meet the following criteria:
  1. When housed outside, animals shall be kept within a wall or woven wire fence enclosure.
  2. The kennel enclosure shall be located at least 37.5 feet from the side and/or rear of the property line.
  3. Kennels shall not be located in the front yard of the property.
  4. Waste materials from the kennel shall be properly stored and disposed of.
  5. The lot containing the kennel shall be a minimum of three acres in area.
  6. The applicant will submit with their application for a special exception the application for a license to operate a kennel in the Town of Deerfield.
  7. The kennel shall be subject to inspections by the Animal Control Officer or his designee.
  8. Runoff from the kennel shall not contaminate surface waters.
  9. Applicant shall, in the siting of the kennel, make every effort to minimize noise disturbance to abutting properties.

**Section 207      Dimensional Requirements:**

The following dimensional standards shall apply:

### **207.1 Minimum Frontage**

- A. Frontage - Every building lot shall have a minimum frontage as specified in Section 204 provided that where lots are located on the exterior of a curving street, a shorter front dimension may be permitted provided that the width of the lot measured along the front setback line shall be the minimum specified in Section 204.
- B. In the alternative, provided all requirements for lot dimensions of this Ordinance can be met, up to four (4) single family dwellings may be constructed on lots which front on a private way.

If, in the opinion of the Planning Board, considering the topography and land ownership in the vicinity, it is likely that the private way could be extended to serve additional dwelling units in the future, the layout of said private way shall be done in such a fashion that all of the geometric layout specifications of the subdivision regulations for a public street could be met.

If the private way is unlikely to serve more than four (4) dwelling units, it shall be constructed following minimum specifications:

1. The right-of-way shall be at least 50 feet in width to accommodate upgrading of the road should future owners choose to dedicate it to the Town;
2. The roadway specifications shall be graduated based upon standard traffic calculations (e.g.- a private way for one dwelling unit generates 10.1 vehicles per day and thus would require a 12-foot wide gravel way);
3. The private way shall provide adequate access for emergency vehicles to said new dwellings;
4. Both the private way and the arrangements for paying the costs of maintenance and repair of said private way, as well as provisions for turning over said way to the Town as a public street should the Town so request, shall be described in instruments referred to in said deeds.
5. The applicant shall provide the Planning Board with a nonbinding conceptual plan of the parcel. This plan would show the parcel as it would appear if built out to the maximum number of lots allowed by current zoning and would show how such growth could be accommodated.

### **207.2 Front Yard Regulations and Exceptions:**

- A. No building shall be built nearer to any street line than the minimum front yard specified in Section 204.
- B. No accessory building may occupy any part of a required front yard.

### **207.3 Side Yard Regulations and Exceptions:**

- A. No building shall be built nearer to a side lot line than the minimum dimension specified in Section 204. For low impact accessory structures or buildings, less than 200 square feet, the side yard and rear yard setback shall be at least ten (10) feet.

**207.4 Rear Yard Regulations and Exceptions:**

- A. No building shall be built nearer to a rear lot line than the minimum rear yard depth specified in Section 204. For low impact accessory structures or buildings, less than 200 square feet, the side yard and rear yard setback shall be at least ten (10) feet.

**207.5 Height Regulations and Exceptions:**

- A. The height of any building shall be measured from the average sill line along the building front, and shall not exceed a height of thirty feet except as provided for in this section or unless a special exception is granted by the Board of Adjustment.
- B. Flagpoles located on a roof or in any required yard may extend above the height limit specified.
- C. Chimneys, spires, silos, towers, stage houses, lightning rods, or the like superstructure not used for human occupancy may extend above the height limit specified if located on a structure of main use.
- D. Radio or TV antennae for private, non-commercial reception may be located on the roof or in the side or rear yard of a structure of main use, but not in the required front yard.

**Section 208 Application of District Regulations**

Any legal non-conforming use existing on the effective date of this ordinance may be continued indefinitely to the extent set forth in this ordinance. Otherwise, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located, as referenced in 315.1 through 315.4 and 316.

**Section 209 Site Plan Review**

All non-residential uses whether permitted or by special exception shall comply with the Site Plan Review Regulations.

**Section 210 Wetlands Conservation District**

**210.1 Purpose:** The purpose of this ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas that have been found to be subjected to high water tables for extended periods of time.

It is intended that this ordinance shall:

- A. Control the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and ground water by sewage or toxic substances.
- B. Prevent the destruction of, or significant changes to natural wetlands which provide flood protection, groundwater recharge, pollution abatement, and augmentation of stream flow during dry periods.
- C. Protect unique and unusual natural areas.
- D. Protect wildlife habitats and maintain ecological balances.

- E. Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
- F. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.
- G. Docks, Open Decks, and Stairways:

Docks, Open Decks, and Stairways proposed to be located within the building setback from any body of water, including rivers, streams, lakes, or ponds shall be subject to obtaining a Special Exception from the Zoning Board of Adjustment. No such improvement shall be enclosed. All other required permits from other regulatory agencies shall be obtained before making application to the Board of Adjustment.

### **210.2 Wetlands Defined**

Soil series and land types commonly associated with wetlands, as described by the "Soil Information For Resource Planning, Town of Deerfield, Rockingham County, New Hampshire" dated June, 1985, include the following "very poorly drained" and "poorly drained soils". In addition, for the purpose of this ordinance, wetlands include those areas which are determined to be wetlands in accordance with the current State of New Hampshire Wetlands Regulations (New Hampshire Code Administrative Rules Wt 100-800) (*Adopted March 14, 2006*)

#### **"Very Poorly Drained" Soils:**

- Scarboro, fsl-15
- Greenwood and Ossipee soils, ponded-197
- Chocorua mucky peat-6 and 395
- Greenwood mucky peat-295
- Scarboro muck, very stony-549
- Ossipee mucky peat-495

#### **"Poorly Drained" Soils:**

- Ridgebury very fine sandy loam -- 646
- Ridgebury very fine sandy loam, very stony -- 647
- Walpole very fine sandy loam, very stony -- 547
- Rayham silt loam -- 533
- Pipestone sand -- 214
- Rippowam-Pootatuck complex -- 4 & 5

### **210.3 District Boundaries:**

- A. The Deerfield Wetlands Conservation District is defined as those areas of the town that contain wetlands as defined as these areas of the Town that contain wetlands as defined in 210.2 including, but not limited to, marshes, ponds, bogs, lakes, streams and rivers as well as soils that are defined as poorly or very poorly drained by the National Cooperative Soil Survey conducted by the U.S. Department of Agriculture Soil Conservation Service. (*Adopted March 14, 2006*) Poorly drained soils less than one quarter (1/4) acre in area shall be excluded from definition provided that these soils are at least one hundred feet (100') from any wetlands.
- B. "Town of Deerfield Wetlands Conservation District Map" is hereby deemed to be a part of the official zoning map of the Town of Deerfield.

- C. Wetlands incorrectly delineated: where it is alleged that an area has been incorrectly delineated as a wetland, or that an area not so designated meets the criteria for wetland designation, the Planning Board shall determine whether the regulations contained herein have application.
- D. The Planning Board shall make their judgment under this section only upon the determination by a qualified soil scientist(s) and/or plant scientist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist(s) to the Planning Board. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

**210.4 Relation to Other Districts:**

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

**210.5 Permitted Uses:**

- A. Poorly Drained Soils: Permitted uses in areas of poorly drained soils are as follows:
  - 1. Agriculture – including grazing, hay production, truck gardening and silage production provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion.
  - 2. Forestry and tree farming to include the construction of access roads for said purposes.
  - 3. Wildlife habitat development and management.
  - 4. Recreational uses consistent with the purpose and intent of this section as defined in part A.
  - 5. Conservation areas and nature trails.
  - 6. Water impoundment and the construction of well water supplies.
  - 7. Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.
  - 8. Any use otherwise permitted by the Zoning Ordinance and state and federal laws that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging except as a common treatment associated with a permitted use.
- B. Very Poorly Drained Soils: Permitted uses in areas containing very poorly drained soils, marshes, bogs, open water and major streams are as follows:
  - 1. Use specified under Part 210.5.A (1 through 8) above shall be permitted except that no alteration of the surface configuration of the land by filling or dredging and no use which results in the erection of a structure, except as provided for in Part 210.5.B.2 below, shall be permitted.

2. The construction of fences, foot bridges, catwalks, and wharves only, provided: (1) said structures are constructed on posts or pilings so as to permit the unobstructed flow of water; (2) the natural contour of the wetland is preserved; and, (3) the Planning Board has reviewed and approved the proposed construction.

#### **210.6 Conditional Use:**

- A. Conditional Use Permit may be granted by the Planning Board (RSA 674:21, II) for the construction of roads and other access ways, and for utility pipelines, power lines, and other transmission lines provided that all of the following conditions are found to exist:
  1. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
  2. Design and construction methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
  3. No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.
  4. Economic advantage alone is not reason for the proposed construction.
- B. Prior to granting of a Conditional Use Permit under this Part, the applicant shall agree to submit a performance security to the Board of Selectmen. The security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel, to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.
- C. The Planning Board, with the concurrence of the Conservation Commission, may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Part. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for review of documents required by particular applications.

#### **210.7 General Provisions:**

- A. For lots created after the adoption of this amendment no septic tank or leach field may be constructed or enlarged closer than one hundred (100) feet of any wetlands. (*Adopted March 14, 2006*)
- B. No part of areas designated as having very poorly drained soils, or bodies of water, may be used to satisfy minimum lot size.
- C. Areas designated as having poorly drained soils may be used to fulfill up to 25% of the minimum lot size required by town ordinances and subdivision regulations, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations.
- D. All land included in the Wetlands Conservation District shall be appraised for tax purposes at its full and true value in money, based on its market value as undevelopable land required to remain in open space.

- E. For lots created after the adoption of this amendment no building shall be erected within one hundred (100) feet of any wetland.
- F. For lots in existence at the time of the adoption of this amendment, March 14, 2006, no building shall be erected within seventy five (75) feet of any wetland.

**210.8 Separability:** If any section, provision, portion, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair or invalidate any other section, provision, portion, clause or phrase of this ordinance.

**210.9 Conflict with Other Regulations:** Where any provision of this ordinance is in conflict with State law or other local ordinance, the more stringent provision shall apply.

**210.10 Special Exception for Non-Conforming Lots:** Upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands Conservation District on vacant lots provided that all of the following conditions are found to exist:

- A. The lot upon which an exception is sought is an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the town.
- B. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District.
- C. Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception.
- D. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.
- E. The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reason.

The Board of Adjustment may themselves, or upon petition from the Building Inspector, Conservation Commission or abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

**210.11 Exemption for Residential Structures:** Notwithstanding other provisions of this Section, the construction of additions and extensions to one and two family dwellings shall be permitted within the Wetlands Conservation District provided that: (1) the dwelling lawfully existed prior to the effective date of this Section; and (2) that the proposed construction conforms with all other applicable ordinance and regulations of the Town of Deerfield.

**210.12 Exemption for Existing Septic System Permits:** Any septic system design approved for construction by the State of New Hampshire Water Supply and Pollution Control Commission, for which date of approval is prior to the effective date of this Section, will be valid for building permit approval.

**210.13 Docks, Open Decks, and Stairways:** Docks, open decks, and stairways proposed to be located within the building setback from any body of water, including rivers, streams, lakes, or ponds shall

be subject to obtaining a Special Exception from the Zoning Board of Adjustment. No such improvement shall be enclosed. All other required permits from other regulatory agencies shall be obtained before making application to the Board of Adjustment.

## **Section 211                    Floodplain Development Regulations**

### **A. Applicability:**

These floodplain development regulations shall overlay and supplement the regulations in the Town of Deerfield Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of these regulations differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Rockingham County, New Hampshire" dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Map Panels numbered 0060E, 0065E, 0070E, 0090E, 0095E, 0155E, 0160E, 0178E, 0180E, 0185E dated May 17, 2005 or as amended which are declared to be part of this ordinance and are hereby incorporated by reference.

### **B. Definition of Terms:** The following definitions shall apply only to these floodplain development regulations, and shall not be affected by the provisions of any other ordinance of the Town of Deerfield.

1. "Area of Special Flood Hazard" is the land in the Town of Deerfield subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the FIRM.
2. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. "Basement" means any area of a building having its floor sub grade on all sides.
4. "Building" - see "Structure."
5. "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 operation.
6. "FEMA" means the Federal Emergency Management Agency.
7. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. the overflow of inland or tidal waters; or
  - b. the unusual and rapid accumulation or runoff of surface waters from any source.
8. "Flood Insurance Rate Map" (FIRM) means an official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Deerfield.

9. "Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
10. "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 sanitation facilities, structures and their contents.
11. "Floodway" - see "Regulatory Floodway."
12. "Functionally 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 and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities, but does not include long-term storage or related manufacturing facilities.
13. "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
14. "Historic Structure" means any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary 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.
15. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of these regulations.
16. "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 purpose, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than one hundred and eighty (180) days.
17. "Mean Sea Level" means 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.
18. "100-year Flood" - see "Base Flood."

19. "Regulatory Floodway" means the channel of a river, stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.
20. "Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
21. "Special Flood Hazard Area" means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on the FHBM or FIRM as zone A, A0, A1-30, AE, or A99. (see - "Area of Special Flood Hazard").
22. "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.
23. "Start of construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.  
  
Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.
24. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.
25. "Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent 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 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."
26. "Water Surface Elevation" means the eight, 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 floodplains.

### C. Permit Required

All proposed development in any special flood hazard area shall require a building permit.

### D. Permit Provisions

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether the 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; and
4. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### E. Water Supply and Wastes Disposal

Where new or replacement water or sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and that on-site wastewater disposal systems will be located to avoid impairment of them or contamination from them during periods of flooding.

