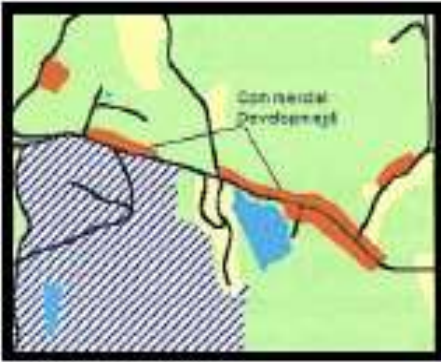


Bethlehem, NH

Zoning Ordinance 2011



This document is a re-codification of the Town's Zoning Ordinances from 1971 to the present. It is organized to make the ordinances easier to locate and to use. No changes to existing ordinances and regulations have been made and effective dates are unchanged. Should there be a question as to exact wording of an ordinance or the effective date and/or subsequent revisions the applicable Town Warrant should be consulted. (2006)

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ZONING ORDINANCE

BETHLEHEM, N.H.

Article I - Title, Authority, and Purpose

Section A. Title

This Ordinance, including all amendments thereto, shall be known and may be cited as the Zoning Ordinance of the Town of Bethlehem, New Hampshire, hereinafter referred to as “this Ordinance.”

Section B. Authority

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

Section C. Purpose

These zoning regulations and maps are being enacted for the purpose of preserving and promoting the health, safety and welfare of the community. It is the intention of the Planning Board and the Zoning Board to guide the future growth and development of Bethlehem in accordance with the Master Plan which represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and modes of living, and future requirements; and considering such conditions, trends and requirements, both within the Town and in relationship to areas outside thereof.

Article II- General Provisions

- A. No dwelling or other structure may be erected which does not at least conform in general value, architecture and character to other structures and dwellings in the neighborhood, or is contrary to the general and economic welfare of the neighborhood, and no structure shall be erected, or business conducted which manifestly depreciates the value of existing property in the neighborhood. *(Adopted 3/9/99)*
- B. "No building or part thereof shall be erected or constructed upon land that fronts on any street within sixty (60) feet of the center line of said street right of way. No building or part thereof shall be erected or constructed within 15 feet of side and rear property lines in District #1: thirty (30) feet in District II, III, IV, & V unless a Special Exception is granted by the Zoning Board of Adjustment. However, under no circumstances shall said setback be less than fifteen (15) feet. For District #1 Main Street refer to Article IV B.
- C. No building or structure shall be greater than forty (40) feet in height, unless a Special Exception is granted by the Zoning Board of Adjustment. However, under no circumstances shall any structure, or building, exceed sixty (60) feet in height. Appurtenances, such as antennae, will not exceed an additional ten (10) feet over the highest point of the building or structure. Personal wireless service facilities and amateur radio antennae are exempted from this provision. *(Adopted 3/9/99) (Amended 3/03)*

- D. The minimum area to be sufficiently planted and permanently maintained with grass, ground cover, shrubs and/or trees shall be 33% (thirty-three percent) of the total lot area. Excepting curb/driveways, a green area shall enclose the entire lot perimeter as follows - minimum width of green areas shall be fifteen (15) feet that where the area abuts a public right-of-way, such area shall be not less than thirty (30) feet. *(Adopted 3/14/89)*
- E. In all districts building coverage on the site shall not exceed twenty-five percent (25%) of the lot area unless otherwise stated here in. *(Adopted 3/11/08)*
- F. A vote at town meeting to accept a road, as a town road or to reclassify a Class VI town road as a Class V town road shall not become effective until the Selectmen certify that the road meets the applicable construction requirements for town roads. *(Adopted 3/8/05)*
- G. "All buildings, structures and uses in the districts herein set forth shall comply in all respects with State law including the regulations of the New Hampshire Departments of Safety, Health and Human Services and Environmental Services." *(Adopted 3/8/05)*
- A. The minimum area to be sufficiently planted and permanently maintained with grass, ground cover, shrubs and/or trees shall be 33% (thirty-three percent) of the total lot area. Excepting curb/driveways, a green area shall enclose the entire lot perimeter as follows - minimum width of green areas shall be fifteen (15) feet that where the area abuts a public right-of-way, such area shall be not less than thirty (30) feet. *(Adopted 3/14/89)*
- B. In all districts building coverage on the site shall not exceed twenty-five percent (25%) of the lot area.
- C. A vote at town meeting to accept a road, as a town road or to reclassify a Class VI town road as a Class V town road shall not become effective until the Selectmen certify that the road meets the applicable construction requirements for town roads. *(Adopted 3/8/05)*
- D. "All buildings, structures and uses in the districts herein set forth shall comply in all respects with State law including the regulations of the New Hampshire Departments of Safety, Health and Human Services and Environmental Services." *(Adopted 3/8/05)*

H. Parking Requirement:

- a. **In Districts I, II, III and IV**, off-street parking, either by means of open air spaces, each having an area of ten (10) feet wide by twenty (20) feet long, or by garage space, shall be provided in accordance with this section whenever any new use is established or any existing use is enlarged. Requirements shall be as follows:

Single and two-family dwellings:	2 spaces per units.
Multi-family dwellings:	1.5 spaces per unit.
Motels, hotels, guesthouses and mobile homes:	1 space per unit.
Theaters, restaurants, churches:	1 space per 3 seats.
Retail floor space, community buildings, clubs, halls:	1 space per 200 square feet of principal use area.
Public, commercial or professional offices:	1 space per 400 s.f.

1 space for each employee on major shift, or 1,000 s.f. of principal use whichever is greater.

- b. **In Districts I, II, III and IV**, additional parking requirements for motels, hotels, theaters, restaurants, retail stores, professional offices and all other commercial uses: one parking space required for every two employees, based on the time period that the maximum amount of employees are working.
 - c. **Given the unique nature of District I – Main Street, there are no parking requirements for this district in the zoning ordinance. Parking requirements for this district are instead set forth in the Site Plan Review Regulations.**
- 4. For commercial, industrial and institutional uses, there shall be adequate space for Vehicle maneuvering and traffic.
 - 5. No parking lot design requiring or encouraging vehicles to back out onto a public way shall be permitted.
 - 6. Adequate off-street loading area shall be provided by all commercial, industrial, and institutional uses. The area shall be located so that all vehicles that are loading and unloading shall be clearly out of the road right-of-way.

Article III- Standards for Specific Uses & Structures

A. Solid Waste Facilities:

1. Landfills and Incinerators

No person, persons, partnership, or corporation shall transport garbage or rubbish in an unsanitary manner or without the same being thoroughly protected from exposure or leakage; nor dump or leave the same in any place other than provided for said purposes. Further, no solid waste disposal facility, site or expansion of any existing solid waste facility or landfills shall be located in any district except District V or except a facility operated by the Town for the purpose of providing a solid waste disposal facility for solid waste generated in the Town. Such a Town owned facility shall be deemed to be a permitted use in Districts III or V provided that a site plan is submitted to the Planning Board for site plan review, the facility meets the Town's site plan review regulations, and provided that the acreage to be used is shown on the site plan. "This prohibition shall include, but not be limited to, any private solid waste disposal facility or site, sanitary landfill or incinerator." Additionally, no solid waste disposal facility shall have a height exceeding 95 (ninety-five) feet above the natural and undisturbed contour of the land under any existing or future landfill.) (*Amended 3/8/05*)

2. Recycling Centers and Transfer Stations

Recycling centers and/or Transfer Stations shall be permitted uses in Districts III or V subject to meeting the Town's site plan review regulations and shall be submitted to the Planning Board for site plan review; provided such facilities are owned or operated by the Town for the transfer and/or recycling of solid waste generated in the Town and provided further that the

recycling center or transfer station is owned and operated by the Town or by a Regional Solid Waste District whose ownership or operation thereof is governed by an agreement entered into pursuant to RSA 149-M:24. *(Adopted 3/8/05)*

Article IV- Non-conforming Uses, Structures, and Lots

- A. Any lawful building or other structure, or any lawful use of a building or other structure or land, existing on the effective date of this Regulation, which does not conform with the provisions of this regulation shall be considered a lawful non-conforming building, structure, or use, and may be continued, except as otherwise herein provided. *(1971)*
- B. Any lawful non-conforming building or other structure located in District 1-Main Street may be exempted from the following dimensional standards for that District by special exception granted by the Board of Adjustment. Article II-B (setbacks), Article II-D (green space), Article II-E (building coverage), Article II-G (parking)
- C. Any lawful non-conforming building may be increased in square footage up to 25% of its finished living area on the effective date of this Regulation when such increase is granted as a special exception by the Zoning Board of Adjustment. *(1971)*
- D. Any lawful non-conforming building or other structure which has been damaged or destroyed by fire, explosion, wind storm, or other similar active cause, to an extent of not more than fifty (50) percent of the replacement value, may be reconstructed on the same location, provided that:
 - 1. The reconstructed building or structure shall not exceed the height, area, or volume of the damaged or destroyed building or structure, and;
 - 2. The reconstruction shall begin within one year from the date of the damage or destruction and shall be carried on without interruption. If a lawful non-conforming building has been damaged or destroyed by the aforementioned cause to an extent of more than fifty (50) percent of the replacement value, such building may be reconstructed subject to the provisions of the regulations if authorized as a special exception by the Zoning Board of Adjustment. The Board of Selectmen shall order the removal, at the expense of the owner, of any building within one (1) year from the date of damage if substantial progress has not been made towards reconstruction.
- E. If a lawful non-conforming use of a building or other structure is abandoned or discontinued for a continuous period of one (1) year or more, subsequent use of such building or land shall be in conformity with the provisions of this Regulation.
- F. No junkyard may continue as a non-conforming use for more than one (1) year after the effective date of this Regulation, without special permit from the Board of Adjustment. *(1971)*

Article V- Zoning Districts and Uses

Section A. Zoning Map and Districts

Establishment

The districts and the boundaries of such districts shall be shown upon a map prepared by the Bethlehem Planning Board together with all notations, references, and other matter and things set forth and, or attached thereto, on file. The same map is adopted and shall be known as the Official Zoning Map of the Town of Bethlehem, and shall be certified by the Selectmen and the Town Clerk. The Town Clerk shall ensure that all changes effected by amendment to this ordinance have been made, and an updated copy of the Zoning Map is on file.

Location

The original of said Zoning Map shall remain on file with the Town Clerk.

Final Authority

Regardless of the existence of other printed copies of the Zoning Map, which from time to time may be made or published, the official Zoning Map which shall be located in the Town Clerk's Office shall be the final authority as to the current zoning status of the land and water areas, buildings and other structures in the Town.

Establishment of Use Districts

The Town of Bethlehem Zoning Map shows a division of the Town into the following Districts:

- District I – Main Street
- District I
- District II
- District III
- District IV
- District V – Landfill District

Section B. District Objectives and Land Use Controls

The following sections of this ordinance state the objectives of each district, and the use and dimensional regulations for each district

DISTRICT I - MAIN STREET

A building may be erected, altered, or used, and a lot may be used or occupied only for the following purposes in accordance with the following provisions and after a building permit is issued by the Board of Selectmen.

This District shall include all property that fronts on Route 302 starting at Lewis Hill Road, and extending east to Turner Street.

A. District I – Main Street Permitted Uses and Special Exceptions

Any use not listed here is prohibited.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Bakery, confectionery, or custom shop for the production of articles to be sold at retail on the premises	P	
Business or professional offices, studios, financial institutions, passenger stations for public transportation	P	
Cemeteries	P	
Churches	P	
Clubs	P	
Day nurseries and kindergartens	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Multi-Family Dwellings (Adopted 3/9/04)		SE
Forestry, agriculture, garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood	P	
Funeral parlors	P	
Golf courses	P	
Governmental use	P	
Home gardens when incidental to primary residential use but excluding any use injurious, noxious, or offensive to the neighborhood.	P	
Hospitals, convalescent homes, sanitariums, institutions of philanthropic use	P	
Laundry and dry cleaning establishment	P	
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities	P	
Personal service shop, including tailor, barber, beauty salon, and shoe repair	P	
Places of amusement or assembly	P	
Private recreation areas, private parks, picnic grounds and other recreation use without permanent structures	P	
Recreational grounds for games and sports, except those, a chief activity of which is customarily carried on primarily for gain (Amended 3/8/05)		SE
Restaurant, tea room, cafe, or ice cream parlor	P	
Retail establishments for the sale and/or repair of food, clothing, drugs, jewelry, scientific instruments, and other general merchandise	P	
Schools	P	
Service stations and Auto repair shops, including the sale of new and used cars	P	

Non-residential developments must receive Site Plan Review approval from the Planning Board.

In District I Main Street no business shall operate so that it can be heard, more than 20 feet from its property line between the hours of 10:00 PM and 9:00 AM.

B. District I – Main Street Dimensional Standards

Minimum Standards	
Minimum Lot Size	20,000 Square Feet
Minimum Lot Frontage	100 Feet
Front Setback	60 Feet From Centerline
Side Setback	15 Feet *
Rear Setback	15 Feet *
Maximum Structure Height	40 Feet
Maximum Lot Coverage	25%

Lots which do not conform to the lot size and frontage requirements above and which were in existence and recorded in the Grafton County Registry of Deeds as such on the effective date of these regulations shall be exempted from lot size and frontage requirements requirements. 1974

The principal access for all lots in this district shall be onto Route #302.

* “Any lawful non-conforming building or other structure located in District 1-Main Street may be exempt from the dimensional standards for setback and frontage be special exception granted by the Zoning Board of Adjustment.”

DISTRICT I

A building may be erected, altered, or used, and a lot may be used or occupied only for the following purposes and in accordance with the following provisions after a building permit issued by the Board of Selectmen.

This District shall include all area within the limits of the Bethlehem Village District excluding District I Main Street.

