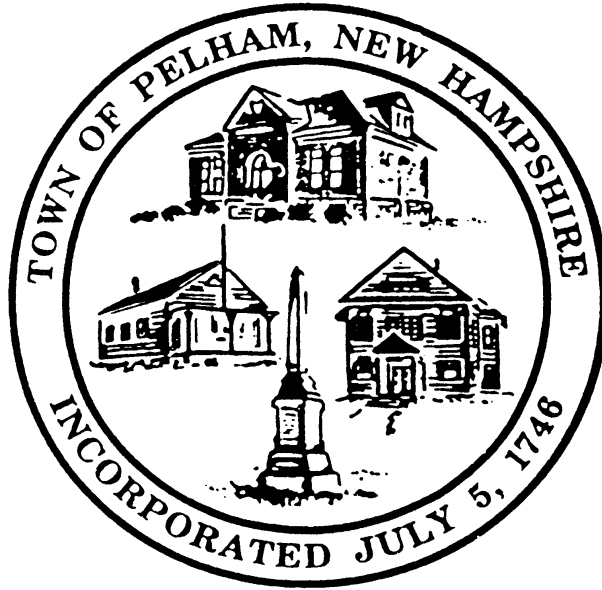


**TOWN OF PELHAM  
NEW HAMPSHIRE**



**ZONING ORDINANCE**

**(Adopted 1955 – Revised March 2009)**



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## ARTICLE I GENERAL PROVISIONS

### **307-1 Title**

This Ordinance shall be cited as "Code of the Town of Pelham, NH." It is hereinafter referred to as "this Ordinance."

### **307-2 Purpose**

The purpose of this Ordinance is to promote the health, safety and general welfare of the inhabitants of the Town of Pelham, New Hampshire by encouraging the most appropriate use of land throughout the Town and to:

- A. lessen congestion in streets;
- B. secure safety from fires, panic and other dangers;
- C. provide adequate light and air;
- D. prevent the overcrowding of land;
- E. avoid undue concentration of population;
- F. conserve property values;
- G. facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care, and housing opportunities for all family types and income levels; and
- H. assure the proper use of natural resources and other public requirements.

### **307-3 Authority**

This Ordinance is adopted pursuant to and in accordance with NH RSA 674:16 through 674:21, inclusive.

### **307-4 Adoption**

Originally adopted 1955 by ballot at a special Town Meeting.

## ARTICLE II DEFINITIONS

[Amended 1-5-60 by ballot by an STM, Art 1; Amended 6-20-73 by ballot by an STM, Art. 1; Amended by ballot ATM March, 1991; Amended by ballot ATM March, 1998; Amended by ballot March, 1999; Added 3-14-06 ATM by ballot, Art. 2, Amended by ballot ATM 3-11-08, Art. 4]

### 307-5 Word Usage and Interpretation

For the purposes of this Ordinance, certain words, terms or phrases shall bear the meaning given herein unless the context clearly indicates otherwise; and:

- A. words in the present tense include the future;
- B. the singular includes the plural and the plural includes the singular;
- C. terms and words not defined in this article but defined in the building code shall have the meanings given therein; and
- D. terms and words not defined in this article or in the building code shall have the meanings understood in common usage and as defined in standard American dictionaries.

### 307-6 Definitions

The following words have the following meanings for the purposes of this Ordinance.

1. **Aquifer**: refers to those areas shaded in blue on the United States Geological Survey Map entitled "Saturated Thickness, Transmissivity and Materials of Stratified-Drift Aquifers in the Nashua region, South Central New Hampshire" from the study Hydrogeology of Stratified Drift-Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South Central New Hampshire (1987) prepared by Kenneth W. Toppin, United States Geological Survey-Water Resources Investigations Report 86-4358, a copy of which is available for inspection at the Pelham Town Hall. [Added by ballot ATM March, 1991]
2. **Building**: any combination of materials, whether portable or fixed, having a roof, which form a structure for the shelter of persons, animals or property.
3. **Building, Accessory**: a detached building, the use of which is customarily incidental and subordinate to that of the principal building, and which is located on the same lot as that occupied by the principal building.
4. **Building, Area**: the aggregate of the maximum horizontal cross-section area of all buildings on a lot exclusive of cornices, eaves, gutters, chimneys, unenclosed porches, bay windows, balconies and terraces, expressed as a percentage of the total lot area.
5. **Building, Attached**: a building having any portion of one (1) or more walls in common with adjoining buildings.

6. **Building, Detached:** a building not sharing any walls or portions of any walls with adjoining buildings.
7. **Building, Height:** the vertical distance from the grade to the highest elevation of the roof of the highest story. [Added 6-20-73 by ballot by an STM, Art. 1]
8. **Building, Principal:** a building in which is conducted the principal use of the lot on which it is located.
9. **Dwelling Unit:** one (1) or more rooms arranged for living and sleeping purposes with cooking and sanitary facilities for the use of one (1) or more individuals living as a single housekeeping unit.
10. **Frontage:** the length of the lot bordering on the public right-of-way and serves as the access to the lot.
11. **High-Intensity Soil Survey (HISS):** a soils map of a parcel of land being considered for development on a perimeter survey, with a scale of one (1) inch equals fifty (50) feet, where soils are identified and mapped in accordance with the high-intensity soils mapping standards as adopted by the Hillsborough County Conservation District.
12. **Home Occupation:** an occupation conducted entirely within the dwelling unit or accessory structure of the resident property owner. It is clearly a secondary use of the property which does not adversely affect the residential character of the neighborhood. It is in compliance with the criteria established for home occupations.
13. **Home Produce and Products:** includes everything of an agriculture nature grown, produced, conditioned or otherwise carried on the property of the resident, also such articles as are manufactured or altered by members of the household of the bona fide resident of any property. [Added 1-5-60 by ballot by an STM, Art 1]
14. **Impact Fee:** Under RSA 674:21 V. a fee or assessment imposed upon a development, including subdivision of land, building construction or other land use activity, in order to help meet future needs that will be impacted by the development. Impact Fees are recommended by the CIP, approved by the Planning Board and established by the Board of Selectmen. [Added 3-14-06 ATM by ballot, Art. 2] The full Impact Fee enabling Ordinance is a stand alone document available from the Planning Department.
15. **Junk:** any old discarded metal, glass, paper, rubber, textiles, rubbish, trash or junked, dismantled, or wrecked motor vehicles or motor vehicle parts.
16. **Junk Yard:** an establishment or place of business which is used for storing, buying or selling junk but not including approved solid waste disposal facilities or registered motor vehicle dealerships.
17. **Junk Yard, Motor Vehicle:** any place of storage or deposit, whether in connection with another business or not, which has two (2) or more unregistered motor vehicles which are no longer fit for legal use on public highways or any combination of motor vehicle parts or materials, the sum of which is equal to or greater than two (2) or more motor vehicles.

18. **Manufactured Housing:** any structure transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site, is three-hundred and twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing does not include presite built housing as defined in subsection S below.
19. **Nonconforming Use:** a building, structure or use of land lawfully existing at the time of enactment of this chapter and which does not conform to the regulations of this chapter.
20. **Permanent Residents:** a family shall be considered “permanent residents” when they have used any building continuously as a residence for a period of six (6) months or more. [Added 1-5-60 by ballot by a STM, Art. 1]
21. **Presite Built Housing:** any structure designed primarily for residential occupancy which is wholly or on substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with 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. Presite built housing does not include manufactured housing as defined in subsection P above.
22. **Right-of-Way:** includes all town, state and federal highways and the land on either side of the same as covered by statutes to determine the width of the “right-of-ways”.
23. **Site Specific Soil Maps for New Hampshire and Vermont, SSSNNE Special Publication No. 3, June 1997:** the most current standards for site specific soil mapping in accordance with the standards of the National Cooperative Soil Survey and are consistent with the requirements of RSA 485-A, and NH Code of Administrative Rules ENV-Ws 1000. [Added by ballot March 99]
24. **Use, Accessory:** a use secondary and subordinate to the principal use of a structure or lot.
25. **Wetland:** a wetland is an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas. Wetlands shall be delineated by either a certified soil scientist or a professional wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1995. [Amended by ballot ATM March 1998]
26. **Yard, Front:** a space extending for the full width of a lot between the extreme front line of a building and the nearest side of the right-of-way.
27. **Yard, Rear:** the distance from the extreme rear of any building to the nearest point on any rear lot line.
28. **Yard, Side:** the distance from the extreme side of any building to the nearest point on any side lot line.

### **ARTICLE III**

### **GENERAL PROVISIONS**

[Amended 1-5-60 by ballot by an STM, Art.1; Amended 3-14-61 by ballot by the ATM, Art. 15; Added 6-20-73 by ballot by an STM, Art. 4; amended 12-5-73 by ballot by an STM, Art. 5: 3-12-85 by ballot by the ATM, Art. 5]

#### **307-7 Conformity Required**

No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations specified in this Ordinance for the district in which it is located.

#### **307-8 Nonconforming Uses**

Any nonconforming use may continue in its present use except that any nonconforming use of land or buildings may not be:

- A. Changed to another nonconforming use.
- B. Re-established after discontinuance for one (1) year, except to a conforming use.
- C. Extended.
- D. Rebuilt after damage exceeding fifty percent (50%) of its value.

#### **307-9 Number of buildings for dwellings per lot. [Added 3-14-61 by ballot by the ATM, Art. 15]**

There shall be constructed on each lot not more than one (1) building for dwelling purposes.

#### **307-10 Off-street parking and driveways. [Added 6-20-73 by ballot by an STM, Art. 4; amended 12-5-73 by ballot by an STM, Art. 5: 3-12-85 by ballot by the ATM, Art. 5]**

- A. One- and two- family dwellings shall have two (2) off-street parking spaces for each dwelling unit, plus sufficient off-street parking for visitors and service vehicles.
- B. All other land uses, other than land used for one- and two-family dwellings, shall provide for adequate paved off-street parking to meet the particularized need of the specific land use. It shall be the duty of the Pelham Planning Board, in the exercise of its nonresidential site review authority granted by RSA 674:43 and 674:44, to adopt site plan review regulations setting forth specific driveway, loading area and parking space requirements for all land uses other than one- and two-family dwellings. These regulations may provide for conditional, contingent, standby, future and phased parking area construction.
- C. Driveway permits shall be obtained from the Planning Board or its designated agent for all new or relocation driveways that enter onto Class V or Class VI streets.

#### **307-11 Ruins to be removed [Added 1-5-60 by ballot by an STM, Art.1]**

No owner or occupant of buildings in any district shall permit a fire or other ruins to be left but shall remove the same within one (1) year.

**307-12 Dimensional Requirements**

The following dimensional requirements apply to all buildings related or accessory to the uses identified in Table 1, unless otherwise indicated, except that:

- A. All buildings for uses not indicated in Table 1, below, that are located within the residential district shall conform to the minimum requirements for single-family dwellings;
- B. All buildings for uses not indicated in Table 1, below, that are located within a business district shall conform to the minimum requirements for commercial uses;
- C. All buildings for uses not indicated in Table 1, below, that are located within an industrial district shall conform to the minimum requirements for industrial uses, and
- D. All buildings for uses not indicated in Table 1, below, that are located within in any other district shall conform to the minimum requirements for single-family dwellings unless otherwise indicated.
- E. Garages, decks, and sheds and other accessory uses to single and two-family dwellings shall be setback a minimum of thirty (30) feet to the front yard and fifteen (15) feet to the side and rear yards. Sheds used for garden tools and yard equipment whose external dimensions total one hundred (100) square feet or less in area and are not more than eight (8) feet in height, shall be exempt from this regulation. This section shall not apply to home occupations under the residential zone. Setbacks for home occupations shall adhere to Section 307-12 of the Zoning Ordinance.

**TABLE 1 - Table of Dimensional Requirements** [Amended 3-29-06 to include Senior and Elderly housing requirements and setbacks for properties abutting cemeteries per NH RSAs]

	Minimum Lot Size (sq. ft.)	Frontage	Building Setbacks		
			Front	Side	Rear
Single-Family Dwelling	43,560	200'	30'	15' <sup>****</sup>	15' <sup>****</sup>
Two-Family Dwelling	87,120	200'	30'	15' <sup>****</sup>	15' <sup>****</sup>
Multi-Family Dwelling	130,680*	200'	40' <sup>**</sup>	30' <sup>**</sup>	30' <sup>**</sup>
Senior & Elderly Developments	217,800 <sup>***</sup>	50'	30'	30'	30'
Commercial Uses	60,000	200'	40' <sup>**</sup>	30' <sup>**</sup>	30' <sup>**</sup>
Industrial Uses	87,120	200'	40' <sup>**</sup>	30' <sup>**</sup>	30' <sup>**</sup>

\* Multi-family dwellings shall have an additional 10,000 sq. ft. of lot area for each bedroom in excess of ten.

\*\* There shall be between the nearest right-of-way and the extreme front of all buildings, other than single- or two-family dwellings, a distance equal to not less than three (3) times the height of the building, but not less than forty (40) feet for all buildings other than single- or two-family dwellings, there shall be provided side yard and rear yard setbacks of not less than two (2) times the height of the building, but not less than thirty (30) feet.

\*\*\* Senior & Elderly Housing developments must have at least five (5) acres of contiguous, non-wetland area.

\*\*\*\* NH RSA 289:3 stipulates that setbacks from structures/excavation to cemetery boundaries shall be a minimum of 25 feet because Pelham's zoning does not specify setbacks to cemeteries.

