

Zoning Ordinance

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Zoning Ordinance

Section 1 - Authority & Purpose

This chapter shall be known as the "*Zoning Ordinance of the Town of Seabrook, New Hampshire.*" The purposes of this chapter are to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Seabrook, to protect and conserve the value of property, to promote economic development of the town's resources and to encourage the most appropriate use of land throughout the town of Seabrook.

Any terms not defined in Section 2 Definitions shall be accorded their commonly accepted meanings. In the event of conflicts between Section 2-Definitions and Section 4 – Smithtown Village, those of Section 4 shall take precedence.

Section 2 - Definitions

As used in this chapter, the following terms shall have the meaning indicated:

Accessory Building: A non-residential building with no habitable space, the use of which is subordinate to that of the main building. It may be separate from or attached to the main building. For the purpose of this ordinance, a garage or a carport that is attached directly to the main building by a breeze way shall be regarded as an integral part of the main building. An accessory building shall be no larger than the standard two-car garage, not to exceed 1,080 square feet, and must conform to the general building design of the neighborhood.

Accessory Use: Any subordinate use of premises that is customarily accepted as a reasonable corollary to the principal use thereof and which is neither injurious nor detrimental to the neighborhood.

Adult Bookstore or Adult Video Store: A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1 or, instruments, devices, or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1, other than birth control devices. An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals.

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

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

Adult Motel: A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

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

Adult Motion Picture Theater: An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexually content" as set forth in NH RSA 571-B:1, for observation by patrons. For the purposes of this ordinance, substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

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

Alteration of a Building or a Fabricated Structure: A change, rearrangement or addition involving the original structural parts or significant changes or additions to the plumbing, gas piping, electrical wiring, ventilation or heating installations. Such alterations are not to be confused with replacements or repairs.

Apartment: A dwelling unit in a structure containing more than two dwelling units, or a dwelling unit in a commercial or industrial building.

Assessed Property means the land or buildings comprising new development that is subject to an impact fee assessment under this Section.

Assessment, with respect to an impact fee, means a notification issued by the Town of Seabrook, its Planning Board, or its Building Inspector, stating the amount of an impact fee due from an assessed property, and the conditions or schedule for its collection.

Buildable Area: Land within the Net Tract Area that is not dedicated to open space preservation.

Building: Any permanent structure occupied or intended to shelter any occupancy. For the purposes of this ordinance, a multi-unit building, with or without firewalls, shall be considered one building.

Building Height: The vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the main mean height between the plate and the ridge of a pitched or a hip roof.

Cargo Container: Standardized reusable vessel that was originally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities. This definition includes containers that have a similar appearance to cargo containers.

Collection, with respect to an impact fee, means the actual delivery of payment of the fee to the Town of Seabrook on behalf of an assessed property.

Commercial Amusements means any game or amusement that is provided in exchange for value received or pledged. Such game or amusement shall not necessarily require any skill on the part of the participant. Commercial amusements shall not include the dissemination of any material which is obscene, as those terms are defined by Chapter 650 of the Revised Statutes Annotated of New Hampshire.

Commercial Entertainment means any show or display, whether live, by film or by other means of presentation, which is provided in exchange for value received or pledged. Commercial entertainment does not include the dissemination of material that is obscene, as those terms are defined by Chapter 650 of the Revised Statutes Annotated of New Hampshire.

Commercial-General means any retail, sales, service or office uses, and not including heavy or light industrial uses.

Commercial Recreation means any game or amusement that is provided in exchange for value received or pledged. Such game or amusement shall not necessarily require any skill on the part of any participant. Commercial recreation shall not include the dissemination of any material which is obscene, as those terms are defined by Chapter 650 of the Revised Statutes Annotated of New Hampshire.

District: A division of the total area of the town, including all the land, water, streets and buildings within the designated boundaries.

Dwelling Building: A building exclusively designed or used for one or more dwelling units.

Dwelling Unit: A building or portion thereof providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.

Single-Family Dwelling: A detached building containing one primary dwelling unit.

Accessory Dwelling Unit (ADU): A residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation. ADU's are subject to the following restrictions:

- An ADU may not be converted to a condominium;
- An ADU may not be detached from the Single-Family Dwelling;
- Two off-street parking spaces are required for the ADU;
- There shall be no more than one ADU per lot;
- Either the ADU or the Single-Family Dwelling shall be owner occupied;
- The ADU shall be no larger than 750 square feet; and
- The ADU shall contain no more than two bedrooms.
- An interior door shall be provided between the primary dwelling unit and the ADU.
- The ADU shall maintain an aesthetic continuity with the primary dwelling unit.

Two-Attached Primary Dwelling Units (TAPDU): A building containing two primary dwelling units. The two dwellings must share a common wall, and each dwelling must be architecturally consistent with the other. Two attached mobile homes shall not be deemed a TAPDU, but rather, they shall be deemed to be two separate dwelling buildings.

Multi-Family Dwelling: A building containing more than 2 dwelling units.

Establishment means and includes any of the following as they relate to a sexually oriented business:

- The opening or commencement of any sexually oriented business as a new business;
- The conversion of an existing business whether or not a sexually oriented business, to any sexually oriented business;
- The relocation of any sexually oriented business;
- The substantial enlargement of a sexually oriented business, which means the increase in floor areas occupied by the business by more than 25%, as a floor area exists on the date of the adoption of this ordinance; or
- The transfer of ownership or control of a sexually oriented business, which means and includes any of the following: A) the sale, lease, or sublease of the business; B) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; C) the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Fee Payer is the party from whom an impact fee payment has been received on behalf of an assessed property.

Fireworks Sales: The sale of fireworks as defined in NH RSA 160-B:1

Foundation: The structural materials supporting a building.

Frontage: Line separating private property from a public right-of-way or street.

Gasoline Station - A retail establishment at which motor vehicles are refueled, serviced, and sometimes repaired. Also called a filling station, a service station, or a retail motor fuel outlet.

Greenbelt: A vegetative area in which no parking lots or buildings are permitted. The only permitted structures shall be utility poles, sidewalks, signs, bicycle paths, and access driveways.

Hazardous Waste: A solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

A) Which, because of quantity, concentration, or physical, chemical, or infectious characteristics may:

- Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or
- Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.

B) Or which has been identified as a hazardous waste by NH DES using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those that are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended.

Home Occupation is a home-based business that has no noticeable impact on the quality and character of Seabrook's residential districts. In order to qualify as a Home Occupation, the business must meet all of the following standards:

- 1) no more than two non-resident employees;
- 2) it is not a nuisance;
- 3) it is conducted within a pre-existing building;
- 4) parking is located off the street, and the vehicles are subject to zoning setbacks for structures;
- 5) no emission of odor, smoke, dust, vibration, or noise that is discernable from the property line;
- 6) no on-site storage of hazardous, flammable, or explosive materials other than small quantities of products that are intended for normal household use; and
- 7) deliveries are permitted only between 7AM and 7PM.

Home Office: A home-based business that has no noticeable impact on the quality and character of Seabrook's residential districts. In order to qualify for Home Office use, the business must meet all of the following standards:

- 1) Be situated in a dwelling in which the business proprietor resides;
- 2) No changes are made to the building exterior that would reveal home office use;
- 3) No outdoor activity related to the office use;
- 4) No more than one vehicle used in the business shall be parked on the premises, and that vehicle shall be no more than 10,000 lbs. GVWR;
- 5) No non-resident employees shall utilize the office;
- 6) No outdoor storage of equipment;
- 7) No retail sales on the premises, and
- 8) Delivery of packages by commercial vehicles shall not exceed two vehicles per day.

Hotel, Motel - A building designed for or used commercially in which the room or rooms are designed to provide living and sleeping accommodations for temporary lodgers. For the purposes of this ordinance, buildings used to lodge the same tenants for more than thirty days within the same calendar year are to be considered multi-family buildings.

House, Guest or Rooming: A building in which bedrooms are rented to semi-permanent guests whose meals, when consumed on the premises, are prepared only by the proprietor or his employees.

Impacted Area: Any area altered from its current state.

Impervious surface means any area that is paved, compacted, or otherwise modified to prevent or restrict the infiltration of storm water. Examples of impervious surfaces include, but are not limited to: roofs, decks, patios, and pavement, and walkways.

Industrial-Heavy means any use having to do with the business of manufacturing products using regulated substances and/or heavy machinery.

Industrial-Light means any production and/or manufacturing activity that uses moderate amounts of partially processed materials to produce finished goods or product parts and components with no significant environmental pollution or risk of contamination.

Junkyard (Machinery Junkyard): Any place of storage in which there is displayed to public view junk machinery of any kind or scrap metals, wood, glass, fabric or other materials commonly called "*junk*".

Junkyard (Motor Vehicle Junkyard): Includes any business, whether conducted in connection with any other business and any place of storage or deposit, whether conducted in connection with any other business such as garage, auto repairs, new or secondhand auto sales, service station, etc. or not, which has stored, deposited or abandoned:

- Two or more unregistered motor vehicles which are no longer intended or in a condition conforming to legal requirements for use on the public highways; or
- Used parts of motor vehicles or such pieces of iron, bronze or other metals, glass, paper, rubber or other discarded or secondhand material as has been a part or intended to be part of any motor vehicle, the sum of which parts or materials shall be the equivalent, in bulk, of two or more passenger car motor vehicles.

- The term "*motor vehicle junkyard*" shall also include any place of business or storage or deposit of motor vehicles purchased or acquired otherwise for the purpose of dismantling the vehicles for their parts or for use of the metals for sale as scrap materials as well as those places where scrap metals are salvaged by burning the motor vehicles or where motor vehicle parts are cut up for the salvage of metals in more convenient sizes.