A. District I Permitted Uses and Special Exceptions

Any use not listed here is prohibited.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Bakery, confectionery, or custom shop for the production of articles to be sold at retail on the premises		SE
Business or professional offices, studios, financial institutions, passenger stations for public transportation		SE
Cemeteries		SE
Churches	P	
Clubs		SE
Day nurseries and kindergartens	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Multi-Family Dwellings (Adopted 3/9/04)		SE

-Manufactured Housing Parks	P	
-Manufactured Housing Subdivisions	P	
Forestry, agriculture, garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood		SE
Funeral parlors		SE
Golf courses	P	
Governmental use		SE
Home gardens when incidental to primary residential use but excluding any use injurious, noxious, or offensive to the neighborhood.	P	
Hospitals, convalescent homes, sanitariums, institutions of philanthropic use		SE
Laundry and dry cleaning establishment		SE
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities	P	
Personal service shop, including tailor, barber, beauty salon, and shoe repair		SE
Places of amusement or assembly		SE
Private recreation areas, private parks, picnic grounds and other recreation use without permanent structures		SE
Recreational grounds for games and sports, except those, a chief activity of which is customarily carried on primarily for gain Amended 3/8/05		SE
Restaurant, tea room, cafe, or ice cream parlor		SE
Retail establishments for the sale and/or repair of food, clothing, drugs, jewelry, scientific instruments, and other general merchandise		SE
Schools	P	
Service stations and Auto repair shops, including the sale of new and used cars		SE

Non-residential developments must receive Site Plan Review approval from the Planning Board.

B. District I Dimensional Standards

Minimum Standards	
Minimum Lot Size	40,000 Square Feet
Minimum Lot Frontage	150 Feet
Front Setback	60 Feet From Centerline
Side Setback	15 Feet *
Rear Setback	15 Feet *
Maximum Structure Height	40 Feet
Maximum Lot Coverage	25%

Lots which do not conform to the lot size and frontage requirements above and which were in existence and recorded in the Grafton County Registry of Deeds as such on the effective date of these regulations shall be exempted from lot size and frontage requirements requirements. 1974

* “No building or part thereof shall be erected or constructed within 15 feet of side and rear property lines.”

DISTRICT II

A building may be erected, altered, or used and a lot may be used or occupied only for the following purposes and in accordance with the following provisions after a building permit is issued by the Board of Selectmen.

This District shall include all that area of said Town of Bethlehem lying outside of said Bethlehem Village District, and exclusive of Districts III, IV and V. (*Amended 3/8/05*)

A. District II Permitted Uses and Special Exceptions

Any use not listed here is prohibited.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Any use customarily accessory to any of the permitted uses provided such use not injurious, noxious or offensive to the neighborhood.	P	
Any use of the same general character as any of the uses herein mentioned which are in conformity with and not detrimental to the area and district.		SE
Aviation uses	P	
Bakery, confectionery, or custom shop for the production of articles to be sold at retail on the premises	P	
Business or professional offices, studios, financial institutions, passenger stations for public transportation	P	
Cemeteries	P	
Churches	P	
Clubs	P	
Construction yards, Auto dismantling yards, used parts yards, junkyards.		SE
Day nurseries and kindergartens	P	
Drive-in Theaters	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Multi-Family Dwellings (Adopted 3/9/04)		SE
-Manufactured Housing Parks	P	
-Manufactured Housing Subdivisions	P	
Forestry	P	
Agriculture (excluding forestry), garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood	P	
Funeral parlors	P	
Golf courses	P	
Governmental use	P	
Home gardens when incidental to primary residential use but excluding any use	P	

injurious, noxious, or offensive to the neighborhood.		
Hospitals, convalescent homes, sanitariums, institutions of philanthropic use	P	
Laundry and dry cleaning establishment	P	
Manufacturing or industrial uses including processing, fabrication, and assembly provided that no such use shall be permitted that will be detrimental or offensive or tend to reduce property values.		SE
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities (Adopted 3/9/04)	P	
Personal service shop, including tailor, barber, beauty salon, and shoe repair	P	
Places of amusement or assembly	P	
Private recreation areas, private parks, picnic grounds and other recreation use without permanent structures	P	
Public utility buildings, structures and lines		SE
Recreational grounds for games and sports, except those, a chief activity of which is customarily carried on primarily for gain (Amended 3/8/05)	P	
Removal of sand, fill, gravel, stone, or loam for commercial purposes from the premises provided that State Law 155-E and the Bethlehem Excavation Regulations been satisfied.(3/12/85)	P	
Restaurant, tea room, cafe, or ice cream parlor	P	
Retail establishments for the sale and/or repair of food, clothing, drugs, jewelry, scientific instruments, and other general merchandise	P	
Schools	P	
Service stations and Auto repair shops, including the sale of new and used cars	P	

Non-residential developments must receive Site Plan Review approval from the Planning Board.

B. District II Dimensional Standards

Minimum Standards	
Minimum Lot Size	80,000 Square Feet
Minimum Lot Frontage	200 Feet
Front Setback	60 Feet From Centerline
Side Setback	30 Feet *
Rear Setback	30 Feet *
Maximum Structure Height	40 Feet
Maximum Lot Coverage	25%

Lots which do not conform to the lot size and frontage requirements above and which were in existence and recorded in the Grafton County Registry of Deeds as such on the effective date of these regulations shall be exempted from lot size and frontage requirements requirements. 1974

* “No building or part thereof shall be erected or constructed within 30 feet of side and rear property lines in this district, however setbacks between 15 and 30 feet may be allowed by Special Exception by the Zoning Board of Adjustment.”

DISTRICT III

General Purpose and District Characteristics:

This District includes land currently in industrial use and additional area for new or expanded industrial and commercial activities. The purpose of this District is to encourage the retention and development of local job opportunities, the expansion of the community tax base, and safe and healthy industrial and commercial uses.

A building may be erected, altered or used and a lot may be used or occupied only in accordance with the following provision after the Board of Selectmen issues a building permit.

This District shall include all of the area of said Town of Bethlehem, lying within the boundaries of Map 405, Lot #54; Map 406 Lots #1, #2, #16, #17, #18, #20.1 through #20.4, #21.1 through #21.6, #22.1 through 22.18, #23, #24, #25, #34; Map 416, Lot #1, #2, #3, #4, #5, and #7 as delineated on the Bethlehem Tax Maps as of April 01, 1998. (*Adopted 3/9/99*)

A. District III Permitted Uses and Special Exceptions

Any use not listed here is prohibited.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Any use customarily accessory to any of the permitted uses provided such use not injurious, noxious or offensive to the neighborhood.	P	
Any use of the same general character as any of the uses herein mentioned which are in conformity with and not detrimental to the area and district.	P	
Aviation uses	P	
Bakery, confectionery, or custom shop for the production of articles to be sold at retail on the premises	P	
Business or professional offices, studios, financial institutions, passenger stations for public transportation	P	
Cemeteries	P	
Churches	P	
Clubs	P	
Construction yards, Auto dismantling yards, used parts yards, junkyards.		SE
Creameries and bottling plants	P	
Day nurseries and kindergartens	P	
Drive-in Theaters	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Multi-Family Dwellings (Adopted 3/9/04)		SE
-Manufactured Housing Parks	P	
-Manufactured Housing Subdivisions	P	
Equipment sales and services	P	

Forestry	P	
Agriculture (except forestry), garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood	P	
Funeral parlors	P	
Golf courses	P	
Governmental use	P	
Home gardens when incidental to primary residential use but excluding any use injurious, noxious, or offensive to the neighborhood.	P	
Hospitals, convalescent homes, sanitariums, institutions of philanthropic use	P	
Laundry and dry cleaning establishment	P	
Kennels and animal hospitals		SE
Manufacturing, industrial, or commercial uses including processing, fabrication, and assembly provided that no such use shall be permitted that will be detrimental or offensive or tend to reduce property values.	P	
Manufacturing research and testing laboratories provided that no pollution results from such activities		SE
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities	P	
Open storage of building materials	P	
Personal service shop, including tailor, barber, beauty salon, and shoe repair	P	
Places of amusement or assembly	P	
Planning mills, sawmills, lumber yards and wood treatment plants.	P	
Private recreation areas, private parks, picnic grounds and other recreation use without permanent structures	P	
Public utility buildings, structures and lines	P	
Recreational grounds for games and sports, except those, a chief activity of which is customarily carried on primarily for gain (Amended 3/8/05)	P	
Recycling center or a transfer station (as defined in Article III) (Adopted 3/8/05)	P	
Removal of sand, fill, gravel, stone, or loam for commercial purposes from the premises provided that State Law 155-E and the Bethlehem Excavation Regulations been satisfied.	P	
Restaurant, tea room, cafe, or ice cream parlor	P	
Retail establishments for the sale and/or repair of food, clothing, drugs, jewelry, scientific instruments, and other general merchandise	P	
Schools	P	
Service stations and Auto repair shops, including the sale of new and used cars	P	
Storage and distribution facilities for petroleum, coal, lumber and wood products, sand and gravel.	P	
Wholesale bottling plants for alcoholic beverages		SE
Wholesale business and storage warehouses.	P	
Wood fired power-generating plants	P	

Non-residential developments must receive Site Plan Review approval from the Planning Board.

B. District III Dimensional Standards

Minimum Standards	
Minimum Lot Size (Adopted 3/9/99)	80,000 Square Feet or four times the building coverage, whichever is greater
Minimum Lot Frontage	200 Feet
Front Setback	60 Feet From Centerline
Side Setback	30 Feet *
Rear Setback	30 Feet *
Maximum Structure Height	40 Feet
Maximum Lot Coverage	25%

Lots which do not conform to the lot size and frontage requirements above and which were in existence and recorded in the Grafton County Registry of Deeds as such on the effective date of these regulations shall be exempted from lot size and frontage requirements requirements. 1974

* “No building or part thereof shall be erected or constructed within 30 feet of side and rear property lines in this district, however setbacks between 15 and 30 feet may be allowed by Special Exception by the Zoning Board of Adjustment.”

DISTRICT IV

General Purpose and District Characteristics:

This District includes additional area for new or expanded light industrial and commercial activities. The purpose of this District is to encourage the development of local job opportunities, the expansion of the community tax base, and safe and healthy light industrial uses.

This District shall include all that area of said Town of Bethlehem, lying within the boundaries of Map 404, Lot #6 as delineated on the Bethlehem Tax Maps as of April 1, 1998. (*Adopted 3/9/99*)

A building may be erected, altered or used and a lot may be used or occupied only for the following purposes and in accordance with the following provisions after the Board of Selectmen issues a building permit.

A. District IV Permitted Uses and Special Exceptions

Any use not listed here is prohibited.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Any use customarily accessory to any of the permitted uses provided such use not injurious, noxious or offensive to the neighborhood.	P	
Aviation uses	P	

Churches	P	
Day nurseries and kindergartens	P	
Drive-in Theaters	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Manufactured Housing Parks	P	
-Manufactured Housing Subdivisions	P	
Forestry, agriculture, garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood	p	
Golf courses	P	
Home gardens when incidental to primary residential use but excluding any use injurious, noxious, or offensive to the neighborhood.	P	
Light industrial uses	P	
Manufacturing or industrial uses including processing, fabrication, and assembly provided that no such use shall be permitted that will be detrimental or offensive or tend to reduce property values. (Adopted 3/9/99)		SE
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities	P	
Removal of sand, fill, gravel, stone, or loam for commercial purposes from the premises provided that State Law 155-E and the Bethlehem Excavation Regulations been satisfied.	P	
Schools	P	

Non-residential developments must receive Site Plan Review approval from the Planning Board.

<i>Use</i>	<i>Permitted</i>	<i>Special Exception</i>
Any use customarily accessory to any of the permitted uses provided such use not injurious, noxious or offensive to the neighborhood.	P	
Aviation uses	P	
Bakery, confectionery, or custom shop for the production of articles to be sold at retail on the premises	P	
Business or professional offices, studios, financial institutions, passenger stations for public transportation	P	
Cemeteries	P	
Churches	P	
Clubs	P	

Any light industrial use	P	
Day nurseries and kindergartens	P	
Drive-in Theaters	P	
Dwelling Units:		
-Single-Family Dwellings	P	
-Two-Family Dwellings	P	
-Manufactured Housing Parks	P	
-Manufactured Housing Subdivisions	P	
Forestry	P	
Agriculture (excluding forestry), garden or nursery not in any way injurious, offensive and/or obnoxious to the general neighborhood	P	
Funeral parlors	P	
Golf courses	P	
Governmental use	P	
Home gardens when incidental to primary residential use but excluding any use injurious, noxious, or offensive to the neighborhood.	P	
Hospitals, convalescent homes, sanitariums, institutions of philanthropic use	P	
Laundry and dry cleaning establishment	P	
Manufacturing or industrial uses including processing, fabrication, and assembly provided that no such use shall be permitted that will be detrimental or offensive or tend to reduce property values.(adopted 3/9/99)		SE
Motels, hotels, guest homes, and overnight cabins.	P	
Municipal recreation, water supply, public utilities (Adopted 3/9/04)	P	
Personal service shop, including tailor, barber, beauty salon, and shoe repair	P	
Places of amusement or assembly	P	
Private recreation areas, private parks, picnic grounds and other recreation use without permanent structures	P	
Recreational grounds for games and sports, except those, a chief activity of which is customarily carried on primarily for gain (Amended 3/8/05)	P	
Removal of sand, fill, gravel, stone, or loam for commercial purposes from the premises provided that State Law 155-E and the Bethlehem Excavation Regulations been satisfied.(3/12/85)	P	
Restaurant, tea room, cafe, or ice cream parlor	P	
Retail establishments for the sale and/or repair of food, clothing, drugs, jewelry, scientific instruments, and other general merchandise	P	
Schools	P	
Service stations and Auto repair shops, including the sale of new and used cars	P	

B. District IV Dimensional Standards

Minimum Standards	
Minimum Lot Size	80,000 Square Feet
Minimum Lot Frontage	200 Feet
Front Setback	60 Feet From Centerline
Side Setback	30 Feet *

Rear Setback	30 Feet *
Maximum Structure Height	40 Feet
Maximum Lot Coverage	25%

Lots which do not conform to the lot size and frontage requirements above and which were in existence and recorded in the Grafton County Registry of Deeds as such on the effective date of these regulations shall be exempted from lot size and frontage requirements requirements. 1974

* “No building or part thereof shall be erected or constructed within 30 feet of side and rear property lines in this district, however setbacks between 15 and 30 feet may be allowed by Special Exception by the Zoning Board of Adjustment.”

DISTRICT V: (Landfill District)

A building or structure may be erected, altered, or used and a lot may be used or occupied only for the following purposes and in accordance with the following provisions after site plan review by the Planning Board and a building permit is issued by the Board of Selectmen.