### **307-13 Additional Lot Size and Street Access Requirements**

[Added 3-4-75 by ballot by the ATM, Art. 4; amended 3/95 ATM; Amended March 8, 2005 ATM; Amended March 13, 2007 ATM, Art. 2]

The intent is to provide for an area that accommodates the building site including all utilities, water supply, sewage disposal for on-site septic tanks and leach fields, drainage retention, slope stabilization and safe lot access. This rea shall include both a primary and an alternate leach field location. [Amended ATM March 13, 2007]

#### A. Lot Size requirements

In addition to meeting the minimum lot size Area Requirements of Section 307-12 of the Pelham Zoning Ordinance, every new single-family lot approved by the Planning Board, **after the effective date of this amendment**, shall contain a 35,000 contiguous square feet non-wetland area. Every new two-family lot approved by the Planning Board, **after the effective date of this amendment**, shall contain 55,000 contiguous square feet of non-wetland area. WCD set back areas may be counted in the computation of the 35,000 and 55,000 square feet requirements. The following land **shall not** be counted in the computation of the required minimum 35,000 and 55,000 contiguous square feet non-wetland area requirements: [Amended ATM March 13, 2007]

1. Land areas containing poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont or such subsequent version as adopted by the Planning Board. [Amended ATM March 13, 2007]
2. Land areas having a pre-existing naturally occurring slope in excess of twenty percent (20%). [Amended ATM March 13, 2007]
3. Land areas located within Recreation, Conservation and Agricultural Districts. [Amended ATM March 13, 2007]
4. Land areas located outside the geographic boundaries of the Town of Pelham. [Amended ATM March 13, 2007]
5. Land areas that would be flooded by the 100 year flood as defined by Flood Insurance Maps prepared by the Federal Flood Insurance Administration. [Added by ballot ATM March 13, 2007]
6. Land areas located within any high-tension electricity or high-pressure gas utility line easement (areas located on opposite sides of any high-tension electrical easement shall not be considered contiguous for the purposes of this section). [Added by ballot ATM March 13, 2007]
7. Land areas wherein ledge and bedrock are not covered with a minimum of at least two feet of pre-existing naturally occurring non-wetland soils (soils not classified as poorly drained or very poorly drained soils as defined by Site Specific Soils Mapping Standards for New Hampshire and Vermont) unless contradicting evidence is provided by the engineer. This 2

foot requirement is intended to minimize erosion and land slides by absorbing and slowing runoff. [Added by ballot ATM March 13, 2007]

B. Street Access Requirements: [Added by ballot ATM March 13, 2007]

1. All one and two family lots approved by the Pelham Planning Board, **after the effective date of this amendment**, must have 200 continuous feet of frontage on either a State of New Hampshire maintained highway or a Town of Pelham Class V or higher street(s) that was in existence on March 14, 2007, or on a new street(s) approved by the Planning Board and accepted by the Town of Pelham after March 13, 2007, but only if the new street(s) is directly accessible to police, fire, medical emergency and school transportation vehicles, without those vehicles first having to leave the corporate limits of the Town of Pelham.
2. The Planning Board shall not approve any new subdivision street or any senior or elderly housing complex driveway, if the new street or driveway would not be directly accessible to police, fire, medical emergency or school transportation vehicles without those vehicles first having to leave the corporate limits of the Town of Pelham.

C. Application: [Added by ballot ATM March 13, 2007]

The changes to the Pelham Zoning Ordinance approved by the 2007 Annual Town Meeting Hall only apply to new lots approved by the Planning Board after the statutory effective date of the changes.

**307-14 Frontage** [Amended March 9, 2004 ATM]

All lots, except those for the use of industrial buildings, shall have at least two hundred (200) feet of contiguous frontage on a public right-of-way. Lots for the use of industrial buildings may have at least two hundred (200) feet of frontage on a clearly defined, fifty-foot-wide privately owned right-of-way in lieu of frontage on a public right-of-way. Whenever a lot for the use of an industrial building has its frontage on a privately owned right-of-way, all setback lines will be measured from the edge of the privately owned right-of way.

**ARTICLE IV  
ESTABLISHMENT OF DISTRICTS**

**307-15 Districts Designated**

For the purposes of this Ordinance, the Town of Pelham is divided into the following districts as shown and defined on the Official Zoning Map.

**A. General Districts [Amended March 10, 2009 ATM, Art. 3]**

<u>Full District Name</u>	<u>Short District Name</u>
Residential District.....	R
Business District No. One.....	B-1
Business District No. Two.....	B-2
Business District No. Three.....	B-3
Business District No. Four.....	B-4
Business District No. Five.....	B-5
Industrial District No. One.....	I-1
Industrial District No. Two.....	I-2
Industrial District No. Three.....	I-3
Rural.....	Ru
Recreation-Conservation-Agricultural Districts.....	RCA

**B. Overlay Districts**

<u>Full District Name</u>	<u>Short District Name</u>
Aquifer Conservation District.....	ACD
Wetlands Conservation District.....	WCD
Floodplain Conservation District.....	FCD

**307-16 Districts Defined**

A. Residential --- (R): The R district is established to provide for the development of single and two-family (duplex) residences and customary accessory uses and structures and complimentary nonresidential uses within a rural/residential environment. The district is intended to provide a diversity of housing types, community facilities, recreational uses and other related uses while protecting the town's rural character and natural resource base.

B. Business --- (B-1, B-2, B-3 & B-4): The B districts are established to provide opportunities for the development of general retail and wholesale commercial uses, services, office uses, apartments and customary accessory uses and structures in a manner compatible with the rural /residential character of the town.

Business --- (B-5): The B-5 district is intended for businesses such as professional office space, banks, medical services, educational facilities, health clubs, recreation facilities, family entertainment, retail shopping, grocery stores and eating and drinking establishments with consumption limited to the premises. Businesses prohibited from this district include new or used

car dealerships, junk yards, gas stations, car washes, fast food restaurants with drive through windows and single tenant "Big Box" retail buildings that exceed 75,000 square feet. Additionally, no structure shall exceed forty (40) feet in height excluding chimneys and other accessory structures not intended for human occupancy. [Added by ballot March 10, 2009 ATM, Art. 3]

- C. Industrial --- (I-1, I-2 & I-3): The I districts are established to provide for light industrial development, warehousing, limited business and commercial uses and customary accessory uses and structures. The district is intended to be nonresidential in character.
- D. Rural --- (Ru): The Ru district is designed to provide for and encompass a wide diversity of land uses. All uses permitted in the other districts are permitted in the Ru district.
- E. Recreation-Conservation-Agricultural (RCA 1-7): RCA districts are intended to protect important natural resources such as prime wetlands from potentially adverse impacts related to incompatible development and to protect and provide opportunities for the continuation of traditional rural land uses related to agriculture, recreation and conservation.
- F. Aquifer Conservation District (ACD): The ACD is an overlay district intended to protect Pelham's groundwater resources from pollutants generated by inappropriate land uses in order to protect the town's existing and future water supply.
- G. Wetlands - (WCD): The Wetlands Conservation district is an overlay district which is established to protect surface and groundwater resources, wildlife habitats and to preserve natural drainage patterns and flood water storage areas. The district strictly limits land uses and construction activities which are otherwise permitted in the underlying districts.
- H. Floodplain Conservation District (FCD): The FCD is an overlay district intended to minimize the dangers of flooding to life and property by strictly limiting and controlling development within designated floodplain areas.

### **307-17 Zoning District Boundaries**

Where appropriate and unless otherwise indicated, zoning district boundaries shown on the zoning map are the center lines of streets, railroads and power line rights-of-way, the middle of the channel of waterways or other water bodies, or the Town Line. Any boundary within ten (10) feet of a property line is considered to coincide with such property line. Where no distance is stated on the Zoning map, the distance is to be determined by the scale on the Map. In any instance where there is doubt as to the location of a zoning district, the Zoning Board of Adjustment (ZBA) shall determine the location of such boundary consistent with the intent of this Ordinance and the Zoning Map.

**ARTICLE V  
PERMITTED USES**

[Amended ATM March 1999; Amended ATM 3-14-06; Amended ATM 3-13-07, Art. 3, Amended ATM 3-10-09, Art. 3, Amended ATM 3-10-09, Art. 3 ]

**307-18 Principal Permitted Uses**

Only the following principal uses are permitted.

**TABLE 2**

Uses	R	B(1-4)	B(5)	I	Ru	RCA
Single-family dwellings	P	P	P		P	
Two-family dwellings	P	P	P		P	
Multi-family dwellings		P	P			
Accessory Dwelling Units	S	S	S		S	
Elderly Housing	P	P	P		P	
Agricultural Uses	P	P	P	P	P	P
Truck Trailers or Container pods <b>[Added by ballot ATM March 13, 2007]</b>		P	P	P		
Automotive Repair Facilities <b>[Added by ballot ATM March 13, 2007]</b>		P	P	P		
Home Occupations	S	S	S		S	
Fraternal organizations & membership clubs	S*	P	P	P	P	
Churches and other places of worship	S	P	P	P	P	
Public or private primary, secondary, business or trade schools, colleges, preschools and daycare centers	S	P	P	P	P	
Hospitals and clinics	S	P	P	P	P	
Country clubs, hunting, fishing swimming, tennis or golf clubs.	S	P	P	P	P	P
Convalescent or nursing homes	S	P	P	S	P	
Health, fitness or athletic membership club		P	P	P	P	
General retail or wholesale trade		P	P	P	P	
Food & Beverage service establishments		P	P***	P	P	
Hotels, motels, inns, rooming houses or tourist cabins		P	P	P	P	
Establishments selling new boats, trailers, aircraft, and related products		P	P	P	P	
Establishments selling new or used (retail) automobiles		P*				
Business & professional offices		P	P	P	P	
Theaters & cinemas		P	P	P	P	
Banquet & function halls		P	P	P	P	
Commercial recreation such as bowling alleys, video arcades, or miniature golf		P	P	P	P	
Light industry & manufacturing				P		
Warehousing				P		
Private Utility Structures; i.e. windmills, watermills, free-standing solar collectors, etc. that generate power for use on same site <b>[Added 3-14-06 by ballot at ATM, Art. 3]</b>	P**	P**	P**	P**	P**	P**
Junkyards and solid waste disposal facilities					S	

P = Permitted Use

P\* = Permitted Use as defined and delineated in Section 307-19D, and reflected in the Town Zoning Map.

P\*\* = Permitted Use with Planning Board Site Plan Approval, all applicable safety inspections as deemed appropriate by the Planning Board and proper licensing by applicable state and federal agencies **[Added 3-14-06 ATM, Art. 3]**

P\*\*\* = Permitted Use as defined and delineated in Section 307-16 **[Added ATM 3-11-09, Art. 3]**

S = Permitted by special exception only

S\* = as defined by RSA 72:23-a, tax exempt veterans organizations by special exception in the Residential District.

**307-19 Permitted Uses -- Special Conditions**

- A. Accessory Uses & Structures Accessory uses and structures, including garages, tool sheds, parking areas, recreational facilities and other uses that are customary, secondary and incidental to any permitted principal use are permitted in any district within which the principal use is permitted unless otherwise restricted.
- B. Noxious, Hazardous or Offensive Uses No use that is noxious, hazardous or offensive due to the emission or generation of measurable or discernible levels of noise, smoke, odor, vibration, dust or gas shall be permitted in any district.
- C. Additional Requirements for RCA Districts The following use restrictions apply only to the RCA districts.
1. Open space as required by Subdivision Regulations is permitted, but no land area in these districts may be used to satisfy minimum lot requirements.
  2. Streets, roads and other accessways and utility right-of-way easements, including power lines and pipelines if essential to the productive use of land not in these districts are permitted, if so located and constructed as to minimize the detrimental import of such uses upon these districts and if a special exception therefore is granted by the Board of Adjustment.
  3. No residences of any kind and no buildings or structures not necessary to the above uses are permitted.
  4. No loam, sand, rock, clay, gravel, fill or other soil shall be removed from these districts.
- D. Additional Requirements for New and Used (Retail) Auto Dealerships. New and used (retail) car dealerships are not permitted in Business District No. 5 but shall be permitted in Business Districts No. 3 and 4, and Business Districts No. 1 and 2 from the most southerly intersection of Pulpit Rock Road and Route 38 to the intersections of Atwood Road and Old Bridge Street. No new or used (retail) car dealership in the above cited permitted districts may be located closer than two-thousand (2,000) linear feet of frontage between or adjacent to any other new or used car dealership. For the purposes of this sub-section, "new or used (retail) auto dealership" means that portion of a lot or structure devoted in whole or part to: **[Amended ATM 3-11-09, Art. 3]**
1. The sale of two (2) or more used automobiles;
  2. The display of two (2) or more used automobiles for the purpose of sale;
  3. All new or used (retail) dealerships will be in conformance with all applicable local and state regulations. **[Added by ballot ATM March 1998]**

### **307-20 Sexually Oriented Businesses**

It is the purpose of this Article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Pelham; and, it is the intent to promote the health, safety and general welfare of the citizens of the Town of Pelham, and it is the intent of this Article that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and, the provisions of this amendment have neither the purpose nor the effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended markets; and neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

### **307-21 Definitions**

A sexually oriented business is any place of business at which any of the following activities is conducted:

- A. Adult Bookstore or Adult Video Store: A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:
  - 1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROM's or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or,
  - 2. Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1, other than birth control devices. An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals.
- B. Adult Motion Picture Theater: An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B: 1, for observation by patrons. For subsections C, D, E, F, and G, a "substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.
- C. Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which means the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

- D. Adult Drive-In Theater: An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct as set forth in RSA 571-B:1."
- E. Adult Cabaret: A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of materials which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
- F. Adult Motel: A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
- G. Adult Theater: A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B: 1.
- H. Nude Model Studio: A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
- I. Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: (A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (B) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (A) or (B) is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

### **307-22 Allowed Locations and Location Restrictions of Sexually Oriented Businesses**

Sexually Oriented Businesses, as defined above shall be permitted only in the business and industrial districts provided that all other regulations, requirements and restrictions for the zone in which the sexually oriented business is to be located are met; and, no sexually oriented business shall be permitted within 1000 feet of another existing sexually oriented business or one for which a building permit has been applied for; and, no sexually oriented business shall be permitted within 750 feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten,

State approved day care center or public sports/recreation parks; and no sexually oriented business shall be permitted within 750 feet of the Town boundaries; and no sexually oriented businesses shall be permitted within 1000 feet of another existing sexually oriented business on the date of the passage of this amendment; and, no sexually oriented business shall be permitted within a building, premise, structure, or other facility that contains a sexually oriented business as defined in paragraphs A through I above.

**307-23 Measure of Distance**

The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between of each business.

**307-24 Additional Reasonable Regulations**

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics in the "Site Plan Review Regulations of the Town of Pelham, New Hampshire," and to avoid site development layout which may result in negative environmental impacts.

**307-25 Severability**

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

## **ARTICLE VI** **AQUIFER CONSERVATION DISTRICT**

[Added 3-12-85 by ballot by the ATM, Art. 8; Amended March 8, 2005 ATM]

### **307-26 Conflicting Provisions**

In cases of conflict between permitted uses of this district and permitted uses defined elsewhere in this chapter (see definitions section), the more restrictive use shall apply.

### **307-27 Permitted Uses**

Only the following uses are permitted in the Aquifer Conservation Districts subject to all other pertinent Zoning Ordinances of the Town of Pelham:

- A. Industrial or business uses in the Industrial District, which discharge no hazardous or toxic wastes on the site and which uses are nonpolluting.
- B. Business uses in the Business District which discharge no hazardous or toxic wastes on the site and which uses are nonpolluting.
- C. Residential uses as permitted in the Residential Districts.
- D. All uses permitted in the Rural District except junkyards, dumps, demolition disposal sites and sanitary landfills.
- E. All uses permitted in the Recreation-Conservation-Agricultural Districts, provided that hazardous materials are used in a safe and recommended manner.
- F. Any activity designed for conservation of soil, water, plants and wildlife.
- G. Outdoor recreational activities except those which destroy the surfaces of hillsides or other watershed areas.
- H. Operation and maintenance of existing bodies of water, wells, dams or other conservation devices.
- I. Forestry uses provided that the land is returned to its natural state in order to prevent loss of topsoil or erosion or alteration of the normal drainage patterns and flow.