Land: Includes all the surface of the earth within the limits of the Town of Seabrook, including all land, ground and subsurface deposits, all the air space above the land to the limits of the town's jurisdiction thereof and all water, tidewaters, marshes, flats and underwater lands to the limits of the town's jurisdiction thereof; provided, however, that as to a lot and its area, the bounds as defined herein, the term "land" shall not include water or underwater lands, whether tidal or otherwise, unless otherwise provided herein.

Limited-Cut Buffer: A healthy, well-distributed stand of trees, saplings, shrubs and ground cover that must be maintained, and which leaves an intact vegetated buffer. Tree cutting shall be limited to 50% of the basal area of trees, and 50% of the total number of saplings over a 20-year period.

Lot: One parcel of land set off as a unit and either occupied by or intended to be occupied by a building or fabricated structure and including the open spaces required by law.

Lot Area: The extent in square feet of the surface of a lot. The "lot area" shall not include any part of the street upon which the lot fronts or abuts.

Lot Lines: The lines bounding a lot and dividing the lot from other lots, streets, land or water.

Lot of Record: A lot which has its principal frontage upon a street and is described in a deed which has been lawfully recorded in the Registry of Deeds, or which, if not so deeded, is a lot which is part of a subdivision, the plan of which has been lawfully recorded in the Registry of Deeds.

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

Mixed Use - A building or parcel that incorporates some combination of residential and non-residential uses or functions. Mixed use also includes elements of pedestrian-oriented access and site design, non-vehicular and transit accommodations, public space, and open space. A mixed-use building or parcel shall have no less than 50 percent of the gross floor area for non-residential use, and with no more than five dwelling units per building.

Mobile Home or House Trailer: A prefabricated dwelling unit which:

- is designed for long-term and continuous residential occupancy,
- is designed to be moved on wheels, as a whole or in sections, or
- on arrival on the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connection with utilities and placing on supports or a permanent structure.

Mobile Home Park or House Trailer Park: Any parcel of land under single or common ownership or control which contains or is designed, laid out or adapted to accommodate three or more mobile homes.

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

Motor Vehicle Re-Manufacturing: The storage, dismantling, and re-assembly of motor vehicles within a building and as a subordinate accessory use to an authorized motor vehicle dealership or repair facility.

Motor Vehicle Repair: A business, service, or industry involving the maintenance, repair, servicing, or painting of motor vehicles.

Natural Ground Cover means any herbaceous plant or any woody seedling or shrub less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, imported organic or stone mulches, or other artificial materials.

Neighborhood: An area of land local to the use concerned, generally lying within a radius of one thousand (1,000) feet of such use for the purposes of this ordinance, but including all areas farther away from such use whenever the use creates a condition which, by reason of noise, smoke, vibration, lighting or other cause, creates a detriment, hazard or injury to an area more extensive in size.

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

Net Tract Area: The area of a parcel less all non-buildable land such as wetlands and land encumbered by utilities such as electrical transmission lines.

New Development, for the purpose of impact fee assessment, may include the following land use changes:

- The construction of a new dwelling unit; or
- Changes to an existing structure that would result in a net increase in the number of dwelling units; or
- Construction of a new commercial/industrial building or any net increase in the gross floor area of an existing commercial/industrial building; or
- The conversion of an existing use to another use that is determined by the Planning Board, with consultation/advice of the Building Inspector, to result in a measurable net increase in the demand on the public capital facilities that are the subject of impact fee assessment; however,
- New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

No-Disturb Buffer: An area where activities that disrupt, move or disturb the soil are prohibited.

Nonconforming Structure: A structure that does not comply with the terms of the ordinance.

Nonconforming Use: A use of the land that is not permitted by the ordinance in the zoning district in which the use occurs.

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

Off-Site Improvements means highway, drainage, and sewer and water upgrades or improvements that are necessitated by a development but which are located outside the boundaries of the property, as determined by the Planning Board during the course of subdivision plat or site plan approval.

Open Space: Land area not covered by pavement or buildings. Solar panels are not subject to open space restrictions.

Power Grid. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Privately Maintained Dedicated Public Way is a street built to Town standards that has been approved by the Planning Board, and the plan has been recorded at the Registry of Deeds.

Regulated Substance: As defined in NH Administrative Rules Env-Wq 401, any of the following, with the exclusion of ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, and potassium permanganate:

A) Oil as defined in RSA 146-A:2, III.

B) Any substance that contains a regulated containment for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6.

C) Any substance listed in 40 CFR 302, 7-1-05 edition.

Repair: Replacement or mending of parts already existing but in a state of deterioration with equivalent materials and for the purpose of maintaining their quality.

Restaurant: A commercial use with the primary function of food service that may also serve alcohol and provide entertainment.

Retail: A use devoted to the sale, rent or lease of merchandise directly to the consumer for use off premises. For the purposes of this ordinance, wholesale clubs shall be considered a retail use.

School District includes the Seabrook School District, and the Winnacunnet Cooperative School District, or any other regional or cooperative school district of which the Town of Seabrook becomes a member municipality.

Schools: Places for systematic instruction in any branch or branches of knowledge and which promotes the academic interests rather than commercial interests.

Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: 1) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or 2) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; and 3) when the activities in sections A or B above are characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

Sexually Oriented Business: any place of business in which any of the following activities are conducted: adult bookstore or adult video store, adult motion picture theater, adult drive-in theater, adult cabaret, adult motel, adult theater, nude model studio, or sexual encounter center.

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

Sign: Any device, structure, banner, fixture, awning or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any establishments product, goods, service or activity.

- **Freestanding Sign:** A sign supported by poles or braces that are permanently attached in the ground or attached to something buried in the ground and not supported by any building or structure.
- **Non-Accessory Sign & Billboard:** Any sign that does not advertise the name, address, business or products of the site on which it is located.
- **Non-Conforming Sign:** Any signs that predate this ordinance and do not comply with the guidelines set forth herein.
- **Off-Premise Directional Sign:** A sign designed to aid the traveling public to locate a business not on a state highway.
- **Roof Sign:** A sign erected over or on the roof of any building.
- **Temporary Sign:** A sign not intended for long-term use and that is not permanently attached to the ground.
- **Wall Sign:** A sign painted on or attached to and erected parallel to the outside wall of any building.

Small Wind Energy System: A wind energy conversion system consisting of a wind generator and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

Solar Farm: A photovoltaic power station.

Special Event: A temporary event such as a tent sale, carnival, circus, outdoor auction in which: 1) Duration shall not exceed one month; 2) Prior written approval is issued by the Fire Chief; and 3) The Building Inspector issues written findings that the event will not create a traffic safety hazard, that there will be no unreasonable impact on nearby residents, and that the proposal complies with all applicable building and safety codes.

Story: That part of a building or structure comprised between a floor and the floor or roof next above it.

Structure: Any structure constructed or erected by human means, whether on land or water, the use of which requires location on the ground or bed of water or which requires attachment to something having location on the ground or water. Fences; stonewalls; retaining walls; driveways; and steps, porches, and piazzas smaller than 24 square feet are not to be construed as "*structures*" for purposes of side line and setback requirements, however for safety reasons, opaque fences shall be set back a minimum of 15 feet from street pavement.

Substantially Complete: A project is considered substantially complete when all utilities and storm water infrastructure are installed, the ground surface is stabilized, and the binder course is in place on all paved areas.

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

Tattoo Establishment: Any room or space where tattooing is practiced or where the business of tattooing is practiced or where the business of tattooing is conducted, or any part thereof.

Telecommunications Facility: any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), personal communications service (PCS), and common carrier wireless exchange access services.

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

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

Trailer, Travel-Trailer Type: A fabricated structure with a maximum floor area of 319 square feet, mounted on wheels and designed for being hauled on highways and to be used as temporary living quarters during travel, camping, recreational, or vacation trips (synonymous with "*trailer coach*").

Travel Trailer Park: A parcel of land in which two or more spaces are occupied or intended for occupancy by vehicles and/or tents for recreational dwelling purposes and not for permanent year-round residence.

Undisturbed State means native vegetation allowed to grow without interference.

Variance: A variation from the terms of this ordinance, not otherwise permitted within the district concerned which may be granted by the Board of Adjustment pursuant to its discretionary power where the Board finds that the granting of such variance will do substantial justice and the intent of the ordinance will be still observed. The Board of Adjustment may, in such case, waive the literal enforcement of the applicable provisions(s) of this ordinance and grant a variance only where such literal enforcement would result in unnecessary hardship to the applicant.

Vernal Pools are as defined by the NH Code of Administrative Rules – part Env-Wt 101.106.

Wetlands means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual (January 1987).

Wholesale – The selling of goods in large quantities to be retailed by others.

Wind Generator: The blades and associated mechanical and electrical conversion components whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

Section 3 - Zoning Districts

For the purpose of this ordinance, the Town of Seabrook is hereby divided into eight use districts:

- Zone 1 (*Rural*)
- Zone 2 (*Commercial*)
- Zone 2R (*Residential*)
- Zone 3 (*Industrial*)
- Zone 4 (*Conservation*)
- Zone 5 (*Harbor Commercial*)
- Zone 6R (*Smithtown Village - Residential*)
- Zone 6M (*Smithtown Village and North Village - Mixed Use*)

These districts and the boundaries of such districts are shown on the official Zoning Map of the Town of Seabrook, which map is incorporated herein by reference and made a part hereof. This official Zoning Map shall be the final authority as the current zoning status of land in the town. In the event that uncertainty exists with respect to the boundaries of the various districts as shown on the official Zoning Map, the following rules of interpretation shall be applied:

3.100 Landmarks: Where a boundary is indicated as a highway, railroad or such other landmark, it shall be construed to be the centerline thereof unless otherwise indicated on the Zoning Map. Where a boundary is indicated as approximately parallel to a highway, railroad or such other landmark, it shall be construed as parallel thereto and at such distance there from as shown on the Zoning Map.

