

**TOWN OF JACKSON
NEW HAMPSHIRE**

ZONING ORDINANCE

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SECTION 1: AUTHORITY AND PURPOSE

1.1 Authority

This ordinance is adopted pursuant to the authority granted by Chapter 674 et seq., New Hampshire Revised Statutes Annotated, as amended.

1.2 Purpose (amended 3/8/2005)

This zoning ordinance and the districts created hereunder are being enacted in order to (1) preserve and promote the health, safety and general welfare of the Town of Jackson; (2) maintain and enhance the economic health of the Town; and (3) provide adequate social and municipal services for the townspeople; all in a manner consistent with preserving the cultural heritage and the rural village character of the Town, while managing land use and regulating development to ensure wise stewardship of the Town's natural resources. Their purpose is to implement the goals of the Master Plan of the Town of Jackson, adopted August 14, 2003, and future revisions of the Master Plan as the needs of the Town dictate.

SECTION 2: APPLICATION OF REGULATIONS and NON-CONFORMING USES, BUILDINGS AND STRUCTURES (amended 3/13/2001, 3/11/2003).

2.1 Application of Regulations

Subsequent to the passage of this ordinance (November 16, 1971) all land, buildings, or structures shall hereafter be used, constructed, altered, or enlarged only in conformity with the regulations specified herein for the zoning district in which it is located unless it is a lawful Non-Conforming Use.

2.2 Non-Conforming Uses, Buildings and Structures

2.2.1 A pre-existing lawful use of land, buildings, or structures may be continued although such use does not conform to the provisions of this ordinance. If such Non-Conforming Use is discontinued and/or abandoned for more than six years then any subsequent use of the land, buildings, or structures shall only be a conforming use.

2.2.2 A Non-Conforming Use may be changed only to a use permitted in the district in which it is located. When such use is changed to a conforming use, no land, buildings, or structures shall be permitted to revert to a Non-Conforming Use.

2.2.3 A Non-Conforming Structure or Building may be moved, enlarged, altered, restored or replaced within the boundaries of the lot it occupied at the time this ordinance took effect, providing that the change does not make the structure more non-conforming in any way. By way of example and not limitation, "more non-conforming in any way" means that a structure or building positioned within a proscribed Setback (Sections 4.3.1.2 and 4.3.2.3) may not be altered in such a way that the structure or building extends for a greater width, a further depth, nor to a greater height, which would have the effect of increasing the volume of the structure or building within the proscribed Setback area. Similarly, a structure or building that exceeds the permissible Building Height (Section 4.1.3) may not be altered in such a way that the structure or building extends to a greater height, nor may the volume of the structure or building exceeding the Height limit be increased. (amended 3/12/2001 and 3/14/2006)

2.2.4 A Non-Conforming Use may be enlarged within the boundaries of the lot it occupied at the time this ordinance took effect, providing that the expansion conforms with all other aspects of the zoning ordinance. (added 3/13/2001)

2.3 Non-Conforming Lots

A Non-Conforming Lot, as defined herein, which does not satisfy the requirements of Section 6 of the Zoning Ordinance, relative to Minimum Lot Size by Soil Type, but which has received approval from the State of New Hampshire (DES) for a sub-surface septic system and leach field, shall be limited to the construction of a Dwelling Unit not to exceed two (2) bedrooms, provided that, with the exception

of Sections 4.3.1.3 and 4.3.2.4, all the other requirements of Section 4 of this Zoning Ordinance are met. (added 3/14/2006)

SECTION 3: DEFINITIONS

3.1 “Accessory Apartment” means a room or rooms which meets the definition of a Dwelling Unit, and which is accessory to a principal Dwelling Unit on the same lot.

3.2 “Accessory Use”/ “Accessory Structure” means a use or structure customarily incidental and subordinate to an existing principal use and located on the same lot as the principal use. (amended 3/11/2008)

3.3 “Aircraft” means any rotary-wing, fixed-wing, or ultra light craft capable of takeoff and landing.

3.4 “Alteration” means any structural change to a building and change of present design or use where compatible and consistent with the existing uses.

3.5 “Cluster Single-Family Development or Subdivision” means an entirely single-family residential subdivision where instead of the entire tract being subdivided into house lots of conventional size, a number of housing units or lots of reduced dimensions are scattered or clustered around and within areas of Open Space.

3.6 “Commercial Use” means any use involving in part or in whole the sale of merchandise, materials or services, but not including Customary Home Occupations (as defined elsewhere in this Section).

3.7 “Common Land” means land in a Cluster Single-Family Development or Multi-Family Residential Development that is created by reducing individual lot sizes, or on parcels with attached units, all land not occupied by units, roadways and other allowed structures, to which access is provided for the residents of the Subdivision and, possibly, for the citizens of the Town or the public at large, and which is owned by either a homeowner's association, a municipal body, or a private non-profit agency for the purpose of preserving the Open Space.

3.8 “Condominium” means a building, or group of buildings, in which units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

3.9 “Customary Home Occupation” means an industry or occupation carried on exclusively by a resident of the premises, entirely within the building and employing not more than three (3) people, providing such use is secondary to the use of the premises for dwelling purposes, and also providing that such use does not constitute a public hazard or nuisance.

3.10 “Driveway” means an area located on a lot, tract or parcel of land, and built for access to a garage or off-street parking space, serving not more than two Dwelling Units, except in the case of Cluster Single-Family Development or Subdivision and Multi-Family Residential Developments in which up to four Dwelling Units may be served by a Driveway. (amended 3/11/1986)

3.11 “Dwelling Unit” means a room or rooms, with its own sanitary and kitchen facilities forming a habitable unit for one family, used or intended to be used for living, sleeping, cooking, eating and sanitation.

3.12 “Enlargement” means the increase in size of any structure or enhancement of use as to land.

3.13 “Erosion” means the wearing away of the ground surface as a result of the action or effect of wind, water, ice, snow and/ or land disturbance activities.

3.14 “Farm” means parcels of land used for husbandry, agricultural, forestry and all horticultural uses, including related facilities and including greenhouses, horse stables, nurseries and/or roadside stands for sale of farm products.

3.15 “Frontage” means the width of a lot measured along its common boundary with a Class V or

better public road or Planning Board approved Private Road right-of-way.

3.16 “Height, Building or Structure” means that the height of all new buildings or structures, and all Alterations and/or Enlargements of buildings or structures, shall neither be more than thirty-five (35) feet from the Natural Ground Surface at any point nor more than thirty-five feet from the finished “as built” grade at any point. (These measurements shall be made vertically.) Chimneys and decorative, un-lit, non-structural, non-functional attachments may be excluded from this provision. (amended 3/11/2003, 3/8/2005)

3.17 “Hotel/Motel” means a facility offering transient lodging accommodations to the general public and may provide additional services such as restaurants, meeting rooms, and recreational facilities.

3.18 “Land Development” means the process of changing the character of the land from its existing condition by any construction or grading activities including but not limited to placement of a building or structure on the land.

3.18 “Lodging House” means a facility in which rental sleeping accommodations are provided and in which meals also may be supplied as part of the fee.

3.19 “Master Plan” means a document entitled "Jackson Master Plan" which is composed of a report and proposals for land use and development designed to show as fully as possible and practical the planning board's recommendations for the desirable development of the territory legally and logically within its planning jurisdiction. The Master Plan was prepared and adopted pursuant to RSA 674:1.

3.20 “Minor Subdivision” – See “Subdivision, Minor”

3.21 “Motel” See Hotel.

3.22 “Multi-Family Residential Development” means a residential development of attached and detached Dwelling Units, such as single-family homes on individual lots, Condominiums, townhouses, Time Sharing units or apartments.

3.23 “Natural Ground Surface” means the contour and surface of the ground prior to addition of fill or soils, blasting of rock, or any other disturbance, as determined by town records or by a registered soil engineer. (3/11/2003)

3.24 “Non-Conforming Lot” means a lot, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning district.

3.25 “Non-Conforming Structure or Building” means a structure or building the size, dimensions or location of which was lawful prior to the adoption, revision or amendment to the zoning ordinance, but which fails by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

3.26 “Non-Conforming Use” means a use or activity that was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

3.27 “Open Space” means an area of dedicated land excluding roads, parking areas and buildings except for accessory buildings or structures and improvements as are necessary for recreational or common purposes of residents or the public and shall include the commercial recreational uses existing and operating at the time of the passage of this Section, as may be recommended by the Planning Board and approved by the Board of Selectmen. (amended 3/11/2008)

3.28 “Overlay District” means a zoned district that is superimposed over another previously existing zoned district.

3.29 “Private Road” means a highway, Street, Road, avenue or way not open to public use as a matter of right, for vehicular travel, the maintenance and repair of which shall be borne by the subdivider, abutting landowners or an association of abutting landowners. (3/12/1985)

3.30 “Recreational Vehicle” means a vehicle which is (a) built on a single chassis; (b) 400 square

feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light truck; and (d) designed primarily not for use as a permanent Dwelling Unit but as temporary living quarters for recreational, camping, travel or seasonal use. (3/8/1994)

3.31 “Riparian Land” means land that is traversed or bounded by a natural watercourse.

3.32 “Sedimentation” means the deposition of sediment resulting from Erosion or construction-vehicle tracking.

3.33 “Site Disturbance” means any human activity that removes the Vegetative Cover from the land surface.

