

**TOWN OF PELHAM  
NEW HAMPSHIRE**



**ZONING ORDINANCE**

**(Adopted 1955 – Revised March 2020)**



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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.

Refer to Article V-I, Section 307-25-5 for nonconforming uses within the MUZD.

#### **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, Amended by STM 6/24/17]

	Minimum Lot Size	Frontage	Building Setbacks		
	(sq. ft.)		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>
Elderly Developments	435,600 <sup>***</sup>	50'	100' <sup>*****</sup>	100' <sup>*****</sup>	100' <sup>*****</sup>
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.
- \*\*\* Elderly Housing developments must have at least ten (10) acres that leaves five (5) acres of which contain 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.
- \*\*\*\*\* Buildings shall be set back from the nearest lot line a distance of one hundred (100) feet unless a greater setback is established at the Planning Board's discretion [Amended by Special Town Meeting 6/24/17]

**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 area 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 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**

[Added 3-10-09 by ballot ATM, Art. 3; Amended by ballot ATM 3/11/14, Art. 2, Amended by ballot ATM 3/16/17]

**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 [Amended March 11, 2014 ATM, Art. 2]**

<u>Full District Name</u>	<u>Short District Name</u>
Aquifer Conservation District .....	ACD
Wetlands Conservation District .....	WCD
Floodplain Conservation District.....	FCD
Town Center Mixed-Use District.....	MUZD

**307-16 Districts Defined [Amended March 11, 2014 ATM, Art. 2, Amended March 16, 2017 ATM, Amended March 12, 2019 ATM, Amended March 10, 2020]**

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, and warehousing and storage facilities. 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, Amended 3-16-17]

- 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.
- I. Pelham Mixed-Use Zoning Overlay District (MUZD): The provisions of the Pelham Mixed Use Zoning Overlay District represent a zoning classification that allows by conditional use permit a mix of business and residential uses within the same building or on the same parcel of land. The district is intended to accommodate a physical pattern of pedestrian-friendly, mixed-use development that is traditionally found in neighborhoods within town centers throughout New England.

### **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.

**For more information on Zoning District Boundaries, please consult the Official Pelham Zoning Map available for inspection at the Pelham Planning Department and online at [www.pelhamweb.com/planning/](http://www.pelhamweb.com/planning/).**



**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; Amended ATM 3-11-14, Art. 2, Amended ATM 3-16-17, Amended ATM 3-12-19, Amended ATM 3-10-20]

**307-18 Principal Permitted Uses by District** 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 Attached	S	S	S		S	
Accessory Dwelling Units Detached	CUP	CUP	CUP		CUP	
Agricultural Uses	P	P	P	P	P	P
Truck Trailers or Container pods [Added by ballot ATM March 13, 2007]		P	P	P		
Automotive Repair Facilities [Added by ballot ATM March 13, 2007]		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 Facilities [Amended ATM 3-16-17 by petition warrant article]			P	P		
Storage Facilities (Self-Storage) [Amended ATM 3-16-17 by petition warrant article]		P	P	P		
Private Utility Structures; i.e. windmills, watermills, free-standing solar collectors, etc. that generate power for use on same site [Added 3-14-06 by ballot at ATM, Art. 3]	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]

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

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.

CUP = Permitted by Conditional Use Permit from Planning Board [Added ATM 3-10-20]

For uses permitted in the Mixed-Use Zoning Overlay District (MUZD), please refer to Article V-I, 307-25-3 Table of Uses within the MUZD [as Amended 3-8-16 ATM, Art. 2]

### 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 impact 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 southernly 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 V – I  
MIXED-USE ZONING OVERLAY DISTRICT (MUZD)**

[Added by ballot ATM 3/11/14, Art. 2, Amended ATM 3/8/16, Art. 2]

The provisions of the Pelham Mixed Use Zoning Overlay District represent a zoning classification that allows by conditional use permit a mix of business and residential uses within the same building or on the same parcel of land. The district is intended to accommodate a physical pattern of pedestrian-friendly, mixed-use development that is traditionally found in neighborhoods within town centers throughout New England.

**307-25-1 Purpose (Spirit and intent)**

The Purposes of the Pelham **MUZD** are to:

1. Allow the traditional mix of residential, business, governmental and institutional uses within the district;
2. Accommodate retail, service, and other business uses on the ground floor and residential units above or adjacent to the nonresidential space;
3. Promote Pelham Center as a vibrant community gathering place;
4. Implement sidewalks or pathways to provide for pedestrian access, connectivity and safety;
5. Provide increased and more varied housing types and business opportunities.

**307-25-2 MUZD Overlay District**

The MUZD District is bounded to the EAST by Beaver Brook, to the NORTH at the intersection of Beaver Brook and Windham Road (including lots 22/8-133 and 22/8-134 and all lots with frontage along Windham Road and Mossey Lane), to the WEST by the intersection of Nashua Road and Tenney Road from lot 22/8-136 (including all lots with frontage on Nashua Road and Greenwood Terrace) to the intersection of Nashua Road and Meetinghouse Way (formerly Pelham Common Highway) including all lots with frontage along Meetinghouse Way then southwesterly along the eastern side of Marsh Road to the southernmost boundary of lot 22/7-130 and to the SOUTH by all lots with frontage on Acorn and Old Bridge Street (excluding the Gibson Cemetery) to Beaver Brook. (Refer to the Pelham Zoning Map which can be found in the Pelham Planning Department or on the Planning Department Website at [www.pelhamweb.com/planning/](http://www.pelhamweb.com/planning/))

**307-25-3 Table of Uses within the MUZD [Amended 3-8-16 ATM, Art. 2, Amended 3-12-19 ATM]**

<b>Allowed Uses*</b>	
Single, Duplex or Multi-family Residential	Bakeries
Accessory Dwellings	Financial services
Bed and Breakfast	Churches
Assisted Living Home or Group Home	Civic institutions
Professional Offices	Family entertainment
Book stores	Retail (under 10K sq. ft.)
Artist Live/Work/Gallery space	Parking
Research and Development	Health/fitness clubs
Artisan/Craft/Antique/Consignment shops	Spas
Educational Facilities	Banks with or without drive-thru windows Attached or stand-alone ATMs
Museums	Banquet/function halls
Child care facilities	Farm stands
Medical offices	<i>Existing accessory dwelling units (in-law apartments) within the MUZD may be used as market rentals without limitation to family members or caregivers, subject to demonstration of septic capacity necessary to support increased residential use.</i>
Parks	
Lodges/clubs	
Veterinarians' offices	
Restaurants	
<b>*ANY USES NOT LISTED ABOVE ARE PROHIBITED WITHIN THE MUZD</b>	

**307-25-4 Conditional Use Requirements [Amended 3-8-16 ATM, Art. 2]**

Within the District, lot uses, lot size, density and setbacks are more flexible than are allowed in the underlying Residential Zoning District or within Pelham Zoning Article III, Chapter 307-12, Dimensional Requirements. When an increase in the density or mix of permitted uses of the lot is proposed, or when a relaxation of lot size or setbacks is proposed, the applicant shall submit a site plan and conditional use permit application. The Application and site plan shall demonstrate that:

1. The land can support the proposed uses and development in full compliance with the New Hampshire Department of Environmental Services' Env-Wq 1000 Subdivision and Individual Sewage Disposal System Design Rules and subsequent revisions;
2. Adequate area is provided for the installation of onsite stormwater systems or low impact development techniques as described within the Pelham Site Plan Regulations;
3. Adequate area is provided for sidewalks, landscaping and other required site design elements as described within Pelham Site Plan Regulations.