3.200 Lots Divided by Zoning Boundaries: When a boundary between two zoning districts divides a lot, the Planning Board may, upon application of the lot owner, grant a Conditional Use Permit in order to permit a use that would be permitted in either zoning district. The Conditional Use Permit shall only be granted following a Planning Board finding that the proposed use will cause no substantial increase in motor vehicle traffic, or such increase will be mitigated to the Planning Board's satisfaction.

3.300 Map Scale: If no dimension is given on the Zoning Map, the location of any boundary shall be determined by use of the scale shown on the Zoning Map.

3.400 Planning Board Determinations: Where not otherwise provided for or a question exists, the Planning Board shall determine the exact boundary line.

Section 4 – Smithtown & North Village

4.100 **Authority:** The purpose of this ordinance is to establish Smithtown Village and North Village, mixed use and residential districts focused on creating a diverse service and pedestrian oriented, economically viable development center in Seabrook as authorized under RSA 674:21 II Innovative Land Use Controls and RSA 674:16 Grant of Power. This Section was adopted as one of the instruments to implement the public purposes and objectives of the Town's Master Plan. This Ordinance is declared to be in accord with the Master Plan, as required by RSA 674:2.

4.200 **Purpose:** The purpose of the Smithtown Village and North Village is to enhance economic vitality, business diversity, accessibility, and visual appeal in a manner that is consistent with the landscape and architecture of the Town's historic village tradition. This Ordinance was adopted to promote the health, safety and general welfare of the Town of Seabrook and its citizens, including protection of the environment, conservation of land, energy and natural resources, reduction in vehicular traffic congestion, more efficient use of public funds, health benefits of a pedestrian environment, preservation of community character, civic and recreational use, reduction in sprawl development, and improvement of the built environment.

4.300 **Intent:** The intent of the Smithtown Village and North Village is to foster development of a vibrant mixed use district with a cohesive street layout and architectural character that includes commercial, residential and civic uses and integration of open spaces, transit, bicycle and pedestrian accommodations.

4.400 **Goals:** The overarching goals of the Smithtown Village and North Village are to enhance the economic development potential of properties; encourage mixed uses that support one another; provide services and employment opportunities; create pedestrian and bicycle friendly neighborhoods; respect the historical nature of Smithtown Village and North Village; and create a gateway into the Town of Seabrook.

4.500 **Defining Elements:** Development shall incorporate the following concepts to preserve and complement elements of the historic tradition of Seabrook, and local and regional village character:

4.501 Comprised of compact, pedestrian-oriented development;

4.502 Mixed-use pattern of development where development specializing in a single use should be the exception;

4.503 Encourage a range of housing choices and price levels to accommodate diverse populations;

4.504 Diversity of open space including parks, squares, and playgrounds distributed within neighborhoods and throughout the district;

4.505 Expansion and provision of public transportation facilities that promote use and access;

4.506 Provide improved visibility and access to and use of conservation lands, where appropriate; and

4.507 Opportunities for agrarian activities such as farmers markets and community gardens.

Section 5 - Buildings per Lot

Every building hereinafter erected shall be located on a lot, as herein defined, in no case shall there be more than one principal building on one lot, except as follows:

1) Commercial development in Zone 2 within 500 feet of Lafayette Road that exceeds a lot area greater than 60,000 square feet; and

2) Zone 6M Smithtown Village and North Village - Mixed Use, and

3) In Zone 2R, a second dwelling building, containing one dwelling unit, may be placed on a lot, providing that the lot is 45,000 square feet or larger; and the number of dwelling units on the lot does not exceed two.

Section 6 - Permitted Land Uses

No building shall be erected, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than is permitted in the district in which such building or land is located. No building, structure or portion thereof shall be erected, altered, moved or used, and no land or building or part thereof shall be used arranged, or designed to be used except in conformance with Tables 1 & 2. Uses that are not designated as permitted (by right or as a conditional use) shall be construed as prohibited.

Table 1

P = Permitted **S** = Special Exception - only permitted if granted by Board of Adjust.
N = Not Permitted **C** = Conditional Use - only permitted if granted by Planning Board

Uses	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
Accessory uses and buildings not for human habitation and which are normally incidental to the permitted principal use of the premises.	P	P	P	P	N	P	P	P
Agricultural	P	P	P	N	N	N	P	C ¹
Boat Charters and Excursions	N	N	N	N	N	P	N	P
Boating Supplies	N	P	N	N	N	P	N	P
Cargo Containers ²	N	C	N	C	N	N	N	C
Churches	P	P	P	N	N	N	N	P
Day Care	P	P	P	S	N	N	C	P
Fireworks Sales	N	N	N	N	N	N	N	N
Fish and Shellfish: wholesale and retail sales	N	P	N	N	N	P	N	P ³
Fishing Equipment: fabrication, storage and repair	P	P	P	N	N	P	P	P
Gasoline Stations, subject to the limitations specified in Section 6.200	N	P	N	N	N	N	N	N
Guest Houses	P	P	P	N	N	N	C	P
Home Occupations	C	C	C	C	N	C	C	C
Home Offices	P	P	P	P	N	P	P	P
Hotels and Motels	N	P	N	N	N	N	N	P
Industrial-Heavy	N	N	N	C	N	N	N	N
Industrial-Light	N	P	N	P	N	N	N	P
Manufacturing - as a Subordinate Use, and clearly subordinate and incidental to the permitted principal use of the premises.	N	P	C	C	N	N	C	C
Marinas and Related Services such as sail lofts, boat brokerage, boat building & repair, retail boat & motor sales, boat storage, and boat refueling.	N	P	N	P	N	P	C	N
Methadone Clinic	N	N	N	N	N	N	N	N
Mixed Use	N	C	N	N	N	N	N	P
Motor Vehicle Repair	N	P	N	N	N	N	N	N

¹ Livestock, fowl and animal husbandry are not permitted in Zone 6M.

² No more than 2 cargo containers per business are permitted, and for a duration not to exceed 3 months. Cargo containers shall not be used for human habitation or hazardous material storage.

³ Wholesale sales of fish and shellfish are not permitted in Zone 6M

Uses	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
Motor Vehicle Re-Manufacturing provided that 1) No more than 20 vehicles are stored on-site at one time; and 2) all salvaged parts shall be used to repair vehicles on-site.	N	S	N	N	N	N	N	N
Nursing or Convalescent Homes - not more than 20 patients.	N	P	N	N	N	N	N	P
Offices - Professional offices which are incidental to a residence, and which conform in design to the structures in the area. There shall be no more than one office per single-family house, and no such office shall have more than three employees.	P	P	P	P	N	N	P	P
Offices for maritime activities	N	P	P	N	N	P	P	P
Offices - All other offices, including banks	N	P	N	P	N	N	N	P
Outdoor Storage of more than one inoperative and unregistered automobile	N	N	N	N	N	N	N	N
Outside Commercial Amusements and Entertainment , including, but not limited to helicopter & airplane rides, and bungee jumping.	N	S	N	S	N	N	N	N
Recreation - Commercial amusements and entertainment which is conducted within the confines of a building.	N	P	N	S	N	N	N	C
Recreation - Non-commercial passive recreation	P	P	P	P	P	P	P	P
Residential⁴								
Mobile Home Park	N	N	N	N	N	N	N	N
Multi-Family Dwelling	N	N	N	N	N	N	N	N
Mixed Use with no more than 5 dwelling units	N	C	N	N	N	N	N	P
Single Family Dwelling	P	P	P	N	N	P	P	N
Single Family Dwelling + ADU	P	P	P	N	N	P	P	N
Two Attached Primary Dwelling Units	P	P	P	N	N	N	P	N
Restaurants	N	P	N	N	N	P	N	P
Restaurants that have drive-up windows	N	P	N	N	N	N	N	N ⁵
Retail and Service Businesses - floor area of 1,000 sq ft or more	N	P	N	N	N	N	N	P
Retail and Service Businesses - floor area less than 1,000 sq ft	N	P	P	N	N	N	P	P
School Bus Shelters	S	S	S	S	N	S	S	P
Schools	P	P	P	N	N	N	N	P

⁴ In North Village, existing residential uses are grandfathered and can be redeveloped and expanded as the same use while conforming to all other requirements.

⁵ In Zone 6M North Village, restaurants that have drive-up windows are permitted if the Planning Board grants a conditional use permit.

Uses	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
Sexually Oriented Businesses as regulated, restricted and defined by this ordinance, Section 21 hereof and such other ordinances adopted by the Town regulating sexually oriented businesses. Specifically, without limitation, sexually oriented businesses shall not be permitted with 1,000 feet of a church, or place of worship, parish house, or convent, a public, parochial or private school, a state approved day care center, another sexually oriented business, a sexually oriented business for which a building permit has been applied for, or within 300 feet from a residence, or 500 feet from a public sports/recreation park, any establishment in which minors constitute more than 50% of the Town boundaries or within 500 feet of such businesses or buildings owned by the Town of Seabrook and operated for government use.	N	P	N	N	N	N	N	N
Solar Farms	C	P	N	P	N	N	N	N
Special Events	N	P	N	P	N	N	N	P
Swimming Pools	P	P	P	N	N	N	P	P
Tattoo Establishment	N	N	N	N	N	N	N	N
Telecommunications Facilities permitted only on land west of I-95 and within 3,500' of the centerline of I-95. These facilities are subject to the provisions of Section 16.	P	P	N	P	N	N	N	N
Theaters and Halls	N	P	N	N	N	N	N	P
Trailers and Boats - Dead storage of travel trailers & boats used by residents of the property	P	P	P	P	N	P	P	P
Travel Trailer Parks	N	P	N	N	N	N	N	N
Utilities: Public Utility Buildings	N	P	P	P	N	N	P	C
Wholesale	N	P	N	P	N	N	N	N

6.200 Gasoline Stations: In order to prevent an excessive concentration of petroleum products that may pose a threat to Seabrook's vital groundwater resources, no gasoline station shall be erected or operated within 1,000 feet of another such station, as measured from the closest property lines.