3.34 “Street/Road” means a state highway, or a town highway, street, road, avenue, land and/or other way including a Private Roadway, which exists for vehicular travel, exclusive of a Driveway serving not more than two adjacent lots or sites, except as provided in the above definition of Driveway. The term "Street/Road" shall include the entire right-of-way. (3/11/1986)

3.35 “Subdivided/ Subdivided Land” means the lots, tracts or parcels of land that are created by a subdivision of land.

3.36 “Subdivision” means:

(1) The division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, Condominium conveyance or Building Development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

(2) The division of a parcel of land held in common and subsequently divided into parts among several owners shall be deemed a Subdivision. (11/2/1982)

(3) Note: The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unmanned structure which is less than 200 square feet, shall not be construed as a Subdivision under this definition, and shall not be deemed to create any new Subdivision of land for any other purpose.

3.37 “Subdivision, Minor” means those proposals involving three (3) lots or fewer with no potential for re-subdivision and fronting on an existing Street; or minor lot line adjustments or boundary agreements that do not create buildable lots, and that require no new roads, utilities or other municipal improvements.

3.38 “Substantial Improvement/ Substantially Improved” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred.

3.39 “Time Sharing/ Time Sharing Interest” means the exclusive right to occupy one or more units for less than 60 days each year for a period of more than 5 years from the date of execution of an instrument for the disposition of such right, regardless of whether such right is accompanied by a fee simple interest or a leasehold interest, or neither of them, in a Condominium interest. Time Sharing Interest shall include "interval ownership interest," "vacation license," or any other similar term. (11/2/1982)

3.40 “Vegetative Cover” means grasses, shrubs, trees, and other vegetation that hold and stabilize soils.

SECTION 4: DISTRICTS & DISTRICT REGULATIONS

4.1 Town-Wide Regulations

4.1.1 Aircraft (added 3/9/2004)

Takeoffs and landings of Aircraft are prohibited in all zoning districts within the Town of Jackson, except as follows:

4.1.1.1 A helicopter pilot with a valid license, or an ultra light pilot, who owns or leases from an owner prior to November 10, 2003, property with an existing principal use in Jackson and containing an established landing area as an Accessory Use, and who has made takeoffs and landings from that landing area as pilot in command prior to November 10, 2003, may continue to use that landing area as an Accessory Use for as long as that ownership or rental agreement remains in effect. (amended 3/14/2006)

4.1.1.2 The exception in Sec. 4.1.1.1 above applies only to the pilot eligible for the exception and to the specific landing site where the landings and takeoffs qualifying for the exception have been made; this right is not transferable.

4.1.1.3 Properly licensed helicopters may be used on a short-term basis 1) to transport construction materials to a site in the Town of Jackson where no other practical method is available, 2) to provide medical and related evacuation services and emergency services essential to the public health and safety, or 3) for short-term special events, with prior written approval from the Board of Selectmen.

4.1.2 Minimum Lot Size

Determined by soil type. See Section 6.

4.1.3 Building Height

35 foot maximum. See definition of Height.

4.1.4 Septic System Leach Field

Setback shall be 100 feet from the near bank of any year-round stream or body of water. If the leach field is installed in excessively drained soil, the setback shall be 150 feet from any year-round stream or body of water (excluding any fire ponds.)

4.1.5 Driveways

All Driveways must be constructed to comply with standards set by the State of New Hampshire and the Town of Jackson. (See definition of Driveway.)

4.1.5.1 The location and design of Driveways shall minimize traffic hazards and not unduly retard traffic flow in the public right of way.

4.1.5.2 Driveways serving more than one Dwelling Unit shall be designed to accommodate prospective traffic and to meet requirements of the Zoning Ordinance and any additional requirements of the Fire Department.

4.1.5.3 Construction of Driveways shall not result in excess sedimentation, erosion, or the creation of a watercourse where one did not previously exist on neighboring or town property. (Amended 3/11/2003)

4.1.6 Site Disturbance

Any Site Disturbance or Land Development shall be designed and performed reasonably to prevent increased run-off, soil loss, or Erosion from the site or lot.

4.1.6.1 Design guidelines which may be used by developers, individual landowners, engineers, and others planning Site Disturbance or Land Development activities will be available in the Town Offices for review and use in designing site work so as to minimize Erosion and Sedimentation.

4.1.6.2 All areas of Site Disturbance and Land Development still in progress at approach of winter shall be stabilized against Erosion and Sedimentation prior to November 15th, to minimize soil depletion and degradation over winter.

4.1.7 **Well Radius** (added 3/14/2006)

In order to protect water quality on all lots, the well radius for each lot must be located within the same lot that the well serves; if a well radius cannot be entirely located within the lot that the well serves, then it shall be located within the well radius of an abutting lot, or within land which is non-buildable under state and/or local regulations. In the event that the well radius does not fall entirely within the lot it serves, the landowner shall release and hold harmless the Town of Jackson from any obligation in connection with the protective well radius and shall obtain an easement from any abutting lot owner on whose land encroachment by the well radius will be necessary; said release, hold harmless agreement, and easement shall be recorded at the Carroll County Registry of Deeds.

4.2 Division of Town into Districts

For the purpose of this Ordinance, the Town of Jackson is divided into the following districts:

4.2.1 **“Village District”** means that land within 500 feet on either side of the traveled center line of public Route 16 and 16A and all other land between said routes in the Town of Jackson, as shown on the Official Zoning Map.

4.2.2 **“Rural-Residential District”** means all land within the Town of Jackson not otherwise designated as within the Village District, as shown on the Official Zoning Map.

4.2.3 **“River Conservation District”** is an Overlay District. See Section 5.

4.3 District Regulations

4.3.1 Rural-Residential District

A building or structure may be erected or used, and a lot may be used or occupied, only for the following purposes and in accordance with the following provisions:

4.3.1.1 Uses Permitted

1) Single family residences, Multi-Family Residential Developments, and Cluster Single-Family Developments, the latter two categories being subject to prior approval by the Planning Board pursuant to Section 8 of this Zoning Ordinance, and Accessory Apartments pursuant to Section 9 of this Zoning Ordinance. (amended 3/11/2008)

2) Farms

3) Customary Home Occupations

4) Jackson Historical Society and/or Jackson Historical Museum. (added 3/12/1996)

4.3.1.2 Setbacks

No building, structure, porch, or portion thereof shall be located on a lot nearer any lot line, year-round stream or body of water than the minimum setback set forth below: (amended 3/8/2005)

1) From the sideline of any public or Private Road right-of-way: Fifty (50) feet.

2) From any abutter property line: Twenty Five (25) feet.

3) From the near bank of any year-round stream or body of water which is a property boundary: Fifty (50) feet.

4.3.1.3 Frontage

Each lot shall have a Frontage no less than 200 feet on a public or Private Road right-of-way except where a road cul-de-sac dictates a shorter Frontage of not less than 100 feet and satisfactory to the Planning Board.

4.3.1.4 Number of Dwelling Units Per Lot

Only one Dwelling Unit may be built on a single lot, except in the case of a single family residence having an Accessory Apartment, as an Accessory Use, approved under Section 9, in which case two Dwelling Units per lot may be permitted; and except for Multi-Family Residential Developments approved under Section 8, in which case multiple Dwelling Units per lot may be permitted. (3/11/2008)

4.3.2. Village District

A building or structure may be erected or used, and a lot may be used or occupied, only for the

following purposes and in accordance with the following provisions:

4.3.2.1 Uses Permitted

- 1) All uses permitted in the Rural-Residential District and, in addition,
- 2) Restaurants
- 3) Professional and/or commercial businesses
- 4) Municipal facilities and areas
- 5) Hotels
- 6) Motels
- 7) Private and/or charitable facilities
- 8) Lodging House

4.3.2.2 Uses Not Permitted

- 1) Businesses whose inventory for resale or lease includes petroleum products, self-propelled motorized vehicles, mobile or travel trailers
- 2) Businesses primarily engaged in sale or lease of prepared foods primarily for consumption outside the building
- 3) Facilities or space primarily for tenting and trailers
- 4) Private educational facilities excepting nonprofit facilities for preschool age children
- 5) Businesses or facilities that contain more than three (3) coin, ticket, or token-operated games (11/2/1982)
- 6) Casino gambling (11/2/1982)
- 7) Amusement parks or arcades (11/2/1982)
- 8) Water slides, other commercial slides, or other similar entertainment (11/2/1982)
- 9) Hazardous waste and radioactive dump sites(11/2/1982).

4.3.2.3 Setbacks

No building, structure, porch, or portion thereof shall be located on a lot nearer any lot line, year-round stream or body of water than the minimum setbacks set forth below: (amended 3/8/2005)

- 1) From the sideline of any public or Private Road right-of-way, except Route 16A: Fifty (50) feet.
- 2) From Route 16A with motor vehicle parking between structure and right-of-way: Fifty (50) feet.
- 3) From Route 16A without motor vehicle parking between structure and right-of-way: Twenty Five (25) feet.
- 4) From abutter property line: Twenty Five (25) feet.
- 5) From the near bank of any year-round stream or body of water which is a property boundary: Fifty (50) feet.

4.3.2.4 Frontage

Each lot shall have a Frontage no less than 150 feet on a public or Private Road right-of-way.

SECTION 5: RIVER CONSERVATION DISTRICT (amended 3/10/1987, 3/13/2001, 3/11/2003).

