AMENDMENTS

MAY 7, 1977 – (ARTICLE II – DISTRICTS & ARTICLE V – ZONING BOARD OF ADJUSTMENT)

MARCH 14, 1978 – (ARTICLE II – DISTRICTS & ARTICLE V – ZONING BOARD OF ADJUSTMENT)

MARCH 11, 1980 – (ARTICLE V – ZONING DISTRICT REGULATIONS)

MARCH 9, 1982 – (ARTICLE II – DISTRICTS)

MARCH 12, 1985 – (ARTICLE IV – GENERAL PROVISIONS)

MARCH 11, 1986 – (ARTICLE II – DISTRICTS, ARTICLE IV – DEFINITIONS, ARTICLE IX BOARD OF ADJUSTMENT)

MARCH 10, 1987 – (ARTICLE IV – DEFINITIONS INCORPORATING WETLANDS DEFINITION)

MARCH 8, 1988 – (ARTICLE IV – DEFINITIONS & ARTICLE V ZONING DISTRICT REGULATIONS)

MARCH 13, 1990 – TOWN MEETING VOTE TO COMPLETELY REPLACE ZONING ORDINANCE WITH A NEW REVISED VERSION

MARCH 11, 1997 – (AMEND SETBACKS FOR WELLS AND SEPTIC SYSTEMS)

MARCH 14, 2000- (NEW ARTICLE 10 – FLOODPLAIN DEV. ORDINANCE; AMEND ARTICLE 2 – DEFINITIONS; ARTICLE 4 – USE & DIMENSIONAL REGS; ARTICLE 11 ADMINISTRATION)

MARCH 11, 2003 – (AMEND ARTICLE 4 – USE & DIMENSIONAL REGS. & ARTICLE 9 –MULTI-FAMILY RESIDENTIAL HOUSING DISTRICT)

MARCH 9, 2004 – (NEW ARTICLE 8 – PERSONAL WIRELESS SERVICE FACILITIES; NEW ARTICLE 9 - MULTI-FAMILY RESIDENTIAL HOUSING DISTRICT; AND AMENDMENT TO ARTICLE 4 – LARGE LOT ZONING)

MARCH 8, 2005 (AMEND ARTICLE 4 – USE & DIMENSIONAL REGULATIONS)

MARCH 9, 2010 (ARTICLE 10 - N.H. FLOODPLAIN DEVELOPMENT ORDINANCE REVISION)

MARCH 8, 2011 (ARTICLE 16 – WORKFORCE HOUSING ORDINANCE ADOPTED)

MARCH 13, 2012 (CLEANUP (SPELLING, GRAMMAR & FORMATTING ISSUES, REVISE & ADD DEFINITIONS, ABOLISH MANUFACTURING HOUSING DISTRICT (MHD), ADD CRITERIA FOR EQUITABLE WAIVER, AMEND NAME & CRITERIA FOR ACCESSORY APARTMENTS TO ACCESSORY DWELLING UNITS, REVISE HOME OCCUPATIONS, REVISE ARTICLE 4, REVISE PWSF TO CONFORM TO STATE & FEDERAL CASE LAW.)

MARCH 12, 2013 VOTED AND PASSED TO AMEND ARTICLE 6. OPEN SPACE SUBDIVISIONS.

TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS 1
- A. Title 1
- B. Authority 1
- C. Purpose 1
- D. Applicability 1
- E. Interpretation 1

ARTICLE 2. DEFINITIONS 2

ARTICLE 3. ESTABLISHMENT OF DISTRICTS 9
- A. District Names 9
- B. Location of Districts..... 9

ARTICLE 4. USE AND DIMENSIONAL REGULATIONS 12
- Table of Uses..... 13
- Large Lot Zoning..... 15
- A. Use Regulations 16
- B. Dimensional Regulations 20
- C. Nonconforming Lots 20
- D. Nonconforming Structures 23
- E. Phasing of Building Permits..... 25

ARTICLE 5. WETLAND CONSERVATION DISTRICT (WCD)..... 26
- A. Purpose 26
- B. Wetland Conservation District Defined 26
- C. Applicability 26
- D. Conditional Use Approval 27
- E. Procedural Requirements 27
- F. Specific Provisions 28

ARTICLE 6. OPEN SPACE SUBDIVISIONS
- A. Authority..... 28
- B. Purpose..... 28
- C. Objectives 28
- D. Applicability and Procedures..... 29
- E. Permitted Uses..... 29
- F. Open Space Permitted Uses..... 30
- G. Lot Size & Dimensional Requirements 30
- H. Designated Open Space..... 31
- I. Other Requirements.....32

ARTICLE 7. EXTRACTION REGULATIONS 34
A. Definitions 34
B. Applicability 34
C. Exemptions 34
D. Prohibited Projects 35
E. Existing Excavations 35
F. Procedural Requirements 36
G. Standards and Conditions of Operation 37
H. Reclamation Standards 38
I. Enforcement 39

ARTICLE 8. PERSONAL WIRELESS SERVICE FACILITIES..... 40
A. Authority..... 40
B. Purposes..... 40
C. Definitions..... 40
D. Districts Permitted..... 42
E. Applicability..... 42
F. Location, Construction, and Performance Req..... 42
G. Conditional Use Permits..... 45
H. Bonding and Security Insurance..... 49
I. Removal of Abandoned PSFs..... 49
J. Requirement to Maintain Stealth Technology..... 49

ARTICLE 9. MULTI-FAMILY RESIDENTIAL HOUSING DISTRICT. 50
A. Purpose..... 50
B. Applicability..... 50
C. Multi-Family Residential Housing District Defined.... 50
D. Permitted Uses..... 50
E. Requirements and Specific Provisions..... 51

Article 10. New Hampshire Floodplain Development Ordinance... 52
Item I. Definitions..... 52
Item II. All proposed development... shall require a permit 55
Item III. Building Inspector shall review 55
Item IV. New or replacement water and sewer systems..... 56
Item V. New or substantially improved structures..... 56
Item VI. Building Inspector shall not grant a permit..... 56
Item VII. Wetlands Permits..... 56
Item VIII. Unnumbered A Zones, Building Inspector..... 57
Items IX. Variances and Appeals..... 58

ARTICLE 11. WORKFORCE HOUSING 59
I. Purpose 59
II. Authority 59
III. Applicability 59
IV. Procedural Requirements/Applicant 60
V. Procedural Requirements/Planning Board 62
VI. Definitions 63
VII. Density Bonus 64
VIII. Frontage Relief Provisions 65
IX. General Req. for Workforce Housing Units 65
X. Affordability 66
XI. Administration, Compliance, and Monitoring 66
XII. Relationship to other ordinances & Regulations 67
XIII. Conflict 67

ARTICLE 12. ADMINISTRATION 68
A. Administration Officer 68
B. Building Permit Procedure 68
C. Certificate of Occupancy 69
D. Special Exceptions, Variances & Conditional Use..... 69
E. Violations and Penalties 69

ARTICLE 13. SIGNS..... 70

ARTICLE 14. TEMPORARY SIGNS..... 71

ARTICLE 15. ZONING BOARD OF ADJUSTMENT 72
A. Authority 72
B. Membership 72
C. Administrative Requirements 72
D. Powers and Duties 72
1. Administrative Appeals..... 72
2. Variances..... 73
3. Special Exceptions..... 73
4. Equitable Waiver of Dimensional Requirements... 74
E. Issuance of Decision 75

ARTICLE 16. ADOPTION AND AMENDMENT PROCEDURES 75

ARTICLE 17. SEPARABILITY 75

ARTICLE 18. EFFECTIVE DATE 75

TOWN CLERK'S CERTIFICATION OF RECORD..... 76

ARTICLE 1. GENERAL PROVISIONS

A. Title

This Ordinance shall be known and may be cited as the *Zoning Ordinance of the Town of Dunbarton, New Hampshire.*

B. Authority

This Ordinance is enacted by the town of Dunbarton pursuant to the authority granted by the New Hampshire Legislature as stipulated in Sections 674:16-21 of the Revised Statutes Annotated, 1983, as amended.

C. Purpose

The purpose of this Ordinance is to promote the health, safety and general welfare of the inhabitants of Dunbarton by: Lessening congestion in streets; securing safety from fires, panic and other dangers; providing adequate light and air; preventing the overcrowding of land and buildings; avoiding undue concentration of population; facilitating the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care; and to assure the proper use of natural resources and other public requirements; preserve agricultural lands and buildings; to encourage the installation and use of solar, wind or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and the encouragement of the use of solar skyspace easements under RSA 477. Zoning ordinances may establish buffer zones or additional districts which overlap existing districts and may further regulate the planting and trimming of vegetation on public and private property to protect access to renewable energy systems (RSA 674:17,18,19).

The provisions of this Ordinance reflect the recommendations of the Dunbarton Master Plan which has given consideration to, among other things: encouraging the most appropriate use of land; preserving environmentally sensitive areas; providing adequate municipal facilities in a cost effective manner; and, providing for a diversity of housing opportunities within the Town (RSA 674:1-4).

D. Applicability

This Ordinance shall apply to: 1) all buildings or structures erected, reconstructed, altered, enlarged or relocated after the effective date of this Ordinance; 2) the use of any building, structure or land which is substantially different from its use prior to the effective date of this Ordinance; and 3) any land which is subdivided after the effective date of this Ordinance. (RSA 674:20)

E. Interpretation

In interpreting any provision of this Ordinance, it shall be held as the minimum requirement, adopted for the promotion of the public health, moral safety and general welfare of the town. Whenever any requirement of this Ordinance is at variance with any other provision of the Ordinance, or with the requirements of any other lawfully adopted rule or regulations, the most restrictive, or that imposing the highest standard, shall govern. (RSA 676:14)

ARTICLE 2. DEFINITIONS

Except where specifically defined herein, the words used in this Ordinance shall carry their customary meaning. The following words are specifically defined.

ABUTTER – Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. (see RSA 672:3)

ACCESSORY BUILDING – A building which exists on the same lot and which is customarily incident and subordinate to the principal building. May also be referred to as accessory structures.

ACCESSORY DWELLING UNIT (ADU) – An attached dwelling unit that is incidental to either a primary structure (i.e. single-family home) or an accessory building (i.e. barn or garage) on a single property. An ADU shall conform to the provisions outlined in the table of uses in Article 4 as well as other standards outlined in section 4.16 of Article 4 of the Dunbarton Zoning Ordinance (AKA "Table of Use Footnotes").

ACCESSORY USE – A non-residential land use which exists on the same lot and which is customarily incident and subordinate to the principal use.

ACRE – A measure of land containing 43,560 square feet.

BACKLOT – 1.) For the purposes of this Zoning Ordinance, and in particular building permits, a parcel lacking Class V (or better) road frontage; 2.) A parcel whose access is only by a right-of-way, easement or other non-owned access-way; 3.) Also, a land-locked parcel.

BED AND BREAKFAST – An establishment in a private residential dwelling that supplies temporary accommodations to overnight guests for a fee. Such operation shall not provide more than ten (10) sleeping rooms for rent and the owner or manager of the facility shall also permanently reside on the premises.

BUFFER – An area of land used to separate visibly one use from another or to shield or block noise, lights or other nuisances.

BUILDING – Any structure larger than 100 square feet built for the shelter, housing or enclosure of persons, animals, chattels, property, or materials of any kind. Such "building" includes open porches and decks, open breezeways and any other roofed areas. ***

- * *Amended March 14, 2000

BUILDING HEIGHT – The vertical distance of a building measured from the average elevation of the finished grade within twenty feet of the structure to the highest point of the roof.

BUILDING, PRINCIPAL – A building in which is conducted the principal use of the lot on which it is located.

CERTIFICATE OF OCCUPANCY (CO) – A document issued by the Building Inspector allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all the applicable local ordinances and regulations.

CERTIFIED PLOT PLAN – A boundary line survey and site plan, certified (stamped and signed) by a land surveyor licensed by the State of New Hampshire. The survey must detail existing natural features (wetlands, topography, ledge, etc.), applicable set back lines and the location and dimensions of all existing and proposed: buildings and structures, septic systems and wells, and driveways; and to the extent practical and accessible, such survey and site plan shall also show comparable site details, within 75 ft., on abutting properties encroachments, protective covenants, easements, and similar land-use restrictions, filed at the Merrimack County Registry of Deeds shall be accurately shown and/or written.

CERTIFIED SOIL SCIENTIST – A person who, by reason of special knowledge of pedological principles acquired by professional education and practical experience as specified by RSA 310-A:84, is qualified to practice soil science, and who has been duly certified by the Board of Natural Scientists.

COMMERCIAL USE – Means when the primary activity or activities on a property are conducted to provide goods or services, or both, or to create, manufacture, or otherwise produce goods of any kind, whether for profit or not, regardless of where the activities occur. The term shall be considered separate from a home occupation.

COMMON OPEN SPACE – Land within or related to a cluster subdivision, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development or the public.

CONDITIONAL USE APPROVAL – An approval issued by the Planning Board or the Zoning Board of Adjustment stating that the proposed use meets all conditions set forth in the zoning ordinance as stipulated by the Board.

CONDOMINIUM – As defined by RSA 356-B.

DAY CARE CENTER – A private establishment enrolling seven (7) or more children under 5 years of age and where tuition, fees or other forms of compensation for the care of the children is charged, and which is licensed or approved to operate as a day care center by the State of New Hampshire. (RSA 672:1 and RSA 170-E).

DEVELOPABLE LAND AREA – Is the portion of the tract remaining after deducting the area of all surface water bodies and slopes in excess of twenty percent (20%) from the total tract area.

DISTRICT, OVERLAY – A zoning district superimposed on one or more established zoning districts designed to impose supplemental requirements, restrictions, and performance standards in the underlying district(s). (Amended March 9, 2004)

DWELLING, DUPLEX (TWO-FAMILY) – A building/structure containing two (2) dwelling units, sharing a common wall, and otherwise connected by common construction, designed for, or occupied exclusively by two (2) families living independent of one another [Note reference of "Duplex (two-family)" in "Multi-Family" definition as it pertains to two-family unit tract development.] (Amended March 9, 2004)

DWELLING, MULTI-FAMILY – A building/structure containing three (3) or more dwelling units, attached and otherwise connected by common construction, designed for, or occupied exclusively by, three (3) families or more living independent of one another. For the purposes of this ordinance, the definition of "Multi-Family" shall apply to the condition of a single building lot having more than one single-family dwelling building/structure, more than one two-family (duplex) building/structure, or any combination thereof. (Amended March 9, 2004)

DWELLING, SINGLE FAMILY – A building/structure containing one dwelling unit which is not attached to any other dwelling unit. [Note reference of "Single-Family" in "Multi-Family" definition as it pertains to multi-unit tract development.] (Amended March 9, 2004)

DWELLING UNIT – A building or portion thereof containing complete housekeeping facilities and intended for occupancy by a single family. No dwelling unit shall have a net floor area of less than 500 square feet. It shall not pertain to facilities such as hotels, motels, boarding houses or other facilities intended for transient use.

ELEVATION, AVERAGE – The mean location between the highest point and lowest point of the ground within twenty (20) feet of the walls of the building.

FAMILY – Any number of people occupying a dwelling unit and living together as a single housekeeping unit.

FAMILY DAY CARE CENTER – The care of up to six (6) full-time pre-school children and three (3) part-time school-aged children (See RSA 672:1).