This District shall include the land lying within the boundaries of Map #419, Lots #22 and 23 as delineated on the Bethlehem Tax Maps as of April 1, 2005. (*Adopted 3/8/05*)

A. District V Permitted uses are as follows:

1. Land filling shall be a permitted use in this District.
2. Any accessory building or structure erected, altered or used in the normal course of land filling are permitted provided such use is not injurious, noxious or offensive to the neighborhood, and provided however that an incinerator within the definition of RSA 149-M:4(X) (a) (Supp. 2004) for the purposes of generating power and or solid waste combustion is not a permitted use and is expressly prohibited. (*Adopted 3/8/05*)

Article VI Signs

- A. No land or building shall be used for the erection or display of signs, other than for advertising the use and/or sales on the premises and then only in such number, style and design as shall be approved in writing by the Board of Selectmen, nor shall any such signage be used in a manner that is disorderly, unsightly, noxious, offensive, detrimental to the public or to the owners or occupants of adjacent property, or prejudicial to the general welfare of the community.
- B. Signs shall not project over public rights-of-way.
- C. Signs and structures shall not be illuminated in any manner, which causes undue distraction, confusion or hazard to vehicular traffic.

Article VII Sludge

To protect public health and welfare, and to protect surface and ground water resources, the land spreading, stockpiling, processing, mixing and/or any other treatment of municipal sewage sludge ("Biosolids") and industrial paper mill sludge is not allowed in the Town of Bethlehem.

This article shall not apply to sewage/septage/sludge generated within the Town of Bethlehem, nor shall it apply to Class A sludge-derived products sold by the bag. (Amended 3/03)

Article VIII Lighting

In the interest of maintaining the historic character of the Town of Bethlehem, and preventing further reduction of visibility of the wonder of the night sky for our children, and us and minimizing energy wasted on lighting, the voters of Bethlehem enacted the following lighting regulations:

1. Any new outside lighting whether for area illumination, sign illumination, building illumination, or other purpose, will project no light rays above the horizon from the lamp, its lens structure, or any associated reflector.
2. An exception is allowed for the up lighting of buildings, provided the lamps are so shielded that the illumination does not overshoot the building on the top and sides, the intent being to keep all the direct light on the premises. Properly done, the bulk of the illuminated wall will appear well lit, but edges of the wall and roofline will appear dark.
3. Seasonal/decorative lighting displays using multiple low wattage bulbs are exempted from this ordinance.
4. New sign or newly illuminated signs may be illuminated only by continuous indirect white light, with illumination from above, and with light sources shielded so that they will not constitute a nuisance or hazard caused by glare to neighbors, pedestrians, or drivers. An exception to overhead sign lighting can be made if the illumination is confined to the area of the sign as in the building up lighting above.

Article IX Condominium Development

(Section adopted 3/13/84), (Revised 3/11/08)

A. STATEMENT OF PURPOSE:

Pursuant to RSA 356-B:5, any use of land proposed to be held in the condominium form of ownership shall be subject to the same requirements under this ordinance as a physically identical use of land that is not subject to the condominium form of ownership.

ARTICLE X CONVERSION TO THE CONDOMINIUM FORM OF OWNERSHIP
(Adopted 3/10/87), (Revised 3/11/08)

Any existing use of land that is proposed to be converted to the condominium form of ownership shall first require subdivision approval from the planning board pursuant to RSA 672:14, I. The planning board shall grant subdivision approval for the conversion, utilizing the board's normal procedures applicable for acceptance, public hearing, review, and final decision for subdivision applications, unless the planning board finds on the record that the proposed conversion to the condominium form of ownership would likely result in an unacceptable impact on surrounding properties which is different in nature or degree from the impacts associated with the use of the land before the conversion to the condominium form of ownership.

Article XI Multi-Family Dwelling Unit Development

(Adopted 3/9/04)(Revised in 3/11/08)

A. STATEMENT OF PURPOSE:

The purpose of this article is to provide for a more affordable (affordable housing – a conventional mortgage of not more than 30% of the median family income for the Bethlehem area as stated in the US census report. The 30% will include Mortgage, PMI, taxes and insurance. If a rental, it will include rent and utility costs) higher density residential dwelling unit than are currently available, while promoting the most appropriate use of the land, facilitating the economical and efficient provision of public services, and maintaining the scenic and historic qualities of the Town.

B. GENERAL REQUIREMENTS:

1. **Public Services**

All multifamily dwelling developments must be on public water and sewerage, except as may be allowed by special exception. Any such development on private services must satisfy all WSPCC requirements for water supply and sewage disposal.

2. **Minimum Parcel Size:**

The minimum Parcel Size of a parcel of land to be developed under this provision is that which is allowed in each district.

3. **Density:**

A multifamily development, which is primarily residential shall maintain a maximum overall density of 5 units per required minimum lot size as stated for each district. The maximum number of single family lots, duplex lots, of single family or duplex dwelling units permitted in any multi-family development shall be determined by dividing the net tract area of the parcel by the minimum lot size for the particular zoning district. The net tract area of a parcel of land shall be defined as the total area of the parcel less all non-buildable land, including all

areas within the mapped, flood hazard areas, all areas with poorly or very poorly drained soils , and all areas with a slope of 25% or greater. The net tract area concept may be waived with a Special Exception to be requested from and granted by the Zoning Board of Adjustment when a parcel is to be serviced by town water and sewer, in which case, the number of units shall be based on the gross land area. (adopted 3/9/11)

4. Building Coverage:

In all Districts the total building coverage shall not exceed 10% of the lot area.

5. Setbacks:

The minimum setbacks are those, which are allowed in each district and the General Provisions of the Town of Bethlehem Zoning Ordinances.

6. Parking:

The parking requirements found in the General Provisions Article II-H shall apply.

7. Building Height:

The building height requirements shall comply with the General Provisions Article II-C.

8. Distance Between Buildings:

Buildings, to include any portion of the structure extending beyond the foundation footprint, shall be no closer than 15 feet.

9. Maximum Number of Attached Units:

There shall be no more than 8 units per building.

10. Compliance with Other Regulations:

The proposed multifamily dwelling project must comply with all other required local, state and federal regulations, including the Subdivision Regulations of the Town of Bethlehem.

11. Determination of Special Exception:

The final determination of the appropriateness of a parcel to be developed for multifamily dwellings shall be determined by the Zoning Board of Adjustment after a thorough evaluation of the proposal, the parcel and neighborhood characteristics, the ability of the site to adequately provide for the building, parking, amenities such as landscaping, recreation areas, walkways, etc., required

utilities and services, impact upon Town services and streets, and the impact upon abutting properties and neighborhood.

12. Residential

Conversions:

Existing structures may be converted to apartments if private parking can be provided as required. (General Provisions Article II G) These properties do not have to meet the minimum parcel size or setbacks. However in no case shall the density exceed that allowed under paragraph 3 of this article.

ARTICLE XII CLUSTER DEVELOPMENTS

(Adopted 3/09/04) (Revised 3/11/08)

A. STATEMENT OF PURPOSE:

This ordinance is an innovative land use control to provide some flexibility in overall subdivision design, lot layout, and shape for single and two family individual dwelling units on a single lot. The purposes to which any such proposed development must adhere are:

1. To promote the conservation of the natural and scenic environment, and the development of community uses in harmony with the natural features of the land.
2. To establish living areas within Bethlehem that provide for a balance of community needs, such as a diversity of housing opportunities, adequate recreation and open space areas, easy accessibility to these and other community facilities, and pedestrian and vehicular safety.
3. To provide for the efficient use of land, streets and utility systems.
4. To stimulate imaginative and economical approaches to land use and community development.

B. DENSITY

The maximum number of single family lots, duplex lots, or single family or duplex dwelling units permitted in any cluster development shall be determined by dividing the net tract area of the parcel by the minimum lot size for the particular zoning district. The net tract area of a parcel of land shall be defined as the total area of the parcel less all non-build able land, including all area within the mapped, flood hazard areas, all area with poorly or very poorly drained soils, and all area with a slope of 25 percent or greater. The net tract area concept may be waived with a special exception to be requested from and granted by the Zoning Board of Adjustment when a parcel is to be serviced by town water and sewer, in which case, the number of units shall be based on the gross land area.

C. PROJECT SIZE

The Planning Board shall evaluate the natural features of the land, the suitability of proposed lots or dwelling units, and overall layout requirements of the development and may permit the reduction of any required road frontage on individual lots to not less than 75 feet in width, for a proposed cluster subdivision.

D. LOT AREA

Each individual lot, or single family or duplex dwelling unit shall have a minimum area accounted for in the development as determined by the regulations governing the District of its location. The building lot size in a cluster subdivision may be reduced in the cluster development so long as the remaining balance of square footage is accounted for in open space or recreational space.

E. LOT SHAPE

Long, narrow lots or lots with very irregular shapes shall not generally be accepted by the Board, especially if, in the opinion of the Board, these lots will create unusable or inaccessible areas of land.

F. OPEN SPACE

All permanent open and recreational space areas referred to in Section D shall be protected by legal arrangements, satisfactory to the Planning Board, sufficient to insure its maintenance and preservation for the designated purpose. Open space land cannot be further subdivided.

G. ROADS AND STREETS

The developer (original or subsequent) or the homeowners association of any cluster development shall have the responsibility to develop, repair, and maintain all roads and streets.

H. CONDOMINIUM COMPLIANCE

A proposed condominium project must comply with all other required local, state and federal regulations, including the Subdivision Regulations of the Town, and RSA 3567-B, the Condominium Act.

Article XIII Manufactured Housing; Manufactured Housing Subdivision; Manufactured Housing Parks

(Adopted 3/10/87)

A. MANUFACTURED HOUSING

1. GENERAL PROVISIONS FOR MANUFACTURED HOUSING:

- a. Manufactured housing shall be permitted in manufactured parks and subdivisions created for the placement of manufactured housing on individually owned lots.
- b. All manufactured housing to be located in the town shall conform to the 1976 United States Department of Housing and Urban Development Mobile Home Construction and Safety Standards, as amended through 1986.
- c. All Manufactured housing located on individually owned lots in subdivision created for the placement of manufactured housing shall comply with lot size, frontage requirements, space limitations, and other reasonable controls that conventional single-family housing in the same area must meet.

- d. Manufactured housing parks and subdivisions shall be subject to such regulations as may be promulgated by the Bethlehem Planning Board.

2. TEMPORARY PERMITS:

Temporary permits may be issued by the Board of Selectmen for a period not to exceed 90 days for the placement of manufactured housing or portable structures used for offices, storage and locker purposes incidental to construction projects provided such permits are conditioned by agreement of the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period not to exceed 90 days as long as construction is actively pursued.

3. FOUNDATIONS:

1. Manufactured housing located in manufactured housing parks shall not be required to be placed on a permanent masonry foundation. Space under each manufactured home shall be suitably enclosed.
2. All manufactured housing located in manufactured housing subdivisions shall be placed on permanent masonry foundations.

B. MANUFACTURED HOUSING PARKS

1. Sanitation:

All specifications for manufactured housing parks as stated within the sanitary laws and regulations of the New Hampshire State Department of Health must be met.

2. Permitting Procedure:

- a. The applicant shall make an application to the Planning Board for subdivision approval. Upon receipt of such approval the applicant shall secure a license to operate a manufactured housing park from the Board of Selectmen. All manufactured housing parks shall meet the Requirements set forth herein and shall conform to such regulations as the Bethlehem Planning Board may promulgate.
- b. The applicant shall submit an application on a form provided by the Planning Board and must prove that all of the following conditions are met:
 1. The specific site is in an appropriate location for such use.
 2. Adequate on-site waste disposal and water supply facilities can be provided.
 3. The use will not adversely affect the adjacent area.
 4. There will be no nuisance or hazard created.
 5. The highway giving access to the property will be adequate to accommodate the intended use.
 6. Adequate buffering from adjoining properties must be provided to the satisfaction of the Board.
 7. Adequate open space is provided for the benefit of the residents of the manufacturing housing park.

- c. In acting on such an application, the Board shall take into account the general purpose and intent of this ordinance to preserve community values and provide reasonable housing alternatives, and may impose conditions and safeguards in addition to those specified in this ordinance if the occurrences of certain characteristics of use or the site warrant such use.
- d. Two copies of plans for the proposed development of the site shall be submitted with an application for a permit and such plans shall show the location of all lots, off-street parking areas, traffic access and circulation patterns, open spaces, landscaping, lighting, signs, water supply, sanitary waste disposal facilities, drainage patterns, adjacent streets, turning lanes, and other pertinent information that may be necessary to determine that the proposed use meets the requirements, spirit and intent of this ordinance.
- e. Permit form the Board of Selectmen:
 - 1. After receiving Planning Board approval, any person or legal entity desiring to establish and/or operate a manufactured housing park shall apply to the Board of Selectmen for a renewable license therefore as hereinafter provided.
 - 2. The application form for the establishment of a manufactured housing park must be obtained from the Board of Selectmen for the Town of Bethlehem and must be accompanied by a fee of not less than \$25.00 per proposed lot: this fee will be in lieu of taxes. The annual renewal fee for a license to operate a manufactured housing park shall not be less than \$5.00 per original proposed lot in the original application.
 - 3. The applicant shall submit evidence of approval from the Planning Board.
 - 4. The above fees may be changed from time to time as the Board of Selectmen may deem prudent.
 - 5. The initial license and fees shall be effective until the next March 31st. Thereafter a renewal license and fee shall be required on each.
- f. Sanitary Requirements:
 - 1. Adequate on-site waste disposal facilities shall be approved by the New Hampshire Water Supply and Pollution Control Commission. Individual septic systems will not be allowed in any manufactured housing park where there are two or more units per acre. In any event, all systems must be approved by the State.
 - 2. Each lot within the manufactured housing park shall be provided with at least a 3” diameter sewer connection. The sewer connection shall be provided with suitable fittings, so that a watertight connection can be made between the manufactured home drain and the sewer connection. Such connections shall be constructed so that they can be closed when not linked to a manufactured home and shall be trapped in such a manner as to maintain them in an odor-free condition.
 - 3. All manufactured housing park operators must provide suitable refuse containers conveniently located throughout the park providing easy accessibility to all tenants. These refuse containers must be of such design as to be rodent-free and not to create a health hazard. Refuse must be picked up not less than twice weekly by the park operator.
- g. Water Supply:

1. Public water supply is that water which is supplied to the residents as a municipal service of the town.
2. Private Water supply is that water which is supplied to the residents of a park by a private concern or operator, or by an individual for his own use.
3. In the absence of a public water supply and when water must be provided by a park operator, a well must be driven and the water must be tested pure for human consumption. This well must be capable of supplying four hundred twenty-five (425) gallons per day per single-family unit in any park at a minimum pressure of 30 psi.
4. In any park where there will be more than ten (10) housing units or fraction thereof.

h. Facilities:

1. Each lot shall have water and sewage connections.
2. An electrical entrance supplying at least 220 volts, 100 amps shall be provided for each lot. The installation shall comply with all national electric codes. Such electrical outlets shall be weatherproof.
3. Liquefied petroleum gas shall not be used at individual lots unless the containers are properly connected by copper or other suitable metallic tubing. Liquefied petroleum gas cylinders, connecting tubing and regulating devices shall be securely fastened in-place.
4. Fuel oil containers shall be properly connected. Racks to hold such containers shall be of a design, which will prevent tipping or accidental overturning.

i. Roads and Streets:

1. All roads within a park shall have a base of not less than twelve (12) inches of bank gravel with two (2) inches of compacted asphalt as finished surface. The minimum surface shall be twenty (20) feet in width. Main entrances and exits to a park will have a paved surface on not less than thirty (30) feet in width.
2. All streets shall be graded and proper drainage shall be installed.
3. Streetlights shall be provided for each five lots exclusive of park entrances and exits.
4. Electric, telephone and other transmission or utility lines shall be installed underground per specifications of public companies involved.
5. Plans for road and streets must be approved by the Planning Board before a license can be issued.

j. General Requirements:

1. Total area of a manufactured housing park shall not be less than 15 acres.
2. A minimum of 10,000 square feet shall be provided for each lot within a manufactured housing park.
3. The minimum frontage of a park shall be 300 feet.
4. Within the minimum park land area, but in addition to all lots and common areas, a 20 foot buffer strip shall be maintained along all boundaries and public roads.