**307-25-5 Nonconforming Lots within the MUZD**

Pre-existing non-conforming lots will not require variance relief for proposed expansion within the MUZD and an applicant may apply for a conditional use permit.

**307-25-6 Setbacks [Amended 3-8-16 ATM, Art. 2]**

The front building setback for new structures shall be a minimum of fifteen (15) feet, to provide adequate room for sidewalks and planting strips along town roads which are mandatory within the MUZD.

Side and rear setbacks shall be a minimum of fifteen (15) feet, except when property abuts R-zoned property, in which case the minimum setbacks required in the district shall be the same as required for a residential use within the abutting R-zoned lot.

**307-25-7 Building Height [Amended 3-8-16 ATM, Art. 2]**

No new building within the MUZD shall exceed two (2) stories above existing grade. The building height for new buildings shall be no more than thirty (30) feet from mean grade to ridge height with the exception of appropriate unoccupied architectural features such as cupolas at the discretion of the Planning Board. This height restriction shall remain until such time as the Town has appropriate fire apparatus to reach taller structures.

**307-25-8 Parking**

Off street parking requirements, including quantity and design, shall be determined by the Planning Board as part of site plan review. It is strongly recommended that off street parking be accommodated at the rear of the property whenever possible and practical in the Planning Board's opinion.

**307-25-9 Building appearance**

All applications for new structures or exterior changes to existing structures shall include color architectural renderings showing a traditional New England appearance for Planning Board review. The Planning Board shall, in its discretion, determine whether proposed building architecture is compatible with traditional New England character as described in the Architectural Design Standards within the Pelham Site Plan regulations.

**307-25-10 Signage within the MUZD District**

No internally illuminated signs including plastic, neon or electronic messaging signs will be permitted within the district including within windows. A color rendering of all proposed signage must accompany any site plan application. The Planning Board shall have discretion to require signage that is compatible with a traditional New England appearance including wood or material that invokes a carved wood or engraved stone appearance. Only one building façade sign and one ground sign are allowed per business. No sign shall exceed twenty-five (25) Square feet in size.

**307-25-11 Savings Clause**

In the event of any discrepancy between the underlying residential district and the MUZD, overlay district, the MUZD language shall apply.

**ARTICLE VI**  
**AQUIFER CONSERVATION DISTRICT**  
[Added 3/12/85 by ballot by the ATM, Art. 8; Amended 3/8/05 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.

Persuant to RSA 674:57, by resolution of the Town of Pelham Board of Selectmen all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Hillsborough, NH" dated September 25, 2009, together with the associated Flood Insurance Rate Maps dated September 25, 2009 are declared to be part of this Town of Pelham Zoning Ordinance, *Article VIII, Floodplain Development Ordinance* and are hereby incorporated by reference.

[Amended by vote of the Board of Selectmen 9-8-09]

### 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 it's 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 VIII-I**  
**ILLCIT DISCHARGE DETECTION AND ELIMINATION (IDDE) ORDINANCE**  
[Added by ballot March 2010, Replaced in its entirety by ballot March 2020]

**307-48-1-1 Purpose and Intent**

The purpose of this Illicit Discharge Detection and Elimination Ordinance (the Ordinance) is to protect water quality in the Town of Pelham (Pelham or the Town) necessary to provide for the health, safety, and general welfare of the citizens through the regulation of non-storm water discharges to storm drain systems, surface waters, or ground water to the maximum extent practicable as required by federal and state law.

To comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit, this Ordinance intends to provide for the protection of Pelham's local natural resources by establishing and enforcing the prohibition of illicit discharges that can carry pollutants into local surface waters and ground water.

The objectives of this Ordinance are to:

1. prevent pollutants from entering Pelham's storm drain systems, surface waters, or ground water.
2. prevent the pollution of surface waters and ground water that serve as a primary source of local drinking water supplies.
3. prohibit illicit discharges and connections to Pelham's storm drain systems, surface waters, or ground water.
4. require the removal of all known illicit connections.
5. comply with state and federal statutes and regulations relating to storm water discharges.
6. establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this Ordinance.

**307-48-1-2 Definitions**

- A. Best Management Practice (BMP)** An activity, procedure, restraint, or an accepted and proven structural, non-structural, or vegetative measure which reduces the quantity or improves the quality of storm water runoff.
- B. Discharge Access (Point)** The outlet location of a discharge conveyance.
- C. Discharger** Any person, entity, property owner or lessee of a property engaged in causing an illicit discharge from their property.
- D. Environmental Protection Agency (EPA)** The Federal agency responsible for implementing the Federal Water Pollution Control Act, (3 U.S.C. § 1251 et seq.) aka the "Clean Water Act".
- E. Illicit Connection** An illicit, unauthorized, or illegal connection that drains into or is connected to a storm drain system, surface waters, or ground water, shall mean either of the following:
  1. any pipe, drain, open channel, or other conveyances that has the potential to allow an illicit discharge. Including, but not limited to any conveyances which allow non-storm water discharge

such as sewage, process wastewater, or wash water to enter storm drain systems, surface waters, or ground water. This includes any connections to storm drain systems, surface waters, or ground water from indoor drains and sinks regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Town.

OR

2. any pipe, drain, open channel, or conveyance connected from a residential, commercial, or industrial land use, that has not been documented in plans, maps, or equivalent records or has not been approved by an authorized federal, state, or local enforcement agency.

**F. Illicit Discharge** Any direct or indirect non-storm water discharge to storm drain systems, surface waters, or ground water, excepting discharges authorized by a specific NPDES permit, or firefighting activities.

**G. Infiltration** The act of conveying surface water into the ground resulting in ground water recharge and the reduction of storm water runoff.

**H. National Pollutant Discharge Elimination System (NPDES)** The water quality program established as part of the Clean Water Act and implemented by the EPA to authorize the discharge of pollutants into surface waters of the United States.

**I. Non-Storm Water Discharge** Discharge to storm drain systems, surface waters, or ground water not composed entirely of storm water.

**J. Outfall** The point at which storm water flows out from a discernible source; a confined and discrete conveyance into Waters of the State of New Hampshire or Waters of the United States.

**K. Owner** A person or entity with a legal or equitable interest in a property.

**L. Pollutant** Anything which causes or contributes to pollution whether originating at a point or nonpoint source, and that is or may be introduced into any sewage treatment works or Waters of the State of New Hampshire or Waters of the United States.

Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**M. Storm Water** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation or resulting from such precipitation.

**N. Storm Water Management Plan (SWMP)** Town regulations required by the EPA (NPDES) that describes the Town's management of storm water by using pollutant source controls, BMPs, and construction phase practices.

**O. Storm Water Pollution Prevention Plan (SWPPP)** A plan required by the Town from a person or entity to identify potential sources of pollution or contamination at a site, and to eliminate or reduce the opportunity for the introduction of pollutants into storm water runoff through improved site design, pollutant source controls, structural BMPs, and construction phase practices.

- P. Storm Water Runoff** Any water coming from rainfall, snowmelt, or irrigation systems (etc.) that is not absorbed, evaporated, or otherwise stored within the contributing drainage area.
- Q. Town** The governing body of the Town of Pelham as the authorized enforcement agency under this Ordinance including, but not limited to: officers of the Town; Town departments, boards and commissions; and any other entity or designee(s) directed by the Town officials to act on behalf of the Town.

### **307-48-1-3 Applicability**

This Ordinance shall apply to all water, pollutants, or other flows entering storm drain systems, wetlands, surface waters, or ground water generated from any public or private, developed or undeveloped lands within the Town of Pelham, unless explicitly exempted by the Town. This Ordinance applies to all discharges including construction activity.

### **307-48-1-4 Responsibility**

It is the responsibility of the Town, property and facility owners, property and facility users, and all citizens to act in a way to prevent pollution, protect natural resources, and safeguard public health and safety.

All property and facility owners and their assigns or lessees have the responsibility to manage and discharge non-storm water flows legally and in compliance with all federal, state, and local ordinances, regulations, rules, and laws. All property and facility owners and their assigns or lessees have the responsibility to maintain and operate storm water devices and systems under their control in a manner consistent with all federal, state, and local ordinances, regulations, rules, and laws, and to ensure continuous and lawful functioning.

Every person or entity (or person or entity's lessee) owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, obstructions, or other matter that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

The Town is responsible for oversight of Pelham's storm drain systems, surface waters, and ground water to ensure that the discharge of pollutants is prohibited and to provide a mechanism to regulate and enforce the prohibitions.

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person or entity will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

### **307-48-1-5 Authority**

The Town of Pelham shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Town may be delegated in writing by the Town to other persons or entities acting in the beneficial interest of or in the employ of the Town.

#### 5.1 Access to Property and Facility

To the extent permitted by law, this Ordinance provides authorization for the Town of Pelham to access properties and facilities to act on the detection and elimination of suspected and known illicit discharges including, but not limited to, inspection, monitoring, and enforcement. Unless determined by the Town to present imminent and substantial danger to the environment, or to public health or welfare, no entry shall be

made without due notice and the consent of the property/facility owner or their assigns/lessees.

1. The Town shall be permitted to enter and inspect property and facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into the premises, the discharger shall make the necessary arrangements to allow access to representatives of the Town.
2. Property owners and facility operators shall allow the Town ready access to all parts of the premises for the purposes of inspection, sampling, and if applicable, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state or federal law.
3. The Town shall have the right to set up on any property or facility such devices as are necessary, in the opinion of the Town, to conduct monitoring and/or sampling of storm water discharge.
4. The Town has the right to require dischargers to install monitoring equipment as necessary. Such sampling and monitoring equipment shall always be maintained in a safe and proper operating condition by the discharger at their own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Town access to the property or facility is a violation of this Ordinance. If the Town has been refused access to any part of the premises from which storm water is discharged, and the Town is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or when there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this Ordinance or any related order issued, or to protect the overall public health, safety, and welfare of the community, then the Town may seek issuance of an administrative search warrant from a court of competent jurisdiction.

## 5.2 Requirement to Manage Storm Water Pollutants using Best Management Practices

The Town has adopted Best Management Practice requirements for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, storm drain systems, surface waters, or ground water.

Any person or entity responsible for a property or premise shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into storm drain systems or watercourses through the use of structural and non-structural BMPs. Further, any person or entity responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person or entity's expense, additional structural and non-structural BMPs to prevent further discharge of pollutants.

## **307-48-1-6 Non-Storm Water Discharge**

### 6.1 Prohibition of Illegal Discharges

No person or entity shall throw, drain, or otherwise discharge, cause, or allow others under their control to throw, drain, or otherwise discharge any pollutants or waters containing any pollutants, other than storm water, into storm drain systems, surface waters, or ground water.

The commencement, conduct, or continuance of any illegal discharge to storm drain systems, surface waters,

or ground water is prohibited except as identified below.

1. The following uncontaminated discharges are exempt from discharge prohibitions established by this Ordinance:
  - water line flushing;
  - discharges from potable water sources;
  - landscape irrigation or lawn watering (not agricultural);
  - diverted stream flows;
  - rising ground water;
  - ground water infiltration;
  - pumped ground water;
  - foundation or footing drains (not including active ground water dewatering systems)
  - water from crawl space or sump pumps;
  - natural springs;
  - natural riparian habitat or wetland flows;
  - street wash waters;
  - culvert or storm system cleaning;
  - non-commercial washing of vehicles or other non-commercial wash water;
  - dechlorinated swimming pool, hot tub, skating rinks or other non-commercial recreational water (less than 1 PPM chlorine);
  - air conditioning condensation; and
  - any other water source not containing pollutants.
2. Discharges or flows from fire-fighting activities are exempt from prohibition.
3. Discharges specified in writing by the Town as being necessary to protect public health and safety are allowed.
4. Dye testing is an allowable discharge but requires a verbal notification to the Town prior to the time of the test.
5. The prohibitions shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waivers or orders, and other applicable laws and regulations.

## 6.2 Prohibition of Illicit Connections

No person or entity shall connect, convey, or otherwise discharge or allow others under their control to connect, convey, or otherwise discharge any non-storm water flow into storm drain systems, surface waters, or ground water without express written consent and approval by the Town. The commencement, conduct, or continuance of any illegal discharge to storm drain systems, surface waters, or ground water is prohibited as follows:

1. The construction, use, maintenance, or continued existence of illicit connections to storm drain systems, surface waters, or ground water is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person or entity is considered to be in violation of this Ordinance if the person or entity connects a line conveying sewage to storm drain systems, surface waters, or ground water (except approved and compliant subsurface and/or wastewater disposal systems), or allows any such connection to continue.
4. Improper connections in violation of this Ordinance must be disconnected and legally redirected, if necessary, to an approved onsite wastewater management system or an appropriate sanitary sewer



system.

5. No person or entity shall obstruct or interfere with the normal flow of storm water into or out of storm drainage systems or natural conveyances without prior approval from the Town (at a minimum).
6. Upon receipt of written Notice of Violation from the Town, any drain or conveyance that has not been documented in plans, maps, or equivalent, and that may be connected to a storm sewer system, shall be field located by the owner or occupant of that property, at their own expense. The notice will specify: a schedule for the location of the drain or conveyance to be completed; that the type of drain or conveyance is to be identified as storm sewer, sanitary sewer, or other discharge; and that the outfall location or point of connection to the storm sewer or other storm water discharge point be identified and accurately show on a plan or map. These investigations are to be documented in writing and provided to the Town.