### **307-28 Prohibited Uses**

Prohibited uses in the Aquifer Conservation District include all other uses not permitted under this section. Prohibited uses specifically include:

- A. Outdoor storage of road salt or other piercing chemicals and dumping of snow containing road salt or other piercing chemicals.

- B. Solid and liquid waste disposal sites, including but not limited to demolition sites and lagoons.
- C. Septage disposal sites and lagoons.
- D. Automotive service and repair shops, junkyards, automotive junkyards and automotive salvage operations, as well as any similar use which might potentially affect water quality.
- E. On-site storage of hazardous waste or toxic materials except temporarily as necessary in the ordinary course of business. A permit from the Pelham Planning Board is required for such temporary storage.
- F. Subsurface storage of petroleum and other refined petroleum products except with suitable secondary barriers and automatic alarm systems.
- G. Industrial uses which discharge contact-type process waters on the site. Noncontact cooling water is permitted.
- H. Excavation of sand or gravel except as such use is conducted in accordance with an approved earth-removal permits being issued by the Pelham Planning Board.
- I. Bulk storage of toxic material for resale or distribution.
- J. No individual, company, or entity shall cause to remove from the Town's above ground water resources or below ground aquifers more than 1000 gallons of water per day, unless said water is for the purpose of redistributing that water to the landowners of Pelham. [Amended March 8, 2005 ATM]

### **307-29 Waste Water Disposal**

Sanitary wastewater discharge to septic and leaching systems shall conform to the regulations set forth in the Town of Pelham health regulations.

### **307-30 Water Supply and Wells**

Monitoring wells shall be established for all industrial and commercial uses utilizing or storing hazardous or toxic materials. The number, construction and location of these wells shall be determined by the Pelham Planning Board. The checking of wells shall take place on a monthly basis by the Board of Health.

### **307-31 Potential Contaminants**

Use of pesticides, herbicides, fertilizers, manure and other potentially dangerous leachables shall be controlled in a manner determined by the Board of Health and in compliance with RSA 149 D: 222, and the New Hampshire Code of Administrative Rules. Storage of these materials shall not be outdoors.

### **307-32 District Boundaries**

When the precise limits of the Aquifer Conservation District are disputed by an owner or an abutter affected by this section, the Planning Board, at the complainant's expense and authorization, may

engage a professional geologist or hydrogeologist to determine the precise location of the Aquifer Conservation District boundaries on the properties affected. A report of the findings shall be submitted to the Pelham Planning Board and shall include but not be limited to:

- A. A revised Soil Map of the area in question prepared by a soil scientist qualified in hydrologic studies along with a written report of the on-site inspection and test-boring data.
- B. The Planning Board shall define the boundary of this district based on the evidence provided as set forth above. The Planning Board shall reserve the right to withhold action on any plan pending the results of an on-site inspection by the Board or its appointed agent and shall act to approve or disapprove the plan within ninety (90) days of submission or such further time as deemed necessary, but not to exceed an additional ninety (90) days.

### **307-33 Planning Board Review**

All subdivision proposals and proposed nonresidential site development within the Aquifer Conservation District shall be reviewed by the Pelham Planning Board and shall conform to the provisions of this chapter, Chapter 248, Site Plan Review; and Chapter 260, Subdivision of Land of the Code of the Town of Pelham and further shall assure that:

- A. All such proposals are consistent with the need to protect the groundwater of the Town of Pelham and adjacent communities.
- B. All sanitary sewer systems are designed to minimize or eliminate leakage or discharges from the system into the groundwater.
- C. On-site waste disposal systems are located so as to avoid or minimize groundwater contamination.
- D. Written approval by the Pelham Planning Board or Board of Health and the State of New Hampshire Water Supply and Pollution Control Commission has been obtained and granted for septic design.

### **307-34 Enforcement**

The Town Building Inspector and the Board of Health shall be responsible for the enforcement of this section. The Building Inspector is authorized to issue cease-and-desist orders wherever he becomes aware of violations of this section.

### **307-35 Nonconformity**

Nonconforming uses which exist at the time of the adoption of this section may continue unless that use is found to pose a direct hazard to the aquifer creating an imminent danger to the public health, safety and welfare. An imminent danger shall exist if any foreign substances (oils, salts, chemicals, hazardous waste, toxic water, etc.) are being introduced into the aquifer. In such cases, the Building Inspector shall issue an immediate cease-and-desist order to stop the offending activity. The offending

use must be brought into conformance with this section in a timely fashion as determined by the Board of Health.

**307-36 Guidelines for Enforcement**

The Board of Selectmen, the Board of Health, the Planning Board, the Board of Adjustment and the Building Inspector, when enforcing and administering this section, shall be guided by the following: The Town of Pelham believes that an adequate water supply is indispensable to the health, welfare and safety of its citizens now and in future years. Adequate supply is seen as essential to the maintenance of the ecological balance of the natural environment of the town. In order to protect this delicate environment which is subject to an ever increasing demand for new and competing uses, the town declares and determines that such water resources, whether occurring above or below ground, constitutes a precious, finite and invaluable public resource. These resources must be protected, conserved and managed in the interest of present and future generations. The intent of this section is to provide for the protection of the water resources from contamination.

**ARTICLE VII  
WETLANDS CONSERVATION DISTRICT**

[Amended ATM 1991; Amended March 1994 by ATM ; Amended ATM 1999; Amended March 8, 2005]

**307-37 Purpose and Intent**

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

- A. Prevent the development of structures and land uses on naturally occurring or compensatory wetlands which will contribute to pollution of surface and ground water by sewage or toxic substances.
- B. Prevent the destruction of or significant changes to, natural or compensatory wetlands which provide flood protection.
- C. Protect unique and unusual natural areas.
- D. Protect wildlife habitats and maintain ecological balances.
- E. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas.
- F. Prevent expenditure of municipal funds 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.
- G. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.

The Wetlands Conservation District is an overlay district which is hereby determined to be wetland areas of 2,000 square feet or more in size, or of any size if contiguous to surface waters such as lakes, ponds and streams, subjected to high water tables for extended periods of time, and all areas within fifty (50) feet of the edge of any wetlands, perennial stream or surface water body. [Amended March 1994 by ATM]

**307-38 Wetlands Incorrectly Delineated**

Where it is alleged that an area has been incorrectly delineated as a wetland, or that an area not so designated meets the criteria for wetlands designation, the soil scientist shall determine whether the area has been correctly delineated.

The Conservation Commission shall make their judgment under this section only upon the determination by a qualified soil scientist(s) and/or plant scientist(s) suitable research, that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist(s) to the Conservation Commission. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

Once an area has been determined to be a wetland under this section that area shall become part of the Wetland Conservation District.

### **307-39 Permitted Uses**

Permitted uses are those specific uses which will not require the erection or construction of any structures or buildings, will not result in a major alteration of the natural surface configuration by the addition of fill or by dredging and uses that otherwise are permitted by this zoning ordinance.

Permitted uses are specifically restricted to the following:

- A. forestry-tree farming, using best management practices in order to protect streams from damage and to prevent sedimentation, excluding access roads across wetlands and streams;
- B. the cultivation and harvesting of crops according to recognized soil conservation practices;
- C. wildlife refuges;
- D. parks and recreation uses consistent with the purpose and intent of this ordinance;
- E. conservation areas and nature trails;
- F. open spaces as permitted or required by the subdivision regulations or the zoning ordinance.

### **307-40 Special Permit**

- A. Special permit may be granted by the Planning Board, after proper public notice and public hearing, for undertaking the following uses in the Wetlands Conservation District when the application has been referred to the Conservation Commission, Licensed N.H. Soil Scientist/Wetland Scientist who shall act as a consultant to the Planning Board in its review of this application, and to the Health Officer for review and comment at least twenty (20) days prior to the hearing. [Amended March 8, 2005 ATM]
  - 1. Streets, roads and other access ways, wells, and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetland.
  - 2. Water impoundments for fire protection or drainage.
- B. Special permit for uses within the Wetlands Conservation District may be granted provided that the following conditions are met, the burden of proof for which shall be upon the applicant who shall furnish such engineering and hydrological data as is reasonably necessary;
  - 1. that the proposed use, construction and/or alteration shall be constructed in such a way that does not unduly restrict the flow of water.
  - 2. that written comment is provided from the Conservation Commission, and if deemed necessary by the Conservation Commission, written comment from the Hillsborough

County Soil Conservation Service and/or the New Hampshire Wetlands Board.  
[Amended March 9, 2004 ATM]

**307-41 Special Provisions** [Amended ATM 1991; amended ATM 1999; amended March 8, 2005 ATM]

- A. Residential and commercial septic leachfields must be setback from Wetland Conservation District areas the following distances:
  - 1. Poorly Drained Soils - 25 feet
  - 2. Very Poorly Drained Soils - 50 feet
  - 3. Ponds, streams and year-round brooks - 75 feet
- B. No building or structure may be located within a Wetland Conservation District area.
- C. No individual, company, or entity shall cause to remove from the Town's above ground water resources or below ground aquifers more than 1000 gallons of water per day, unless said water is for the purpose of redistributing that water to the landowners of Pelham. [Amended March 8, 2005 ATM]

**307-42 Relation to Other Districts**

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

**307-43 Separability**

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

**307-44 Conflict with other Regulations**

Where any provision of this ordinance is in conflict with State law or other local ordinance, the more stringent provision shall apply.

## ARTICLE VIII FLOODPLAIN DEVELOPMENT ORDINANCE

[Amended 3-13-07 ATM, Art. 7]

### 307-45 Purpose

Certain areas of the Town of Pelham, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Pelham, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

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

The following regulations in this Ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Rate maps dated March 14, 1980, which are declared to be a part of this Ordinance and are hereby incorporated by reference.

### 307-46 Definitions

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 Pelham.

- A. Area of Special Flood Hazard: is the land in the flood plain within the Town of Pelham subject to a one percent or greater chance of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map. [Amended 3-13-07 ATM]
- B. Base Flood: the flood having a one percent possibility of being equaled or exceeded in any given year.
- C. Basement: That portion of a building that is partly or completely below grade.
- D. Building: see "structure".
- E. 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.
- F. FEMA: the Federal Emergency Management Agency.

- G. Flood or Flooding: a general and temporary condition of partial or complete inundation of normally dry land areas from:
1. the overflow of inland or tidal waters or
  2. the unusual and rapid accumulation or runoff of surface waters from any source.
- H. Flood Insurance Rate Map (FIRM): an official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Pelham.
- I. Floodplain or Flood-prone area: any land areas susceptible to being inundated by water from any source (see definition of "Flooding").
- J. Flood proofing: 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.
- K. Floodway: see "Regulatory Floodway".
- L. Functionally dependent use: 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.
- M. Highest adjacent grade: the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- N. Historic Structure: any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or primarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  2. Certified or primarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district primarily determined by the Secretary to qualify as a registered historic district;
  3. 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
  4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - a. By an approved state program as determined by the Secretary of the Interior, or
    - b. Directly by the Secretary of the Interior in states without approved programs.

- O. Lowest Floor: the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.
- P. 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 attached to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision. [Amended 3-13-07 ATM]
- Q. 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. [Added 3-13-07 ATM]
- R. Mean sea level: 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.
- S. 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. [Added 3-13-07 ATM]
- T. 100-year Flood: see "Base Flood".
- U. Recreational Vehicle: a vehicle which is
1. built on a single chassis;
  2. 400 square feet or less when measured at the largest horizontal protection;
  3. designed to be self propelled or permanently towable by a light duty truck; and
  4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
- V. 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. [Amended 3-13-07 ATM] -
- W. Special Flood Hazard Area: see "Area of Special Flood Hazard"
- X. Structure: 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.

- Y. Start of Construction: includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and/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.
- Z. Substantial damage: 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.
- AA. Substantial Improvement: any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:
1. the appraised value prior to the start of 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".

- BB. 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 in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [Added 3-13-07 ATM]

- CC. Water surface elevation: 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.

All proposed development in any special food hazard area shall require a permit. [Added 3-13-07 ATM]

### **307-47 Administration**

- A. 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:

1. be designed (or modified) adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. be constructed with materials resistant to flood damage;
  3. be constructed by methods and practices that minimize flood damages;
  4. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. 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 the 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.
- C. For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:
1. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  2. If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
  3. Any certification of flood proofing.

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

- D. The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those government 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.
- E. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board and local wetland hearings. **[Amended 3-13-07 ATM]**

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

Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**[Added 3-13-07 ATM]**

Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. **[Added 3-13-07 ATM]**

- F. In special flood hazard areas the Building Inspector shall determine the 100-year flood elevation in the following order of precedence according to the data available: **[Amended 3-13-07 ATM]**
- a. In zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM. **[Added 3-13-07 ATM]**
  - b. 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). **[Added 3-13-07 ATM]**

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

1. all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;
2. 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: (a) be flood proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water; (b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and (c) 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;
3. 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;

4. 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: (a) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (b) the area is not a basement; (c) 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, other coverings or devices provided that they permit the automatic entry and exit of floodwater;
5. Recreational vehicles placed on sites within Zones A and AE shall either (a) be on the site for fewer than 180 consecutive days; (b) be fully licensed and ready for highway use, or (c) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in paragraph (c) (6) of Section 60.3. [Amended 3-13-07 ATM]

### **307-48 Variances and Appeals**

- A. 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.
- B. 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:
  1. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  2. 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;
  3. that the variance is necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that:
  1. the issuance of a variance to construct below the base flood level will result in as high as \$25 for \$100 of insurance coverage; and
  2. 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.

- D. The community shall maintain a record of all variance action, including their justification for their issuance, and report such variances issued in its annual or biannual report submitted to FEMA's Federal Insurance Administrator.

## ARTICLE IX SENIOR & ELDERLY HOUSING

[Added 3-11-80 by ballot by the ATM, Art. 3; amended 3-8-05 ATM; amended 3-14-06 ATM; amended 3-13-07 ATM, Art. 4]

### 307-49 Purpose & Intent

It is the intent of this Article to recognize the need for granting provisions whereby appropriate housing alternatives may be provided for: active adults age 55 and over; elderly persons living independently; and, frail elderly persons.

To provide affordable alternative housing for the senior and elderly population in the form of multiple attached or detached units.