Within this 20-foot space a dense visual screen of suitable shrubs and trees shall be maintained.

5. Off-street parking shall be required with provisions for two spaces per lot.
6. Each lot shall be a minimum of 70 feet wide. There shall be a minimum of 40 feet between manufactured homes. No manufactured home or accessory structure shall be located closer than 20 feet from the lot boundary.
7. Manufactured housing parks shall provide recreational areas and other open space in accordance with the provisions of subdivision regulations of the Town of Bethlehem Planning Board.

Article XIV Floodplain Development

(Adopted 3/10/87) (Revised in 2001, 2007)

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its Flood Insurance Rate Maps Dated, April 15, 1986, which are declared to be a part of this regulation and are hereby incorporated by reference.

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.

ITEM I.

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

ITEM II.

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

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

ITEM III.

Where new and replacement water and sewer systems (including on-site systems) are proposed in flood prone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from 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.

The building inspector shall maintain for public inspection, and finish upon request, any certification of flood proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been flood proofed, the as built elevation (in relation to mean seal level) to which the structure was flood proofed. The applicant must furnish this information.

ITEM V.

The building inspector shall review proposed developments to assure 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. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

ITEM VI.

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

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

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.**

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.

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' 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 Building Inspector's 100 year flood elevation determination will be used as criteria for requiring in **Zone(s) A and AE** that:

A. ALL new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level.

B. That all new construction and 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:

1. Be flood proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and hydrodynamic loads and the effects of buoyancy; and:
3. 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 floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

D. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements:

1. The enclosed area is unfinished or flood resistant, useable solely for 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 entry and exit of floodwaters. 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 floodwaters.

E. ALL recreational vehicles placed on sites within Zone A or Zone AE shall either:

1. Be on the site for fewer than 180 consecutive days;
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.

ITEM VIII. VARIANCES AND APPEALS:

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

4. 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.

2. The Zoning Board of Adjustment shall notify the applicant in writing that (i) the issuance of a variance to construct below the vase flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (ii) such construction below the vase flood level increases risks to like and property. Such notification shall be maintained with a record of all variance actions.

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

2. The community shall:

- A. Maintain a record of all variance actions, including their justification for their issuance, and;
- B. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

3. The Zoning Board of Adjustment shall notify the applicant in writing that:

- A. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and;
- B. Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

4. The community shall:

- A. Maintain a record of all variance actions, including their justification for their issuance, and;

- B. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE XV: PERSONAL WIRELESS SERVICE FACILITIES (PWSF)

Adopted 3-2001, Revised 3-11-2008

- VII. Reasonably regulate the location, placement, operation and maintenance PWSF within the Town of Bethlehem, while at the same time meeting the requirements of the (Federal) Telecommunications Act of 1996.
- VIII. Amateur Radio; Receive-Only Antennas: This article shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.
 - A. Application Procedure: An applicant for a PWSF shall first obtain a Special Exception from the Zoning Board of Appeals, followed by Site Plan Review from the Planning Board. An applicant may apply for a Joint Meeting of the Zoning Board of Adjustment and the Planning Board.
 - B. General requirements for a PWSF.
 - (1) Siting preferences. Pursuant to the needs analysis required by Subsection E below, an application to install, construct, erect, move, reconstruct or modify, any PWSF antenna shall be subject to siting preferences as follows:
 - (a) If the analysis demonstrates that it is reasonably necessary to install, construct, erect, move, reconstruct or modify a PWSF antenna within the Town of Bethlehem, then, subject to all other permitted conditional use standards, the proposed PWSF antenna maybe located upon an existing building or other structure in a location within the Town of Bethlehem that is uniquely suited to the demonstrated need for service, by special exception of the ZBA.
 - (b) If the analysis demonstrates that it is not reasonably practicable to install, construct, erect, move, reconstruct, or modify the proposed PWSF antenna upon an existing building or structure within the Town of Bethlehem by special exception of the ZBA that is uniquely suited to the demonstrated need for service, then, subject to all other permitted conditional use standards, the proposed PWSF antenna may be located or collocated upon an existing PWSF tower in a location within the Town of Bethlehem by special exception of the ZBA that is uniquely suited to the demonstrated need for service.
 - (c) If the analysis demonstrates that it is not reasonably practicable to install, construct, erect, move, reconstruct and/or modify the proposed PWSF antenna upon an existing PWSF tower in a location within the Town of Bethlehem that is uniquely suited to the demonstrated need for service, then, subject to all other permitted conditional use standards, the proposed PWSF antenna may be located or collocated upon a new PWSF tower to be constructed in a location within the Town of Bethlehem by special exception of the ZBA that is uniquely suited to the demonstrated need for service.
 - (2) PWSF antennas. PWSF antennas shall be consistent with the following

requirements:

- (a) Microwave dishes, cones or other antennas used for the purpose of point-to-point microwave transmission or microwave links are prohibited.
 - (b) Platform-mounted or side-arm-mounted antennas of any kind are prohibited.
 - (c) Subject to the siting preferences set forth in Subsection B(1) above, PWSF antennas may be mounted on existing buildings or other structures or on PWSF towers, provided that:
 - [1] PWSF antennas mounted on existing buildings or other structures shall not, when combined with the height of the building or structure on which they are located, exceed **50 feet** in height nor shall the total height of the existing structure or preexisting tower be more than ten (10) feet above the average tree canopy height; and
 - [2] PWSF antennas mounted on PWSF towers shall not extend beyond the height limitations for such towers.
 - (d) PWSF antennas shall be constructed, finished or painted so as to minimize their visual impact on the landscape.
- (3) PWSF towers. PWSF towers shall be consistent with the following requirements:
- (a) PWSF towers shall be limited to monopole designs only. Freestanding lattice towers and guyed towers of any kind are prohibited.
 - (b) To the maximum extent practicable, PWSF towers shall be designed to permit collocation of additional antennas.
 - (c) The maximum height of any PWSF tower including any PWSF antennas or other equipment mounted thereon, shall not exceed twenty (20) feet above the average tree canopy height and under no circumstances shall the overall height of a new tower, including any antennas or appendages, be more than ninety (90) feet.
 - (d) No PWSF tower shall be lighted except as may be required by state or federal law. All lighting incidental to that required above shall be shielded to minimize glare and, to the extent reasonable, shall be directed downward and inward towards the facility and not towards neighboring properties.
 - (e) No PWSF tower shall bear any signs, displays or advertisements of any kind except as may be required by law.
 - (f) PWSF towers shall be constructed, finished or painted so as to minimize their visual impact on the landscape.
- (4) PWSF equipment and PWSF equipment compound. All PWSF equipment shall be housed within a PWSF equipment compound, consistent with the following requirements:
- (a) PWSF equipment compounds shall be enclosed within a locked security fence

at least seven feet in height, unless located within an existing building.

(b) No PWSF equipment compound nor any PWSF equipment housed therein shall exceed 15 feet in overall height.

(c) PWSF equipment compounds shall be constructed, finished or painted so as to minimize their visual impact on the landscape.

(5) Reasonable efforts shall be employed to camouflage and minimize the visual impact of any PWSF installed or constructed pursuant to the provisions of this section

(6) PWSF shall fully conform to all applicable state, federal and local laws.

(7) Routine maintenance of PWSF shall be limited to the hours of 7:00 am, to 7:00 p.m.

C. Setback requirements for the location of PWSF.

1. The minimum setback for a new tower shall be no closer than 1,500 feet horizontally to any structure existing at the time of application which is used as a primary or secondary residence, school property (both public and private), a hospital, senior center, child care facility, building used for religious worship, or to any other building used regularly by the public. Primary or secondary residences are those dwelling units that include toilet facilities and facilities for food preparation and sleeping.

2. The minimum setback from residential lot lines shall be 150 feet.

3. No PWSF shall be located in the front yard of any lot

4. Fall Zone: New towers must be set back a minimum distance that is equal to 150% of the height of the tower from all property lines, public road, or public recreational area. This distance under no circumstances shall be less than the setbacks for the Zoning District in which they are to be located.

D. Additional site plan requirements. In addition to compliance with all applicable zoning and site plan requirements, applications for approval of PWSF shall include the following:

(1) An access road, turnaround, and one parking space, as may be necessary to provide adequate emergency and service access, using existing roads, public or private, to the maximum extent practicable.

(2) The color or colors of the proposed PWSF equipment.

(3) A Visual Environmental Assessment Form (“Visual EAF”) with particular attention given to the visibility of the proposed PWSF equipment from key viewpoints identified in the Visual EAF, existing tree lines, and proposed elevations.

(4) A map of existing PWSF within the Town of Bethlehem which is owned, leased or otherwise under the custody, control or use of the applicant at the time of application, and of sites within the Town of Bethlehem where PWSF is proposed or

projected to be installed, constructed, erected, moved, reconstructed and/or modified by or for the benefit of the applicant within the next five years.

- 5) A certified load analysis report for the building, structure, existing PWSF tower, or proposed PWSF tower upon which a PWSF antenna is proposed to be located, indicating its ability to support possible future, collocated PWSF antennas.
- (6) The approving authority may waive any of these requirements, for good cause shown, where an application is made to locate the proposed PWSF antenna upon an existing building, structure, or PWSF tower.

E. Criteria for a Special Exception for a PWSF: In addition to submission of all applications required by this Zoning Ordinance, all applicants for a Special Exception for the installation, constructing, erection, movement, reconstruction, or modification of any PWSF shall meet the following requirements in addition to those stated in Article XVIII, Section B:

- (1) Needs analysis. As used in this ordinance, the term “Significant Gap” shall mean a quality of voice service, exclusive of additional features and services that may be offered by carriers in addition to voice cellular telephone service, that is sufficiently poor as to prevent access to the national telephone network, and which affects a significant number of users. The term “Significant Gap” shall not mean a level of coverage that is merely comprised of de minimus “dead spots” in coverage within a larger service area. No cell tower shall be erected anywhere in the Town of Bethlehem unless a proposed cell tower is necessary to close a significant gap in coverage, as defined herein. The needs analysis shall contain documentary evidence and expert testimony demonstrating by clear and convincing evidence that there exists a Significant Gap in the ability of remote users to access the national telephone network, and that the proposed installation, construction, erection, movement, reconstruction or modification of any PWSF within the Town is uniquely suited to the said demonstrated need for service. This evidence shall include, at a minimum:
 - [a] In operation as of the filing date of the Special Exception; and
 - [b] Under construction as of the filing date of the Special Exception; and
 - [c] Pending approval before any licensing authority as of the filing date of the Special Exception.
- (2) The PWSF service provider’s wireless telecommunications network layout and coverage area for a radius of at least **20 miles** from the Town of Bethlehem, identifying all locations:
 - [a] In operation as of the filing date of the Special Exception; and
 - [b] Under construction as of the filing date of the Special Exception; and
 - [c] Pending approval before any licensing authority as of the filing date of the Special Exception.
- (3) All results and, to the extent requested by either the Bethlehem Planning Board or Zoning Board of Adjustment, as applicable, supporting data derived from tests which must be conducted to determine before and after signal strength plots. These results and data:
 - [a] Shall demonstrate the actual existing signal coverage in effect at the time of application, and the Significant Gap in coverage needed to provide remote users access to the national telephone network contrasted with the proposed signal coverage which would result from the proposed installation, construction, erection, movement reconstruction, or

modification of PWSF within the Town of Bethlehem; and

[b] Shall be certified by a qualified, independent, licensed, professional engineer, qualified and experienced in the design of cellular telecommunication systems, utilizing radio frequencies, hereinafter "A Radio Frequency Engineer". The Town reserves the right to retain a Radio Frequency Engineer on its own behalf at the applicant's expense to review the results or data submitted by the applicant.

[c] Balloon Test: Within 35 days of submitting an application, applicant shall arrange to fly, or raise upon a temporary mast, a three foot diameter brightly colored balloon at the maximum height of the tower and within fifty horizontal feet of the center of the proposed tower. The date time and location of this balloon test shall be advertised by the applicant, at 7 and 14 days in advance of the test date in *The Littleton Courier*, and *The Caledonia Record*. The applicant shall inform the Bethlehem Zoning Board of Adjustment, the Planning Board, and abutting property owners in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9:00 am, and 5:00 p.m. of the dates chosen.