Seabrook's twelve existing gasoline stations in an operable condition in 2012 are grandfathered, and thus are not required to conform to the 1,000-foot setback, and are situated on the following parcels:

Map	Lot	Name	Address
5	11	O'Brien	8 Batchelder
7	62	Extra Mart	762 Lafayette
7	87	Getty North	663 Lafayette
7	94-5	Prime Gas	843 Lafayette
7	126	Sunoco	720 Lafayette
8	110	Richdale	472 Lafayette
8	4	Getty South	587 Lafayette
9	62	Irving	361 Lafayette
9	67-0	Seacoast One-Stop	265 Lafayette
10	20-1	Gateway	3 Lafayette
17	48-1	O'Keefe	445 Route 286
26	98	Yankee Fishermen	725 Ocean Boulevard

Should a gasoline station cease to operate for one year, and should its NH gasoline station operator's license expire, the facility will no longer be grandfathered from the 1,000-foot setback requirement.

Section 7 - Dimensional Requirements

No building shall be erected, reconstructed or structurally altered to exceed the height herein established for the districts in which such building is located. No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this ordinance, nor shall the density of population be increased in any manner except in conformity with the table set forth below. No yard or other open space provided around any building for the purpose of complying with the provisions of these regulations shall be considered as providing a yard or open space for any other building. In order to demonstrate the minimum required lot depth and lot width, lots in Zones 2R, 5 & 6R must be able to accommodate a 100' by 100' square; lots in Zones 1, 2, 3 & 6M must be able to accommodate a 125' by 125' square.

Dimensional Requirements	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
Minimum Lot Area (in thousands of sq ft)								
Single Family Dwelling ⁶	20	30	15	30	--	20	15	30
Single Family Dwelling + ADU ⁶	20	30	15	30	--	20	15	30
Two Attached Primary Dwelling Units	30	30	30	--	--	--	20	--
Non-Residential Buildings	20	30	15	30	--	20	15	30
Maximum # of Primary Structures⁷								
(Residential) Buildings per lot ⁸	1	1	1	0	0	1	1	--
(Residential) Dwelling Units per lot ³	2	2	2	0	0	2	2	2
Mixed Use (maximum dwelling units per building)	--	--	--	--	--	--	--	5
Minimum Lot Dimensions¹								
Continuous Road Frontage ⁹ (i.e. uninterrupted frontage)	125'	125'	100'	125'	--	100'	100	125
Depth and Width	125'	125'	100'	125'	--	100'	100	125
Minimum Setbacks¹⁰								
Front	20'	30'	20'	50'	--	30'	20'	15'
Frontage abutting Route 1	30'	30'	30'	30'	--	30'	30'	30'
Side and Rear	10'	15'	10'	15'	--	15'	10'	15'
Side and Rear for sheds less than 100 sq ft	2'	2'	2'	2'	--	2'	2'	2'
From ponds & streams	50'	50'	50'	50'	--	50'	50'	50'
Bus and Transit Shelters:								
setback from roadway pavement	8'	8'	8'	8'	--	8'	8'	8'
setback from roadway intersections	20'	20'	20'	20'	--	20'	20'	20'
Side and rear setbacks for commercial uses from land utilized or zoned Residential	30'	30'	30'	30'	--	30'	20'	30'

⁶ This requirement shall not apply to lots of record that were recorded at the Registry of Deeds prior to 1974.

⁷ Note exceptions for lots in Zone 2, per Section 5 of this ordinance.

⁸ A second dwelling building, containing one dwelling unit, may be placed on a lot in Zones 2R & 6R, providing that the lot is 45,000 sq ft or larger; and the number of dwelling units on the lot does not exceed two.

⁹ Parcels dedicated for conveyance to the Town of Seabrook for conservation purposes shall be exempt from the roadway frontage requirement.

¹⁰ On corner lots where the side yard abuts a street, the side yard shall be subject to the minimum setback requirements for front yards.

Dimensional Requirements	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
Minimum Buffers See Section 15 for buffer and setback requirements for wetlands and surface waters.								
Maximum Height ¹¹ In 6M - with parking on first floor In 6M - without parking on first floor	35'	35'	35'	50'	--	35'	35"	-- 45' 40'
Minimum Width of Greenbelt along Lafayette Road ¹²		20'					--	20'
Minimum % of Open Space	25%	25%	25%	25%	100%	25%	25%	20%
Maximum Building Footprint (in square feet) ¹³ Mixed Use Building (with no more than 5 dwelling units per building permitted)								7,500
In 6M-Smithtown	-	-	-	-	-	-	-	7,500
In 6M North Village west of Route 1								7,500
In 6M North Village east of Route 1								20,000 ¹⁴

¹¹ Utility structures such as radio/television towers are exempt from this height limit. For wind systems, see Section 19. The maximum height limit for all other structures on properties that abut Lafayette Road in Zone 2 is 50 feet (not 35 feet).

¹² The minimum 20-foot Lafayette greenbelt shall be measured from the edge of the widest proposed right-of-way currently under consideration by NH DOT.

¹³ In Zone 6-M North Village, existing lots of record as of adoption of the 6-M North Village zoning district are allowed to redevelop the square footage of their existing building footprint(s) on that property.

¹⁴ Conditional Use Permit from the Planning Board required to permit structures greater than 20,000 square feet on the east side of Route 1 in 6-M North Village for Industrial-Light uses.

Section 8 - Special Exceptions & Conditional Use Permits

8.100 **Special Exceptions** shall be granted by the Board of Adjustment, and **Conditional Use Permits** shall be granted by the Planning Board, if in the board's judgment, the proposed use:

- Does not have an adverse effect on surrounding properties or on environmentally sensitive areas;
- Does not at any time of day decrease the existing level of service of roads and intersections servicing the property and any other road or intersection to be determined by the Planning Board;
- Implements mitigation measures that retain the existing and/or improve the level of service of roads and intersections servicing the property including other affected components of the roadways network identified by the Planning Board;
- Does not cause erosion, or discharge of chemicals or other pollutants into stormwater;
- Does not emit odors, noise, dust, vibration, smoke or fumes which travel beyond the boundary lines of the subject property; and
- Does not interfere with or decrease safety and access for motorists, bicyclists, pedestrians and residents.

The Special Exceptions and Conditional Use Permits shall run with the land, that is to say, the restrictions and stipulations will apply to subsequent owners of the property.

Section 9 – Open Space Development

9.100 **Purpose:** The purpose of this section is to encourage flexibility in design and development of land in order to promote the conservation of open space and the efficient use of land in harmony with its natural features.

9.200 **Objectives**

9.201 To stimulate imaginative and economical approaches to land use and community development.

9.202 To facilitate the adequate and economical provision of streets, utilities and public spaces.

9.203 To preserve the natural and scenic qualities of open areas.

9.204 To establish living areas that provide a diversity of housing opportunities while ensuring adequate standards for public health, safety, welfare and convenience.

9.205 To encourage the conveyance of land and easements for use by the general public for recreational and or conservation purposes,

9.206 To preserve those areas of the site that have the highest ecological value, for example, wildlife habitat including rare and exemplary species and habitats, water resources, wetlands, streams and rivers.

9.207 To create a contiguous network of open spaces or “greenways” by linking the common open spaces within the subdivision and to open space on adjoining lands wherever possible.

9.300 **Locations:** Such development shall only be permitted in Zones 1, 2R & 6R

9.400 **Procedure:** Applications shall follow the procedures and standards of the Subdivision Regulations. Open Space subdivisions, as described herein, are strictly optional, that is to say, applicants are free to pursue conventional subdivisions pursuant to Seabrook’s Subdivision Regulations.

9.500 **Dimensional Requirements:** Within the Buildable Area, residential development may be built in any configuration or combination of dwelling types and lot sizes, subject to the following:

9.501 A minimum of fifty percent (50%) of the land identified as Net Tract Area shall be set aside as open space.

9.502 Residential density for the Buildable Area shall not exceed 7,500 square feet per dwelling.

9.503 The height of buildings shall not exceed 35 feet.

9.504 Ten foot structural setbacks shall be maintained from all abutters who are situated outside of the Open Space Development.

9.505 The Planning Board finds that the proposal is consistent with the purposes of this section.

9.600 **Open Space Guarantees**

9.601 **Contiguous Open Space:** Reasonable efforts shall be made to locate open space adjacent to protected open space in adjoining property or properties to the satisfaction of the Planning Board. This open space shall be permanently restricted for recreation, open space and conservation uses and protected by a homeowners or condominium association. Upon mutual agreement of the Town, the developer and/or the homeowners or condominium association, a portion of the open space may be permanently protected by a public body which shall maintain the land for the benefit of the general public.

9.602 **Enforceability:** The Town and the property owners within the development shall be assured of enforceable rights with respect to such preservation.