### F. Elevations and Flood-proofing:

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:

1. The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
2. If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
3. Any certification of flood proofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

### G. Building Permit to be Withheld:

The Building Inspector 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.

## H. Altered or Relocated Watercourses

1. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by N.H. 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 Board.
2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. 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 floodway requirement:

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

## I. Building Provisions

1. In unnumbered A zones, the Building Inspector 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 and site plan approvals).
2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in Zone A that:
  - a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
  - b. 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 together with attendant utility and sanitary facilities, shall:
    - (1) be flood proofed so that below the 100-year flood elevation, the structure is watertight with walls substantially impermeable to the passage of water;
    - (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (3) 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 within or substantially 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 100-year flood elevation; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, the 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. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
  - (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access, or storage;
  - (2) the area is not a basement; and
  - (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwater.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: (a) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; (b) the bottom of all openings shall be no higher than one foot above grade; and (c) openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

- e. Recreational vehicles placed on sites within Zones A1-30, AH and AE or designated in the Flood Insurance Rate Maps dated September 1, 1989 also known as Flood Hazard Boundary Map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3".

## **J. Variances and Appeals**

1. Any order, requirement, decision, or determination of the Building Inspector made under these floodplain development regulations may be appealed to the Zoning Board of Adjustment as set forth in N.H. RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by N.H. RSA 674:33,I(b), in determining whether or not any variance will be contrary to the spirit of these regulations, the Board of Adjustment shall consider the following:
  - 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; and
  - c. that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The community shall:
  - a. maintain a record of all variance actions, including their justification for their issuance; and
  - b. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## COMMERCIAL/INDUSTRIAL FLEXIBLE OVERLAY DISTRICT

### Section 212 Commercial/Industrial Flexible Overlay District

**212.1 Purpose:** The purpose of the Commercial/Industrial Overlay District is encourage flexibility and creativity for compatible commercial or industrial development to occur throughout the Town of Deerfield and to attract environmentally acceptable commercial and industrial uses to the town that meet a set of standards that maintain Deerfield's rural character. Traditional zoning generally separates incompatible types of land development thereby protecting low intensity uses from the harmful or disagreeable impacts of high intensity uses. However, this can produce its own set of undesirable side effects. Innovative land developments are often denied by traditional zoning, resulting in a loss of tax revenue to the town. Additionally, often traditional zoning can not respond to an innovative, desirable development proposal in a timely fashion due to lengthy rezoning procedures, including ballot votes at town meeting.

The flexible overlay district is a floating district that has written performance and other standards which insure the proposed developments undesirable impacts are minimized but the location of the district is not shown on a map, but could be located anywhere in Deerfield, except as specifically indicated in this ordinance.

**212.2 Authority.** This ordinance is enacted by the Town of Deerfield pursuant to NH RSA 674:21, I (h) and (i), innovative land use controls. This innovative land use control ordinance shall provide for all approvals, including the granting of conditional or special use permits by the Planning Board. Any decision made by the Planning Board under this innovate land use control ordinance may be appealed directly to Superior Court in the same manner provided by statute for appeals from the Planning Board, as set forth in RSA 676:5, III and RSA 677:15. A waiver from particular requirements set forth in Section 212 may be employed by the Planning Board where the applicant demonstrates substantial compliance with the standards set forth in this ordinance.

**212.3 Process.** A proposed development shall generally be done in three phases: A Conceptual Consultation Phase, Design Review Phase, and Final Plat Phase. Subdivision and Site Plan review, if applicable, of any proposal under Section 212 shall be done concurrently and all applicable submittal items are required.

**212.4 Criteria and Standards:** The criteria that must be addressed are contained in the following sections. The specific criteria which a development proposal must satisfy are dependent upon the type of land use being proposed. The Deerfield Commercial/Industrial

Overlay District divides land uses into the following categories:

1. ABSOLUTE criteria for ALL Proposals
  - A. Commercial ACTIVITY
  - B. Industrial ACTIVITY

Every single or mixed land use development activity must satisfy the criteria in the "ABSOLUTE Criteria for ALL Proposals" category (summarized in the "Absolute Criteria for ALL Proposals Chart" following that section). In addition, each use must satisfy all applicable criteria of the appropriate ACTIVITY category of which it is a part, which include relative criteria that add to the flexibility of the Zone

(summarized in the point Charts” following each section). The Planning Board may determine that a criterion is irrelevant and does not apply to the proposed development.

**Types of Criteria:** The Deerfield Commercial/Industrial Overlay District contains two types of review criteria: numbered and lettered criteria. Numbered criteria are absolute requirements each development must satisfy before approval can be granted. Found both in the: Absolute Criteria for ALL Proposals” and ACTIVITY sections, these include assuring community character compatibility and compliance with official plans and policies, minimum public facilities standards, resource protection, environmental standards and site design. Each of the applicable number criteria must be answered YES before approval can be granted.

**Lettered criteria relative “points”** that make the zone flexible and negotiable in character. Each development must achieve a specified minimum percentage of these criteria. The lettered relative criteria are located at the end of each ACTIVITY section and focus on location as well as design of a project.

**Evaluation:** The performance of a particular development plan shall be evaluated as follows:

**Absolute (Numbered) Criteria:** Each of the numbered criteria on the “ALL Proposals” and appropriate “Activity” section charts is answered YES, NO or NOT APPLICABLE. A NO answer to any of the applicable numbered criteria will automatically exclude the development from further consideration. A criterion is considered to be applicable if it is reasonably capable of being applied to the development.

**Relative (Lettered) Criteria:** The development plan is evaluated against each of the applicable lettered criteria and assigned a SCORE. A criterion is considered to be applicable if it is reasonable capable of being applied to the development. Several criteria are applicable to any development proposal and are pre-checked on the relevant chart. The numerical SCORE is assigned based upon the following:

YES (+1) = for an adequate job of implementing the criterion.

VERY WELL (+2) = for an excellent job on implementing the criterion or for doing the best job possible, given the constraints and opportunities of the site.

NO (0) = for no effort or failure to implement the criterion.

Each letter criterion has been pre-assigned a MULTIPLIER which determines the relative importance of the criterion to the other criteria. The meaning of each MULTIPLIER is as follows:

5 – indicates that the criterion is of exceptional importance.

4 – indicates that the criterion is very important.

3 – indicates that the criterion is important.

2 – indicates a criterion of normal importance

1 – indicates a minor criterion.

The points earned for each criterion are the product of multiplying the SCORE times the MULTIPLIER. The MAXIMUM POINTS POSSIBLE in each chart are added together and the POINTS EARNED are

added together to get TOTALS. By dividing the TOTAL POINTS EARNED by the TOTAL MAXIMUM POINTS POSSIBLE, the PERCENTAGE EARNED is determined. The PERCENTAGE EARNED must be at least the minimum percentage specified for that ACTIVITY category.

**212.4.D Criteria:** Absolute Criteria for ALL Proposals and Activity Criteria are listed on the following pages.

## **ABSOLUTE CRITERIA FOR ALL PROPOSALS:**

### **COMPLIANCE WITH EXISTING PLANS AND POLICIES STANDARDS**

#### **MUNICIPAL MASTER PLAN:**

1. Does the project meet the adopted goals and objectives as set out in the Deerfield Master Plan: is the area suitable for development, conform to the planned pattern of growth, and fit into both the natural and man-made environments?

#### **SUBDIVISION:**

2. If the development proposal will require subdivision or re-platting of an existing parcel, has a preliminary plat in conformance with the Deerfield Subdivision Regulations been filed along with a subdivision application? Approval of the final plan and subdivision plat shall be required before filing of the subdivision plat or issuance of Building Permit.

#### **PRELIMINARY SITE PLAN:**

3. If over 20 acres are in common ownership and/or if subdivision has occurred within 20 years thereby creating multiple lots and phased development, has a preliminary site plan for the property been approved and filed with the planning board?

#### **CAPITAL BUDGET:**

4. Does the project fit into the current Capital Budget/Capital Improvements Program expenditure schedule concerning required road improvement, municipal services and open space acquisition?

### **COMMUNITY CHARACTER COMPATIBILITY STANDARDS**

#### **CONFLICTS**

5. Have the conflicts that are presumed to exist between the proposed development and the surrounding land uses been effectively mitigated in the proposal?

#### **SCENIC ROADS**

6. Does the project maintain stonewalls, trees, vegetation and other amenities consistent with scenic road designation or other roads with potential scenic road designation?

### **PUBLIC FACILITIES AND SERVICES STANDARDS**

#### **UTILITIES**

7. Is the development served by utilities with adequate capacity or have arrangements been made for extension and augmentation for the following services, complying with all applicable design standards, specifications and requirements?

- Water supply
- Electricity
- Fire protection
- Streets/pedestrians
- Sanitary sewer
- Storm drainage
- Walks/bikeways
- Flood hazard areas

#### **EMERGENCY ACCESS**

8. Does the project provide adequate access for emergency vehicles and for those persons attempting to render emergency services

**LIGHTING**

9. Are all vehicular use areas, pedestrian circulation paths and exterior portions of building provided with adequate lighting for safety and security?

**ON-SITE WATER**

10. If the project includes a water body, retention pond, or other water channel, man-made or natural, have necessary precautions been taken to minimize any hazard to life or property?

**FLOOD HAZARD**

11. If located in a Flood Hazard Area, does the project conform to the town floodplain development regulations; see Section 211.

**GEOLOGICAL**

12. If the project contains known areas of natural or geological hazard (e.g. slopes over 15%, rock falls, flood hazard areas) or soil conditions unfavorable to development (e.g. wetlands and/or poorly and very poorly drained soil(s) have these areas been set aside from development and/or protected through easement, deed restrictions, or other protective covenants?

**TOPOGRAPHY**

13. Does the project preserve significant existing vegetation and landforms to the extent practical?

**FLORA & FAUNA**

14. If the site contains an area which serves as a habitat for wildlife and/or plant species identified by NH Fish and Game/NH Natural Heritage Inventory as significant and in particular need of attention, have special precautions been implemented in the plan to prevent the creation of environmental influences adverse to the preservation of these areas?

**HISTORIC AREA**

15. If the proposed project is located within an existing village or historic area and/or includes a locally designated historic structure, does the project maintain the integrity of these resources to the extent possible?

**MINERAL DEPOSITS**

16. If the project includes an area known to contain a commercial mineral deposit for which extraction could be commercially feasible, has the project been designed to preclude extraction?

**FRAGILE AREAS**

17. If the project contains lands that are ecologically sensitive and/or important (e.g. aquifers, lakeshores, agricultural soils of prime and/or statewide importance, important forest soils), has development of these areas been avoided and/or has the land been set aside as permanent open space? Does the proposal allow for the practice of recreational, farming or forestry activities in those important areas so suited?

**OPEN SPACE**

18. If the project contains land noted in the Master Plan as important conservation/recreation lands, have provisions been made to permanently preserve that space?

## **ENVIRONMENTAL STANDARDS**

### **AIR QUALITY**

19. Will the project conform to applicable local, state and federal air quality standards, including, but not limited to: odor; dust; fumes or gases which are noxious, toxic or corrosive; suspended solid or liquid particles; or any air contaminant which may obscure an observer's vision? No offensive or harmful odors shall be produced perceptible beyond its lot lines measured wither at ground level or habitable level. Generation of dust, dirt, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or could soil or stain persons or property shall be prohibited beyond the project lot lines.

### **WATER**

20. Will the project conform to applicable local, state and federal water quality standards, including, but not limited to: erosion and sedimentation; runoff control; solid wastes; and hazardous substances?

### **NOISE**

21. Can the proposed land uses and activities be conducted so that noise generated shall not exceed the maximum noise dB level allowed and that excessive noise at unreasonable hours is avoided? If not, have detailed plans been approved for the elimination of objectionable noise levels? Sound pressure levels shall be measured on a sound level meter at all major lot lines of the site, at a height if at least 4 feet above the ground surface. Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute "American Standard Specification for General Purpose Sound Level Meters" and be set to the A-weighted response scale and slow response. Acceptable levels for primarily residential areas is 55 dB(A) from 7 a.m. – 10 p.m. and 45 dB(A) from 10 p.m. – 7 a.m. Areas that are primarily commercial with no residential uses should be 65 dB(A) from 7 a.m. – 10 p.m. and 55 dB(A) from 10 p.m. – 7 a.m. Industrial districts should be 75 dB (A) from 7 a.m. – 10 p.m. and 65 dB(A) from 10 p.m. – 7 a.m. In areas of mixed use, the limits governing the stricter zone shall apply to any noise entering the area.

### **GLARE HEAT**

22. If the proposed activity produces intense glare or heat, whether direct or reflected, is the operation conducted within an enclosed building or with other effective screening in such a manner as to make such glare or heat completely imperceptible from any point along the property and street line? If not, have detailed plans been approved for the elimination of intense glare or heat?

### **VIBRATION**

23. Will the project cause no inherent or recurring generated vibration perceptible without instruments at any point along the property line? Temporary construction is excluded from this criterion.

### **LIGHTING HAZARDS**

24. Is the exterior lighting, except for overhead street lighting and warning emergency or traffic signals, installed in such a manner that the light source will be sufficiently obscured to prevent excessive glare on public streets and walkways or into any residential area? The installation or erection of any lighting which may be confused with warning signals, emergency signals or traffic signals shall not be permitted.

## **EFFLUENTS**

25. Will all sewage and industrial wastes be treated and disposed of in such a manner as to comply with applicable federal, state, and local standards? Will sewage effluent leaching fields be located further than 100 feet of the high water mark of a year-round stream or pond and further than 75 feet from wetlands and aquifers? Detailed plans and permits must be submitted.

## **SITE DESIGN STANDARDS**

### **SITE PLAN**

26. Is the lot at least 3 acres in size with 200 feet of road frontage and does it meet all applicable subdivision or site plan regulations?