### 6.3 Industrial or Construction Activity Discharges

Any person or entity subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges.

This Ordinance is in addition to and does not circumvent or replace the requirements of any entity operating under a NPDES permit. Such entities continue to be required to comply with all permits and other applicable laws and regulations.

### 6.4 Notification of Spills or Other Non-Storm Water Discharges

Notwithstanding other requirements of law, as soon as any person or entity responsible for a property, facility, site activity, or operation has information of any known or suspected release of pollutants or non-storm water discharges which are resulting or may result in illicit discharges or pollutants discharging into the storm water systems, surface waters or ground water, said person or entity shall take all necessary steps to ensure the discovery, containment, and cleanup of the release so as to minimize the effects of the discharge.

1. If the spill/discharge poses an immediate health or safety concern, the State of New Hampshire Emergency Services (911) shall be immediately notified.
2. If the spill/discharge does not pose an immediate health or safety concern, the Town Health Officer and Code Compliance Official shall be notified as soon as possible, however, no more than twenty-four (24) hours after the spill/discharge event. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town within three business days of the initial notice.
3. If the spill/discharge originates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to remedy, mitigate, and prevent recurrence. Such records shall be retained for at least three years.

Failure to provide notification of a release to the Town or other appropriate jurisdictional authority as prescribed above is a violation of this Ordinance.

## **307-48-1-7 Violations, Enforcement, And Penalties**

### 7.1 Notice of Violation

It shall be unlawful for any person or entity to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person or entity who has violated or continues to violate the provisions of this Ordinance may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

Whenever the Town finds that a person or entity has violated a prohibition or failed to meet a requirement of

this Ordinance the Town may order compliance by written notice of violation to the responsible person or entity. Such notice may require without limitation:

1. the performance of monitoring, analyses, and reporting;
2. the implementation of source control or treatment BMPs;
3. the elimination of illicit connections or discharges;
4. the abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. a cease and desist of violating discharges, practices, or operations;
6. termination of discharge access;
7. payment of a fine to cover administrative costs; and
8. payment of remediation costs.

The notice shall set forth a deadline within which the prescribed remedy must be completed. The notice shall further advise that should the violator fail to act within the established deadline, the remedy will be completed by the Town and the expense thereof shall be the responsibility of the violator.

In the event the violation constitutes an immediate danger to public health or public safety, the Town is authorized to enter upon the subject property, without prior notice, to take any and all measures necessary to abate the violation. The Town is authorized to seek costs of abatement as outlined in Section 7.7 of this Ordinance.

Based on the severity and level of violation, the Town will escalate notice and/or action on a case-by-case basis. Such escalation of illicit discharge and connection enforcement notice may include:

**Warning Notice**

When the Town finds that any person or entity has violated or continues to violate, any provision of this Ordinance, the Town may serve upon that person or entity a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and/or cooperate with the Town to seek a resolution whereby any illicit discharge or connection will be eliminated. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice.

**Notice of Intent to Enforce**

If following the warning notice the identified responsible person or entity does not act within the prescribed timeline, or if the violation is deemed by the Town to be of high severity or a threat to public health or safety, the Town shall issue a Notice of Intent to Enforce. Such notice will require an immediate response to the Town, define a critical path timeline, prescribe specific requirements for investigation or remedy, identify the consequences and penalties as a result of non-response and non-compliance of this Ordinance. This notice may also assign fines for the violation.

7.2 Violations Deemed A Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or that continues to exist in violation of any of the provisions of this Ordinance is considered a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

The Town may, without prior notice, suspend discharge access when a situation presents or may present

imminent and substantial danger to the environment, or to public health or safety. If the violator fails to comply with a suspension order issued in an emergency, the Town may take such steps as deemed necessary to prevent or minimize damage to storm drain systems, surface waters, or ground water and to minimize the potential danger.

### 7.3 Enforcement

1. The Town is authorized to enforce this Ordinance including related terms and conditions of all related permits, notices, and orders. The Town may pursue all civil and criminal remedies needed to resolve violations of this Ordinance.
2. The Town may seek injunctive relief to restrain the person or entity that violates the provisions of this Ordinance, or related permits, notices, or orders issued from activities that would create further violations, and to compel the person or entity to abate or remediate the violation.
3. If the Town determines that abatement or remediation of contamination is required, a written notice shall set forth a deadline for completion of the abatement or remediation. The order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner as described in Section 7.7 of this Ordinance.
4. Any person or entity who violates any provision of this Ordinance, or the terms or conditions in any related permit or order issued hereunder, shall be subject to fines as defined in the Town's current Illicit Discharge Fine Schedule or as determined by a court of competent jurisdiction. Each day of non-compliance shall represent a separate offense. The Illicit Discharge Fine Schedule can be obtained from the Pelham Planning Department.
5. To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Town may enter upon privately owned property for the purpose of performing their duties under this Ordinance and may make or cause to be made such examinations, surveys or sampling as deemed reasonably necessary to determine the source and extent of the illicit discharge.
6. The decisions or orders of the Town shall be final unless overturned on appeal by the Pelham Zoning Board of Adjustment. Further relief shall be to a court of competent jurisdiction.

### 7.4 Suspension of Discharge Access

Any person or entity discharging to storm drain systems, surface waters, or ground water in violation of this Ordinance may have their discharge access terminated if such termination would abate or reduce an illicit discharge. The Town will notify a violator in writing of the proposed termination of discharge access. The violator may petition the Pelham Zoning Board of Adjustment for reconsideration and hearing.

The Town may suspend access to storm drain systems, surface waters, or ground water to any person, entity, or property without written notice when such suspension is necessary to stop an actual or suspected illicit discharge that presents or may present imminent risk of harm to the public health, safety, welfare or to the environment. If any person or entity fails to comply with an emergency suspension order, the Town may take all reasonable steps necessary to prevent or minimize harm to the public health, safety and welfare, or to the environment, at the expense of the violator and/or property owner.

A person or entity is in violation of this Ordinance if the person or entity reinstates access to the terminated discharge without the prior approval of the Town.

### 7.5 Injunctive Relief

If a person or entity has violated or continues to violate the provisions of this Ordinance, the Town may petition for a preliminary or permanent injunction restraining the person or entity from activities which would create further violations or compelling the person or entity to perform abatement or remediation of the violation.

### 7.6 Criminal Prosecution

Any person or entity that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of fines as defined in the Town's current Illicit Discharge Fine Schedule per violation and per day, and/or imprisonment for a period of time as determined by a court of competent jurisdiction.

### 7.7 Cost of Abatement of Violation

If the Town incurs any costs to investigate, manage, or remedy an illicit discharge or connection, within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within thirty (30) days of the notice of cost. If the amount due is not paid within a timely manner as determined by the decision of the authority, or by the expiration of time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person or entity violating any of the provisions of this Ordinance shall become liable to the Town by reason of such violation. Assessed and notified costs shall be paid to the Town in not more than twelve (12) equal payments. Interest at the rate of 18-percent per annum shall be assessed on the balance beginning on the 1st day of each month following discovery of the violation.