The following uses shall be permitted under this article: A variety of housing types exclusively addressing the needs of senior citizens, including, but not limited to: active adult homes and facilities; independent living facilities; CCRC's; ALF's; congregate care facilities; nursing homes; and, skilled nursing facilities.

Senior, elderly, and adult community complexes, as herein defined, shall be a permitted use in any zoning district, except for Industrial Districts and Recreation-Conservation-Agriculture Districts where such use shall not be permitted. [Amended 3-13-07 ATM]

### 307-50 Definitions

As used in this Article, the following terms shall have the meanings indicated:

- A. Elderly Housing Complex: One (1) or more dwelling units intended exclusively for occupancy by elderly persons or couples (elderly as defined in accordance with applicable federal regulations and housing types E through N in this section), wherein each dwelling unit shall contain not less than seven hundred (700) square feet of living space and each complex shall be located on a single parcel or lot of land.
- B. Elderly, Handicapped or Disabled Person: A person who is at least 62 years old. The term elderly (senior citizen) also means persons with the following handicap or disabilities:
  - 1. Handicapped - inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:
    - a. has lasted or can be expected to last for a continuous period of not less than 12 months; or which can expected to result in death;
    - b. substantially impedes the ability to live independently; and
    - c. is of such nature that such ability can be improved by more suitable housing conditions.

In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in Section 223 of the Social Security Act), and who is unable because of the blindness to engage in substantially gainful activity requiring skills or

abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

2. Disabled: in the case of developmental disability, a person with a severe, chronic disability which:
    - a. is attributable to a mental or physical impairment;
    - b. is manifested before the person attains age 22;
    - c. is likely to continue indefinitely;
    - d. results in substantial functional limitations in three or more of the following areas of major life activity:
      - i. self care,
      - ii. receptive and expressive language,
      - iii. learning,
      - iv. mobility,
      - v. self-direction,
      - vi. capacity for independent living,
      - vii. economic self sufficiency; and
      - viii. reflects the person's need for a combination and sequence of special, interdisciplinary or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.
- C. Seniors: Persons age 55 and older.
- D. Elderly: Persons age 62 and older, as defined in federal regulations.
- E. Seniors Housing: A variety of housing types designed specifically to meet the varied needs of persons 55 and older. Such housing may include active adult facilities & independent living facilities. Such housing shall meet the Fair Housing Act (FHAct) definition of "housing for older persons" and houses at least one person who is 55 or older in at least 80% of the occupied units and adheres to a policy that demonstrates intent to house persons who are 55 or older.
- F. Elderly Housing: Any of a variety of housing types or housing units intended exclusively for use and occupancy by persons aged 62 years and older. Such housing may include, active adult facilities; independent living facilities; continuing care retirement communities (CCRC); assisted living facilities (ALF); congregate care facilities; nursing homes; and, skilled nursing facilities (SNF).
- G. Elderly Housing Project: One (1) or more buildings situated on contiguous parcel(s) of land and containing elderly housing dwelling units. The age restriction contained within 307-51 F apply.  
**[Amended 3-13-07 ATM]**
- H. Active Adult Community: A community or living facility designed specifically for the interests of persons age 55 and older, which typically contains recreational amenities and support services

for older adults who are healthy, active, and capable of completely independent living. The age restrictions contained within 307-51 F apply. [Amended 3-13-07 ATM]

- I. Independent Living Facilities: Housing which groups seniors for the purpose of social interaction and mutual support in a common interest community. Group facilities may be provided on premises for recreation and social interaction, but only limited support services are typically provided. Typically these are multi-family residential structures.
- J. Continuing Care Retirement Community (CCRC): A variety of housing options to meet the spectrum of needs and interests ranging from active adults through assisted living. These often include on-premises skilled nursing facilities. CCRC's where a primary feature is the provision of "lifetime" supportive services at each stage of a senior's later life.
- K. Assisted Living Facility (ALF): Housing for frail elderly persons, typically age 75 to 85, who require limited supportive services for their daily living activities. ALF's typically require residents to be mobile and capable of performing most routine tasks.
- L. Congregate Care Facility: A congregate care facility is a group living facility for seniors who may or may not require assistance with daily living. Congregate care facilities tend to be limited in size and scope of services, often providing more intensive services than can be provided in an ALF, but requiring residents to have at least partial mobility and reasonably good health.
- M. Nursing Home: A group living facility in which semi-skilled, rehabilitative nursing services are provided for patients who have impaired mobility or health problems of a limited duration. Nursing homes may or may not cater exclusively to senior patients, and may provide rehabilitatory services for patients of all ages.
- N. Skilled Nursing Facility (SNF): A group living facility providing extended nursing care exclusively to senior patients. SNF's are specifically defined under federal regulations and are regulated through the New Hampshire Department of Health under criteria established for a Certificate of Need.
- O. Handicapped Accessible: Meeting the design requirements of the "Barrier-Free Design Code for the State of New Hampshire" and/or the Uniform Federal Accessibility Standards (UFAS).
- P. Net Area: Contiguous useable land excluding wetlands and land with slopes greater than 25%.
- Q. Maximum Project Density: The total number of bedrooms that the subject site can support, based upon the development capability of the subject site and calculated in accordance with the provisions of this Section and 307-52. [Amended 3-13-07 ATM]

### **307-51 Requirements for complex**

Each elderly housing complex shall meet the following requirements:

- A. It will be located on a single, undivided parcel or lot of land.
- B. The number of units shall be established by compliance with Section 307-52 of this ordinance. [Amended 3-13-07 ATM]

- C. Each dwelling unit within the complex shall contain at least seven hundred (700) square feet of living space.
- D. Each dwelling unit shall have no more than two bedrooms, and shall be specifically designed for occupancy by the elderly providing for such things as emergency lighting, exits, fire safety equipment, and adequate structural design features to permit handicapped accessibility such as handicap ramps, etc.
- E. Residential facilities designed for exclusive occupancy by senior citizens, as a minimum, must meet federal regulations for such facilities.
- F. Occupancy of each unit shall be restricted to persons fifty-five (55) years and older, with the following exceptions:
  - 1. A spouse under the age of fifty-five (55) married to a resident aged fifty-five (55) or older.
  - 2. An adult over the age of twenty-one (21), if their presence is required to provide medical care to a resident aged fifty-five (55) or older or to the resident's spouse.
  - 3. Employees of the elderly housing project (and family members living in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the project's facilities.
  - 4. Seniors Housing with the age restriction set forth as that term is defined above in Section 307-50.E.

**307-52 Site Requirements [Amended 3-13-07 ATM, entire section]**

Every senior and elderly housing complex must be located on a site that meets the following minimum requirements:

- A. **Minimum Lot Size:** The site shall have a minimum net area of not less than ten (10) contiguous acres at least five (5) acres of which shall not contain poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont. No portion of the ten (10) acre minimum shall contain land with a slope in excess of 25%, land located within any high-tension electrical or high-pressure gas line easement, or land located within the limits of the 100 year flood as defined by the Flood Insurance Maps prepared by the National Flood Insurance Administration. Land located within a Wetland Conservation District buffer may be counted towards the minimum lot size calculations.
- B. **Density Criteria:** The site shall provide at least 10,000 square feet of land area for each dwelling unit. No part of the 10,000 square feet per unit minimum shall include:
  - 1. land containing poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont, and;
  - 2. land with a slope in excess of 20%, and;
  - 3. land areas within any high-tension electrical or high-pressure gas utility line easement, (areas located on opposite sides of any high tension electrical easement shall not be considered contiguous for the purposes of this section)
  - 4. land within a ledge or bedrock area covered with less than two feet of pre-existing naturally occurring non-wetland soils, and;

5. land areas located within a Recreation, Conservation and Agriculture District, and;
6. land areas located outside of the corporate limits of the Town of Pelham, and;
7. land within the limits of the 100 year flood as defined by the Flood Insurance Maps prepared by the National Flood Insurance Administration, and.

This density criteria is not intended to limit a developer's options to cluster or place separate units within the overall site, except that no unit (clustered or separate) shall be placed within any land area described in subparagraphs one (1) through seven (7).

- C. **Frontage Requirement:** Every senior or elderly housing complex shall have 50 continuous feet of frontage on a Class V or higher public road. The 50 feet of public road frontage must be accessible to police, fire and medical emergency vehicles without those vehicles first having to leave the corporate limits of the Town of Pelham.
- D. **Set Back Requirement:** All parking areas shall be set back from the nearest lot line a minimum of fifty (50) feet. All buildings shall be set back from the nearest lot line a distance of fifty (50) feet or two times the height of the building, whichever is greater.

### **307-53 Plan Approval**

- A. Each proposed elderly housing complex must receive site plan approval from the Pelham Planning Board in accordance with its Subdivision Regulations.
- B. The Planning Board shall review all applications for housing developments for the elderly according to the above procedures and approve or deny such applications and require such covenants or legal restrictions they deem necessary to insure the intent of the ordinance.
- C. Each plan for an elderly housing complex must:
  1. Respect the integrity of adjacent single-family neighborhoods and, to the extent feasible, minimize any conflicts with the character of the existing neighborhood.
  2. The design and site layout of the development shall maximize the privacy of the dwelling units, preserve the natural character of land where feasible, provide for the appropriate separation of parking and living areas as determined by the specific use, and consider such factors as orientation, energy usage, view, etc.
  3. The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing natural features where possible.
  4. The Planning Board may require sufficient landscaped or naturally vegetated buffers for adjacent uses. Buffers shall be maintained to provide continued screening.
  5. Performance Bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the subdivision regulations of the Town of Pelham as adopted or hereafter amended.

**307-53-1 Evaluation Criteria [Amended 3-13-07 ATM]**

In considering plans submitted under this ordinance, the Planning Board shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and the residents of the immediate neighborhood in particular and shall make any appropriate conditions and safeguards in harmony with the general purpose and intent of this ordinance and particularly in regard to achieving:

- A. Maximum safety of traffic access and egress, with minimum impact on the capacity of existing roads and sufficient parking areas to provide for adequate off-street parking.
- B. Reasonable screening of all parking lots, service areas, and multi-family housing developments from the view of adjacent residential properties and streets.
- C. Installation of public improvements and amenities, at the expense of the applicant, to assist in the establishment of a sound neighborhood environment. Such improvements may include, but shall not be limited to, granite curbing, sidewalks and street trees, extension of utilities and, when deemed necessary, improvements to existing roadways and/or drainage systems in order to adequately serve the proposed project. [Amended 3-13-07 ATM]
- D. Conformance of the building and all related signs and structures to the properties of the aesthetic character of the area, as determined by consideration of architecture, building size and type, scale of lot coverage, and consistency of uses in the immediate area.
- E. Continuation of existing trails and establishment of new trails including interconnections with pedestrian walkways between abutting or adjacent parcels. [Amended 3-13-07 ATM]

**307-53-2 Development Standards.**

- A. Senior facilities must be served by municipal water and sewer, by private systems suitable for community use, or by individual septic systems and wells approved by the Planning Board and the state of New Hampshire.
- B. Facilities designed as dwelling units within the district may have a maximum of two bedrooms.
- C. Open space shall consist of no less than 30% of the lot area and shall be protected by covenants, recorded with the plans, and deed restrictions. Open space shall include all land areas without building structures, impervious surfaces (other than porous pavement), and slopes greater than twenty (20%). No more than ten percent (10%) of the open space can be poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont. At least 10% of the open space shall be beneficial to the residents of the complex for walking trails or other passive recreational uses. [Amended 3-13-07 ATM]
  - 1. Entrances. Building entrances must comply with all current accessibility regulations, however the use of ramps and lifts is discouraged. Building should be designed with entrances that are barrier free for the intended residential or commercial uses.
  - 2. No building shall contain more than six (6) dwelling units, except that the Planning Board may permit more than six (6) units per building when, in the Board's sole discretion, such

increase provides specific, substantial benefits consistent with the purpose and intent of this Ordinance;

3. Where there will be more than one (1) building on a lot, buildings shall have a minimum horizontal separation of thirty (30) feet. The Planning Board may require a greater separation where topography, or other unique characteristics of the site or the development will affect the use of emergency equipment between buildings;
4. All units within a building shall have at-grade access;
5. No unit shall contain more than two (2) bedrooms;
6. Units may occupy two (2) floors, provided that at least one bedroom and one full bathroom must be situated on the floor containing the principal access and main living area for the unit.
7. Parking for visitors and guests will be provided as required by the Pelham Planning Board.
8. Sidewalks on at least one side of each roadway/driveway within the interior of the complex shall be provided to allow for and encourage safe pedestrian flow. [Added 3-13-07 ATM]
9. All units shall be serviced by sprinklers. Additional fire suppression water supply, such as cisterns, shall be required and located at the direction of the Fire Chief or his appointed inspector. [Added 3-13-07 ATM]

### **307-53-3 Additional Criteria for Approval**

It is intended under this Section that the Applicant comply with applicable state/federal law which imposes similar requirements. To the extent that a state/federal regulatory agency concludes that the Applicant has not fully complied with this Section, the Applicant must comply with such state and federal requirements.

Dwelling units shall be subject to any applicable elderly housing impact fee which shall be assessed either in conjunction with Planning Board approval or upon application for a building permit as is authorized by RSA 674:21.

Any site on which an elderly housing project is proposed shall be reviewed with respect to the proposed construction and design of the elderly housing project containing the usual amenities and living aids found in housing designed for use by the elderly.

All Elderly and Senior facilities are required to be inspected by the Town's Building Inspector, Health Officer, and Life Safety Officer for specific criteria required by them in providing a safe environment for seniors and elderly. It is recommended that applicants meet with these individuals early in the design process to understand the codes and requirements they will need to meet including the topography and other characteristics of the site which must be suitable for the type of development being proposed to ensure that conflicts with the character of adjacent neighborhoods will be minimal. [Amended 3-13-07 ATM]

The design and layout of the development shall emphasize the rural character of the town, maximize the privacy of the dwelling units, preserve the natural character of land, and consider such factors as orientation, energy usage, views, etc.

### **307-53-4 Other Provisions**

- A. Interpretation: To the extent that the specific requirements of this Senior/Elderly Housing Ordinance are inconsistent with any other requirements contained in the Zoning Ordinance, the requirements imposed herein shall govern and control an Elderly Housing proposal. To the extent that specific requirements imposed herein are inconsistent with or in conflict with the requirements of the State of New Hampshire or the requirements of the Federal Government with respect to the operation or construction of an elderly housing project, such State or Federal requirements shall supersede the requirements of this Ordinance.
  