FARM – A parcel of land used for agricultural activities.

FLOOR AREA, NET – The total of all floor areas of a building, excluding stairwells, equipment rooms, storage areas, interior vehicular parking and all floors below the first or ground floor, except when used or intended to be used for human habitation.

FRONTAGE – That portion of a lot bordering on a highway, street or right-of-way (RSA 674:24-I). Frontage shall be measured along the common boundary of the front lot line and public street right-of-way on a Class V or better road. However, in an Open Space Development a private road may be used to determine frontage. For the purposes of the required frontage for conforming lots and/or lots considered for subdivision, such measurement shall refer to a contiguous line except where otherwise specified.

HIGH INTENSITY SOIL SURVEY (HISS) – A soil map prepared using the methods prescribed by the Society of Soil Scientists of Northern New England, in the publication "High Intensity Soil Maps for New Hampshire, January 1987", as amended.

HOME OCCUPATION – An occupation conducted within the dwelling unit or accessory building(s), customarily, incidental and secondary to the residential use of the structure for dwelling purposes, and which does not adversely affect or undermine the residential character of the neighborhood. Examples of "home occupations" include but are not limited to: seamstress, hairdresser, lawyer, tutor, musician, photographer, antique dealer, architect, dentist or engineer.

HOTEL – A building designed and used for transient lodging accommodations to the general public and providing additional services such as restaurants, meeting rooms, and recreation facilities. A hotel shall have a minimum of ten (10) sleeping rooms, to which primary access is gained through internal hallways.

JUNK YARD – As defined by RSA 236:112 a junk yard means any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two (2) or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part of any motor vehicle, the sum of which parts or materials shall be equal in bulk to two (2) or more motor vehicles. Junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn materials which are parts of a motor vehicle or cut up the parts thereof.

KENNEL – A commercial establishment, as defined in this Ordinance, in which more than four (4) dogs or domesticated animals, other than the property owner's licensed pets, are housed, groomed, bred, boarded, trained or sold.

LOT – A parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area, and to provide required yards and other open spaces. An undersized lot is permissible if it passes state standards for soil conditions and substantially meets the requirements of this ordinance and if in existence on the date of adoption of this ordinance. (See RSA 674:24-II)

LOT COVERAGE – That portion of the lot that is covered by buildings and impervious surfaces or structures.

LOT LINE ADJUSTMENT – Is the adjustment of a lot line between two or more legally existing lots of record that, while reconfiguring the shape and size of the existing lots, conforms to current zoning requirements, and does not create any additional lots; and which, in the event of a non-conforming lot(s), does not result in the expansion of an existing non-conformity.

LOT LINE, FRONT – The lot line separating a lot from a public street right-of-way.

LOT OF RECORD – A lot which exists as shown or described on a plat or deed in the records of the Merrimack County Registry of Deeds.

LOT SIZE, MINIMUM – The smallest lot area established by the zoning ordinance on which a principal use or structure may be located in a particular zoning district.

MANUFACTURED HOUSING – Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. (See RSA 674:31)

MANUFACTURING – Establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquids.

MOTEL – An establishment providing transient accommodations containing six (6) or more rooms, the majority of which have direct access to the outside without the necessity of passing through the main lobby of the building.

NONCONFORMING USE – The use of land, buildings or premise which is not a use permitted by the provisions of this ordinance for the district in which such land, buildings or premise is located. (See RSA 674:24-IV)

PLOT PLAN – Is a graphical depiction of a property and is identical to that of a **CERTIFIED PLOT PLAN** as described in this Zoning Ordinance above, with the exception being that it may lack "certification" by the surveyor (i.e. stamped and signed).

PRE-SITE BUILT HOUSING – Any structure designed primarily for residential occupancy which is wholly or in substantial part made , fabricated, formed or assemble in an off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes for installation, or assembly and installation, on the building site. For the purposes of this ordinance, pre-site built housing shall not include manufactured housing as defined in RSA 674:31. (See RSA 674:31-a)

REGULATOR – Shall mean the Dunbarton Planning Board in accordance with RSA 155-E, as amended.

RIDING ACADEMY – Is a commercial venture, as defined in this Ordinance, wherein equestrian skills are taught to the public for a fee. Animals may or may not be owned and boarded by the riding academy.

SETBACK – The distance between the nearest portion of: a) a structure ordinarily requiring a permit; or b) any other land-use feature subject to a specified minimum setback; and a lot line or right-of way line as shown by a deed or survey, whichever is closer (See RSA 674:24-VII).

SIGN – Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

SITE PLAN REVIEW – The site review procedure, as required by, and /or provided by the Planning Board to allow for the safe and attractive development of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of inadequate drainage or conditions conducive to flooding of the property or that of another, inadequate protection for the quality of groundwater, undesirable and preventable elements of pollution such as noise, smoke, soot, that might prove harmful to persons, structures, or adjacent properties, and inadequate provision for fire safety, prevention, and control; provide for the harmonious and aesthetically pleasing development of the municipality and its environs; provide for open spaces and green spaces of adequate proportions; require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality; require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system; require, in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the planning board for approval; require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health; and include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity. (Adopted: July 1989(Adopted March 11, 2003)****

STREET – Relates to and includes street, avenue, boulevard, road, lane, alley, viaduct, highway, freeway and other ways. (See RSA 672:13)

STRUCTURE – Means anything constructed or erected for the support, shelter or enclosure of persons, animals, goods, or property of any kind, with a fixed permanent location on or in the ground, exclusive of fences and wells.

SUBDIVISION – As defined in RSA 672:14 subdivision means the following:

I. The division of the lot, tract, or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose whether immediate or future, of sale, rent, lease, condominium, conveyance or building development. It includes re-subdivision and when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

II. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this definition.

III. The granting of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for the transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unmanned structures which is less than 200 square feet, shall not be construed as a subdivision under this title and shall not be deemed to create any new division of land for any other purpose.

TRAVEL TRAILER – A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use.

WELL – A system designed and installed to provide a potable water supply.

YARD, FRONT – An open unoccupied space within and extending the full width of the lot, between the street property line and the closest part of a building nearest to such street line.

YARD, REAR – An open unoccupied space, the full width of the lot, between the rear wall of the building from the furthest point of the permanent structure throughout its height and the rear line of the lot. In the case of a triangular lot with only one side fronting on a street, the rear yard shall be the open unoccupied space between the rear wall of the building, and a line halfway between such rear wall and the point of intersection of the side lines of the lot.

YARD, SIDE – An open unoccupied space within the lot between the side lot line, not a street line, and the parts of the building nearest to such lot line.

ARTICLE 3. ESTABLISHMENT OF DISTRICTS
(Manufactured Housing District, AKA MHD, removed March 13, 2012)

A. District Names

For the purpose of this Ordinance, the town of Dunbarton is hereby divided into the following districts (RSA 674:20)

Low Density Residential – LDR

Medium Density Residential – MDR

Village District – VD

Multi-Family Residential Housing District (overlay) - MFD

Wetland Conservation District (overlay) – WCD

B. Location of Districts

1. The location of said districts are delineated on the map entitled *Town of Dunbarton, N. H. Zoning Map of 1970,* as revised, which shall hereinafter be referred to as the Zoning Map of the town of Dunbarton and shall be made part of this Ordinance. (RSA 674:9, 10, 11, 12) The location of said district boundaries are further described as follows:

a. **Village District (VD)** – Said area begins at a point on the centerline of Route 13 three hundred (300) feet north of its intersection with Barnard Hill Road; thence running easterly at a ninety degree angle (90) from said centerline for a distance of three hundred (300) feet; thence running in a southerly direction, three hundred (300) feet from and parallel to, the centerline of Route 13 to a point which intersects the line dividing assessors lots D3-1 and D3-2; thence turning and running westerly along said line to its point of intersection with the centerline of Route 13; thence turning and running northwesterly approximately three hundred (300) feet along the centerline of Mansion Road; thence turning and running northerly, parallel to, and three hundred (300) feet from the centerline of Route 13 to its point of intersection with the centerline of Barnard Hill Road; thence turning and running northwesterly along the centerline of said road to a point of intersection with the extension of the line dividing assessors lots F3-13 and F3-14; thence turning and running easterly along said line to a point where its extension intersect the centerline of Route 13; thence turning and running southerly along the centerline of Route 13 to the point of beginning.

b. **Low Density Residential (LDR)** - Said area shall include all land within the corporate boundaries of the town of Dunbarton which is not defined as part of the Village District or the Medium Density Residential District.

c. **Medium Density Residential (MDR)** - Said area begins at a point of intersection of the centerlines of the streets Tenney Hill Road and Route 13; thence running easterly and southerly along the centerline of Tenney Hill Road to its point of intersection with the centerline of Grapevine Hill Road; thence turning and running easterly approximately

eighty (80) feet along the centerline of Grapevine Hill Road to a point where the extension of the line dividing assessors lots G4-4 and G4-5 intersects the centerline of the road; thence turning and running southerly approximately five hundred and sixty (560) feet along said property line which divides assessors lots G4-4 and G4-5; thence turning and running westerly two hundred and twenty (220) feet along said property line; thence turning and running southerly approximately six hundred and ten (610) feet along the line dividing assessors lots G4-4, . G4-7 and G4-10; thence turning and running westerly approximately one hundred and fifty (150) feet along the line dividing assessors lots G4-3 and G4-10; thence turning and running southerly approximately twenty four hundred (2400) feet along the line dividing assessors lots G4-3 and G4-6; thence turning and running westerly approximately six hundred and ten (610) feet along the line dividing assessors lots G4-6, G4-1, and F3-5; thence turning and running southerly approximately sixteen hundred and sixty (1660) feet along the line which is the eastern side of the New England Power Company easement to its intersection with the centerline of Guinea Road; thence turning and running southerly along said centerline to its point of intersection of the centerline of Robert Rogers Road; thence turning and running westerly approximately sixty (60) feet to the point where the extension of the line dividing assessors lots E4-6 and E4-7 intersects the centerline of the road; thence turning and running southerly approximately seven hundred and ninety (790) feet along said property line; thence turning and running easterly approximately one hundred and ten (110) feet along the line dividing assessors lots E4-5 and D3-1; thence turning and running southerly approximately thirteen hundred seventy (1370) feet along the line dividing assessors lots D3-1 and D4-10; thence turning and running westerly approximately fourteen hundred and fifty (1450) along the line dividing assessors lots D3-1 and D4-9; thence turning and running southerly approximately seven hundred and seventy (770) feet along same line; thence turning and running westerly approximately seven hundred and ten (71 O) feet along the line dividing assessors lots D3-1, D3-7 and D3-6; thence turning and running northerly approximately seven hundred and twenty (720) feet along the line dividing assessors lots D3-1, D3-2 and D3-6; thence turning and running westerly approximately one hundred and thirty (130) feet along the line dividing assessors lots D3-1 and D3-2; thence running northwesterly approximately two hundred and ninety (290) feet along same line; thence running westerly approximately ninety (90) feet along same line to the southeast corner of the Village District zoning district; thence turning and running northerly along the eastern boundary of the Village District; thence turning and running westerly along the northern boundary of the Village District; thence turning and running southerly along the western boundary of the Village District to its intersection with the centerline of Mansion Road; thence turning and running northwesterly along the centerline of Mansion Road to its point of intersection with the centerline of Stark Lane; thence turning and running northeasterly along the centerline of Stark Lane to its point of intersection with the centerline of Winslow Road; thence turning and running easterly along the centerline of Winslow Road to its point of intersection with the centerline of Route 13; thence turning and running southerly along the centerline of Route 13 to the point of beginning.

d. **Multi-Family Residential Housing District (MFD)** – The Multi-Family Residential Housing District (MFD) is defined as an overlay zone situated parallel to both sides of N.H. State Highway Routes 13 and 77, running the length and width of the Town to the respective Town borders of Weare, Bow, and Goffstown, and shall be configured to

include all lots and parcels which front on said highways or retain access easements and/or right-of-ways directly to these highways. These parcels shall be able to show provisions for direct, reasonable, and safe access to those highways without traversing other existing roadways, at the time of formal application for Site Plan Review.

2. Interpretation of District Boundaries

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply.

a. Boundaries indicated as a street, utility line, watercourse or other water body shall be construed to be the centerline thereof.

b. Boundaries indicated as following approximately parallel to a street, utility line, watercourse or other water body shall be construed to be parallel to the nearest line thereof and the number placed on the Zoning Map between the boundary and such line shall be the distance in feet between them as measured at a right angle from such line.

c. Where a boundary apparently follows a property line, it shall be interpreted as such. Such property line shall be interpreted as the one existing at the time of enactment of this Ordinance.

d. Where a boundary is indicated as intersecting the center line of a street, utility line, watercourse or other water body, it shall be construed to intersect at right angles to said center line or, in the case of a curved center line, at right angles to the tangent of the curve at the point of intersection.

e. Where a district boundary line divides a lot, the use in either zoning district into the adjoining zoning district a distance of not more than twenty (20) feet.

f. In the case of uncertainty of the location of a district boundary, except for parcels considered to configure the Multi-Family Residential Housing District (MFD) (see sub-section g.), the Zoning Board of Adjustment shall determine the exact location of said boundary. (Amended March 9, 2004)

g. In the case of uncertainty of the location of a district boundary in the Zoning Board of Adjustment shall determine the exact location of said boundary.

h. Multi-Family Residential Housing District (MFD), the Planning Board shall determine the exact location of said boundary and the inclusion of those lots and parcels providing required access to the specified State Highway system. This determination shall be made during the application phase of Site Plan Review, and shall be based on proposals that are designed to provide direct, safe, and reasonable access to State Highways 13 and 77, consistent with engineering access standards ordinarily applied to new subdivision roadway proposals. (Amended March 9, 2004)

ARTICLE 4. USE AND DIMENSIONAL REGULATIONS
(Revised March 13, 2012)

Except as herein provided, no building or land shall be used except for the purposes permitted in the district as described in this section. A permit for the construction, alteration, enlargement, moving, demolition or use of a building or structure shall not be issued by the Building Inspector unless it complies with the provisions of this section and/or has been granted a variance or special exception by the Zoning Board of Adjustment. (RSA 674:20)