9.603 **Non-Divisible:** Such open space shall not be re-subdivided further, but may contain accessory structures and improvements appropriate for educational, recreational or social uses.

9.604 **Legal Guarantees:** The developer shall submit, prior to final approval, such legal instruments as the Planning Board may require to prescribe the manner of ownership, maintenance and obligations of the developer and future residents, including the articles of incorporation and charter in a form and manner approved by the Board necessary to ensure the intent and purpose of this section.

9.605 **Municipal Rights:** In the event the party entrusted with ownership of the open space within the development shall fail to maintain such open space in a reasonable order and condition, the Town may, through court action, be authorized to assess the costs incurred by the municipality to maintain this open space against the owners as a lien on their properties.

9.606 **Dissolution:** Should the organization managing said open space dissolve, all assets shall be turned over to the public or a non-profit organization dedicated to the preservation of open space. Any such transfer shall be approved by the Planning Board.

Section 10 - Junkyards

In pursuance of the authority conferred by RSA 236, as amended, the following regulations shall govern the upkeep of motor vehicle and machinery junkyards. No new junkyards, as herein before defined shall be established, opened or operated within the town. No existing junkyard within the town shall be expanded or in any way enlarged unless a variance is granted by the Board of Adjustment. No person, corporation or association shall locate or maintain a motor vehicle junkyard or a machinery junkyard within a distance of 150 feet from the surface of any public highway, unless such yard is fenced or screened so as to be completely hidden from view of the highway. Yards currently in operation shall be a period of 60 days grace in which to complete the actions necessary for compliance with these regulations before violators may be prosecuted. Any motor vehicle junkyard or machinery junkyard located or maintained in violation of the provisions of this Section is hereby declared a nuisance, and the same may be abated on complaint of any prosecuting officer. Whoever violates any of the provisions of these regulations governing junkyards shall be fined not more than \$100 or imprisoned for not more than six months, or both.

Section 11 - General Provisions

11.100 **Mobile Home Parks:** No mobile home park or house trailer park shall be established, or be allowed to expand if already established, within the confines of the town.

11.200 **Nuisances:** The occurrence of activities that may be obnoxious or injurious by reason of the production or the emission of odor, dust, smoke, fumes, refuse matter, noise, vibration or similar conditions or that are dangerous to the health, safety or value of property of the community or that lend otherwise to the annoyance or disturbance of a neighborhood shall be prohibited.

11.300 **Dumping and waste disposal:** No land in any district shall be used for a dumping place for garbage and refuse from either private or from commercial or from industrial sources except the public dump as provided by the town and except with the approval, in writing, of the Public Health Officer or the Board of Adjustment upon such conditions as they may require.

11.400 **Housing Authority Exempted:** The use of land by the Seabrook Housing Authority shall be exempt from all provisions of this Zoning Ordinance.

11.500 **Historic Stone Walls** – No person shall deface, alter, the location of or remove any stone wall which was made for the purpose of marking the boundary of lots or recording lots of record, or which borders any road in the Town of Seabrook except upon written permission of the Planning Board and the Board of Selectmen.

Section 12 - Sand, Topsoil & Gravel Removal

It shall be unlawful to excavate and remove from any premises, sand, topsoil, gravel or rock, excepting such surpluses of topsoil, sand, gravel or rock as may result from excavations when constructing basements or foundations for buildings or when excavating for driveways, parking lots and streets, except in accordance with the following conditions:

12.100 Permit Application: A permit has first been obtained from the Board of Adjustment, following written application therefore, and said Board has held a public hearing thereon.

12.200 BOA Findings: The Board of Adjustment must first find that such use is not detrimental, injurious or dangerous to public health and the welfare of the district or town and shall not constitute a nuisance due to noise, vibration, erosion, the discharge of chemical and other pollutants from stormwater runoff, smoke, odor or other objectionable features nor adversely affect the economic status of the district or town. The Board shall consult with the Planning Board of the town as a resource for making these findings.

12.300 Permit to Operate: Both existing and proposed uses must have a permit to operate. A permit so issued shall be issued for an initial period of not more than one year and to be subject to renewal upon application to and at the option of the Board of Adjustment for successive periods of not more than one year, provided that a bond is posted in the name of the Town assuring satisfaction of any requirements of the Board of Adjustment which it may require to safeguard the interest of the town.

12.400 Inspections: The Code Enforcement Officer will arrange inspections of the site to ensure that the Board's requirements and those of the NPDES Construction Permit are being followed. If an outside consultant is necessary to make a report, the cost shall be paid by the permit holder.

Section 13 - Signs

13.100 **Purpose:** The purpose of this section is to minimize distractions to motorists that could adversely affect traffic safety, and also to minimize unsightly signs that could diminish the value of nearby properties.

13.200 **Dimensional Limits:** All signs, other than temporary political campaign signs and real estate sales signs, require a permit issued by the Building Inspector. All signs shall adhere to the requirements set forth in the table below:

Zoning District:	1, 2R & 5	2&3	4	6R	6M Smith-town	6M North Village
Maximum Cumulative Surface Area (<i>in square feet</i>) of all free-standing signs	16	100 ¹⁵	0	16	55	100
Maximum area of all roof signs	0	32	0	0	0	0
Maximum number of free-standing signs per lot ¹⁶	1	1	0	1	1	1
Maximum area of entrance & exit signs	4	4	0	4	4	4
Maximum height of entrance & exit signs above grade	3	3	-	3	3	3
Maximum number of roof signs per business	0	1	0	0	0	0
Height of free-standing sign above grade						
Maximum	15'	20'	-	15'	20'	20'
Minimum for signs within 30' of street pavement	6'	6'	-	6'	6'	6'
Minimum for signs beyond 30' of street pavement	0	0	-	0	0	0
Minimum Setback for free-standing signs from edge of pavement ¹⁷	10'	15'	-	10'	15'	15'
Wall Sign: Maximum coverage of wall surface	10%	10%	-	10%	10 sf	10%
Suspended Sign: Placed no higher than 2 nd floor sill	-	-	-	-	8 sf	-
Maximum area of a temporary sign	16	16	-	16	16	16

¹⁵ 100 square feet plus an additional 24 square feet for every business on the premises, not to exceed a total of 400 square feet. No one side of any sign shall exceed 200 square feet.

¹⁶ Entrance & exit signs, and temporary signs are exempt from the limit on the number of free-standing signs per lot.

¹⁷ Entrance & exit signs are exempt from this setback requirement.

13.300 **Temporary Signs:** The maximum duration for the display of temporary signs shall be 90 days per sign, within any calendar year.

13.400 **Prohibited signs:** In order to minimize driver distraction, the following signs are prohibited in the Town of Seabrook:

- **Animated, moving, flashing, spinning, revolving, scrolling, or intensely lighted signs** and signs that emit audible sounds or noise are prohibited in order to enhance traffic safety.
- **Digital Display** signs that change their message more frequently than once per hour. The display of time, temperature, public service announcements, and Amber Alerts are exempt from this prohibition.
- **Off-Premise signs** and **billboards**, except as noted in Section 13.600 below.
- **Signs painted on or attached to a vehicle or trailer** parked on private property for the purpose of providing advertisement of products or directing people or a business or activity located on the property.
- **Signs that block the view of traffic**, street signs or traffic signals;
- Signs which bear or contain statements, words, or pictures which constitute the dissemination of any material which is **obscene** as those terms are defined by Chapter 650 of the Revised Statutes Annotated of New Hampshire;
- **Roof signs made of combustible material;**
- **Visual Story Signs** that convey a sequence of messages.
- Illumination that interferes with traffic controls devices.

13.500 **Light Emitting Diode (LED) Signs:** In order to minimize driver distraction, LED signs shall adhere to the following standards:

- LED signs shall be permanently affixed to the ground;
- Maximum luminance shall not exceed 5,000 nits (candela per square meter) during daylight hours, and 300 nits after sunset.
- LED signs shall not be illuminated between the hours of 12AM and 5AM.
- LED signs shall only be erected within Zones 2 and 6M North Village.

- Text shall be sufficiently large enough so as not to require additional attention from passing motorists.

13.600 For businesses that are *not* located along State highways, one **Off-Premise Directional Sign** per business shall be permitted, providing that:

- the sign complies with the provisions of this ordinance in all other respects;
- the sign face does not exceed six square feet;

13.700 **Non-conforming signs** in place prior to this ordinance may not be altered or replaced, however a change to the message is permitted.

Section 14 - Non-Conforming Property

14.100 **Expansion:** Non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended, nor changed to another non-conforming use. Note Section 6 Permitted Land Uses and Section 7 Dimensional Requirements for exceptions relating to continuance and expansion of non-conforming uses in 6-M North Village.

14.200 **Cessation:** If a non-conforming use ceases for a period of one year, all subsequent uses shall conform to the terms of the Zoning Ordinance.

14.300 **Restoration:** Nothing in this ordinance shall prevent restoration within one year and continued non-conforming use of a building that has been damaged by fire, water or other casualty.

14.400 **Mobile Homes:** A non-conforming mobile home may be replaced with a new mobile home at the same locations.

Section 15 – Surface Water Protection

15.100 **Purpose:** to protect the larger expanses of wetlands in Seabrook, to minimize flooding, to protect wildlife habitats, to protect groundwater quality, and to prevent damage to structures and property.

15.200 **Minimum Lot Sizes:** Wetlands shall not be utilized to satisfy more than 20% of the minimum lot size requirement specified in Section 6 of this ordinance. Tracts of land that were less than five acres as of January 1, 1998 are exempt from this requirement. For the construction of single-family homes, a minimum of 7,500 square feet of contiguous uplands (non-wetlands) shall be available on the lot; For duplexes, 15,000 square feet of contiguous uplands shall be available.