5.1 Purpose and Intent

The purpose of this district is to promote and protect the health, safety and general welfare of the people of the Town of Jackson by providing reasonable regulations governing development and use of the flood plains, including riparian wetlands, of the Town of Jackson. Within this District, new structures and other Alterations of existing land uses will be regulated in order to:

- 5.1.1 Protect and maintain existing and potential public water supplies, including aquifers, aquifer recharge areas and surface sources within the Town for the health and safety of the public.
- 5.1.2 Prevent pollution of surface water and groundwater caused by erosion, sedimentation, nutrient and pesticide runoff, and siting of waste disposal facilities in very poorly drained or highly permeable soils.

5.1.3 Prevent destruction or significant alteration of the natural flow pattern of water courses and to natural flood plains and riparian wetlands that provide flood protection for persons and property.

5.1.4 Prevent unnecessary or excessive expenditures of municipal funds to provide and/or maintain additional services and utilities that might be required as a result of improper development of lands within the District.

5.1.5 Preserve wildlife habitat and maintain ecological balances within the Riparian Land of the Town.

5.1.6 Protect the unique and unusual aesthetic features associated with streams and Riparian Land in the Town of Jackson that are vital to the economic and environmental well being of the Town.

5.1.7 Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in flood plains and Riparian Land.

5.2 District Boundaries

5.2.1 The River Conservation District shall encompass those areas designated as Zone A and A1-99 on the Flood Insurance Rate Map (FIRM) of Jackson, New Hampshire, issued by the Federal Insurance Administration (330014 0025, July 2, 1979). The FIRM map is further supported by the Flood Boundary & Floodway Maps (330014 0001-0004, July 2, 1979) and the Flood Insurance Study (January, 1979) also issued by the Federal Insurance Administration. The FIRM Map together with the Flood Boundary & Floodway Maps and Flood Insurance Study are hereby made a part of this Ordinance and of the Municipal Zoning Map. These maps are on file in the office of the Board of Selectmen.

5.2.2 The July 2, 1979 FIRM Map and Flood Boundary & Floodway Maps along with the January 1979 Flood Insurance Study provide important baseline topographic information essential to accurately determine and document floodplain locations, boundaries, and elevations adjacent to major water course within the Town of Jackson. While these published materials can serve as a useful reference for Town officials and citizens, the precise establishment of 100-year flood/River Conservation District boundaries must, where required, be determined through the development of a topographic survey; such survey to be undertaken by a registered surveyor/engineer who will rely on the inclusion and interpretation of the above-mentioned references as a basis for locating and illustrating such boundaries.

5.2.3 The bodies of water specifically defined in this District are the Wildcat River, the Great Brook from the bridge on Route 16B at the junction of Black Mountain Road and Moody Farm Road to the Wildcat River, the Ellis River and the East Branch of the Saco River. Where the floodplain has not been delineated on the FIRM maps or where the delineation is less than 75 feet from the nearest bank of a stream or body of water, the River Conservation District shall be defined as that area within 75 feet of a body of water. The 75 feet shall be measured horizontally from the nearest bank of such stream or water body. In any specific situation, the greater limit shall apply. In situations where, authorized or unauthorized filling has occurred within the 100-year floodplain subsequent to the issuance of the 1979 FIRM of Jackson, and such filling has been sufficient to raise ground elevations above those which determine the 100-year flood for the area in which it has occurred, such areas shall remain within the boundaries of the River Conservation District and subject to the provisions of this Section.

5.2.4 In situations where, subsequent to the issuance of the 1979 FIRM of Jackson, excavation has occurred for any purpose outside of and adjacent to the boundaries of the 100-year floodplain, and such excavation has been sufficient to lower ground elevations to levels that are equal to or below those that designate the 100-year flood (Zone A and A1-99) for the area in which it has occurred, such areas shall remain outside the RCD boundaries and not subject to the provision of this ordinance. Furthermore, any building constructed adjacent to the 100-year floodplain with a basement which, through excavation, resides at an elevation that is equal to or below that of the 100-year floodplain shall not be

included within the RCD.

5.2.5 Compliance with Section 11 of this Zoning Ordinance is required.

5.3 Disputed Boundaries

In cases where planned alterations to topography and terrain by filling or excavating are sufficient to influence the location of the 100-year floodplain/RCD boundaries, it shall be incumbent on the landowner, prior and subsequent to any planned site work or construction activities, to provide the Town with both pre-construction and “as-built” topographic surveys prepared by a registered surveyor/engineer that indicate pre-existing RCD boundaries as well as designate physical and horizontally-based points of reference sufficient to accurately determine and illustrate RCD boundaries. The Board of Adjustment shall be responsible for a final determination on the boundary, based on on-site investigations and other suitable studies conducted by a qualified, registered surveyor, soil scientist or engineer. A report or analysis shall be submitted to the Jackson Conservation Commission and the Board of Selectmen for review and recommendation prior to issuance of permits.

5.4 Use Regulations

The River Conservation District shall be an Overlay District. Where the provisions of the River Conservation District conflict with the underlying use zoning district, the more restrictive regulations shall apply.

5.4.1 Uses Permitted

The following uses shall be permitted within the River Conservation District provided that the proposed use will not alter the natural surface configuration of the land by the addition of fill or by dredging or does not require the erection or construction of any structure or building unless otherwise permitted in this Section. No use shall adversely affect the efficiency or unduly restrict the capacity of the channels or floodway or any tributary to the main stream, drainage ditch, or any other drainage facility or system, nor shall any use in the floodway raise the level of the 100 year flood waters at any point.

5.4.1.1 Agricultural/ Farm uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, sod farming and wild crop harvesting.

5.4.1.2 Forestry according to recognized soil conservation practices and consistent with the purpose and intent of this Section.

5.4.1.3 Residential accessory uses such as lawns, gardens and play areas.

5.4.1.4 Parks, conservation areas, nature trails and recreation uses consistent with the purpose and intent of this ordinance.

5.4.1.5 Sealed water supplies.

5.4.1.6 Temporary non-residential structures used in connection with growing, harvesting, storage or sale of crops raised on the premises.

5.4.1.7 Uses or structures accessory to public open space such as signs, shelters, picnic facilities, walkways and the like.

5.4.1.8 Private Roads, Driveways, bridges and utility rights-of-way if essential to the use of land not located within the River Conservation District, and if so located and constructed as to minimize any detrimental impact upon the District.

5.4.1.9 Improvements to existing municipal, school district, and church facilities.

5.4.1.10 Agricultural buildings that do not require septic systems.

5.4.1.11 Construction and maintenance of Farm, forest or recreational service roads. No de-icing chemicals or other potential pollutants shall be stockpiled or stored within the River Conservation District.

5.4.1.12 River or floodway maintenance, subject to any required state or federal permits.

5.4.1.13 Replacement septic systems shall be designed to minimize or eliminate infiltration of

flood waters into the system and discharge from the system into flood waters.

5.4.2. Special Provisions

5.4.2.1 Non-Conforming Uses, which existed on the effective date of this Section (3/10/1987), shall be permitted to continue as specified in this Zoning Ordinance. See Section 2.

5.4.2.2 Lots that are partially or entirely within the River Conservation District and qualified as building lots designated on a plan approved by the Planning Board and recorded in the Carroll County Registry of Deeds, or separately owned, at the time this Section takes effect and which cannot practicably be enlarged to comply with the regulations of this District may be used for any purpose permitted by the underlying use district. Such uses shall, to the maximum extent possible, conform to the spirit and intent of this Section.

SECTION 6: MINIMUM LOT SIZE (3/10/1987)

6.1 The minimum lot size for all Subdivisions shall be based upon the following specifications and the "Minimum Lot Size By Soil Type" Table contained in the Appendix. The minimum lot sizes contained in the Table have been determined by soil characteristics of drainage, slope, parent material and specific restrictive features.

6.1.1 For the determination of the actual soil type(s) present, High Intensity Soil Maps shall be provided by the applicant for all Subdivisions. A High Intensity Soil Map is a map of a parcel of land being considered for development, on a perimeter survey, with a scale of one inch not to exceed one hundred (100) feet and contour intervals of two (2) feet or less, where soils are identified and mapped in accordance with "High Intensity Soil Maps for New Hampshire," SSSNNE Special Publication Number 1 (as amended). High Intensity Soil Maps shall be prepared by field examination and stamped by a soil scientist certified by the State of New Hampshire Board of Natural Scientists (RSA 310-A).

6.1.2 Under special circumstances (including a Minor Subdivision), the Planning Board may allow the soils information contained in the Soil Conservation Service "Soil Survey of Carroll County" to be used, instead of a High Intensity Soil Map, for determining the soils present in the parcel proposed for some or all of the lots created by a Subdivision.

6.1.3 When more than one soil type is present in a parcel proposed for Subdivision, the maximum number of lots or Dwelling Units to be permitted on that parcel will be determined by summing the number of units permitted for each type of soil present in the parcel. The number of units permitted for a single type of soil is determined by dividing the area (in square feet) covered by the soil type by its minimum lot size obtained from the Minimum Lot Size By Soil Type Table in the Appendix.

Maximum #		Area (in sq. ft.)		Area (in sq. ft.)		
of Units	=	<u>of Soil Type A</u>	+	<u>of Soil Type B</u>	+	etc.
Permitted		Minimum Lot Size		Minimum Lot Size		
		permitted for Soil		permitted for Soil		
		Type A from Table		Type B from Table		

This formula also applies to Cluster Single-Family Development and Multi-Family Residential Developments.