TABLE OF USES

DISTRICT	LDR	MDR	VD
A. RESIDENTIAL			
Single Family Dwelling	P	P	P
Multi-family dwelling (see Article 9)	P(1)(13)	P(2)(13)	P(3)(13)
Manufactured housing unit	P	P	P
Open Space Subdivision	P	P	
Home Occupations	P(5)	P(5)	P(5)
Accessory Dwelling Unit	P(16)	P(16)	P(16)
B. AGRICULTURAL			
Agriculture, horticulture, and floriculture	P	P	P
Greenhouse, retail sale of agriculture or farm products	P	P	P
Livestock, poultry and swine	P(7)	P(7)	P(7)
Stables	P	P	P
Veterinary office, animal hospital, or kennel	S(8)(13)	S(8)(13)	
Riding Academy or Commercial Stable	S (8) (13)	S (8) (13)	
C. COMMERCIAL			
Bank	S(9)(13)	S(9)(13)	S(9)(13)
Barber or Beauty Shop	S(13)	S(13)	S(13)
Bed & Breakfast Inns	S(13)	S(13)	S(13)
Camping Areas	S(13)	S(13)	
Country Club	S(13)	S(13)	
Eating & Drinking establishments	S(13)	S(13)	S(13)
Funeral Parlor	S(13)	S(13)	S(13)
Gas Station and Auto Repair	S(13)	S(13)	
General Service Establishments	S(13)	S(13)	S(13)
Hotel	S(9)(13)	S(9)(13)	S(9)(13)
Motel	S(9)(13)	S(9)(13)	S(9)(13)
Office	S(13)	S(13)	S(13)
Personal Service Establishment	S(13)	S(13)	S(13)
Recreation Facility	S(13)	S(13)	S(13)
Retail Store	S(13)	S(13)	S(13)
Service Club	S(13)	S(13)	S(13)
Theater	S(13)	S(13)	S(13)
Travel Trailer Park	S(13)	S(13)	S(13)
Wholesaling	S(13)	S(13)	S(13)
D: INDUSTRIAL			
Extraction operations	S(10)(13)	S(10)(13)	
Junk Yards	S(11)(13)		
Lumber Yards	S(13)	S(13)	
Manufacturing	S(12)(13)	S(12)(13)	
Research & development	S(12)(13)	S(12)(13)	
Sawmills & Wood processing	S(13)	S(13)	
Warehousing	S(12)(13)	S(12)(13)	
E: PUBLIC/ INSTITUTIONAL			
Church	P	P	P
Clinic	S(13)	S(13)	S(13)
Educational Institution	S(13)	S(13)	S(13)
Hospital	S(13)	S(13)	S(13)
Public Utilities	S(13)	S(13)	S(13)
Public parks and playgrounds	P	P	P
Day Care	S(13)	S(13)	S(13)
Family Day Care	P	P	P

TABLE OF USES
Footnotes

(1) **LOW DENSITY DISTRICT** - Multi-Family dwellings, up to four units per structure, provided such structures are located on lots of a size to provide five (5) acres for the first unit and two (2) additional acres for each additional unit. Additional structures require an additional five (5) acres for the first unit and two (2) acres for each additional unit up to four. No more than four (4) dwelling units per building are permitted. This results in the following density. ****

Number of Units/Building	Acres	Acres/Unit
1	5	5.00
2	7	3.50
3	9	3.00
4	11	2.75

(2) **MEDIUM DENSITY DISTRICT** - Multi-Family dwellings, up to four units per structure, provided such structures are located on lots of a size to provide three (3) acres for the first dwelling unit and two (2) acres for each additional dwelling unit. Additional structures require an additional three (3) acres for the first unit and two acres for each additional dwelling unit. No more than four (4) dwelling units per building are permitted. This results in the following density: ****

Number of Units/Building	Acres	Acres/Unit
1	3	3.00
2	5	2.50
3	7	2.33
4	9	2.25

(3) **VILLAGE DISTRICT** - Multi-Family dwellings, up to four units per structure, provided such structures are located on lots of a size to provide two (2) acres for the first dwelling unit and two (2) acres for each additional dwelling unit. Additional structures require an additional two (2) acres for the first unit and two acres for each additional dwelling unit. No more than four (4) dwelling units per building are permitted. This results in the following density: ****

Number of Units/Building	Acres	Acres/Unit
1	2	2.00
2	4	2.00
3	6	2.00
4	8	2.00

(4) Provided that a Planned Residential Unit receives a special exception from the Zoning Board of Adjustment and Planning Board Approval under Article 6 of this Ordinance.

(5) Provided that such a use complies with Article 4, Section 6-a of this Ordinance.

(6) Reserved for future foot note.

(7) On any farm or land use where livestock, poultry or swine are boarded; shelters, pens or runs used to contain said animals shall be no closer than one hundred (100) feet to any property line. This does not include pasture land.

(8) Provided that the lot contains five (5) acres and that any shelter or runs used to house/contain animals shall be no closer than one hundred (100) feet to any property line. This does not include pasture land.

(9) Provided that direct vehicular access is available to a state arterial highway.

(10) Provided that such a use receives approval as provided in Article 7 of this Ordinance.

(11) Provided that a determination is made by the Zoning Board of Adjustment that the property values of land adjacent to such a use will not be compromised. Also a specific site shall contain at least ten (10) acres; all related activities shall be adequately fenced and/or screened and in no instance shall any fence be closer than 125 feet to an adjacent land use.

(12) Provided that the lot contains at least five (5) acres and vehicular access is available to a paved highway.

Must require Site Plan Review by the Dunbarton Planning Board. (Amended March 11, 2003 Town Meeting)****

Reserved for future foot note.

Reserved for future foot note.

Each Accessory Dwelling Unit must conform to all of the following:

i. The ADU shall be attached to either the principal structure (i.e. home) or an accessory structure (i.e. barn or garage) on the lot;

ii. An ADU is permitted only on a lot that conforms to the current minimum lot size requirements as prescribed by the Dunbarton Zoning Ordinance for the district in which the lot lies;

iii. If the ADU is attached to the principal structure (i.e. single family home) it shall not exceed one third of the finished structure's floor area of total living space, and shall not exceed a total of 1,000 square feet. Anything over 1,000 square feet shall require a Variance from the Zoning Board of Adjustment;

iv. If the ADU is attached to an accessory structure (i.e. barn or garage) it shall not exceed 50% of the finished structure's total gross floor area, first floor and above, and in no circumstance shall exceed a total of 1,000 square feet. Anything over 1,000 square feet shall require a Variance from the Zoning Board of Adjustment;

v. An ADU shall have no more than one bedroom;

vi. There shall be no more than 1 ADU per lot;

vii. Septic design for the ADU shall assume a minimum of two bedroom loading capacity design in addition to the principal structure's loading design;

viii. The ADU must receive its own street address number separate from the principal dwelling; and,

ix. The ADU must receive its own certificate of occupancy.

(10) Formal Workforce Housing Applications shall be permitted to construct five residential rental units per multi-family buildings. Such application is controlled and governed by the Dunbarton Workforce Housing Ordinance.

F. LARGE LOT ZONING WITH REDUCED LOT FRONTAGE

LARGE LOT ZONING with reduced lot frontage		
As an elective option to less-than-traditional frontage requirements, reduced lot frontages shall be permitted under the provisions of this section, provided each lot provides for an increase in the minimum acreage per the Table of Dimensional Regulations.		
District	**Minimum Lot Size (1)(2)**	**Minimum Frontage**
Optional Large Lot Zoning with reduced frontage (See Note 5) All districts	12 Acres	225 Feet
	18 Acres	150 Feet
	24 Acres	75 Feet

(Note: Requirements for setback distance at front-yard, side-yard, rear-yard, septic, well, etc. remain the same as the underlying applicable zone.)

General Notes: a.) As an innovative land-use control zoning regulation, implementation under these provisions is voluntary and at the elected option of the applicant.

b.) Lot sizing allows for the continuity of current-use taxation, or implementation thereof, for qualified parcels.

c.) Minimum lot width, between the principal access point and the generally considered building pocket area shall not be less than 75 ft., measured perpendicular to the opposing side lot lines.

A. Use Regulations

1. **Uses Permitted By Right - A** use listed in the Table of Uses is permitted as a matter of right in the district in which it is denoted by the letter "**P**", subject to all other applicable local, state and federal regulations.

2. **Uses Permitted By Right With Conditions Imposed -** A use listed in the Table of Uses and denoted by the letter "**P**" and a number (footnote) indicates a use that is permitted by right only when in compliance with the conditions imposed as specified in the appropriate footnote(s); subject to all other applicable local, state and federal regulations.

3. **Uses Permitted By Special Exception -** A use listed in the Table of Uses and denoted by the letter "**S**", may be permitted as a special exception if such approval is granted by the Zoning Board of Adjustment in accordance with the conditions set forth in this Ordinance; subject to all other applicable local, state and federal regulations. Footnote conditions may also be specified in addition to the special exception requirements.

4. **Prohibited Uses -** Prohibited uses shall be denoted by a (-) in the Table of Uses. Unless a use is specifically permitted in a district as indicated in the Table of Uses, it shall be prohibited, unless a variance is granted by the Zoning Board of Adjustment pursuant to this Ordinance.

5. **Nonconforming Uses -** Where on the effective date of adoption of this Ordinance or applicable amendment, a lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided that:

a. No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.

b. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.

c. If any such nonconforming use of land ceases for any reason for a period of more than twenty four (24) consecutive months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such use is located.

If the physical attributes of such a structure or property have continued to clearly lend it to a particular nonconforming use, such a use shall be considered continued "in effect," regardless of any duration of time that the property may lay dormant or unused, until such a time when a new use is instituted on the property and only at that time it shall conform to the regulations specified by this Ordinance (i.e. the previous grandfathered nonconforming use will become abandoned).

In the event that any grandfathered nonconforming use is converted another use, the previous pre-existing use shall become abandoned (this includes, and is not limited to, changes between business and residential uses) and, abandoned uses that do not meet

current zoning requirements shall not be re-established without being granted a Variance or Special Exception from the Zoning Board of Adjustment.

d. No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

6. **Supplemental Provisions -** The following supplemental provisions shall applicable to all zoning districts within the Town.

a. **Home Occupations -** The purpose of this subsection is to permit the accessory use of a residence for business purposes which are clearly incidental to the principal residential use, provided that the use does not change the residential character or function of the property to the extent that the property would be distinguishable from other residential properties. Upon determination of compliance with all of the following conditions, the Building Inspector shall issue a certificate of use and occupancy for the home occupation as provided for in this Ordinance if all of the following are met:

(1) There shall not be more than one home occupation carried out in a dwelling unit;

(2) The use is carried on strictly by the owner or residing tenant (with owner's written permission transmitted to the Town) of the principal building, who shall also reside in said building;

(3) Adequate parking shall be provided for on the property;

(4) No more than five (5) nonresidents shall be employed;

(5) No more than 33% of the existing gross floor area of the principal dwelling shall be used for business purposes; and no more than 10,000 square feet of land shall be used for outside purposes;

(6) The use will not change the internal or external residential character or function of the dwelling to the extent that the use will be objectionable to other residential uses in the neighborhood;

(7) There shall be no display of goods or wares visible from the street;

(8) No advertising on the premises other than a small non-electric sign not to exceed two (2) square feet in area and carrying only the occupant's name and occupation and, such a sign may be externally lit;

(9) The building or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood because of exterior appearance, traffic, emissions of odor, gas, smoke, dust, noise or electrical disturbance or in any other way;

(10) The use will not cause vehicular traffic which is substantially different from that which currently exists on the street;

Home Occupation requirements do not apply to an agricultural business including, farm stands, wood processing, pick-your-own operations, forestry, etc.

A project that is not solely residential in nature and/or does not meet the requirements of this section shall require site plan review in accordance with the Dunbarton Site Plan Regulations, as amended: i.e. a business conducted out of the home that cannot meet the above criteria. Such development shall adhere to the Dunbarton Sign Ordinance requirements.

b. **Signs -** No sign shall be permitted except in accordance with the Sign Ordinance adopted in 1966 and as amended.

c. **Parking -** Adequate off-street parking space(s) will be provided for each use in accordance with the following minimum standards. All residential land uses should have one (1) off-street space for each dwelling unit. All other uses permitted under this Zoning Ordinance shall comply with the parking and loading standards specified in the Site Plan Review Regulations of the Town of Dunbarton.

d. **Private Residential Water Wells (Adopted at March 8, 2005 Town Meeting)**

Private on-site residential water wells, serving no more than an equivalent of 5-bedrooms, shall be located a minimum 75 ft. from property lines, public rights-of-way, septic system leach beds, and other observed or probable sources of contamination.

All wells shall be located in a manner to reduce the likelihood of contamination from sources of pollution at or near the ground surface.

In the event a minimum 75 ft. protective well radius cannot be maintained on an individual building lot (serving 5-bedrooms or less), due to lot size or pre-existing physical constraints of a permanent nature, the Building Official may permit the installation of a private on-site water well with less than the minimum required protective well radius, subject to the following conditions:

a.) That a technical site assessment, to consider the need for protection from pollution at a particular building site, be jointly undertaken, by: a.) the Town of Dunbarton designated Building Official, and: b.) the N.H. licensed water well contractor responsible for constructing the well.

b.) That special methods of construction be implemented, if deemed required per such technical assessment, to provide additional protection from pollution potential.

c.) That a "hold-harmless" agreement, indemnification, and/or standard release form, as determined at the sole discretion of the Building Official be signed by the lot owner(s), acknowledging that said owner(s) has no cause of action against the State of N.H., the Town of Dunbarton, or any owner of abutting property, if the subject well becomes contaminated as a result of the decreased set-back distance.

d.) That, where applicable, and required by the Building Official, a protective deed easement be recorded, encumbering such other land within the prescribed protective radius, declaring that such land is permanently dedicated to a use that precludes development.

e.) That if any part of a well radius extends over the lot lines of any abutting nonconforming lot, which in the opinion of the Building Official is capable of development, the well shall be grouted to below bedrock-depth.

f.) That all waivers, and/or lessening of requirements, continue to meet applicable minimum requirements of NHDES.

In granting any waiver from the minimum 75 ft. protective well radius requirement, the Town of Dunbarton, in addition to the above requirements, shall implement and enforce all other provisions of RSA 485-A:30-b, Env. Ws 1008.05 through 1008.11 (Subsurface Systems; well radii), and We 602.5 (Water Well Board; well location), as amended from time to time and as may be applicable.

7. Structures Per Lot - No more than one single-family dwelling structure, or more than one connected two-family dwelling structure (commonly known as a duplex) shall be permitted on any lot, except under those provisions for multi-family dwellings in the MFD overlay district. Use and dimensional requirements for multi-family construction are referenced in this section, and further defined in Article 10: Multi-Family Residential Housing District (MFD)". (Amended March 9, 2004 & March 13, 2012)

B. Dimensional Regulations

No building or structure shall be erected, enlarged, altered or moved, nor shall any existing lot size be changed or new lot created, except in accordance with the Table of Dimensional Regulations or as otherwise specified herein.

TABLE OF DIMENSIONAL REGULATIONS

District	Minimum Lot Size (1)(2)	Minimum Frontage	Building Setbacks			Septic System **	Well ***	Max Building Height	Max Lot Coverage (%)
			Front Yard	Rear Yard	Side Yard				
Low Density	5 Acres	300	50	50	50	50	75	35	15
Medium Density	3 Acres (3)	250	40	40	40	50	75	35	15
Village District	2 Acres	200	40	40	40	50	75	35	15
Multi-Family*****	Per Underlying District	"	150	100	100	100	75	35	15

* All dimensions are in feet unless otherwise noted

1) Refer to Article 4. section C. 'Nonconforming Lots' for exceptions to these minimum lot sizes.
2) Minimum lot size calculations shall be per dwelling unit except as otherwise specified herein, and shall exclude all surface water bodies but may include wetlands.

** Amended March 11, 1997
*** Amended March 14, 2000
****Amended March 11, 2003
*****Amended March 9, 2004

C. Nonconforming Lots (Adopted/Amended at March 8, 2005 Town Meeting)

1. Structures shall be permitted on a lot having frontage or an area which is less than that required by the Table of Dimensional Regulations if said structure is permitted by right within that district and if all of the following provisions (a. thru e.) are met:

   a. The lot was a parcel of record that is: a.) shown on an approved plan, or: b.) described within an historical deed; either of which shall have been duly recorded at the Merrimack County Registry of Deeds prior to the effective date (March 10, 1970) or applicable amendment of this Ordinance.

   b. The lot is capable of supporting a well and septic system designed and installed in compliance with all applicable Town of Dunbarton and New Hampshire Department of Environmental Services regulations.