- B. Legal Documents Required: The Planning Board shall require such covenants, legal restrictions, or maintenance schedules that it deems necessary to insure the intent of this ordinance. The Planning Board shall require review and approval of any such documents by legal counsel to insure that the form and substance of such documents is sufficient to achieve and preserve the requirements of this Ordinance. The provision and review of any documents required hereunder shall be at the Applicant's expense. **[Amended 3-13-07 ATM]**
  
- C. Assurances of Senior Residency: The Applicant shall provide deed restrictions, use limitations, covenants, or some other legally enforceable instrument, which shall permanently restrict occupancy of the housing facilities to persons who meet all applicable restrictions regarding age as required by this ordinance. Said assurances shall include provisions for: **[Amended 3-13-07 ATM]**
  - 1. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner(s) or manager(s) to provide housing for persons fifty-five (55) years of age or older; and
  - 2. Annual verification of compliance with the age restrictions by reliable surveys and affidavits. Notice of the results of the annual verification process is to be provided to the Planning Director. **[Amended 3-13-07 ATM]**
  
- D. Performance Guarantees Required: The Planning Board shall require that a restoration bond and/or such other legal assurances be submitted as are required to insure the completion of streets, buffers, amenities, or common area improvements, or offsite improvements in accordance with the approved plans and the Subdivision Regulations of the Town of Pelham. An escrow deposit shall be required for construction monitoring by the Planning Board's review engineer to assure the project is built according to an approved plan. **[Amended 3-13-07 ATM]**

### **307-54 Septic System**

The septic system for any elderly housing complex shall comply with the minimum requirements imposed by the New Hampshire Water Supply and Pollution Control Commission for the size of the complex proposed. No portion of the leach field shall be less than seventy-five (75) feet from the well or wells which are to service the complex or any wells on adjoining properties.

**307-55 Interpretation**

To the extent the specific requirements in this Article are inconsistent or in conflict with any other requirements contained in this chapter, the requirements imposed herein shall govern and control an elderly housing complex.

**ARTICLE X**  
**PERSONAL WIRELESS SERVICES ORDINANCE**  
[Added by ballot March 99]

**307-56 Purpose and Intent**

This Ordinance is enacted in order to permit the siting of personal wireless service facilities in the Town of Pelham consistent with the following:

- A. Avoid and mitigate adverse impacts such facilities may create, including, but not limited to the following impacts: visual, environmental, historical, flight corridors, health, safety and prosperity.
- B. Promote co-location for facilities when such co-location minimizes the adverse impacts described in I (A) above through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- C. Permit the siting of facilities on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.
- D. Require that facilities be constructed and maintained safely.
- E. Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense to protect the citizens from imminent harm and danger.

**307-57 Definitions**

- A. Alternative Siting: Innovative siting techniques that shall include the location of antennas which are roof-mounted, side mounted or structure mounted, including but not limited to man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas.
- B. Antenna: Shall mean any exterior apparatus designed for telephonic, radio, television, personal communication services (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.
- C. Antenna Array: A collection of antennas attached to a structure or mount to send and receive radio signals for a single carrier.
- D. Carrier: A company that provides personal wireless services.
- E. Environmental Assessment (EA): An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service is placed in certain designated areas.
- F. Equipment Shelter: An enclosed structure, cabinet, shed, vault, or box near the base of the personal wireless service facility within which are housed equipment for those facilities such as battery and electrical equipment.
- G. FAA: An acronym that shall mean the Federal Aviation Administration.
- H. Fall Zone: The area on the ground within a prescribed radius from the base of a personal wireless facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- I. FCC: An Acronym that shall mean the Federal Communications Commission.

- J. Guyed Tower: A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.
- K. Height: Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- L. Lattice Tower: A type of structure that is self supporting with multiple legs and a cross bracing of structural steel.
- M. Mast: A thin pole that resembles a street light standard or telephone pole.
- N. Monopole: A thicker type of structure than a mast that is self supporting with a single shaft of wood, steel or concrete that is designed for the placement of antennas and arrays along the shaft.
- O. Mount: The structure or surface upon which antennas are mounted, including the following four types of mount:
  - 1. roof mounted or mounted on the roof of a building;
  - 2. side mounted or mounted on the side of a building;
  - 3. ground mounted or mounted on the ground;
  - 4. structure mounted or mounted on a structure other than a building.
- P. Personal Wireless Service Facilities: Shall mean any facility which provides commercial mobile wireless services, unlicensed wireless services and common carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996.
- Q. Planning Board or Board: Shall mean the Town of Pelham Planning Board.
- R. Preexisting Towers and Antennas: Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance.
- S. Radio Frequency (RF) Engineer: An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.
- T. Tower: Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers.

### **307-58 Siting Standards**

#### **A. General**

##### **1. Siting Priority**

An applicant seeking approval for personal wireless service facility shall comply with the following:

- a. Preference will be given to the siting of personal wireless service facilities on existing personal wireless service facilities including preexisting towers and antennas, where such co-location can exist while preserving the character and integrity of the existing structure and without other adverse impacts.

- b. To the extent that there are no existing personal wireless facilities which meet the requirements of the applicant, preference will be given to locating facilities on existing structures of other kinds, such as a water tower or church steeple, where such co-location preserve the character and integrity of the existing structure, and does not create other adverse impacts.
- c. To the extent that location of the personal wireless service facility is not possible under Paragraphs a and b, siting will be governed by a conditional use permit under this ordinance in certain designated commercial or industrial areas.

2. Burden of Proof on Applicant Regarding Siting Priority

The burden of proof that there are no existing structures upon which a carrier may locate its personal wireless facility and/or transmit or receive radio signals shall include, at a minimum:

- a. the applicant shall submit a list of all owner contacts made with regard to the availability of potential wireless service facility. If the Planning Board or Town staff finds additional existing buildings and structures that may be satisfactory, the applicant shall contact the property owners;
- b. the applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "return receipt requested" forms from the US Post Office shall be provided for each owner of existing structures that was contacted;
- c. if an applicant claims that a structure is not structurally capable of supporting a personal wireless service facility, this claim must be certified by a registered professional engineer licensed in the State of New Hampshire. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified or replaced to support the personal wireless facility at a reasonable cost.

B. Use Regulations

A personal wireless service facility shall require a building permit in all cases and may be permitted as follows:

1. Existing Personal Wireless Service Structures: A personal wireless service facility may locate, subject to the issuance of a building permit that includes review by the Director of Planning, on any existing personal wireless service structure, including any guyed tower, lattice tower, mast tower or monopole tower in existence prior to the adoption of this ordinance so long as co-location complies with any approved site plan. All the performance standards stated in this ordinance shall be met. This provision shall apply only so long as the height of the existing tower structure is not increased, a security barrier already exists, and the area of the security barrier is not increased. All other sitings shall require site plan review and approval by the Planning Board.
2. Existing Structures: A personal wireless service facility may locate, subject to the provisions of this ordinance and site plan review, on an existing structure other than on an existing personal wireless service or tower structure.
3. Telecommunications Overlay Zone: A personal wireless service facility may locate within the telecommunications overlay zone, subject to a conditional use permit granted by the Planning Board and site plan review by the Planning Board. The telecommunications overlay zone consists of the following:

- a. Industrial Zones 1, 2, and 3.
- b. Business Zones 1, 2, 3, and 4.

C. Dimensional Requirements

These requirements and limitations shall preempt all other dimensional limitations as required by the Zoning Ordinance and shall apply only to personal wireless service facilities.

1. Height

- a. Height, Maximum
- b. Existing Structures

New personal wireless service facilities located on any of the following existing structures shall be exempt from the height restrictions of the zoning ordinance provided that there is no more than a 20 foot increase in height of the existing structure as a result of the installation of a personal wireless service facility so long as the overall height of the personal wireless facility will not exceed 199 feet; water towers, electric transmission and distribution towers, utility poles, and similar existing utility structures, guyed, lattice towers, monopoles, flagpoles, steeples or chimneys. This increase in height shall only be permitted once for each structure.

- c. Height for Ground Mounted Facilities

Ground mounted personal wireless service facilities shall not project higher than 199 feet in height, unless the facility was greater than 199 feet in height prior to the adoption of this article.

2. Setbacks

All personal wireless service facilities and equipment shelters shall adhere to a front, rear and side setback of 175 feet.

3. Fall Zone

In order to ensure public safety, the minimum distance from the ground mount of a personal wireless service facility to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 100% of the height of the facility, including any antennas or other appurtenances. This setback is considered the "Fall Zone". The Planning Board may change the fall zone upon a showing that the technical quality and nature of the facility requires a different fall zone as is otherwise required by this section.

**307-59 Performance Standards**

A. Visual Impact and Lighting.

Visual impacts are measured on the basis of: change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within its proposed surroundings; new visible elements proposed on a contrasting background; different colors and textures proposed against a contrasting background; and use of materials that are foreign to the existing built environment.

Preservation of the existing developed and natural environments within Pelham are enhancements to the Town. Enhancements are measured on the basis of: conservation of opportunities to maintain community scale, amount and type of landscaping and/or natural vegetation; preservation of view corridors, vistas and view sheds; and continuation of existing colors, textures and materials.

Visibility focuses on eliminating or mitigating the visual impact, and maximizing enhancement of the existing environment.

The requirements in this subsection (A), shall govern the location of all facilities, and the installation of all antennas.

The requirements are as follows:

1. Towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts.
2. Tower or ground mounts shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
3. The design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
4. 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.
5. Facilities shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
6. Facilities shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

#### B. Federal Requirements

All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate facilities and antennas. If such standards and regulations are changed, the owners of the facilities governed by this ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with § VIII, of the facilities, at the owner's expense through the execution of the posted security required by § VI.

#### C. Building Codes-Safety Standards

To ensure the structural integrity of facilities and antennas, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards for personal wireless service facilities that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer

licensed in New Hampshire and thereafter shall provide certifying reports to the town every five years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. If, upon inspection the Town concludes that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have 30 days to bring such facility into compliance with such standards. If the owner fails to bring such facility into compliance within 30 days, such action shall constitute grounds for the removal, in accordance with Section 307-62, of the facility, at the owners expense through the execution of the posted security required by Section 307-61.

D. Additional Requirements

These requirements shall supersede any and all other applicable standards found elsewhere in Pelham Ordinances or Regulations that are less strict.

1. Landscaping

- a. Towers or ground mounted facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the equipment shelter from adjacent residential property and public roads. The standard buffer shall consist of landscaped strip at least 10 feet wide outside the perimeter of the tower 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 land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

**307-60 Conditional Use Permits**

A. General

Unless otherwise provided, all applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided herein and as provided for in the Site Plan Review Regulations. Applicants for conditional use permits under this ordinance shall also be required to submit the information provided for in this Section.

B. Issuance of Conditional Use Permits

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

1. Procedure on application.

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

2. Decisions

Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

3. Elements of Conditional Permit: The applicant has the burden of addressing the following:
  - a. The height of proposed tower or other structure is necessary to provide personal wireless services;
  - b. The effect of the proximity of the facility to residential development or zones;
  - c. Nature of uses on adjacent and nearby properties;
  - d. Surrounding topography;
  - e. Surrounding tree coverage and foliage;
  - f. Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - g. Proposed ingress and egress to the site;
  - h. Availability of suitable existing sites and other structures as discussed herein;
  - i. Visual impacts on view sheds, ridge lines, and other impacts by means of personal wireless service facility location, tree and foliage clearing and placement of incidental structures; and;
  - j. Availability of alternative siting locations;
  - k. All outside storage related to the operation of the personal wireless service facility shall be screened from neighboring view, and shall not emit loud noises or obnoxious gases or fumes. Outdoor storage unrelated to the operation of the personal wireless facility is prohibited.

C. Information Required

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; a scaled elevation view, topography, radio frequency coverage, facility height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200' away from the property line), and any other information deemed necessary by the Planning Board to assess compliance with this ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
2. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.
3. Each applicant for a facility shall provide to the Planning Board an inventory of all existing facilities that are within the jurisdiction of the Town and those within five miles of the border thereof, including specific information about the location, height, design of each facility, as well as economic and technological feasibility for co-location on the inventoried facilities. The 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 that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant is proposing to build a new tower or other ground mounted structure, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed facility. This evidence will consist of:

- a. Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
  - b. Substantial Evidence that existing structures, including towers are not of sufficient height to meet the applicant's engineering requirements, and why.
  - 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 would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
  - 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.
4. The applicant proposing to build a tower or ground mounted structure shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure to the extent such co-location can exist while minimizing adverse impacts noted in I(A). 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 telecommunication providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of Pelham, and is ground for a Denial.
5. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with 676:4, I(g).

D. Waivers to Section 307-60

1. General

Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the terms of Section 307-60 or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations.

The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Pelham Zoning Ordinance, Pelham Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other site features
  - b. Availability of alternative site locations
  - c. Geographic location of property
  - d. Size/magnitude of project being evaluated and availability of co-location.

2. Conditions

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

3. Procedures

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

4. Variations

Any other variations from Article X, excluding Section 307-60, will require appropriate action from the Board of Adjustment.

**307-61 Bonding, Security and Insurance**

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

**307-62 Removal of Abandoned Antennas and Facilities**

Any antenna or facility that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the facility.

If the abandoned facility is not removed within 90 days the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

**307-63 Enforcement**

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and Pelham Zoning Ordinance.

**307-64 Saving Clause**

If any provision of this ordinance is found to be unenforceable or unlawful by a court of competent jurisdiction, the ordinance shall be considered savable and such a finding shall not be construed to invalidate the remainder of the ordinance.

## **ARTICLE XI SIGNS**

[Amended by March, 1999 Town Meeting; Amended March 8, 2005 ATM; amended 3-14-06 ATM, Art. 5; Amended March 13, 2007, Art. 5]

### **307-65 Scope and Intent**

Only the following signs shall be permitted: town and state highway directional and regulatory signs, historic signs and those signs used to advertise the profession or goods dealt in by the owner or occupant of property on which placed.

The Town of Pelham has determined that:

- A. There is a public responsibility to protect the safety and welfare of its citizens;
- B. There is a substantial interest in maintaining and enhancing the aesthetic appearance of all residential, commercial and industrial areas of Town; and
- C. There is a substantial interest in enabling business and industry to advertise effectively.

### **307-66 Purpose**

The intent of this Ordinance is to allow signs that:

- A. Give information and directions;
- B. Build the image of business and industry;
- C. Incorporate new technologies; and
- D. Compliment the character of the zoning district land use.

It is further intended that the sign ordinance will help the Town in its efforts to protect the safety and welfare of the public.

### **307-67 Title**

This division shall be known as the "Town of Pelham, N.H., Sign Ordinance"; and may be so cited.