### **COMPATIBILITY**

27. Is the design and arrangement of elements of the site plan (e.g. buildings, circulation, open space, parking, landscaping, etc.) in favorable relationship to the existing natural topography; natural water bodies and water courses; existing desirable trees; exposure to sunlight and wind; and views?

### **SCREENING**

28. Are open storage and loading/service areas screened from adjacent properties or public ways by plantings, with refuse confined out of sight?

### **SHADOWS**

29. Are the elements of the site plan (e.g. buildings, circulation, open space, parking, landscaping, etc.) located and designed so as not to cast a shadow onto adjacent property greater than a shadow cast by a 25 foot hypothetical wall located along the property lines of the project between the hours of 9:00 a.m. and 3:00 p.m., EST, on December 21?

### **TRAFFIC**

30. Does the street and parking system provide for the smooth, safe and convenient movement of both vehicles and pedestrians, where appropriate, on and off the site?

### **ENTRANCE/EXIT**

31. Is the subdivision designed to share access points from the existing roadway in order to minimize curb cuts and traffic congestion? A maximum of two accesses shall be allowed regardless of the number of lots or businesses served.

### **BUFFERS**

32. Do buffers perform their necessary functions of providing visual and sound protection and non-point pollution control?

### **HEIGHT**

33. Does the project comply with the height regulations of Section 207.5 and are structures located and shown on the plan?

### **PARKING**

34. Is parking situated primarily beside or behind the buildings when viewed from the street and does it meet the requirements of Section 318?

### **RECREATION**

35. Are there adequate recreation facilities available for employees and/or customer needs?

**ALL PROPOSALS: ABSOLUTE CRITERIA CHART**

<b>ALL CRITERIA</b>			<b>APPLICABLE CRITERIA ONLY</b>			
<b>CRITERION</b>	Is the criterion applicable?			Will the criterion be satisfied?		<b>If no, please explain</b>
	Preliminary	Final	Not Applicable	Yes	No	
<b>COMPLIANCE WITH EXISTING PLANS/POLICIES STANDARDS</b>						
1. Municipal Master Plan						
2. Subdivision						
3. Preliminary Master Plan						
4. Capital Budget						
<b>COMMUNITY CHARACTER COMPATIBILITY STANDARDS</b>						
5. Conflicts						
6. Scenic Roads						
<b>PUBLIC FACILITIES AND SERVICES STANDARDS</b>						
7. Utilities						
8. Emergency Access						
9. Lighting						
10. On-Site Water						
<b>RESOURCE PROTECTION STANDARDS</b>						
11. Flood Hazard						
12. Geological Hazard						
13. Topography						
14. Flora & Fauna						
15. Historic Preservation						
16. Mineral Deposits						
17. Fragile Areas						
18. Open Space						
<b>ENVIRONMENTAL STANDARDS</b>						
19. Air Quality						
20. Water						
21. Noise						
22. Glare & Heat						
23. Vibration						
24. Lighting Hazards						
25. Effluents						
<b>SITE DESIGN STANDARDS</b>						
26. Site Plan						
27. Compatibility						
28. Screening						
29. Shadows						
30. Traffic						
31. Entrance/Exit						
32. Buffers						

**ALL PROPOSALS: ABSOLUTE CRITERIA CHART**

<b>ALL CRITERIA</b>			<b>APPLICABLE CRITERIA ONLY</b>			
<b>CRITERION</b>	Is the criterion applicable?			Will the criterion be satisfied?		<b>If no, please explain</b>
	Preliminary	Final	Not Applicable	Yes	No	
33.Height						
34.Parking						
35.Recreation						

**ACTIVITY: COMMERCIAL**

**DEFINITION:** Retail trade and service activities such as vehicle service stations and sales, greenhouses and nurseries, grocery and convenience stores, offices, business services, hotels/motels, health and recreation clubs, restaurants, bars, shopping centers, theaters, retail laundry centers, mortuaries, veterinary clinics, medical clinics, childcare centers and other uses which are of the same general character that involve commercial activity.

**CRITERIA:** Each of the following applicable criteria must be answered “yes” and implemented within the development plan.

		Y	N	N/A
1.	If the project is likely to generate more than 25 vehicle trips per business day per acre both to and from the premises, will the project site be directly served by an arterial or collector street?			
2.	If the project is likely to generate more than 25 vehicle trips per acre both to and from the premises in the busiest hour of the operating day (annual average), is it directly served by an arterial street?			
3.	Is all repair and service activity, including storage, planned to take place within an enclosed structure?			
4.	Are all state and local minimum lot size standards fulfilled?			
5.	Do parking accommodations take into consideration the following guidelines (based upon 300 square foot parking space for an automobile which includes room for turning):			
	a. commercial = 1,500 feet/1,000 square feet of floor area;			
	b. office = 1,200 square feet/1,000 square feet of floor area;			
	c. church, restaurant, theater = 300 square feet/3 seats;			
	d. hotel, motel, inn, hospital = 300 square feet/sleeping room (2 beds);			
	e. auto service/repair station = 300 square feet/1,000 square feet floor area;			

		Y	N	N/A
6.	IF ALL OF THE ABOVE ARE ANSWERED “YES” , DOES THE PROJECT EARN AT LEAST 50% OF THE MAXIMUM POINTS AS CALCULATED ON “POINT CHART A” FOR THE FOLLOWING CRITERIA:			
a.	Is the project adjacent to or functionally a part of an existing commercial or industrial use?			
b.	Does the project contain a workable mix of uses, thereby promoting the historic clustered village character of the region?			
c.	Does the activity reduce non-renewable energy usage, through the application of alternative energy systems, re-use of existing buildings, and through committed energy conservation and/or recycling measures?			
d.	If the project site contains a building or place in which a historic event occurred, which has special public value because of notable architecture or is of cultural significance, does the project fulfill the following:			
	(1) Prevent creation of influences adverse to its preservation?			
	(2) Assure that new structures and uses will be in keeping with the character, scale, and/or style of the building or place?			
	(3) Propose adaptive use of the building or place that will lead to its continuance, conservation, and improvement in a manner that respects the integrity of the neighborhood?			
e.	Are there any recreational facilities/opportunities available to the public, which are created by the project (including but not limited to: playfields, trails, trails connecting to existing trails, tennis courts)?			
f.	Does parking area design take into consideration sharing existing or proposed parking accommodations, utilize creative designs in order to minimize asphalt areas, promote parking behind or beside buildings, and provide one access from the principal road serving the development?			
g.	Does the project maintain the rural character of the area by protecting such things as agricultural land, vegetative buffers, stonewalls, views, rural roadside character, etc.			

COMMERCIAL ACTIVITIES				POINT CHART A							
For All Criteria				Applicable Criteria Only							
				I		II		III		IV	
Criterion	Is The Criterion Applicable		Circle The Correct Score			Multiplier	Points Earned	Maximum Applicable Points			
	Yes	No	Yes	VW*	No						
a. Adjacent Existing Use			1	2	0	3					
b. Mixed Use			1	2	0	4					
c. Energy Conservation			1	2	0	2					
d. Historic Preservation			1	2	0	5					
e. Recreation			1	2	0	3					
f. Parking			1	2	0	4					
g. Character			1	2	0	5					
*VW – Very Well Done							Totals				
Percentage Earned of Maximum Applicable Points: V/VI = _____% (VII)								V	VI		

**ACTIVITY: INDUSTRIAL**

**DEFINITION:** All industrial and manufacturing uses, and other uses which are of the same general character

**CRITERIA:** Each of the following applicable criteria must be answered “yes” and implemented within the development plan.

		Y	N	N/A
1.	If the project is likely to generate more than 25 vehicle trips per business day per acre both to and from the premises, will the project site be directly served by an arterial or collector street?			
2.	If the project is likely to generate more than 25 vehicle trips per acre both to and from the premises in the busiest hour of the operating day (annual average), is it located in the existing Commercial District?			
3.	Have all necessary precautions been taken to prevent all lubricants, fuel oil, or other substances used in the manufacturing process, which are stored on the site, from leaking or draining into the groundwater system, streams, or other water bodies or from otherwise dispersing?			
4.	Is all repair and service activity, including storage, planned to take place within an enclosed structure?			
5.	Are all state and local minimum lot size and sewage disposal standards fulfilled?			
6.	Do parking accommodations allow for 300 square feet/employee (based upon a 300 square foot parking space for an automobile which includes room for turning):			
7.	IF ALL OF THE ABOVE ARE ANSWERED ‘YES’, DOES THE PROJECT EARN AT LEAST 50% OF THE MAXIMUM POINTS AS CALCULATED ON “POINT CHART B” FOR THE FOLLOWING CRITERIA:			
	a. Does the project maintain the rural character of the area by protecting such things as agricultural land, vegetative buffers, stonewalls, views, rural roadside character, etc.			
	b. Does the project contain a workable mix of uses, thereby promoting the historic clustered village character?			

	<b>Y</b>	<b>N</b>	<b>N/A</b>
c. Does the activity reduce non-renewable energy usage, through the application of alternative energy systems, reuse of existing buildings, and through committed energy conservation and/or recycling measures?			
d. If the project site contains a building or place in which a historic event occurred, which has special public value because of notable architecture or is of cultural significance does the project fulfill the following:			
(1) Prevent creation of influences adverse to its preservation?			
(2) Assure that new structures and uses will be in keeping with the character, scale, and/or style of the building or place?			
(3) Propose adaptive use of the building or place that will lead to its continuance, conservation, and improvement in a manner that respects the integrity of the neighborhood?			
e. Does parking area design take into consideration sharing existing or proposed parking accommodations, utilize creative designs in order to minimize asphalt areas, promote parking behind or beside buildings, and provide one access from the principal road serving the development?			
f. Are there any recreational facilities/opportunities available to the public, which are created by the project (including but not limited to: playfields, trails, trails connecting to existing trails, tennis courts)?			

INDUSTRIAL ACTIVITIES				POINT CHART A					
For All Criteria				Applicable Criteria Only					
				I	II	III	IV		
Criterion	Is The Criterion Applicable		Circle The Correct Score Yes VW* No			Multiplier	Points Earned	Maximum Applicable Points	
	Yes	No	1	2	0				
a. Character			1	2	0	5			
b. Mixed Use			1	2	0	3			
c. Energy Conservation			1	2	0	2			
d. Historic Preservation			1	2	0	5			
e. Parking			1	2	0	4			
f. Recreation			1	2	0	3			
			1	2	0				
			1	2	0				
			1	2	0				
			1	2	0				
			1	2	0				
			1	2	0				
*VW – Very Well Done						Totals			
Percentage Earned of Maximum Applicable Point:							<b>V</b>	<b>VI</b>	
V/VI = _____ % (VII)									

**Section 213 Senior Housing Overlay District**

*(Approved by ballot at a Special Town Meeting on October 23, 2001. Article II, Establishment of Districts and District Regulations was amended by ballot at March 12, 2003, Town Meeting by adding the following Section 213.)*

**213 Purpose and Intent:** The provisions relating to senior housing are established to promote affordable housing for the senior population, provide for the efficient use of land and utilities consistent with the needs of the senior population 62 years of age and over to preserve open space.

**213.1 General Requirements and Location**

- A. The design and site layout of all elderly housing developments shall compliment and harmonize with the rural character of the Town of Deerfield, shall maximize the privacy of dwelling units and preserve the natural character of the land. A mixture of exterior architectural styles, acceptable to Planning Board, shall be provided in each development.
- B. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis giving to the utilization of natural features wherever possible.
- C. Senior Housing may be located in the A/R Zone.

**213.2 Minimum Lot Size and Overall Residential Unit Density:**

- A. The minimum lot size for senior housing development shall be at least three (3) acres. Very poorly drained soils, wetlands, and slopes greater than 20% shall not be included in determining the minimum lot.
- B. The maximum number of residential units permitted shall be based on the distance the further extent of the property is from the common intersection of South Old Center, Candia, North and Raymond Roads.

One mile or less	3 units per acre
Greater than one mile but less than two miles	2 units per acre
Greater than two miles	1 unit per acre

**213.3 Frontage**

- A. All senior residential housing developments shall maintain a minimum of two hundred feet of frontage on a Class V or better road. In a case where the frontage is on an arc, the frontage shall be measured along the chord of the arc and shall be determined at the building set-back line.

**213.4 Building Requirements**

- A. The front, side line and rear setbacks for buildings, internal roadways, and parking lots from all external property lines shall be fifty (50) feet.
- B. Lot coverage, including roofs, roadways, sidewalks and parking areas shall not exceed 25(%) percent of the lot.
- C. Senior housing development shall not be located within identified floodplains.

- D. No dwelling unit shall contain more than two (2) bedrooms.
- E. Each dwelling unit within the complex shall contain at least four hundred (400) square feet of living space.
- F. No more than one third (1/3) of the dwellings shall be a single bedroom unit.
- G. Dwelling units containing two (2) bedroom units shall have a minimum of six hundred (600) square feet per unit.
- H. Two (2) story buildings are permitted but all units shall have at-grade access. The maximum building height shall not exceed thirty-five (35) feet.
- I. There shall be no more than four (4) dwelling units in any one structure.
- J. Where there will be more than one building on a lot, they shall have a minimum horizontal separation of thirty-five (35) feet.
- K. A community building shall be provided of sufficient size for the residents which can be used as a place of assembly and to provide the usual amenities and living aids found in housing designed for use by the elderly.

### **213.5 Buffer**

- A. A buffer area shall be of sufficient width to provide privacy and noise protection, but shall not be less than the setbacks otherwise required in this section. The buffer shall provide and maintain a strip of nativized plantings along and within the buffer area.