6.1.4 For residential developments with more than four bedrooms per unit, the minimum lot size shall be proportionately larger than the lot size indicated in the Minimum Lot Size By Soil Type Table, as determined by the formula:

6.1.5 Lot Size (in sq. ft.) = # of bedrooms/4 x Lot Size from Table
 For Commercial Uses and/or industrial uses, the lot size shall be determined by the formula:
 Lot Size (in sq. ft.) = $\frac{\text{Maximum Gallons of Waste-water Discharge per Day}}{1837 \text{ g.p.d.}}$ x Lot Size from Table

(Formula is based on loading rates listed in the N.H. Water Supply and Pollution Control Commission "Guide for the Design and Maintenance of Small Sewage Disposal Systems," January 1978, as amended.)

Lot sizes for Commercial and/or industrial uses shall not be less than the minimum stipulated by the Minimum Lot Size By Soil Type Table.

SECTION 7: PARKING (3/12/1985)

7.1 All new altered and/or enlarged structures or land uses shall provide adequate parking facilities for motor vehicles using the following design guidelines in their building permit applications. In calculating parking spaces: round down if 0.5 or less; round up if 0.6 or greater.

<u>USE</u>	<u>PARKING GUIDELINE</u>
Dwelling Units	2 spaces per Dwelling Unit
Public accommodation - Hotels, Motels, Lodging House	1.1 per lodging unit + 1 space per 3 employees
Professional offices, business services, health clinics	1 per every 250 square feet of gross floor area
Retail businesses, personal service establishments and shopping centers	1 per every 200 square feet of gross floor area
Eating and drinking establishments	1 per every 2 seats
Auditorium, theater, convention hall, church or similar place of public gathering	1 per 4 seats in principal assembly room
Nursery schools	1 per staff member plus 1 per 10 children
Elementary and junior high	2 per classroom + additional spaces as per the requirement for places of public gathering
Private clubs or lodges	1 per 4 members
Hospitals, nursing and convalescent homes	1 per 3 beds + 1 for each employee on day shift
Industrial	1 per each 1.2 employees, based on the highest expected employee occupancy

7.2 Minimum parking space shall be 10 feet by 20 feet and minimum aisle width in parking lots, where applicable, shall be 18 feet for one-way traffic and 24 feet for two-way traffic.

7.3 Minimum off-street loading facilities required of new or Substantially Improved or reconstructed buildings shall be required as deemed necessary in the interest of public health and safety and of aesthetic considerations.

SECTION 8: CLUSTER SINGLE-FAMILY DEVELOPMENT AND MULTI-FAMILY

RESIDENTIAL DEVELOPMENT (amended 3/12/1985)

8.1 Purpose

The purpose of this Section is to encourage flexibility and variety in residential development in order to promote more efficient use of land in harmony with its natural features; to make more economic the provision of roads, water, septic disposal and other services; to promote designs which enhance the privacy, safety and enjoyment of residents and to preserve Open Space.

8.2 General Requirements

8.2.1 Cluster Single-Family Developments and Multi-Family Residential Developments are allowed in the Village and Rural-Residential Districts. Each development must be reviewed and approved by the Jackson Planning Board in compliance with the Subdivision and any other Regulations that may apply.

8.2.2 Accessory Uses and structures otherwise allowed in the specific district are permitted as well as buildings, structures or facilities incidental to the use of Common Land for conservation, preservation or recreational uses.

8.2.3. The maximum number of Dwelling Units in either Cluster Single-Family Developments or Multi-Family Residential Developments shall be determined by the requirements in Section 6 and the Minimum Lot Size By Soil Type Table in the Appendix. (amended 3/10/1987)

8.2.4 Public or Private Road right-of-ways within a development (internal Streets) must be at least 50 feet in width.

8.2.5 The developer must provide for* safe and adequate water and sewerage disposal, including connections to town services where available. (* "for" added 3/10/1987)

8.2.6 Open Space in developments approved under this Section shall be Common Land amounting to a minimum of twenty-five (25) percent of the total area of the lot or parcel being developed. (3/11/2008)

8.3 Areas and Dimensions

8.3.1 The parcel to be Subdivided shall have at least 200 feet of Frontage along a public or Private Road right-of-way.

8.3.2 There shall be no internal setback requirements for attached or detached residential units within the parcel to be Subdivided. However, the existing setback requirements described in Sections 4 and 5 of this Zoning ordinance shall apply to the entire parcel.

8.3.3 There shall be no minimum lot size for single-family lots in either a Cluster Single-Family Development or Multi-Family Residential Development. However, the maximum number of lots shall be determined by the requirements in Section 6 and the Minimum Lot Size By Soil Type Table in the Appendix. (amended 3/10/1987)

SECTION 9: ACCESSORY APARTMENTS

A single family residence constituting a principal Dwelling Unit may also include not more than one Accessory Apartment, as an Accessory Use, either integral, attached or detached, provided all of the following conditions are met:

9.1 There is only one Dwelling Unit on the lot at the time the Accessory Apartment is proposed to be added.

9.2 The lot on which the Accessory Apartment is proposed is of sufficient size to accommodate at least two Dwelling Units according to the requirements of Section 6: Minimum Lot Size and Minimum Lot Size by Soil Type Table in the Appendix.

9.3 The Accessory Apartment shall not exceed 1,000 square feet of enclosed space. The minimum size of the Accessory Apartment shall not be less than 350 square feet of enclosed space. Floor space

with sloping ceilings providing less than 4 feet of clearance to the floor shall not be included in the square footage.

9.4 No Accessory Apartment shall have more than two bedrooms.

9.5 No Accessory Apartment shall have more than one occupant per 250 square feet of space.

9.6 The principal Dwelling Unit and the Accessory Apartment shall comply with the requirements of RSA 48 A:14 (“Housing Standards”, “Minimum Standards Established”) and all other applicable codes and ordinances including without limitation, building codes, fire codes, the Life Safety Code and the Jackson Zoning Ordinance. Without limiting requirements under any applicable code or ordinance, the Accessory Apartment shall be equipped with a hard-wired fire and smoke alarm system. If the principal Dwelling Unit and the Accessory Apartment are contained within the same building, both shall be equipped with a hard-wired fire and smoke alarm system such that alarms sound throughout both units in the event of an emergency in either unit.

9.7 Without limiting requirements under any applicable code or ordinance, adequate off-street parking and access which meet the provisions of Section 7 and Section 3.10 “Driveway” of this Zoning Ordinance shall be provided to serve the combined needs of the principal Dwelling Unit and the Accessory Apartment.

9.8 A State approved septic system sufficient to serve both the principal Dwelling Unit and the Accessory Apartment shall be in place before any construction or renovation is begun to add an Accessory Apartment.

9.9 Irrespective of the dollar amount of the work and materials involved, a building permit approved by the Board of Selectmen is obtained before beginning the conversion of any existing single family building or other structure into one containing an Accessory Apartment or the construction of a detached Accessory Apartment.

9.10 Irrespective of the dollar amount of the work and materials involved, a building permit approved by the Board of Selectmen is obtained before beginning the structural alteration of an existing Accessory Apartment, in which case all of the provisions of this Section 9 must be met.

9.11 A Certificate of Occupancy must be obtained before any newly created or structurally altered Accessory Apartment may be occupied.

9.12 No Accessory Apartment lawfully established pursuant to this Ordinance shall be deemed to create or allow any subdivision of the property into separate fee estates by deed, use or otherwise, except by express approval by the Planning Board of a subdivision under the then applicable Land Subdivision Regulations of the Town of Jackson.

SECTION 10. TRAILER AND MOBILE HOME PARKS

No trailer or mobile home park shall be located or maintained within the Town of Jackson; and which, for purposes thereof, shall be deemed to mean a parcel of land where two or more trailers or mobile homes are parked. Nothing hereunder shall be construed to prohibit individual trailers or mobile homes located on individual lots so long as such lot otherwise meets the minimum lot size requirements and setbacks (amended 3/10/1987) under the Ordinances of the Town of Jackson.

SECTION 11: AREAS OF SPECIAL FLOOD HAZARD (amended 3/12/2002)

The following provisions shall apply to all lands designated as Flood hazard areas by the Federal Insurance Administration in its "Flood Insurance Study for the Town of Jackson, N.H.", together with the associated Flood Insurance Rate Map, #330014 0025B, to be dated July 2, 1979, and Sheets 1 through 4 of the Flood Boundary and Floodway Map of the Town of Jackson to be dated July 2, 1979, and any additions, amendments or revisions thereto, which are declared to be part of this Ordinance. This Section was adopted pursuant to the authority of RSA 674:16. The Regulations in this Section

shall overlay and supplement other regulations in this Zoning Ordinance. If any provision of this Section differs or appears to conflict with any other provision of this Zoning Ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

11.1 Definitions

The following definitions shall apply to this Section. (3/12/1996, 3/12/2002)

11.1.1 “Area of Special Flood Hazard” means the land in the Floodplain within the Town of Jackson subject to a one-percent or greater possibility of Flooding in any given year. The area is designated on the Flood Hazard Boundary Map (FHBM) as Zone A and is designated on the Flood Insurance Rate Map (FIRM) as zones A1 through A30.

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

11.1.3 “Basement” means any area of a building having its floor subgrade on all sides.

11.1.4 “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

11.1.5 “FEMA” means the Federal Emergency Management Agency.