[d] Visual Analysis: The applicant shall develop and submit a written analysis of the visual impact of the proposed tower. This analysis shall include photographs of the balloon test taken from at least 10 different perspectives within the Town of Bethlehem.

(4) A search ring of the Town of Bethlehem prepared by a licensed professional radio frequency engineer and overlaid on an appropriate background map demonstrating the area within the Town of Bethlehem where the PWSF needs to be located in order to provide reasonably necessary signal strength required to close the claimed Significant Gap in coverage needed to provide remote users access to the national telecommunications network, within the target cell.

(5) In connection with the signal strength plots and search ring described above, the applicant must provide a report prepared by a qualified independent professional engineer which explains why the proposed location was selected and which specifically addresses, at a minimum:

[a] If the applicant proposes to install, construct, erect move, reconstruct or modify a PWSF antenna upon an existing structure or building, why it is reasonably necessary to locate that PWSF antenna within the Town of Bethlehem to close the Significant Gap in coverage needed to provide remote users access to the national telephone network;

[b] If the applicant proposes to install, construct, erect, move, reconstruct or modify a PWSF antenna upon an existing PWSF tower:

[1] Why it is reasonably necessary to locate that PWSF antenna within the Town of Bethlehem to close the Significant Gap in coverage to provide remote users access to the national telephone network; and

[2] Why it is not reasonably practicable to locate or collocate that PWSF antenna upon an existing building or structure within the Town of Bethlehem; and

[c] If the applicant proposes to install, construct, erect, move, reconstruct and/or modify, a PWSF antenna upon a PWSF tower:

[1] Why it is reasonably necessary to locate that PWSF antenna within the Town of Bethlehem to close the Significant Gap in coverage to provide remote users access to the national telephone network;

[2] Why it is not reasonably practicable to locate or collocate that PWSF antenna upon an existing building or structure within the Town of Bethlehem; and

[3] Why it is not reasonably practicable to locate or collocate that PWSF antenna upon an existing PWSF tower within the Town of Bethlehem.

(6) The Maximum Permissible Exposure Analysis for the power at which this proposed PWSF is expected to operate.

F. Permit standards. The following criteria shall be considered by the Planning Board prior to the approval or denial of site plan review for the PWSF. These criteria may be used as a basis to impose reasonable conditions on the applicant.

(1) Aesthetics. PWSF shall be located and buffered to the maximum extent which is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Planning Board may impose reasonable conditions on the approval of the application, including the following:

(a) The Planning Board may require the applicant to show that it has made good-faith efforts to minimize the height of proposed towers; to collocate on existing building structures or PWSF towers; or to locate proposed new PWSF towers near existing towers in an effort to consolidate visual disturbances.

(b) The applicant must submit a copy of its policy regarding collocation with other potential applicants on any proposed PWSF tower.

(c) The Planning Board may require the applicant to use camouflage and/or otherwise to minimize the visual impact of the proposed PWSF.

(2) Radio-frequency effect. The Planning Board may impose conditions on the applicant that the proposed PWSF antenna be operated only at Federal Communication Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits, that competent documentation be provided which establishes maximum allowable frequencies, power levels and exposure limits for radiation from the site will not be exceeded, and that radio and television reception will not be interfered with.

(3) Removal of PWSF. The applicant shall agree to remove any PWSF if all or part of any such PWSF becomes obsolete, is unrepaired for an unreasonable period, or ceases to be used for its intended purpose for 12 consecutive months. The Town of Bethlehem may, at its sole discretion, require the applicant to provide a demolition bond to the Town of Bethlehem for the purpose of assuring the removal of any PWSF in accordance with the provisions of this section. The applicant will be responsible for providing, on an annual basis, written estimates to the Town of Bethlehem for the cost to demolish and/or remove the PWSF, and to restore the land upon which it is located. Such estimates will be used to establish whether any adjustment is required in the amount of the required demolition bond.

(4) Structural safety.

- (a) Upon written request from the Town of Bethlehem at any time, during the application process or after the installation, construction, erection, movement, reconstruction, or modification of any PWSF, the applicant shall provide a report from a licensed professional engineer certifying as to the condition of the PWSF with respect to applicable structural safety standards. Such requests from the Town shall not occur more often than once every three years. If the engineer's report recommends that repairs or maintenance are required, then a letter shall be submitted to the Town which shall contain a reasonable schedule for the required repairs or maintenance. Upon their completion, a letter shall promptly be submitted to the Town to certify the same.
- (b) In the event that the applicant fails to comply with these requirements regarding structural safety, the Town reserves the right in addition to all of its other rights and remedies available under, state, federal and local law to declare the applicant in default of its obligations under this chapter. Should that occur, the applicant will have 10 days to notify the Town as to how it intends to cure its default, setting forth a reasonable schedule for the same. In the event that the applicant fails to so notify the Town, or fails to cure as agreed, the Town may draw on the applicant's demolition bond and arrange for the removal and/or demolition of the applicant's PWSF; declare the PWSF to be abandoned and arrange for the public auction of the PWSF; and/or pursue such other remedies at law and in equity as may be available. Nothing in this section shall be construed to limit the applicant's liability for criminal prosecution.

VII. SEVERABILITY CLAUSE: If any portion of this Cell Tower Ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected. The approval is valid for a period of one year from date of issue; if no construction has begun by this date, the approval becomes invalid.

XVI Aquifer Protection Ordinance

Adopted 03/09/10

I. AUTHORITY

The Town of Bethlehem hereby adopts this ordinance pursuant to the authority granted under RSA 674:16 and RSA 674:21 relative to innovative land use controls.

II. PURPOSE

The purpose of this ordinance is to preserve, maintain, and protect the quality and quantity of aquifers, aquifer recharge areas and surface waters that are fed by **groundwater located** wholly or partially within the town of Bethlehem.

The purpose is to be accomplished by regulating land uses, which could harm and/or contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

III. GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning so as to include all land within the boundaries of the Stratified Drift Aquifer (s) as shown on the maps in the middle Connecticut River Basin West-

Central New Hampshire, Northeastern Quadrant. This map will be revised as new data becomes available.

IV. APPLICABILITY

This ordinance applies to all uses in the Groundwater Protection District, except that this ordinance does not apply to the Town's district V zone. (amended 3/9/11)

V. PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District unless specifically exempt under Section XI:

- A. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff NH Department of Environmental Services, January 1996.
- B. Conditional uses, as defined under Section IX shall develop stormwater management and pollution prevention plans and include information consistent with Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices. (US EPA, 1992) The plan shall demonstrate that the use will:
 - 1. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - 2. Demonstrate that recharge to groundwater will not result in violation of Ambient Groundwater Quality Standards (ENV-Ws 410.05) at the property boundary;
 - 3. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI).
- C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 2005, and any subsequent revisions;
- D. All regulated substances stored in containers with a capacity of 7 gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- E. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;

- G. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of 275 gallons or more of regulated substances are stored outdoors on any particular property;
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.

VI. SPILL PREVENTION, CONTROL AND COUNTERMEASURE (SPCC) PLAN

Applicants for a conditional use permit as described under Section IX, part (A), (users of regulated substances) shall submit a spill control and countermeasure (SPCC) plan to the Fire Chief who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

- 1. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- 2. Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
- 3. A list of all regulated substances in use and locations of use and storage;
- 4. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
- 5. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

VII. PERMITTED USES

All uses permitted by right or allowed by Special Exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses (Section XIII herein) or Conditional Uses (Section IX herein). All uses must comply with the Performance Standards unless specifically exempt under Section XI.

VIII. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District.

- A. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A
- B. The development or operation of a solid waste landfill
- C. The outdoor storage of road salt or other deicing chemicals in bulk
- D. The development or operation of a junkyard
- E. The development or operation of a snow dump

- F. The development or operation of a wastewater or septage lagoon
- G. The development or operation of a petroleum bulk plant or terminal
- H. The development or operation of gasoline stations.

IX. CONDITIONAL USES

A. The following uses are permitted only by Conditional Use Permit issued by the Planning Board, so long as such use is otherwise permitted within the underlying district and is not a prohibited use under Section XIII herein;

1. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with Section VI, is approved by the local Fire Chief.
2. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater.

B. In granting such Conditional Use Permit, the Planning Board must determine that the proposed use will be in compliance with the Performance Standards set forth in Section V as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the performance standards.

C. The Planning Board may suspend or revoke any Conditional Use Permit issued hereunder if it determines, after notice and hearing, that it was issued in error or upon false information, or that the applicant has failed to comply with any conditions of approval, and upon such suspension or revocation all activities approved by said Permit shall cease until such Permit is reinstated or a new permit issued.

X. EXISTING NONCONFORMING USES

Existing nonconforming uses may continue without expanding or changing to another nonconforming use but must be in compliance with all applicable state and federal requirements, including Env-Ws 421, Best Management Practices Rules.

XI. EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence is exempt from all Performance Standards

- B. Any business or facility where regulated substances are not stored in containers with a capacity of 7 gallons or more is exempt from Section V Performance Standards, Sections E through H
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards E through H
- E. Storage and use of office supplies is exempt from Performance Standard E through H
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E through H
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance
- H. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards E through H
- I. Underground storage tank systems and above ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section XIII this ordinance.

XII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIRMENTS

Where both the State and the municipality have existing requirements the more stringent shall govern.

XIII. MAINTENANCE AND INSPECTION

- A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Grafton County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections may be required to verify compliance with Performance Standards. The Code Enforcement Officer shall perform such inspections at reasonable times with prior written notice to the landowner, unless emergency circumstances exist such that prior notice cannot be reasonably given.
- C. All properties within the Groundwater Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of 7 gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Section XI, shall be subject to inspections under this Section.
- D. The Bethlehem Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen pursuant to the procedures set forth in RSA 41-9:a.

XIV. EFFECTIVE DATE

This ordinance shall be effective upon adoption by the legislative body.

Aquifer Ordinance – Definitions

1. **Aquifer:** a geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.
2. **Extraction (or “Water Extraction” or “Extraction of Water”):** withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources, aquifers, springs, wells, pumps, or similar.
3. **Extraction Point (or “Extraction Facility”):** the physical location where water is extracted, whether by well, pump, pipeline, catchments or other similar method.
4. **Gasoline Station:** Portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.
5. **Groundwater:** Subsurface water that occurs beneath the water table in soils and geologic formations.
6. **Impervious:** Not readily permitting the infiltration of water.
7. **Impervious Surface:** a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden, or gravel surfaces; or other surfaces, which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.
8. **Junkyard:** An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126
9. **Large Scale Water Extraction:** Extraction of water from ground water sources, aquifers, springs, wells or similar in a total daily amount on any given day of 5000 gallons or more, as extracted by an individual or entity or consortium or association of individuals or entities, regardless of the number of extraction facilities utilized.
10. **Outdoor Storage:** Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
11. **Petroleum Bulk Plant or Terminal:** Means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
12. **Public Water System:** A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
13. **Regulated Substance:** Petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
14. **Reviewing Authority:** “Reviewing agency” and “Planning Board” are used interchangeable and have the same meaning.

15. **Sanitary Protective Radius:** The area around a public water supply well, which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems); Env-Ws 372.12 and Env-Ws 372.13 (for other public water systems).
16. **Water Bodies (or “surface water”):** Lakes, ponds, rivers, streams, wetlands, and similar.
17. **Zone of Contribution:** That area of an aquifer that contributes water to a well or other extraction point under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases the zone of contribution shall extend up gradient to its point of intersection with prevailing hydro geologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

Article XVII Impact Fees

A. PURPOSE

Following implementation of a Capital Improvement Program as authorized by RSA 674:5-7, this Impact Fee Regulation allows the Bethlehem Planning Board to assess Impact Fees on any development requiring the upgrading and/or improvement of municipal facilities as identified in the Town’s Capital Improvement Program.

B. ADMINISTRATION

The Planning Board shall be authorized to impose and assess impact fee, and shall give each applicant written notification of the assessed fee. The Bethlehem Board of Selectmen shall collect, administer, and disburse impact fees. Reasonable costs to the Town of determining and administering the impact fees for the new development may be included in the fees assessed.

C. PROPORTIONATE SHARE

Impact fees shall not exceed a proportionate share of the cost of providing capital improvements for which the need is reasonably attributable to those developments that pay the fee. New development must receive a reasonable benefit from capital improvements financed by impact fees.

In determining proportionate share of capital improvement costs, the following factors, when applicable, shall be addressed:

1. The need for capital improvements required to serve new development, as reflected in the CIP.

2. The availability of other means or sources of revenue to fund capital improvements including, but not limited to, user charges, taxes, inter-governmental transfers, and other revenues including special taxation or assessment districts;
3. The extent to which new developments required to pay impact fees will also contribute to the cost of the existing and planned capital improvements in the future through taxes, users fees, or debt service payments. Credits or offsets that may be due to new development because of such payments shall be estimated and included in the calculations of the impact fee assessment;
4. Offsets or credits which may be due because new development is required to construct or dedicate capital improvement, of which the total benefit does not accrue to that development.

D. MUNICIPAL CONTRIBUTIONS

Provisions of this ordinance notwithstanding, the Bethlehem Planning Board, may waive all or part of the impact fee assessed against new development that achieves public purposes, including, but not limited to, the provision of long-term affordable housing, the retention of existing employment, or the preservation of open space. These public purposes must be associated with needs identified in the master plan. In no case shall such amounts be assessed to other new developments.

E. TIMING OF ASSESSMENT

1. All impact fees imposed pursuant to this article shall be assessed to new development prior to, or as a condition for, the granting of subdivision or site plan approval or, in the case of an existing lot, issuance of a building permit. Impact fees shall normally be collected as a condition of a certificate of occupancy. In the interim between assessment and collection, the Town may require that a bond be posted, a letter of credit be issued, a lien given, or that other suitable measures of surety be provided so as to guarantee future payment of assessed impact fees.
2. The provisions of Section 6.1 notwithstanding, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover its portion of such improvements, the Town may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this article shall prevent the Town and the assessed party from establishing an alternate mutually acceptable schedule of payment.

