



Revised 3/9/10

# TOWN OF PITTSFIELD

## ZONING ORDINANCE

Adopted by the Town of Pittsfield March 8, 1988

Amended by the Town of Pittsfield March 14, 1989.

Added to Article 2	Industrial Park Description (Removed)
Added to Table 2	Industrial Park Dist. & Uses (Removed)
Added to Article 3	Major Industrial Uses-Definition (Removed)
Added Article 11	Industrial Park Standards (Removed)
Added Table 3	Minimum Parking Requirements
Added Article 15	Rubbish, Dumping, & Filling
Added Article 16	Parking Requirements

Amended by the Town of Pittsfield March 13, 1990.

Added Article 17	Flood Plain Development Ordinance
------------------	-----------------------------------

Amended by the Town of Pittsfield March 15, 1997.

Amend Article 3	Definitions
Amend Table 1	Zoning Districts & Uses
Added Article 14	Storage Containers

Amended by the Town of Pittsfield March 9, 1999.

Added Article 18	Telecommunications Equipment & Facilities
Amend Article 7, Section 2	Board of Adjustment Variances
Amend Table 1	Zoning Districts & Uses
Amend Table 3	Definitions
Amend Article 10	Manufactured Housing & Manufactured Housing Parks

Amended by the Town of Pittsfield March 14, 2000.

Amend Article 17, VII (f)	Floodplain Ordinance
Amend Article 4 Section 3 & 4	Non-Conforming Structures, Lots & Uses
Amend Article 2 Table 1	By deleting "In-Law Apartment"
Amend Article 3	Deleting definition "In-Law Apartment"
Add Article 19	Shoreland Protection Ordinance

Amended by the Town of Pittsfield March 17, 2001.

Amend Article 19 Section 9,I,(2-b),1	Deleting "swamps and bogs"
Amend Article 2 Table 3	Adding "Intent of Parking Requirements"
	Adding "Reduction of Parking Requirements"

Amended by the Town of Pittsfield March 16, 2002.

Amend Article 2, Special Exceptions	Deleting section 2(a) and renumbering the remaining subsections (b) through (f) to (a) through (e).
Amend Article 7, Variances	Amending section 2, Requirements for a Variance, changing "five" to "seven" (of the conditions to meet) in the first paragraph.
Amend Article 7, Variances	Amending section 2, Requirements for a Variance, by deleting subparagraph 3, and replacing it with a new subparagraph 3.
Amend Article 7, Variances	Amending section 2, Requirements for a Variance, by renumbering the existing subparagraphs 4 and 5 to read 6 and 7, respectively, and adding two new subparagraphs to be numbered 4 and 5.

Amended by the Town of Pittsfield March 11, 2003.

Added Article 20	Development Phasing and Growth Management
Amend Article 2, Table 1	To allow 2-family residences within the Urban Zone by Special Exception and to remove 2-family residences as an allowable use from the Suburban, Rural, and Commercial Zones.
Amend Article 3, Definitions	To amend the definition of Density.

Amended by the Town of Pittsfield March 8, 2005.

Added Article 21

Adult Business Establishments

Amended by the Town of Pittsfield March 14, 2006.

Amend Article 2, Table of Uses

Add Adult Business Establishments, In-Law Apartments, and Nursing, Convalescent Facility to Table 2 and delete Rest/Convalescent Home.

Amend Article 3, Definitions

Add new/revised definitions for Accessory Use/Building, Adult Business Establishment, Adult Housing, In-Law Apartments, Multi-Family Dwelling, Nursing/Convalescent Facility, and Senior Housing to Article 3.

Amend Article 7, Variances

Insert Area Variance criteria, delete existing Section 3, renumber remaining sections, and add a new Section 4.

Amend Article 20

Replace existing Development Phasing and Growth Management section with revised Development Phasing and Growth Management section.

Amend Articles 11, 12, 13

Delete Article 11, Industrial Park Standards and move Article 11, Penalty Clause, Article 12, Administration and Enforcement, and Article 13, Miscellaneous to become Articles 22 through 24 with Articles 11 through 13 to be reserved for future amendment.

Amended by the Town of Pittsfield April 15, 2008

Amend Article 17

Replace existing Floodplain Development section with revised Floodplain Development section.

Amended by the Town of Pittsfield March 3, 2010

Amend Article 17

Replace existing Floodplain Development section with revised Floodplain Development section.

## ARTICLE 1 - PURPOSE AND AUTHORITY

In pursuance of authority conferred by Chapters 672-677, New Hampshire Revised Statutes Annotated 1986, as amended and for the purpose of promoting the health, safety and general welfare of the inhabitants of the incorporated Town of Pittsfield, to protect the value of property, to prevent overcrowding of land, to avoid under concentration of populations, to provide adequate light and air, to facilitate the adequate provision for transportation, water, sewage, schools and other public requirements, the following ordinance is hereby enacted by the voters of the Town of Pittsfield, New Hampshire in official meeting convened.

## ARTICLE 2 - ZONING DISTRICTS

There shall be five (5) districts established in the Town of Pittsfield: Urban, Suburban, Rural, Commercial, and Light Industrial/Commercial. These districts are shown on the official zoning map filed with the Town Clerk, dated January 1988. The uses established for each district are as provided for in Table 1, and dimensional regulations are as provided in Table 2.

**1. URBAN:** This district is primarily residential in character. There is little room for additional growth, as most of the land is already developed. It encompasses the most dense development in the Town.

**2. SUBURBAN:** This district is also primarily residential, but is a transition between the Urban and Rural districts. It may also be used for some professional and commercial uses. This district is now, or may be in the foreseeable future, serviced by municipal sewer and the Pittsfield Aqueduct Company.

**3. RURAL:** The Rural district shall be designed to accommodate residential uses in what is commonly recognized as being a rural environment. Generally the property included within the district will not have sewer and water facilities available. Agriculture, open space and other low intensity uses shall also be permitted.

**4. COMMERCIAL:** This area is for major commercial and professional activities. This district is established in recognition of the fact that commerce and business tend to concentrate in a central area. This area is intended primarily for retail, office, civic, financial, and cultural uses.

**5. LIGHT INDUSTRIAL/COMMERCIAL:** In addition to certain commercial uses permitted under Paragraph 4 above, this district is intended to recognize existing industrial areas and to permit controlled expansion of these and other light industries.

Where any uncertainty exists with respect to the boundary of any district as shown on the zoning map, the following rules shall apply:

- (a) Where a boundary is indicated as a highway, street, watercourse or town boundary, it shall be construed to be the centerline thereof;
- (b) Where a boundary is indicated as approximately parallel to a highway, street, watercourse or town boundary, it shall be construed as parallel thereto;
- (c) If no dimension is given on the zoning map, the location of any boundary shall be determined by use of the scale shown on the map; and

(d) Where a boundary line coincides within twenty-five (25) feet or less of a lot line, the boundary shall be construed as the lot line.

**TABLE 1  
ZONING DISTRICTS AND USES**

USES	ZONING DISTRICTS				
	URBAN	SUBUR	RURAL	COMM	LT.IND/COMM
Accessory Uses/Bldgs	Y	Y	Y	Y	Y
Adult Business Establishment				Y	
Agriculture		E	Y		
Airport/Helipad			E		E
Amusement (Indoor & Outdoor)			E	E	E
Automobile Dealers (new & used)					Y
Auto Body Shop			E	Y	Y
Bakery				Y	E
Bed & Breakfast Established Inn	E	E	Y	E	E
Boarding Stable			Y		
Business Office	Y	E	E	Y	Y
Campground			Y		E
Cemetery			E		
Church	Y		E	Y	
Cluster Development		E	E		
Combined Dwelling/Business	E	E	E	Y	E
Conservation Uses		Y	Y		
Executive & Administrative Office for Business, Govt. (other than local) or Professional Use		Y		Y	Y
Flea Market					Y
Forestry		Y	Y		
Fuel Storage (Oil & Propane)					Y
Funeral Home				Y	Y
Greenhouse		E	E		Y
Health Club/Indoor Sports Facility			E	Y	Y
Home Occupation	Y	E	E	Y	
Hotel/Motel/Conference Center		E	E		Y
In-Law Apartments	E	E	E		
Junk Yards					
Kennel			E		
Light Industrial					Y
Lumber Yard					Y
Manufactured Home	Y	Y	Y		
Manufactured Housing Park					
Marine Facilities	Y		E	Y	Y
Medical Center/Hospital	E	E	E	Y	Y
Mobile Home (See Manufact. Home)					
Multi-Family Dwelling	E				
Nursery/Day Care	E	E	E		

USES	ZONING DISTRICTS				
	URBAN	SUBUR	RURAL	COMM	LT.IND/COMM
Nursing, Convalescent Facility	E	E			E
Park/Recreation	Y	Y	Y	Y	
Parking Facility	Y			Y	Y
Personal Service	Y		E	Y	Y
Plazas, Malls, Multiple Use Business Parks		E			Y
Repair Shop	Y		E	Y	Y
Research & Development Offices, Medical & Testing Laboratories		E			Y
Restaurant	E		E	Y	Y
Retail Sales	Y			Y	E
Sawmill			Y		Y
Sawmill - Lumber mills					
School	E	E	E	E	E
Self Storage Facilities		E			E
Service Stations					Y
Single Family Dwelling	Y	Y	Y		
Theater		E		Y	Y
Truck, Heavy Equip & Trailer Repair					E
Two Family Dwelling	E				
Veterinary Hospital			E		Y
Warehouse & Wholesale Marketing					Y

Key: Y = Permitted Use, E= Special Exception (A blank space indicates that the use is not permitted and that a Variance would be required.)

**TABLE 2  
DIMENSIONAL REGULATIONS**

Zones	Lot Size	Frontage	Setbacks			
			Front	Side	Rear	Height
Urban	1/4 Acre	50'	10'	10'	10'	35'
Suburban	1 Ac. (with municipal water & sewer)	150'	25'	25'	25'	35'
Suburban (cont.)	1-1/2 Ac. (without municipal water & sewer)	150'	25'	25'	25'	35'
Rural	2 Acres	225'	50'	25'	25'	35'
Commercial	1/4 Acre	50'	10'	10'	10'	35'
Light Industrial/ Commercial	1 Acre	150'	25'	25'	25'	35'

**TABLE 3  
MINIMUM PARKING REQUIREMENTS**

TYPE OF USE	# OF DESIGNATED SPACES
Dwelling & Apartments	2 Per Dwelling Unit
Hotel, Motel, Tourist Home, or Lodging Houses	1 Per sleeping room plus one per 5 seats in ancillary restaurants and 1 per 500 sq ft of other areas
Dormitories, Fraternity &	1 for every 2 beds

TYPE OF USE	# OF DESIGNATED SPACES
Sorority House	
Elementary School, Junior High	1 per 500 sq ft gross floor area plus 1 for each teaching station
High Schools, Colleges	1 per 500 sq ft gross floor area plus 1 for each teaching station
Restaurant, Theater, Auditorium, Church and all places of indoor assembly	1 per 5 seats
Bowling alleys, Skating rinks and other places of public assembly where capacity cannot be measured in terms of seats	1 per 500 sq ft gross floor area
Retail stores (calculated cumulatively)	1 per 200 sq ft display area for first 30,000 sq ft, 1 per 150 sq ft display area for next 20,000 sq ft, 1 per 400 sq ft display area in excess of 50,000 sq ft.
Furniture or large appliance stores	1 per 500 sq ft gross floor area
Offices	1 per 200 sq ft gross floor area
Industrial	1 per 1,000 sq ft gross floor area
Wholesale & Storage establishments	1 per 3,000 sq ft gross floor area

**INTENT OF PARKING REQUIREMENTS**

It is the intent of parking regulations to insure the free movement of ordinary public and private vehicular traffic in the streets at all times; reduce congestion in the streets in order to permit the rapid, safe passage of police and fire fighting equipment as well as any other emergency vehicles; facilitate maneuvering of public equipment and snow removal, and all other similar related purposes. It is therefore required that all structures and land uses be provided with sufficient, associated off-street vehicular parking spaces to meet the reasonable parking needs of persons making use of the premises.