### **213.6 Water Supply and Wastewater Disposal**

- A. The water supply and wastewater disposal systems serving the residential units shall be owned, operated, and maintained by the development. The water supply system, through the well yield or on-site pressurized storage, shall be of sufficient size to operate fire suppression sprinkles required in each of the units. Water supply and wastewater disposal systems shall be approved by the NH Department of Environmental Services.

### **213.7 Access Drives, Parking Lots, Walkways and Lighting Requirements**

- A. All access driveways and parking lots for senior housing shall be maintained by the owners. There shall be provided off-street parking areas to allow one and one half spaces for each dwelling unit. All parking areas, including driveways, shall be paved in accordance with the requirements of the Town of Deerfield Site Plan Review Regulations. There shall be adequate provisions for drainage and snow removal.
- B. Paved sidewalks and/or walking paths shall be provided within the development for access to public road, connection to other walking paths in the vicinity and, to the extent possible, to off-site community facilities. Such sidewalks and/or walking paths shall be pedestrian access for exercise/recreation for the residents.
- C. Lighting shall be provided along access roads, parking lots and walking paths that shall be appropriate for the residents of the development.
- D. Two (2) parking spaces per unit are required. (*Adopted March 14, 2006*)

### **213.8 Site Plan Review**

- A. Senior housing unit developments shall conform to procedural and plan requirements of the Site Plan Review Regulations of the Town of Deerfield Planning Boards.

### **213.9 Assurances of Senior Residency**

- A. Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review of the Planning Board's attorney at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town whether by injunctive relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted thereunder, without the prior written approval of the Planning Board.

### **213.10 Common Land/ Open Space**

- A. In every Elderly Housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all elderly housing developments shall be calculated as follows: either
  - 1. No less than 30% of the gross upland area of the development. Upland area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), water bodies, and slopes equal to greater than 20%; or
  - 2. No less than 30% of the gross land area of development. No more than 50% of the open space land shall contain poorly drained soils.
- B. In calculating common/open space area the following shall not be included: public right-of-way, very poorly drained soils, soils with slopes equal to or greater than 20%, parking lots, the footprints of all structures and the area within 35 feet of the structures. For developments with interior lot lines, the area inside the lot lines shall not be included in the open space calculations.
- C. Use of Common Land. Such common land shall be restricted to open space recreational uses such as parks, swimming pool, tennis courts, golf courses, or conservation. While the setbacks, front, rear and side are considered part of the common land, none of the above uses shall be allowed within these areas nor any other uses that would disturb the natural vegetation within these areas. These restrictions of the use of the common land (including the landscaped buffered area) shall be stated in the covenants running with the land.
- D. Access to Open Space/Common Land. Such common land shall have suitable access to a road within the development.
- E. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the Elderly Housing development shall be protected by covenants running with the land and shall be conveyed by the property owner to a homeowners association so as to guarantee the following:
  - 1. The continued use of land for the intended purposes.

2. Continuity of proper maintenance for those portions of the development requiring maintenance.
3. The availability of funds required for such maintenance.
4. Recovery for loss sustained as a result of casualty, condemnation or otherwise.
5. Creation of a homeowners association or tenancy-in-common or similar form of ownership,
  - a. with automatic membership and obligation of residents of the Elderly Housing development
  - b. upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-
  - c. in-common, or similar form of ownership shall include lien provisions and shall be subject to
  - d. review by the Planning Board.

**213.11 Homeowner’s Association**

- A. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Homeowner’s Association and to prepare and adopt appropriate Articles and By-Laws, which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Homeowner’s Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs for the review by the Planning Board and Board’s attorney shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in the By-Laws and Declaration of Covenants, that the Association will at all times be in compliance with current ordinances of the Town governing elderly housing.

**213.12 Senior Housing Documents**

- A. Condominium Documents, By-Laws, Homeowner’s Association and Declaration of Covenants shall be submitted to the Planning Board at the time the application is filed.

The application will not be considered complete unless these documents are included. All documents in their final form must be signed by the Chair of the Planning Board and recorded at Rockingham County Registry of Deeds.

- B. The applicant shall provide a listing of all elderly housing developments undertaken in the previous ten years by that applicant.

**213.13 Maximum Amount of Senior Housing Units**

- A. The total number of dedicated senior housing units in the Town of Deerfield shall not exceed ten (10) percent of the total number of dwelling units in the Town at the time the determination is made. The total number of existing dwelling units shall not include those units set aside for senior housing. *(Adopted March 14, 2006)*

## ARTICLE III

## GENERAL PROVISIONS

The following provisions shall apply to all districts except where listed:

### **Section 301            Uses Not Permitted**

In all districts the following uses are not permitted: Junk/Salvage yards, machinery wrecking yards, and not more than two unregistered vehicles on a particular owner's land.

### **Section 302            Front Yard Setback**

On streets with less than 50 foot right-of-way, the front yard requirement shall be 65 feet from the center line of the existing right-of-way.

### **Section 303            Lots in Two Zoning Districts**

Where a district boundary line divides a lot of record at the time such district boundary line is established, the regulations for either district of such lot shall extend not more than thirty feet into the other district, provided the lot has frontage on a street in the district for which the use is being granted.

### **Section 304            Dwellings on Lots**

There shall be only one dwelling on a lot.

### **Section 305            Set-Back from Water Bodies**

No building permit will be issued for any structure having a set-back of less than 75 feet from any river or stream, lake or pond.

### **Section 306            Collapsed or Burned Buildings and Structures**

No owner or occupant of land in any district shall permit a collapsed or burned building to remain as such, but within one year shall remove the building or structure and clear the site to ground level, or shall repair and rebuild or replace the building or structure. The Board of Adjustment may grant an extension of this time limit provided.

### **Section 307            Lot Coverage**

No building shall cover more than twenty-five percent (25%) of the lot.

### **Section 308            Building Coverage, Open Porches, Carports and Garages**

In determining the percentage of building coverage of a lot, porches or carports open at the side but roofed, and all principal and accessory buildings shall be included.

### **Section 309            Reduction of Lot Area**

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of this ordinance shall be less than herein prescribed for each district. The provisions of this section shall not apply when part of a lot is taken for a public purpose.

## **Section 310            Multifamily Dwellings**

Multifamily dwellings will only be allowed through conversion of residential buildings existing at the time of the passage of this ordinance or pursuant to the Senior Housing Ordinance Section 213. The maximum number of dwelling units allowed in a building will be four (4). Written approval from the New Hampshire Department of Environmental Services (DES) for the septic disposal system serving the units must be presented upon application for a building permit.

## **Section 312            Open Excavation**

**312.1** Within twelve months after work on an excavation for a building has begun, the excavation thus remaining shall be covered such as with building construction or filled to normal grade by owner.

**312.2** For safety purposes, abandoned excavations with slopes exceeding one horizontal to two vertical shall be protected by a fence at least four feet in height.

## **Section 313            Obstruction of Vision**

On a corner lot regardless of the district, within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty-five feet away from their intersection, there shall be no obstruction to vision between the heights of three feet and ten feet above the surface of each street. The Board of Adjustment may waive, as a special exception, this requirement in the commercial district.

## **Section 314            Agricultural Uses Shall Comply with the Following Requirements**

Farm buildings, other than a dwelling shall not be erected within 37.5 feet of a neighboring property line.

Feed lots, fenced runs, pig pens, and similar intensively used facilities for animal raising and care shall not be located within 100 feet of a neighboring dwelling or street line, excluding pastures.

## **Section 315            Non-Conforming Uses**

Any non-conforming use existing on the effective date of these regulations may be continued indefinitely but:

**315.1** Shall not be expanded, enlarged, or extended (except as provided in 316), nor shall any external evidence of such use be increased by any means whatsoever.

**315.2** Shall not be changed to another non-conforming use.

**315.3** Shall not be reestablished if such use has been discontinued for a period of twelve months, or has been changed to, or replaced by a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.

**315.4** Shall not be restored for other than a conforming use after damage from any cause, unless the non-conforming use is reinstated within one year of such damage. If the restoration of such building is not completed within one year, the non-conforming use of such building shall be deemed to have been discontinued, unless carried on without interruption in the undamaged part of the building.

**Section 316                    Expansion of a Non-Conforming Use**

Any non-conforming use of land or buildings may continue in their present use except that such non-conforming use shall not be changed, extended or enlarged more than twenty-five percent (25%) except by variance of the Board of Adjustment. A discontinuance of one (1) year shall void the permit.

The expansion of structures on sub-standard size lots is permitted, but only so long as said expansion occurs, within the yard dimensions for the district in which the lot is located, subject to Section 307 and all other applicable requirements of this Ordinance. *(Amendment adopted to Section 316 "Expansion of a Non-Conforming Use" by vote at March 12, 2003 Town Meeting).*

**Section 317                    Off-Street Loading**

Off-street loading facilities shall be provided for all institutional, commercial and industrial uses. These facilities shall be located so that delivery vehicles are parked outside of the street right-of-way.

**Section 318                    Off-Street Parking**

Parking facilities shall be provided for all permitted uses, and in all instances off the street and outside of the public right-of-way.

Use	Parking Space Required
Dwelling Unit	2 parking spaces per unit
Industrial and Manufacturing Establishments	1.5 parking spaces for each employee on a major shift
Church or Meeting Hall	1 parking space for every four persons
Restaurants	1 parking space for every three seats
Bed & Breakfast	2 parking spaces for each dwelling unit and 1 for each sleeping room

A parking space shall contain a minimum of 200 square feet.

**Section 319                    Signs**

Signs as defined in Article VI are specifically prohibited except as herein provided.

**319.1** All signs must be constructed of durable materials and shall be maintained in good condition and repair at all times.

**319.2** In any residential district, a sign not exceeding four square feet is permitted which announces the name, address, or professional or home business of the occupant of the premises on which said sign is located.

**319.3** A bulletin board not exceeding twenty-four square feet is permitted in connection with any church, school, or similar public structure.

**319.4** A temporary real estate or construction sign, not exceeding twenty square feet is permitted on the property being sold, leased, or developed. Such sign shall not obstruct the view of traffic and shall be removed.

**319.5** A business sign shall be permitted in connection with any legal business or industry located on the same premises and meeting the following requirements:

- A. Two signs are permitted for any established business, one may be free standing.
- B. The primary purpose of the sign shall be for identification and not for advertising and may state only the owner, trade names, trademarks, products sold, and/or the business or activity conducted on the premises on which the sign is located.
- C. Signs shall not extend above the roof or parapet of the building. The height of a free standing sign shall not exceed 15 feet.
- D. Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon or from within the sign itself.
- E. Signs which are animated, flashing, or with intermittent illumination are prohibited.
- F. Signs shall not project over public right-of-way or property lines.
- G. Maximum square footage of any sign shall be 32 square feet.

## **Section 320 Home Business**

A home occupation as herein defined, shall be permitted within the Agricultural-Residential District. Home occupation means the operation of a business, office or shop for: the manufacture and/or sale of products such as jewelry, pottery or similarly small objects; use by a lawyer, doctor, realtor or other professional or service provider; or use by an electrician, plumber or similar tradesman provided that all of the following qualifications are observed:

**320.1** The use shall be subordinate to the principal residential use of the dwelling;

**320.2** The use shall be limited to and carried out entirely within the confines of a detached single family dwelling or accessory structures;

**320.3** The use shall not utilize outdoor storage or display of materials or products;

**320.4** The use shall not change the residential character of the dwelling, the property on which the dwelling is situated, or the neighborhood in which the property is located;

**320.5** The use shall not become the source of undue nuisance to the neighbors by reason of hours of operation, noise, dust, glare, vibration, traffic or other disruptive influences;

**320.6** The use shall not employ more than two persons other than persons who live within the dwelling; Any proposed use which does not conform to this limit on the number of employees will require a Special Exception from the Board of Adjustment.

**320.7** The operator of the home occupation shall be a person who is in continuous residence in the dwelling within which the occupational use is conducted; and

**320.8** Parking shall be provided, off-street.

**320.9** No home occupation shall generate hazardous waste as defined under New Hampshire Department of Environmental Services, Waste Management Division, Rules for Management of Hazardous Waste unless by Special Exception granted by the Board of Adjustment. Applicants for such a Special Exception must demonstrate compliance with all current State and Federal Regulations regarding management, storage, transportation and disposal of hazardous waste.

## **Section 321                   Excavation of Natural Material**

**321.1** Soil, loam, sand, gravel, clay or stone may be removed from any lot by special exception. Excavation incidental to construction or grading on the same lot is not subject to special exception.

**321.2** The applicant shall submit plans of the site prepared by a registered land surveyor or professional engineering showing property lines, existing natural and manmade features, the scope of the proposed operation, the proposed restoration of the site, and other information useful to the Board in evaluating the aspects of the proposed excavation referred to in Section 321.3.

**321.3** In determining whether a special exception is appropriate, the Board of Adjustment shall, in addition to the criteria of Section 206, consider the public health, safety and welfare of the following aspects of the proposed excavation:

- A. Feasibility of site for excavation and water restoration without excessive slopes, water pollution, soil erosion, or alteration of drainage onto adjoining land;
- B. The impact of the proposed excavation on ground water;
- C. Site drainage, erosion control and water pollution during and after proposed excavation;
- D. Quantities of materials to be removed;
- E. Duration of operation in terms of months;
- F. Hours of operation daily and weekly;
- G. Offsite transportation routes, including health and safety hazards and risk of damage to public highways and bridges posed by trucks;
- H. Safety of site entrance and exit;
- I. Dust, noise, odor and other off-site impacts of proposed excavation, and need for vegetative or other screening;
- J. Need for fencing to ensure safety;
- K. Disposal of stumps, boulders and other debris;

- L. The capacity of the applicant to post sufficient surety for the cost of restoring the site after excavation and repairing damage to public roadways and bridges caused by truck traffic to and from the site;
- M. Any other aspect of the proposed excavation that is likely to have an adverse impact on public health, safety or welfare.