The proposed septic system shall be designed, insofar as practical, in accordance with the Town of Dunbarton 50 ft. set-back requirement for conforming lots. Set-back distances as allowed per NHDES regulations, however, may be utilized in the event of lot-size dimensional constraints and/or pre-existing physical conditions of a permanent nature that restrict placement of a system designed in accordance with the Town of Dunbarton requirements. The proposed septic system shall not create a threat to individual or public health, safety and welfare, such as degrading ground or surface water, or causing damage to surrounding properties.

In the event any proposed septic system, or portion thereof, is to be located closer than 50 ft. to an abutting property line, notice shall be given by the applicant to the owner(s) of such abutting land; clearly explaining such proposed design and construction. Written notice shall be given by certified mail, return receipt, enclosing a brief explanation of the planned construction, a readable copy of the proposed plan, and a written statement that "any concerns and comments as to the increased likelihood of pollution potential to abutting properties, must be directed in writing, within 30 days of the mailing hereof, to the Dunbarton Building and Planning Department." Such duly submitted comments shall be taken into account in any septic design plan review to be conducted by the Town of Dunbarton and/or the N.H. Department of Environmental Services, Sub-surface Systems Division.

No final plan review shall be approved by the Town, or forwarded to NHDES, until such time as the comment period, where required, has lapsed. In the alternate, nothing in this section shall prevent an applicant from securing written comment from abutters prior to 30 days in an effort to expedite the permitting process. In such cases, the applicant shall demonstrate to the Dunbarton Building Department that: 1.) all abutters have been notified and provided comment (or an official "no comment"); and 2.) the substance of any constructive or critical comment. No final plan review shall be approved by the Town, or forwarded to NHDES, until such time as the comment period, where required, has lapsed, or the intent of the comment period has been fulfilled.

Any increase in heated living space in a building or structure on a nonconforming lot that the Building Official determines is reasonably capable of increasing the number of bedrooms on a nonconforming lot, shall require the septic system be reviewed, and if necessary, a new or modified system be designed and installed, and approved by the New Hampshire Department of Environmental Services and the Town of Dunbarton.

Wells shall meet the set-back standards and criteria established under Art. 4. A-6-d: "Private residential water wells." If any part of the well radius extends over the lot lines of a non-conforming lot, the well shall be grouted to below bedrock-depth.

c. All buildings and structures, other than septic systems and wells (as described above), or those uses requiring special setback or requirements per regulations in the underlying zone, shall comply with the following minimum setback requirements:

Total Lot area	**Side & Rear yard Setback**	**Front yard Setback**
Under 1 acre	20'	25'
Between 1 and 2 acres	30'	30'
Between 2 and 3 acres	40'	40'
3 acres and above	See underlying zone requirements	

d. Building permit applications for construction on a non-conforming lot must be accompanied by a boundary line survey and site plan, certified by a land surveyor licensed by the State of New Hampshire. The survey must detail existing natural features (wetlands, topography, ledge, etc.), set back lines and the location and dimensions of all existing and proposed: buildings and structures, septic systems and wells, and driveways; and to the extent practical and accessible, such survey and site plan shall also show comparable site details, within 75 ft., on abutting properties.

[Note: whereas this plan requirement and procedure is commonly referred to as a "certified plot plan," any submittal must be in conformance as specified herein.]

e. All proposed uses, buildings and structures must comply with the provisions of the Town of Dunbarton Wetlands Conservation District, NH Comprehensive Shoreland Protection Act, NHDES Wetland Rules, and all other State, Federal and local regulations as may be applicable. Additional review and permit procedures may be required; other dimensional restrictions may apply.

2. No portion of said parcel shall be used or sold in a manner, which diminishes compliance with frontage and area requirements established by this Ordinance, nor shall any division be made which creates a lot with frontage or area below said requirements [except for lot-line adjustments. See Definition.]. Further, requirements other than those applying to area and frontage, except as established in section 4 C. above, shall conform to the regulations for the district in which the lot is located.

D. Nonconforming Structures (Adopted/Amended at March 8, 2005 Town Meeting)

1. Where a lawful building or structure exists at the effective date of this Ordinance (March 10, 1970) or applicable amendment that could not be built under the terms of this Ordinance or amendment by reason of restrictions on area, lot coverage, height, yards or other dimensional requirements, the building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

   a. No such nonconforming building or structure may be enlarged or altered in a way, which increases its nonconformity, but any building or structure or portion thereof may be altered to decrease its nonconformity.

   b. A nonconforming building or structure which is destroyed by fire or other hazard may be restored to its former square footage, existing dimensions and footprint provided that it was not destroyed voluntarily and restoration is begun within twenty four (24) months after the act of destruction.

   c. Should a nonconforming building or structure be intentionally moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

   d. Building permit applications for exterior additions to non-conforming buildings and structures, which increase: a.) the square footage of the footprint, or b.) the total volume of the building or structure, or c.) the height of building or structure; or which change the location or configuration of the footprint of the building layout, must be accompanied by a boundary line survey and site plan. The survey and plan must be certified by a land surveyor licensed by the State of New Hampshire, and must detail existing natural features (wetlands, topography, ledge, etc), set back lines and the location and dimensions of all existing and proposed: buildings and structures, septic systems and wells, and driveways; and to the extent practical and accessible, such survey and site plan shall also show comparable site details, within 75 ft., on abutting properties.

      [Note: whereas this plan requirement and procedure is commonly referred to as a "certified plot plan," any submittal must be in conformance as specified herein.]

   e. Building permit applications for exterior additions and expansion of a non-conforming building or structure, showing any new construction, as depicted in section d. above, that is considered to be in a restricted zoning area (such as a set-back area, or excessive lot coverage), absence a variance from the Zoning Board of Adjustment.

      Exterior additions and expansion of a nonconforming building or structure, which are shown by means of the certified plot plan not to be in a restricted zoning area, may receive building permit approval directly from the Building Official.

   f. Any increase in heated living space in a nonconforming structure that the Building Official determines is reasonably capable of increasing the number of bedrooms for a nonconforming dwelling or lot, shall require the septic system to be reviewed, and, if

necessary, a new or modified system be designed and installed, and approved by the New Hampshire Department of Environmental Services and the Town of Dunbarton.

Septic systems shall not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.

g. All proposed uses, buildings, and structures must comply with the provisions of the Town of Dunbarton Wetlands Conservation District, NH Comprehensive Shoreland Protection Act, NHDES Wetland Rules, and all other State, Federal and local regulations as may be applicable. Additional review and permit procedures may be required; other dimensional restrictions may apply.

E. Phasing of Building Permits for New Subdivision and Multi-Unit Developments
*****(Adopted at March 2003 Town Meeting) *****

1. Purpose

It is intended that this article shall enable the town to economically and efficiently provide for public services.

2. Applicability

This Ordinance shall apply to:

a. All new Subdivisions of more than five (5) single family lots.
b. Any new Multi-family Development of more than five (5) Dwelling units.

3. Phasing Schedule

Phasing requirements will be in accordance with the following schedule upon approval of the Planning Board.

Number of lots/dwelling units	1st year	2nd year	3rd year	4th year
6 – 10	5	Balance	--	
11-15	5	5	Balance	
16-18	6	6	Balance	
19-24	8	8	Balance	
25 or more	30%	30%	Balance	

C. Exemptions

Any Elderly Housing, Motel, Hotel, or Bed and Breakfast Developments shall be exempt.

ARTICLE 5. WETLAND CONSERVATION DISTRICT (WCD)

A. Purpose

It is intended that this article shall:

1. Prevent the development of structures and land uses on or adjacent to wetlands, which will contribute to pollution of surface and groundwater by sewerage, toxic substances or sedimentation.

2. Prevent the destruction of, or significant changes to wetlands which provide flood protection, recharge the groundwater supply, augment stream flow during dry periods and filtration of water flowing into ponds and streams.

3. Protect unique and unusual natural areas and rare and endangered species.

4. Protect fish and wildlife habitat, maintain ecological balances, and enhance ecological values such as those cited in RSA 482-A:1.

5. Protect potential water supplies and existing aquifers and aquifer recharge areas.

6. Prevent unnecessary or excessive expense to the Town for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

7. Preserve and enhance the aesthetic values associated with wetlands in the town of Dunbarton.

B. Wetland Conservation District Defined

The Wetland Conservation District is defined as the following great ponds and brooks and adjacent Group I soils as depicted on the wetlands soils map in the Town Offices: Gorham Pond, Purgatory Pond, Kimball Pond, Long Pond, Harry Brook, Gorham Brook, Black Brook, Bela Brook, and Purgatory Brook. [Group I soils are Mn (mixed alluvial), Sa (Saco silt loam), Sc (Scarboro fine sandy loam), Mp (muck and peat), Mh (marsh), AgA (Au Gres fine sandy loam), RbA (Ridgebury Loam), RdA (Ridgebury and Whitman very stony loam), Ru (Rumney fine sandy loam), and Lm (Limerick silt loam).]

C. Applicability

1. All applications for a building permit, subdivision or site plan approval shall be subject to the provisions of this Article.

1. Any applicant seeking said approval(s) will be responsible for providing this information before the appropriate approval or permit can be granted.

2. Standards established herein shall constitute the rules of overlay zoning and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations.

D. Permitted Uses

Any use otherwise permitted by the Zoning Ordinance, except on-site sewerage disposal systems, may be permitted in a Wetland Conservation District if the proposed use complies with the provisions of Section E herein.

D. Conditional Use Approval

1. Conditional use approval may be granted by the Planning Board (RSA 674:21 11) after proper public notice and public hearing, for the crossing of a Wetland Conservation District by a road or other access way, utility right-of-way, communication lines, power lines and pipelines provided that the proposed construction complies with the following provisions:

   a. The proposed construction is essential to the productive use of land or water outside the Wetlands Conservation District; and

   b. No reasonable alternative to the proposed construction exists which does not cross or alter a wetland, or which has less detrimental impact on a wetland.

2. The burden of proof that the conditions specified in subsection 1 above have been met shall be the, responsibility of the person(s) requesting the conditional use approval.

3. The conditional use approval shall apply only to the project specified at the time of approval and shall not be transferable to a different project.

4. The Planning Board may attach conditions to any approvals granted under this section to insure that the intent of the Ordinance is met and failure to comply with all such conditions and all provisions of this Article 5 shall be grounds for revocation of such approvals.

E. Procedural Requirements

1. The provisions of Article V shall not apply to such land in the Wetland Conservation District that the owner demonstrates at his expense are not wetlands by means of a HISS map prepared by a Certified Soil Scientist.

2. Where the presence of a Wetland Conservation District has been identified, the boundaries of said District shall be clearly marked on the site with appropriate flagging along the entire perimeter of the wetland.

3. The Planning Board and/or Building Inspector shall notify the Conservation Commission of all applications for proposed projects, which may impact a Wetland Conservation District for the purpose of allowing the Commission to make recommendations prior to final action on such application. If a conditional use approval has been issued by the Planning Board for construction in a wetland in accordance with the provisions of section E, the applicant and his/her contractor shall have a pre-construction meeting with the Conservation Commission to insure that all provisions of the conditional use approval are complied with. Such meeting shall occur prior to the commencement of any earthwork or removal of vegetation in the wetland.

In the event that the accuracy of the wetland boundaries submitted by the applicant are suspect, the Planning Board may call upon the services of a Certified Soil Scientist to re-examine said area and report the findings to the Planning Board for a boundary determination. The cost of said services shall be paid by the applicant.

F. Specific Provisions

1. Structures shall be set back at least 125 feet from a Wetland Conservation District.

2. No septic tank or leach field (edge of bed) may be constructed or enlarged closer than 125 feet to a Wetland Conservation District.

3. Any proposed changes to a wetland shall comply with all applicable state and federal laws including RSA 482-A and shall comply with all permits (including conditions) issued pursuant to such laws.

4. Notwithstanding other provisions of this ordinance, the construction of additions and/or extensions to single family dwellings may be permitted within the Wetland Conservation District provided that the dwelling lawfully existed prior to the effective date of this Ordinance and all other local, state, and federal requirements are met.

5. The authority of the Planning Board and the Zoning Board of Adjustment to review on a case-by-case basis the impact of a proposed project on wetlands located outside of the Wetland Conservation District shall not be affected by the provisions of this Article 5.

ARTICLE 6. OPEN SPACE SUBDIVISIONS

A. Authority

This Chapter is enacted in accordance with the provisions of RSA 674:16-21, as amended.

B. Purpose

The purpose of this Open Space subdivision Chapter is to provide flexibility in the design and development of land to conserve open space, retain and protect important natural and cultural features, provide for more efficient use of Town services, and promote the development of balanced residential communities in harmony with the natural landscape.

C. Objectives

The objectives of this Chapter are to:

1. Permanently preserve natural topography and features and provide open space and recreation opportunities in close proximity to dwelling units;

2. Encourage flexibility and creativity in the design of developments through a carefully controlled process of negotiation of particular plans rather than the strict pre-regulation of all plans within a zone;

3. Encourage a less sprawling form of development that makes more efficient use of land, requires shorter networks of streets and utilities, and fosters more economical development and less consumption of rural land;

4. Provide an efficient procedure that can ensure appropriate, high-quality design and site planning and a high-level of environmental amenity;

5. Avoid development of portions of sites that contain important natural and/or cultural features, including, for example, scenic views, wildlife habitat (e.g. large un-fragmented blocks of undeveloped land), areas of highest quality habitat, water resources and historic structures; and

6. Avoid development of portions of sites that are ill-suited for development, including, for example, areas with poor soil conditions, a high water table, that are subject to flooding, or that have excessively steep slopes.

D. Applicability and Procedures

1. Applicability: Open space subdivisions are permitted on lots that are twenty (20) acres or larger located in one of the following zones:

    a. The Low Density Residential District (LDR); or,
    b. The Medium Density Residential District (MDR)

2. Authorization for Planning Board to Administer This Chapter: The Dunbarton Planning Board is hereby granted the authority, in accordance with RSA 674:21, as amended, to issue a Conditional Use Permit to administer this Chapter and its provisions. The approval of a proposed open space subdivision by the Planning Board shall constitute an approved Conditional Use Permit as described in this Chapter. With the exception of deviations described and presented in this Chapter, approvals shall follow the process prescribed in the Dunbarton Subdivision Regulations.

3. Review Process: An application submitted under the provisions and authority of this Chapter shall, unless directed otherwise by the specifics of this Chapter, follow the standard application and review process specified in the Dunbarton Subdivision Regulations, along with the following additional procedures:

    a. The maximum density shall be determined by dividing the parcel by the minimum lot size of the zone in which the parcel is located. For example: a 50 acre parcel in the LDR zone would yield 10 lots. Fractions shall be rounded to the nearest whole number.

    b. The applicant may participate in a Design Review with the Planning Board in accordance with RSA 676:4.II(b) prior to the submittal of a formal engineered plan. The Design Review plan shall depict, at a minimum, property lines (for parent tract, proposed open space, and individual dwelling lots), buffers, wetland areas and a rough concept of the clustering. The purpose of such a meeting is to, among other things, verify the base number of lots. The applicant is strongly encouraged to participate in Design Review.