15.300 **Vegetation:** In order to ensure that wetlands remain well vegetated, no natural herbaceous vegetation and no more than fifty percent (50%) of trees, saplings, or shrubs shall be removed from wetlands. Vegetation shall only be removed during the dry season or when the ground is frozen.

- Not more than a maximum of fifty percent (50%) of the basal area of trees, and a maximum of fifty percent (50%) of the total number of saplings shall be removed for any purpose in a 15-year period. Any subsequent cutting requires prior approval by the Planning Board. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.
- Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations.
- Stumps and their root systems shall be left intact in the ground.
- Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.
- Planting efforts that are beneficial to wildlife are encouraged.

15.400 **Buffers & Setbacks:** The following vegetative buffers and structural setbacks shall be observed in order to protect the integrity and functionality of Seabrook’s water resources:

Water Resource	Minimum Buffer	Minimum Setback
Wetlands less than 5,000 sq ft	None	10 feet
Vernal Pools of any size, and Wetlands greater than 5,000 sq ft	25 feet limited-cut, consistent with Paragraph D above.	25 feet
Ponds & Streams	25 feet limited-cut, consistent with Paragraph D above.	50 feet

Parking lots shall observe a minimum setback of 25 feet.

15.500 **Violations:** Any water resource or its buffer altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5 and under the direction of a New Hampshire certified wetland scientist, and said restoration shall be subject to review by the Seabrook Conservation Commission. When appropriate, injunctive relief shall be sought by the Town as per RSA 676:15, and civil fines imposed as per RSA 676:17.

15.600 In all water resource areas such as ponds, streams, wetlands, and their associated buffers, only potash and slow release lime shall be used for soil amenities.

Section 16- Aquifer Protection

16.100 **Purpose:** The purpose of the Aquifer Protection Overlay District is to protect future ground water sources from potential contaminants and human intervention that might limit recharge. The intent of this Overlay District is to provide for the overall health and safety to the public by preserving and maintaining existing aquifers. The Aquifer Protection Overlay District is a zoning overlay district that imposes additional requirements and restrictions in addition to those of the underlying district zone. The goals of the Aquifer Protection Overlay District are to:

16.101 Achieve runoff volume control to maintain pre-development hydrology functions, including holding surface runoff volume, infiltration, and aquifer recharge volumes reasonably constant. These standards help maintain aquatic habitats, wetlands, stream base flow and prevent increased frequency of damaging bank full flows and floods.

16.102 Protect, maintain, and improve stream uses and the surface water and groundwater quality (including temperature regimes) that sustains these uses.

16.103 Prevent any increase in peak runoff rate and total volume of discharge from a site for a range of frequent to large storms. Where appropriate, additional release rate and volume controls may be required to reduce cumulative flooding impacts downstream and to water bodies containing sensitive species or habitats.

16.200 **Aquifer Protection Overlay District** extends over all land within the political boundaries of the Town of Seabrook located west of I-95.

16.300 **Applicability:** The Aquifer Protection Overlay District standards shall apply fully to new development projects, and redevelopment projects that expand by more than 25 percent the total footprint of development on a site or add more than 10,000 square feet of new impervious surface cover to a site, whichever is smaller. For site development that does not meet these redevelopment thresholds, the standards shall be applied to the maximum extent practicable at the discretion of the Planning Board.

16.400 **Prohibited Uses:** The following uses are not permitted in the Aquifer Overlay Protection District.

16.401 Storage, use, treatment or disposal of hazardous waste as defined under RSA 147-A, and Section 2 herein:

16.402 Storage, use, treatment or disposal of solid waste and sludge;

16.403 Disposal of solid waste. Brush and stumps may not be disposed of on-site;

16.404 Disposal of septic waste;

16.405 Dumping of snow or stockpiling of snow brought from outside the Aquifer Protection Overlay District;

16.406 Storage of road salt, salted sand or other deicing materials and chemicals in bulk except in lined and enclosed covered storage constructed in accordance with the standards of NH DES;

16.407 Subsurface storage of petroleum and other refined petroleum products for commercial sale and industrial use;

16.408 Motor vehicle service and repair shops, gasoline stations, car washes, junk, reclamation and salvage yards;

16.49 Facilities for the bulk storage of petroleum products;

16.410 Industrial and commercial uses that discharge contact type process and cooling waters on site;

16.411 Commercial livestock stockyards, feedlots, and manure storage;

16.412 Mining of land and excavation of sand or gravel;

16.413 Septage or wastewater lagoons.

16.450 **Regulated Substances:** The handling, storage, processing or recycling of regulated substances and toxic materials in storage containers greater than five gallons shall only be permitted if the Planning Board and Fire Chief approve the applicant's plan for Spill Prevention, Control and Countermeasure (SPCC).

16.500 **Exemptions:** The following uses are exempt from this ordinance as long as they are in compliance with all applicable local, state and federal requirements:

16.501 Storage of heating fuels for on-site residential and non-residential use or fuels for emergency electric generation, provided that storage tanks are above ground on a concrete pad or floor and have corrosion control, leak detection, and secondary containment in place.

16.502 Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle.

16.303 Storage and use of office supplies.

Section 17 - Telecommunications Facilities

17.100 **Signs:** Telecommunication towers shall not contain signs or graphic representation of any kind.

17.200 **Fall Zone:** A circular fall zone shall be depicted on the site plan. The radius of said zone shall equal the height of the proposed tower. This zone shall not include any buildings or public ways. Easements shall be required if the fall zone extends onto other properties.

17.300 **Evidence that Co-Location is not Feasible:** If a new tower is being proposed, the applicant shall submit evidence which is satisfactory to the Planning Board, that no existing structure can accommodate the applicant's antenna(s).

17.400 **Cooperation:** An applicant proposing to build a new tower shall submit a binding agreement that provides for the maximum allowance of antenna co-location on the new structure. This agreement shall obligate the applicant to supply antenna co-location for reasonable fees and costs to other telecommunications providers. Failure to provide an agreement that is satisfactory to the Planning Board is grounds for denial.

17.500 **A Bond** shall be submitted by the applicant to cover the costs of tower removal in the case of abandonment. The applicant shall submit a written agreement, the terms of which are to be satisfactory to the Town of Seabrook, which governs the bond.

17.600 **Abandoned Telecommunications Facilities** are those that have not operated for a period of twelve consecutive months.

Section 18 – Traffic Mitigation

The construction or redevelopment of any building in excess of 50,000 square feet may be approved only after a finding by the Planning Board that the following conditions will be met at the time of opening of the building and that they will continue to be met for at least five years from the time of building opening:

18.100 **Visibility:** Line of sight distance shall meet or exceed New Hampshire DOT standards for entrances and exits to commercial sites.

18.200 **Access:** Access to the site shall be directly from a Town road or State highway or through a private roadway built to Town standards and approved by the Planning Board.

18.300 **Traffic Controls:** Adequate traffic controls exist to ensure safe access and on-site circulation of vehicle and pedestrian traffic. If traffic signals are required, signalization shall be interconnected with other traffic signals in the Town if such interconnection is found to be appropriate by the Planning Board.

18.400 **Acceleration/Deceleration lanes** or suitable alternate roadway improvements are provided on State and Town roads where the Planning Board finds out such lanes are necessary to provide safe site access based on sound engineering principles and practice.

18.500 **Review Costs:** The costs incurred by the Town in reviewing traffic studies of applicants, calculating the fair share of off-site improvements and/or in developing mitigation plans shall be borne by applicants.

18.600 **Construction Standards:** All improvements required by this ordinance shall be built in accordance with local, State and ASHTO standards.

Section 19 - Small Wind Energy Systems

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

19.200 **Procedure for Review:**

19.210 **Location:** Small wind energy systems and met towers are an accessory use, and are permitted in all zoning districts where structures of any sort are allowed.

19.220 **Building Permit:** No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

19.230 **Application:** Applications submitted to the building inspector shall contain a site plan with the following information:

19.231 Property lines and physical dimensions of the applicant's property.

19.232 Location, dimensions, and types of existing major structures on the property.

19.233 Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.

19.234 Tower foundation blueprints or drawings.

19.235 Tower blueprints or drawings.

19.236 Setback requirements as outlined in this ordinance.

19.237 The right-of-way of any public road that is contiguous with the property.

19.238 Any overhead utility lines.

19.239 Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.

19.240 Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.

19.241 Sound level analysis prepared by the wind generator manufacturer or qualified engineer.

19.242 Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.

19.243 List of abutters to the applicant's property.

19.240 **Abutter and Regional Notification:** In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

19.300 **Standards:** The building inspector shall evaluate the application for compliance with the following standards;

19.310 **Setbacks:** The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

19.311 Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

19.312 Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

Minimum Setback Requirements Indicated as a % of Tower Height			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	150%	110%	150%

19.320 **Tower:** The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

19.330 **The Sound Level** of the small wind energy system shall not be discernible at the property line.

19.340 **Shadow Flicker:** Small wind energy systems shall be sited in a manner that does not result in shadow flicker impacts on abutting properties.

19.350 **Signs:** All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

19.360 **Code Compliance:** The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

19.370 Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

19.371 The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

19.372 The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.

19.373 A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

19.380 Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

19.390 Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA362-A:9.

19.392 Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

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

19.396 **Impact on Wildlife:** Only wind energy system models that have a minimal negative impact on birds, said impact as determined by the Seabrook Conservation Commission, shall be permitted.