**321.4** Special exception approvals for excavation may be made subject to appropriate conditions related to the criteria set forth in Section 321.3.

**321.5** The Board may require the applicant to post sufficient surety for the cost of site restoration highway and bridge repair necessitated by the operation; and any other condition of approval whose performance warrants a surety.

## **Section 322                    Site Plan Requirements**

No permit to build or locate any structure shall be issued by the Building Inspector until a plat or plan showing the location of the structure in relation to the property lines has been submitted to the Building Inspector. A permit application shall be acted upon by the Building Inspector within thirty (30) days from the date of submission.

## **Section 323                    Ordinance Conformance**

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered, except in conformity with the provisions of this Ordinance.

## **Section 324                    Plan Recording Requirements**

No owner or agent may sell land by subdivision before obtaining approval of the Planning Board and recording the approval plat or plan with the Register of Deeds. New Hampshire RSA 36:27.

## **Section 325                    Open Space Development**

### **325.1 Purpose and Objectives:**

- A. Authority: This section is enacted in accordance with RSA 674:21, and is referred to as the Open Space Development Ordinance.
- B. Purpose: The purpose of these open space development provisions is to encourage flexibility in the design and development of land in order to preserve open space and traditional rural character, and to promote the most efficient use of land in harmony with its natural features and protecting the natural resource base. The intent is to enhance and protect the health, safety, convenience, and general welfare of the inhabitants of Deerfield.
- C. Objectives: Open Space Development shall promote the following objectives.
  - 1. Preserve the natural beauty of existing rural roads, topography, agricultural and wooded areas and to provide usable open space and recreation facilities in close proximity to dwelling units; encourage the use of buffers, wildlife habitats and corridors and greenways in order to achieve the above:

2. Encourage a less sprawling form of development which makes more efficient use of land, requires shorter networks of streets and utilities, and fosters less consumption of rural and/or agricultural land;
3. Provide an efficient procedure which can insure appropriate, high quality design and site planning and a high level of environmental amenities;
4. Avoid development of portions of sites which have poor soil conditions, high water tables, are subject to flooding, or have excessively steep slopes;

**325.2 Definitions: The following terms as used in this section shall have the following definitions:**

- A. Open Space Development or Open Space Subdivision: A subdivision or development of land where the lot area and other dimensional standards are reduced in exchange for the preservation of permanently protected open space, recreational land, forests or farmland.
- B. Conventional Subdivision: A subdivision having lot areas setback, frontage, and street layout that conform to the requirements of Section 204 of the Town of Deerfield Zoning Ordinance.
- C. Home Owners Association: A private non-profit corporation, association, or other legal entity established to manage and support the activities of the open space development, in which membership is mandatory for owners of lots in the subdivision.
- D. Open Space: Land for which development rights have been restricted under this ordinance.
- E. Parent Lot: Any lot existing as of March 11, 2008, the date of the adoption of this ordinance.
- F. Yield Plan: A subdivision plan, with such information as the Planning Board may require, showing the subdivision of the land as a Conventional Subdivision for single-family houses.

**325.3 Applicability:**

- A. Lots subject to this Ordinance: This Ordinance applies to any Parent Lot that is greater than twelve acres, and to any lot created by subdivision from any Parent Lot that was greater than twelve acres.
- B. Required Open Space Development. Any subdivision of any Parent Lot greater than twelve acres must be and Open Space Subdivision, unless exempted by the following subsection.
- C. Exemptions: The following lots created by subdivision are exempt from the requirement for Open Space Development (but not from any restrictions from further subdivision contained in this Ordinance).

1. Three Lot Exemption: Lots created by the subdivision that meet the following requirements:

(a) Use Limitations : The lots are limited in use to single family dwellings:

(b) Number of Lots: Not more than three lots may be created under this subsection from any Parent Lot, including any later subdivision of any lots created from the Parent Lot: and

- (c) Frontage limitation: At least 200 feet of frontage of the Parent Lot shall not be used for the lots exempted by this subsection.
- 2. Large Lot Exemption: Any lot created by the subdivision that has at least ten (10) acres: and
- 3. Nonresidential Lot Exemption: Lots created by the subdivision that are restricted to nonresidential uses.

### **325.4 Standards and Conditions:**

- A. Use of Lots in Open Space Developments: The following uses are permitted on lots in an Open Space Development
  - 1. Residential uses as permitted by the Zoning Ordinance.
  - 2. Outdoor recreation, such as golf courses, riding stables, skating rinks and other forms of outdoor recreation, provided:
    - (a) The siting of all outdoor recreation facilities will be subject to approval by the Planning Board under its Site Plan Review Regulations.
    - (b) Spectator events are incidental and not operated as a primary business:
    - (c) Accessory service buildings are limited to those necessary for the pursuit of the recreational activity: and
    - (d) No area developed for active recreation is located within 150 feet of any lot used for a residence.
  - 3. Commercial and non-commercial agriculture and forestry.
- B. Maximum Density: The number of dwelling units permitted in any Open Space Development shall not exceed the number of single family dwelling units permitted for a Conventional Subdivision that conforms to Section 204 of the Deerfield Zoning Ordinance and that would be approved by the Planning Board.
- C. Uses Restricted: No lots in an open space development may be used for manufactured housing, trailers, recreational vehicles, campers, or similar semi-permanent housing, whether provided with a foundation or not.
- D. Design Standards
  - 1. Setbacks: Open Space Development are subject to the following setbacks, and building separation, in place of the area and yard dimensions in Section 204:
    - (a) Setbacks: No Structure, road (except the road giving access to the subdivision), septic System, or parking area may be located:
      - (1) Front Setback: Within one hundred (100) feet from the edge of a public right-of-way in existence prior to the open space development subdivision.
      - (2) Side and rear Setback or Buffer: Within fifty (50) feet of an abutting property line to the subdivision.
    - (b) Internal Setbacks and Separation:
      - (1) Front setback: Structures shall be located at least twenty-five (25) feet from the edge of any roads in the subdivision.
      - (2) Dwelling units Separation: Dwelling units must be located at least forty (40) feet apart. The Planning Board may approve a smaller separation if an acceptable alternative for fire safety, as determined by the Fire Chief, is provided. The location

of setbacks proposed to achieve this requirement shall be depicted on all plats in the proposed open space subdivision.

2. Waiver: The Planning Board may reduce any of the Design Standards if it finds that the purposes and objectives of this ordinance are not adversely affected by the reduction.

E. Landscape Buffer:

An Open Space Development shall have a landscape buffer to provide transition between abutting land uses and the development and also between the development and existing Town roads, as determined by the Planning Board. Whenever possible, the natural vegetation shall be retained. The Board may require vegetative plantings to supplement or replace inadequate natural buffers. No construction, with the exception of primary access roads, shall be permitted in the buffer, including septic systems, parking areas, driveways and other roads.

F. Minimum Open Space Area:

The Total area of Open Space shall equal at least fifty percent of the Open Space Development's gross tract area (Minimum Open Space Area). Not more than fifty percent of the Minimum Open Space Area may consist of lands within the Wetlands Conservation District or having slopes in excess of twenty percent.

G. Use of Open Space Area:

Not greater than ten percent of the Open Space may be used for active recreational uses, such as parks, swimming pools, tennis courts, playgrounds, play fields, or golf courses. The remainder of the Open Space may be used for nature trails and passive recreation, commercial and non-commercial agricultural and forestry uses, or left as undeveloped land. The Planning Board may permit a greater portion of the land to be used for active recreational uses if it finds that expansion of active recreation satisfies the purposes of this ordinance.

H. Protection of Open Space:

Open space shall be protected by deed restrictions or other permanent covenants running with the land or a conservation easement. Open Space not conveyed to the Town or to a conservation organization acceptable to the Planning Board shall be conveyed to a Homeowners Association, provided that the lots in the Open Space Development are subject to recorded covenants requiring membership by the lot owners in the subdivision and providing for:

1. Continued use of the Open Space only for its allowed purposes;
2. Continuity of proper maintenance and monitoring of the Open Space.
3. Availability of funds required for such maintenance and monitoring;
4. Recovery for damages sustained as a result of casualty, condemnation or other loss of the Open Space; and
5. Enforcement rights held by the Town of Deerfield.

- I. Other Standards and Conditions: Except as expressly modified by this section, all Open Space Developments shall be subject to all other applicable provisions of the Zoning Ordinance and the Subdivision and Site Plan Regulations.

### **325.5 Limitation on Further Subdivision**

No lot created by subdivision of a Parent Lot, or by any subsequent subdivision of any lot that was part of a Parent Lot, may be further subdivided unless or except:

- A. The lot subject to further subdivision is at least twelve acres and the subdivision is an Open Space Subdivision under this ordinance:
- B. Lots created by the further subdivision that are greater than ten acres and are exempt from this ordinance under section 325.3C,2: or
- C. Lots created by the further subdivision that are exempt from this ordinance under section 325.3C.1, but only if the number of lots created when combined with the number of all lots previously created when combined with the number of all lots previously created from the Parent Lot that were exempt under section 325.3.C1, do not exceed three lots.

### **325.6 Procedure:**

- A. Planning Board Review: An open space development shall be treated as a subdivision for review and public hearing purposes. Multi-family open space developments with structures containing more than two dwelling unit, shall also be subject to Site Plan Review regulations. The Planning Board may impose additional conditions and limitations on any open space development, to satisfy the purposes and objectives of the ordinance.
- B. Yield Plans: For any Open Space Subdivision application, the applicant shall file with the Planning Board a Yield Plan showing the lots that may be created by a Conventional Subdivision, and containing such additional information as the Planning Board may require.
- C. Planning Board Development Regulation: The Planning Board may adopt regulations for Open Space Developments, which may impose additional standards and restrictions.

### **325.7 Other**

- A. Enforcement: Protective covenants and restrictions on Open Space required by this ordinance shall be deemed to create conservation restrictions that are enforceable by the Town of Deerfield in accordance with New Hampshire RSA 674:21-a.
- B. Statutory References: Any reference to any section of the New Hampshire Revised Statutes Annotated (“RSA”) shall refer also to any section as amended and to any successor or replacement section.
- C. Rules of Construction: In the event of any conflict between the Open Space Development Ordinance and the rest of the Deerfield Zoning Ordinance, the more restrictive provision shall control. Any reference to lots created by a subdivision of a lot subject to this Ordinance refers to all of the lots resulting from the subdivision, including the remainder portion of the original subdivided lot. Any reference to additional lots created by a subdivision refers only to the additional number of lots created by the subdivision, but not to the remainder portion of the original lot. References to the “Ordinance” in this section refer to the Open Space Development Ordinance.

### **Section 326 Conversion of a Dwelling from Seasonal To Year-Round**

Any existing seasonal dwelling may be converted to a year round dwelling as long as it is served by a sewage disposal system approved by the State of New Hampshire. The system must meet all State design and construction requirements in effect at the time of the proposed conversion. A year round dwelling is defined as a dwelling occupied or capable of being occupied for more than eight (8) months of the year.

### **Section 327 Sewage Disposal Systems *(Defeated March 14, 2006)***

**Section 328 Phased Development (Adopted March 14, 2006)**

**328.1 Authority**

Pursuant to the authority grant in the New Hampshire RSA 674: 21

(b) the Town of Deerfield adopts the following zoning amendment to be administered by the Town of Deerfield Planning Board in conjunction with the Town’s Subdivision Regulations.

**328.2 Purpose**

Based on information on the 2007 Master Plan update, the Planning Board recognizes the concern for rapid and excessive growth and that the existing. Municipal and educational infrastructures in Deerfield is not sufficient to handle such growth, this amendment is adopted for the following purposes.

1. To guide the implementation of a major subdivision in the Town of Deerfield so that residents of the Town can be adequately served by community services as those services are expanded.
2. To ensure fairness in the allocation of building permits.
3. To phase in residential development at a rate that will be compatible with the orderly and gradual expansion of community services, including but not limited to education, fire and police protection, road maintenance, waste disposal and recreation.

**328.3 Applicability**

This article shall apply to all major subdivision applications filed with the Deerfield Planning Board. Major subdivisions are subdivisions that create four (4) or more new dwelling units. The following phasing schedule shall apply to all forms of residential subdivision of land as defined in RSA 672:14 (I) with the following exceptions.

When unusual or unforeseen conditions arise with regard to a particular subdivision, the applicant may request the Planning Board consider a modification to the phasing schedule. The applicant shall provide the Planning Board with sufficient information in order for the Board to consider such a request.

For subdivisions in excess of 60 dwelling units the Planning Board may require the subdivision to adhere to a longer phasing plan if the Planning Board determines that such phasing is necessary to protect the health, safety, welfare and environment of the Town.

**328.4 Phasing Schedule**

Number of Proposed Units	Years	Max. number of building permits that can be issued in one Year
2 to 3	Not Applicable	Not Applicable
4 to 6	2	50%
7 to 9	3	33%
10 to 20	4	25%
21 to 40	5	20%
40 to 60	6	16%
Over 60	7 to 8	13%

### **328.5 Implementation**

Subdivisions approved under the phasing schedule shall include a note on the plan that states the phasing schedule for the approved subdivision, identifying the phasing of each lot, consistent with the schedule in Section 328.4. The Town's Building Inspector shall only approve building permits for lots in the subdivision approved after the effective date of this amendment consistent with the schedule in Section 328.4.

### **328.6 Periodic Review**

The Planning Board shall periodically review the effectiveness and impact of this article, but not less frequently than once every two years to ensure that the phasing requirements of this article are:

1. Reasonable in its implementation/
2. Achieving the intent of provision as stated in the Purpose above.

## **Section 329 Wireless Telecommunication Facilities Ordinance (Adopted March 14, 2006)**

### **329.1 Authority**

This Ordinance is adopted by the Town of Deerfield on March 14, 2006 in accordance with the authority granted by the New Hampshire RSA 674:16 and 21, II.