The Town may recover all attorney's fees court costs and other expenses associated with enforcement of this Ordinance.

### 7.8 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Town may impose upon a violator or mediate alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, cleanup, etc.

### 7.9 Remedies Not Exclusive

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Town to seek cumulative remedies.

## **307-48-1-8 Appeal of Notice of Violation**

Any person or entity receiving a Notice of Violation may appeal the determination of the Town. The Notice of Appeal must be received within thirty (30) days from the date of the Notice of Violation. Hearings on the appeal before the appropriate Town authority shall take place within fifteen (15) days from the date of receipt of the Notice of Appeal. The decision of the Town shall be final.

In the event of an appeal, if the violation has not been corrected pursuant to the requirements set forth in the Notice(s) of Violation, or within sixty (60) days of the decision of the authority upholding the decision of the Town, then the Town shall enter upon the subject property and is authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any person, entity, owner, or agent in possession of any premises to refuse to allow the Town or its designated contractor(s) to enter upon the premises for the purposes set forth above.

## **307-48-1-9 Compatibility with Other Regulations**

The Town of Pelham may adopt and periodically amend regulations, rules, and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures, and administration of this Ordinance by

majority vote of the Town authority after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation at least fourteen (14) days prior to the hearing date. Failure of the Town to issue such rules or regulations, or a legal declaration of invalidity by a court, shall not act to suspend or invalidate the effect of this Ordinance.

The requirements of this Ordinance are in addition to the requirements of any other federal, state, and local ordinances, rules, regulations, or other provisions of law, and where any provision of this Ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**307-48-1-10 Severability**

The provisions of this Ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Ordinance or the application thereof to any person, entity, establishment, or circumstance shall be held invalid such invalidity shall not affect the other provisions or application of this Ordinance.

**ARTICLE IX**  
**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; amended ATM 3-11-14, Art. 3. amended Special Town Meeting 6-24-17; amended 3-13-18 ATM]

Article IX, Sections 307-49 – 307-55 repealed in its entirety 3-12-19 ATM

## 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 March 16, 2017, Article #2] Note this sign ordinance has been revised, reorganized and re-codified

### 307-65-1 Scope and Intent

Signs advertising or identifying the occupant or activity of a lot on which they are located shall be permitted in any district subject to the regulations contained in this Article. This ordinance does not regulate flags of National, State, or historical significance.

### 307-66-1 Purpose

The purpose of this article is to provide standards for the size and treatment of signs within the various zoning districts to protect against detrimental impact on the visual character of the community and on transportation safety. This ordinance is consistent with the goals of the Master Plan.

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.

### 307-67-1 Title

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

### 307-68-1 Definitions

Abandoned Sign: The cessation of use of a sign as indicated by the visibly poor condition or otherwise apparent intention of an owner to discontinue the use of a sign and/or structural framework.

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.

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.

Banner Sign: A type of temporary sign of lightweight matter (e.g. paper, plastic or fabric) hung either with or without frames.

Billboard Sign: Considered a type of Ground Sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, product or services.

Building or Face Wall: A wall area of a building in one plane or elevation.

Building Name Sign: A sign identifying a named building

Changeable Copy Sign: A type of ground or wall sign on which message copy can be changed through the use of attachable letters and numbers (excluding electronic messaging signs).

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" & "Parking".

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.

Flag: National, state or corporate flags

Flashing Sign: A sign containing intermittent flashing light by means of an animation or an externally mounted intermittent light source, or chase lights.

Frontage: The length of the property line of any individual lot along each public right-of-way it borders.

Ground Sign: A sign erected on a free-standing frame, mast or pole and not attached to any building.

Group Sign: A sign describing more than one business in a multi-tenant situation within the Business and Industrial Zones. One business may occupy a larger portion of the sign (up to 50 sf) when that 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”. See Business and Industrial Table of Requirements.

Height of Sign: The vertical distance measured from the adjacent undisturbed grade of ground to the highest point of the sign.

Illuminated sign: A sign may be internally illuminated by use of internal wiring and lighting fixtures or it may be externally illuminated by lights mounted to shine on the sign. Signs may also be unilluminated.

Incidental Sign: A sign identifying or advertising associated goods, products, services, or facilities available on the premises. Examples: “trading stamps”, “credit cards accepted”, brand names, price signs, etc.

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.

Mobile Sign: A sign mounted on wheels or a wheeled trailer. Considered a ground sign when in stationary use.

Nameplate or Historic Marker: 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” refers to all names & occupations or professions as well as the name of the building and directional information.

Off Premises Sign: A sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, products or services not located on the property where that activity is conducted.

Premises: An individual dwelling or commercial unit whether stand-alone or within a building containing multiple units.

Roof Sign: A sign erected upon, against, or on the top of the parapet of a building. 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.

Sign: Any 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 whether illuminated or not.

Sign Structure: Any structure which supports or is capable of supporting any sign, including decorative cover.

Temporary Sign: A sign which is not permanently installed or affixed to any sign structure or building

Wall Sign: A 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.

Window Sign: A sign displayed within the interior of any window intended to be viewed from the exterior of the building.



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 sign from the building department 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 or the replacement of the sign face is intended to change the name of the business and/or owner in which case a permit would be required. No permit is required for signs installed by government bodies and utility companies. .

All sign applications shall include a color rendering of the proposed sign, all dimensions, a detailed description of materials of construction, illumination, moving components, electronic messages and method of attachment to structure.

A. Any sign or use of signs shall conform to the following standards:

1. All signs shall be designed, constructed and maintained in accordance with this Zoning Ordinance. Signs shall be constructed of permanent materials and shall be properly attached to the ground, building, or other structure. Signs may also be subject to State and Federal regulations.
2. Sign Permit Process:
  - a. A Sign Permit Application must be completed, submitted to the Planning Office and approved prior to erecting, constructing, enlarging or relocating a sign. Sign Permit Applications are approved by the Zoning Administrator and/or Planning Director if part of an approved Site Plan once confirmed the proposed sign conforms to the town's Zoning Ordinance and Regulations and/or any decision of the ZBA or Planning Board.
  - b. All sign applications shall include a color rendering of the proposed sign, a detailed description of materials of construction, dimensions, illumination, moving components, electronic messages and method of attachment to structure.
3. Signs shall be permitted in any district subject to the requirements contained in this Article.
4. The height of any freestanding sign shall not exceed twenty (20) feet. Building mounted signs shall be below the eave of a hip, gambrel, or other pitched roof building, or below the main roof deck line of a building with a mansard roof.
5. In all residential districts, one (1) sign shall be allowed per property for each residence. One (1) additional sign per premise shall be permitted in any district where there is an approved Home Occupation. Each Sign shall have a maximum area of three (3) square feet, shall be a maximum of six (6) feet high and must be displayed from the residential lot and not within a public or state right-of-way.
6. A maximum of three (3) types of signs per property are permitted, with no more than one (1) from each of the following categories: awning, ground, wall, roof or projecting. See Group signs for situations where multiple business tenants are lawfully located on a single property.
7. Signs or lighting of signs shall not be placed in such a position as to endanger vehicular or pedestrian traffic by interfering with vision by obscuring a clear view or by confusion with official street signs or signals.
8. On-site signs associated with a legal non-conforming use shall be maintained and may be replaced in kind if necessary. Non-conforming signs shall not be expanded.
9. Signs for a business that has not operated within the previous ninety (90) days shall be removed within thirty (30) days of notification by the Town. Seasonal businesses or businesses temporarily not in operation may be exempt from this requirement through the review and permit process. At their option, seasonal business may remove their sign at the end of the season and reinstall it at the start of the next season without needing a new permit.