4. Legal Review: Prior to final approval by the Planning Board, the applicant shall submit for review by the Town Counsel, any restrictive covenants, condominium or cooperative agreements, conservation easements, or other legal agreements proposed for use in the open space subdivision. The Town Counsel shall advise the Planning board of the adequacy of such legal provisions. Final responsibility for the approval of the adequacy of such documentation shall rest with the Planning Board or their designee.

E. Permitted Uses and Ownership of the Lots/Units and Open Space

1. Permitted Uses:

    a. Single Family Homes

    b. Common area/Open Space Uses described in Section F below.

2. Ownership of the Units and Open Space:

    a. There are no restrictions or requirements with regard to the ownership of individual dwelling units/homestead lots (i.e. single family homes).

    b. Open Space ownership shall be limited to the following entities:

i. The Condominium/Home Owners Association

ii. The Town of Dunbarton or its designee

iii. A third-party not-for-profit conservation entity

c. The Planning Board, with the guidance of Section F below, shall approve the entity or entities that will own and operate the open space. Such approval is required for the approval of the subdivision application. Open space proposed to be owned, operated and/or maintained by the Town of Dunbarton is subject to the approval of the Dunbarton Board of Selectmen in addition to Planning Board approval, with consultation and comment from the Dunbarton Conservation Commission.

d. Under formal agreement with one of the entities in Section b above, a third-party private entity may engage in agricultural, forestry, recreation or other activity as approved by the Planning Board with the guidance of Section F below.

F. Open Space Permitted Uses

1. Allowable Uses in Designated Open Space: Such uses include but are not limited to the following:

   a. Undisturbed Land
   b. A "walking trail" or "nature trail"
   c. Developed parks and recreation areas, public or private (not to exceed 10% of Designated Open Space)
   d. Agriculture and/or forestry activity
   e. Historic/cultural center open and free to the Public (not to exceed 25% of the Designated Open Space)
   f. A combination of permitted uses listed in this section

   Open Space uses shall be approved by the Planning Board, in consultation with the Conservation Commission and the Board of Selectmen. Open space shall not be used for dwelling units, infrastructure or roadways; land to remain, in the opinion of the Planning Board, undisturbed as much as possible.

G. Lot Size and Dimensional Requirements

1. Design Standards for Developed Areas: Except as specified in this Chapter, subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this Ordinance and as set forth in the Subdivision Regulations.

2. Lot Size Requirements: Individual lots within a Open space subdivision shall be a minimum of 2 Acres with at least 125 feet of frontage. Frontage for individual lots shall be controlled by Section I.3 below. Such lots shall be referred to as "homestead lots."

3. Planning Board's Role in Homestead Lot Layout: The Planning Board shall have the authority to approve or require the adjustment of the location and clustering of individual

homestead lots within a cluster subdivision based upon factors including but not limited to terrain, economy/efficiency, access and safety.

4. Lot Shape Requirements: Homestead lots shall be, in the opinion of the Planning Board, reasonably symmetrical; "flag" or "pork chop" lots shall be discouraged.

5. Setbacks: Front, rear and side setbacks on homestead lots shall be the same as those in the underlying district in which the parent tract resides.

6. Other Requirements: All development proposals and homestead lots shall demonstrate compliance with Town of Dunbarton and/or New Hampshire Department of Environmental Services rules and regulations with regard to septic and well requirements. In the event that there are conflicts between State and Town requirements the more stringent requirement shall apply.

H. Designated Open Space

1. Area of Designated Open Space: Designated Open Space shall be considered land that is not part of the developed area as specified above. 100% of the Designated Open Space shall be permanently protected as open space (i.e. undevelopable and unsubdividable) with the exception of recreational, cultural or historic facilities, if applicable, as specified at the time of plan approval. Designated Open Space shall be considered separate from Common Areas associated with a home owner's association.

2. Protection and Management of Open Space:

a. Open Space Boundaries:

i. Boundaries, including monumentation at each change of direction, shall be shown on the plan. Additionally, a plan note shall indicate that further development in and/or subdivision of the Designated Open Space shall be prohibited. Restrictions on development and subdivision within the open space shall also be indicated in any deed(s) associated with the Designated Open Space.

b. Deeds:

i. Draft deeds for the open space shall be presented to the Planning Board for review by Town Counsel prior to the final approval of the plan. Deeds shall indicate, among other things, uses permitted in the open space, restrictions on future development and subdivision, management responsibilities of the open space, and what entity will own the open space. The Building Inspector shall not issue a building permit for the development until such a deed is executed and recorded at the Merrimack County Registry of Deeds.

c. Other Documents:

i. Any home owner association documents/restrictive covenants shall be presented to the Planning Board for review by Town Counsel prior to the final approval of the plan. Such documents shall describe, among other things, the structure

of the Association as well common area maintenance provisions. Such document(s) shall be executed and recorded at the Merrimack County Registry of Deeds as part of final approval. The Building Inspector shall not issue a building permit for the project until such document(s) are executed and recorded at the Merrimack County Registry of Deeds.

ii. Easements shall be presented to the Planning Board prior to final approval of the plan. This shall include depictions on the plan as well as any accompanying easement documents to be recorded. Such documents shall be subject to review by Town Counsel. Such document(s) shall be executed and recorded at the Merrimack County Registry of Deeds as part of final approval. The Building Inspector shall not issue a building permit for the project until such document(s) are executed and recorded at the Merrimack County Registry of Deeds.

3. Planning Board's Role in Open Space Quality: The Planning Board shall have the authority to determine the adequacy of the open space as presented in an open space subdivision. A significant portion of the open space subdivision shall consist of "desirable" land. The Board may deny the open space subdivision application if the ratio of "desirable" land to "undesirable" land is insufficient. Desirable land shall be made up of and consist of components including but not limited to:
   a. Buildable land (i.e. non-wetland, non-steep slope per Town of Dunbarton Zoning Ordinance/Subdivision Regulations)
   b. Conservation importance (i.e. identified as such in the Master Plan, Wildlife Inventory or other recognized conservation document)
   c. Area and/or structure of historic significance (subject to verification by Historical Society or other such entity)
   d. Scenic vistas (as demonstrated via a view-shed analysis)
   e. Farm land/forestry/agricultural soils or other agricultural importance indicator
   f. Land of other value as agreed upon between the Board and the Applicant and as quantitatively demonstrated by a recognized third party expert (state, archeologist, etc.), documentation (plan, etc.) or other objective source.

I. Other Requirements

1. Common Areas: Common Area shall be considered separate from Designated Open Space. Common areas shall, in general, provide required services to the residential components of the development. Common areas shall include, but are not limited to roads, drainage structures, community drinking water facilities and community sanitary sewer systems. Except as specified in this Chapter, streets, utilities, drainage facilities and other common area structures shall comply with applicable sections found elsewhere in this Ordinance and requirements specified in the Subdivision Regulations, including the posting of bonds.

2. Buffers: The perimeter of the entire development (i.e. the property lines of the original parent tract) shall maintain a 100' "no-build" buffer on all sides of the lot. No building shall take place in the buffer and it shall remain in a natural state (the removal of dead trees is permitted). The Planning Board may require additional vegetation within the buffer to screen the development, if needed.

3. Road Design and Access: Individual homestead lots shall front on internal subdivision roads. Driveway access to individual homestead lots shall be from internal subdivision roads only. All other road design and access components shall be adhered to as prescribed in the Dunbarton Subdivision Regulations.

4. Open Space Access: Reasonable physical access to the Designated Open Space shall be provided.

ARTICLE 7. EXTRACTION REGULATIONS

A. Definitions

For purposes of this article the following words are specifically defined (RSA 155: E)

1. **Earth -** Sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or other mining activity or such other naturally occurring unconsolidated materials that normally mark the bedrock.

2. **Excavation -** A land area which is used, or has been used, for the commercial taking of earth, including all slopes.

3. **Regulator -** The Dunbarton Planning Board unless an annual or special Town Meeting grants this authority to the Board of Selectmen or Zoning Board of Adjustment.

B. Applicability

Before any excavation of earth is commenced or expanded, the owner of the property or his/her designated agent shall obtain a special exception from the Zoning Board of Adjustment pursuant to this ordinance and an excavation permit for said excavation from the Regulator in accordance with the provisions of this Article, unless said excavation is exempt as provided for herein. (RSA 155-E)

C. Exemptions

The provisions of this Article and the requirement to obtain a permit shall apply to all excavation or removal of earth from any lot except when incidental to or in connection with:

1. The lawful construction or alteration of a building or structure or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where the removal occurs; provided that no such excavation shall be commenced without a permit under this Article unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued;

2. Agricultural or silvicultural activities, normal landscaping or minor topographical adjustment;

3. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E; and

4. The lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway. Such activity shall be exempt only from the requirement of obtaining a permit; all other provisions of this Article shall apply. In addition, a pit agreement executed by the owner, the agent, and the town of Dunbarton shall be filed with the Regulator prior to the start of excavation.

D. Prohibited Projects

The Regulator shall not grant a permit under this Article for the following:

1. Where an excavation is proposed below road level within fifty (50) feet of any highway right-of-way unless such excavation is for the purpose of said highway;

2. For excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter unless approval is requested by said abutter;

3. When the excavation is not permitted by zoning or other applicable local or state law;

4. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;

5. Where the required existing visual barriers would be removed, except to provide access to the excavation;

6. Within one hundred-fifty (150) feet of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced.

7. When the excavation is planned beneath or adjacent to inland surface waters in such a manner that a permit is required from the N. H. Department of Environmental Services or federal agencies with jurisdiction over the premises; however the Board may approve such excavation when all necessary permits have been obtained; or

8. Where the project cannot comply with the reclamation provisions of this Article.

D. Existing Excavations

The owner of an excavation, which lawfully existed and was in use before August 24, 1979, may continue such excavation on the site without a permit subject to the following:

1. Such an excavation may not be expanded, without a permit, beyond the limits of Dunbarton.

2. Such an excavation may not be expanded without a permit beyond the land area which has been contiguous and in common ownership with the excavation site at all times subsequent to August 24, 1979.

3. Such an excavation shall be performed in compliance with the operational standards of RSA 155-E:4-a and the reclamation standards of RSA 155-E:5 and 155-E:5-a. Any violations of those standards shall be enforceable pursuant to RSA 155-E:10.

4. The owner and/or operator of any existing excavation site for which no permit has been obtained shall file a report with the Regulator within one year after receiving written notice of this requirement from the Regulator, and in no case later than August 4, 1991. The report shall include:

a. The location of the excavation and the date the excavation first began;

b. A description of the limits of permissible expansion, as described above, which are claimed to apply to the excavation;

c. An estimate of the area which has been excavated at the time of the report; and

d. An estimate of the amount of commercially viable earth materials still available on the parcel.

5. The exemptions granted under section D above shall not pertain to abandoned excavations as defined in RSA 155-E:2, II.

F. Procedural Requirements

1. Any owner or owner's designate seeking an excavation permit under this article shall first obtain a special exception from the Zoning Board of Adjustment.

2. Any owner or owner's designated agent seeking an excavation permit under this Article shall also submit an application to the Regulator in accordance with the following minimum requirements.

a. The name, address and signature of the owner of the land to be excavated, the person or company who will do the excavating and the names and mailing addresses all abutters to the premises on which the excavation is proposed.

b. A plat plan of the property prepared by a licensed land surveyor which shows: property boundaries; total acreage; abutting property owners names and property boundaries; existing and proposed contour lines at five foot intervals; existing vegetation, water bodies and other significant natural features; the elevation of the highest annual average ground water table within or next to the proposed excavation; existing and proposed structures; proposed and existing access points to the site; any existing excavation areas; and any proposed excavation areas.

c. A narrative description of the proposed excavation including: the proposed hours of operation; the breadth, depth and slope of the proposed excavation; the number of acres involved; the estimated duration of the project; and the estimated amount and type of material to be removed.

d. A plan for the reclamation of the area affected by the excavation which complies with the provisions of this Article.

e. A review of, and comment on, the proposed application by the Conservation Commission.

f. An application fee of $50.00.

1. Upon receipt of an application for an excavation permit the Regulator shall hold a public hearing within thirty (30) days on said application. A notice of said hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time and place of the hearing. Said notice shall also be published in a newspaper of general circulation in the Town at least 14 days prior to the hearing; and posted in three public places in the Town. The 14 days shall not include the day of publication nor the day of the hearing.

2. Within twenty (20) days after said public hearing or any continuation thereof, the Regulator shall render a decision approving or disapproving the application, giving the reasons for the disapproval. The Regulator may include such reasonable conditions as are consistent with the purpose of this Ordinance.

   If the Regulator disapproves or approves an application, any interested person affected by such decision may appeal to the Regulator for a rehearing of such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within ten (10) days, and if the request is granted a rehearing shall be scheduled within thirty (30) days. Any person affected by the Regulator's decision on a motion for rehearing may appeal in conformity with the procedures specified in RSA 677:4-15.

5. Permits shall be issued for period of twelve (12) months. A copy of the permit shall be prominently posted at the excavation site or the principle access thereto. Said permit shall not be assignable or transferable without the written consent of the Regulator.

6. A performance bond shall be posted by the owner or his/her designee prior to any excavation of the site. Said bond shall be in an amount approved by the Board of Selectmen and sufficient to cover all costs pertaining to the proposed reclamation of the site. Twenty-five percent (25%) of said bond shall be retained for a period of twenty-four (24) months following the completed reclamation as a maintenance bond.

7. When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his/her excavation permit which application shall be subject to approval in the same manner as provided for an excavation permit.

G. Standards and Conditions of Operation

1. Any property owner or his/her designee who has received an excavation permit pursuant to this Article shall comply with the following provisions.

   a. Truck access to the lot and work area shall be so arranged as to minimize traffic hazards on the street and to avoid nuisance to the residents of the area.

   b. No processing machinery shall be erected or maintained on any lot within three hundred (300) feet of any residential lot line and such machinery shall be removed from the lot upon expiration of the permit.

c. No material shall be stockpiled or located outside the permit area.

d. Dust control measures to protect the surrounding properties shall be taken when deemed necessary by the Regulator, including the covering of all trucks carrying excavation material.

e. A visual vegetative, topographical, or other such barrier as determined by the Regulator shall be maintained in the buffer zones between surrounding streets, highways, commercial or residential land uses and the excavation site.

f. Unless otherwise approved by the Zoning Board of Adjustment during the special exemption process, the final depth of the excavation shall be a minimum of four (4) feet above the annual average high water table.

2. All excavation operations shall be subject to the following provisions whether or not a permit is required under this Article.

a. No excavation shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway unless such excavation is for the purpose of said highway.

b. No excavation shall be permitted within fifty (50) feet of the boundary of a disapproving abutter, or within one hundred and fifty (150) of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced.

c. Vegetation shall be maintained or provided within the buffer areas described in "a." and "b." above.

c. Drainage shall be maintained so as to prevent the accumulation of freestanding water for prolonged periods. Excavation practices which result in siltation of streams or degradation of any water supplies are prohibited.

e. No fuels, lubricants, or other toxic or polluting materials shall be stored onsite unless in compliance with state laws or rules pertaining to such materials.

H. Reclamation Standards

Within twelve (12) months after the expiration date on a permit issued under this Article, or of the completion of any excavation, whether subject to permit or not, whichever occurs first, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum conditions.

1. Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or stripping if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.

2. Said area shall be evenly graded to slopes not to exceed one (1) foot of rise to two (2) feet of horizontal distance, or one (1) foot rise to three (3) feet of horizontal distance if the excavation occurs within one hundred (100) feet of an abutting property line. The required slope may be modified by the Regulator where rock ledge makes steeper slopes possible or to a lesser degree if necessary for soil stability, safety or reasonable reuse and development of the lot.

3. All debris and loose boulders not incorporated into the improvement of the lot shall be buried or removed from the lot.

4. Any standing bodies of water created in the excavation project as may constitute a hazard to the public health and/or safety shall be eliminated unless the Regulator specifies different restoration.

5. All reclamation shall be performed in compliance with the Merrimack County Conservation District's recommendations and guidelines contingent upon the Regulator's approval.

6. Excavation sites, upon completion, shall be permanently closed and gated so that the site cannot be used for dumping.

7. Any excavated area of five (5) contiguous acres or more, which either is depleted of commercial earth materials, excluding bedrock, or from which no earth materials have been removed for a two year period, shall be reclaimed in accordance with subsections 1-7 above, within twelve months following such depletion of two year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership.

I. Enforcement

1. The Regulator or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of said permit or other applicable regulation, or made a material misstatement in the application upon which his/her permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with the provisions of this Article.

2. Fines, penalties and remedies for violations of this Article shall be enforced in accordance with RSA 155-E.

3. To ascertain if there is compliance with this Article, a permit issued hereunder or an order issued hereunder, the Regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this Article.

ARTICLE 8. PERSONAL WIRELESS SERVICE FACILITIES (Revised March 13, 2012)

A. Authority

This Ordinance is adopted by the Town of Dunbarton on March 9, 2004 in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16, 674:21, and 12-K.

B. Purposes

These regulations have been enacted in order to establish general guidelines for the siting of personal wireless service facilities ("PWSFs"), including towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of the Town of Dunbarton to regulate and to provide for reasonable opportunity for the siting of personal wireless service facilities, by enhancing the ability of providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.

2. Reduce adverse impacts such personal wireless service facilities may create, including, but not limited to: impacts on aesthetics, environmental sensitive areas, conservation lands, historically significant locations, ridgelines, scenic areas and vistas, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.

3. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

4. Permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the construction of new PWSFs in a way that minimizes the adverse visual impact of such facilities.

5. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Dunbarton.

6. Provide constant maintenance and safety inspections for any and all personal wireless service facilities.

7. Provide for the removal of abandoned personal wireless service facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned facilities to protect the citizens from imminent harm and danger.

8. Provide for the removal of personal wireless service facilities that are technologically outdated.

C. Definitions

Antenna shall mean any exterior 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 bandwidth.

Average tree canopy height shall mean the average height above ground level of all trees over a specified height within a 50-foot radius of the center of the mount of a PWSF, such average to be determined by inventorying the trees to remain after the construction of the PWSF.

Camouflaged shall mean a personal wireless service facility that is disguised, hidden, part of an existing or proposed building or structure, or placed within an existing or proposed building or structure.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Height shall mean, when referring to a tower or other structure, the distance measured from ground level of the natural grade of a site to the highest point on the tower or other structure, even if said highest point is an antenna.

Mount shall mean the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.

Personal Wireless Service Facility (ies)* or *PWSF(s)* or *facility (ies) shall mean any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services, which for purposes of this Ordinance shall also include, as the context may require, all towers and antennas used in connection therewith.

Personal Wireless Services shall mean any wireless telecommunications services, and commercial mobile services including cellular telephone services, personal communications services, and mobile and radio paging services as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332 (c)(7)(C)(i).

Planning Board or Board shall mean the Town of Dunbarton Planning Board, which shall be the regulator of this Ordinance.

Pre-existing Facilities shall mean any PWSF, tower or antenna lawfully constructed or permitted prior to the adoption of this Ordinance, as well as the replacement of any such PWSF, tower or antenna, provided that such replacement meets the requirements of Paragraph F. Pre-existing Facilities shall also mean any PWSF, tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Board.

Radio frequency radiation shall mean the emissions from personal wireless service facilities.

Stealth Facility/Stealth Technology shall mean any PWSF designed to look like a structure which may commonly be found in the area surrounding such proposed facilities such as, but not limited to, flagpoles, traffic lights, farm silos, ranger or forest fire watch towers, or artificial trees.

Tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, stealth facilities, and the like.

D. Districts Permitted

1. General. Personal wireless service facilities shall be permitted as a principal or accessory (secondary) use in all zoning districts within the Town of Dunbarton governed by this Ordinance only after obtaining a Conditional Use Permit as provided in this Ordinance.

2. Existing Uses or Structures. The existence of a permitted use on a site shall not preclude the addition of a PWSF as a secondary use provided all other provisions of this Ordinance are satisfied. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a PWSF, tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the PWSF, tower or antenna may be located on an easement or leased parcel within such lot. PWSF, towers that are constructed, and antennas that are installed, in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

E. Applicability

1. General. The terms of this Ordinance shall apply to all personal wireless service facilities proposed to be located within the Town of Dunbarton whether on property owned by the Town of Dunbarton, on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier.

2. Exceptions.

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

b. Essential Services & Public Utilities. Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for personal wireless service facilities is a use of land, and <u>is subject to this Ordinance and all other applicable Town ordinances and regulations.</u>

F. Location, Construction, and Performance Requirements

1. Setbacks. All personal wireless service facilities, including equipment compounds, utility buildings, structures, towers and antennas must meet the minimum setback requirements of this Ordinance. Further, freestanding facilities must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower's height; provided, however, that this requirement shall not apply to PWSFs and appurtenant facilities (1) located on or within existing buildings or structures; or structures less than thirty-five (35) feet in height from surrounding grades.

2. Height Limitations.

a. General. Subject to any stricter standards as set forth below, a personal wireless service facility shall not exceed ninety (90) feet in height, measured as the vertical distance from the average finished grade surrounding the facility, to its highest point, including all attachments.

b. PWSFs in Wooded Areas. A PWSF located in a wooded area must be camouflaged to blend in with the natural character of such area and must employ stealth technology in order to make the site less obtrusive to surrounding properties and the community. Appropriate stealth technologies for wooded areas include: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.

c. PWSFs in Fields or Agricultural Areas. A personal wireless service facility located in a field or other open area without a tree canopy shall employ stealth technology. Appropriate stealth technologies for fields or open areas include agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size typically found in the State of New Hampshire.

d. PWSFs in or on Existing Structures. A PWSF may be located on or within an existing building or structure provided that such facilities shall employ stealth technologies and shall be architecturally compatible with the host building or structure.

e. New PWSF Structures. A PWSF may be located in a new building or structure provided that such building or structure (i) shall not exceed the maximum building height in the district where a PWSF is proposed, and (ii) shall be architecturally compatible with the buildings in the immediately surrounding area.

3. Location Prioritization. Any new personal wireless service facility shall be located in accordance with the following priorities:

a. Concealed or camouflaged on or within an existing building or structure, including but not limited to an historic building, an agricultural building or structure, a water tank, a utility transmission pole, an outdoor lighting structure, or a church steeple.

b. On or within a new building or structure having a height not greater than the maximum building height in the zoning district where the PWSF is proposed;

c. On an existing PWSF (co-location);

d. On a new facility which is camouflaged using stealth technologies and subject to the height limitations set forth above.

4. Easements or Leased Areas. If a PWSF is to be located on an easement or leased area, said easement or leased area shall have a minimum area equal to an area having a radius of 125% of the tower's height plus additional area for accessory structures and access, if required.

5. Tower Construction. Traditional lattice, guyed, and monopole towers are prohibited. All new PWSFs must employ appropriate stealth technologies that are visually compatible and in scale with the rural character of the Town and its villages and shall satisfy the following additional requirements:

a. The design of the tower, buildings and related structures on a PWSF site shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend such facilities with the natural setting and built environment. These facilities shall also be subject to all other requirements of the Zoning Ordinance and Site Plan Review Regulations.

b. 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.

c. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

d. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by law for such facilities.

e. An applicant constructing a PWSF in a wooded area shall utilize appropriate construction techniques to minimize damage to trees and other vegetation within the PWSF site and surrounding areas. Moreover, all trees used to determine the average tree canopy height for the PWSF site shall not be damaged or removed during construction, maintenance, repair and operation of the PWSF.

6. Viewshed Analysis. As part of the review process the applicant shall conduct a viewshed analysis to include, at a minimum, (i) a mapped viewshed delineation; and (ii) a test balloon or crane extension moored at the site to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the PWSF site and other vantage points as determined by the Planning Board.

7. Landscaping. The following landscaping requirements shall apply to personal wireless service facilities constructed under this ordinance.

a. Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compounded from adjacent residential property. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound. Natural vegetation is preferred.

b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.

c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

8. Federal Requirements. All PWSFs must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of the PWSFs 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 revised standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring a PWSFs into compliance with such revised standards and regulations shall constitute an abandonment and grounds for the removal of the PWSF in accordance with Paragraph J at the owner's expense through the execution of the posted security.

9. Building Codes-Safety Standards. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower 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 tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute abandonment and grounds for the removal of the tower in accordance with Paragraph J at the owner's expense through execution of the posted security.

G. Conditional Use Permits

1. General. Any person seeking to construct a personal wireless service facility shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Town's Site Plan Review Regulations. In addition, such applicant shall submit the information required in this Paragraph G.

2. Issuance of Conditional Use Permits. In granting a Conditional Use Permit, the Planning Board may impose such conditions as the Board determines are necessary to minimize any adverse effect of the proposed PWSF on adjoining properties, and to preserve the intent of this Ordinance.

a. Procedure on Applications. The Planning Board shall act upon an application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. In addition, applicants shall submit a list of all communities within twenty (20) miles of the Town, with mailing addresses for each, as required by RSA 12-K. Applicants shall also pay all fees required to notify each such community.

b. Decisions. Possible decisions that may be rendered by the Planning Board include approval, approval with conditions, disapproval without prejudice, or disapproval. All decisions shall be rendered in writing, in accordance with RSA 676:3. Further, in accordance with the National Wireless Telecommunications Siting Policy - Section 332(c)(47 U.S.C. 332(c)), a denial shall be based upon substantial evidence contained in the written record. The Planning Board shall act within 90 days if the proposal is for the

construction of infrastructure at existing town locations and within 150 days for construction at new locations (i.e. sites with no previous towers or telecommunications infrastructure).

c. Application Requirements. All applications shall meet the standards set forth in Paragraph F.

d. Other Factors. Other factors to be considered by the Board in reviewing applications shall include:

i) The height of the proposed tower or other structure shall not exceed that which is essential for its intended use and public safety.

ii) The proximity of a PWSF to residential developments or zones.

iii) Nature of uses on adjacent and nearby properties.

iv) Surrounding topography.

v) Surrounding tree coverage and foliage.

vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

vii) Proposed ingress and egress to the site.

viii) Availability of suitable existing towers and other structures as discussed in Section 3.10.6.C.

ix) Visual impacts on view-sheds, ridgelines, public parks, natural scenic vistas, historic buildings, major view corridors and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.

e. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including:

i) A scaled elevation view;

ii) Topography;

iii) Propagation Maps;

iv) Radio frequency coverage;

v) Setbacks;

vi) Adjacent uses (up to 400' away);

vii) The location of all buildings and structures within 500 feet of proposed tower;

viii) Diagram of the average tree canopy height determined for the proposed PWSF site;

ix) Driveways and parking;

x) Fencing; and

xi) Landscaping.

3. Other Information Required. In order to assess compliance with this Ordinance, the Planning Board shall require the applicant for a PWSF to submit the following information prior to any decision by the Board:

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

b. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed wireless telecommunication facility, tower or antenna, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town proceedings with respect to the proposed wireless telecommunication facility, tower or antenna shall become part of the FCC application requirements.

c. The applicant shall submit written proof that it has complied with the requirements of Section 106 of the National Historic Preservation Act.

d. Each applicant for a PWSF shall provide to the Planning Board an inventory of all existing personal wireless service facilities and towers 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 tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board 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, the Planning is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

4. If an applicant proposes to build a new PWSF, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence shall consist of:

a. Substantial evidence that no existing PWSFs, towers or structures are located within the geographic area meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.

b. Substantial evidence that existing towers in the Town are not of sufficient height to meet the applicant's engineering requirements, with supporting reasons.

c. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

d. Substantial evidence that the applicant's proposed antenna or structures would not cause electromagnetic interference with other antennae on the existing towers, and visa versa.

e. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

f. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

g. Information on the number of sites for PWSFs each provider will require.

h. Information on sites outside of the Town of Dunbarton being considered.

i. Information on how future technology may reduce or eliminate the need for towers.

j. Information on how the impact, if any of the PWSF on a competitor's facility on the same property.

k. Information on whether it is feasible for carriers to locate base station equipment underground.

5. The applicant proposing to build a new PWSF shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new facility. 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 person wireless service providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Dunbarton and grounds for a denial.

6. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board may retain the services of a consultant qualified in personal wireless services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, 1 (g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full. The Planning Board shall act within 90 days if the proposal is for the construction of infrastructure at existing town locations and within 150 days for construction at new locations (i.e. sites with no previous towers or telecommunications infrastructure).

H. Bonding and Security Insurance

In recognition of the extremely hazardous situation presented by abandoned and unmonitored PWSFs, towers and antennas, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of such abandoned facilities in the event that such facility is abandoned and the owner thereof is incapable and unwilling to remove the facility in accordance with Paragraph J. The security provided shall include a provision that it may not be cancelled absent 120 days notice to the Town. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed PWSF, tower or antenna prior to the construction of such facilities.

I. Removal of Abandoned PWSFs

i. Any PWSF, tower or antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said facility provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (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 tower. If the abandoned PWSF, tower or antenna is not removed within ninety (90) days of the determination of abandonment, the Town may execute on the security posted in accordance with Paragraph I 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.

ii. Notwithstanding the provisions above, in the event the town receives notification that the security for removal posted under Section H above is to be cancelled, the Town may immediately notify the owner of the PWSF to physically remove all portions of the PWSF within thirty (30) days. The Town may revoke the notice to remove if adequate new security is provided.

iii. If the owner of the PWSF fails to physically remove all portions of the PWSF within the required time periods, the Town may execute the security to pay for this action.

iv. "Physically remove" shall include, but not be limited to the town components described above in Section F.5.

J. Requirement to Maintain Stealth Technology

Where stealth technology has been employed to reduce the aesthetic impact of a PWSF, said technology or camouflaging techniques must be maintained in perpetuity for the life of the PWSF. Failure to maintain said technology/techniques shall be considered abandonment and grounds for removal of said facility in accordance with Paragraphs I and J of this Ordinance.

ARTICLE 9. MULTI-FAMILY RESIDENTIAL HOUSING DISTRICT (MFD Overlay District)

A. PURPOSE

It is intended that this Article shall:

1. Permit an increased residential density in areas where transportation networks and proximity of services are more readily available to serve: a.) active, mobile residents and families, b.) elderly and or/disabled residents, and c.) the service and supply needs of more integrated and functionally compact communities.
2. Promote accessible open-space conservation that protects natural resources and continues the rural, countrified character of the Town.
3. Encourage and allow for on-site recreational uses consistent with appropriate and reasonable use of the land.
4. Facilitate the economical and efficient provision of public services.
5. Expand opportunities for development of affordable housing.