### **329.2 Purpose**

These regulations have been enacted in order to establish general guidelines for the siting towers and antennas and to enhance and fulfill the following goals:

Preserve the authority of the Town of Deerfield to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.

Enhance the ability of providers of telecommunication services to provide such services to the community effectively and efficiently.

Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.

Preserve the Town's unique view-sheds, scenic values and natural resources in particular those identified in the Town's recently completed Open Space Plan.

### **329.3 Definitions**

**Antenna:** Means any exterior Apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.

**Average Tree Canopy Height:** Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet of the proposed tower site.

**Tower:** Means any structure that is designed and constructed primarily for the purpose of

supporting one or more antennas.

**Telecommunications Facilities:** Means any antenna, tower or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions.

### 329.3 Location of Telecommunications Facilities

Telecommunications facilities may be permitted in all districts provided they are camouflaged, hidden or disguised. In no case, however, shall such a facility be sited in a location that would impact any view to Pawtuckaway Mountains and Nottingham Mountain.

### 329.4 Permitted Uses

**Principal or secondary use:** Telecommunications facilities may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of a facility as a secondary use as long as all other provisions of the Town of Deerfield's Zoning Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setbacks and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

Any alteration of the original permitted use and device configuration of the facility will require a new approval.

**Amateur Radio: Receive-Only Antennas.** This Ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally- licensed amateur radio station operator or is used exclusively for receive-only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

**Essential Services & Public Utilities:** Telecommunications facilities shall be considered infrastructure, essential services or public facilities as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications is a use of land and is addressed by this Section.

### 329.5 Construction Performance Requirements

**Federal Requirements:** All facilities must meet or exceed current standards and regulations of the FAA, FCC and any other agency of the Federal Government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of the facilities governed by the Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with 329.10 through the execution of the posted security.

**Building Codes/Safety Standards:** To ensure the structural integrity of towers and antennas, all facilities will be inspected every three years by an engineer approved by the Town, with the cost to be paid by the owner. The engineer will submit a report to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply

within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with 329.10, of the tower or antenna, at the owner's expense through execution of the posted security.

**Additional Requirements for Telecommunications Facilities:** These requirements shall supersede any and all applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

**Height:** All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 175 feet.

**Setbacks and Separation:** In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.

**Security Fencing:** Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

**Landscaping:** A vegetative buffer shall be provided that effectively screens the sight of the compound from adjacent property. The standard vegetative buffer shall consist of a landscaped strip of at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirements may be reduced or waived entirely. Existing mature tree growth and natural landforms on the site shall be preserved to maximum extent possible.

**Camouflaging:**

- a. At a tower site, the design of the 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 setting and built environment.
- b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical mechanical equipment must be of a neutral color this is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive.

**Balloon Test:** The applicant shall provide notice of a date on which a balloon(s) will be floated at the proposed site, and provide pictures from all locations around the Town and within 20 miles from which the balloon(s) is visible.

**329.6 Conditional Use Permits**

**General:** Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with other applicable ordinances and regulations of the Town of Deerfield.

**Issuance of Conditional Use Permits:** In granting the Conditional Use Permit, the Planning Board may impose conditions to extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

## **Procedure on Application:**

The Planning Board shall act upon application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

All Towns within 20 miles of the proposed location will be notified of the public hearing by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

**Decisions:** All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.

Permits shall be renewable every three years. When possible, this time frame shall be consistent with the timing for performance bond renewal and inspection per 329.6.

**Plan Requirements:** Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan along with information identified in Sections 4.4, Existing Data and 4.4.2 Proposed Data in the Town of Deerfield's Site Plan Review Regulations. The Planning Board may request the applicant to provide additional site plan information that is customary for applications of the type.

**Other Information Required:** In order to assess compliance with this zoning amendment, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

Propagation map showing proposed radio frequency coverage.

Photographic documentation of the balloon test(s).

The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. IF such documents are required, the applicant should provide the Planning Board with copies.

The applicant will provide the Board with the following information:

1. The number of sites for telecommunication facilities each provider will require;
2. Sites outside of the Town for the particular coverage area that are being considered;
3. How the siting of a telecommunication facility will affect the ability to allow a competitor's antennas on the same property.
4. The applicant will provide the Board with studies of the alternative sites in the Town that have been considered for siting and selection criteria.

The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers.

The applicant will provide the Board with any copies of the federal license from the FCC. Upon request the applicant will provide:

1. Detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20 mile radius, both active and inactive; and
2. Site descriptions for each of the above locations showing the antenna height and diameter, and externally visible structures.

The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

### **329.7 Waivers**

Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations. The applicant shall submit a waiver request in writing to the Planning Board.

### **329.8 Performance Guarantee Agreement and Security**

The applicant shall provide a performance guarantee to the Town in the amount that would be sufficient to cover the costs of site improvements and costs of removal and disposal of the facility components. The Planning Board shall establish the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction. The term of performance guarantee shall be negotiated with the Planning Board and administered by the Board of Selectmen.

### **329.9 Removal of Abandoned Antennas and Towers**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from town. A declaration of abandonment shall only be issued following a public hearings, notice in accordance with the Town procedures, with written notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the performance guarantee in order to remove the tower. If there are two or more users of single tower, this provision shall not become effective until all users cease using the tower.

### **329.10 Administrations and Enforcement**

The Board of Selectmen shall be responsible for the enforcement of the provisions of this ordinance.

### **329.11 Severability**

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

### **329.12 Appeals**

As provided by NH RSA 677:15, the applicant, an abutter or an aggrieved party may appeal a decision to the Superior Court as provided by RSA 677:15.

## **Section 330 Pleasant Lake Watershed Ordinance (Adopted March 13, 2007)**

### **330.1 Authority and Statement of Intent**

- A. Pursuant to RSA 674:21, The Town of Deerfield adopts a Watershed Protection Overlay District and accompanying regulations to ensure adequate protection and preservation of Pleasant Lake and its watershed from the effects of point and non point source pollution, including sedimentation. This watershed district and the adoption of these regulations are intended to:
1. Protect Public Health
  2. Protect aquifers that serve as existing or potential water supplies and the aquifer recharge system.
  3. Protect contiguous surface waters and wetlands by minimizing storm water runoff.
  4. Protect the natural areas and wildlife habitats within the overlay district by maintaining ecological balance.
  5. Protect water quality degradation through the regulation of land uses and development.
  6. Protect property values that affect the town tax base.
  7. Minimize storm water runoff.
- B. Within his district, and in the event of a conflict between the requirements of this section and other provisions of the Town of Deerfield Zoning Ordinance or state law, the more stringent requirement shall prevail.

### **330.2 Applicability**

- A. The special provisions established herein shall apply to all development proposals and subdivision and site plan review proposals and to potential contaminating activities within the Watershed Protection Overlay District and all such proposals and activities shall be subject to the review requirements set forth in Section 330.6. The Watershed Protection Overlay District is displayed on the Pleasant Lake Watershed Map on file at the Town Office.
- B. The boundaries of the Watershed Protection Overlay District are identified on the Pleasant Lake Watershed Map.

### **330.3 Administration**

- A. General: With regard to subdivision and site plan proposals, the Deerfield Planning Board shall have the primary authority to administer the provisions of the Watershed Protection Ordinance. All development proposals, exclusive of subdivision and site plan proposals, and any potential activity that may cause a source of pollution to the water body
- B. Occurring wholly or partly in an area within the Watershed Protection Overlay District shall be subject to this Ordinance and to review by the Town's Code Enforcement Officer. Such review approval and all conditions attached to the approval shall be properly documented before issuance of any building permit by the Town.

### **330.4 Definitions**

- A. Buffer Zone: The undisturbed natural area sufficient in size to mitigate runoff effects harmful to the water quality.
- B. Contamination: Sedimentation, point and non point source pollution, septage or the discharge of hazardous materials.

- C. Development: Any construction, change in use, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel of land, but not meant to include the installation, expansion or improvement of lawns.
- D. Hazardous Materials: As defined in Superfund Amendment and Reauthorization Act of 1986 and Identification and Listing of Hazardous Wastes 40 CFR:261 (1987)
- E. Hydrology: The study of the earth's waters, their distribution and the cycle involving precipitation, infiltration into the soil and evaporation.
- F. Impervious Surface: An area whose water absorbing characteristics are greatly reduced as compared to the natural land and therefore less easily penetrated by moisture including, but not limited to, dirt and paved roads, driveways, parking lots, sidewalks, roofs, patios and/or decks.
- G. Infiltration Rate: The amount and measure of time for the surface water to filter into the soil.
- H. Potential Contaminating Activity: Activities that have the potential to create a new discharge of contaminants or to increase the discharge of contaminants to surface or ground waters.
- I. Runoff Volume: The measure of surface water runoff during a storm event.
- J. Sedimentation: The deposition of sand, silt, soil or other matters into a watercourse or wetland, including that resulting from a post development surface runoff.
- K. Storm Event: A period of sustained rainfall with a minimum total accumulation of 0.25 inches of precipitation over 24 hours.
- L. Tributary Stream: Any perennial or intermittent stream that flows into a surface water.
- M. Watershed: The area lying within the drainage basin of the lake.
- N. Non Point Source Pollution: Contaminants including, but not limited to, pesticides, fertilizers, animal waste, sediments, nutrients, and heavy metals that are deposited on the ground surface and that may flow into and pollute nearby surface waters.
- O. Best Management Practices: As defined in "Innovative Storm water Treatment Technologies", Best Management Practices to Control Non-Point Source Pollution, a Guide for Citizens and Town Officials", January, 2004 prepared by the New Hampshire DES and "Buffer for Wetlands and Surface Waters, A Guidebook for New Hampshire Municipalities" May 1997 and subsequent amendments and revisions.

### **330.5 Use Regulations**

- A. Permitted Uses, special exceptions uses, dimensional standards and special requirements established by the underlying zoning district shall apply, except as modified below.
- B. The following uses shall be specifically prohibited within the Watershed Protection Overlay District.
  1. Storage or production of hazardous materials.
  2. Disposal of hazardous materials or solid wastes
  3. Treatment of hazardous material, except rehabilitation programs authorized by a government agency to treat hazardous material present at a site prior to the adoption of this ordinance.
  4. Dry cleaning, dyeing, printing and photo processing.
  5. Disposal of septage or septage sludge, as defined by New Hampshire Solid Waste Rules Env-Wm101-300 & 2100-3700.
  6. Establishment of Salt Storage Areas.
  7. Junkyards and Salvage Yards.

### **330.6.1 Review requirements for development in the Watershed Protection Overlay District**

#### **A. General:**

1. Applications for subdivision of land and for site plan review and approval are subject to all review requirements of this section, including the requirement 330.6B, may be accompanied by a hydrologic study.
2. Applications for construction activities that require soil or site disturbances like new homes, additions, modifications and repairs of existing homes need to be accompanied by an erosion and sedimentation control plan.
3. New home construction applications must include a soil erosion and control plan.

#### **B. All development within the Watershed Protection Overlay District will be evaluated by the Town's Code Enforcement Officer to ensure that:**

1. Non point source pollution is prevented to the maximum extent possible.
2. Storm water runoff associated with new development or other land disturbance activities shall not discharge untreated directly into any wetland or local water body.
3. Best Management Practices (BMP) are in place to remove pollutants that present a potential impact to the water body.
4. Grading, grubbing and removal of vegetation at a development site is minimized and erosion and sedimentation control measures are in place and properly installed.
5. Activities involved in potential contamination within the Watershed Protection Overlay District, but which have received a special exception , must submit a spill prevention control and countermeasures plan (SPCC Plan).

### **330.7 Hydrologic Study**

1. For proposed subdivisions and site plan: A hydrologic study may be required and shall be performed by a licensed professional engineer or other qualified professional and shall include, at a minimum, the following information.
  - a. Description of the proposed project including location and extent of impervious surfaces, on site processes or storage of materials, the anticipated use of the land and buildings, site description, including topographic, hydrologic and vegetative features.
  - b. Characteristics of natural runoff on the site and projected runoff as a result of the proposed project, including runoff volumes and velocities and other characteristics necessary to provide a water quality assessment.
  - c. Measures proposed to be employed to restrict the rate of runoff and pollutant loading from the project areas both during and after construction.
  - d. Proposed runoff control and watershed protection measures for the site. These measures shall be designed with the goal of ensuring that the velocity of surface water runoff from the site does not exceed pre-development conditions and that the runoff quality will not be less than pre-development conditions.
  - e. Where the developer of property subject to the terms of this Watershed Protection Overlay District seeks to utilize existing or planned off site storm water quality management facilities, the developer shall provide a written certification that the owner of the off-site facilities will accept the runoff and be responsible for its adequate treatment and that the arrangement will be recorded with the Rockingham County Registry of Deeds and is intended to run with the land in a manner that will be acceptable to the Town's Code Enforcement Officer.
  - f. The study , when applicable, will make use of existing Pleasant Lake Watershed Study and other appropriate information.

- g. The study shall be submitted to the Planning Board for review and approval concurrent with the submission of applications for review and approval of site or subdivision plans.