F. ACCOUNTING SYSTEM AND DISBURSEMENT OF IMPACT FEES

1. Impact fee revenue shall be earmarked for the specific purpose for which it was assessed and shall be accounted for in a separate municipal impact fee fund.
2. Impact fees shall be expended only for the purpose for which they are assessed in performance with the capital improvement program, master plan, zoning ordinance, subdivision regulations, and site plan review regulations. Impact fees shall be expended after appropriation by the local legislative body. After said appropriation, impact fee

expenditures shall be paid by the treasurer upon order of the Board of Selectmen or its designated agent, without further approval of the legislative body. Impact fees may be used to reimburse any account from which an amount has been expended in anticipation of the receipt of said fees. Impact fees assessed to recoup the cost of existing capital improvements made in anticipation of the needs of new development shall be applied as revenue against any outstanding debt for those capital improvements.

3. Impact fees received shall be expended or encumbered within six years of receipt of refunded to the current landowner, unless there exists an extraordinary or compelling reason for fees to be held longer than six years. The Selectmen shall have the authority to determine whether or not such extraordinary or compelling reason exists.

G. METHOD OF CALCULATING IMPACT FEES

1. TOWN ROADS

a. GENERAL

Fees will be assessed to new development on impact fee roads by applying the percentage of total trip ends per day (TPD) generated by new development to the cost for upgrading each impact fee road (cost as identified in the Bethlehem CIP). The following formula will be used:

a. PERCENTAGE

The trip and percentage will be calculated as follows: TPD generated by new development as a percentage of total TPD on impact fee roads (or segments thereof) after development. Total TPD after the development is the sum of existing TPD on an impact fee road plus TPD to be generated by the proposed development.

b. ROAD SEGMENTS

Where it is determined that new development will affect individual segments of impact fees roads or intersections differently, separate assessments will be determined for each segment depending on the level (proportion) of impact.

c. TRIP GENERATION INFORMATION

Projected trip generation information used shall be the most recent publication available from the Institute of Transportation Engineers, Washington, D.C. Existing trip generation information shall be determined by a Traffic Impact Analysis (TIA) performed by a qualified consultant selected by the Planning Board. The cost of said TIA, and any other special investigative studies necessary to evaluate new development for the assessment, shall be borne by the applicant in accordance with RSA 676:4, I(g) if required by the Planning Board. The content and extent of the TIA shall be determined by the Planning Board.

2. PUBLIC SCHOOLS

Impact fees for public schools shall apply only to residential development. Fees will be assessed to new development for school capital improvements, which are scheduled in the CIP, using the following information:

School Impact Fee = # of new units x school-age children multiplier x per pupil school capital cost. (cross reference 2.5)

3. CREDITS

A credit will be applied to impact fee assessment for future taxes paid by the applicant to retire bonds for capital projects for which the applicant is assessed impact fees. Credits will be calculated for each year that a capital project, for which impact fee have been assessed, has an impact on property taxes. The credit will be based on the projected amount of the applicant's estimated tax bills attributable to the capital project (determined by projections in the CIP). The property value will be estimated by the Planning Board based on the applicant's intended property use and municipal tax records.

4. PRESENT VALUE FACTOR

All monetary calculations must employ the applicable present value factor in order to allow for time-price differentials.

H. REFUND OF UNEXPENDED IMPACT FEES

1. CONDITIONS UNDER WHICH REFUND IS DUE

Impact fees received shall be expended or encumbered within six years of receipts, or shall be refunded.

2. PROCEDURE

The current owner of property on which an impact fee has been paid may apply for a refund of such fees plus any accrued interest. The refund shall be owed when the Town has failed within the period of time established in Section 9.1 to expend or encumber impact fees on capital improvements intended to benefit the development that has paid the fees. The Town shall notify the owner of record according to the municipal tax records that they are eligible for an impact fee refund. Such notification shall be by publication in a newspaper of local circulation and by certified mail deposited with the United States Postal Service to said owner's last known address. Only the current owner of the property may apply for the refund. Application for the refund shall be submitted to the Town within one year of the date that the right of claim the refund arises. All refunds due and not claimed shall be retained in the special funds and expended or encumbered for capital improvements occasioned by other developments, as identified in the CIP. This right to claim of refund may be limited by the provisions of Section 4.

3. UNENCUMBERED FUNDS

When the Town, by vote pursuant to 675: 2-5, rescinds its action authorizing impact fees, all unexpended or unencumbered funds, plus any accrued interest, shall be refunded pursuant to Section 9.2. Upon the finding that any or all fee requirements are to be terminated, the Town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least twice and shall notify all eligible claimants by certified mail deposited with the United States Postal Service to the last known address of claimants. All funds eligible for refund shall be made available to potential claimants for a period of one year from the date that the ordinance is rescinded. At the end of one year, any remaining funds shall be transferred to the general fund unappropriate surplus. The Town is released from this notice requirement if there are no unexpended or unencumbered balances within a fund being terminated.

I. APPEAL OF ASSESSMENT OF IMPACT FEES

An impact fee that has been assessed to new development under this ordinance may be appealed in the following manner. Within fifteen days of receipt of written notification of an assessed impact fee, an applicant or its agent may submit to the Board of Selectmen, in writing, a notice of appeal specifying the grounds for appeal. A copy of the appeal shall also be submitted grounds for appeal. A copy of the appeal shall also be submitted simultaneously to the Board or officer from whose decision the appeal is sought. The Board or officer, from whose decision the appeal is sought, shall transmit to the Board of Selectmen all the pertinent documentation relative to the impact fee assessment.

Within thirty days of receipt of a written notice of appeal, the Board of Selectmen shall hold a duly noticed public hearing on the appeal. The Board of Selectmen shall provide a decision, in writing, to the applicant no later than fourteen days after the date of the public hearing. The applicant may waive the requirement for a decision within fourteen days and consent to such extension as may be mutually agreeable. No decision shall be rendered on an impact fee assessment appeal without a duly noticed public hearing.

Article XVIII Enforcement of the Zoning Ordinance

- A. No building permit shall be required for repairs or maintenance necessitated by ordinary wear and tear or for remodeling where the total cost of such work, including materials will not exceed three thousand dollars (\$3,000.00), and providing the purpose for which the building is to be used is not changed. (Amended 3/03)
- B. No building or structure shall be erected or altered until the proposed user has first provided, authorizing such construction or alteration. Applications for building permits shall be filed with the Board of Selectmen on forms supplied by the Board, and shall contain such information as the Board may require to ascertain the proposed building or structure and its intended use comply with the provisions of these Regulations. No building permit shall be issued until the Board of Selectmen has certified that the proposed building and its use comply with the provisions of these Regulations. Upon approval of an application, the Board of Selectmen shall issue a building permit to the applicant authorizing such construction or alteration.

- C. ALL construction/renovation of structures within the Town of Bethlehem shall conform to the applicable sections of the BOCA national building code. (Adopted 3/10/87) All single-family dwellings and their outbuildings are exempt from the B.O.C.A. Code. (Amended 3/97) All Construction /Renovation projects shall secure a building permit from the Board of Selectmen or from the Zoning Board of Adjustment as herein after. A building permit shall become void if:
1. Operations are not begun within six months from date of issuance of the permit:
and
 2. If at the determination of two years from date of the permit the exterior of the building remains in an incomplete condition. The Board of Selectmen or its duly authorized agent shall order the completion or removal at the expense of the owner, of such incomplete buildings, unless an extension of the permit is granted by the Zoning Board of Adjustment.
- D. Building permits shall not be issued for building on land of such character that it cannot be safely used because of danger to life, health and property from flood or other menace until appropriate measures have been taken by the owner to eliminate such hazards.
- E. The Code Enforcement Officer shall take action on an application for a building permit within thirty (30) days, or sixty (60) days (for nonresidential applications or residential application encompassing more than 10 dwelling units) from the date of filing, in accordance with RSA 676:13 III. (Revised 03/10/2009)
- F. Appeals to the Board of Adjustment may be taken by any person aggrieved by any officer, department, board or bureau of the municipality affected by any decision of the Board of Selectmen. Such appeal shall be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Board of Selectmen from whom the appeal is taken and with the Board of Adjustment notice of appeal specifying the grounds thereof. The Board of Selectmen from whom the appeal is taken shall for with transmit to the Board Adjustment all records concerning the appealed action.
- G. Upon any well-founded information that these Regulations are being violated, the Selectmen shall take immediate steps to enforce the provisions of these Regulations by seeking an injunction in the Superior Court or by any other legal action.
- H. It shall be the duty of the Board of Selectmen or their duly authorized agent to enforce the provisions of these Regulations.
- I. These Regulations may be amended in accordance with the provisions of N.H. Revised Statutes Annotated.

- J. "All buildings, structures and uses in the districts herein set forth shall comply in all respects with State law including the regulations of the New Hampshire Departments of Safety, Health and Human Services and Environmental Services." (*Adopted 3/9/04*)

Article XIX Board of Adjustment

A. Board Composition:

Within thirty (30) days after the adoption of these Regulations and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to a Board of Adjustment consisting of five (5) members, one of whom shall be a member of the Planning Board, conforming in duties to the provision of Chapter 31 of the N.H. Revised Statutes Annotated. Thereafter as terms expire or vacancies occur, the appointing authority shall be responsible for filling vacancies and maintaining full membership and term of office in accordance with the provisions of Section 67, Chapter 31, N.H. Revised Statutes Annotated.

B: SPECIAL EXCEPTIONS

The Zoning Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant permits for uses permitted as special exceptions under this ordinance. Approvals may be granted by the Zoning Board of Adjustment to uses that meet the following criteria. These criteria are designed to ensure that the use will not adversely affect nearby, existing uses and to protect neighborhoods against potentially disruptive uses or those which might in some way be incompatible with the neighborhood.

The applicant shall submit an application on a special form provided by the Zoning Board of Adjustment and must prove that the proposed use will meet all of the following criteria:

- 1) The specific site is an appropriate location for the proposed use, structure, or change to a structure, in relation to surrounding properties.
- 2) The proposed use, structure, or change to a structure, will be compatible with adjoining land uses and with the character of the surrounding neighborhood.
- 3) The proposed use, structure, or change to a structure, will not generate substantial amounts of noise, odor, or create substantial increase in traffic.
- 4) The proposed use, structure, or change to a structure, will not create any other nuisance or hazard.
- 5) The proposed use, structure, or change to a structure, will be in harmony with surrounding properties and consistent with the spirit and intent of this ordinance.

C. Conditions:

In acting on such exceptions, the Board shall take into account the general purpose and intent of this ordinance to preserve community values. The Board may impose conditions and safeguards in addition to those specified in the ordinance should the nature of the site or certain characteristics of the use warrant such.

Two copies of plans for the, proposed development of a site requesting a special exception shall be submitted with an application for a permit. Such plans shall show, as appropriate, the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, lighting and any other pertinent information that may be necessary to determine if the proposed use meets the requirements set forth above. At the request of the ZBA an impact study may be required at the applicant's expense. The location and size of the use, nature, and intensity of the operations involved the size of the site in relation to the proposed use and the location of the site with respect to existing or future streets giving access to it shall be such that it will be in harmony with the orderly development of the district. The location, nature and height of buildings, walls, and fences, shall not discourage the appropriate development of adjacent land and buildings or impair the value thereof.

The board may impose safeguards in addition to the applicable requirements of this ordinance, including, but not limited to, the following:

1. Front, side or rear setbacks in excess of the minimum requirements in this ordinance.
2. Screening of parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting or other devices.
3. Limitations of size, number, design and location of drives, or other traffic features.
4. Off-street parking or loading spaces beyond the minimum requirements of this ordinance.

Article XX Penalty

Every person, persons, firm or corporation violating any of the provisions of these Regulations shall be fined in accordance with the provisions of N.H. Revised Statutes Annotated. 676:17. *(Amended 3/03)*

Article XXI Definitions

In the interpretation and enforcement of these regulations, all words other than those specifically below shall have the meanings implied by their context and by their ordinarily accepted meanings. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

Abutter: Shall mean 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 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/her land will be directly affected by the proposal under consideration.

Alternative tower structure: innovative sitting techniques that shall mean 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.

Antenna: shall mean any exterior apparatus designed for telephonic, radio, television, personal communications services (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Applicant: Shall mean the owner of the property to be excavated or the owner's agents, so designated in writing as part of the excavation application.

Application: Shall mean an official form, specific to a project, provided by the Land Use Office, to be completed and submitted by the applicant (property owner or agent of the owner for proposed project so designated in writing as part of the application).

Average tree canopy height: an average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height within a 75 foot radius of the proposed facility site.

Area of shallow flooding: is the land in the floodplain within the Town of Bethlehem subject to a one percent or greater chance of flooding in any given year. The area is designated as Zone A on the Firm,

Area of special flood hazard: is the land in the floodplain within the Town of Bethlehem subject to a one percent or greater chance of flooding in any given year. The area is designated as Zone A on the FIRM, as the current definition relates to maps and Special Flood Hazard Areas (SFHA) that do not apply to Bethlehem.

Base flood: means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement: means any area of the building having its floor sub grade (below ground level) on all sides.

Breakaway wall: this definition can be deleted in its entirety, as it does not relate to Bethlehem's SFHA construction practices.

Building: see "structure".

Building Height: The vertical distance of the highest point of the roof beam in the case of a flat roof and of the top of the rafters at the ridge in the case of a sloping roof as measured from the average ground level along the front of the building.

Camouflaged: a telecommunication facility that is disguised, hidden, or placed within an existing or proposed structure.

Capital Improvement: Only public facilities or assets that are owned or operated, or owned and operated, by the Town of Bethlehem, whether individually or cooperatively with other governmental entities, like the Bethlehem Village District. Such facilities include, but are not limited to:

- Town owned and maintained road systems
- Public School Facilities
- Municipal Buildings
- Village District Water and Sewer Systems

Capital Improvement Program (CIP): A plan developed by the municipality consistent with RSA 674:5-7-7, which identifies the need for public facility capital improvements, the estimated cost of such improvements and proposed funding sources. The plan shall specify the level of service standards adopted by the Town for each type of facility, which is to be the subject of an impact fee, and such standards shall apply equally to existing and new development. A capital improvements program shall cover a six-year period. The CIP shall assess the following:

- The need for capital improvements required to serve new development;
- Any current deficiencies in capital facilities serving existing development, in light of level of service standards, and the means by which such existing deficiencies will be eliminated within a reasonable period of time by means other than impact fees; and
- Any additional demands anticipated to be placed on specified capital facilities by new development.

Co-location: the use of a single tower on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several towers on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Commercial: Shall mean any use of any earth material for sale or resale on-or off-site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.