**REDUCTION OF PARKING REQUIREMENTS**

In recognition of the small lot sizes of existing buildings in the downtown within the Commercial District, and in order to accommodate commercial use and promote a pedestrian orientated business area, it is the purpose of this section to provide flexibility in parking regulation for non-residential uses within the boundary of the Commercial District.

The Planning Board may during a Site Plan approval process waive all or a portion of the off-street parking spaces in Table 3 above for non-residential uses within the Commercial District, such reduction shall be based upon the determination that the intended use of the premises may be adequately served by fewer spaces, the Planning Board may consider available on-street parking and/or off-street parking spaces near the premises as a factor in making its decision.

**ARTICLE 3 - DEFINITIONS**

For the purpose of this Ordinance, certain terms or words herein shall be interpreted or defined as follows:

**ABUTTER:** Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For purpose of receiving testimony only and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

**ACCESSORY USE/BUILDING:** Any subordinate use, building, or portions of the main building, the use of which is customarily incidental to that of the main building on the same lot or premises and which is used primarily by the occupants of the main building.

**ADULT BUSINESS ESTABLISHMENT:** means any business open to the public, including, but not limited to, any bookstore, video store, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, theater, sexual encounter center or another business which: **a)** Derives revenue from the sale, rental or viewing of live performances or representations in any form involving displays or materials which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in N.H. RSA 571-B:1, et.seq., and **b)** Devotes more than twenty percent of the total display, shelf, rack, table, stand or floor area for live performances or representations in any form of displays or material which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in N.H. RSA 571-B:1, (See Article 21)

**ADULT HOUSING:** Housing which is restricted to and occupied by at least one person 55 years of age or older per unit in accordance with applicable federal and state laws which allow housing for older persons.

**AGRICULTURE:** Commercial agricultural activity including but not limited to orchard, market garden, nursery, dairy farm, commercial animals, poultry, livestock, including the keeping of wild or domestic animals for personal or commercial use on any parcel of at least 2 acres in size. Customary household pets such as cats or dogs are permitted throughout the town. Home farming is allowed.

**AIRPORT/HELIPORT:** An area used for landing and/or takeoff of motorized and/or non-motorized aircraft.

**AMUSEMENTS:**

- (a) Indoor: Bowling alley, dance hall, gymnasium, tennis center or other indoor commercial amusement or assembly use.
- (b) Outdoor: Golf driving range, miniature golf course, water slide or other outdoor commercial amusement use.

**APARTMENT:** Independent dwelling unit in a structure or apartment building with other dwelling units.

**APARTMENT BUILDING:** A building in single ownership, that is used as the residence of two (2) or more families living independently.

**AQUIFER:** A soil deposit with the capacity to transmit and store a large amount of ground water, having the potential to meet public and private water needs.

**AUTO BODY SHOP:** A facility where the primary work is the repair, painting and frame straightening of motor vehicles. Other work such as engine, transmission, mechanical, glass and interior repair or replacement is incidental to the primary work.

**AUTO DEALER:** Business establishment for the retail sale of new and used automobiles and trucks.

**BAKERY:** A place for the baking and/or selling of bakery goods.

**BED & BREAKFAST:** An owner-occupied home in which the owner rents guest rooms and serves breakfast to those guests as part of the room rent.

**BUILDING:** Any structure for the shelter, support or enclosure of persons, animals, chattels, or property of any kind.



**BUSINESS OFFICE:** Bank, insurance, real estate or other business or professional office.

**CAMPGROUND:** Land rented for temporary occupancy by tent trailers, tents or sleeping quarters of any kind except dwelling, mobile homes or motorized vehicles for recreational purposes.

**CEMETERY:** A burial ground or place designed, used or intended for the interment of human remains in accordance with law.

**CHURCH:** A place of worship either indoors or outside, including a parish house and rectory.

**CLUSTER DEVELOPMENT:** A subdivision for residential purposes to promote an efficient use of land through networks of lots, utilities and streets, to preserve natural topographic features and create a more desirable environment than possible through strict application of other sections of this Ordinance.

**COMBINES DWELLING AND BUSINESS:** A building in which is combined dwelling units and business uses.

**CONDOMINIUM:** The definition of condominium and associated terms shall be according to New Hampshire Revised Statutes Annotated, Chapter 356-B:3.

**CONSERVATION AREA:** The planned management of a natural resource to prevent exploitation, destruction or neglect.

**CONTIGUOUS PARCELS:** Two or more separately defined parcels of land which have one or more common boundaries.

**DENSITY:** The ratio of dwellings to land area.

**DWELLING:** A building or portion thereof designed for residential occupancy, including one family, two-family and multiple families, but not including hotels, motels or rented rooms in boarding houses or similar uses.

**DWELLING UNIT:** A dwelling or a portion within a dwelling designed for use of one (1) family for living and sleeping purposes and having independent kitchen and bath facilities.

**EXECUTIVE & ADMINISTRATIVE OFFICE FOR BUSINESS, GOVERNMENT (other than local government) OR PROFESSIONAL USE:** A space or spaces devoted to executive or administrative functions for the management and supervision of businesses, non-local government and professional facilities and uses.

**FAMILY:** One or more persons related by blood, adoption, or marriage, living together as a single housekeeping unit. Unrelated groups consisting of up to four (4) adults, or up to two (2) adults and their children, living together as one housekeeping unit, shall be considered a family for residency and density controls of this Ordinance.

**FENCE:** An enclosure or barrier, as around a field or yard.

**FLEA MARKET:** A usually open-air market for the display and sale of second-hand articles and antiques.

**FUEL STORAGE (Oil & Propane):** The commercial storage, above or below ground, of oil and propane fuel for commercial sale, in storage facilities legally licensed and maintained in accordance with existing laws.

**FUNERAL HOME:** Mortuary, funeral home or similar use.

**GREENHOUSE:** A structure, generally of glass or light-transmitting material such as Plexiglas, for the production, cultivation and growing of agricultural, floricultural or horticultural commodities for commercial sale.

**HEALTH CLUB/INDOOR SPORTS FACILITY:** A structure, within which is housed as the primary use, facilities for the playing of athletic games and contests, and machinery, appliances and equipment used to maintain an individual's physical health.

**HOME OCCUPATION:** A use to be carried on strictly within a primary single-family residential dwelling or accessory buildings by the owner or tenant that meets all of the following criteria:

- a. Home occupations shall clearly be an accessory use of the residential property carried on by the owner or tenant and their employees;
- b. Home occupations shall include such use as offices for doctors, engineers, architects, lawyers or other recognized professions or home occupations such as hairdressers, barber shops, day care facilities, kindergartens, dress makers, upholstery, manufacturing of craft products, manufacturing of food products, real estate or insurance business except that the number of persons employed at any one location shall not be more than four (4) persons, including the owner or tenant. The owner or tenant must occupy the house as their primary residence.
- c. No more than two home occupations shall be established on a lot at any one time.
- d. There shall be no display of goods or wares visible from the street with the exception of farm products. Each home occupation shall be permitted a sign on the frontage of the property in accordance with the sign requirements of this ordinance.
- e. The residential property, by virtue of its use for a home occupation, shall not be objectionable, detrimental, injurious, obnoxious, or offensive to the neighborhood and will not diminish the value of surrounding properties. The property shall not emit odors, gas smoke, dust, noise, or interfere with the operation or delivery of electricity, water, sewer services, cable or off air television, or radio reception.

**HOTEL/MOTEL/CONFERENCE CENTER:** *A Hotel* is a building or group of buildings containing guest rooms and facilities which are directly accessible from within the structure. *A Motel* is a building or group of buildings containing guest rooms and facilities which are accessible from outdoor parking areas. *A Conference Center* is a building or group of buildings containing facilities, for lease or rent on a short term basis, used to conduct conferences, large and small scale meetings and gatherings of established groups and organizations. A Conference Center may or may not contain facilities for eating such as a restaurant and may or may not be attached to, or be a part of a Hotel or Motel as defined herein.

**IN-LAW APARTMENTS:** A dwelling unit which meets all of the following:

- a. Is contained within an existing or proposed single family dwelling unit.
- b. Is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.
- c. Is not used for rental purposes.

**JUNK YARDS:** A legally licensed facility for the storage of junk as defined in RSA 236:91,II, III, IV and RSA 236:112, I, III, IV and V (c).

**KENNEL:** A structure other than a residence, for the care, boarding or breeding of cats and dogs, for a fee.

**LIGHT INDUSTRIAL USES:** Manufacturing, research and testing, assembly, fabrication, processing, reproducing, packaging, packing, bottling, printing, or publishing, provided that all resulting cinders, dust, gases, odors, refuse matter, smoke, vapors, electromagnetic or radioactive emission shall be completely and effectively confined within a building or so regulated as to prevent any nuisance or hazard to the public health or safety, and further provided that no objectionable noise, vibration, or other disturbance is noticeable at the boundary of the premises. Uses not permitted include smelts, blast furnaces, slaughter houses, rendering plants, hide tanning or curing plants, manufacturing or processing of fertilizer, bone, rubber, asphalt, ammonia, chlorine, petroleum, explosives or the bulk storage of explosives or hazardous wastes.

**LOT:** A lot is a parcel of land occupied or to be occupied by only one single-family structure or commercial/industrial structure and the accessory buildings or uses customarily incident to it. A lot shall be of sufficient size to meet the minimum zoning requirements for use, coverage, frontage, setbacks and area and to provide such yards and other open spaces are herein required.

**LUMBER YARD:** A commercial establishment for the sale and storage of lumber and building materials.

**MAJOR INDUSTRIAL USES ~ Definition removed March 14, 1989**

**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 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 systems contained therein. (The term “manufactured housing” includes the term “mobile home.”)

**MANUFACTURED HOUSING PARK:** Any parcel of land under single or common ownership or control which contains or is designed, laid out or adapted to accommodate two or more manufactured houses.

**MARINE FACILITIES:** Facilities for selling and servicing boats, to include fuel and marine supply sales and for sheltered and outside storage that provides safekeeping of boats.

**MEDICAL CENTER:** Medical doctor, dentist, medical laboratory, chiropractor, or similar medical office or use where there are no overnight facilities for patients.

**MOBILE HOME:** See Manufactured Housing.

**MULTI-FAMILY DWELLING:** Apartment, condominium time-sharing structure or similar dwelling where more than two (2) families share a building with separate dwelling units.

**NON-CONFORMING USE:** A use that does not conform to the regulations of the district in which it is situated.

**NURSERY AND DAY CARE:** A place for the care of more than five children of elementary school age or younger children for payment. Play areas shall be separated from a major or collector street by a fence or barrier which the children cannot cross unaided.

**NURSING, CONVALESCENT FACILITY** - An institution where persons are housed for compensation and which is licensed by the State including convalescent hospital, home of the aged, rest homes and similar uses.

**OPEN SPACE:** Uncovered space open to the sky on the same lot as the building. A paved or similar surface is not interpreted to be open space.