### **330.8 Buffer Requirements**

- A. A 100 foot buffer zone shall be maintained along the edge of any tributary stream discharging into Pleasant Lake and along the edge of any wetland associated with those tributary streams. The required setback distance shall be measured from the high water mark of such tributary stream and from the delineated edge of a wetland. Streams and wetlands shall be delineated from their mean high water mark. The buffer zone shall be maintained in its natural state.
- B. A reduction in the required buffer zone width down to an absolute minimum of 50 feet may be granted by the Planning Board upon presentation of a hydrologic study that provides documentation and justification, acceptable to the Planning Board, that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the full width buffer zone.
- C. All buildings shall be located outside of the required buffer zone.
- D. The following uses shall not be permitted within the buffer zone:
  - 1. Septic tanks and drain fields.
  - 2. Feed lots or other livestock impoundments.
  - 3. Trash containers and dumpsters which are not under a roof or which are located so that leachate from the receptacle could escape unfiltered and untreated.
  - 4. Fuel storage in excess of 50 gallons.
  - 5. A permit is required for the cutting of trees within the designated buffer.
- E. Installation of or improvement of a lawn is allowed with the condition that the property owner follow appropriate Best Management Practices for such activity.

### **330.9 Site Construction**

- A. The impervious surface area of any single building lot is limited to 30% of the lot.

### **330.10 Commercial Agricultural Activities**

- A. Livestock are not allowed direct access to public water bodies, streams that flow into public water bodies, or associated wetland. Drinking water for livestock shall be provided by the use of a container located a minimum of 100 feet away from public water bodies, streams that flow into public water bodies or associated wetlands.
- B. Application of fertilizer or pesticides is not allowed within 200 feet from the public water body high water mark, streams that flow into public water bodies, or associated wetlands.
- C. All livestock grazing and feeding areas shall be a minimum of 200 feet away from public water bodies and streams.
- D. No spreading of animal manure on fields or pastures is allowed closer than 200 feet from public water bodies, streams that flow into public water bodies, or associated wetlands and the manure

stockpiles must be placed on a covered impervious surface and contained to prevent the release of leachate.

- E. Unless stricter setbacks or operational requirements are outlined above, all agricultural operations shall be conducted in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. Agriculture, June, 1993, as amended, and in accordance with all appropriate sections of the NHDES Comprehensive Shoreland Protection Act, as amended.

### **330.11 Commercial Forest Activity**

- A. An undisturbed natural vegetated buffer shall be maintained within 40 feet off the mean high water mark of the public water bodies, streams, or associated wetlands.
- B. Unless stricter setbacks or operational requirements as outlined above, all forestry operations shall be conducted in accordance with the Best Management Practices for Erosion Control for Timber Harvesting Operations. In NH, per NH Div Forest and Lands, Feb. 2000, as amended, and in accordance with appropriate sections of the Comprehensive Shoreland Protection Act as amended and the latest edition of Forestry Operations in accordance with “Good Forestry Practices in the Granite State”.

## **ARTICLE IV      MANUFACTURED HOUSING**

### **Section 401              Standards**

Manufactured housing used as a place of permanent residence in the Town of Deerfield must meet the standards of the U. S. Department of Housing and Urban Development. These standards include fire and wind resistance. Manufactured housing must carry a seal certifying that these standards have been met.

### **Section 402              Purpose**

A major purpose of this Article is to protect the value of property, to provide safe and healthful living conditions for all the inhabitants of the Town of Deerfield, and to facilitate the adequate and economical provisions of schools and other public requirements. Manufactured Housing is of proven value in fulfilling a given need under given conditions, and yet its very mobility makes it difficult to provide and plan facilities, and for the protection of the municipality against sharp and sudden fluctuations in the demands upon its public services.

### **Section 403              Temporary Use of Manufactured Housing**

Manufactured housing may be used as temporary living quarters by a person employed in adjoining construction work or for whom a residence is being built. Such use must be shown to be a temporary expedient and shall not exceed a period of 24 months, unless extended following the granting of a variance from the Zoning Board of Adjustment.

The use will conform with all applicable sections of this Ordinance and all applicable statutes of the State of New Hampshire. In cases where the manufactured housing is to be used as temporary quarters during the construction of a residence, the application for a temporary building permit for the manufactured housing must be accompanied by an application for construction of the residence.

If an extension of the permit is required beyond the prescribed 24 months, application must be made to the Board of Adjustment.

### **Section 404              Temporary Use of Recreational Vehicles on Individual Lots**

A Recreational Vehicle may be parked on a property provided the vehicle does not present a health or safety hazard or create a nuisance. Such a vehicle so parked shall not be used as a permanent dwelling unit, but may be occupied for a period not to exceed 60 days in a 12 month period. A Thirty (30) day extension beyond this period would be allowed following obtaining a permit from the Building Inspector. The permit shall include dates of intended use and any of the information required to insure conformance with all Town and State laws. Recreational vehicles in use prior to the addition of this permitting requirement shall not be exempt from this permit.

Placement of a recreational vehicle shall comply with the current setback requirements of the district where it is located.

No more than one (1) recreational vehicle may be used for a temporary residence on any lot at any one time. Use of recreational vehicles shall be in conformance with the regulations of the Deerfield Board of Health in effect at the time of placement.

## ARTICLE VI DEFINITIONS

For the purpose of this Ordinance, certain words or terms used herein shall be interpreted as follows.

### Section 601 Word Definitions

The word "**person**" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The words "**shall**" and "**will**" are mandatory; the word "**may**" is permissive.

The words "**used**" or "**occupied**" include the words intended, designed, or arranged to be used or occupied.

The word "**lot**" includes the word "**parcel**".

### Section 602 Term Definitions

**Accessory** - Means incidental to another use or structure on the same lot.

**Accessory Apartment**- A dwelling unit, either attached to or independent of the primary dwelling and is incidental and subordinate to the said primary dwelling unit. The accessory apartment can have up to 35% of the primary dwelling unit living space but, in no case, shall it have more than 750 square feet.

**Agricultural**- Means, farming, dairying, livestock, and poultry, truck farming, forestry, and horticulture.

**Affordable Senior Housing** - Means any housing that have been so dedicated for said purpose so that the eligible occupant has an income which is at or below the median family income for Rockingham County, NH and the occupant does not pay more that 30% of income for housing including principal, interest, real estate taxes and utilities and in case of renters, no more that 30% of their income for rent and utilities. (Adopted March 14, 2006)

**Back Yard** - A space, unoccupied, extending for the full width of the lot between the extreme rear of a building and the rear lot line.

**Bed & Breakfast**- A single family, owner-occupied dwelling with meal service limited to breakfast, for 8 or fewer in-house transient guests in a maximum of 4 bedrooms with rental period of a maximum of two weeks, on a minimum 3-acre lot. For use of any structure as a Bed & Breakfast facility, the structure shall conform to the minimum fire protection standards of the most recent addition of the BOCA National Building Code, and of the NFPA 101Life Safety Code.

**Building** - Any structure, either temporary or permanent, having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal, or property and used for the purposes of a building.

**District** - A zoning district as specified in this Ordinance.

**Dwelling, Single-Family** - A detached or free-standing residence other than a mobile home, designed for and occupied by one family only.

**Dwelling, Two-Family** - A residential building in singly ownership designed for or occupied by two families living independently of each other in individual attached dwelling units.

**Dwelling Unit** - Any room, or rooms, connected together forming a habitable unit for one family with its own bathing and toilet facilities and its own living, eating, and sleeping areas wholly within such room, or rooms, connected together.

**Family** - An individual, or two or more individuals, related by blood, marriage, or adoption living together as a single housekeeping unit.

**Family Day Care Home** - A residence occupied by the provider in which child care is regularly provided for any part of a day (but less than 24 hours except in emergencies) for one to six children from one or more unrelated families. The maximum of six children includes children under six years of age who are living in the home and children related to the applicant who are received for child care.

**Frontage** - The width of a lot measured along its common boundary with the street line.

**Home Produce and Products** - Includes everything of an agricultural nature grown, produced, conditioned, or otherwise carried on the property of the resident and such articles as are manufactured or altered by members of the household and their employees.

**Junk/Salvage** - As defined in RSA 236.

**Kennel** - A weatherproof structure properly ventilated and the use of a lot or structure for the containment of six (6) or more dogs that are more than nine (9) months old.

**Light Manufacturing** - Is defined as manufacturing or fabrication of small parts or products from previously prepared materials; research and testing lab; electronic assembly operations; warehousing; furniture manufacturing; printing and publishing; scientific and controlling instruments; photographic and optical goods, watches and clocks; wholesale trade (with enclosed storage on premises) including merchant wholesalers, wholesale and industrial distributors, manufacturing sales branches and wholesale assemblers; and things of a similar nature. The following uses are expressly prohibited: Explosives and chemical manufacturing.

**Lot** - The whole area of a single parcel of land with ascertainable boundaries in single or joint ownership, undivided by a street, and established by deed(s) or record.

**Lot Area** - The land wholly within the boundary of a lot.

**Lot Coverage** - The area of a lot covered by the aggregate of the maximum horizontal cross section of all buildings.

**Lot of Record** - A lot which is part of a subdivision of record in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description for which has been so recorded.

**Manufactured Housing** - Any structure, transportable in one or more sections, which, in the traveling mode is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site, is three hundred and twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein.

**Motor Home** – Is a portable, temporary dwelling to be used for travel, recreation, and vacation, and constructed as an integral part of a self-propelled vehicle.

**Motor Vehicle** - As defined in RSA 267:A 2III.

**Municipal Facilities** - Town buildings, fire station, and things of a similar nature.

**Nonconforming Structure** - A structure the use of which, in whole or in part, does not conform to the use regulations of the district in which the structure is located.

**Nonconforming Use** - A use lawfully existing at the effective date of this Ordinance or any subsequent amendment thereto which is not in conformity with the provisions of this Ordinance.

**Personal Service Business** - Includes kindergartens, barber shop, hair dresser, and businesses of a similar nature.

**Portable Saw Mill** - Mill set up to process on individual lots. Not permanent.

**Principal Use** - The primary purpose for which a lot or structure is used.

**Private Way**- A privately-owned street for which the Town has no obligation to repair or maintain and which serves more than one (1) lot.

**Outdoor Recreational Facility**- A place designated and equipped for the conduct of sports, leisure time activities and other customary and usual outdoor recreational activities as long as such activities do not require the use of a track or course needed for motorized vehicles.

**Public Right-of-Way** - Means all Town, State and Federal highways and the land on either side as covered by statutes to determine the widths of the rights-of-way, does not include Class VI highways.

**Recreational Vehicle** - A travel trailer, motor home, truck camper, or similarly equipped vehicle capable of self contained operation for short periods of time without connection to and longer periods of time when connected to site based utilities such as water, electricity, and sewage disposal. Said vehicle shall be less than eight (8) feet in body width and less than forty (40) feet in body length in the traveling mode and less than 320 square feet when stationed on a site ready for use.

**Restaurant** - A building or other structure used principally to provide refreshments or meals to the public for consumption, principally on the premises at tables, booths or a counter. It shall include cafes, lunchrooms, cafeterias, coffee shops, sandwich shops and the like. Take-out refreshments are only incidental to the main purpose of the establishment.: Add the following: Definition of a restaurant does not include a building or other structure used principally to dispense prepared food and/or beverages to the public for consumption on or off the premises, the major attributes of which are assembly line preparation of food and speed of dispensing, self service by the customer by standing in line, and/or service to the customer in automobiles, and which generates a large volume and rapid turnover of entering and exiting motor vehicle traffic.

**Retail Service** - Includes television and appliance repair and businesses of a similar nature.

**Senior Housing** - Housing principally used, designed or adapted for use by senior citizens, sixty two (62) year of age and older, and complying with the design requirements of the “Architectural Barrier Free Design Code for the State of New Hampshire”, as amended, and licensed by the appropriate state agencies.

**Sign** - Any structure constructed or erected with a fixed location on the ground, or attached or applied to something having a fixed location on the ground, which serves as a permanent or temporary advertisement or identification, designed to be seen from outside the building.

**Special Exception** - A use of a building or lot which may be permitted under this Ordinance only upon application to the Board of Adjustment and subject to the conditions and approval of the Board, and only in cases where the words "Special Exception" in this Ordinance pertain.

**Street/Road** - a.) A public right-of-way as defined by this Ordinance; or  
b.) A right-of-way shown on an approved and recorded subdivision plan that meets roadway construction requirements contained within the Deerfield Subdivision Regulations in effect as of the date of adoption of this Ordinance.

**Street Line** - The right-of way line of a street.

**Structure** - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground, excluding minor installation such as fences, mailbox, flag poles, portable screen house and the like.

**Variance** - Such departure from the terms of this Ordinance as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize only under the terms of Section 705 and applicable statutes of the State of New Hampshire.

**Yard** - A space on the same lot with a main building unoccupied and unobstructed by any structure or portion of structure provided that fences, walls, poles, posts and other customary yard accessories, ornaments, and furniture shall be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

**Yard, Front Setback** - A space between a street line and a line parallel thereto extending between side lot lines drawn through the nearest point of a structure.

**Yard, Rear** - A yard extending between side lot lines across the rear of the lot.

**Yard, Side** - A yard extending from the front yard, or front lot line where there is no front yard, to the rear yard.

**Section 701            Building Inspector**

The administrative and enforcement office for the Ordinance except as otherwise stated shall be known as the Building Inspector who shall be appointed by the Board of Selectmen. The Building Inspector shall administer the Zoning Ordinance and Building Code and shall not have the power to permit any use of land or buildings which is not in conformance with this Ordinance and the Building Code. Until a Building Inspector is appointed or if a vacancy exists in the office of Building Inspector, the Board of Selectmen shall perform these duties.

**Section 702            Building Permits**

Hereafter, no land use shall be commended or changed and no structure shall be erected, altered or enlarged until the person conducting such use or erecting or enlarging such structure has obtained a building permit from the Building Inspector.