11.1.6 “FIRM” means the Flood Insurance Rate Map.

11.1.7 “FHBM” means the Flood Hazard Boundary Map.

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

11.1.8.1 the overflow of inland waters, or

11.1.8.2 the unusual and rapid accumulation or runoff of surface waters from any source.

11.1.9 “Flood boundary and Floodway Map” means the official map of the Town of Jackson, on which FEMA has delineated the “Regulatory Floodway.” This map should not be used to determine the correct Flood hazard zone or Base Flood elevation; the Flood Insurance Rate Map (FIRM) will be used to make determinations of Flood hazard zones and Base Flood elevations.

11.1.10 “Flood Insurance Rate Map” (FIRM) means the official map incorporated with this Ordinance, on which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the Town of Jackson.

11.1.11 “Floodplain” means any land susceptible to being inundated by water from any source.

11.1.12 “Flood Proofing” means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate Flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

11.1.13 “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.

11.1.14 “Mobile Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For Floodplain management purposes the term "mobile home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.

11.1.15 “Recreational Vehicle” is defined as: built on a single chassis; 400 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 and seasonal use.

11.1.16 “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 increasing the water surface elevation. These areas are designated as Floodways on the Flood Boundary and Floodway Map.

11.1.17 "Special Flood Hazard Area" means an area having Flood, mudslide, and/or Flood-related erosion hazards, and shown on an FHBM or FIRM as zones A1 through A30.

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

11.1.19 "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 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."

11.2 All proposed Development, including the placement of manufactured homes, in any Special Flood Hazard Area shall require a permit.

11.3 Where new and replacement water and sewer systems (including on-site systems) are proposed, the applicant shall provide the Board of Selectmen with assurance that the systems are located, designed and will be constructed to minimize infiltration and avoid impairment by Flooding.

11.4 The Board of Selectmen shall review all building permit applications for new construction or Substantial Improvements to determine whether the proposed building will be reasonably safe from Flooding. If a proposed building site is in a location that has a Flood hazard, any proposed new construction or Substantial Improvement (including prefabricated and Mobile Homes) must (1) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (2) use construction materials and utility equipment that are resistant to Flood damage, (3) use construction methods and practices that will minimize Flood damage and (4) be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of Flooding. ((4) added 3/12/1996)

11.5 The Board of Selectmen shall maintain for public inspection and furnish upon request, for the determination of applicable Flood insurance risk premium rates within all areas having Flood hazards identified on a Flood Insurance Rate Map, any certification of Flood Proofing, and information on the elevation (in relation to mean sea level) of the level of the Lowest Floor (including Basement) of all new or Substantially Improved Structures, and include whether or not such Structures contain a Basement, and if the Structure has been Flood Proofed, the elevation (in relation to mean sea level) to which the structure was Flood Proofed. This information must be furnished by the applicant.

11.6 The Board of Selectmen shall review proposed developments to assure that all necessary permits have been applied for and/or received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these

assurances to the Board of Selectmen.

11.7 In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Board of Selectmen and submit copies of such notification to the Federal Insurance Administration. Further, the applicant shall be required to submit copies of said notification to those adjacent communities, as determined by the Board of Selectmen.

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

11.8 The following requirements shall apply in specific zones designated on the Flood Insurance Rate Maps.

11.8.1 In unnumbered “A” zones, the Board of Selectmen shall obtain, review, and reasonably utilize any Base Flood elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (1) all new construction and Substantial Improvements of residential structures have the Lowest Floor (including Basement) elevated to or above the Base Flood level, and (2) that all new construction and Substantial Improvement of non-residential structures have the Lowest Floor (including Basement) elevated or Flood Proofed to or above the Base Flood level.

11.8.2 In zones “A1 through A30”, for new construction and Substantial Improvements, the Board of Selectmen shall require that:

11.8.2.1 Residential Structures have the Lowest Floor (including Basement) elevated to or above the Base Flood level.

11.8.2.2 Non-residential Structures have the Lowest Floor (including Basement) elevated to or above the Base Flood level; or together with attendant utility and sanitary facilities, be designed so that below the Base Flood level the Structure is water tight with walls substantially impermeable to the passage of water with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

11.8.3 In zones “A1 through A30”, where Flood Proofing is used in lieu of elevation, a registered professional engineer or architect shall certify to the Board of Selectmen that the Flood Proofing methods used are adequate to withstand the Flood depths, pressures, velocities impact and uplift forces and other factors associated with the Base Flood.

11.8.4 In zones “A1 through A30”, for Mobile Home placement, the Board of Selectmen shall require that:

11.8.4.1 Stands or lots are elevated on compacted fill or on pilings so that the Lowest Floor of the mobile home will be at or above the Base Flood level.

11.8.4.2 Adequate surface drainage and access for a hauler are provided.

11.8.4.3 In the instance of elevation on pilings: (1) lots are large enough to permit steps, (2) piling foundations are placed in stable soil and are no more than ten feet apart, and (3) reinforcement is provided for pilings that extend more than six feet above the ground level.

11.8.5 In unnumbered A zones and zones “A1 through A30”, Mobile Homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that (1) over-the-top ties be provided at each of the four corners with two additional ties per side at intermediate locations and Mobile Homes less than 50 feet long shall require one additional tie per side; (2) frame ties be provided at each corner with five additional ties per side at intermediate points and Mobile Homes less than 50 feet long shall require four additional ties per side; (3) all components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and (4) any additions to the Mobile Home shall be similarly anchored.

11.8.6 In the Regulatory Floodway, as delineated on the Flood Boundary and Floodway Maps

of the Town of Jackson, to be dated July 2, 1979, as prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration:

11.8.6.1 The placement of Mobile Homes is prohibited within the designated Regulatory Floodway.

11.8.6.2 Within the Regulatory Floodway, any Development or encroachment (including fill) which would result in any increase in Flood levels during the Base Flood discharge is prohibited.

11.9 Recreational Vehicles placed on sites within Zones AI-30, AH and AE shall either (a) be on the site for fewer than 180 consecutive days, (b) be fully licensed and ready for highway use, (c) meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (C)(6) of Section 60.3. (3/8/1994)

11.10 For all new construction and Substantial Improvement in areas of Special Flood Hazard below the 100 year Flood elevation, fully enclosed areas below the Lowest Floor that are subject to Flooding are permitted provided they meet the following requirements:

11.10.1 The enclosed area is unfinished or Flood resistant, usable solely for the parking of vehicles, building access or storage,

11.10.2 The enclosed area is not a Basement,

11.10.3 The enclosed area is 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. (3/12/1996)

11.11 **Variances and Appeals** (3/12/1996)

11.11.1 Any order, requirement, decision or determination made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

11.11.2 If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, 1 (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law: (a) that the variance will not result in increased Flood heights, additional threats to public safety, or extraordinary public expense; (b) that if the requested variance is for activity within a designated Regulatory Floodway, no increase in Flood levels during the Base Flood discharge will result, and (c) that the variance is the minimum necessary, considering the Flood hazard, to afford relief.

11.11.3 The Zoning Board of Adjustment shall notify the applicant in writing that: (a) 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 (b) 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.

SECTION 12: SIGNS (added 3/13/1979, amended 3/12/1996)

The following provisions shall apply to the location, erection and maintenance of signs on any property within the Town of Jackson.

12.1. All signs shall be located so as not to create a hazard or danger to the public.

12.2 **On-premises sign**

Any new or replacement signs shall meet the following conditions:

12.2.1. Be no larger than 32 square feet exclusive of supports and shall not exceed 12 feet

above natural ground level or center of the traveled way.

12.2.2 Not be neon lighted or have flashing lights, and

12.2.3 Be substantially of wood construction, except for its support.

12.3 Off-premises signs shall be limited to:

12.3.1 Directory type signs that may include a map and listing of businesses in the Town of Jackson. Not more than two directory type signs will be permitted. The total area of the sign, exclusive of supports, shall not exceed 64 square feet. The height of the sign shall not exceed 12 feet above the natural ground level or the center of the traveled way. The locations will be recommended by the Planning Board and approved by the Board of Selectmen.

12.3.2 Directional signs for local businesses will be permitted attached to town-owned Street or road signs and they shall not exceed 8 inches high by 48 inches long and must be approved by the Board of Selectmen.

12.3.3 Off premises directional signs for ski areas and the ski touring foundation located in the Town of Jackson shall be permitted. The total area of the sign, exclusive of supports, shall not exceed 64 square feet. The height of the sign shall not exceed 12 feet above natural ground level or the center of the traveled way. The locations will be recommended by the Planning Board and approved by the Board of Selectmen.

12.3.4 Signs not conforming with these conditions shall be removed within three (3) years from the date of enactment of this Section, save that nothing herein shall be deemed to prohibit Town or State Highway signs.

SECTION 13: COMMUNICATIONS TOWERS AND ANTENNAS (added 3/10/1999, amended 3/13/2001, 3/12/2002).

13.1 Purpose and Intent

This ordinance is enacted in order to permit the siting of Communications Towers and Antennas, including Personal Wireless Service Facilities, in the Town of Jackson consistent with the following:

13.1.1 Avoid and mitigate adverse impacts such facilities may create, including, but not limited to the following impacts: visual, auditory, environmental, historical, flight corridors, health, safety and prosperity.

13.1.2 Promote co-location for facilities when such co-location minimizes the adverse impacts described in 13.1.1 above through an assessment of technology, current locational options, future available locations, Innovative Siting Techniques, and siting possibilities beyond the political jurisdiction of the Town.