**OPEN SPACE USES:**

(a) **Agriculture:** Orchard, market garden, nursery, dairy farm, commercial animals, poultry, livestock, or other commercial agricultural activity. Home farming is allowed.

(b) **Conservation:** Uses with the primary purpose of conservation of natural resources.

(c) **Forestry:** Commercial growing and harvesting of forest products.

**PARKING FACILITY:** Parking area, parking garage or similar use.

**PERMITTED USE:** A use that is allowable in the district as a matter of right under the terms of the Ordinance. Uses that are not expressly stated as permitted uses, accessory uses, or special exceptions are prohibited.

**PERSONAL SERVICE SHOP:** Barber or beauty shop, laundry or dry cleaning shop, shoe repair shop, photographer's studio, printer, rentals, or similar service commercial uses.

**PLAZAS, MALLS, MULTIPLE USE BUSINESS PARKS:** A Plaza is an open area featuring walkways, covered or uncovered, fronting on retail stores with ample parking for motor vehicles and may be commonly referred to as a shopping center. A Mall is a large shopping area featuring a variety of shops and stores surrounding an all-weather enclosed concourse exclusively reserved for pedestrian traffic. A Multiple Use Business Park is a tract of land divided into parcels. Each parcel being occupied or to be occupied by only one main building and accessory buildings devoted to various business enterprises.

**REPAIR SHOP:** Business for repair of small appliances, radios, televisions, auto repairs, office equipment, or similar use. No outdoor storage or display of materials shall be allowed.

**RESEARCH & DEVELOPMENT OFFICES, MEDICAL & TESTING LABORATORIES:** Commercial and light industrial facilities and offices devoted to research and development or medical and testing laboratories and facilities.

**RESTAURANT:** A place that serves food and beverages inside a building with seats and tables for patrons who consume food and beverages inside the building.

**RETAIL SALES:** A store where merchandise is primarily sold for personal use to customers who select and buy the merchandise on the premises.

**RIGHT-OF-WAY:** Includes all public rights of way and all private rights of way for access and/or driveway purposes.

**SAWMILL:** A temporary operation for the cutting and removal of timber.

**SCHOOL:** Private school, college, or other educational facility either licensed by the State of New Hampshire as an educational institution or one which leads to a higher education degree as accredited by a nationally recognized accredited association not conducted as a gainful business.

**SELF-STORAGE FACILITY:** A facility constructed and configured to allow access on a continuous basis to individuals who rent, lease or otherwise utilize, individually self-contained sub-units of the structures for the storage of personal, company or corporate possessions.

**SENIOR HOUSING:** Housing which is restricted to and occupied by at least one person 62 years of age or older per unit in accordance with applicable federal and state laws which allow housing for older persons.

**SERVICE STATION:** Buildings and premises where items such as gasoline, oil, grease, batteries, tires and automobile accessories may be dispensed at retail and where mechanical servicing and repairs may be made. Retail sale of cold drinks, candy, tobacco and similar goods and car washing facilities may also be available.

**SETBACK:** The minimum distance from the property lines established by the requirements of this ordinance for each zoning district. It is a line which runs parallel to the property lines. The areas between the property line and the minimum setback line shall remain unoccupied ground fully open to the sky.

**SINGLE-FAMILY DWELLING:** A dwelling unit intended for residential occupancy by a single family.

**SPECIAL EXCEPTION:** A use that may be permitted under the ordinance that contains certain stated conditions applied by the Zoning Board of Adjustment after review and considerations.

**STABLE:** An establishment providing for the housing of more than four horses for the purpose of instructing horseback riding or rental of horses for the purpose of riding for pleasure.

**STRUCTURE:** Something constructed or erected with a fixed location on the ground or permanently attached to the ground. Specifically excluded from this definition are tree houses and fences.

**SUBDIVISION:** The division of the lot, tract, or parcel of land into two (2) or more lots, plots, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes re-subdivision and when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision.

**TEMPORARY BUILDING (STRUCTURE):** A building constructed or located on a site, intended for up to one (1) year of use.

**THEATER:** Movie, playhouse.

**TRUCK, HEAVY EQUIPMENT & TRAILER REPAIR:** A business primarily devoted to the repair, reconstruction, rebuilding and refurbishing of medium and heavy duty trucks, heavy equipment used primarily for off-road applications, and trailers used in commercial operations.

**VARIANCE:** A departure from the strict letter of the zoning ordinances as it applies to a particular piece of property permitting a property to be developed or used in a manner that conflicts with the specific terms of the zoning ordinance, but for which approval was granted by the Zoning Board of Adjustment after public hearing and review.

**VETERINARY HOSPITAL:** A place for the boarding or treating of animals, provided that the principal user is a certified veterinarian. Any outdoor use area shall be enclosed by a solid wall or fence that effectively screens all noise from adjoining property.

**WAREHOUSE AND WHOLESALE MARKETING:** A building for personal or commercial storage, distribution, or wholesale marketing of materials, merchandise, products or equipment, provided that such use is not hazardous by reason of potential fire, explosion, or radiation.

**WETLANDS:** Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that, under normal conditions, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Bogs, marshes and swamps are classified as wetlands.

#### **ARTICLE 4 - NON-CONFORMING STRUCTURES; LOTS AND USES**

This ordinance is intended to regulate land uses so areas will contain compatible uses on adequate lots with proper structures.

1. Non-Conforming Lots: A lot that is not contiguous to another lot owned by the same party, that has less than the prescribed minimum area or frontage may be built upon provided that all other regulations of this Ordinance are met and that lot, before the adoption of the requirements which have made it non-conforming:

- (a) Was lawfully laid out by plan or deed duly recorded in the Merrimack County Registry of Deeds; or
- (b) Was shown on a subdivision plan approved before 1987 under the Subdivision Regulations of the Town of Pittsfield; or
- (c) Was otherwise exempt from such regulations by the provisions of statute, and provided that such lot conforms to the area and frontage requirements of the zoning ordinance applicable at the time of said recording or approval.

2. Non-Conforming Lots (Contiguous): Non-conforming contiguous lots under the same ownership shall only be developed with such adjacent lot.

3. Non-Conforming Uses: If a lawful use exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, said use may be continued, so long as it remains otherwise lawful and subject to other provisions of this section.

- (a) Discontinued Use: If a non-conforming use is discontinued for one year or superseded by a conforming use, it shall thereafter conform to the regulations of the district and the non-conforming use may not be resumed, unless approved by a variance.
- (b) Superseding Non-Conforming Use: A non-conforming use may be superseded by another non-conforming use provided that the Board of Adjustment determines the proposed use is no more objectionable than the existing use. In the event a new non-conforming use is allowed, the original use shall not, thereafter, be resumed.
- (c) Expansion: A non-conforming use may be expended by a variance from the Zoning Board of Adjustment.

4. Non-Conforming Structure: If a structure exists before this ordinance is effective, which does not comply with the regulations contained herein, it may remain, subject to the other provisions of this Ordinance.

(a) Repairs: Normal repairs, renovations and maintenance may be made to any non-conforming structure; however, if it is destroyed by any means, to the extent of more than seventy-five (75%) of its replacement value as determined by the Board of Selectmen, it shall not be reconstructed unless it is rebuilt within one year of destruction.

(b) Additions: Additions to non-conforming buildings shall be permitted provided they do not increase the degree of non-conformance or make a new area that would be more non-conforming under this Ordinance.

(c) General Safety: Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition any building or part thereof upon order by any public official charged with protecting the public safety.

## ARTICLE 5 - BOARD OF ADJUSTMENT

1. Terms, Membership, Authority and Duties: A Board of Adjustment, appointed by the Board of Selectmen, shall be established consisting of five members with terms, membership, authority, and duties as provided in Chapter 673, New Hampshire Revised Statutes Annotated as amended (NHRSA).

(a) No more than three (3) alternate members of the Board of Adjustment may be appointed by the Selectmen. These individuals may serve as board members, after being duly sworn in, in the event:

- (i) A regular member is unable to attend a meeting; or
- (ii) A regular member disqualifies himself for any cause.

2. By-Laws: The Board of Adjustment shall adopt rules governing its proceedings pursuant to the requirements of the New Hampshire Revised Statutes Annotated.

3. Powers: The Board of Adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the endorsement thereof or of any ordinance adopted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which such Board of Adjustment is required to pass under such Ordinance.

(c) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(d) In exercising the above-mentioned powers the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision, as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

(e) The concurring vote of three (3) members of the Board shall be necessary to reverse any action of such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

4. Notice of Public Hearing: Application under Articles 6 and 7 shall be made no less than fifteen (15) days before a regularly scheduled Zoning Board of Adjustment hearing. Notification procedures and information shall be in compliance with state legislation.

Notice of hearing shall also be provided to each member of the Board of Adjustment and a notice sent to the Planning Board. The cost of notification and advertisement of the application shall be charged to the applicant and paid before consideration of the appeal by the Zoning Board of Adjustment.

5. Notice of Action Taken: The Board of Adjustment shall, within seven (7) days of its action on all matters, notify the Board of Selectmen, Planning Board and the applicant of its action in writing.

If the Board of Adjustment votes to deny a variance or special exception, it shall set forth for the record each condition or conditions necessary for a variance or special exception which the applicant failed to establish.

## **ARTICLE 6 - SPECIAL EXCEPTIONS**

1. Special Exceptions-General: Certain uses, structures or conditions are designated as Special Exceptions (E) in this Ordinance. Upon application duly made the Board of Adjustment may, subject to the appropriate conditions and safeguards, grant a permit for these special exceptions and no others. In all instances a site plan of the proposal shall be presented to the Planning Board for approval and determination as to how the proposal relates to the on-going town-planning program and to the maintenance of the integrity of the comprehensive plan.

2. Consideration Governing Granting of Special Exceptions: In acting upon an application for a special exception, the Board of Adjustment shall take into consideration whether:

- (a) The specific site is an appropriate location for the proposed use or structure;
- (b) The proposal will not be detrimental, injurious, obnoxious, or offensive to the neighborhood and will not diminish the value of surrounding properties;
- (c) There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking;
- (d) Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure; and
- (e) The proposed use or structure is consistent with the spirit of this Ordinance and the intent of the Town's Master Plan.

3. Additional Conditions: In approving a special exception, the Board of Adjustment may impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance including, but not limited to, the following:

- (a) Lot area;
- (b) Front, side, or rear yards;
- (c) Height limitations;
- (d) Screening, buffers or planting stripes, fences or walls;
- (e) Modification of the exterior appearance of the structure;
- (f) Limitation upon the size of buildings, number of occupants, method and time of operation or extent of facilities.



## ARTICLE 7 - VARIANCES

**1. Definition:** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance will result in unnecessary or undue hardship.

### **2. Requirements for a Variance:**

The Board of Adjustment may grant a variance from the requirements of this Ordinance only where at least three members of the Board shall find in writing, that all of the following conditions are met, in accordance with the standards set by the New Hampshire Supreme Court;

a. An unnecessary hardship would be imposed by a literal application and enforcement of the provisions of this Ordinance.

(1) For a USE variance, the following must be determined to support a finding of unnecessary hardship:

(a) the Zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property considering the unique setting of the property in its environment;

(b) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and

(c) Granting the variance will not injure the public or private rights of others.

(2) For an AREA variance, the following must be determined to support a finding of unnecessary hardship:

(a) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; and

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

b. Authorization of a variance will not be contrary to the public interest;

c. Granting the variance is consistent with the spirit of this Ordinance;

d. Granting the variance will do substantial justice; and

e. No diminution in the value of surrounding properties would be suffered as a result of the authorization of the variance.