### **307-68 Sign Permit**

Except as otherwise provided in this Ordinance, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the Town of Pelham, or cause the same to be done, without first obtaining a sign permit for each such sign from the building official as required by this code. This prohibition shall not be construed to require any permit for a change of copy on any sign, nor for the repainting, cleaning and other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified in any way.

[Amended 3-13-07 ATM]

All sign applications shall include a color rendering of the proposed sign, a detailed description of materials of construction, illumination, moving components, electronic messages and method of attachment to structure. [Amended 3-14-06 ATM]

### **307-69 Sign Definitions and Restrictions**

The following definitions and restrictions shall apply throughout these regulations:

- A. Abandoned Sign: The cessation of use of a sign as indicated by the visible or otherwise apparent intention of an owner to discontinue the use of a sign and/or structural framework.
- B. Administration & Enforcement: The building official is hereby authorized to review all sign applications and to enforce the provisions of this regulation.
- C. Area: The area, on the largest single face of a sign, within a perimeter which forms the image area of a sign. If the sign consists of more than one module, the total area of all modules shall constitute the sign area. If a sign is lettered on both sides back to back, only one side shall be counted as the total sign area. Graphics communicating the type of business or goods within (i.e. an image of scissors for a salon sign) shall be counted toward the sign area. [Amended 3-13-07 ATM]
- D. Awning Sign: A removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun, with sign message incorporated. Awnings with graphics will be considered a form of a wall sign. A permit is required. Only the area of the awning where lettering or graphic images are located shall be considered the "sign area" for purposes of calculation. [Amended 3-13-07 ATM]
- E. Banner Sign: A temporary sign of lightweight matter (e.g. paper, plastic or fabric) hung either with or without frames. This will only be allowed for a maximum of thirty (30) days, two (2) times during each calendar year. The banner may not exceed one hundred (100) square feet in area. Alternatively, a banner may be used as a temporary sign (see "temporary sign").
- F. Billboards: Any sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, product or services. This is considered a form of a ground sign (see "ground sign"). A permit is required. Off premises billboards are not permitted (see "off premises").
- G. Building or Face Wall: A wall area of a building in one plane or elevation.
- H. Building Name Sign: A building name sign shall identify the building and shall be a maximum of twelve (12) square feet in area. No permit is required.
- I. Building Officials: The official appointed under by the Board of Selectmen to review and issue sign permits. Refer to **307-71 Administration and Enforcement**.
- J. Changeable Copy Sign: A sign on which message copy can be changed through the use of attachable letters and numb/numerals excluding electronic switching of lamps or illuminated tubes to form words and numerals. This shall be considered a form of ground or wall sign (see "ground or wall sign"). Refer to **O. Electronic Messaging Signs** for limitations on electronic signs. [Amended 3-13-07 ATM]

K. Charitable: Charitable shall mean those signs communicating messages related to not-for-profit events for social service, benevolent, patriotic, civil, educational, or fraternal purposes. Charitable signs shall be subject to the following conditions: **[Amended 3-13-07 ATM]**

1. May be placed a maximum of 30 days preceding the event.
2. Shall be located so as not to obstruct a public right-of-way or create a hazard.
3. Must be removed within 7 days after the event.
4. Size limit shall be 50 sf. **[Amended 3-13-07 ATM]**
5. May be located off premises with permission of the property owner. **[Added 3-13-07 ATM]**

No permit is required.

L. Construction or Project Sign: As used in this regulation, shall mean any sign erected on a project site prior to or during a construction project, with the following restrictions:

1. Maximum area shall be 32 square feet, except on projects that exceed one acre in size, where the maximum area shall be 64 square feet.
2. Height and setback shall be commensurate with the underlying district.
3. Must be removed within 15 days from the date on the certificate of occupancy permit (if applicable), expiration, or loss of building permit, upon completion of work, or upon installation of a permanent sign.

No permit is required.

M. Directional Sign: Signage which is necessary for on-site public safety and convenience. Directional signs may be located adjacent to driveways. Examples: "In", "Out", "Entrance", "Exit", and "Parking". No permit is required.

N. Electrical Sign: Any sign containing electrical wiring.

O. Electronic Messaging Displays: A sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means. Electronic Messaging Displays may be permitted in all Business or Industrial districts subject to the following requirements: **[Amended 3-13-07 ATM]**

1. Operational Limitations: Such displays shall be limited to amber in color and shall contain static messages only, and shall not have any movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination or the flashing or varying of light intensity. **[Added 3-13-07 ATM]**

2. Minimum Display Time. Each message displayed on the sign must be displayed for a minimum of 3 seconds. **[Added 3-13-07 ATM]**
3. Message Change Sequence. The transition from static message to static message must be made with "Fade" or "Dissolve" transitions. No "Travel" or "Scrolling" messages and no animation, flashing or video is permitted. **[Added 3-13-07 ATM]**
4. Electronic Messaging Displays may not exceed two feet (2') in height and eight feet (8') in width and are counted towards the total area or any proposed ground or wall sign. **[Added 3-13-07 ATM]**
5. A maximum of one (1) electronic messaging center is allowed per property. **[Added 3-13-07 ATM]**

A permit is required.

- P. Flag: National, state or corporate flags properly displayed shall be allowed in all districts with no sign permit required. The set back shall be the same as for ground signs. No permit is required. **[Amended 3-13-07 ATM]**
- Q. Flashing Sign: Any sign containing intermittent flashing light by means of an animation or an externally mounted intermittent light source, or chase lights. Not permitted. **[Amended 3-13-07 ATM]**
- R. Frontage: The length of the property line of any one premises along each public right-of-way it borders.
- S. Ground Sign: A sign erected on a free-standing frame, mast or pole and not attached to any building, subject to the following conditions:
  1. Maximum sign area shall be fifty (50) square feet (except for Group Signs as defined in T). **[Amended 3-13-07 ATM]**
  2. Minimum setback of the sign shall be fifteen (15) feet from a right-of-way or property line, with a maximum sign height of twenty (20) feet. Signs for businesses located on a State highway shall have no setback to the right-of-way but adhere to a fifteen (15) feet setback to the side property lines. **[Amended 3-13-07 ATM]**
  3. Minimum setback from an intersection shall be twenty-five (25) feet from the point of the intersecting rights-of-way.
  4. As an alternate for a corner premises, an allowed ground sign may be replaced by two (2) ground signs, each meeting all of the following conditions:
    - a. Each sign shall be designed to be viewed from a different right-of-way.
    - b. Maximum sign area of each sign shall be twenty-five (25) square feet.
    - c. Minimum setback of signs shall be twenty (20) feet from right-of-way with a maximum sign height of twenty (20) feet; or the minimum setback of

the signs may be reduced to ten (10) feet from right-of-way with a maximum sign height of ten (10) feet. [Amended 3-13-07 ATM]

- T. Group Sign: A Group sign can be used to indicate businesses in a multi-tenant situation. The following restrictions apply: [Added 3-13-07 ATM]
1. One business may occupy a larger portion of the sign (up to 50 sf) when one business occupies a substantially greater portion of the property than other tenants (50% or more of total sq. footage). This larger business is considered an “anchor tenant”.
  2. Except for one anchor tenant, no individual sign within a group sign may occupy more than ten (10) square feet.
  3. No Group sign may exceed 150 sf. in area or the combined limitations expressed in (1) and (2) above, whichever is less.
  4. All Group Signs must meet the limitations set forth in section S. Ground Signs
- U. Height of Sign: The vertical distance measured from the adjacent undisturbed grade of ground to the highest point of the sign. Freestanding signs shall not exceed twenty (20) feet in height. Any attached sign shall not project above or beyond the limits of the building on which it is viewed. [Amended 3-13-07 ATM]
- V. Incidental Sign: A sign identifying or advertising associated, goods, products, services, or facilities available on the premises. Incidental signs include, without limitation, trading stamps, credit cards accepted, brand names or price signs. The limit shall be three (3) at 1.5 square feet each. No permit is required.
- W. Maintain: To permit a sign, sign structure or any part of each to continue; or to repair or refurbish a sign, sign structure or any part of each. A sign shall be maintained in good repair for public safety and aesthetics.
- X. Mobile Signs: Any sign mounted on wheels or a wheeled trailer primarily situated and decorated to display an advertising message. Signs will only be allowed for a maximum of 30 days, 2 times per calendar year. Sign may not exceed 32 square feet in area.
- Y. Nameplate and Historic Markers: A non-electrical sign identifying only the name and occupation or profession of the occupancy of the premises on which the sign is located. If any premises includes more than one occupant, nameplate means all names and occupations or professions as well as the name of the building and directional information. The sign shall be a maximum of three (3) square feet in area. No permit is required.
- Z. Non-electrical Sign: Any sign that does not contain electrical wiring or its own source of illumination, such as a wood sign, carved sign, routed sign, sandblasted sign, or painted sign, etc.
- AA. Off-Premises Sign: Any sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, products or services not located on the premises where the

sign is located or maintained. Not permitted except for temporary Political and Charitable signs and Open House Real Estate signs with property owner's permission. [Amended 3-13-07 ATM]

- BB. On-Premises Sign: Any sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign is installed or maintained.
- CC. Political Sign: A sign advertising a candidate for political office. These signs are allowed in all districts. Political signs shall not be placed or affixed to premises without the consent of the owner including Town of Pelham property. Only the property owner or their designee may affix such signs to their home, buildings on the premises or trees on the property. Time limitation on placement of political signs before of after an election shall be determined by applicable federal and or State law. No permit is required. [Amended 3-11-08 ATM]
- DD. Portable Sign: See temporary sign.
- EE. Premises: A lot or group of lots on which are situated a building or group of buildings designated as a unit, or on which a building or a group of buildings are to be constructed.
- FF. Real Estate Directional Sign: Real estate signs advertising an open house, and located off premises. Signs shall not be nailed to trees or telephone poles not owned by the Realtor. No permit is required.
- GG. Real Estate Sign: Any sign advertising exclusively the sale, rental or lease of the premises, or a portion thereof, upon which the sign is located. Such signs must be removed within 15 days after the closing of the sale, rental or lease. Such signs are subject to the following restrictions:
1. Number and type: one (1) non-electrical ground or wall sign per premises, per street frontage.
  2. Maximum sign area (including Real Estate Rider Boards): eight (8) square feet for residential; thirty-two (32) square feet for multiple structures within residential developments such as apartment complexes; and sixty-four (64) square feet for business and industrial.
  3. Height and setback requirements commensurate with underlying zone.
  4. On-site real estate signs must be removed within 15 days after sale, rental or lease; and off-site signs (including balloons) advertising an open house, may be located for a duration not to exceed 15 days.

No permit is required.

- HH. Roof Sign: A sign erected upon, against, or on the top of the parapet of a building. Roof signs are only allowed if insufficient area exists above windows or doors and then only when mounted with brackets so the sign is positioned midway between the roof ridge and the eave. Roof signs are subject to the following restrictions: [Amended 3-13-07 ATM]

1. Maximum sign area measured in square feet shall be two (2) times the building frontage if there is no other sign type; one and one-half times the building frontage if there is a wall sign or projecting sign, or fifty (50) square feet, whichever is least.  
[Amended 3-13-07 ATM]
  2. Roof signs shall be set back a minimum of three (3) feet from the projecting plane of the building's exterior wall. It is the intention of this provision to provide a clear passageway around or under the sign.
  3. Maximum number of roof signs shall be one (1).
  4. Sign content shall refer to on-site business identification only.
- II. Rotating Sign: Any sign, or portion of a sign, which moves in any manner. It is considered a form or ground, wall or roof sign.
- JJ. Sign: Any sign, illuminated or non-illuminated, or presentation by words, letters, figures, designs or pictures, publicly displayed to give notice relative to a person, business, goods, products, a service, activity or a solicitation. "Sign" includes identification, advertising and informational signs, and also includes any permanently installed or situated merchandise (other than a structure). For the purpose of removal, "Sign" shall also include the sign structure. No permit is required for signs installed by government bodies and utility companies. A maximum of three (3) types of signs per premise are permitted, with no more than one (1) from each of the following categories: ground, wall, roof or projecting. Alterations that include repainting, changing copy or replacement of the existing sign face will not require a permit, unless the replacement of the sign face is intended to change the name of the business and/or owner, or if the complete sign structure is changing to new signage.
- KK. Sign Structure: Any structure which supports or is capable of supporting any sign, including decorative cover. A sign may be a single pole and may or may not be an integral part of a building or structure.
- LL. Subdivision Identification Sign: A sign intended to identify the name of a residential subdivision located in a residential district. Subdivision signs shall be located at the main entrance to the subdivision project (see real estate and construction project signs). No permit is required.
- MM. Temporary Sign: any sign, except charitable, political, religious, municipal or personal signs, which is not permanently installed or affixed to any sign structure or building. Signs shall only be displayed for special events or on accepted civic, patriotic or religious holidays. Each business shall be allowed one (1) sign not to exceed thirty-two (32) square feet. Temporary signs shall not be maintained longer than thirty (30) days in any ninety (90) day period whatsoever. Signs shall not be attached to fences, trees, utility poles, rocks or other parts of a natural landscape, nor be placed in a position that will obstruct or impair traffic or in any manner to create a hazard or disturbance to the health, safety, and welfare of the general public. Such signs may not be flashing or illuminated; and must be set back at least ten feet from the edge of the right-of-way. [Amended March 8, 2005 ATM, Amended 3-13-07 ATM]
- NN. Temporary Window Sign: Any sign which is not permanently installed or affixed to any window. No permit is required.

OO. Wall Sign: Any sign attached to, painted on or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of the wall. "Wall Sign" shall include any sign erected against, installed on or painted on a penthouse above the roof of a building as long as the wall of the penthouse is on a plane parallel to the wall of the building a sign attached to, painted on or erected against a false wall or false roof that does not vary more than thirty degrees from the plane of the adjoining elevation. Wall signs shall be subject to the following restrictions: [Amended 3-13-07 ATM]

1. Maximum sign area measured in square feet shall be two (2) times the building frontage if there is no other sign type; one and one-half (1 ½) times the building frontage if there is a ground sign; one (1) times the building frontage if there is a wall sign; or fifty (50) square feet, whichever is least.

**307-70 General Regulations**

- A. No sign or part of any sign shall flash, rotate, move or make noise; [Amended 3-13-07 ATM]
- B. Signs shall be illuminated internally or by external shielded light directed solely at the sign in such a manner as to prevent glare for motorists and pedestrians, and such that the light source and lenses shall not be visible from any residential district.