13.1.3 Permit the siting of facilities on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.

13.1.4 Give preference to siting on designated Town-owned property permitting facilities in other designated areas.

13.1.5 Require that facilities be constructed and maintained safely.

13.1.6 Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense to protect the citizens from imminent harm and danger.

13.2 Definitions

The following definitions shall apply to this Section.

13.2.1 "Antenna" means any apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency or bandwidth.

13.2.2 “Communications Antennas”/ “Communications Towers and/or Antennas” means all types of sending and receiving Antennas and the supporting towers.

13.2.3 “Equipment Shelter” means an enclosed structure, cabinet, shed, vault, or box near the base of a Communications Antenna within which are housed equipment for those facilities such as battery and electrical equipment.

13.2.4 “Fall Zone” means the area on the ground within a prescribed radius from the base of a Tower or other support structure. The Fall Zone is the area within which there is a potential hazard from falling debris (such as ice), collapsing material or the collapse of the Tower itself.

13.2.5 “Height” means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the Tower or other structure, even if said highest point is an Antenna.

13.2.6 “Innovative Siting Techniques” means the mounting of Antennas on the roof, or side of a structure, including but not limited to man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of the Antennas.

13.2.7 “Personal Wireless Service Facilities” means any facility that provides commercial mobile wireless services, unlicensed wireless services and common carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996.

13.2.8 “Preexisting Towers and Antennas” means any Tower or Antenna lawfully constructed or permitted prior to the adoption of this Ordinance, or lawfully constructed in accordance with this Ordinance.

13.2.9 “Support Structure” means any structure to which any type of sending and receiving Antenna is attached.

13.2.10 “Tower” means any structure that is designed and constructed primarily for but not limited to the purpose of supporting one or more Antennas, including self-supporting lattice Towers, guyed Towers, “stealth tree” Towers, or monopole Towers.

13.3. Exemptions

This Section shall not apply to amateur facilities.

13.4 Permit required

All Communications Towers and Antennas shall require a building permit issued by the Board of Selectmen.

13.5 Regulations

All Communications Towers and Antennas shall comply with the following requirements. These requirements shall supersede any and all other applicable standards found elsewhere in the Jackson Zoning Ordinances and Regulations that are less strict.

13.5.1. Height. New Communications Antennas, media Antennas, and Personal Wireless Service Facilities located on any existing structures shall not increase the Height of the existing structure more than 20 feet. No Communications Tower or Antenna shall project higher than 20 feet above the average surrounding tree canopy height.

13.5.2 Setbacks. All Communications Towers and Antennas and equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.

13.5.3 Fall Zone. In order to ensure public safety, the minimum distance from the ground mount of a communications Tower or Support Structure to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 125% of the Height of the facility, including any Antennas or other appurtenances. This setback is considered the "Fall Zone."

13.5.4 Visual Impact and Lighting. In order to preserve the character of the existing developed and natural environments within the Town of Jackson, and to minimize any detrimental visual impact that Communications Towers and Antennas might have, all such facilities will adhere to the following

requirements.

13.5.4.1 The design of the Towers, ground mounts, Antennas, buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the Tower facilities with the natural setting and built environment.

13.5.4.2 If an Antenna is installed on a structure other than a Tower, the Antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the Antenna and related equipment as visually unobtrusive as possible. Facilities shall not be artificially lighted, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Board of Selectmen may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

13.5.4.3 Towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts.

13.5.4.4 Towers or ground-mounted facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the facilities from adjacent properties and public roads. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the Tower compound. Natural vegetation is preferred.

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

13.5.4.6 Towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind, except as may be allowed or required by the Board of Selectmen in the interests of public safety.

13.5.5 Fencing. Towers shall be enclosed by security fencing located inside the landscaped buffer. The fencing shall be at least 6 feet in height and equipped with appropriate anti-climbing devices. The Planning Board may waive the requirement for fencing if the Tower is designed in a way that makes climbing it impossible.

13.5.6 Building Codes. To ensure the safety and structural integrity of Communications Towers and Antennas, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards for Communications Towers, support structures, and Antennas that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer licensed in New Hampshire and thereafter shall provide certifying reports to the town every five years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. If, upon inspection, the Town concludes that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have 30 days to bring such facility into compliance with such standards. If the owner fails to bring such facility into compliance within 30 days such action shall constitute grounds for the removal of the facility in accordance with Section 13.9. at the owner's expense through execution of the posted security required by Section 13.8.

13.5.7 Federal Requirements. All Communications Towers and Antennas must meet or exceed current standards and regulations of the FAA, the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate facilities and Antennas. If such standards and regulations are changed, then the owners of the facilities governed by this ordinance shall bring-such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with

such revised standards and regulations shall constitute grounds for the removal, in accordance with Section 13.9 of the facilities, at the owner's expense through the execution of the posted security required by Section 13.8.

13.5.8 A full written disclosure of all materials in the sealed transmitter's shelter or vault located at the base of the Tower must be submitted. The applicant must pay for any training required in handling any potential problem created by any hazardous materials in the transmitter.

13.5.9 Access for motorized vehicles to sites where communications facilities are located shall conform to the Town requirements relating to Driveways.

13.6 Application Procedure

13.6.1 Application to erect Communications Towers and Antennas in Jackson shall be made to the Board of Selectmen of the Town of Jackson. The application will be reviewed by the Planning Board, who will make recommendations to the Board of Selectmen. The Board of Selectmen will have the authority to approve or deny the application, and issue the building permit.

13.6.2 The application shall contain a scaled plan including a scaled elevation view, surrounding topography, surrounding tree cover and natural vegetation, radio frequency coverage, setbacks, Fall Zone, design of the facility and construction materials, design characteristics that will avoid visual obtrusiveness, landscaping, fencing, parking, access roads, adjacent uses, and any other information deemed necessary by the Board of Selectmen to assess compliance with this ordinance. In addition, the applicant shall provide the following information.

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

13.6.2.2 The applicant shall submit written proof of legal authority to use the proposed site.

13.6.2.3 The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirement of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board of Selectmen prior to the beginning of the federal 30-day comment period and the Town process, shall become part of the application requirements.

13.6.2.4 Each applicant for a facility shall provide to the Board of Selectmen an inventory of its existing facilities that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, Height, design of each facility, as well as economic and technological feasibility for co-location on the inventoried facilities. The Board of Selectmen may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate Antennas within the jurisdiction of the governing authority, provided however that the Board of Selectmen is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

13.6.2.5 Each applicant for a facility shall provide a list of any additional Towers which may be required in Jackson for completion of their planned wireless coverage.

13.6.3 In its consideration of an application to erect Communications Towers and Antennas, the Board of Selectmen shall adhere to the following prioritization.

13.6.3.1 Preference will be given to the siting of Communications Towers and Antennas on existing facilities including preexisting Towers and Antennas, where such co-location can exist while preserving the character and integrity of the existing structure and without other adverse impacts.

13.6.3.2 To the extent that there are no existing facilities which meet the requirements of the applicant, preference will be given to locating facilities on existing structures of other kinds, such as a water tower or utility poles where such co-location preserves the character and integrity of the existing structure, and does not create other adverse impacts.

13.6.3.3 To the extent that facilities under Paragraphs 13.6.3.1 and 13.6.3.2 are not available, preference will be given to siting a facility within the designated Telecommunications Overlay Zone, which shall consist of an area within 200 feet on either side of the traveled center line of NH Route 16 within the Jackson town limits.

13.6.4 Burden of Proof on Applicant Regarding Siting Priority. The burden of proof that there are no existing structures upon which the applicant may locate its Antennas and facilities and transmit or receive radio signals shall include, at a minimum:

13.6.4.1 The applicant shall submit a list of all owner contacts made with regard to the availability of co-location for the Antenna. If the Board of Selectmen or Town staff finds additional existing buildings and structures that may be satisfactory, the applicant shall contact the property owners.

13.6.4.2 The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "return receipt requested" forms from the US Post Office shall be provided for each owner of existing structure that was contacted.

13.6.4.3 If the applicant claims that a structure is not structurally capable of supporting a Communications Antenna or facility, this claim must be certified by a registered, professional engineer licensed in the State of New Hampshire. This certification shall at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the facility.

13.6.5 If the applicant is proposing to build a new Tower or other ground-mounted support structure, the applicant shall submit written evidence demonstrating why no existing structure can accommodate the applicant's proposed facility. This evidence must be substantial and can address such issues as location within required geographic area, required Height, electromagnetic interference, unreasonable financial requirements, etc.

13.6.6 The applicant proposing to build a Tower or ground mounted structure shall submit an agreement with the Town that allows for the co-location of additional facilities upon the new structure by a future applicant to the extent such co-location can exist while minimizing adverse impacts noted in Section 13.1.1. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of Jackson, and is grounds for a denial.

13.6.7 The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board of Selectmen may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant.

13.6.8 Prior to construction, the applicant shall submit the following:

- a. A radio frequency (RF) background survey (wide spectrum-1f-3xf) to establish a zero point for future evaluation. Cost for this survey shall be borne by the applicant.
- b. A clear method of communication for concerns or complaints: contact name and address, telephone number.