Except that the Zoning Board of Adjustment may grant a variance from the terms of the Zoning Ordinance without a finding of hardship, under 2 above, arising from a condition of a premises subject to the Zoning Ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted pursuant to this paragraph and exception shall be in harmony with the general purpose and intent of the Zoning Ordinance.

(b) In granting any variance pursuant to this paragraph, the Zoning Board of Adjustment, shall provide, in a finding included in the variance, that the variance shall survive only so long as the particular person or persons has a continuing need to use the premises.

**3. Board May Impose Special Conditions:**

In granting a variance, the Board may impose such special conditions and safeguards, as it deems necessary to protect the neighborhood and zoning district.

**4. Interim Requirements For Variance:**

Should the standards for a variance be revised by the New Hampshire State Legislature or the New Hampshire State Supreme Court, the Zoning Board shall adopt those standards on an interim basis until the revised standards are placed into the zoning ordinance by amendment.

**5. Unused Variances to Expire:**

A variance shall expire automatically if not substantially acted upon within two (2) years.

**ARTICLE 8 - CLUSTER DEVELOPMENT**

The Board of Adjustment may, with the concurrence of the Planning Board and after public hearing, waive the dimensional requirement contained in Article 2 above, provided the following conditions are met:

1. The subdivisions of a parcel of land into residential lots would not increase the overall density of the residential housing had there been compliance with the frontage and minimum lot size requirements relevant to the district in which the land lies.
2. Reasonable restrictions are placed on the use of the remaining land to insure its use and upkeep as a park, open land, productive agricultural land or forest in which modern silviculture practices are followed.
3. The development does not adversely affect the appearance, health, safety or general welfare of the neighborhood.
4. The general welfare of the community as a whole is enhanced by the cluster development taking into account the affect of the development on the tax base of the community and the potential which the development offers for retaining land in productive agricultural or forestry uses or other uses in keeping with the rural character of the Town.

**ARTICLE 9 - SIGNS**

Signs of whatever size and material shall be a permitted accessory use in the Commercial and Light Industrial/Commercial districts of the Town and on the premises of businesses or permitted industry in other districts, provided that any such signs do not constitute a nuisance, in the opinion of the Zoning Board of Adjustment, by emitting an unreasonable amount of light or noise and are compatible with the surrounding area.

**ARTICLE 10 - MANUFACTURED HOUSING & MANUFACTURED HOUSING PARKS**

Manufactured housing (including mobile homes, trailers and the like) may be located in the urban, suburban and rural districts in accordance with Table 1, provided they meet all requirements set forth in this Ordinance for single-family dwellings on a lot.

Any manufactured housing unit, regardless of size, intended to be used for residential purposes, moved into the Town, or moved from one location to another within the Town, after the enactment of this Ordinance shall meet the following requirements before a building permit is issued:

1. Must have a current and valid H.U.D. certificate of compliance;
2. Must meet or exceed all of the requirements of the BOCA Code and the CABO one and two family dwelling code, the National Electric Code and the National Plumbing Code;
3. Must receive a certificate issued to the transporter that the manufactured housing unit is safely transportable over public roads within the Town;
4. If a previously occupied manufactured home, it must be inspected by a Building Inspector and/or a Housing Standards Inspector and found to be a habitable structure under all current codes and ordinances of the Town;
5. If a previously occupied manufactured home, its furnace and heating system must be inspected by the Fire Chief and must be found to be in compliance with all applicable codes;
6. Must have a current and valid release of property taxes from the current and all subsequent years from a Tax Collector.

Sewage disposal system requirements must be in accordance with those established by the New Hampshire Department of Environmental Services and the Town of Pittsfield Waste Water Treatment Facility.

Residential trailers must be fully skirted if set on a slab, or set on a permanent foundation of concrete or any base approved by the Building Inspector before a six (6) month period expires.

Any property owner may accommodate one manufactured housing unit of a nonpaying guest for a period not to exceed ninety (90) days in any calendar year provided said unit remains mobile, or accommodate a unit as a contract business office during construction or accommodate a unit during the construction period of a home for a period not to exceed six (6) months. A single manufactured housing unit owned by a Town resident may be stored or parked during periods of non-use on the premises of the owner provided the unit remains mobile and unoccupied. Any manufactured housing unit stored on a parcel of land must be set back at least fifty (50) feet from all property lines.

*Manufactured Housing Park:* Any manufactured housing park shall provide a pleasant and attractive residential atmosphere for its occupants, which is comparable to conventional residential developments and shall insure that the park is compatible with development in the surrounding area.

*1. Site Requirements:*

- (a) Minimum Park Area: Five (5) Acres

(b) Maximum Park Area: Four (4) mobile homes per buildable acre.

(c) Access: Access shall be provided by means of public roads or a privately constructed and maintained roadway built to Town of Pittsfield road standards. Said roadways shall be not less than 40 feet wide of which 24 feet shall be finished for vehicular traffic, shall be well drained, adequately graveled and maintained in good condition. Every right of way shall be lit at night and shall have a light intensity at the center of the right of way of not less than two candles.

(d) Along all boundaries adjacent to existing residences and along all public roads, a dense visual screen comprised of evergreens or other suitable shrubs shall be developed within a 20 foot buffer strip. In addition to this screening buffer, there shall be an additional 80-foot buffer, for a total of a 100-foot buffer surrounding the perimeter of the manufactured housing park.

(e) Spacing: A minimum distance of 25 feet shall be observed between manufactured homes.

2. Utilities: All manufactured housing parks shall comply with all laws and regulations of the State of New Hampshire relating to water supply, sewage disposal and other aspects of sanitation and any similar applicable ordinances of the Town of Pittsfield. All utilities shall be underground.

3. Refuse and Garbage Disposal: The storage collection and disposal of refuse in a manufactured housing park shall not create health hazards or any type of above or belowground pollution. Central collection of garbage may be required.

4. Register: Every manufactured housing park operator shall maintain a register containing a record of all occupants using the park. Such register shall be available to any legally authorized person and shall be preserved for a period of at least one (1) year.

## **ARTICLE 11**

Reserved for future amendment.

## **ARTICLE 12**

Reserved for future amendment.

## **ARTICLE 13**

Reserved for future amendment.

## **ARTICLE 14 - STORAGE CONTAINERS**

Storage Containers, whether registered or not, whether mobile or stationary, are not allowed on a permanent basis in any zoning district within the Town of Pittsfield. A storage container is permitted for storage purposes only, for a period of one year, with the approval of a parking permit issued by the Board of Selectmen or their designee, provided said storage container meets all setback requirements and as limited by the following:

a) Maximum of one storage container per lot in the Urban, Suburban or Rural District.

b) Maximum of two storage containers per lot in the Light Industrial/Commercial District.

The temporary use of construction trailers at a building site is exempt from this article. Nothing in this article is intended to limit repeated seasonal use providing a permit is obtained.

Existing storage containers at the time of the adoption of this article shall be subject to the provisions of Article 4, Section 3, Non-Conforming Uses.

### **ARTICLE 15 - RUBBISH, DUMPING, & FILLING**

No garbage, rubbish, refuse or other waste material shall be dumped in any District and no land shall be used as a dump or fill area without authorization by the Selectmen. The Selectmen shall grant no such authorization with respect to any site unless said site has been approved for such use by the Board of Health.

Any area in use for dumping or filling shall be identified by suitable markers as a public or private dump area or as a fill area.

### **ARTICLE 16 - PARKING REQUIREMENTS**

#### **PARKING LOTS:**

1. The surface shall be paved - hot top on compacted base.
2. Shall be graded to prevent drainage across sidewalks and curb cuts or onto adjacent property.
3. Paved area shall be striped to delineate parking spaces.
4. Shall have a substantial bumper of masonry, steel or heavy timber from damaging adjacent buildings, lawns, trees or shrubs or from creating a hazard to pedestrians on any adjacent sidewalk.

#### **PARKING SPACES:**

1. Shall not be less than 8' by 18'.
2. Spaces designed primarily to serve retail establishments shall either provide a 1' separation between adjacent spaces or shall be not less than 9' wide. Single spaces with sidewalks or green space on each side may be 8' wide.

#### **Travel Lanes shall be not less than:**

1. 22" wide for 90 degree angle parking
2. 18" wide for 60 degree angle parking
3. 11' wide for 45 degree angle parking
4. 10' wide for 30 degree angle parking

### **ARTICLE 17 - PITTSFIELD FLOODPLAIN DEVELOPMENT ORDINANCE**

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

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Merrimack, NH" dated April 19, 2010, together with the associated Flood Insurance Rate Maps dated April 19, 2010, are declared to be a part of the Town of Pittsfield Floodplain Development Ordinance and are hereby incorporated by reference.

**Item I, Definition of Terms**

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Pittsfield.

**“Area of Special Flood Hazard”** is the land in the floodplain within the Town of Pittsfield subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone(s) A and AE on the Flood Insurance Rate Map.

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

**“Basement”** means any area of a building having its floor sub grade on all sides.

**“Building”** - see “structure”.

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

**“FEMA”** means the Federal Emergency Management Agency.

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

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

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

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

**“Flood Insurance Study”** - see “Flood elevation study”.

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

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

**“Floodway”** - see “Regulatory Floodway”.

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

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

**“Historic Structure”** means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1.) By an approved state program as determined by the Secretary of the Interior, or
  - 2.) Directly by the Secretary of the Interior in states without approved programs.

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

**“Manufactured Home”** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to 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.

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

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

**“New construction”** means for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 21, 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 flood plain management regulation adopted by a community and includes any subsequent improvements to such structures.

**“100-year flood”** - see “base flood”.

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

**“Special flood hazard area”** means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on FIRM as zone A, AE. (See - “Area of Special Flood Hazard”)

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

**“Start of Construction”** includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or 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 filling; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

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

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

**“Violation”** means the failure of a structure or other development to be fully compliant with the community’s 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.

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

## **Item II**

All proposed development in any special flood hazard area shall require a permit.

The Board of Selectmen shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a



proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- (i) be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- (ii) be constructed with materials resistant to flood damage,
- (iii) be constructed by methods and practices that minimize flood damages,
- (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**Item III**

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 Board of Selectmen with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

**Item IV**

For all new or substantially improved structures located in Zone AE, the applicant shall furnish the following information to the Board of Selectmen:

- (a) The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- (b) If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
- (c) Any certification of flood proofing.

The Board of Selectmen shall maintain for public inspection, and shall furnish such information upon request.

**Item V**

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

**Item VI**

1. 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 Board of Selectmen, in addition to the copies required by RSA 483-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Board of Selectmen, including notice of all scheduled hearings before the Wetlands Board.

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

3. 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.
4. 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.
5. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

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

**Item VII**

1. 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:
  - a. In Zone AE, refer to the elevation data provided in the community’s Flood Insurance Study and accompanying FIRM.
  - 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).
2. The Board of Selectmen’s 100-year flood elevation determination will be used as criteria for requiring in zones AE and A that:
  - (a) All new construction or substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
  - (b) That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
    - (i) be flood proofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

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

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

(d) for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(e) proposed structures to be located on slopes in special flood hazard areas shall include adequate drainage paths to guide floodwaters around and away from the proposed structures.

(f) All recreational vehicles placed on sites within Zone AE or A shall either:

1. Be on site fewer than 180 days per year;
2. Be fully licensed and ready for highway use; or
3. 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.

A recreational vehicle is defined as:

- a). Built on a single chassis;
- b). 400 square feet or less when measured at the largest horizontal projection;
- c). Designed to be self propelled or permanently towable by a light duty truck;
- d). Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, or seasonal use.