**B. PROHIBITED SIGN TYPES**

1. Signs which flash, rotate, have motion, are animated, create an illusion of movement, except for an electronic messaging sign determined as compliant with this ordinance by the Zoning Administrator.
2. Off Premises Signs.
3. Signs that could be mistaken for traffic control signs or lights.
4. Any sign in any district that impedes safe sight distance for vehicular, non-motorized or pedestrian traffic on driveways or roads.
5. Signs on a vehicle or trailer located for the purpose of advertising the business on-site.
6. Signs that may project over a public right-of-way or sidewalk unless the situation is such that the building to which the sign is attached is closer than five (5) feet from the public way or sidewalk. In such situations the sign shall be at an adequate height so as not to interfere with pedestrians, vehicular traffic, or snow removal.

**C. SIGNS ALLOWED but EXEMPT from a SIGN PERMIT**

1. Signs required or erected by government agencies
2. Certain Temporary Signs where indicated in this Article.
3. Signs indicating “open”, “closed”, “sale” or business related business hours located on premises and limited to one (1) square foot in area.
4. Incidental signs guiding traffic safely to parking spaces, loading spaces, stacking lanes, entry and exit drives, direction of traffic flow, and pedestrian ways on private property that do not exceed three (3) square feet and that bear no advertising.
5. Residential identification and house number not exceeding two (2) square feet, and set a minimum of ten (10) feet from an abutter’s property line.
6. Signs regulating or defining access to private property when the signs are less than one (1) square feet in area. This includes (for example) signs such as those indicating whether or not someone could trespass, hunt, hike, bike, or snowmobile on private property.
7. Signs indicating a State or National Register of Historic Places status of a property.

**309-70-1 Signs within the Residential District - Table of Requirements**

<b>Sign Type</b>	<b>Restrictions</b>	<b>Permit Required?</b>
Refer to Definitions		
Non-Business Ground Sign or Building Sign	<ul style="list-style-type: none"> <li>• One sign allowed per premises</li> <li>• Maximum sign size of 50 square feet</li> <li>• Maximum height 10 feet from grade</li> </ul>	N
Temporary Sign for a onetime event	<ul style="list-style-type: none"> <li>• One sign allowed per premises</li> <li>• Maximum size of 25 sq. feet</li> <li>• Maximum 30 days for onetime event</li> </ul>	N

Sign(s) when there is a construction or maintenance project	<ul style="list-style-type: none"> <li>• One sign allowed per premises</li> <li>• Can be displayed from issuance of the construction permit through full project completion</li> </ul>	N
Sign when lot, house or unit is for sale, lease, or rent	<ul style="list-style-type: none"> <li>• Maximum of one (1) at five (6) square feet</li> <li>• While for sale, lease or rent</li> </ul>	N
Ground mounted sign(s) when there is a yard sale	<ul style="list-style-type: none"> <li>• Maximum two (2) at six (6) square feet</li> </ul>	N
Business sign within the Residential District	<ul style="list-style-type: none"> <li>• For compliant Minor Home Occupation - One (1) sign per compliant Minto Home Occupation – One sign per business at two (2) sq. ft.</li> <li>• For approved General Home Occupation - One (1) sign per approved business at three (3) sq. ft.</li> </ul>	Y

**309-71-1 Signs within the Mixed Use District - Table of Requirements**

<b>Sign Type</b> Refer to Definitions	<b>Restrictions</b>	<b>Permit Required?</b>
Any Business Sign within the MUZD	<p>Must follow the same restrictions as Table 307-71 with the following additional restrictions:</p> <ul style="list-style-type: none"> <li>• Only one (1) building and one (1) ground sign allowed per business</li> <li>• Maximum sign size of 25 square feet per sign</li> <li>• May not be internally illuminated</li> <li>• May not include electronic messaging on any sign or in any window</li> <li>• Must evoke a carved wood or engraved stone appearance</li> <li>• Must be approved by the Planning Board as a requirement for a Conditional Use Permit for a business within the MUZD</li> </ul>	Y

**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.

**309-72-1 Signs within the Business and Industrial Districts –**

**Table of Requirements**

<b>Sign Type</b> Refer to Definitions	<b>Restrictions</b>	<b>Permit Req?</b>
Awning Sign	<ul style="list-style-type: none"> <li>• Only the area of the awning where lettering or graphic images are located shall be considered the “sign area” for purposes of calculation.</li> <li>• Maximum area is 50 Sq. Ft.</li> </ul>	Y
Banner Sign	<ul style="list-style-type: none"> <li>• Maximum of thirty (30) days, two times during each calendar year.</li> <li>• Not to exceed one hundred (100) square feet in area.</li> </ul>	Y
Billboards	<ul style="list-style-type: none"> <li>• Not permitted off premises.</li> <li>• See restrictions for ground sign.</li> </ul>	Y
Building Name Sign	<ul style="list-style-type: none"> <li>• Maximum of twelve (12) square feet in area.</li> </ul>	N
Changeable Copy Sign	<ul style="list-style-type: none"> <li>• See restrictions for ground or wall signs.</li> </ul>	Y
Illuminated sign	<ul style="list-style-type: none"> <li>• Any externally illuminated sign’s lighting source(s) must aim directly at the sign without and not towards neighboring properties or any vehicular traffic</li> </ul>	
Directional Sign	<ul style="list-style-type: none"> <li>• Maximum of three (3) square feet</li> <li>• Bear no advertising</li> </ul>	N
Electronic Messaging Displays	<ul style="list-style-type: none"> <li>• Allowed only in the Business and Industrial Districts</li> <li>• Only one (1) electronic messaging display per property</li> <li>• The electronic message display cannot exceed 3 x 5 feet in size and will be counted towards the 50 sq. ft. maximum overall sign size</li> <li>• The LEDs may be full color but must only display static images that fade into the next image with a minimum of 3 second intervals between images with no scrolling, animation, flashing or blinking.</li> <li>• The display must be programmed to automatically dim at dusk to reduce contrast and glare consistent with protecting driver safety and visual character as described in the purpose section of this sign ordinance</li> <li>• LED gas pricing signs are exempt from these restrictions as long as they do not blink</li> </ul>	Y
Flag	<ul style="list-style-type: none"> <li>• Setbacks are the same as ground signs.</li> </ul>	N
Flashing Sign	Not permitted – No part of any sign may flash, rotate or move except for compliant Electronic Messaging signs	N/A
Ground Sign	<ul style="list-style-type: none"> <li>• Maximum sign area shall be fifty (50) square feet (except for Group Signs).</li> <li>• Minimum setback fifteen (15) feet from a right-of-way or property line, with a max sign height of twenty (20) feet.</li> <li>• 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.</li> <li>• Minimum setback from an intersection shall be twenty-five (25) feet from the point of the intersecting rights-of-way.</li> </ul>	Y