**307-71 Administration and Enforcement**

The Zoning Administrator is authorized to review all sign applications and issue permits and to enforce the provisions of this regulation. This ordinance shall supersede all other town ordinances and site review regulations, where inconsistent therewith, except as provided in the following paragraph. Any alteration (as defined in item JJ of the above section) of existing signs shall conform to the provisions of this ordinance. [Amended 3-13-97 ATM]

In the event that any Federal, State, or Town agency imposes more stringent requirements than those found in this ordinance, the stricter standards shall in all cases apply.

**307-72 Fees [Amended 3-13-07 ATM]**

The following are permit fees as required under this ordinance:

- a. Mobile signs ..... \$15.00
- b. Signs w/area under 50 SF ..... \$15.00
- c. Signs w/area of 51 to 100 SF..... \$50.00
- d. Signs w/area of 101 to 150 SF..... \$75.00

Fees for multiple signs for a single premise shall be determined by total square footage.

## ARTICLE XII SPECIAL EXCEPTIONS

[Amended March 8, 2005 ATM; Amended 3-14-06 ATM; Amended 3-11-08 ATM]

### 307-73 General Requirements

Unless otherwise specified, the ZBA shall permit a use by special exception subject to the following conditions:

- A. the use requested is listed as being permitted by special exception in Table 1 or elsewhere in this Ordinance, for the district in which the use is requested;
- B. the proposed use is consistent with the purpose and intent of the district within which it is proposed to be located;
- C. the proposed use meets all other applicable requirements under this Ordinance, and
- D. the proposed use is compatible with character of the surrounding neighborhood or area.

### 307-74 Additional Requirements for Accessory Dwelling Units [Amended March 8, 2005 ATM]

A single-family home may contain not more than one accessory dwelling unit, attached to the principal dwelling, subject to the following conditions.

#### Purpose and Intent

In order to provide for non-rental housing alternatives for immediate family members or family caregivers, a single family home may contain not more than the one accessory dwelling unit, while maintaining neighborhood aesthetics, quality, and intent, subject to the following conditions:

#### Definitions

Common Wall: The wall that separates the living space of the primary dwelling unit from the living space of the accessory dwelling.

- A. The accessory dwelling unit shall be clearly secondary to the primary dwelling.
- B. Accessory dwelling units shall not contain more than one bedroom and shall not exceed 750 square feet of living area, exclusive of entryways, or 75% of the footprint of the primary dwelling, whichever is less. [Amended March 8, 2005 ATM]
- C. Accessory dwelling units shall be considered as one and one half (1 1/2) bedrooms for the purposes of septic system design and Planning Board Subdivision Regulations and be allowed only where the waste disposal system is on file and has been approved by the New Hampshire Water Supply and Pollution Control Division (N.H.W.S.P.C.D.).

In the case of a previously existing N.H.W.S.P.C.C. approved system, the Code Enforcement Officer shall be required to certify that the existing system is in good working condition and the applicant shall also include a subsurface waste disposal system design approved by the N.H.W.S.P.C.C. that demonstrates that the lot can accommodate the combined flows of the primary dwelling and accessory unit to be installed in the event of a system failure.

If an approved N.H.W.S.P.C.C. design is not on file, a system adequate for the proposed combined flows of the primary dwelling and accessory unit must be designed and installed.

- D. The exterior of the dwelling shall be designed such that it has the characteristics and appearance of a single family residence. No new entrance or exit to an accessory dwelling shall be constructed facing the front of the single family residence.
- E. An accessory dwelling shall be constructed either within or attached to a single family residence.
- F. Where the Accessory Dwelling unit is attached, the common wall between the accessory unit and primary dwelling must have an area that is at least 75% common with both units.
- G. At least one interior unlocked passage shall be provided in the common wall between the primary dwelling and the accessory dwelling.
- H. The driveway shall be designed so as to appear as a driveway of a single family residence, and no new curb cut from the street shall be constructed. Adequate off-street parking shall be provided to support the vehicles of the primary and accessory units.
- I. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family residence.
- J. An accessory dwelling unit shall not be permitted anywhere except in a single family residence.

### **307-75 Other Uses in the Residential District**

The following additional conditions apply to all other uses permitted by special exception in the Residential district.

- A. Not less than two-hundred (200) feet of frontage is provided on a major or minor thoroughfare or arterial or collector street or access to the site is provided by a right-of-way of not less than fifty (50) feet in width directly from a major or minor thoroughfare or arterial or collector street.
- B. Primary ingress and egress is provided from a major or minor thoroughfare or arterial or collector street.
- C. No off-street parking shall be located within required setbacks or between any principal building and a public right-of-way unless all such buildings and parking areas are completely screened from view.
- D. The exterior of buildings and ground shall be maintained in a manner compatible with the rural/residential character of the district.
- E. Site Plan review and approval shall be obtained from the Planning Board.

### **307-76 Additional Requirements for Home Occupations**

#### **I. Purpose and Intent**

1. It is the will of the people that a harmonious balance be established between the needs of the individual who operates a home occupation and to the abutting residents.
2. Protect residential areas and property values.
3. Permit residents of the community a broad choice in the use of their property.

4. To establish criteria for home occupations.

## **II. Minor Home Occupations [Amended 3-8-05 ATM, Amended 3-14-06 ATM, Amended 3-11-08 ATM]**

A Minor Home Occupation is an accessory use of a home or accessory structure for the purpose of conducting business activities by a resident of that home. Minor Home Occupations are those businesses limited to home office uses that are unobstrusive to the neighborhood residents and that do not have adverse impacts to abutting properties. Minor Home Occupations expressly do not include retail uses, landscaping, the parking or storage of tractor trailers, auto body, auto repair or small engine repair or maintenance, or other uses which involve the visible storage on the property of business related equipment, automobiles or the parts thereof. Businesses with increased impact on septic systems such as hair salons or pet grooming facilities are not considered Minor Home Occupations. [Amended 3-8-05 ATM, Amended 3-11-08 ATM]

1. The occupation does not utilize more than 25% of the living area of the primary dwelling (if the business is conducted within the dwelling unit) or more than 25% of the total square footage footprint of all structures upon the property (if it is located within an accessory structure). [Amended 3-11-08 ATM]
2. A maximum of one on site non resident employee.
3. Any use that may be objectionable, noxious or injurious by reason of the production or emission of odor, dust, smoke refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval. [Amended 3-14-06 by ballot ATM, Art. 6]
4. No increase in traffic volumes beyond what is normally generated within the neighborhood.
5. One (1) sign which advertises the minor home occupation is permitted. It shall not exceed 1.5 sq. ft. in area and shall not be directly illuminated. The sign must be of a design and color appropriate for a residential setting. In the event a second minor home occupation exists within the same dwelling, and where the additional business meets all provisions of the section, an additional sign of identical size and design is permitted. No more than two (2) signs may be used for any combination of minor home occupations conducted within the boundaries of any individual lot. A sign permit is required for each sign. [Added 3-14-06 by ballot ATM, Art. 6]
6. A maximum of one registered vehicle related to the business may be kept in view. All other business related equipment must be garaged.
7. Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.
8. The display for sale of three (3) or more vehicles per any twelve (12) month period shall be considered a general home occupation and shall not be permitted without

zoning relief and Planning Board site plan review and approval. [Amended 3-8-05 ATM, Amended 3-10-09 ATM, Art. 4]

9. Not permitted in a duplex or multi-family dwelling. [Added by ballot 3-11-08 ATM]

Minor Home Occupations are permitted as an accessory use without the approval of any Town board or official in all Zoning Districts within which residential uses are permitted.

### **III. General Home Occupations**

A general home occupation is an accessory use of a home or accessory structure for the purpose of conducting any non-agricultural business activity by a resident of that home that meets the following conditions and for which a Special Exception is required.

1. The occupation is clearly secondary and subordinate to the primary residential use and shall not change the residential character of the neighborhood.
2. It shall not consume more than 49% (forty-nine percent) of the gross residential living space including accessory structures and shall not change the residential character of the property. [Amended 3-10-09 ATM, Art. 4]
3. A maximum of two on-site non resident employees.
4. Not permitted in a duplex or multi-family dwelling.
5. One sign which advertises the business is permitted. It shall be unlighted and shall not exceed three square feet.
6. All outdoor storage, display, and any other external indication of the business activity shall be screened from neighboring view.
7. Any use that may be objectionable, noxious or injurious by reason of the production of emission of odor, dust, smoke, refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage, or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval.
8. A maximum of two registered vehicles related to the business may be kept in view. All other business related equipment must be garaged and screened from neighboring view.
9. Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.
10. Customer parking shall be provided off-street and may not be located within the required front, side or rear setbacks of the property.

11. No retail sales other than those that are incidental to and customarily associated with business use for which the permit was issued.
12. An accessory structure built or converted for home occupation purposes shall be a size, style and type that is compatible with the surrounding neighborhood and capable of reversion to uses that are customarily accessory to residential.
13. Where the proposed General Home Occupation shall result in an increase of the amount of waste water to be discharged it shall be shown by the applicant that there is subsurface waste water disposal system that has been approved by the New Hampshire Water Supply and Pollution Control Commission (NHWSPPCC) or that a system adequate for the proposed use shall be installed as a condition of issuing a Special Exception.
14. The BOA may impose any other reasonable conditions on the home occupation that are necessary to protect the residential character of the neighborhood.
15. Site plan review and approval shall be obtained from the Planning Board.

**ARTICLE XIII  
ENFORCEMENT AND MISCELLANEOUS**

[Amended March 8, 2005 ATM, Amended 3-13-07 ATM]

**307-77 Severability**

The invalidity, unconstitutionality or illegality of any article, section or provision of this Ordinance or of any zoning district or boundary shown on the zoning map, shall not have any affect on the validity, constitutionality or legality of any other article, section, provision, zoning district or district boundary.

**307-78 Authorization to Administer Ordinance**

It is the authority of the Board of Selectmen to administer and enforce this Ordinance.

**307-79 Zoning Administrator**

The Board of Selectmen shall designate a zoning administrator to administer and enforce this Ordinance under their general supervisory authority.

**307-80 Review of Applications**

It shall be the duty of the Zoning Administrator to review all applications for building permits to determine that the application conforms to the provisions of this Ordinance.

**307-81 Violations and Penalties**

Any person, firm or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine for each day of the violation of not more than one-hundred dollars (\$100). Each day that the violation is permitted to exist shall constitute a separate violation. Such fines shall be in addition to any other remedies for violation as provided for under state law.

**307-82 Zoning Board of Adjustment - Administration**

- A. The Zoning Board of Adjustment (ZBA) shall consist of five (5) regular members and five (5) alternate members, who shall be appointed by the Board of Selectmen as provided by the New Hampshire Revised Statues Annotated.
- B. The ZBA shall adopt rules in accordance with the provisions of this chapter.
- C. Meetings of the ZBA shall be held at the call of the Chairman and at such other times as the ZBA may determine. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. The Board shall keep minutes of its proceedings, showing the vote indicating such fact, and shall keep records of its examinations and other official actions, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

### **307-83 Powers of the ZBA**

The ZBA shall have the following powers:

- A. Appeals. The power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Zoning Chapter.
- B. Special exceptions. The power to hear and decide requests for special exceptions as authorized by this Zoning Chapter.
- C. Variances. The power to authorize upon appeal in specific cases such variance from the terms of this Zoning Chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Zoning Chapter will result in unnecessary hardship, and so that the spirit of the Zoning Chapter shall be observed and substantial justice done.

### **307-84 Application procedure**

Applications appealing an administrative decision seeking a special exception or requesting a variance shall be in writing, shall be signed by the property owner applicant, shall be accompanied by such fees as the Board deems necessary to defray its costs in processing the application in question. The property plan shall contain such information as the Board determines to be necessary for it to reach a decision. In appropriate cases, the Board may require that the plan shall be prepared by a registered professional engineer or registered land surveyor. The application shall list the name and current mailing address of each abutter to the property in question. An "abutter" is defined as anyone who owns property immediately adjacent to or within two hundred (200) feet of any portion of the property in question.

- A. Appeals. Applications appealing an administrative decision shall specify the grounds for the appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all of the papers constituting the record upon which the action appealed from was taken.
- B. Special exceptions. Applications seeking a special exception shall quote the section of the Zoning Chapter authorizing the special exception and shall state how the applicant meets the conditions that would entitle him to the special exception provided for by chapter.
- C. Variances. Applications seeking a variance shall quote in full the section of the Zoning Chapter from which a variance is sought. The applicant shall also state in writing, to the best of his ability, why he is in need of a variance.

### **307-85 Appeals**

Any person aggrieved by a decision of the Zoning Administrator or other officer of the town charged with administering or interpreting this Ordinance may appeal to the Zoning Board of Adjustment. Such an appeal must be made within twenty (20) days from the date of the order or decision complained of in writing, addressed to the clerk of the Zoning Board of Adjustment.

### **307-86 Hearing Procedure**

Hearings before the Board shall be conducted by the Chairman or, in his absence, the Acting Chairman who may administer oaths and compel the attendance of witnesses. At all hearings before the Board, the burden shall be upon the applicant to establish that the administrative decision appealed from is erroneous; or to show that he has met the conditions established for a special exception; or to show that he has met the criteria for a variance. Abutters and residents of the town shall be permitted to speak on behalf of or against the appeal and to present evidence in support of their position.

### **307-87 Decisions**

The minutes of the Board shall show the vote of each member upon each question, or, if absent or failing to vote, the minutes shall indicate such fact.

- A. Appeals. If the Board votes to reverse or modify the decision of an administrative officer, the reason or reasons for the reversal or modification shall be set forth in the minutes. In exercising its authority in appeal cases, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and make such order or decisions as ought to be made and, to that end, shall have all the powers of that officer from whom the appeal is taken.
- B. Special exceptions. If the Board votes to grant a special exception, it shall set forth in its minutes how the applicant has met all of the conditions for the special exception. If the Board votes to deny a special exception, it shall set forth in its minutes which condition or conditions for the special exception were not met by the applicant.
- C. Variances. If the Board votes to grant a variance, it shall set forth in its minutes how the applicant has met each of the five (5) conditions which must be set forth in order to obtain a variance. If the Board votes to deny a variance, it shall set forth in its minutes which condition or conditions, necessary for a variance, the applicant failed to establish.

### **307-88 Variances [Amended March 8, 2005 ATM, Amended 3-13-07 ATM]**

- A. In order for a variance to be legally granted, all of the following five (5) conditions must be present:
  - 1. The variance will not be contrary to the public interest.
  - 2. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.
    - a. Applicant seeking use variance – Simplex analysis
      - i. The zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.
      - ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.