### **Item VIII, Variances and Appeals**

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

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

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

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

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

3. The Zoning Board of Adjustment shall notify the applicant in writing that: (1) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (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.

4. The community shall (1) maintain a record of all variance actions, including their justification for their issuance, and (2) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## **ARTICLE 18 - TELECOMMUNICATIONS EQUIPMENT & FACILITIES**

### **18.1, FINDINGS & INTENT**

A. The Town of Pittsfield finds that specific regulation of the placement, spacing, installation, location and number of telecommunication facilities is in the public interest so as to conserve and enhance property values, to minimize the visual impact of such facilities upon the natural landscape and scenic vistas within the municipality, to minimize the number of towers and/or reduce the height and visual impact of towers and to avoid congestion in the location of such facilities.

B. The Town hereby states its intent not to discriminate against or favor providers of telecommunication facilities and services.

C. The Town also finds that regulation of wireless and personal telecommunication facilities, consistent with federal and state policies and law, is in public interest.

D. The purposes of this article are as follows:

1. To preserve the authority of the Town to regulate the siting of telecommunication facilities while facilitating the proper location of facilities to provide such services to the community quickly, effectively and efficiently.

2. To reduce adverse impacts such facilities may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property and prosperity through protection of property values.

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

4. To permit the construction of new towers only where all other reasonable opportunities have been exhausted and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.

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

6. To assure responsibility for adequate telecommunications maintenance and safety inspections for facilities.
7. To provide the prompt, safe removal of abandoned facilities.
8. To provide for the removal or upgrade of facilities that are technologically outdated.

### **18.2, DEFINITIONS**

**A. ACT**, means the federal laws governing telecommunication facilities, as amended, including the Telecommunications Act of 1996, and FCC regulations promulgated thereunder.

**B. ALTERNATIVE TOWER STRUCTURE**, means an innovative siting technique or structure such as man-made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

**C. ANTENNA**, means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

**D. FAA**, means the Federal Aviation Administration.

**E. FCC**, means the Federal Communications Commission.

**F. HEIGHT**, when referring to a tower or other structure, means the distance measured from ground level to the highest point on the tower or structure, even if said highest point is an antenna.

**G. PREEXISTING TOWER OR ANTENNA**, means any tower lawfully constructed or permitted prior to the adoption of this article.

**H. TELECOMMUNICATION FACILITY**, includes both:

1. **Wireless telecommunication facilities** such as any structure, antenna, tower or other device which provides commercial mobile services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR) and personal communications service (PCS) and common carrier wireless exchange access services; and

2. **Conventional telecommunications facilities** such as any telecommunication facility installed within, upon, or across a public right-of-way including poles, wires, conduits and similar equipment or property, whether installed above or below ground.

**I. TOWER**, means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers, the term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.

### **18.3, GENERAL SITING STANDARDS & POLICIES**

Wireless telecommunications facilities shall be permitted within the Town only in accordance with this ordinance, this article and the specific provisions of the following sections. In the case of conflict with any other provisions of this ordinance or any town ordinance or regulation, that provision imposing the more stringent shall apply.

**18.4, GENERAL PROVISIONS**

A. Wireless telecommunication facilities may be allowed as primary or secondary uses, either as permitted uses or by conditional use permit issued in accordance with section 18.7. In any case, however, the facility must conform to all other applicable ordinances and regulations, and must be approved by the Planning Board through site plan review. If allowed by the Planning Board, an applicant may combine conditional permit review with site plan review.

B. When allowed by this Ordinance and after approval by the Planning Board, a wireless telecommunications facility may be placed upon a property as a primary or secondary use of the property on which it is located. A different primary use of the property shall not preclude the use of the property for an antenna or tower, provided that the Planning Board approves such use a conditional use under section 18.7. Any other wireless telecommunications structures or facility shall be allowed only by conditional use permit in accordance with section 18.7.

C. For purposes of determining whether the installation of a tower or antenna complies with this ordinance, including by not limited to set-back requirements, lot-coverage requirements and other requirements, the dimensions of the entire lot shall control, even though the antenna or tower may be located on a leased parcel within the lot. Towers that are constructed and antenna that are installed strictly in accordance with this ordinance shall not be deemed to constitute the expansion of a non-conforming use or structure. Wireless telecommunication facilities shall not be deemed to be an accessory use.

**18.5, ZONING DISTRICT REQUIREMENTS**

A. Wireless telecommunication towers and antennas may be located within the Town only in accordance with the following table:

Zoning District	New Tower Construction	Co-Location on Existing Tower	Co-Location on Existing Structure
Urban	Not Allowed	CUP	CUP
Suburban	Not Allowed	CUP	CUP
Rural	Not Allowed	CUP	CUP
Commercial	CUP	P	P
Lt. Ind./Commercial	CUP	P	P

**CUP** - means allowed only by conditional use permit issued under section 18.7, and site plan review, also required.

**P** - means permitted without a conditional use permit, but site plan review still required and subject to any restrictions on existing tower or structure.

**NEW TOWER CONSTRUCTION** permits construction of a tower for one or more antennas, as allowed in the permit issued by the Planning Board.

**CO-LOCATION ON EXISTING TOWER** permits additions of antenna(s) to an existing telecommunication tower in the manner permitted in the CUP or site plan review as appropriate.

**CO-LOCATION ON EXISTING STRUCTURE** permits the placement of an antenna on an existing structure other than a telecommunication tower in the manner permitted in the CUP or site plan review as appropriate.

B. Wireless telecommunications structures other than towers as allowed amenities may be located on property only in conformity with the use and dimensional requirements otherwise applicable to the property.

C. Where allowed and as approved in site plan review, a telecommunications tower may include reasonable minor, accessory amenities such as one storage building not to exceed 200 square feet and a parking area not to exceed 400 square feet (only with a surface approved by the Planning Board).

D. The maximum height for any telecommunications tower or support for an antenna shall be 190 feet. Any height limit imposed may be decreased by the Planning Board by approval of a CUP if the Board affirmatively finds the intent of the ordinance will be preserved, and where the Board finds that a modification is reasonably necessary and appropriate to further the purpose of this article.

### **18.6, APPLICABILITY**

A. PUBLIC PROPERTY. Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the permit requirements of this article, except that such uses are permitted only in the commercial and industrial zones. This partial exemption shall be available if a license authorizing such antenna or tower has been approved by the Board of Selectmen. The entity that will use or operate the tower or antenna shall be required to obtain site plan approval.

B. AMATEUR RADIO; RECEIVER-ONLY ANTENNAS. In accordance with RSA 674:16,IV, this article shall not apply to any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator and is used exclusively for receive-only antennas.

C. ESSENTIAL SERVICES AND PUBLIC UTILITIES. Telecommunication facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in this ordinance or any Town ordinance or regulation. Siting for telecommunication facilities constitutes a use of land and is regulated by this article.

### **18.7, CONDITIONAL USE PERMITS AND SITE PLAN REVIEW; CRITERIA; CONSTRUCTION AND PERFORMANCE STANDARDS**

A. In acting upon a conditional use permit, or in applying its site plan review regulations to a wireless telecommunication facility, the Planning Board shall apply and utilize the criteria and standards set forth in this section, in addition to such other standards and criteria as it may establish. The Planning Board may waive one or more of these requirements, in accordance with section 18.11, only if it determines that the goals of this article are served thereby

B. AESTHETICS AND LIGHTING.

1. Towers shall have a galvanized steel finish, subject to any applicable FAA standards, or shall be painted a neutral color so as to reduce visual obtrusiveness.

2. At a tower site, 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.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall 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 obtrusive as possible.

4. Towers 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.

5. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as allowed by the Planning Board in the interests of public safety.

C. FEDERAL REQUIREMENTS. All towers and antennas 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 towers and antennas. If such standards and regulations are changed, then the owners or operators of the towers and antennas shall bring such towers and antennas into compliance with such revised standards and regulations within 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 towers and antennas into compliance with such revised standards and regulations shall constitute grounds for removal of the tower or antenna in accordance with section 14.10, at the owner's expense through the execution of the posted security.

D. ADDITIONAL REQUIREMENTS FOR WIRELESS TELECOMMUNICATION FACILITIES. These requirements shall supersede any less stringent applicable standards found elsewhere in this ordinance or any Town ordinance or regulation.

1. Setbacks and Separation.

a. Towers shall be setback at least the distance equal to 125% of the height of the tower from the property lines of the lot on which the tower is sited.

b. Tower, guys, and accessory facilities shall comply with the minimum zoning district setback requirements.

c. Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.

2. Security Fencing. Towers shall be enclosed by security fencing not less than 6 feet in height and shall also be equipped with an appropriate anti-climbing device.

3. Landscaping.

a. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet 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, in accordance with section 18.11.

c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. For towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer, if approved by the Planning Board.



**18.8, PERMIT PROCEDURES**

A. GENERAL. All applications under this section shall apply to the Planning Board for site plan review, in accordance with the Site Plan Review Regulations. In addition, applications under this section shall submit the information required by this section. All applications shall be handled as required by RSA 676:4.

B. INFORMATION REQUIRED. Each applicant requesting a Conditional Use Permit or Site Plan Approval shall submit a scaled plan in accordance with the Site Plan Review Regulations. The applicant shall also provide: a scale elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200 feet away), and any other information deemed necessary by the Planning Board to assess compliance with this article.

The applicant shall also submit the following prior to any approval by the Board:

1. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
2. Written proof that an evaluation has taken place that demonstrates that the use/facility satisfies the requirements of the National Environmental Policy Act (NEPA). 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 requirement.
3. An inventory of existing towers that are within the jurisdiction of the Town and those within 2 miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for the co-location on the inventories towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate within the jurisdiction of the Town, 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.
4. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence may 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, including a description of the geographic area required.
  - b. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
  - c. Substantial evidence that the existing tower 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 antennae on existing towers or structures, or antennae

on existing towers and structures would cause interference with the applicant's proposed antenna.

e. Substantial evidence that the fees, costs or contractual provisions required by the owner to share the existing tower or structure is unreasonable.

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

5. An applicant proposing to build a new tower shall execute an agreement that allows for the maximum allowance of co-location upon the new structure, which shall become a condition of any approval. This agreement 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 the Town and grounds for denial of approval for the tower.

6. The applicant shall submit engineering information detailing the size and coverage required for the facility location. The Planning Board may require such information to be reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternate locations, or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with RSA 676:4, I (g).

C. FACTORS CONSIDERED IN DECISIONS. The Planning Board shall consider at least the following criteria when acting upon an application for conditional use permit:

1. Height of proposed tower or other structure.
2. Proximity of tower to residential development or zones.
3. Nature of uses on adjacent and nearby properties.
4. Surrounding topography.
5. Surrounding tree coverage and foliage.
6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
7. Proposed ingress and egress to the site.
8. Availability of suitable existing towers or other structures.
9. Visual impacts on viewsheds, ridgelines and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
10. Availability of alternative tower structures and alternative siting locations.

#### D. DECISIONS

1. In granting a conditional use permit, the Planning Board may impose conditions necessary to minimize any adverse effect of the proposed tower on adjoining properties, and to preserve the intent of this Ordinance.

2. The Planning Board may approve, approve with conditions, or deny an application. All decisions shall be in writing and a denial shall be based upon the record.

E. EXPEDITED REVIEW. The Planning Board may, by regulation, provide for an expedited review of facilities that utilize existing facilities or sites designated by the Planning Board and Selectmen as desired sites for such facilities.