Group Sign	<ul style="list-style-type: none"> <li>• One business may occupy a larger portion of the sign (up to 50 sf) when that business occupies a greater portion of the property than other tenants (50% or more of total sq. footage). Except for one anchor tenant, no individual sign within a group sign may occupy more than ten (10) square feet.</li> <li>• No Group sign may exceed 150 sf. in area. All Group Signs must meet the limitations set forth in section Ground Sign, above.</li> </ul>	Y
Incidental Sign	<ul style="list-style-type: none"> <li>• Maximum of three (3) at 1.5 square feet</li> </ul>	N
Mobile Signs	<ul style="list-style-type: none"> <li>• Maximum of thirty (30) days, 2 times per calendar year.</li> <li>• Maximum of thirty-two (32) square feet in area.</li> </ul>	Y
Nameplate & Historic Markers	<ul style="list-style-type: none"> <li>• Maximum of three (3) square feet in area.</li> </ul>	N
Roof Sign	<ul style="list-style-type: none"> <li>• Maximum of one (1) at fifty (50) square feet.</li> <li>• Setback 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.</li> </ul>	Y
Temporary Sign	<ul style="list-style-type: none"> <li>• Maximum of one (1) sign per business not to exceed thirty-two (32) square feet.</li> <li>• Maximum of thirty (30) days, two times during each calendar year.</li> </ul>	Y
Wall Sign	<ul style="list-style-type: none"> <li>• Maximum fifty (50) square feet</li> </ul>	N
Window Sign	<ul style="list-style-type: none"> <li>• No portion of the sign may flash, blink or contain chasing lights.</li> </ul>	N

**307-73-1 No Discrimination Against Non-Commercial Signs or Speech**

The owner of any sign which is otherwise allowed under this Article may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision does not create a right to increase the total amount of signage on a parcel or allow the substitution of an off-site commercial message in place of an on-site commercial message.

**307-74-1 Administration and Enforcement**

The Zoning Administrator is hereby authorized to review all sign applications and to interpret the provisions of this regulation. If the sign was part of an approved Site Plan, the sign will also be reviewed by Planning Director to ensure compliance with the approved plan.

The Code Compliance Official is authorized to enforce this regulation under Board of Selectmen authority. This ordinance shall supersede all other town ordinances and site review regulations, where inconsistent therewith. 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.

## ARTICLE XII SPECIAL EXCEPTIONS

[Amended March 8, 2005 ATM; Amended 3-14-06 ATM; Amended 3-11-08 ATM; Amended March 16, 2017 ATM, Amended March 10, 2020 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 the character of the surrounding neighborhood or area.

### 307-74 Additional Requirements for Accessory Dwelling Units [Amended March 8, 2005, March 14, 2017 ATM, March 10, 2020 ATM]

Authority. NH RSA 674:71-73, Accessory Dwelling Units

#### **Purpose and Intent:**

In accordance with NH RSA 674:71-73, The purpose of this ordinance is to expand the mix of affordable housing opportunities throughout the Town by permitting the creation of secondary dwelling residences as an accessory use to existing single-family detached dwellings while maintaining the visual and functional character of single-family residential neighborhoods for the following reasons:

- I. There is a growing need for more diverse affordable housing opportunities for the citizens of New Hampshire.
- II. Demographic trends are producing more households where adult children wish to give care and support to parents in a semi-independent living arrangement.
- III. Elderly and disabled citizens are in need of independent living space for caregivers.
- IV. There are many important societal benefits associated with the creation of accessory dwelling residences, including:
  - (a) Increasing the supply of affordable housing without the need for more infrastructure or further land development.
  - (b) Benefits for aging homeowners, single parents, recent college graduates who are saddled with significant student loan debt, caregivers, and disabled persons.
  - (c) Integrating affordable housing into the community with minimal negative impact.
  - (d) Providing elderly citizens with the opportunity to live in a supportive family environment with both independence and dignity.

#### Definitions.

"Accessory dwelling unit (ADU)": A subordinate dwelling residence with complete and independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation on the same lot or attached to or contained within an existing single-family dwelling.

Rental Occupancy: Non-ownership including long term lease ownership

Criteria for Accessory Dwelling Units: The accessory dwelling unit (ADU) shall be clearly secondary to the primary dwelling.

- A. Accessory dwelling units shall not contain more than two bedrooms and shall not exceed 1000 (one thousand) square feet of living area, exclusive of entryways.
- B. An accessory dwelling unit shall not be permitted anywhere except in a single-family residence or on a lot occupied by a single-family residence. Only one ADU shall be allowed on any individual lot whether attached to, within, or detached from the primary dwelling.
- C. Accessory dwelling units shall meet the well requirements set by the Board of Health either by the primary dwelling already meeting the standard or due to the standard being met in advance of Certificate of Occupancy (CO) issuance for the ADU.
- D. Accessory dwelling units shall be allowed only when the waste disposal system, sufficient to support the septic loading requirements of both the accessory dwelling unit and principal dwelling unit, is on file and has been approved by the New Hampshire Department of Environmental Services (NHDES).
- E. In the case of a previously existing septic system, the applicant shall provide evidence that the existing sewage disposal system is in good working condition and shall also include a subsurface waste disposal system design approved by the NHDES that demonstrates the lot can accommodate the combined flows of the primary dwelling and accessory unit to be installed in the event of a system failure.
- F. The exterior of the dwelling shall be designed so it has the characteristics and appearance of a single-family residence or an accessory use customary to a single-family dwelling such as a garage or other outbuilding. The accessory dwelling unit shall have an independent means of ingress and egress meeting all applicable building code requirements to the satisfaction of the Building Inspector. No new entrance or exit to an accessory dwelling shall be constructed on the front of the single-family residence but may be in the front of a detached ADU that meets all requirements herein.
- G. An accessory dwelling unit shall be constructed within or attached to a single-family residence. A detached ADU can be allowed by Planning Board Conditional Use Permit approval (rather than by Special Exception) if it meets the following criteria:
  - 1. At least a 1.5-acre lot containing at least 45,000 square feet of non-hydric soils
  - 2. A NHDES approved septic design accommodating all bedrooms within the Primary dwelling and the ADU.
  - 3. No detached ADU can be constructed on land with naturally occurring slopes in excess of 20%.
  - 4. All setbacks as defined in Article III, Section 307-12 must be met.
  - 5. The Planning Board shall have discretion to approve the location of a detached ADU within the parcel of land to ensure the best placement of the ADU.
- H. The driveway shall be designed to appear as a driveway of a single-family residence. No new curb cut from the street shall be constructed except for detached ADUs when the Planning board is satisfied an additional curb cut is needed. Adequate off-street parking shall be provided to support the vehicles of the primary and accessory units.
- I. There shall be no conveyance of an accessory dwelling separate from the principal dwelling unit by subdivision as that term is defined by RSA 672:14, nor shall the accessory dwelling unit have ownership separate from the owner of the lot in which the principal dwelling unit is located. 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. Either the principal or the accessory dwelling unit must be occupied by the owner of the property.
- K. Annually by April 1<sup>st</sup>, the owner of the property on which an accessory dwelling unit is located shall file with the Town Planning Department, on a form prepared by the Town, attesting that property owner resides in either the proposed dwelling unit or the accessory dwelling unit and is the property owner's primary place of residence.
- L. A maximum of three (3) non-related (by blood or marriage) tenants may occupy the Accessory Dwelling Unit