- iii. The variance would not injure the public or private rights of others.
- b. Applicant seeking area variance – Boccia analysis
- i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
  - ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than a variance.
3. The variance is consistent with the spirit of the ordinance.
  4. Substantial justice is done.
  5. The value of surrounding properties will not be diminished.
- B. At the hearing on the application, the applicant shall present testimony and other evidence to establish that all five (5) conditions for a variance have been met. The decision of the Board shall be based on evidence presented at the hearing, not on the allegations contained in the application. Abutters and residents shall be entitled to present testimony and other evidence to establish that the applicant has or has not met all five (5) of the above-listed conditions.
- C. The Zoning Chapter of the Code of the Town of Pelham is part of a Comprehensive Plan and is designed and intended to promote health, safety and general welfare of the community as delineated in Section 307-2 of this Ordinance. In determining whether the granting of a variance would violate the spirit and intent of the chapter, the Board shall be guided by the general statements of intent contained in Section 307-2 and by the following specific statements of intent.
1. It is the intent of this chapter to preserve the rural charm and cultural heritage now attached to the Residential, Rural and Recreation-Conservation-Agriculture Districts of our town.
  2. It is the intent of this chapter to prevent the pollution of our air, brooks, streams, ponds and lakes.
  3. It is the intent of this chapter to permit in each district only those uses specifically authorized by this chapter for each district.
  4. It is the intent of this chapter to prevent overcrowding of housing and the creating of blighted areas.
  5. It is the intent of this chapter to support other codes, regulations, rules and ordinances which have been adopted to carry out the same or similar purposes as this chapter.

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**ARTICLE XIV  
AMENDMENTS; PENALTIES; SEVERABILITY AND WHEN EFFECTIVE**

**307-89 Amendments** [Amended 3/2/76 by ballot by the ATM, Art.9]

This chapter may be amended in the manner prescribed by the New Hampshire Revised Statutes Annotated.

**307-90 Violations and Penalties** [Amended March 8, 2005 ATM]

Any person, whether natural or corporate, violating any of the provisions of this chapter, shall be fined not more than two hundred seventy five dollars (\$275.00) for a first offense and five hundred dollars (\$500.00) for subsequent offences for each day that such violation is found to continue after the conviction date or after the date upon which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier.

**307-91 Severability**

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

**307-92 When effective**

This chapter shall take effect upon its passage.

**ARTICLE XV**  
**RESIDENTIAL CONSERVATION SUBDIVISION BY SPECIAL PERMIT**  
[Added by ballot 3-11-08 ATM]

**RESIDENTIAL CONSERVATION SUBDIVISION:**

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Special Permit to allow for a CONSERVATION SUBDIVISION in accordance with the restrictions and requirements of this section. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations in order to further administer the requirements of this Ordinance.

**307-93 Purpose**

Among the goals of this Conservation Subdivision Ordinance is to promote the conservation of undeveloped land and to limit the length of new roads so as to minimize the impact of their future and ongoing maintenance. Special Permits shall be administered by the Planning Board to ensure that Conservation Subdivision opportunities will not adversely impact neighboring properties, town citizens, or the Town of Pelham. The Planning Board shall consider the following purposes during its review of individual applications:

- A. to maintain and preserve the rural character of the Town of Pelham;
- B. to provide multiple options for landowners to conserve open space from development while minimizing impacts on environmental resources (such as wetlands, floodplain, and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls);
- C. to provide design flexibility and efficiency in the establishment of services and infrastructure, including the opportunity to reduce road lengths, utility runs, and the amount of paving required for residential development;
- D. to reduce erosion and sedimentation by retaining existing vegetation;
- E. to provide for a diversity of lot sizes, building orientation, and proximity in the physical placement of homes while minimizing confusion over issues of property ownership;
- F. to provide for connected corridors of open land throughout town for the protection of wildlife habitats, environmental resources, and public enjoyment of such corridors for recreational and aesthetic purposes;
- G. to conserve scenic views, unique and aesthetic elements of the town's character while minimizing views of new development from existing roads.
- H. to provide reasonable and realistic opportunities for the development of workforce housing.  
[Added by ballot March 10, 2009 ATM, Art. 2]

**307-94 Special Permit**

All Conservation Subdivisions shall obtain a special permit from the Planning Board. The special permit shall set forth all conditions of approval and shall list all plans, drawings, and other submittals that are requisite elements of each application. Everything on a plan or submittal that is listed on the special permit shall be considered a condition of approval to the Pelham Conservation Subdivision zoning ordinance. Construction shall not deviate from the stated conditions without first obtaining approval of such modification from the Planning Board or from their designated agent.

### **307-95 Application Procedure**

Applications for special permits for a Conservation Subdivision shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Pelham Planning Board.

### **307-96 Approval of Applications**

The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section, including but not limited to; a reasonable adjustment in allowed density, required frontage, setbacks, or any other requirement necessary to accomplish said objectives.

### **307-97 Reserved for subsequent amendment**

### **307-98 Definitions**

The following definitions apply specifically to this Article of the Zoning Ordinance:

Common Area: Any parcel or area of land and/or area of water set aside as a part of a Conservation Subdivision plan. A common area is designed for the benefit and enjoyment of the residents of a Conservation Subdivision. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other non-commercial/non-residential / non-industrial uses, plus any utility services utilized by the owners of the common area.

Conservation Easement. A legal agreement between a landowner and a land trust or government agency that permanently limits uses of land that has been donated in order to protect its conservation values.

Density Offsets: Allowances for a minor increase in lots or units to a Conservation Subdivision for inclusion of amenities, design attributes, and protection of natural land features beyond what is found in conventional subdivisions.

Mandatory Homeowners' Association: A private, non-profit corporation, association, or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Conservation Subdivision. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area, when applicable and may charge dues to cover expenses which may include tax liabilities of the common area, recreational or utility facilities. Articles of association and or incorporation must be acceptable to the Planning Board and reviewed by Town Counsel at the applicant's expense.

Viewshed: An area of land, water, or other environmental elements visible from a fixed vantage point with particular scenic, aesthetic or historic value that is deemed worthy of protection against development or other change.

Workforce Housing: Deed restricted housing intended to comply with the New Hampshire Workforce Housing Law, NH RSA 674:59, I and 674:21, IV (a) to provide to provide reasonable and realistic opportunities for the development of workforce housing within reach of recent college graduates, young professionals and community employees so that they may live in the community in which they work. All workforce housing units must be compatible in style and appearance to the other units within the proposed development. [Added by ballot March 10, 2009 ATM, Art. 2]

Yield Plan: The Yield Plan is the design, acceptable to the Planning Board, showing the number of lots that could be approvable and buildable following the requirements of conventional zoning and subdivision regulations. The Yield Plan should represent a realistic baseline of development

against which the Planning Board can compare the density proposed for the Conservation Subdivision.

### **307-99 Strict Adherence**

Strict adherence to these provisions shall not be construed as establishing a legal right to a special permit for a Conservation Subdivision.

### **307-100 Parcel Requirements**

Ten (10) acres is the minimum size for a Conservation Subdivision development. The minimum frontage for the development shall be a continuous one hundred (100) feet and of sufficient length to provide safe access for a right-of-way of at least fifty (50) feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Pelham. If, however, the subject parcel has only fifty (50) feet of frontage and was legally created prior to the date of adoption of this ordinance under ordinances and regulations that required at least a fifty (50) feet minimum right-of-way, fifty (50) feet shall be the minimum required frontage for such pre-existing lots. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. **[Amended March 10, 2009 ATM, Art. 2]**

### **307-101 Density**

The maximum density for Conservation Subdivisions shall be determined by use of a yield plan. The Planning Board shall adopt subdivision regulations that provide for the generation of a yield plan in accordance with this section. After review of the yield plan the Planning Board shall determine whether the established density meets the Conservation Subdivision regulations. The Board may, at its discretion, and at the developer's expense, require additional engineering or engineering review.

### **307-102 Density Offsets**

For the inclusion of amenities, design attributes, protection of natural land features beyond what is found in conventional subdivisions, and to provide reasonable and realistic opportunities for the development of workforce housing, it is the intent to provide the Planning Board the flexibility to allow for a minor increase in lots or units to a Conservation Subdivision. **[Amended March 10, 2009 ATM, Art. 2]**

Density offsets are based on the number of lots or units achievable under the yield plan baseline. In no instance shall the Planning Board grant density offsets totaling in excess of twenty percent (20%) beyond the density established in the yield plan.

When reviewing requests for density offsets, the Planning Board shall consider requiring the establishment of a Mandatory Home Owner's Association to fund, maintain, and protect the Open Space and common areas including roads, buildings, and utility facilities. Every development seeking such offsets shall provide the Planning Board with easements, covenants, or deed restrictions, which shall provide for the perpetual continuation of the performance standards, which are used in the granting of any offset. Said easements, covenants, or deed restrictions shall be reviewed by qualified legal counsel on behalf of the town (at the developer's expense) and approved by the Planning Board prior to the issuance of any final approval.

The Planning Board may grant development density offsets if the required criteria as set forth in the Pelham Subdivision Regulations are met. The required criteria within the Subdivision Regulations shall be based on the following standards:

- A. the preservation of unique land, wildlife habitat/corridors, environmental features, and/or facilities;
- B. innovative layout and design of the project to encourage a village or community type environment with such amenities as village greens and parks, community viewsheds and/or integration into existing protected farm activities or existing recreational facilities;

- C. the development of new recreational facilities such as parks, playgrounds, trails, and/or community centers. If the improvements are made available to the general public, a density offset may be adjusted to reflect use;
- D. the protection of each potential frontage lot as open space. Merging adjacent road frontage parcels with the parent parcel and removing structures shall qualify.
- E. the inclusion of workforce housing as defined in 307-98. Criteria for density offsets shall be developed by the Planning Board and outlined in the subdivision regulations. Administration of deed restrictions and assurance of buyer/renter qualification shall be outsourced at the expense of the applicant to the agency or agencies identified by the Planning Board within the subdivision regulations. [Added by ballot March 10, 2009 ATM, Art. 2]

### **307-103 Standards for Approval**

All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Special Permit:

- A. the permit shall be in compliance with this ordinance or any variance that may be granted there from;
- B. impacts to existing neighborhoods shall be considered;
- C. the Planning Board shall consider the following aspects of the surrounding area:
  - 1. Transportation: Assessment through analysis of the following:
    - a. access for emergency vehicles onto the site, within the site, and to individual houses;
    - b. capacity of nearby and affected intersections, and transportation corridors;
    - c. cost for the town to maintain roadways if applicable;
    - d. layout, width, and construction of roadways on the site.
  - 2. Protection of Natural and Historic Resources: Assessment through analysis of the following:
    - protection of environmentally sensitive areas, including but not limited to, wetlands, shore land buffers, wildlife corridors, significant groundwater resources, etc;
    - maintenance of viewsheds, stone walls and other visually appealing aspects of the site;
    - establishment of new and protection of existing trail systems;
    - protection of historic buildings and significant historical landscapes;
    - establishment, protection, and promotion of agricultural uses on the site
- D. the granting of the permit shall not result in municipal expense that is in excess of that which is necessary for conventional subdivision development;
- E. existing or planned community facilities and services (including streets and highways) shall not be impacted more than would occur in a conventional subdivision development;
- F. landscaping or other appropriate buffers of sufficient opacity and materials shall be required if deemed necessary for the welfare of neighboring properties or the Town.

### **307-104 Subdivision Regulations**

The Planning Board shall adopt sections of the Subdivision Regulations not preempted by this ordinance which shall apply to the Conservation Subdivision, including the right to waive such regulations. Where not specifically pre-empted by the provisions of this ordinance, the requirement that is more restrictive shall apply.

### **307-105 Minimum Open Space Requirements**

The Planning Board shall adopt Subdivision regulations that specify the criteria for Open Space based on the following standards:

- A. a minimum of forty percent (40%) of the total land in the parcel must be dedicated as open space;
- B. the minimum required open space is land not to be built upon except that up to fifty percent (50%) of the open space may include recreational facilities, water supply facilities and subsurface systems. The open space cannot be subjected to current use taxation or discretionary easements;
- C. the dedicated Open Space shall be protected in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plan;
- D. the open space and/or common area within a Conservation Subdivision shall be owned and bound by one or more of the following:
  1. a Mandatory Homeowners' or Condominium Association;
  2. a Public Body;
  3. a Private Entity

Any such designation or combination of designations must be made prior to approval of the subdivision by the Planning Board.

### **307-106 General Requirements**

- A. Only single family detached residential units shall be permitted.
- B. Setbacks and Other Dimensions:
  1. The following road frontage requirements shall apply:
    - a. fifty (50) feet or more on interior roadways for each lot or unit;
    - b. two hundred (200) feet or more for each lot or unit proposed along an existing town road.
  2. All developments shall contain some form of lot or limited common area delineation or lines that designate the amount of land attributable to each unit.
  3. The following minimum setbacks shall apply to all residential structures within the development excluding existing historic buildings:
    - a. twenty-five (25) feet from exterior property lines of the initial Conversation Subdivision parcel;
    - b. thirty (30) feet from the right of way of roads;
    - c. fifteen (15) feet from side and rear lot lines of individual unit lots if applicable;

- d. thirty (30) feet from any other residential unit within the development.

**307-107 Expiration**

Any Special Permit shall expire if there has not been active and substantial development or construction on the site by the owner or the owner's successor in interest in accordance with the approved plan within twelve (12) months after the date of approval. As part of its approval of a plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or construction" for purposes of complying with this paragraph.

**307-108 Conditions**

The Planning Board may impose stricter standards than allowed by this Article if it should determine that an adverse impact would result from the Conservation Subdivision.

**307-109 Savings Clause**

If any provision of this ordinance is found to be invalid or unenforceable such a result shall not be construed to invalidate the remainder of the ordinance which shall remain in full force and effect.

**#255B-1**

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amended ATM 3/8/05: Section 307-50, 51, 52, 53, 307-88.A, 307-74.B, 307-76.II, 307-90, 307-40.A.1, 307-69.LL, 307-13, 307-28, 307-41;

amended ATM 3/14/06: 307-18, 307-53A, 53C, 53-4D, 307-68, 69, 69.I, 307-76.II, 76.II.3, 76.II.5

TABLE 1 – Table of Dimensional Requirements [Amended 3-29-06 to include Senior and Elderly housing requirements and setbacks for properties abutting cemeteries per NH RSAs]

Amended ATM 3/13/07: 307-13, 307-18 table 2, 307-45, 46, 47, 307-50.G, H, Q, 307-51.B, 307-52, 307-53-1.B, C, E, 307-53-2.C, 307-53-3, 307-53-4, 307-68, 607-69, 307-70, 307-71, 307-72, 307-88

Amended ATM 3/11/08: 307-69, 307-76 II, Article XV added in its entirety;

Amended ATM 3/10/09: 307-16.B, 307-76 II, 307-76 III, 307-93.H, 307-98, 307-100, 307-102, 307-102.E