### **18.9, SECURITY**

As a condition of approval for any new tower and when deemed appropriate for other facilities, the Planning Board shall require the applicant to post adequate surety for the costs of maintenance, repair, or removal thereof. The amount and form of the surety shall be determined by the Planning Board.

**18.10, ABANDONMENT, DISCONTINUANCE, REPAIR, REPLACEMENT, & REMOVAL**

To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the Town finds that a tower fails to comply with such codes and standards or otherwise constitutes a danger to persons or property, it shall notify the tower owner who shall, within 30 days, bring the tower into compliance with such standards or eliminate the danger. If the owner fails to bring the tower into compliance within 30 days, such action shall constitute abandonment and grounds for the removal of the tower or antenna, at the owner's expense through execution of the posted security, in accordance with section 18.9.

**18.11, WAIVER/APPEAL**

A. In compliance with Section 253 of the Act, the Town does not intend to create barriers to the ability of any entity to provide interstate or intrastate telecommunications service. If any such entity, having duly exhausted all applicable avenues to providing such service, believes that the procedures or standards established by this article have created such a barrier, the entity may apply within 20 days after the final administrative decision, to the Planning Board for administrative relief in accordance with this section.

B. Upon application duly made in accordance with the procedures required for a conditional use permit, the Planning Board may grant waivers for the strict application of the requirements of this article where the board finds, on the probability of evidence presented to it, with the burden upon the applicant for the facility, that:

1. Strict adherence to the requirement of this chapter is not required to effectuate the purposes hereof;
2. Strict compliance would create practical difficulty and unnecessary inconvenience;
3. Strict compliance could potentially cause a conflict with the Act.

**ARTICLE 19 - SHORELAND PROTECTION ORDINANCE**

This Ordinance, adopted pursuant to the authority contained in RSA 483-B:8, shall be known as the Town of Pittsfield Shoreland Protection Ordinance. The regulations contained in this Ordinance shall overlay and supplement the regulations in the Town of Pittsfield Zoning Ordinance, and shall be considered a 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 control.

**Section 1. Purpose**

The Town Meeting of the Town of Pittsfield finds that:

- A. The shorelands of the Town are among its most valuable and fragile resources and their protection is essential to maintain the integrity of our public waters.
- B. The public waters of the State of New Hampshire located in the Town of Pittsfield are valuable resources held in trust by the State for all people of the community. The Town has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public good and protection.

- C. There is great concern throughout the community relating to the protection, preservation, utilization, and restoration of shorelands because of their effects on the public waters of our community and state.
- D. Current law may allow for uncoordinated, unplanned and piecemeal development along the shorelands of public waters, which could result in significant negative impacts on the public waters within the Town of Pittsfield and to property of her citizens.

## **Section 2. Minimum Standards Required**

To fulfill the Town's role as a trustee of the public water within the community and to promote public health, safety and the general welfare, the Town Meeting declares that the public interest requires the establishment of reasonable standards for the subdivision, use, and development of the shorelands of the state's public waters within the Town of Pittsfield.

These standards shall serve to:

- A. Further the maintenance of safe and healthful conditions.
- B. Provide for the wise utilization of water and related land resources.
- C. Prevent and control water pollution.
- D. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.
- E. Protect buildings and lands from flooding and accelerated erosion.
- F. Protect archaeological and historical resources.
- G. Protect freshwater wetlands.
- H. Control building sites, placement of structures, and land uses.
- I. Conserve shoreland cover, and visual as well as actual points of access to inland waters.
- J. Preserve lakes, streams, ponds, brooks, rivers, and wetlands in their natural state.
- K. Promote wildlife habitat, scenic beauty, and scientific study.
- L. Protect public use of water, including recreation.
- M. Conserve natural beauty and open spaces.
- N. Anticipate and respond to the impacts of development in shoreland areas.
- O. Provide for economic development in proximity to waters.

## **Section 3. Consistency Required**

- A. All state and local agencies shall perform their responsibilities in a manner consistent with the intent of this Ordinance. State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this Ordinance.
- B. When the standards and practices in this Ordinance conflict with other local or state laws and rules, the more stringent standard shall control.
- C. All agricultural activities and operations in the Town as defined in RSA 21:34-A and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation, and other agricultural technologies, shall be exempt from the provisions of this Ordinance, provided such activities and operations are in conformance with the best management practices as determined by the United States Department of Agriculture, Natural Resource Conservation Service, the United States Department of Agriculture, Cooperative Extension Service and the New Hampshire Department of Agriculture, Markets and Food. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with representatives of the above agencies for their particular property.

#### Section 4. Definitions

In this Ordinance:

- A. **“Abutter”** means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For the purpose of receiving testimony only, and not for the purpose of notification, the term “abutter” shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- B. **“Accessory structure”** means a structure detached from the primary building on the same lot and customarily incidental and subordinate to the primary building or use, such as a pump house, gazebo or woodshed.
- C. **“Basal area”** means the cross sectional area of a tree measured at a height of 4 ½ feet above the ground, usually expressed in square feet per acre for a stand of trees.
- D. **“Boat slip”** means a volume of water, 20 feet long, 6 feet wide and 2 feet deep, as measured at normal high water, and located adjacent to a structure to which watercraft may be secured.
- E. **“Commissioner”** means the Commissioner of the Department of Environmental Services or his designee.
- F. **“Department”** means the Department of Environmental Services.
- G. **“Disturbed area”** means an area in which natural vegetation is removed, exposing the underlying soil.
- H. **“Ground cover”** means any herbaceous plant, which normally grows to a mature height of 4 feet or less.
- I. **“Lot of record”** means a parcel, the plat or description of which has been recorded at the Merrimack County Registry of Deeds.
- J. **“Municipality”** means all governmental entities within the Town of Pittsfield.
- K. **“Marina”** means a commercial waterfront activity whose principal use is the provision of publicly available services such as securing, launching, storing, fueling, servicing and repairing of watercraft.
- L. **“Natural wood buffer”** means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.
- M. **“Ordinary high water mark”** means the line on the shore, running parallel to the main stem of the river, stream or brook, established by the fluctuations of water indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of surrounding areas.

- N. “Person”** means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.
- O. “Primary building line”** means a setback from the public boundary line.
- P. “Primary structure”** means a structure other than one that is used for purposes wholly incidental or accessory to the use of another structure on the same premises.
- Q. “Protected shoreland”** means all land located within 250 feet of the public boundary line of public waters.
- R. “Public waters”** shall include:
- (1). All fresh water bodies listed on the official list of public waters published by the Department of Environmental Services pursuant to RSA 271:20, II, whether they are great ponds or artificial impoundments.
  - (2). Rivers, perennial streams, perennial brooks, all fresh water bodies, located within the Town of Pittsfield, as identified on the most recent public version, 7.5 minute series, of the USGS quads of the Loudon, Parker Mountain and Pittsfield quadrants.
- S. “Public boundary line”** means:
- (1). For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Division of Water Resources of the Department of Environmental Services.
  - (2). For artificial impounded fresh water bodies, the waterline at full pond as determined by the elevation of the top of the impoundment structure.
- T. “Reference line”** means:
- (1). For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department of Environmental Services.
  - (2). For artificial impounded fresh water bodies with established flowage rights, the limits of the flowage rights, and for bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
  - (3). For rivers, streams, and brooks the “ordinary high water mark”.
  - (4). For all other bodies of water the line established by the Town of Pittsfield through its regulatory bodies.
- U. “Removal or removed”** means cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

- V. **“Residential unit”** means a structure providing complete and independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking, and sanitation that are used in common by one or more persons.
- W. **“Sapling”** means any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4 ½ feet above the ground.
- X. **“Shrub”** means any multi-stemmed woody plant that normally grows to a mature height of less than 20 feet.
- Y. **“Structure”** means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.
- Z. **“Subdivision”** means subdivision as defined in RSA 672:14.
- AA. **“Tree”** means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4 ½ feet above the ground.
- AB. **“Urbanization”** means the concentrated development found in the sections of cities and towns where there has been an historic pattern of intensive building for commercial or industrial use, or mixed residential, commercial, and industrial use.
- AC. **“Water dependent structure”** means a dock, wharf, pier, breakwater, or other similar structure or any part thereof, built over, on or in the waters of the State.

## **Section 5. Enforcement by Selectmen; Duties**

- A. The Board of Selectmen, or their authorized representative(s), with the advice and assistance of the Planning Board, the Conservation Commission, the Office of State Planning, the Department of Resources and Economic Development, the Department of Environmental Services and the Department of Agriculture, shall enforce the provisions of this Ordinance.
- B. The Selectmen or their designee may enter upon any land or parcel at any reasonable time to perform oversight and enforcement duties as provide in RSA 483-B:5.
- C. To encourage coordination of local and State enforcement measures, the Selectmen shall notify the Department of Environmental Services of enforcement action taken by the Town of Pittsfield in respect to protected shoreland within the Town by sending copies of relevant administrative orders issued or pleadings filed.
- D. The Selectmen may issue an order to any person in violation of this Ordinance, of rules adopted under this Ordinance, or of any condition of a permit issued under this Ordinance.

## **Section 6. Prior Approval; Permits**

Each person intending to construct a new or expanded structure within the protected shoreland, or intending to engage in timber cutting for purposes other than forest management activities now subject to RSA 224:44-a, earth excavation, or any other activity which will alter the existing character of the protected shoreland, shall seek a shoreland development permit from the Selectmen. Such person shall demonstrate to the satisfaction of the Selectmen that the proposal meets or exceeds the development

standards of this Ordinance. The Selectmen shall, grant, deny, or attach reasonable conditions to a permit requested under this Ordinance to protect the public waters or the public health, safety, or welfare.

**A.** Within the protected shoreland, any person intending to:

(1). Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(2). Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(3). Install a septic system as defined in RSA 483-B:9, V (b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(4). Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(5). Subdivide land for residential or non-residential development as described in RSA 489-B, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29

**B.** In applying for these approvals and permits, such person shall demonstrate to the satisfaction of the Selectmen that the proposal meets or exceeds the development standards of the Ordinance. The Selectmen shall attach reasonable conditions to a permit listed in paragraphs A (1)-(5), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this Ordinance.

**Section 7. Reporting; On-Site Inspections; State Participation**

The Selectmen may devise a system whereby state officials may voluntarily assist with the permitting process under Section 6 and the subsequent enforcement of permit conditions, by performing certain reporting functions relative to on-site inspections. Utilization of such reports shall be at the Selectmen's discretion, but may, when appropriate, obviate the need for further on-site review by Town staff.

**Section 8. Municipal Authority**

**A.** The Town of Pittsfield by the enactment of this Ordinance has adopted the authority granted under RSA 483-B:8.

**B.** The Board of Selectmen may enforce the provisions of this Ordinance by issuing cease and desist orders and by seeking injunctive relief or civil penalties as provided in RSA 483-B:18, III(a) and (b). Civil penalties and fines collected by the court shall be remitted within 14 days to the Treasurer of the Town for such use as the Town may direct. The Selectmen shall send copies of any pleading to the Attorney General at the time of filing.

**C.** The Town of Pittsfield shall work jointly with abutting municipalities to monitor compliance where both municipalities share or are responsible for duties under RSA 483-B or their respective Shoreland Protection Ordinances.