B. APPLICABILITY

The provisions of this section apply to all proposals for the construction of:

1. Three (3) or more dwelling units per building/structure on a single building lot;
2. More than one single-family dwelling building/structure, more than one two-family (duplex) building/structure, or any combination thereof, on a single building lot.

C. MULTI-FAMILY RESIDENTIAL HOUSING DISTRICT DEFINED. LOCATION OF DISTRICT.

The Multi-Family Residential Housing District (MFD) is defined as an overlay zone situated parallel to both sides of N.H. State Highway Routes 13 and 77, running the length and width of the Town to the respective Town borders of Weare, Bow, and Goffstown, and shall be configured to include all lots and parcels that provide, or are able to provide, direct, reasonable, and safe access to those highways, at the time of formal application for Site Plan Review.

D. PERMITTED USES.

1. Any other use permitted by the underlying zone or district insofar as it does not conflict with the requirements of this section.
2. Multi-family dwelling structures/buildings, including multiple dwelling structures on a single building lot.
3. The tract development and construction of more than one single-family dwelling, or more than one two-family (duplex) structure/building, or any combination thereof, on a single building lot.
4. For the purposes of this section "multi-family" shall pertain to and include so-called "elderly or adult communities," nursing home facilities, assisted living facilities, and boarding houses.
5. All accessory structures and uses, including recreation facilities, maintenance buildings, garages, storage units, rental offices, management offices, and all other

such uses and construction considered ancillary to multi-family residential development for the service and use of the residents therein.

E. REQUIREMENTS AND SPECIFIC PROVISIONS.

1. All provisions for multi-family construction shall be subject to Site Plan Review by the Planning Board, at duly noticed public hearings, and in accordance with Site Plan Review Regulations enacted for such uses.
2. Use and dimensional regulations shall be per the Use and Dimensional Regulations, Article 4, of this Ordinance. Note that dwelling unit acreage densities vary according to the respective underlying district; note that the maximum number of dwelling units per structure, in any district, is four units, with the exception of workforce housing projects which may have a maximum of five units per structure.
3. There shall be a minimum 100 ft. "no development, no build, no cut" buffer zone and set-back at side and rear-yard property lines that allows for screening opportunities to adjacent properties, to be determined per the Site Plan Review process.
4. There shall be a minimum 150 ft. setback at the front and/or access portion of the project, to all buildings and structures.
5. The Planning Board may increase setbacks based on conditions assessed per individual development proposals, during the Site Plan Review Process.
6. The access portion to the project, may constitute, in whole or part, a private or Town roadway; the primary use point of which shall have frontage on the aforementioned State Highway(s).

ARTICLE 10. FLOODPLAIN DEVELOPMENT ORDINANCE (Adopted March 14, 2000; Revised March 8, 2011 and March 13, 2012)

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

The following regulations in this ordinance shall apply to all lands designed as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the County of Merrimack, N.H dated April 19, 2010, or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010, or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

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

"Area of Special Flood Hazard" is the land in the floodplain within the Town of Dunbarton subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the FIRM.

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

"Basement" means any area of a building having its floor sub-grade on all sides.

"Building" - see "structure".

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

"FEMA" means the Federal Emergency Management Agency.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, and (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means an official map incorporation with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Dunbarton.

"Flood Insurance Study" (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

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

"Flood proofing" means any combination of structural and non-structural additions, 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.

"Floodway" - see "Regulatory Floodway".

"Functionally dependent use" means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

(a) Listed individually in the national Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national Register;

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

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

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

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

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

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

"Mean sea level," means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

"100 year flood" see "base flood"

"Recreational Vehicle" is defined as:

A. built on a single chassis;

B. 400 square feet or less when measured at the largest horizontal projection;

C. designed to be self propelled or permanently towable by a light duty truck; and

D. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

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

"Special flood hazard area" - see "Area of Special Flood Hazard"

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

"Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, construction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

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

"Substantial Improvement" means any combination of repairs; reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures, which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a **"historic structure".**

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Item V or Item VIII(2)(b) of this ordinance is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation," means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Item II.

This Ordinance shall be administered by the Building Inspector, Zoning Board of Adjustment and Planning Board as appropriate. All proposed development in any special flood hazard areas shall require a Building Permit as issued by the Building Inspector.

Item III.

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

(i) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

(ii) be constructed with materials resistant to flood damage,

(iii) be constructed by methods and practices that minimize flood damages,

(iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item IV.

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

Item V.

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

(i) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

(ii) If the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed.

(iii) Any certification of flood-proofing.

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

Item VI.

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334.

Item VII.

1. All proposals for development that encroach upon wetlands or wetland buffers, as described in Article 5, the Wetlands Conservation District, shall comply with the provisions of Article 5, the Wetlands Conservation District.

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

3. The applicant shall submit to the Building Inspector, Zoning Board of Adjustment and Planning Board, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

4. The Building Inspector, Zoning Board of Adjustment and Planning Board shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located Zone A meet the following floodway requirement:

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

Item VIII.

1. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in zone A that:

a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;

b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

(i) be flood-proofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

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

d. All recreational vehicles placed on sites within Zone A shall either:

(i) be on the site for fewer than 180 consecutive days;

(ii) be fully licensed and ready for highway use; or

(iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A 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.

Item IX. Variances and Appeals:

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

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

(a) that the variance will not result in increased flood heights, additional treats to public safety, or extraordinary public expense.

(b) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

(c) that the variance is the minimum necessary, considering the flood hazard, to afford relief.

3. The Zoning Board of adjustment shall notify the applicant in writing that: (I) the issuance of a variance to construct below the base flood level will result in creased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

4. The community shall (I) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE 11. WORKFORCE HOUSING ORDINANCE (Adopted March 8, 2011; Formatted March 13, 2012)

I. Purpose. The purposes of this Article are as follows:

A. To encourage and provide for the development of affordable workforce housing;

B. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households;

C. To meet the goals related to affordable housing provisions set forth in the town's Master Plan; and

D. To comply with the requirements of SB 342, An Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA674:58-61).

In the course of implementing this Article, the Town of Dunbarton has considered the region's affordable housing needs as described in the Central New Hampshire Regional Planning Commission's Housing Needs Assessment and relevant regional fair share analysis.

II. Authority. This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009 which states: "All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."

III. Applicability

A. The provisions of this ordinance will be in effect only when Dunbarton <u>does not</u> meet its regional "fair share" of workforce housing at the present time and for a projection of the next 24 months. During those times when Dunbarton <u>does</u> meet its regional "fair share" of workforce housing the provisions of this ordinance <u>will not</u> apply. A Housing Commission, or the Planning Board (or its designee) in the absence of a Housing Commission, will monitor and report regional housing trends to determine if Dunbarton meets its "fair share" of workforce housing for the region. The Central New Hampshire Regional Planning Commission Regional Housing Needs Assessment and any relevant methodology or documents will be consulted when determining if Dunbarton meets its "fair share" of the region's workforce housing needs.

No more than one application for workforce housing shall be made for a parcel of land in existence as single lot of record as of March 8, 2011. For the purpose of this paragraph a "lot of record" means a parcel of land that was separately described and delineated by

deed or on a locally approved subdivision plan recorded at the Merrimack County Registry of Deeds on or before March 8, 2011.

B. Development in accordance with the provisions of this Article shall comply with all Zoning Ordinance, Site Plan Review Regulations, and/or Subdivision Regulations, other than those standards relaxed under the provisions of this Article.

C. Development in accordance with the provisions of this Article is permitted as a conditional use in any part of town that permits residential uses.

D. Permitted Uses: Single family, duplexes, and accessory apartments are permitted within an application under this Article anywhere in town where residential uses are permitted. Multi-family (3 units or more, no more than 5 units per single structure), manufactured housing parks or a mix of housing types ("types" meaning construction, not income) within the same development are permitted within an application under this Article provided that such uses are permitted in the underlying zoning district(s). Please see Dunbarton Zoning Ordinance for the locations in town where multi-family housing, manufactured housing parks or a mix of housing types are permitted. Currently (as of March, 2011) multi-family units are permitted only along Routes 13 and 77. Multi-family workforce housing units shall be limited to the areas as stipulated by the Dunbarton Zoning Ordinance, now or as may be amended.

E. Appeal: Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

F. Applicability of Remainder of Article if Portions Overturned: If any clauses or provisions of the Article are found to be illegal, void or unenforceable, the remainder of the Article shall not be affected thereby.

IV. Procedural Requirements/ Applicant

A. Notice of Intent to Build Workforce Housing: Any person who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this Article shall file a written statement of such intent as part of the application for a Workforce Housing (WFH) Conditional Use Permit. In addition, a Site Plan Review and/or Subdivision Application must be filed as required by a specific project. A WFH Conditional Use Permit can be processed concurrently with a Site Plan Review Application and or Subdivision Application.

B. In any appeal where the applicant has failed to file the statement required by Section IV.A above, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

C. Conditional Use Permit Application (CUP): A complete application for a Conditional Use Permit includes the materials listed below ***in addition to an application for a site plan review and/or a subdivision, when applicable***. An application for a Conditional Use Permit can be processed concurrently with the application for a Site Plan Review and/or a Subdivision, as required for the specific project. All of the following must be met, in the opinion of the Planning Board, in order for a Conditional Use Permit to be granted for the construction of workforce housing under the provisions of this Article:

1. That the property in question is in conformance with the dimensional requirements of the zone as stipulated by this Article.

2. That the proposal meets the purposes of this Article under which the application is proposed.

3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Dunbarton.

4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances.

5. That the proposed use will not adversely affect the ground water resources of the Town of Dunbarton.

6. That the proposed use meets all applicable provisions of this Article.

Items required for a CUP include:

a. An application form as created by the Planning Board for such purposes.

b. A plot plan depicting the proposal.

c. The applicant shall file a written statement indicating the applicant's intent to develop land that is intended to qualify as Workforce Housing under RSA 674:58-61.

d. A written statement indicating whether the applicant prefers that the CUP and any required site plan or subdivision is processed by the Planning Board concurrently or sequentially.

e. List and mailing address of the abutters, the applicant and any easement holders on the property in question.

f. Fees for notifying abutters, the applicant and any easement holders.

7. All applicants under this Article must submit the following data to ensure project affordability:

a. Calculation of the number of workforce housing and market rate housing units provided under this Article and how it relates to its provisions, to include construction phasing, the number and timing of building permits required, and the number of additional units requested as per Section VII Density Bonus.

b. Description of each workforce housing unit's size, type, estimated sales price and other relevant data.

c. Builder's Agreement to comply with the Section X entitled Affordability of this Article.

d. All agreements established as part of section X.B Assurance of Continued Affordability of this Article.

e. List of required variances, Conditional Use Permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability.

f. Cost savings associated with any written waiver request to the application submittal requirements or the standards outlined in the Site Plan Review Regulations or the Subdivision Regulations. Such savings shall be depicted in relation to not granting said waiver request(s).

g. Two detailed pro formas depicting the costs of construction for the proposed development. One pro forma must show the itemized costs for the affordable units and the other the same for market-rate units.

8. Written requests for waivers from any of the application submittal requirements or standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.

9. Any other items that may be requested by the Planning Board.

V. Procedural Requirements/Planning Board

A. Approval Process: The Planning Board shall consider the Applicant's Conditional use Permit as stipulated in Section IV.C of this Article as well as the relevant Site or Subdivision Plan Application. The consideration of these two applications may be done concurrently at the request of the Applicant or sequentially. Such a request shall be in writing and part of the Conditional Use Permit application.

B. Notice of Conditions: If the Planning Board approves an application (to include any Site Plan and/or Subdivision applications, if required, in addition to the Conditional Use Permit) to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purposes of complying with the requirements of RSA 676:4 I(i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

C. Submission of evidence to establish cost of complying with conditions: Upon receiving notice of conditions and restrictions as described above, the applicant must submit evidence (i.e. updated pro forma per Section IV.C.7.g above per initial CUP submittal) to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the board, which shall not be less than 30 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the board may also receive and consider evidence from other sources including paid professional expertise whose cost shall be borne by the applicant. Such relief is not to be confused with Section D.a in the following paragraph.

D. Cost Relief: The board may affirm, alter, or rescind any or all of the conditions or restrictions of approval at such a meeting. Upon reasonable showing demonstrated by the applicant (as per Section V.C. above) that after considering all cost factors, affordable housing cannot be provided under the terms of the zoning ordinance, the Planning Board is authorized to consider relaxing or waiving, due to prohibitive costs that provide an impediment to affordability:

a) One or more provisions of the Town's Site Plan Regulations or Subdivision Regulations;

b) Zoning Ordinance interior road frontage requirements for individual lots; and,

c) The Planning Board shall also have the authority to reduce the vegetative buffer requirements from the original side property lines as outlined in Section IX.B of this Article if proven to be cost-prohibitive by the applicant.

E. Final decision: The board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the board, in which case it may issue its final decision any time after the expiration of the period. If the applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of the approval, the board may issue its final decision without further action under this paragraph.

F. Appeals: Any person who has filed the written notice and whose application is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the Superior Court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

VI. Definitions

A. Area Median Income (AMI): Means the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the community belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.

B. Affordable: Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that does not exceed 30 percent of the household's gross annual income.

C. Community Water System: A small community water system serving 10 or more households in accordance with ENV-WS 372.

D. Market-rate Housing: Means any units within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to the comparable real estate transactions.

E. Multi-family housing: Multi-family housing for the purposes of workforce housing, means a building or structure containing 3 units or more but no more than 5 units per single structure, each designed for occupancy by an individual household.

F. Reasonable and realistic opportunities for the development of workforce housing: Means Opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

G. Unit: Means a single unit of housing, rental or owner-occupied, for occupation by a single household.

H. Vegetative Buffer: Shall mean an area along property lines containing trees, shrubs and other natural vegetation that reasonably obstructs development from view of abutters.

I. Workforce housing/owner occupied: Means housing which is intended for sale and which is affordable to a household with an income of no more than 100% of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

J. Workforce housing/renter occupied: Means rental housing which is affordable to a household with an income of no more than 60% of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

VII. Density Bonus

Density for a proposed workforce housing project will be controlled by Table 1 below or, where stipulated, density will be determined by the underlining zoning density. Deductions for development constraints such as wetlands and steep slopes shall not be necessary provided there is adequate land for a well and proper septic loading. Every proposal for workforce housing shall provide adequate drinking water and waste provisions (town sewer and water or well and septic where no such utilities exist).

Every proposal for workforce housing will guarantee that at least 50% of the total units will be permanently reserved as workforce housing. A proposal for a single duplex on a single lot of record may not require site plan or subdivision approval but the remaining provisions of this Article shall apply. Table 1 indicates density incentives per type of use. Permitted uses and their locations are stipulated in sections III.D within this Article. All community water systems are subject to approval per RSA 485.8, as amended and ENV-Ws 372, as amended.