13.6.9 At any time before, during, or after the construction of a communications facility, the applicant shall provide to the Board of Selectmen information about intentions to sell, assign, lease or sub-lease any part of the facility. Such notice shall be given in writing prior to execution of any sale, assignment, or lease agreement. Any owner, assignee, lessee or sub-lessee shall be bound by all of the regulations of this Ordinance.

13.7 Waivers

13.7.1 Where the Zoning Board of Adjustment finds that extraordinary hardships, or practical difficulties would result from strict compliance with the terms of Section 13.5, or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The Zoning Board of Adjustment shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply: (3/13/2001)

13.7.1.1 The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.

13.7.1.2 The waiver will not, in any manner, be inconsistent with the provisions of the Jackson Zoning Ordinance or the Jackson Master Plan.

13.7.1.3 Such waiver(s) will substantially secure the objectives, standards, and requirements of these regulations.

13.7.1.4 A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver.

13.7.2 In approving waivers, the Zoning Board of Adjustment may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

13.7.3 A petition for any such waiver shall be submitted in writing by the applicant with the application for Zoning Board of Adjustment review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require automatic denial.

13.8 Bonding, Security and Insurance

Recognizing the extremely hazardous situation presented by inadequately maintained or abandoned and unmonitored facilities, the Board of Selectmen shall set the form and amount of security that represents the cost for removal and disposal of abandoned facilities in the event that the facility is abandoned or inadequately maintained and the facility owner is incapable and unwilling to remove or maintain it. The applicant shall bear the cost of the demolition. Furthermore, the Board of Selectmen shall require annual submission of proof of adequate liability insurance covering accident or damage.

13.9 Removal of Abandoned Antennas and Facilities

Any Antenna or facility that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the facility. If the abandoned facility is not removed within 90 days the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

SECTION 14: LIGHTING (added 3/12/2002)

14.1 Purpose

The purposes of the outdoor lighting regulations are to protect dark skies, to prevent Light Pollution by minimizing the spillover of light onto adjacent properties, and to protect the public safety by preventing glare from outdoor lighting sources.

14.2 Definitions

14.2.1 "Direct Light" means light emitted directly from the Lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a Luminaire.

14.2.2 “Fixture” means the assembly that houses the Lamp(s) and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a Lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

14.2.3 “Lamp” means the component of a Luminaire that produces the actual light.

14.2.4 “Light Pollution” means light emitted from a Luminaire that illuminates more than the object or area it was intended to.

14.2.5 “Luminaire” means a complete lighting system, including a Lamp(s) and a Fixture.

14.3 Regulations

14.3.1 All nonexempt outdoor lighting Fixtures shall be shielded in such a way that Direct Light emitted by the installed Fixture will be at an angle of twenty (20) degrees or more below the horizontal plane of the bottom of the Fixture.

14.3.2 Post-top lighting is permitted, to a maximum of 150 watts per Luminaire.

14.3.3 Mercury vapor Lamps are not permitted.

14.4 Exemptions

The following types of lighting are exempted from these requirements:

14.4.1 Lighting installed or used by public authorities or emergency crews.

14.4.2 Lighting required by the FAA or FCC.

14.4.3 Security lighting controlled by sensors set to provide illumination for a maximum of fifteen (15) minutes.

14.4.4 Lighting lawfully installed prior to the effective date of this ordinance. However, in the event that a grandfathered lighting Fixture must be moved or replaced, it is encouraged that the new or moved Fixture comply with the Regulations of this Ordinance.

14.4.5 Lighting of non-commercial flags expressing constitutionally protected speech.

14.4.6 Decorative holiday lighting for a temporary period, provided that the amount of holiday lighting at any one property does not create a public nuisance.

SECTION 15: ADMINISTRATION AND ENFORCEMENT

15.1 Duty of Board of Selectmen

It shall be the duty of the Board of Selectmen to enforce and administer the provisions of this Ordinance. The Board of Selectmen or an appointed Building Inspector shall administer the Zoning Ordinance literally and shall not have the power to permit any use of land or buildings that are not in conformance with this Ordinance. Variances and Special Exceptions must be approved by the Zoning Board of Adjustment.

15.2 Requirement of Building Permit (amended 3/10/1987, 3/13/2001).

15.2.1 A building permit shall be obtained before a building or structure is constructed, extended, removed or altered. This requirement also applies to swimming pools, mobile homes, modular homes and exterior signs. Alterations to an existing building or structure within the existing footprint that do not exceed \$10,000 in estimated value shall not require a permit.

15.2.2 A building permit application shall be on a form provided by the Town, and shall furnish all requested information, and be accompanied by a permit fee, based on a fee schedule established by the Board of Selectmen.

15.2.3 The Board of Selectmen or Building Inspector shall act upon any application within 30 days after it has been received. In the event that 30 days is determined by the Board of Selectmen to be insufficient, the time period may be extended by the Board of Selectmen for an additional 30 days. If a permit is denied, the reason for denial shall be clearly stated in writing. The Zoning Board of Adjustment may, upon appeal, special exception or variance, direct the issuance of a permit. (3/13/2001)

15.2.4 Any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

15.2.5 A true copy of the building permit shall be kept on the site of operations open to public inspection during the entire time of prosecution of the work and until the completion of same.

15.2.6 No permit shall be transferred to a subsequent owner.

15.2.7 The Board of Selectmen may appoint a Building Inspector, prescribe his duties, and fix his compensation.

15.2.8 In the discharge of duties, the Board of Selectmen, Building Inspector, Fire Chief, or authorized representative shall have the authority to enter at any reasonable hour, with the permission of the leaseholder or, if there is no leaseholder, the owner (provided prior notice is offered the leaseholder, or, if there is no leaseholder, the owner), any building, structure or premises in the Town to enforce the provisions of this ordinance. (3/13/2001).

15.2.9 The Board of Selectmen, Building Inspector, Fire Chief or authorized representative shall not be personally liable while performing duties in administration of this Ordinance. No oversight or neglect of duty of these officials in administering this ordinance shall legalize any work that fails to conform to this ordinance nor relieve the applicant therefrom.

15.2.10 Upon notice from the Board of Selectmen or the Building Inspector that work on any building or structure is being prosecuted contrary to the provisions of this Ordinance or in an unsafe or dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Any person who shall continue to do any work in or about the structure after having been served with the stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition(s), shall be subject to fines as provided for in Section 15.3 of this Ordinance.

15.2.11 A building or structure, with the exception of detached single family residences, hereafter erected shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the Board of Selectmen or the Building Inspector. A building or structure, hereafter enlarged, extended or altered for change from one use to another, whether in whole or in part, shall not be occupied or used for the change in use until the certificate of use and occupancy has been issued. Any use not discontinued during the Alterations shall be discontinued within 60 days after the work is completed, if the certificate of use and occupancy has not been issued.

15.3 Enforcement and Penalty

15.3.1 If any violation of this Ordinance occurs, the Board of Selectmen shall institute in the name of the Town of Jackson, any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate such violation.

15.3.2 A violation of this ordinance shall be punished by a fine of not more than the maximum set by state law, with each day that such violation continues to be deemed a separate offense.

SECTION 16: ZONING BOARD OF ADJUSTMENT

16.1 A Zoning Board of Adjustment shall be appointed by the Board of Selectmen consisting of five (5) members. The Board membership, including length of term, alternates and vacancies, and its organization, shall be consistent with the state law (RSA 672 and 673.) The Board shall have the duties and powers as provided by RSA 674:33.

16.2 Specifically, the Zoning Board of Adjustment is authorized to:

16.2.1 Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Board of Selectmen or the Building Inspector in enforcement of

this Ordinance;

16.2.2 Hear and decide Special Exceptions to the terms of this Ordinance upon which the Board of Adjustment is required to pass as provided herein; and

16.2.3 Hear and decide upon variance requests where the Board finds that all of the following conditions apply: (16.2.3 amended in its entirety 3/8/2005)

16.2.3.1 The variance will not be contrary to the public interest.

16.2.3.2 Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

1) To establish an unnecessary hardship for a use variance, an applicant must prove that:

a. The zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.

b. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property.

c. The variance would not injure the public or private rights of others.

2) To establish an unnecessary hardship for an area variance, an applicant must prove that:

a. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

b. The benefits sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

16.2.3.3 The variance is consistent with the spirit of the ordinance.

16.2.3.4 Substantial justice is done

16.2.3.5 The value of the surrounding property will not be diminished.

16.2.3.6 (deleted, 3/11/2008)

16.2.4 Determine an Equitable Waiver of Dimensional Requirement (added 3/9/2004)

Waivers shall be granted only from physical layout, mathematical or dimensional requirements. An equitable waiver shall not be construed as a Non-Conforming Use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Zoning Ordinance. This Section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them.

SECTION 17: EFFECTIVE DATE, CONFLICT AND SEVERABILITY

17.1 These provisions shall take effect upon their passage.

17.2 Where any provision of this Ordinance is in conflict with state law or any other local ordinances, the more stringent provision shall apply. (amended 3/8/2005)

17.3 If any provision of this ordinance is for any reason declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the specific provision so declared to be unconstitutional or invalid. (amended 3/8/2005)

APPENDIX – MINIMUM LOT SIZE BY SOIL TYPE TABLE

Lot sizes are in square feet.

N/A = Not allowed - not to be included in minimum lot size determination.

* = any slope or any number.