- M. Any applicable impact fees in effect at the time the Special Exception for an Accessory Dwelling Unit (ADU) is approved shall be collected at the time of building permit issuance unless the impact fees are waived by the Planning Board.
- N. Accessory Dwelling Units (ADUs) are only allowed on conforming lots as described within Article III, Section 307-12 *Table of Dimensional Requirements* and on lots within an approved Conservation Subdivision or within the MUZD, as long as the land area described in 307-74, *Criteria for Accessory Dwelling Units*, section G is met.

Compliance with statutory changes:

This ordinance has been updated to meet NH statutory changes for ADUs effective 6-30-2017. All ADUs already in existence as of 6-30-2017 with prior Special Exception or Variance approval will be governed by the revised ADU requirements as described herein.

### **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 unobtrusive 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 (NHWSPCC) 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 Statutes 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 thirty (30) 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.

**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, Amended 3-8-16 ATM, Art. 3]

Article XV, Residential Conservation Subdivision by Special Permit has been repealed in its entirety 3-10-20 ATM



**ARTICLE XVI**  
**SMALL WIND ENERGY SYSTEMS**  
[Added by ballot 3-09-10 ATM]

**307-110 Purpose and Intent:**

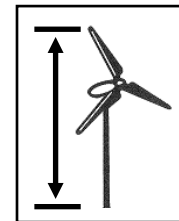
This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition,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

**307-111 Authority:**

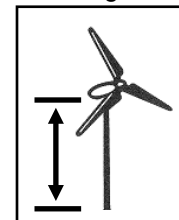
The Authority Having Jurisdiction (AHJ) or their designee(s) shall administer and enforce this ordinance. For the purpose of this ordinance the AHJ shall be the Pelham Zoning Administrator.

**307-112 Definitions:**

- A. Meteorological tower (met tower): Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.
- B. Modification: Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.
- C. Net metering: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.
- D. Power grid: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.
- E. Shadow flicker: The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.
- F. Small wind energy system: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.
- G. System height: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



- H. Tower: The monopole, guyed monopole or lattice structure that supports a wind generator.
- I. Tower height: The height above grade of the fixed portion of the tower, excluding the wind generator.
- J. Wind generator: The blades and associated mechanical and electrical conversion components mounted on top of the tower



whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

**307-113 Procedure for Review:**

- A. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Authority Having Jurisdiction (AHJ). A building permit shall be required for any physical modification to an existing small wind energy system.
- B. Application: Applications submitted to the building department shall contain a site plan with the following information:
  - 1. Property lines and physical dimensions of the applicant's property.
  - 2. Location, dimensions, and types of existing major structures on the property.
  - 3. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - 4. Tower foundation blueprints or drawings.
  - 5. Tower blueprints or drawings.
  - 6. Setback requirements as outlined in this ordinance.
  - 7. The right-of-way of any public road that is contiguous with the property.
  - 8. Any overhead utility lines.
  - 9. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - 10. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - 11. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - 12. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - 13. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - 14. List of abutters to the applicant's property.
- C. Abutter and Regional Notification: In accordance with RSA 674:66, the Authority Having Jurisdiction (AHJ) or their designee(s) shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system at the expense of the applicant. The public will be afforded 30 days to submit comments to the Authority Having Jurisdiction (AHJ) prior to the issuance of the building permit. The AHJ shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the AHJ shall follow the procedures set forth in RSA 36:57, IV.

**307-114 Standards**

- A. The Authority Having Jurisdiction (AHJ) or their designee(s) shall evaluate the application for compliance with the following standards;
  - 1. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Proposed Windmill Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5 x Min.	1.1 x Min.	1.5 x Min.

- a. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - b. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
2. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
3. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
4. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker impact is considered as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
5. Signs: All signs including flags, streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
6. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
7. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424 and subsequent revisions.
8. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - a. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - b. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - c. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

9. Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
10. Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
11. Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
12. Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

### **307-115 Abandonment**

- A. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Authority Having Jurisdiction (AHJ) by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- B. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the AHJ or their designee(s). "Physically remove" shall include, but not be limited to:
  1. Removal of the wind generator and tower and related above-grade structures.
  2. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- C. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the AHJ or their designee(s) may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the AHJ or their designee(s) shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the AHJ or their designee(s) shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- D. If the owner fails to respond to the Notice of Abandonment or if, after review by the AHJ or their designee(s), it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the AHJ may pursue legal action to have the small wind energy system removed at the owner's expense.

### **307-116 Violation**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

### **307-117 Penalties:**

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

**#255B-1**

date of print: 3/29/06

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

Added Article VIII-I and Article XVI ATM 3/09/2010

Amended ATM 3/11/14: 307-53-2.C,3, Added 307-16,I; added 307-18, Table 3; added Article IV-I Mixed-Use Zoning Overlay District (MUZD)

Amended ATM 3/8/16: Article IV-I (MUZD); amended Article XV Residential Conservation Subdivision by Special Permit

Amended ATM 3/16/17: Article XI, Signs; Article XII, 307-74 Accessory Dwelling Units, Article IV, 307-16, B, Article V

Amended Special Town Meeting 6/24/17 Article IX, Elderly Housing to remove Senior Housing as an allowed use in all zoning districts and to increase setbacks and add clubhouse requirement

Amended ATM 3/13/18: Article IX, Elderly Housing, 307-51, Requirements for complex

Amended ATM 3/12/19: Article IX, Elderly Housing repealed in its entirety. Article IV, Section 307-16(A), 307-16(I), Article V, Section 307-18 Table of Permitted Uses, Article V-1 regarding the raising and keeping of livestock

Amended ATM 3/10/20: Article VIII-I, Illicit Discharge & Connection Ordinance replaced it its entirety, Article XII, Special Exceptions, Sections 307-74, Article XV, Residential Conservation Subdivision by Special Permit repealed in its entirety.