**Section 9. Minimum Shoreland Protection Standards**



- A.** The standards in this section are designed to minimize shoreland disturbance so as to protect the public waters, while still accommodating reasonable levels of development in the protected shoreland.
- B.** Within the protected shoreland the following restrictions shall apply:
  - (1).** The establishment or expansion of salt storage yards, automobile junk yards, machinery junk yards, automobile graveyards, automobile recycling yards, junk yards, petrochemical storage facilities (except for use within individual homes and businesses), gasoline service stations, and solid or hazardous waste facilities shall be prohibited.
  - (2).** Primary structures shall be setback behind the primary building line. This line shall be set back 50 feet from the reference line.
  - (3).** The construction of a water dependent structure, meaning one which is a dock, wharf, pier, breakwater, or other similar structure, or any part thereof, built over, on, or in the public waters, shall be constructed only as approved by the Wetlands Board pursuant to RSA 482-A.
  - (4).** No fertilizer, except limestone, shall be used within 25 feet of the reference line of any property. Twenty-five (25) feet beyond the reference line, low phosphate, slow release nitrogen fertilizer or limestone, may be used on lawns or areas with grass.
  - (5).** Accessory structures such as storage sheds and gazebos but excluding automobile garages may be located within the 50 feet setback as a special exception provided:
    - a.** The location of construction of the structure is consistent with the intent of the Ordinance to maintain a vegetated buffer;
    - b.** The structure is required as a shelter for humans, equipment, or firewood;
    - c.** The structure is usually customary and incidental to a legally authorized use located within the shoreland district.
- C.** Public water supply facilities, including water supply intakes, pipes, water treatment facilities, pump stations, and disinfection stations shall be permitted as necessary, consistent with the purposes of this Ordinance and State Law. Private water supply facilities shall not require a permit.
- D.** The placement and expansion of public water and sewage treatment facilities shall be permitted as necessary, consistent with the purposes of this Ordinance and other State Law.
- E.** Hydroelectric facilities, including, but not limited to, dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, and shall be permitted as necessary, consistent with the purposes of this Ordinance and State Laws.
- F.** Public utility lines and associated structures and facilities shall be permitted as necessary, consistent with the provisions of this Ordinance and State Laws.
- G.** An existing solid waste facility which is locate within 250 feet of the reference line of public waters under this Ordinance may continue to operate under an existing solid waste permit, provided it does not cause degradation to an area in excess of that area under permit.

- H.** No solid waste facility shall place solid waste within 250 feet of the reference line of public waters under this Ordinance except as expressly permitted under RSA 483-B: 9, IV-c. However, any solid waste facility may be allowed, subject to permitting conditions under RSA 149-M: 9, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line of public waters under this Ordinance, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the Department of Environmental Services.

Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.

- I.** The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion and conducted in compliance with RSA 227-J:9, forestry involving water supply reservoir watershed management, or agriculture conducted in accordance with best management practices, shall be exempted from the provisions of this Ordinance.

**(1). Natural Woodland Buffer**

- a.** Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
- b.** Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B: 9, V, the following prohibitions and limitations shall apply:
- 1.** Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose within a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level.
  - 2.** Trees, saplings, shrubs and ground covers which are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations under subparagraph (1)b 1.
  - 3.** Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground covers may be removed. Their removal shall not be used in computing the percentage of limitations under subparagraph (1)b 1.
  - 4.** Stumps and their root systems that are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the Department, pursuant to RSA 482-A.

**(2). Septic Systems**

- a. All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the Department of Environmental Services under RSA 485-A: 29.
- b. The following conditions, based on the characteristics of the receiving soils as they relate to the United States Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems as follows:
  - 1. Adjacent to ponds, lakes, all fresh water bodies.
    - (a). Where the receiving soil down gradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;
    - (b). For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and
    - (c). For all other soil conditions, the setback shall be at least 75 feet from the reference line.
  - 2. Adjacent to rivers, streams and brooks the setback shall be no less than 75 feet, and may be greater if approved by the Commissioner.
- c. The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (2) b, to the extent feasible.

**Section 11. Erosion and Siltation**

- a. All new structures within the protected shoreland shall be designed and constructed in accordance with rules adopted by the Department pursuant to RSA 541-A, relative to terrain alteration under RSA 485-A: 17, for controlling erosion and siltation of public waters, during and after construction.
- b. New structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soil.
- c. A permit pursuant to RSA 485-A: 17, I, shall be required for improved, developed, or subdivided land within the protected shoreland whenever there is a contiguous disturbed area exceeding 50,000 square feet.

**Section 12. Minimum Lots and Residential Development**

In the protected shoreland:

- a. The minimum size of new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the Department of Environmental Services.

- b. For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed one unit per 150 feet of shoreland frontage.
- c. Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by Town standards.

### **Section 12. Commonly Used Water Front Parcels or Lots**

Shoreland lots/parcels, which are intended for use for common access by the non-shoreland property owners within the development or subdivision which owns or has control over the common land, shall:

- A. Contain a minimum of one acre.
- B. Have a minimum shoreland frontage of 150 feet for the first ten residential units and an additional 10 feet for each additional unit.
- C. Have no structures other than toilet facilities, picnic shelters and/or recreational facilities. Necessary leach fields shall be located at 125 feet from the reference line.
- D. Half the shoreland frontage shall be designated for swimming and shall be separate from boating areas. Swimming areas shall be separated from boating areas by ropes and appropriate marks, subject to approval of the Safety Services Division of the New Hampshire Department of Safety.
- E. Off street parking shall be provided on the basis of 300 square feet for each residential unit ¼ mile or more from the common area that has use of the area.
- F. Toilet facilities shall be provided on the basis of one facility each for men and women for each 25 residential units.
- G. Impervious cover for roof area, parking lots, access roads, sidewalks and any other similar cover over or on the parcel or lot shall not exceed 10% of the area of the parcel or lot.

### **Section 13. Non-Conforming Lots of Record**

Non-conforming, undeveloped lots of record that are located within the protected shoreland shall comply with the following restrictions:

- A. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single-family residential dwelling on it, notwithstanding the provisions of this Ordinance. Conditions may be imposed which, in the opinion of the Town, more nearly meet the intent of this Ordinance, while still accommodating the applicant's rights.
- B. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, docks, piers, boathouses, boat loading ramps, walkways, and other water dependent structures, consistent with State Laws.

### **Section 14. Nonconforming Structures**

- A. Except as otherwise prohibited by law, pre-existing nonconforming structures located within the protected shoreland may be repaired, improved, or expanded. An expansion that increases the sewage load to an on-site septic system, for example, additional bedrooms, shall require approval by the Department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of an open deck or porch is permitted up to a maximum of 12 feet towards the reference line.
- B. When reviewing requests for the redevelopment of sites that currently contain nonconforming structures, the Town shall review proposals that are more nearly conforming than the existing structures, and may waive some of the existing standards, so long as there is at least the same degree of protection provided to the public waters.

### **Section 15. Conflicts with Existing Statutes**

Where the requirements of this Ordinance are in conflict with existing statutory authority then the existing statutory authority that is more stringent shall be enforced and apply.

### **Section 16. Shoreland Exceptions**

The Board of Selectmen may, in its discretion, request the Commissioner to exempt all or a portion of the protected shoreland within the Town from the provisions of RSA 483-B in accordance with the provisions of RSA 483-B: 12.

### **Section 17. Hearings and Appeals**

The Town of Pittsfield Zoning Board of Adjustment shall be the Board of Appeals from decisions made under this Ordinance. Such appeals shall be governed by the requirements of the Zoning Ordinance relating to appeals.

### **Section 18. Designated Rivers**

The provisions of this Ordinance shall not apply to rivers or river segments designated by the General Court and approved for management and protection under RSA 483 prior to January 1, 1993.

### **Section 19. Rulemaking**

The Board of Selectmen, in consultation with the Planning Board, Conservation Commission and the Office of State Planning, and following a public hearing, may adopt rules relative to:

- A. The content and structure of all forms, applications and permits to be received or issued by the town under this Ordinance, including information and other materials to be submitted by an applicant.
- B. Procedures for filing and review requests for urbanized shoreland exemptions and standards granting urbanized shoreland exemptions, including time frames for decisions.
- C. Enforcement of the minimum shoreland standards, including methods and timing of inspection and coordination with other municipalities and the State.
- D. Procedures and criteria for the placement of small accessory structures such as storage sheds and gazebos, the size, placement, and construction of which is consistent with the intent of this Ordinance, between the reference line and the primary building line.

### **Section 20. Penalties**

The penalties for violating this Ordinance shall be as set forth in RSA 483-B: 18 and amendments thereto.

**Section 21. Effective**

This Ordinance shall take effect upon its passage.

**ARTICLE 20 - DEVELOPMENT PHASING AND GROWTH MANAGEMENT**

**1. AUTHORITY**

This section of the zoning ordinance is enacted in accordance with RSAs 674:21 and 674:22.

**2. PURPOSE**

The purposes of the Development Phasing and Growth Management section of the zoning ordinance are as follows:

- (a) Manage orderly growth in Pittsfield in coordination with the Master Plan and Capital Improvements Program
- (b) Determine, monitor, evaluate and manage a rate of residential growth in the Town that does not unreasonably interfere with the Town's capacity for planned, orderly, and reasonable expansion of its services to accommodate such growth.
- (c) Provide a temporary mechanism when municipal services are strained or overlooked to reduce the rate of residential growth and thereby allow the Town time to correct any deficiencies that have developed.

**3. FINDINGS**

The Town hereby finds that:

- (a) The number of residential building permits issued in Pittsfield in 2001 increased over 360% from residential building permits issued in 1998.
- (b) Pittsfield's population grew from 2,889 in 1980 to 3,931 in 2000, an increase of 1,042 people or 36%. Much of the growth depicted by the U.S. Census occurred in the 1980's. The NH Office of Energy and Planning estimates that Pittsfield's population was 4,307 in 2004.
- (c) The number of residential building permits issued in Pittsfield in 2000 and 2001 increased substantially from levels experienced in the 1990's. There were 11 permits issued in 1998, 21 issued in 1999, 35 issued in 2000, 40 issued in 2001, 32 issued in 2002, 33 issued in 2003, and 32 issued in 2004.
- (d) The Planning Board adopted an update to the Pittsfield Master Plan in August 2001. As noted in the document, the overall goal is "balanced, moderate growth to strengthen the downtown and increase the economic base, while maintaining the rural character of the town."
- (e) Following a recommendation contained in the 2001 Master Plan, the Planning Board adopted the Pittsfield Capital Improvements Program (CIP) on February 11, 2002 and last updated the document in October 2005. The CIP examines tax rates, past municipal expenditure trends, and presents a detailed

proposed schedule of capital expenditures over the next six years for use by the Budget Committee, Board of Selectmen, and all citizens of Pittsfield.

The CIP outlined capital needs for the Police Department, Ambulance Service, Town Administration, Public Works, Fire Department and Waste Water Treatment Plant. The projected impact of capital needs ranges from \$2.37 to \$3.09 per thousand.

(f) In a letter to the Board of Selectmen and Planning Board dated July 17, 2002, the Pittsfield School Board stated that it is concerned the “aggressive” rates of future growth may overwhelm the Town’s schools and services.

(g) The 2005 full value tax rate for the Town of Pittsfield was \$28.17 per thousand. This rate was significantly higher than the full value tax rate in each of the seven communities that directly abut Pittsfield. Abutting communities are Barnstead, Chichester, Epsom, Gilmanton, Loudon, Northwood, and Strafford.

#### **4. INDICATORS OF GROWTH IMPACT**

The Town of Pittsfield hereby determines that the presence of the following conditions constitute an indicator of growth.

(a) The annual percent increase in building permits for new dwelling units in Pittsfield for the past calendar year exceeds the same combined average of the seven abutting communities.

(b) The number of public students enrolled or projected for the coming year at the Pittsfield Elementary School or the Pittsfield Middle/High School exceeds 90 percent of its stated capacity, as defined by the Pittsfield School Board. The Planning Board shall receive an annual statement of capacity utilization in writing from the School District.