Condominium Unit: A portion of a condominium building designated and intended for individual ownership and use, together with the undivided interest in the common area associated with the unit. (See RSA 356-B for other related definitions.)

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

Dimension Stone: Shall mean rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or internal parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in this section.

Dwelling, Multifamily: A residential building designed for and occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided. *(Adopted 3/9/04)*

Earth: Shall mean sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

Environmental Assessment (EA): an EA is a document required by the Federal Commission and the National Environmental Policy Act when a telecommunication facility is placed in certain designated areas.

Equipment shelter: an enclosed structure, cabinet, shed, vault, or box near the base of the tower within which are housed equipment for telecommunications facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Excavation: Shall mean a land area, which is used, or has been used, for commercial taking of earth.

Excavation Area: Shall mean the area within an excavation site where excavation has occurred or is eligible to occur under this regulation.

Excavation Site: Shall mean any area of contiguous land in common ownership upon which excavation takes place.

Expansion: Shall mean either 1) the removal of topsoil from a new area or 2) excavation beyond the limits of the Town and/or the area which in 1979 had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for tax purposes as part of the same tract.

FAA: an acronym that shall mean the Federal Aviation Administration.

FCC: an acronym that shall mean the Federal Communications Commission.

Fees: Shall mean the following:

- a. Filing fee shall mean the required fee, to be paid upon submission of an excavation application to the Planning Board, to defray the cost of the Town of reviewing the application.
- b. Excavation fee shall mean those fees paid by the applicant to the Planning Board before issuance of a permit to defray the cost of permit compliance.
- c. Inspection fee shall mean any costs associated with site inspections should the Planning Board require the advice of an engineer or other agent to ensure compliance with the conditions of the permit.

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 Hazard Boundary Map (FHBM): means an official map of a community, issued by the Federal Emergency Agency, where the boundaries of the: flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood Insurance Rate Map (FIRM): means the official map of the community, on which the Federal Emergency Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

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

Flood proofing: means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: see "regulatory floodway."

Functional 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 facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Guyed tower: any tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height: height shall mean the distance measured above grade to the top of the structure. When referring to a tower, the height shall be measured to the highest point on the tower, even if said highest point is an antenna or other appendage.

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:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) as preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. 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.
3. Individually listed on a state inventory of historic places in states with historic, preservation programs which have been approved by the Secretary of the Interior, or;

4. Individually listed on a local inventory of historic places in communities with historic preservation, programs which have been approved by the Secretary to qualify as a registered historic district;
 - A. By an approved state program as determined by the Secretary of the Interior, or;
 - B. Directly by the Secretary of the Interior in states without approved programs.

Impact Fee: Any charge, fee, or assessment imposed upon new development by the Bethlehem Planning Board to fund all or a proportionate share of the municipal facilities/services improvement occasioned by the new development from whom the fee is collected; or to recoup the cost of existing capital improvements made in anticipation of the needs of the new development. Land dedications or provision of capital improvements, which exclusively benefit new development, are not considered as credit against impact fees.

Lattice tower: a type of tower with multiple legs and structural cross bracing between the legs that may be self-supporting and freestanding or may be guyed.

Light Industry: Any manufacturing or industrial use including processing, fabrication and assembly provided that no such use shall create smoke, odors, sound or other hazards beyond the premises, and provided that no such use shall generate hazardous waste. *(Adopted 3/9/04)*

Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on an permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:3 1 -a.

Manufactured Housing Park: Manufactured Housing Park means 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. Nothing herein shall be construed to apply to premises used solely for storage or display of manufactured housing.

Manufactured Housing Subdivision: A manufactured housing subdivision, as defined in RSA 672:14, created exclusively for the placement of manufactured housing on individually owned lots.

Mast: a thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole: a thicker type of tower than a mast that is self-supporting with a single shaft of wood, steel, or concrete, or other material that is designed for the placement of antennas and arrays along the shaft.

Mount: the structure or surface upon which antennas are mounted, including the following types of mounts: roof mounted (mounted on the roof of the building, side-mounted (mounted on the

side of the building), ground-mounted (mounted on the ground), structure-mounted (mounted on a structure other than a building).

New Development: Any building activity, any material alterations of the use or for the appearance of any structure or land, or any subdivision of land into two or more parcels which results in potential demand on municipal capital facilities.

Notice of Intent: Shall mean a written notice to the Planning Board and to the Conservation Commission informing them of the intent to apply for a permit to excavate for a new excavation, or for expansion of, or continuation of an excavation in operation at the time of adoption of this regulation.

Per Pupil School Capital Cost: Costs for school facilities capital improvements multiplied by Bethlehem's percentage of total school assessments, divided by the number of Bethlehem students enrolled in a given year, as determined in the Bethlehem CIP.

Preexisting towers and antennas: shall mean any tower or antenna lawfully constructed prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

“Pre-site built” housing: A manufactured housing unit with a removable chassis, delivered to the site in two or more sections, which, when erected on a site, has a total width of not less than twenty-four (24) feet and a total length greater than its width, shall be considered pre-site built housing as defined in RSA 674:31a when its chassis is removed and its construction meets all federal, state and local building codes required for site built single-family dwellings.

Reclamation: Shall mean the restoring of an excavation site to a minimum standard as outlined in Article XVII of these regulations.

Recreational Condominium Development: A planned condominium development, which is based on or around a distinct recreational attraction. A significant portion of the land and/or facilities must be permanently devoted to large-scale or a variety of recreational activities.

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 tow able by a light duty truck, and;
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulator: Shall mean the Bethlehem Planning Board for excavation only.

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 one foot at any point.

Riverine: means relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

School Age Children Multiplier: Estimated number of school-age (K-12) children per housing unit based on housing type and number of bedrooms as determined in the Bethlehem CIP. Each type of housing unit will have its own multiplier.

Special flood hazard area: means an area having special flood, mudslide (i.e. Mudflow) and/or flood-related erosion hazards, and shown on an FIRM as Zone A, (See Area of Special Flood Hazard).

Start of Construction: includes substantial improvement, 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 a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation: or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwellings units or part of the main structure.

Stationary Manufacturing and/or Processing Plant: Shall mean facilities which are permanently placed on a site for the purposes of sorting, washing, and screening, crushing, classifying, drying or processing excavated earth material.

Structure: Any man made improvement to the land, or 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.

Structure Height: The distance measured from the natural and undisturbed contour of the land surrounding the area of the structure to the top of it. When referring to a structure, the height shall be measured to the highest point of it. (*Adopted 3/03*)

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

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:

- a. the appraised value prior to the start of the initial repair or improvement, or
- b. 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".

Telecommunications facilities: shall mean any structure, antenna, tower, or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.

Tower: shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.

View shed: shall mean any property from which the telecommunications facility can be seen.

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.

Article XXII Amendments

These Regulations may be amended in accordance with Chapter 31 of the N.H. Revised Statutes Annotated, by a majority vote at any regular Town Meeting when such amendment has received a preliminary public hearing and a final public hearing by the legislative body, which hearing has been advertised and given a legal fifteen (15) day notice: or when such amendment has been published in its entirety in the warrant calling for the meeting.

Article XXIII Saving Clause

The invalidity of any section or provision of these Regulations shall not invalidate any other section or provision thereof.

Article XXIV Effective Date

These Regulations shall take effect upon passage, March 9, 1971. Revised: 1974, 1981, 1983, 1984, 1985, 1986, 1988, 1989, 1999, 2000, 2001, 2003, 2004, 2005, 2006.

REGULATIONS

Excavation Regulations (Adopted 11/18/92)

A. GENERAL PURPOSE AND AUTHORITY

These regulations are adopted in accordance with the authority granted by New Hampshire RSA 155:E relative to the local regulation of excavations. The purpose of this regulation is to provide for reasonable opportunity for excavation, to minimize safety hazards created by open excavation; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution and to promote soil stabilization.

B. DEFINITIONS

1. **“Abutter”**: Shall mean 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 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/her land will be directly affected by the proposal under consideration.
2. **“Applicant”**: Shall mean the owner of the property to be excavated or the owner’s Agents, so designated in writing as part of the excavation application.
3. **“Application”**: Shall mean a completed application for an excavation permit
4. **“Commercial”**: Shall mean any use of any earth material for sale or resale on-or off-site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
5. **“Dimension Stone”**: Shall mean rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or internal parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in 2.06.
6. **“Earth”**: Shall mean sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.
7. **“Excavation”**: Shall mean a land area which is used, or has been used, for commercial taking of earth.
8. **“Excavation Area”**: Shall mean the area within an excavation site where excavation has occurred or is eligible to occur under this regulation.
9. **“Excavation Site”**: Shall mean any area of contiguous land in common ownership upon which excavation takes place.
10. **“Expansion”**: Shall mean either 1) the removal of topsoil from a new area or 2) excavation beyond the limits of the Town and/or the area which in 1979 had been

contiguous to and in common ownership with the excavation and has been appraised and inventoried for tax purposes as part of the same tract.

11. **“Fees”**: Shall mean the following:
 - a) Filing fee shall mean the required fee, to be paid upon submission of an excavation Application to the Planning Board, to defray the cost of the Town of reviewing the application.
 - b) Excavation fee shall mean those fees paid by the applicant to the Planning Board Before issuance of a permit to defray the cost of permit compliance.
 - c) Inspection fee shall mean any costs associated with site inspections should the Planning Board require the advice of an engineer or other agent to ensure compliance with the conditions of the permit.
12. **“Notice of Intent”**: Shall mean a written notice to the Planning Board and to the Conservation Commission informing them of the intent to apply for a permit to excavate for a new excavation, or for expansion of, or continuation of an excavation in operation at the time of adoption of this regulation.
13. **“Reclamation”**: Shall mean the restoring of an excavation site to a minimum standard as outlined in Article VIII of these regulations.
14. **“Regulator”**: Shall mean the Bethlehem Planning Board for Excavation only.
15. **“Stationary Manufacturing and /or Processing Plants”**: Shall mean facilities which are permanently placed on a site for the purposes of sorting, washing, and screening, crushing, classifying, drying or processing excavated earth material.

C. PERMIT REQUIRED

No owner shall permit any excavation of earth on his/her premises without first obtaining a permit. Excavations in operation at the time of adoption of this regulation shall have until August 4, 1991 to file an application with the Planning Board.

1. **Pre-1979 Lawful Excavations**: An excavation which lawfully existed as of or before August 24, 1979 from which earth material of sufficient weight or volume to be Commercially useful has been removed during the 2 year period before August 24, 1979 may continue to excavate on the excavation site without a permit subject to:
 - a. The excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances that may have been in effect.
 - b. The excavation area may not be expanded beyond the limits of the Town in which it is situated and the area which, on August 24, 1979 and at all times subsequent thereto, has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site. In this paragraph the

term contiguous means land whose perimeter can be circumscribed without interruption in common ownership, except for roads or other easements, in a single town. It is further provided that when such excavation is not a permitted use in that location by the Bethlehem Zoning Ordinance or when it is only allowed by special exception, expansion may be restricted or modified with conditions by order of the Planning Board if after notice to the owner and a hearing, the Board finds that such expansion will have a substantially different and adverse impact on the neighborhood.

- c. The excavation shall be performed in compliance with the express operational and reclamation standards in RSA 155 E.
 - d. The owners or operators of an existing excavation area for which no permit has been obtained shall file an excavation report with the Planning Board no later than August 4, 1991. Any existing excavation report with the Planning Board no later than August 4, 1991. Any existing excavation that fails to file a report before this date shall obtain a permit from the Planning Board before continuing excavation of the site.
2. **Pre-1979 Operating Contiguous Excavation:** Excavations from a site contiguous to, or contiguous land in common ownership with, stationary manufacturing a processing plants in operation as of August 24, 1979, which use earth from said excavation site. Such excavations shall be performed in compliance with the express operational and reclamation standards contained in RSA 155 E.
 3. **Pre-1979 Permitted Contiguous Excavation:** Excavations from a site contiguous to or contiguous land in common ownership with, stationary manufacturing and processing plants which have been granted state or local permits since August 24, 1979, and which use earth obtained from said site. The operation and reclamation of such sites shall be governed by the conditions of the state or local permit and any extensions or renewals thereof.
 4. **Highway Project Excavations:** An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:
 - a. A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Planning Board prior to the start of excavation, and such excavation shall not be exempt from the provisions of Articles 6, 7, and 8 of this regulation, nor from any other land use regulations of the municipality. Failure to file a copy of the pit agreement with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provision of Article XVII of these regulations.
 - b. Such excavation shall not be exempt from local zoning or other applicable ordinances, unless such exemption is granted pursuant to subparagraph (c), or

From the express operational and reclamation standards, which express standards shall be the sole standards with such excavations must comply in order to retain their non-permit status as provided under this paragraph. Before beginning such excavation, the governmental unit or its agents shall certify to the regulator that:

1. The excavation shall comply with the express operational and reclamation standards or RSA 155-E: 4-a, RSA 155-E:5 and 155-E:5-a.
2. The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter, unless requested by said abutter.
3. The excavation shall not be unduly hazardous or injurious to the public welfare.
4. Existing visual barriers in the area specified in RSA 155-E:3, III shall not be removed, except to provide access to the excavation.
5. The excavation shall not substantially damage a known aquifer, so designated by the U.S.G.S.
6. All required permits for the excavation from state or federal agencies have been obtained.

- c. The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 115-E:2, IV-(c).

5. **Incidental Excavation:** An excavation that is exclusively incidental to the lawful construction or alternation of a building or structure or the lawful construction or alternation of a parking lot or way including a driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until all required state and local permits necessary for the construction or alteration of the building, structure, parking lot, or way have been issued.
6. **Agricultureal/Silvicultureal Excavations:** An excavation that is incidental to agricultureal or silvicultureal activities, normal landscaping or minor topographical adjustment.
7. **Dimension Stone Excavations:** An excavation from a granite quarry for the purpose of producing dimension stone, is such excavation requires a permit under RSA 12-E.
8. **Governmental Taking of Contiguous Land:** A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove earth at a later date after written notification to the regulator.

D. ABANDONED EXCAVATIONS

The permit exemptions under Article III shall not apply to any abandoned excavations as defined in Article 4.01.