19.400 **Abandonment**

19.410 **Notification:** At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

19.420 **Removal:** Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:

19.421 Removal of the wind generator and tower and related above-grade structures.

19.422 Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

19.430 **Failure to Notify:** In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

19.440 **Legal Action:** If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

19.500 **Violation:** It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance.

19.600 **Penalties:** Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

Section 20 - Impact Fees

20.100 **Authority**

20.110 This Section is authorized by New Hampshire RSA 674:21, V, and other pertinent state law, as an innovative land use control. Under this authority, new development in Seabrook may be assessed impact fees in proportion to its demand on the public capital facilities of the Town or the School Districts serving Seabrook.

20.120 The public facilities for which impact fees may be assessed in Seabrook may include municipal office facilities; public school facilities; public safety facilities; public road systems and rights-of-way; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; public recreation facilities, not including public open space; water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; and storm water, drainage and flood control facilities.

The Planning Board is hereby authorized to assess impact fees in accordance with the standards set forth in this Section. The Planning Board shall have the authority to adopt regulations to implement the provisions of this Section and to delegate the administrative functions of impact fee assessment, collection and disbursement as necessary.

20.200 **Purpose:** Impact fees may be used to assess an equitable share of the cost of public facility capacity to new development in proportion to the facility demands created by that development. The purpose of this Section is to:

- Assist in the implementation of the Master Plan and Capital Improvements Program;
- Enable the Town of Seabrook to assess an equitable share of the cost of public capital facilities to new development in proportion to its demand on those facilities; and
- Provide authority to the Planning Board to adopt appropriate methods that support proportionate impact fee assessments, and to provide for the administration thereof.

20.300 Standards for Assessment

20.310 The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of capital facility impact fee assessment in Seabrook. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. Such documentation shall be available for public inspection at the Planning office of the Town of Seabrook.

20.320 The amount of any impact fee shall be a proportional share of public facility improvement costs that are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

20.330 The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules thereof.

20.340 No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.

20.400 Waiver of Impact Fees: The Planning Board may grant full or partial waivers of impact fees to an assessed property, subject to its finding that the proposed development meets one or more of the applicable conditions set forth below:

20.410 A full or partial waiver of public school impact fees may be granted for residential units that are lawfully restricted to exclusive occupancy by persons age 55 or older within a development that is maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments for the age-restricted units within a development that are subject to deeded restrictions that limit occupancy to persons age 55 or older. Should these occupancy restrictions be rescinded subsequent to the construction of the affected units, the units shall be subject to the school impact fee assessment in effect at the time the age restriction on occupancy is removed.

20.420 The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that involves a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers of impact fees may not be based on the value of exactions for off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Section.

20.430 The applicant for development of an assessed property may apply for a full or partial waiver of the amount of the impact fee based on the results of an independent study of the demand on capital facility capacity and related costs attributable to the development. In support of such request, the applicant shall prepare and submit to the Planning Board an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the Town. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the applicant.

20.500 Assessment and Collection of Impact Fees: The administrative process of assessment and collection of impact fees will be the delegated to the Building Inspector. The management and disbursement of impact fee accounts will be the responsibility of the Treasurer.

20.510 Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan. The amount of such assessment shall be applicable to subsequent building construction within the approved subdivision or site plan for a period of five years from the date of Planning Board approval. Once this five-year period has expired, remaining construction for which no building permit has been obtained shall be subject to the adopted fee schedule in force at the time of the building permit application.

20.520 With the exception of those plats and site plans meeting the conditions in (A) above, and when no other Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit. The impact fee schedule in force at the time of the building permit application shall apply.

20.530 Unless an impact fee is inapplicable to a particular development or has been waived by the Planning Board, no permit shall be issued for new development as defined in this Section until the applicable impact fees have been assessed. The Building Inspector shall not issue a Certificate of Occupancy for the development on which the fee is assessed until the impact fee has been paid in full.

20.540 In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee assessment applicable to the new use as compared to the highest impact fee that was or would have been assessed to the previous use in existence on or after the effective date of the assessment.

20.550 The Planning Board and applicant may agree to another mutually acceptable schedule for payment. If an alternate schedule of payment is established, the Planning Board shall require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Seabrook.

20.600 Accounting and Disbursement of Impact Fees: Impact fees shall be held in the custody of the Town Treasurer. Impact fees shall be held in separate, non-lapsing, interest-bearing accounts and not co-mingled with other municipal funds.

20.610 Impact fee expenditures shall be paid by the Treasurer upon order of the Board of Selectmen or its designated agent, without further approval of the legislative body. Impact fees shall be expended only for the purpose for which they were assessed.

20.620 Impact fees may be used to reimburse any account from which an amount has been expended in anticipation of the receipt of said fees. Impact fees assessed to recoup the cost of existing capital improvements made in anticipation of the needs of new development may be applied as revenue against any outstanding debt for those capital improvements.

20.630 In the absence of outstanding debt service obligations for a particular capital facility, the recoupment may be applied to offset the cost of other capital expenditures within the same facility category where the Planning Board finds that there is sufficient facility capacity to accommodate new development.

20.640 Impact fee revenue shall be earmarked for the specific purpose of which it was assessed and shall be accounted for in separate municipal impact fee accounts. Seabrook's annual financial statements shall include an accounting for each impact fee, showing the source and amount of fees assessed, the amount of fees expended for capital improvements funded in whole or in part by impact fees, and the balance remaining at year end. The annual statements shall show the capital improvement category for which the fees were assessed and the date of assessment and collection of the fee. The report shall be sufficiently detailed as to allow the public to determine how the fees were applied, and whether the fees were expended, retained, or refunded.

20.700 **Refund of Impact Fee:** Impact fees are assessed to specific properties to offset the capital cost impact of new development within the property. Impact fees received by the Town from all fee payers shall be recognized as payments made on behalf of the assessed property, its owner, or successors in interest in the assessed property.

20.710 Impact fees are collected to offset the capital facility impacts associated with the occupancy or use of the assessed property. Therefore impact fee refunds shall be made to the owner of record of the assessed property at the time a refund becomes due.

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

- 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
- The Town, or in the case of school impact fees the School District 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.

20.800 Review and Change in Assessment Schedules: An impact fee assessment schedule adopted by the Planning Board shall be reviewed not more than five years following its adoption. The fee schedule may also be revised periodically upon the Board's adoption of revisions to a Capital Improvement Program if its adoption would affect the facility standards or capital cost assumptions used to define the fee schedules. Periodic review of fee schedules may result in recommended adjustments in one or more of the fees or the basis of assessment, using the most recent data that affect the variables in the fee calculations. A proposed change in the impact fee assessment schedules or the basis of assessment shall be effective only where such change is adopted by the Planning Board following a public hearing. Failure to conduct a periodic review of the methodology shall not, in and of itself, invalidate any fee imposed.

20.900 Appeals Under this Section

20.9100 A party aggrieved by a decision made by the Building Inspector or other Town official relating to an administrative decision in the assessment, collection, or refunding of impact fees authorized by this Section may appeal such decision to the Zoning Board of Adjustment as provided by RSA 676:5, as amended.

20.9200 A party aggrieved by a decision of the Planning Board under this Section may appeal such decision to the Rockingham County Superior Court as provided by RSA 677:15, as amended.

20.930 Other Authority Retained: This Section shall not affect other authority of the Town of Seabrook or its Planning Board governing subdivisions and site plans, or ordinances and regulations on public water or sewer utilities, including but not limited to:

20.931 The authority of the Planning Board to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); or

20.932 The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j); or

20.933 Other authority of the Town of Seabrook to assess system development charges for water and sewer utilities, or fees authorized by other statutory authority as provided within the ordinances of the Town of Seabrook or the Seabrook Planning Board Site Plan Review and Subdivision Regulations.

20.940 **Effective Date:** This Section shall become effective upon adoption. Specific Impact fee schedules applicable to new development shall not become effective until the Planning Board has adopted a basis of assessment and fee schedule for capital facilities under the procedures provided for in this Section.

Section 21 – Administrative Provisions

21.100 **Board of Adjustment:** A Board of Adjustment, as established, is hereby continued as such, and its membership and duties shall conform to the provisions of RSA 676:5-7, or any amendments or additions made thereto.

21.200 **Enforcement procedures:** Upon receipt of information from any source that any provision of this ordinance is being violated, the Building Inspector, Health Officer, or Police Chief shall promptly investigate the alleged violation at its site and, through the Board of Selectmen, shall undertake the following actions to enforce the provisions of this ordinance:

21.210 Notify the owner of his agent, in writing, of the nature of the violation and order immediate correction of it;

21.220 When satisfactory compliance has not been obtained following such notification, the Selectmen shall have a complaint prepared against the offending party who shall be summoned to appear in court to answer such complaint or the Selectmen may take any other action that may be appropriate or in accordance with the advice of Town Counsel.

21.300 **Violations and penalties:** Any person, firm or corporation who violates any of the provisions of this Zoning Ordinance or decisions issued by any local administrator(s) or land use board acting under authority of this ordinance:

21.310 shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person;

21.320 shall be subject to a civil penalty not to exceed \$275 for each day that such violation is found to continue after the conviction date or after the date on which the violator received written notice from the Selectmen or their representative that he is in violation, whichever is earlier.

Any such violation, once commenced, shall constitute a continuing violation until it is terminated and continuing violation may be prosecuted as a single violation or a series of separate violations.

21.400 **Amendments:** The provisions of this ordinance or any part thereof may be amended, supplemented or repealed in the manner set forth by RSA 675, as amended.

21.500 **More restrictive standards to prevail:** Whenever the regulations made under the authority hereof differ from those described by any statute, ordinance or other regulation, that provision which imposes the greater restriction or the higher standard shall prevail.