(c) The annual full value tax rate of Pittsfield, as reported by the New Hampshire Department of Revenue Administration, exceeds the combined average rate of the seven abutting communities for the most recent reporting year.

(d) The number of dwelling units of all projects combined, which have been approved and/or for which approval is being sought from the Planning Board, at any time of Annual or Interim Reporting, if approved could result in conditions defined by either a. b. or c.

#### **5. ADMINISTRATION**

(a) **Data:** The baseline data for developing total housing units counts in Pittsfield and the seven abutting communities is the 2000 U.S. Census Summary Tape File 1. Building permits issued by each community are to be used in the Planning Board’s annual reporting as described in section 5. b below and any necessary calculations as described in Section 8.a.

(b) **Annual and Interim Reporting:** The Planning Board, at its first regular February meeting each year and thereafter as the Board deems beneficial or necessary, will report on the number of building permits issued for the previous calendar year for all residential dwelling units in Pittsfield and the seven surrounding communities. In addition, the Planning Board will report on the overall annual percent increase in residential dwelling units (based upon building permits issued) for the seven abutting communities, as well as Pittsfield, for the previous calendar year. The Planning Board shall also prepare the analysis of building permit data, if necessary, as required under section 8. a.

In addition, the Planning Board shall report on the status, as appropriate, of any development phasing or permit limitations currently in place.

All reports prepared by the Planning Board relative to growth management shall remain on file at the Town Office for as long as the reports are in effect.

**(c) Indicator of Growth Declaration:** The Planning Board may, at any time, issue an Indicator of Growth Declaration, if it has determined that any of the conditions in Section 4 exist. In the case of this determination, the Planning Board shall summarize the appropriate growth indicators notify the Board of Selectmen, the Building Inspector, and the general public of that summary by posting a notice in two public places and publishing the notice in a newspaper of general circulation in Pittsfield.

## **6. PROCEDURES FOR DEVELOPMENT PHASING OR PERMIT LIMITATIONS**

Following an Indicator of Growth Declaration and formal notification of the declaration as described in Section 5,c. the following procedures will be observed to implement Development Phasing or Permit Limitations.

**(a) Notice of Development Phasing:** If the Planning Board finds in their Indicator of Growth Declaration that one (1) or more of the conditions in Section 4 exist, the Board shall prepare a Notice of Development Phasing.

This notice may be combined with the Indicator of Growth Declaration. The Notice of Development Phasing will also describe the date and location of a public hearing to seek input from the general public. All notices shall be in conformance with the requirements of RSA 675:7.

**(b) Notice of Permit Limitation:** If the Planning Board finds in their Indicator of Growth Declaration that three of the conditions in Section 4 exist, the Board shall publish a Notice of Permit Limitation.

The Notice of Permit Limitation shall delineate the number of permits that will be allowed as calculated in Section 8.a. This notice may be combined with the Indicator of Growth Declaration. The Notice of Permit Limitation will also describe the date and location of a public hearing to seek input from the general public. All notices shall be in conformance with the requirements of RSA 675:7.

**(c) Interim Permit Limitation:** Once a Notice of Permit Limitation is published, no residential building permits shall be approved by the Building Inspector until after the hearing in Section 6.b. is held and a decision is issued by the Planning Board, as described in Section 6.d.

**(d) Determination of Action:** After the public hearing in Sections 6.a or 6.b, the Planning Board shall deliberate and decide whether the Notice of Development Phasing or Notice of Permit Limitation shall be confirmed or not confirmed, and issue its decision. Any decision shall be issued within 45 days of the issuance of a Notice of Development Phasing or Notice of Permit Limitation. A confirmed Notice of Development Phasing or Notice of Permit Limitation shall remain in effect until rescinded by the Planning Board.

**(e) Annual Review:** The operation of this Article shall be reviewed by the Planning Board at its first regular February meeting each year to insure that the annual maximum growth rate has not become inconsistent with Pittsfield's responsibility and capability of planning, development, and implementing the necessary municipal systems and facilities to serve the growing town and insure that Pittsfield is assuming its fair share of housing growth.



If it is deemed by the Planning Board that a Notice of Permit Limitation or Notice of Development Phasing shall be rescinded, the Planning Board shall prepare and Indicator of Growth Declaration, provide appropriate notice of such finding, hold a public hearing, and issue a decision following the same process as outlined in Sections 5.c, 6.a, 6.b, and 6.d.

## **7. PHASING OF SUBDIVISION AND CLUSTER DEVELOPMENTS UNDER A NOTICE OF DEVELOPMENT PHASING**

(a) Upon publishing a Notice of Development Phasing and its confirmation by the Planning Board, the Planning Board may require the phasing of a pending and future subdivision and cluster development proposals.

(b) **Phasing Period:** The Planning Board may require the phasing of a development for a period of up to five (5) years from a project that is proposed to have up to fifty (50) dwelling units or lots. For a project exceeding fifty (50) dwelling units or lots, the Planning Board may negotiate a longer period of time over which the phasing of the proposed development is to occur, based upon the size of the project and the potential impact to the Town.

(c) Once a phasing plan is approved by the Planning Board with dates of allowed construction of each phase, the approved phasing plan shall be recorded with the Merrimack County Registry of Deeds.

## **8. EQUITABLE ALLOCATION OF AVAILABLE PERMITS UNDER A NOTICE OF PERMIT LIMITATION**

(a) Upon publishing a Notice of Permit Limitation and its confirmation by the Planning Board, the number of building permits available for the calendar year for the Town of Pittsfield shall be determined by multiplying the previous year's overall average percent increase in housing units in the seven towns abutting the Town of Pittsfield by the Town's housing unit base at the conclusion of the immediate past calendar year. This number shall be rounded up to the next whole number.

The allowable number of building permits available per year shall not be less than (1) the average number of permits issued in Pittsfield over the previous five (5) years, or (2) the average number of permits issued in the seven abutting town over the previous five (5) years, whichever is higher.

(b) To ensure equitable distribution of available permits, no individual, partnership, corporation, or other entity or its related or affiliated entities or approved subdivision, or in the case of individuals, their relatives or persons associated in business, may receive more than twenty (20) percent of the permits, or permits for seven units, whichever is less, available during the given calendar year.

(c) In order to be complete, the building permit applications must be for lots approved by the Pittsfield Planning Board and registered in the Merrimack County Registry of Deeds. Lots must meet all applicable state and local regulations.

(d) Twenty five (25) percent of the available permits shall be reserved for owners of single lots, that are not part of a subdivision of three lots or more, and are not created within one (1) year after the date of the building permit application.

(e) Permits issued shall lapse and be returned to the pool of available permits if construction on the dwelling has not begun within one (1) year. Site preparation work shall not be considered construction.

(f) In the event that more permits are requested than are available, the earlier application shall prevail based upon the date and time of receipt of the completed application at the Town Office. The Building Inspector

may maintain a waiting list in the event that another permit becomes available during the calendar year, or it can apply to the next calendar year. The waiting list shall not extend beyond the next calendar year.

**(g)** In the event that any available permits for the year are not issued, they shall be carried forward and applied to the following year's quota. No more than two year's building permits shall be issued in any given calendar year.

**(h) Transferability:** A residential building permit approved under this Ordinance shall be valid only for the site specified on the permit application. Should the property be conveyed, the permit shall be transferred to the new owner, but the expiration date shall remain unchanged.

**(i) Application:** This section applies to building permits for new residential dwelling units, as well as repair, replacement, construction, or alteration of any existing seasonal dwelling units if the proposed work results in year-round residency in the unit. This section does not apply to permits for non-residential buildings, or permits for the expansion or alteration of existing year-round structures, or permits for the conversion of a number of occupied apartments into an equal number of condominium units.

**(j)** For the purpose of this ordinance, one building permit shall be required for each dwelling unit (e.g., one permit for a single family home, two permits for a duplex, etc.)

**(k)** Any municipal code, rule, regulation, ordinance or the like notwithstanding, it is the specific intent and purpose of this ordinance that any interpretation of this Article 20 shall be recognized and given effect that supercedes and controls the effect, meaning, definition or interpretation of any municipal ordinance, code or regulation of the Town of Pittsfield that is in conflict with any provision of this Article 20.

## **9. EXCEPTIONS**

**(a)** Proposals for senior housing or adult housing may be excluded from this Article upon a finding by the Planning Board that the proposed project does provide such housing and provided said proposed housing complies in all other regards to the Pittsfield Zoning Ordinance and other applicable regulations.

**(b)** In the event of damage, destruction, or demolition of any dwelling, the dwelling may be rebuilt, provided that construction is started within one year of its damage, destruction, or demolition and completed within two years.

**(c)** In each September and December at a regular meeting in a period of Notice of Permit Limitation, the Planning Board shall review the number of permits issued to the date during that calendar year, determine the number of available permits, and consider the issuance of additional permits (within the available permits) to applicants that had previously received their maximum number of permits calculated in Section 8.b.

## **10. SUNSET**

This Ordinance shall expire at the Annual Town Meeting in 2009 unless re-adopted at that meeting. The Planning Board shall make recommendations as to the necessity and desirability of re-adopting this Ordinance prior to said Annual Town Meeting.

## **ARTICLE 21 – ADULT BUSINESS ESTABLISHMENTS**

### **Article 21 - Adult entertainment ordinance:**

**21.1** It is the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of adult business establishments within the Town of Pittsfield; and, it is the intent to promote

the health, safety and general welfare of the citizens of the Town of Pittsfield; 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 adult business establishments; and, the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this 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 market; and, neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

**21.2 Allowed Locations and Location Restrictions of Adult Business Establishments:**

**ADULT BUSINESS ESTABLISHMENTS**, as defined above shall be permitted only within the following designated area of Pittsfield: the Commercial District: provided that all other regulations, requirements and restrictions in the Commercial District zone are met; and no adult business establishment shall be permitted within 1,000 feet of an existing church or within 500 feet of another adult business establishment, and no other adult business establishment shall be permitted within a building, premise, structure or other facility that contains an adult business establishment as defined in Article 3 above.

**21.3 Measure of Distance:**

The distance between any two adult business establishments 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 each business.

**21.4 Additional Reasonable Regulations:**

No adult business establishment (as per Article 21.1 above) shall be established without first receiving site plan approval from the Pittsfield Planning Board.

**21.5 Severability:**

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

**ARTICLE 22 - PENALTY CLAUSE**

Any violation of this Ordinance is subject to a penalty as determined by the local governing body in accordance with RSA 676:17.

**ARTICLE 23 - ADMINISTRATION AND ENFORCEMENT**

The Board of Selectmen or its appointee shall administer and enforce the provisions of this Ordinance.

**ARTICLE 24 - MISCELLANEOUS**

Whenever the regulations hereunder differ from those prescribed by any statutes, ordinance or other regulations, that provision which imposes the greater restriction or higher standard shall govern. The invalidity of any of the provisions of this Ordinance shall not affect the validity of any other provision.

The official map may be amended in accordance with RSA 674:11, by the local legislative body following a public hearing.

This Zoning Ordinance may be amended from time to time upon the affirmative vote by ballot of a majority of the voters present and voting at a Town meeting, but only after the Planning Board has held at least one public hearing on the proposed amendment. See RSA 675:3.

The adoption of this Ordinance shall have the effect of repealing the Mobile Home, Mobile Home Park and Trailer Park Ordinance for the Town of Pittsfield as heretofore amended.

This Ordinance shall take effect immediately upon its passage.