1. **Definition:** Any excavation for which the affected area has not been brought into Complete compliance with the reclamation standards of this regulation (Article VI And VIII) shall be deemed abandoned if excavation occurred on the site subsequent To August 24, 1979, and:
 - a. No earth material of sufficient weight and volume to be commercially useful has been removed from the excavation site during any two (2) year period before, on or after August 4, 1979. The owner or operator may, however, extend the period by submitting a reclamation time table to the Planning Board and posting a bond or other surety in a form and amount prescribed by the regulator sufficient to cover the costs or reclamation; or
 - b. The excavation is in use and is not an excavation or excavation site as defined, but the owner or operator has not brought the affected area into compliance with incremental reclamation requirements of this requirements of this regulation within three (3) years of August 4, 1989 or posted a bond or other surety sufficient to cover the costs or reclamation; or
 - c. The owner or operator of the excavation has neither secured a permit pursuant to this regulation nor filed a report of an existing excavation within the prescribed time period.

2. **Reclamation of Abandoned Excavation:**
 - a. The Planning Board may order the owner of any land containing an abandoned Excavation to either file a reclamation time table and bond or other surety, or to Complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation within the prescribed time period may result in the regulator requesting the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's cost shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

 - b. The site of a excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into Compliance with the reclamation standards of these regulation may be made Subject to the remedy prescribed in 4.02a only if the regulator finds in writing That specified reclamation measures are necessary to eliminate or mitigate an Identified hazard to public health or safety.

E. APPLICATION FOR PERMIT

Any owner or owner's designee subject to this chapter shall, prior to excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for a permit for

excavation and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall contain at least the following information in addition to other regulations, checklist and site plan review requirements. The Planning Board may waive one or more of the items listed under this section.

1. **Ownership of Land:** The name and address of the owner of the land to be excavated, the person who will actually do the excavating and all abutters to the premises on which the excavation is proposed;
2. **Excavation Plan:** An Excavation Plan at a scale of no less than one (1) inch equals one hundred (100) feet and showing the area to be excavated and the land falling within 200 feet of the perimeter of the area to be excavated. All plans submitted shall be of a quality that they are easily understood and of accuracy that compliance can easily be checked. At least three (3) copies of final plans shall be filed with the Planning Board prior to issuance of the permit.

The Excavation Plan shall include:

- a. A locus map, at a scale of one inch equals one thousand feet (1"=1000), showing the Proposed operation in relation to existing roads;
- b. Existing topography at contour intervals of five or fewer feet, based on mean sea Level. The Planning Board may require 2 foot contour intervals if deemed necessary.
- c. Cross sections of existing topographic conditions;
- d. The breadth, depth and slope of the proposed excavation and existing excavation where applicable, and the estimated duration of the excavation;
- e. Wooded and heavily vegetated areas;
- f. All surface drainage patterns including wetlands, standing water and intermittent streams;
- g. Location of all easements, on or below the ground;
- h. Location and width of all public roads and rights-of-way;
- i. Aquifer locations based on most recent USGA mapping;
- j. A log of borings or test pits that extend to either the seasonal high water travel, ledge or a minimum of six(6) feet below the maximum proposed excavation depth, including location and soils data;
- k. Location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like on site;
- l. The location of existing buildings, structures, septic systems, and wells within one hundred and fifty (150) feet of the boundary;
- m. Existing zoning districts, tax map numbers of owners and abutters lots;
- n. Any existing and all proposed excavation areas;
- o. Any existing and all accessory facilities and/or activities;
- p. Existing and proposed access roads, including width and surface materials;
- q. Existing and proposed parking areas;
- r. Existing and proposed fencing, buffers or visual barriers, including height and materials;
- s. Storage areas for topsoil and stabilization plan.

- t. All measures to control erosion, sedimentation, using the method and standards in the publication "Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire as amended.
 - u. Stump, stone and debris storage and/or disposal areas;
 - v. All measures to minimize air pollution, noise and hazards to human safety;
 - w. The location of all driveways and road intersections within two hundred (200) feet of the property boundary;
 - x. Hauling information, including routes, weight of vehicles, trips per day, etc; and
 - y. Copies of any applications, plans and permits required by state or federal regulations.
 - z. A plan for the handling of fuel and chemicals and storage, if required.
3. **Reclamation Plan:** A Reclamation Plan at the same scale as the Excavation Plan, and covering the same area. All plans submitted shall be of a quality that they are easily understood and of accuracy that compliance can easily be checked. At least three (3) copies of final plan shall be filed with the Planning Board prior to issuance of a permit.

The Reclamation Plan shall include:

- a. All boundaries of the area proposed for reclamation;
- b. Phasing plan for restoration;
- c. Final topography of the area proposed for reclamation showing final grades;
- d. Cross sections of final topography, visual barrier location and types;
- e. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities;
- f. Schedule of final reclamation activities including: top soiling, seeding mixtures, cover vegetation, fertilizer types, and rates;
- g. Photographs of the site before excavation (from at least two different vantage points);
- h. Subsequent use of the site, if known or anticipated and
- i. Copies of related permits approvals and other documents pertinent to the excavation proposal, such as WSPCD, Wetland Board, stump disposal, State Highway Department (access permit), any other permits required by state or federal regulations, and such other information as the Planning Board may reasonable require.

The Planning Board may require on environmental assessment of the proposed excavation and restoration plan. All costs for such assessments shall be borne by the applicant.

F. ADDITIONAL PERMIT REQUIREMENTS

1. **Reclamation Size and Time Limit on New Excavations:** No excavation of a new area shall exceed five acres in size at any one time. In addition, the size of the area for any permitted excavation shall not exceed that area which can be excavated and reclaimed according to the approved application within a one (1) year period.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeited, and use these monies to reclaim The site, in addition to the requirements of Article XIII (Issuance of Permit). At no

Time shall more than one permit be allowed on a lot of record.

2. **Reclamation Size and Time Limit on Expansions of Existing Excavations:** No expansion and reclamation of an existing excavation shall exceed the area of the existing excavation plus five acres. However, the entire excavation area shall not exceed that area which can be excavated a reclaimed according to the approved application within a one (1) year period. If an existing operating excavation at the time of adoption of this regulation cannot be reclaimed within one (1) year, no additional new excavation into an undisturbed areas shall be permitted until the existing excavation area is reclaimed based on an approved permit as required by this regulation. In the case of an excavation in operation at the time of adoption of this ordinance that is not being expanded, the permit period allowed for reclamation shall also be one (1) year.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or the entire bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Article XIII (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

3. **Hours of Operation:** The hours of operation shall be determined by the Planning Board during the permit process. The Planning Board shall establish start-up and shut-down times for all machinery associated with the excavation. The Planning Board may also specify days or week for operation. The level of operation and the type of neighborhood affected shall be considered by the Planning Board in establishing these hours.
4. **Hauling Information:** Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Planning Board prior to the issuance of an Excavation Permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending upon surrounding land uses and road conditions. The Planning Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and optimized in the hauling plan.

G. OPERATIONAL STANDARDS

1. **Setback from Property Lines:** No excavation covered under RSA 155-E shall be Permitted closer than 50 feet to the boundary of a disapproving abutter or within 10 Feet of an approving abutter unless approval of a lesser distance is requested by the Abutter.
2. **Setback from Dwelling:** No excavation covered under RSA 155-E shall be permitted closer than 150 feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.

3. **Setback from Roadway:** No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
4. **Visual Buffers:** Vegetation shall be maintained or provided within the peripheral areas required by Articles 7.01, 7.02 and 7.03.
5. **Natural Vegetative Buffers:** Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property valuation.
6. **Size Limit:** No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Planning Board.
7. **Environmental Quality:** Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process.
8. **Depth Limit:** No excavation shall be permitted so close to the seasonal high water table or to bedrock (as indicated by the required borings or test pits) as would preclude the subsequent re-use of the site in accordance with existing public health standards, local zoning, and local master plan.
9. **Fencing:** Where the depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
10. **Drainage:** No area shall be excavated which will cause the accumulation of freestanding water for prolonged periods. Appropriate drainage shall be provided.
11. **DES-WSPCC PERMIT:** Excavation projects requiring a permit from the Water Supply and Pollution Control Division of Department of Environmental Services (DES) under RSA 149:8-a shall file a copy of the permit with the Planning Board prior to receiving a permit.
12. **Topsoil Removal:** Topsoil shall be stripped from the excavation area and stockpiled on-site for use in subsequent reclamation of the site. No topsoil shall leave the site.
13. **Temporary Structures:** All temporary structures required during excavation operation shall be removed from the site within 30 days after such operations cease.
14. **Transport Vehicles:** All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
15. **On-site Storage of Fuels and Chemicals:** No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with the State laws and rules pertaining to such material and as so approved by the Planning Board.
16. **Site Reclamation:** Prior to the removal of topsoil and other material from a new excavation area, the excavator shall file a reclamation bond or other surety, as

prescribed by the Planning Board, sufficient to cover the cost of site reclamation. See Article XV of these regulations.

17. **Setbacks for Water and Wetlands:** No excavation shall be permitted within 75 feet of and great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 feet of any other stream, river or brook which normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetland as designated in accordance with FSA 482-A:15, or any other wetland greater than 5 acres in area, as defined by the Wetlands Board.

2. SITE RECLAMATION STANDARDS

The Planning Board or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed. All costs relative to these inspections shall be borne by the applicant.

- a. **Slope Standards:** No slope in soil material shall be left steeper than 3:1 (three horizontal feet from each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no case shall a soil material slope be left steeper than 2:1.
- b. **Debris Removal:** All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Planning Board or its designee.
- c. **Grades:** Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical after site excavation has been completed, but no later than one year.
- d. **Topsoil:** Stockpiled topsoil shall be spread over the disturbed area to a depth to allow and maintain vegetation. Area posing the most critical problem for re-vegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be fertilized, and seeded with a grass or grass-legume mixture and mulched. Re-fertilizing one year after the completed reclamation shall also be required.
- e. **Vegetation:** If deemed necessary by the Planning Board, suitable trees or shrubs shall be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices. Age and size of the trees or shrubs shall be determined by the Planning Board or their designee.
- f. **Drainage:** Upon completion of the reclamation operation, the topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points.
- g. **Release of Surety:** The responsible party shall not be released from its performance commitment (reclamation bond) until the Planning Board

certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.

- h. **Time Limit:** Any excavated area of 5 contiguous acres or more, which either is depleted of commercial earth m

H. PROHIBITED PROJECTS

The Planning Board shall not grant a permit:

1. **Violation of Article VII:** Where the excavation would violate the operational Standards of Article VII;
2. **Injury to Public Welfare:** where the issuance of the permit would be unduly Hazardous or injurious to the public welfare;
3. **Visual Buffers:** where existing visual barriers would be removed, except to provide Access to the excavation;
4. **Aquifer:** where the excavation would substantially damage a known aquifer, so Designated by the United States Geological Survey;
5. **Impact on Water bodies:** where the excavation is planned beneath or adjacent to inland surface waters or wetlands in such a manner that a permit is required from the Department of Environmental Services or federal agencies with jurisdiction over the premises; but the Planning Board may approve the application when all the Necessary permits have been obtained;
6. **Violation of Local Ordinances:** where the excavation is not permitted by other Applicable ordinances.

I. WAIVERS

The Planning Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Articles VI, VII, VIII and IX for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

J. APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit. An application for amendment to increase the size of a permitted excavation may be allowed if a least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site Reclamation Plan.

I. ISSUANCE OF PERMITS

If the Planning Board, after public hearing, approves the application for a permit and determines it is not profited by Article IX it shall grant the excavation permit upon receipt of an excavation application fee of \$50.00 and the posting of a bond or other surety with the municipal treasurer in the amount determined by the Planning Board to be sufficient to guarantee compliance with the permit. A copy of the permit shall be prominently posted at the excavation site and the principal access thereto. A permit shall not be assigned or transferable without the prior written consent of the Planning Board. A permit shall specify the date upon which it expires. The Planning Board may include in a permit such reasonable conditions as are consistent with the purposes of this regulation including the provision of visual barriers to the excavation. In addition, a permit fee in an amount determined by the planning board for application plan review and annual compliance review, by the Planning Board or its designated agent, shall be assessed the applicant prior to issuance of a permit. This permit fee shall also include sufficient funds for the municipality's designee or other agents of the Planning Board to periodically conduct field reviews at the excavation site to ensure compliance with the approved excavation and reclamation.

J. WITHDRAWAL OF PERMIT

A permit to excavate is automatically withdrawn if no substantial work is done on the site for a period of three (3) years. Reclamation of areas already **worked is mandatory**.

K. BONDING

The Planning Board shall establish the amount of a performance bond prior to the issuance of the excavation permit. The bond amount shall be reasonable sufficient to guarantee compliance with the reclamation standards in Article VIII. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per acre reclamation costs. The bond will be returned to the applicant when reclamation work has been completed and a final satisfactory site inspection has been conducted by the Planning Board or its designee. The applicant shall pay for any bond reviews by the Town, or any other professional service necessary to review the proposed excavation/reclamation plan.

L. APPEAL

If the Planning Board Disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Planning Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within 10 days of the date of decision appealed from. The Planning Board shall either grant or deny the request for rehearing within 10 days, and if the request is grated, a rehearing shall be scheduled within 30 days. Any person affected by the Planning Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677.

M. ENFORCEMENT

1. **Suspension or Revocation of Permit:** The Planning Board or its duly authorized Agent may suspend or revoke the permit of any person who has violated any provision of his/her permit or this regulation or made a material misstatement in the application upon which his/her permit was granted. Such suspension or evocation shall be subject to a motion for rehearing thereon and appeal in accordance with Article 16. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provisions of This regulation.
2. **Fines:** Fines, penalties and remedies for violations of this regulation shall be the Same as for violation of RSA 676:15 and RSA 676:17.
3. **Ascertaining Compliance:** To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent(s) may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this regulation.
4. **Misdemeanor:** Whoever violates any provision of this regulation, a permit issued hereunder, or a valid order issued hereunder, shall be guilty of a misdemeanor.
5. **Cease and Desist Order:** Operators who fail to file for permit will be issued a cease and desist order.

N. SEPARABILITY

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

O. EFFECTIVE DATE

This regulation shall become effective immediately upon its adoption.

Bethlehem, New Hampshire

Zoning Districts

Amended March 2005