TABLE I

		Number of Units Permitted	
	Subject Parcel Acreage	**Detached Single Family***	**Attached Multi-Family**
Base Acreage	**Under 8.5 acres**	Underlying Zoning Density Shall Apply	Underlying Zoning Density Shall Apply
	8.5 Acres or Greater, Individual Water & Septic	1 unit per every 2 acres, 20 unit max	1 unit per every 1.5 acres, 20 unit max
	15 Acres or Greater, COMMUNITY Water & Septic	1 unit per every 1.5 acre, 20 unit max	1 unit per every 1.5 acres, 20 unit max

**Unit means a single unit of housing, rental or owner-occupied, for occupation by a single household.*

VIII. Frontage Relief Provisions

When appropriate to contribute to the affordability of a proposal, the Planning Board shall have the authority and discretion to determine and adjust proposed road frontage requirements for interior lots to be created within a cluster-type workforce housing development proposal on a case-by-case basis. Such a reduction in frontage shall only be granted by the Board when reduced frontage will directly contribute to a decrease in road length in a cluster-type development. This provision is not to be confused with, nor does it apply to any frontage requirements that may be required elsewhere pertaining to subject parcels before development of a workforce housing project; i.e. lot frontage requirements for lots before subdivision and/or development.

IX. General Requirements of Workforce Housing Units

A. Architectural compatibility of all units: The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market-rate dwellings of similar type, (i.e. affordable and market-rate multifamily units, affordable and market-rate single family homes) in the proposed development. The workforce housing units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from the market-rate units.

B. Buffers and Setbacks, Original Subject Parcel: Developments on lots larger than 8.5 acres will be set back 200 feet from the original property lines of the subject parcel and shall be adequately screened with vegetative buffers.

C. Setbacks for Individual Housing Lots Within Development: Individual housing lots shall maintain 50-foot setbacks at all property lines.

D. Phasing: The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units.

X. Affordability

A. Certification of Income Levels: To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of a workforce housing unit must satisfactorily demonstrate income eligibility to all parties administering this ordinance.

B. Assurance of Continued Affordability: Affordable units offered for sale and approved by the planning board as part of a subdivision or site plan and subject to RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Dunbarton. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town of Dunbarton lien is indexed over time at a rate equal to a consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the housing unit's fair market value, minus the adjusted lien value. The restrictive covenant and lien shall be in a form approved by the planning board. Workforce housing rental units (i) shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions; or (ii) shall be subject to affordability controls imposed by a state or federal governmental entity.

C. Documentation of restrictions: Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be documented on all plans filed with the town's Planning Board and with the Merrimack County Registry of Deeds.

XI. Administration, Compliance, and Monitoring

A. This Article shall be administered by the Planning Board.

B. Certificate of Occupancy: No certificate of occupancy shall be issued for a workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and the confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.

C. Ongoing responsibility for monitoring part X.A and B: *Certification of Income Levels* and *Compliance With Continued Affordability* of the resale and rental of workforce housing units shall be the responsibility of the organization(s) designated by the Board of Selectmen or, in the absence of an outside monitoring organization, the Dunbarton Planning Board or its designee. This Article shall grant the Board of Selectmen the authority to enter into agreement with said outside monitoring organizations. All costs for administering this subsection shall be borne by the applicant/buyer/seller/owner, as appropriate depending upon the type of application, or other appropriate party other than the Town of Dunbarton.

D. Annual Report: The owner of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of workforce housing units have been maintained in accordance with this Article. Such reports shall be submitted to the monitoring agent indicated in XI.C above or their designee and shall list the contract rent and occupant household incomes of all workforce housing units for the calendar year.

XII. Relationship to other ordinances and regulations

No portion of this ordinance shall nullify the provisions of any other town ordinance provisions which relate to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

XIII. Conflict

If any provisions of this ordinance are in conflict with the provisions of other ordinances, the more restrictive provisions shall apply, except for any provision dealing with affordability, in which the provisions of this ordinance shall apply.

ARTICLE 12. ADMINISTRATION (Formerly Article 11, revised March 13, 2012)

For the purposes of this Ordinance, the Dunbarton Board of Selectmen are hereby given the power to appoint a Building Inspector who shall perform the duties of his/her office as designated in the various provisions of the Ordinance and shall report all violations of said Ordinance to the Board. In the absence of a Building Inspector, the Board of Selectmen shall be given the Building Inspector's powers enumerated herein.

A. Administrative Officer

This Ordinance shall be administered by the Building Inspector under the direction of the Board of Selectmen. The Building Inspector shall have the authority to make inspections necessary to carry out his/her duties in the administration of this Ordinance. The Board of Selectmen shall be responsible for enforcement of this Ordinance.

The Building Inspector shall not approve an application or issue a building permit or certificate of occupancy for any purpose, except in compliance with the provisions of this Ordinance. (RSA 676:13)

B. Building Permit Procedure

1. **Applicability -** No building or structure shall be constructed, reconstructed, altered or relocated nor shall any excavation be commenced without a duly authorized building permit issued by such Building Inspector. (RSA 676:11)

2. **Prerequisite Approvals -** An applicant for building permit approval shall be responsible for providing certified verification of all requisite local, state and federal approvals prior to the issuance of said building permit.

3. **Application -** Application for a building permit shall be made on standard forms provided by the Building Inspector, which are available at the Town Offices during normal business hours.

4. **Exemptions -** No building permit shall be required under this Ordinance for work that is less than one thousand dollars (S1,000) in value or for structures with a maximum 100 square footage or less. ***

5. **Statue of Limitations -** Any work for which a building permit has been issued shall commence within six (6) months from the date of issuance or such permit shall be **considered null and void. Any work not completed within twelve (12) months of issuance of a permit requires an renewal permit without fee. ***

   *****Amended March 14, 2000**

6. **Pending Changes (RSA 676:12) -** The Building Inspector shall not issue an building permit where application for such permit is made after the first legal notice of proposed changes in the Zoning Ordinance has been posted pursuant to the provisions of RSA 675:7 if the proposed changes in the zoning ordinance would, if adopted, justify refusal of such a permit. After final action has been taken on the proposed changes in the zoning ordinance, the building inspector shall issue or refuse to issue a permit, which has been held in abeyance under this section pursuant to a final action taken by the Town Meeting.

C. Certificate of Occupancy

1. **Purpose -** The purpose of a certificate of occupancy is to give the Building Inspector a mechanism by which he/she can verify conformance to provisions of this Ordinance, the building permit and other requisite approvals related thereto.

2. **Applicability -** No person shall use or permit the use of any building, structure or premises or part thereof hereafter erected, relocated, altered, repaired, converted or extended until a certificate of occupancy is issued by the Building Inspector.

3. **Application -** Application for a certificate of occupancy shall be made on standard forms provided by the Building Inspector, which are available at the Town Offices during normal business hours.

D. Special Exceptions, Variances and Conditional Use Permits

Unless otherwise indicated by the Planning Board or Zoning Board as a condition of approval during the application approval process, Conditional Use Permits, Special Exceptions and Variances shall automatically expire two (2) years after the date of approval if at that time:

1. The conditions of approval have not been met; or
2. Any related state or local permit or approval is outstanding; or
3. The action authorized by the land use board(s) has not commenced.

E. Violations and Penalties

1. **Violations -** The Building Inspector shall serve a notice of violation and order to cease activity to any person, company, corporation or other association responsible for violating any provision of this Ordinance. Any person, company, corporation or other association who has been served with a notice and ceases any work or other activity shall not leave any structure or lot in such a condition as to be a hazard or menace to the public safety, health or general welfare (RSA 676:17).

2. **Prosecution of Violations -** If the notice of violation and order to cease activity is not complied with, the Building Inspector shall notify the Board of Selectmen whom may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful violation (RSA 676:15).

   a. Any violation of this Ordinance shall constitute a misdemeanor if a natural person, or a felony if any other person and shall be subject to a civil penalty not to exceed $100 for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the Town that he is in violation, whichever is earlier (RSA 676:17, I).

   b. In addition, if any successful legal action is brought by the Town to enforce by way of injunctive relief or otherwise, the Town may recover its out-of-pocket costs and reasonable attorney's fees actually expended in pursuing the legal action (RSA 676:17, II).

ARTICLE 13. SIGNS (Adopted March 8, 1966; Formatted March 12, 2012)

The following regulations govern the erection and placement of signs in the Town of Dunbarton, and shall govern all new signs placed in the Town after the date of adoption.

1. Definitions:

   Sign: Any structure, or part thereof, or device attached thereto, which displays or includes any letter, word, model device or representation, which is in the nature of an announcement, direction, or advertisement. For the purposes of this ordinance the word sign does not include street or traffic signs or warnings.

2. Regulations Governing Signs:

   All signs placed in the Town after the effective date of this ordinance shall conform to the following regulations:

   A. No sign shall be erected or maintained within a street right-of-way;
   B. No sign shall be placed in such a position as to endanger motor vehicle or pedestrian traffic or obscure or otherwise cause confusion with official street of highway signs or signals;
   C. Signs may be illuminated only by continuous indirect white light, with the light sources so placed that they will not constitute a hazard to street or highway driving by glaze, and so placed that lighting there-from does not directly shine into an adjacent residence;
   D. No sign shall exceed twenty-four (24) square feet in dimension;
   E. No more than three (3) signs are permitted on any single lot;
   F. Signs shall be constructed of durable materials and shall be maintained in good condition and repair;
   G. The above regulations shall not apply to signs and window posters that are displayed from within a building;
   H. Sign which direct attention to a business, commodity, service, or entertainment conducted, sold or offered elsewhere than on the land upon which it is located will be allowed by permit of the Board of Selectmen only. Such permits will be allowed only after application to the Selectmen. Such permits shall be renewable annually, one year from date of issuance.

3. Enforcement and Penalties:

This ordinance shall be enforced by the Board of Selectmen, which may delegate any of its duties or powers under this ordinance to one of its members.

Whoever violates any of the provisions of this ordinance shall be punished by a fine not exceeding five dollars for each day of such violation. It shall be the duty of the Selectmen to take all such action necessary to enforce the provisions of this ordinance.

Failure to renew an annual permit shall constitute a violation of this ordinance.

ARTICLE 14. TEMPORARY SIGNS (Adopted February 16, 2006; Formatted March 12, 2012)

At a meeting of the Board of Selectmen of the Town of Dunbarton, New Hampshire, held on February 16, 2006, the following Ordinance was adopted in accordance with 41:11 and 47:17 of the New Hampshire Revised Statutes Annotated or amendments thereto:

TEMPORARY SIGN REGULATIONS

1. Political signs shall be governed in accordance with RSA 664:17.

2. Signs offering property for sale or rent are permitted.

3. Temporary signs advertising a local or private function including yard sales, band concerts and the like are permitted.

4. Signs shall be placed not earlier than 4 weeks prior to the event and shall be removed within 7 days after the event.

5. Signs shall be placed only on the lot on which the use of the establishment being advertised by the sign is being conducted.

6. Off-premises signs are prohibited.

7. Violators will be subject to a fine not to exceed $1,000.00 for each violation.

8. Advertising for Dunbarton Town functions are exempt from this ordinance.

ARTICLE 15. ZONING BOARD OF ADJUSTMENT (Formerly Article 12, revised March 13, 2012)

A. Authority

In accordance with the requirements of RSA 673:1, IV, a Zoning Board of Adjustment is hereby established as part of this Ordinance.

B. Membership

The Zoning Board of Adjustment shall consist of five (5) regular members, one of whom may be a member of the Planning Board. Up to five (5) alternate members may be designated. All regular and alternate board members shall be appointed by the Board of Selectmen and shall be residents of the Town in order to be appointed (RSA 673:3).
The members of the Zoning Board of Adjustment shall elect a chairman and other officers from amongst themselves. The term of the chairman or any other officer shall be for one year. Both the chairman and officers shall be eligible for reelection.

C. Administrative Requirements

The Zoning Board of Adjustment shall adopt rules and regulations governing meetings, hearings, application procedures, fees and other matter for the proper functioning of the Board. The Board shall adopt its own rules of procedure and shall keep a record of its proceedings showing the vote, indicating such fact and shall keep records of its examinations and other official actions. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Board and become a matter of public record (RSA 676:1).

D. Powers and Duties

The Zoning Board of Adjustment shall have the following powers (RSA 674:33):

1. **Administrative Appeals -** Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance.

   a. For the purpose of an administrative appeal

   (1) **The "administrative officer"** means any official or board who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for enforcing the ordinance, and may include a building inspector, board of selectmen, or other official or board with such responsibility. (RSA 676:5-II (a)).

   (2) **A "decision of the administrative officer"** includes any decision involving construction, interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the ordinance, which is implicated in such enforcement proceedings. (RSA 676:5-II (b)).

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

c. The concurring vote of three (3) members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

2. Variances - Authorize, upon appeal in specific cases, pursuant to RSA 674-33, as amended and in accordance with applicable case law. The Board shall make and present findings of fact for each criteria and shall enter all its decisions of such findings in its records. Any conditions necessary to meet one or more of the foregoing standards may be attached to approval of a variance.

3. Special Exceptions (RSA 674:33) - Authorize special exceptions to the terms of the Ordinance for uses specifically identified in the Table of Uses. The Board may grant such special exceptions in appropriate cases and subject to appropriate conditions so as to be in harmony with the general purpose and intent of the Zoning Ordinance. In granting a special exception, the Board shall apply the following standards:

a. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas or other accessways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles or other materials.

b. No hazard will be caused to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

c. No creation of a traffic safety hazard or substantial traffic congestion in the vicinity of the proposed development.

d. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection and schools.

e. The proposed use will not result in the degradation of existing surface and groundwater water quality standards, nor will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection.

f. In addition to the standards specified above, special exceptions may be subject to appropriate conditions including the following: (RSA 674:33-IV)

(1) Front, side, or rear yards in excess of the minimum requirements of the Ordinance;

(2) Screening of the premises from the street or adjacent property by walls, fences, or other devices;

(3) Limitations on the size of buildings and other structures more stringent than minimum or maximum requirements of this Ordinance;

(4) Limitations on the number of occupants and methods and times of operation;

(5) Regulation of the design and location of access drives, sidewalks, and other traffic features;

(6) Location and amount of parking and loading spaces in excess of existing standards;

(7) Regulation of the number, size and lighting of signs in excess of existing standards.

4. Equitable Waiver of Dimensional Requirements (RSA 674:33-a):

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

E. Issuance of Decision.

I. The local land use board shall issue a final written decision, which either approves or disapproves an application for a local permit. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval.

II. Whenever a local land use board votes to approve or disapprove an application or deny a motion for rehearing, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefore, shall be placed on file in the board's office and shall be made available for public inspection with 144 hours of such vote. (RSA 676:3) ****(Adopted at March 11, 2003 Town Meeting)

ARTICLE 16. ADOPTION AND AMENDMENT PROCEDURES (Formerly Article 13, revised March 13, 2012)

This Ordinance shall be adopted and amended in accordance with the provisions of RSA 675:3 or RSA 675:4 as amended.

ARTICLE 17. SEPARABILITY (Formerly Article 14, revised March 13, 2012)

Should any provision of this Ordinance be declared invalid by a decision of a court of legal standing, said decision shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

ARTICLE 18. EFFECTIVE DATE (Formerly Article 15, revised March 13, 2012)

This Ordinance or subsequent amendment thereto shall take effect immediately upon passage and adoption by the Town Meeting.

TOWN CLERK'S CERTIFICATION OF RECORD

I hereby certify that this is a true copy from the record on file at this office.

Book: _____ **Page:**_____

Attest:

_____
Linda L. Landry, Dunbarton Town Clerk

Date Signed: _____

Dunbarton, New Hampshire **Seal:**