21.600 **Severability:** Should any section or provision of this ordinance be held to be invalid or unconstitutional by any court of competent authority and jurisdiction, such holding shall not affect, impair or invalidate any other provision of this ordinance, and to such end, all sections and provisions of this ordinance are declared to be severable.

21.700 **Effective date:** This ordinance shall take effect upon its passage and shall thereupon supersede all prior zoning ordinances of the Town of Seabrook.

21.800 **Effect on power of Planning Board:** No provision of this ordinance however shall limit or affect the power of the Planning Board as authorized by the Town on March 7, 1972 under former RSA 36:19 and its amendments and replacements.

Section 22 – Pollution Control

Developers of all land activities that disturb 1 acre or more (or are a part of a larger development that disturbs 1 acre or more) shall submit to the Building Inspector a plan for erosion and pollution control measures that meet the EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Activities. These projects shall be subject to review, inspection, and enforcement by the Town. The project plan shall include appropriate stormwater and erosion BMP's (Best Management Practices), provisions to provide minimized land disturbance, an outline of measures to control construction wastes, and a spill control plan.

Section 23 - Sexually Oriented Businesses

It is the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Seabrook; and, it is the intent to promote the health, safety and general welfare of the citizens of the Town of Seabrook; and, it is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and, the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

23.100 Permitted Locations: Sexually oriented businesses shall only be permitted in Zone 2 provided all regulations, requirements and restrictions pertaining to that zone are met, and sexually oriented businesses shall not be permitted within 1,000 feet of a church or place of worship, parish house or convent, a public, parochial or private school, a state approved day care center, another sexual oriented business, a sexually oriented business for which a building permit has been applied for, or 300 feet from a residence, or 500 feet from any establishment in which minors constitute more than 50% of the patrons or 500 feet from public sports, recreation park or 500 feet from Town boundaries or 500 feet from buildings owned by the Town of Seabrook and operated for government use.

23.200 Measure of Distance: The measure of distance between any sexually oriented business and other named point of reference shall be measured in a straight line.

23.300 Site Plan Approval: Site Plan Approval by the Seabrook Planning Board shall be a prerequisite for the establishment of a sexually oriented business. The Planning Board may impose reasonable restrictions relative to buffers, outdoor lighting, signs, parking, egress and ingress, pedestrian movement, landscaping, building aesthetics, and measures to ensure that displays of merchandise conform with NH RSA 571-B.

23.400 Non-Conforming Sexually Oriented Businesses: Sexually oriented businesses which have been established at their existing locations prior to the effective date of this ordinance and which are not in conformity with the requirements of this ordinance, may continue to operate. Once established in a permitted location under this ordinance, a sexually oriented business operating as a conforming use is not rendered a non conforming use by the subsequent location of:

- A **church** or place of worship, parish house or convent within 1,000';
- A state approved **day care center** within 1,000 feet;
- A public sports, recreation **park** with 500 feet;
- A **residence** with 300 feet;
- A public, parochial or private **school** within 1,000 feet;
- Any establishment in which **minors** constitute more than 50% of the patrons with 500 feet; or
- The location within 500 feet of such business or buildings owned by the Town of Seabrook and operated for **government use**.

23.500 Public Nuisance Per Se: Violation of the use provisions of this ordinance is declared to be a public nuisance per se, which shall be abated by the Town by way of civil abatement procedures.

23.600 Limiting Clause: Nothing in this ordinance is intended to authorize, legalize or permit the establishment operation or maintenance of any business, building or use which violates any Town of Seabrook ordinance or statute of the State of New Hampshire regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

23.700 Severability: If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The legislative body of the Town of Seabrook hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentence, clauses, phrases or portions be declared invalid or unconstitutional.

Section 24 - Floodplain Regulations

This ordinance, adopted pursuant to the authority of RSA 674:16 shall be known as the Town of Seabrook Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Seabrook Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

24.110 Purpose: Whereas the flood hazard areas of Seabrook are subject to periodic flooding from streams, rivers, lakes, and oceans, etc., which result in loss of life and property, health and safety, disruption of commerce and government services, public expenditure for flood protection and relief and impairment of the tax base, all of which adversely affects the public health, safety, and general welfare; and whereas the relief is available in the form of federally subsidized flood insurance as authorized by the *National Flood Insurance Act of 1968*, which Act requires the implementation of certain regulations by the Town prior to June 17, 1986, regarding the building regulations within identified flood hazard areas.

24.120 Affected Land Areas: The following regulations are hereby adopted so as to comply with requirements of the National Flood Insurance Act of 1968; These regulations 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 420, 438, 439,626 and 627, dated May 17, 2005 or as amended, which are hereby declared to be a part of this ordinance and are hereby incorporated by reference.

24.130 Definition of Terms: the following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Seabrook.

Area of Special Flood Hazard is the land in the floodplain within the Town of Seabrook subject to a one-percent or greater possibility of flooding in any given year. The area is designated on the FIRM as zones A, AE and VE.

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

Base Flood Elevation means the water surface elevation having a one percent chance of being equaled or exceeded in any given year.

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

Building: See *Structure*.

Breakaway Wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

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 or storage of equipment materials.

FEMA means the Federal Emergency Management Agency.

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

- the overflow of inland or tidal waters.
- the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Study means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

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 risk premium zones applicable to the Town of Seabrook.

Flood Plain or **Flood-Prone Area** means any land area susceptible to being inundated by water from any source (*see definition of "Flooding"*).

Flood Proofing means any combination of structural and non-structural additions, change, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

Floodway: *See Regulatory Floodway.*

Functionally Dependent Use means a use that 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 passenger, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

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

Historic Structure means any structure that is listed individually in the National Register of Historic Places (*a listing maintained by the Department of Interior*) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- by an approved state program as determined by the Secretary of the Interior, or
- directly by the Secretary of the Interior in states without approved programs.

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

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

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

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

Recreational Vehicle means a vehicle that is

- built on a single chassis;
- 319 square feet or less when measured at the largest horizontal projection;
- designed to be self-propelled or permanently towable by a light duty truck; and
- designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special Flood Hazard Area: See Area of Special Flood Hazard.

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

Start of Construction includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 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 footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of 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 form; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

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

Substantial Improvement means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:

- (1) the appraised value prior to the start of the initial repair or improvement, or
- (2) in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, "*substantial improvement*" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures that 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 a "*historic structure*", provided that the alteration will not preclude the structure's continued designation as a "*historic structure*".

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation means the height, in relation to the *National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988*, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

24.140 **Permit Required:** All proposed development in any special flood hazard areas shall require a permit.

24.150 **Application Review:** The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- be constructed with materials resistant to flood damage,
- be constructed by methods and practices that minimize flood damages.
- 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.

24.160 **Water & Sewer Systems:** Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the 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 on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

24.170 **Information to be Submitted:** For all new or substantially improved structures located in zones A, or AE, the applicant shall furnish the following information to the Building Inspector:

- the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement;
- if the structure has been flood-proofed, the as-built (elevation in relation to mean sea level) to which the structure was flood-proofed;
- any certification of flood-proofing.

For all new construction or substantially improved buildings located in Zone VE, the applicant shall furnish the Building Inspector records indicating the as-built

elevation of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) in relation to mean sea level and whether or not the structure contains a basement. The Building Inspector shall maintain the above information for public inspection, and shall furnish it upon request.

24.180 Other Permits Required: The Building Inspector shall not grant a 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.*

24.190 Alteration of Watercourses: In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau. 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. The Building Inspector shall obtain, review, and reasonable utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located Zone A meet the following floodway requirement: *No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.* Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

24.200 Method for Determining Base Flood Elevations: In special flood hazard areas the Building Inspector shall determine the base flood elevation in the following order of precedence according to the data available:

- In zones AE, and VE refer to the base flood elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
- In Zone A the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community, i.e. subdivisions, site approvals.
- In Zone A when a base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

24.210 Construction Requirements: The Building Inspector's base flood elevation determination will be used as criteria for requiring in zones A and AE, that:

- all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation;
- that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:
- be flood-proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- 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.

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

24.230 **Recreational Vehicles** placed on sites within Zones A and AE shall either:

- be on the site for fewer than 180 days;
- be fully licensed and ready for highway use;
- meet all standards of Section 23.140 of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section 24.220 of this ordinance.

24.240 **Areas Subject to Flooding:** 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:

- the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
- the area is not a basement;
- shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

24.250 Coastal High Hazard Areas: The following regulations shall apply to all new construction and substantial improvements including all manufactured homes to be placed or substantially improved in a coastal high hazard area, designated as Zone VE on the *Flood Insurance Rate Map*. All new construction or substantial improvements are to be elevated on pilings and columns so that:

- The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation;
- The pile or column foundation and structure attached thereto is anchored to resist floatation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
- A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards or practice for meeting the provisions of this section.
- The space below the lowest floor must be free of obstructions or constructed with non-supporting breakaway walls, open lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be usable solely for the parking of vehicles, building access, or storage.
- The use of fill for the structural support of buildings is prohibited.
- Man-made alterations of sand dunes that would increase potential flood damage are prohibited.
- All new construction or substantial improvements within zone VE on the FIRM shall be located landward of the reach of mean high tide.
- All recreational vehicles placed on sites within Zone VE shall either: be on the site for fewer than 180 days; be fully licensed and ready for highway use; or meet all standards of Section 24.140 of this ordinance and all of the above requirements of Section 24.250.

24.270 **Variations and Appeals:** Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

- That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
- 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.
- That the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

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

24.290 The community shall:

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