Soil Type	B	Slope C	D	E
111-H	31750	35250	40000	46000
112-H	31750	35250	40000	46000
114-H	77000	89000	106000	132000
117-H	54500	60500	67500	77000
118-H	65750	74750	86750	104500
121-H	31750	35250	40000	46000
122-H	31750	35250	40000	46000
124-H	77000	89000	106000	132000
127-H	54500	60500	67500	77000
128-H	65750	74750	86750	104500
161-H	31750	35250	40000	46000
164-H	77000	89000	106000	132000
167-H	54500	60500	67500	77000
168-H	65750	74750	86750	104500
211-H	31750	35250	40000	46000
212-H	31750	35250	40000	46000
214-H	77000	89000	106000	132000
217-H	54500	60500	67500	77000
218-H	65750	74750	86750	104500
221-H	40000	46000	54500	67500
222-H	40000	46000	54500	67500
223-H	54500	60500	67500	77000
224-H	77000	89000	106000	132000
227-H	54500	60500	67500	77000
228-H	65750	74750	86750	104500
231-H	40000	46000	54500	67500
234-H	77000	89000	106000	132000
237-H	54500	60500	67500	77000
238-H	65750	74750	86750	104500
243-H	54500	60500	67500	77000
247-H	54500	60500	67500	77000
248-H	65750	74750	86750	104500
253-H	54500	60500	67500	77000
257-H	54500	60500	67500	77000
258-H	65750	74750	86750	104500
261-H	40000	46000	54500	67500
263-H	54500	60500	67500	77000
264-H	77000	89000	106000	132000
267-H	54500	60500	67500	77000
268-H	65750	74750	86750	104500
275-H	40000	46000	54500	67500
311-H	54500	60500	67500	77000
312-H	54500	60500	67500	77000

Soil Type	Slope			
	B	C	D	E
313-H	54500	60500	67500	77000
314-H	77000	89000	106000	132000
317-H	54500	60500	67500	77000
318-H	65750	74750	86750	104500
321-H	54500	60500	67500	77000
322-H	54500	60500	67500	77000
323-H	54500	60500	67500	77000
324-H	77000	89000	106000	132000
325-H	54500	60500	67500	77000
327-H	54500	60500	67500	77000
328-H	65750	74750	86750	104500
331-H	54500	60500	67500	77000
332-H	54500	60500	67500	77000
333-H	54500	60500	67500	77000
334-H	77000	89000	106000	132000
337-H	54500	60500	67500	77000
338-H	65750	74750	86750	104500
343-H	54500	60500	67500	77000
344-H	77000	89000	106000	132000
347-H	54500	60500	67500	77000
348-H	65750	74750	86750	104500
353-H	106000	132000	N/A	N/A
354-H	106000	132000	N/A	N/A
357-H	106000	132000	N/A	N/A
358-H	106000	132000	N/A	N/A
361-H	54500	60500	67500	77000
363-H	54500	60500	67500	77000
364-H	77000	89000	106000	132000
367-H	54500	60500	67500	77000
368-H	65750	74750	86750	104500
374-H	77000	89000	106000	132000
375-H	54500	60500	67500	77000
411-H	77000	89000	106000	132000
412-H	77000	89000	106000	132000
413-H	77000	89000	106000	132000
414-H	77000	89000	106000	132000
417-H	77000	89000	106000	132000
418-H	77000	89000	106000	132000
421-H	77000	89000	106000	132000
422-H	77000	89000	106000	132000
423-H	77000	89000	106000	132000
424-H	77000	89000	106000	132000
427-H	77000	89000	106000	132000
428-H	77000	89000	106000	132000
431-H	77000	89000	106000	132000
432-H	77000	89000	106000	132000
433-H	77000	89000	106000	132000
434-H	77000	89000	106000	132000
437-H	77000	89000	106000	132000

Soil Type	Slope			
	B	C	D	E
438-H	77000	89000	106000	132000
443-H	77000	89000	106000	132000
444-H	77000	89000	106000	132000
447-H	77000	89000	106000	132000
448-H	77000	89000	106000	132000
453-H	106000	132000	N/A	N/A
454-H	106000	132000	N/A	N/A
457-H	106000	132000	N/A	N/A
458-H	106000	132000	N/A	N/A
461-H	77000	89000	106000	132000
463-H	77000	89000	106000	132000
464-H	77000	89000	106000	132000
467-H	77000	89000	106000	132000
468-H	77000	89000	106000	132000
475-H	77000	89000	106000	132000
511-H	106000	132000	N/A	N/A
512-H	106000	132000	N/A	N/A
513-H	106000	132000	N/A	N/A
514-H	106000	132000	N/A	N/A
517-H	106000	132000	N/A	N/A
518-H	106000	132000	N/A	N/A
521-H	106000	132000	N/A	N/A
522-H	106000	132000	N/A	N/A
523-H	106000	132000	N/A	N/A
524-H	106000	132000	N/A	N/A
527-H	106000	132000	N/A	N/A
528-H	106000	132000	N/A	N/A
531-H	106000	132000	N/A	N/A
532-H	106000	132000	N/A	N/A
533-H	106000	132000	N/A	N/A
534-H	106000	132000	N/A	N/A
537-H	106000	132000	N/A	N/A
538-H	106000	132000	N/A	N/A
543-H	106000	132000	N/A	N/A
544-H	106000	132000	N/A	N/A
547-H	106000	132000	N/A	N/A
548-H	106000	132000	N/A	N/A
553-H	N/A	N/A	N/A	N/A
554-H	N/A	N/A	N/A	N/A
557-H	N/A	N/A	N/A	N/A
558-H	N/A	N/A	N/A	N/A
561-H	106000	132000	N/A	N/A
563-H	106000	132000	N/A	N/A
564-H	106000	132000	N/A	N/A
567-H	106000	132000	N/A	N/A
568-H	106000	132000	N/A	N/A
575-H	106000	132000	N/A	N/A

The soil types listed below have one or more limiting characteristics that make the soil type "N/A" or require on-site investigation, no matter what other characteristics of the soil may be present.

<u>Soil Type</u>	<u>Minimum Lot Size</u>
6***H	N/A, very poorly drained soil
*66*H	N/A, fill does not meet the Standards for Fill Material (see Key to Soil Types)
76**H	On-site evaluation needed (Usually filled, excavated or regraded sites)

KEY TO SOIL TYPES CONTAINED IN THE MINIMUM LOT SIZE BY SOIL TYPE TABLE

The soil types utilized in high intensity soil surveys are defined as soils having the same soil characteristics of drainage class, parent material, restrictive features, and slope; and are designated by a five part symbol the parts being A, B, C, D and E

Part A-Drainage Class

- 1- Excessively drained
- 2- Well drained
- 3- Moderately well drained
- 4- Somewhat poorly drained
- 5- Poorly drained
- 6- Very poorly drained
- 7- Not determinable (to be used only with Part B-6)

Part B-Parent Material

- 1- Glaciofluvial Deposits (outwash/terraces of sand or sand and gravel)
- 2- Glacial Till Material (active ice) Marine or Glaciolacustrine Deposits (3,4 or 5)
- 3- Very fine sand and silt deposits (glacial lakes)
- 4- Loamy/sandy over silt/clay deposits
- 5- Silt and clay deposits (ocean waters)
- 6- Evacuated, regraded or filled (see Standards for Fill Material below)
- 7- Alluvial deposits (flood plains)
- 8- Organic materials-Fresh water bogs, etc.
- 9- Organic materials-Tidal Marsh

Part C-Restrictive Feature (if more than one applies, list the most restrictive)

- 1- None
- 2- Bouldery with more than 15% of the surface covered with boulders (larger than 24 inches in diameter)
- 3- Mineral restrictive layer(s) are present in the soil profile less than 40 inches below the soil surface such as hard pan, platy structure, clayey texture.
- 4- Bedrock present in the soil profile 0 to 20 inches below the soil surface
- 5- Subject to flooding
- 6- Does not meet-fill standards (see Standards for Fill Material below) (only to be used with Part B-6)
- 7- Bedrock present in the soil profile 20 to 40 inches below the soil surface
- 8- Areas where depth to bedrock is so variable that a single soil type cannot be applied will be mapped as a complex of soil types and will have a Part C of 8

Part D-Slope class

- B- 0 to 8%
- C- 8 to 15%
- D- 15 to 25%
- E- over 25%

Part E-High intensity soil map identifier - H

The H is placed at the end of the soil type to identify the area mapped as meeting the standards for high intensity soil maps. On a preliminary map a P may be used instead of the H to indicate that, even though the soil scientist has used the connotative legend to identify the soils, the map does not meet the standards of a High Intensity Soil Map.

Example of a Soil Type Classified Using the Key to Soil Types:

A Marlow soil that is well drained, formed in a deposit of glacial till, has a hard pan layer at a depth of 20 inches, and has a slope of 10% would be mapped by the symbol 223CH. The Minimum Lot Size by Soil Type Table indicates that the minimum lot size per Dwelling Unit on this soil, 223-H in Slope Class C, would be 60,500 square feet.

Standards for Fill Material

1. Fill material consisting of organic materials or non-soil materials such as tree stumps, sawdust, wood chips and bark, bricks, asphalt, concrete, metal, wallboard, etc., even with a soil matrix should not be used.
2. The in-place fill should have less than 15% organic matter and non-soil materials by volume.
3. The in-place fill should not contain more than 25% by volume of cobbles (6 inch diameter) and stones (larger than 12 inches in diameter).
4. The in-place fill should not have more than 27% by weight of clay size (0.002 mm and smaller) particles.
5. The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.