- A. Application for a building permit shall be upon an appropriate form to be prescribed by the Town and shall be accompanied by:
  - 1. Plans, drawn to scale, showing the actual shape, dimensions and location of the lot to be used; of existing buildings upon it; of alterations proposed for existing buildings; and of proposed new buildings.
  - 2. Information as to the existing and intended use of each building, lot, or parcel thereof and as to the number of families or lodgers, or other occupants any building upon the premises is designed to accommodate.
  - 3. Proof that the applicant has notified the abutters to the lot by certified mail of the intent to make application for a building permit. The notice letter shall state that a building permit will be requested for the lot and shall provide a description of the proposed new dwelling.
- B. If the Building Inspector determines that an application for permit is a permitted use and in compliance with the requirements of this Ordinance, the application shall be approved. The Appeals Process is outlined in Section 704.

The Building Inspector shall act upon any application within thirty (30) days after it has been filed. On approval by the Board of Adjustment of a variance or special exception, the Building Inspector shall issue a permit and note any stipulations on the permit.

- C. A building permit shall become void if construction is not begun thereunder within twelve (12) months from the date of issuance of the permit. Permits may be extended once for no more than an additional twelve (12) months by the Building Inspector upon receipt of a written request for extension at least fourteen (14) days prior to the expiration of the original permit.
- D. No permit issued hereunder shall be transferable to a subsequent owner.

## **Section 703 Certificate of Occupancy**

It shall be unlawful to use or occupy or permit the use or occupancy of any land or structure created, erected, changed, converted, altered or enlarged in its use or structure, except for normal repair or redecorating, after the effective date of adoption of Ordinance until a certificate of occupancy is issued therefore by the Building Inspector. Prior to the issuance of any Certificate of Occupancy, the Building Inspector shall insure that all of the requirements of this Ordinance and the Building Regulations of the Town of Deerfield (Building Code) pertaining to that land or structure are met.

## **Section 704 Board of Adjustment**

There shall be a Board of Adjustment, as provided by the Statutes (RSA 31:66) of the State of New Hampshire, whose members and alternates shall be appointed by the Board of Selectmen.

### **704.1 Powers of Board:**

The Board of Adjustment shall have the following powers, as well as any other power conferred upon such Boards by the statutes of the State of New Hampshire.

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrative Officer in enforcement of this Ordinance.
- B. To hear and decide special exceptions to the terms of this Ordinance upon which the Board of Adjustment is required to pass as provided herein.
- C. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where owing to special conditions a literal enforcement of the provision of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance shall be observed and substantial justice done. In so doing, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and community.
- D. Equitable Waiver of Dimensional Requirement; RSA 674:33-a.
- E. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the powers granted to it under RSA

Chapter 31, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the Administrative Official from whom the appeal is taken.

- F. The concurring vote of three members of the Board shall be necessary to reverse any action of the Administration Official or to decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance.

### **704.2 Rules Governing Proceedings:**

- A. All appeals and applications to the Board of Adjustment shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall set forth the interpretation, the special exception, or the variance for which application is

made. The cost of advertising and mailing shall be payable by the appellant prior to the required public hearing.

Proof that the applicant has notified the abutters to the lot by certified mail of the intent to make application for a building permit. The notice letter shall state that a building permit will be requested for the lot and shall provide a description of the proposed new dwelling.

- B. Whenever a notice of appeal is filed for a variance or an application is made for a special exception, the Board of Adjustment shall hold a public hearing, and notice shall be given as follows: The appellant and all the abutters shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be given not less than five days before the date fixed for the hearing of the appeal. A public notice of the hearing shall be placed in a newspaper of general circulation not less than 5 days before the date fixed for the hearing of the appeal. Any person may appear in person or by agent or attorney at the hearing of an appeal. In addition to the notices sent as described above, the Board shall also send such a notice to the Planning Board and the Board of Selectmen, and either Board shall be a proper party to appear and to be heard upon any such appeal or application. Upon the entry of any decision, report, or order in such a proceeding, the Board of Adjustment shall cause a copy to be sent to the Planning Board. In those proceedings before the Board of Adjustment at which the Planning Board submits its recommendations, such recommendations shall be in the same format as that required of the Board of Adjustment in reporting its decision. The Board of Adjustment shall state in writing in sufficient detail its reason as to the granting or denial of a special exception or variance with particular reference to the standards or conditions applicable thereto.
  
- C. The Board of Adjustment shall adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board of Adjustment and shall be a public record.

## **Section 705                      Variance**

### **705.1 Granting of a Variance:**

The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Ordinance, if all of the following facts are found by the Board of Adjustment and such findings are specified in its decision:

- A. No diminution in value of surrounding properties would be suffered;
- B. Granting the permit would be of benefit to the public interest;
- C. Denial of the permit would result in unnecessary hardship to the owner seeking it;
- D. By granting the permit substantial justice would be done; and
- E. The use must not be contrary to the spirit of the Ordinance.

**705.2 Authorization of a Variance:**

In authorizing a variance, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and the community, including, but not limited to a time limit when the variance will expire if not utilized.

**Section 706 Enforcement and Penalty**

**706.1 Enforcement:**

This Ordinance shall be enforced by the Building Inspector. If any buildings or use of land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance, the Building Inspector shall institute, in the name of the Town, any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate such construction of use or to present in or about the premises any act, conduct, business, or use constituting a violation.

**706.2 Penalty:**

Any person who violates this Ordinance shall be fined not more than one hundred dollars (\$100.00) for each offense. No action may be brought under this provision unless the alleged offender has had at least seven (7) days notice by certified mail that a violation which is continued shall constitute a separate offense for each day.

**Section 707 Fees**

The Board of Selectmen shall establish a schedule of fees and a collection procedure for building permits, certificates of occupancy, and other matters pertaining to this Ordinance. Until all applicable fees have been paid in full, no action shall be taken on any application or appeal.

**Section 708 Impact Fees**

**708.1 Authority**

These provisions are established pursuant to New Hampshire RSA674:21,V.

**708.2 Purpose**

These provisions are intended to:

- A. Assist in the implementation of the Town of Deerfield Master Plan.
- B. Provide for the public capital facilities necessitated by the growth of the Town of Deerfield; and
- C. Assess an equitable share of the growth-related cost of new and expanded public capital facilities to all types of new development in proportion to the facility demands created by that development.

**708.3 Findings**

The Deerfield Planning Board has made the following findings based on expensive consultation with all municipal departments, and careful study of municipal public capital facility needs.

- A. The Deerfield Planning Board adopted a Master Plan on August 18, 1987.
- B. The Deerfield Planning Board has prepared, and regularly updated a Capital Improvements Program and Budget as authorized by the Deerfield Town Meeting of March 15, 1986.
- C. The Master Plan and the Capital Improvements Program demonstrate that significant new growth and development is anticipated in residential and non-residential sectors which will necessitate increased public expenditures to provide adequate public facilities.
- D. The Town of Deerfield is responsible for and committed to the provision of public facilities and services at standards determined to be necessary by the Town to support residential and non-residential growth and development in a manner which protects and promotes the public health, safety and welfare.
- E. The costs of providing public capital facility capacity to serve new growth will be disproportionately borne by existing taxpayers in the absence of impact fee assessments.
- F. The calculation methodology for impact fees, as established by a report by the Planning Board entitled "Development of Impact Fee Assessment Schedules: Town of Deerfield," represents a fair and rational method for the allocation of growth related capital facility costs to new development. Based on this methodology, impact fees will not exceed the costs of:
  - (1) Providing additional public capital facilities necessitated by the new developments paying impact fees; or
  - (2) Compensating the Town of Deerfield for expenditures made for existing public facilities which were constructed in anticipation of new growth and development.
- G. Impact fee payments from new development will enable the Town of Deerfield to provide adequate public facilities to serve new growth, and provide new development with a reasonable benefit in proportion to its contribution to the demand for such facilities.

**708.4 Definitions**

- A. Feepayer. A person applying for the issuance of a building permit, subdivision or site plan approval, special exception, variance of other local land use decision which would create new development.
- B. New Development. Any activity which results in:
  - (1) the creation of a new dwelling unit, except for the replacement of existing units of the same density;
  - (2) a net increase in the gross floor area of any non-residential building.
  - (3) the conversion of a legally existing use to another permitted use if such change or use would create a net increase in the demand for additional public capital facilities, as defined by this ordinance.
- C. Gross Floor Area. The entire square footage of a building calculated from the dimensional perimeter measurements of the first floor of the building with adjustments to the usable area of other floors made in a manner consistent with Deerfield property assessment procedures.

- D. Public Capital Facilities. Facilities and equipment owned, maintained or operated by the Town of Deerfield as defined in the Capital Improvements Program and which are listed in the adopted impact fee schedule.

#### **708.5 Imposition of Public Capital Facilities Impact Fee**

- A. Any person, who after January 12, 1994 seeks approval of new development within the Town of Deerfield, New Hampshire, is hereby required to pay a public capital facilities impact fee in the manner and amount set forth in Section 708.6 of this Ordinance.
- B. A person may request, from the Planning Board, a full or partial waiver of impact fee payments required by this Ordinance. The amount of such waiver shall not exceed the value of land, facilities construction, or other contributions to be made by that person toward public capital facilities. The value of on-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver under this Ordinance.
- C. A person undertaking no development for residential use in which all or a portion of its occupancy will be restricted to persons age 62 and over, and where it can be shown to the satisfaction of the Planning Board that such restricted occupancy will be maintained for a period of at least 20 years, may apply for a waiver of the school impact fee for the said restricted occupancy units.
- D. No building permit for new development requiring payment of an impact fee pursuant to Section 708.6 of this Ordinance shall be issued until the public capital facilities impact fee hereby required has been determined assessed by the Planning Board.
- E. All impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development.
- F. Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of a cash bond, letter of credit or performance bond so as to guaranty future payment of assessed impact fees.
- G. Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy; provided however, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit
- H. The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees.

#### **708.6 Computation of Impact Fee**

- A. The amount of the public capital facilities impact fee shall be determined by an Impact Fee Schedule prepared in accordance with the methodology established in a report by the Planning Board entitled "Impact Fee Analysis: Town of Deerfield," and adopted by the Board of Selectmen.
- B. In the case of new development created by a change of use, redevelopment, or expansion or modification of an existing use, the impact fee shall be based upon the net positive increase in the

impact fee for the new use as compared to that which was or would have been assessed for the previous use.

#### **708.7 Payment of Fees**

No certificate of occupancy shall be issued for new development until the assessed impact fee has been paid, or until the fee payer has established a mutually acceptable bond guaranteeing such payment, with the Board of Selectmen.

#### **708.8 Appeals**

- A. Any aggrieved party may appeal to the Zoning Board of Adjustment the amount of the public facilities impact fee.
- B. If a fee payer elects to appeal the amount of the impact fee, the feepayer shall prepare and submit to the Zoning Board an independent fee calculation study for the new development activity which is proposed. All costs incurred by the Town for the review of such study shall be paid by the fee payer.

#### **708.9 Administration of Funds Collected**

- A. All funds collected shall be properly identified and promptly transferred for deposit in individual Public Capital Facilities Impact Fee Accounts for each of the facilities for which fees are assessed, and shall be used solely for the purposes specified in this Ordinance. Impact Fee accounts shall be special revenue fund accounts and under no circumstances shall such revenue accrue to the General Fund.
- B. The Town Treasurer shall have custody of all fee accounts, and shall pay out the same only upon written orders of the Board of Selectmen.
- C. The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payments, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Ordinance for a period of at least years.
- D. At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving a particular account of all public capital facilities impact fee transaction during the year.
- E. Funds withdrawn from the Public Capital Facilities Impact Fee Accounts shall be used solely for the purpose of acquiring, constructing, expanding or equipping those public capital facilities identified in this Ordinance.
- F. In the event that bonds or similar debt instruments have been issued for public capital facilities which were constructed in anticipation of new development, or are issued for advance provision of capital facilities identified in this Ordinance, impact fees may be used to pay debt service on such bonds or similar debt instruments.

#### **708.10 Refund of Fees Paid**

- A. The owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

- (1) The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the final payment of the fee; or
- (3) The town has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.

#### **708.11 Credits**

- A. Land and/or public capital facility improvements may be offered by the feepayer as total or partial payment of the required impact fee. The offer must be determined to represent an identifiable dollar value computed in a manner acceptable to the Board of Selectmen. The Board of Selectmen may authorize the feepayer an impact fee credit in the amount of the amount of the value of the contribution.
- B. Any claim for credit must be made no later than the time application for the building permit is made.
- C. Credits shall not be transferable from one project or development to another without the written approval of the Board of Selectmen.
- D. Credits shall not be transferable from one component of the public capital facilities impact fee to any other component of this fee.

#### **708.12 Additional Assessments**

Payment of public capital facilities impact fee does not restrict the Town or the Planning Board in requiring other payments from the feepayer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and facilities specifically benefiting the development as required by the subdivision or site plan review regulations.

#### **708.13 Premature and Scattered Development**

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

#### **708.14 Review**

The Impact Fee Assessment Schedule shall be reviewed annually by the Planning Board, using the methodology established in the report "Development of Impact Fee Assessment Schedules: Town of Deerfield." Such review may result in recommended adjustments in one or more of the fees based on the most recent data as may be available from the Bureau of the Census, local property assessment records, market data reflecting interest and discount rates, current construction cost information for public capital facilities, etc. Adjustments shall be approved by the Board of Selectmen no more frequently than annually, based on such data. Schedule adjustments which would change the methodology shall be made by the Planning Board.

**ARTICLE VIII**

**MISCELLANEOUS PROVISIONS**

**Section 801 Severability Clause**

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

**Section 802 Effective Date**

This Ordinance shall take effect immediately upon its adoption.

**Section 803 Amendments**

This Ordinance and its accompanying maps may be amended in accordance with the provisions of the applicable statutes of the State of New Hampshire.

**Section 804 Validity**

Whenever the provisions of this ordinance or rulings made under the authority hereof differ from those of other Ordinances or regulations of the Town, that provision or ruling which imposes greater restriction or higher standard shall govern.

## NOTES