

TOWN OF RYE, NEW HAMPSHIRE

ZONING ORDINANCE

Amendments through March 2016

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**ARTICLE I
INTRODUCTION**

SECTION 100 TITLE:

This ordinance may be known and may be cited as “Zoning Ordinance of the Town of Rye, New Hampshire.”

SECTION 101 AUTHORITY:

This ordinance is enacted pursuant to the Planning and Zoning Enabling Legislation of the State of New Hampshire, which is embodied in New Hampshire Revised Statutes Annotated, Title LXIV, and Chapters 672-677.

SECTION 102 PURPOSE:

This ordinance is enacted for the purpose of promoting the health, safety and general welfare of the community. The regulations herein give consideration to the character and suitability for particular uses of area in the Town of Rye, the conservation of the value of buildings and the encouragement of the most appropriate use of land throughout the Town of Rye. The ordinance is designed to:

- Lessen congestion in the streets;
- Secure safety from fire, panic and other dangers;
- Promote health and the general welfare;
- Promote adequate light and air;
- Prevent the overcrowding of land;
- Avoid undue concentration of population;
- Facilitate adequate provision of transportation, solid waste, water, sewerage, school and Recreation facilities; and,
- Assure proper use of natural resources and other public requirements.

SECTION 103 SCOPE:

No land in the Town of Rye shall hereafter be used for building, development or otherwise and no structure shall be erected, enlarged, materially altered or moved, except in conformance with this ordinance.

SECTION 104 LIMITED APPLICABILITY WITHIN RYE BEACH PRECINCT:

As authorized by special state statute, the Rye Beach Precinct has separate and primary zoning powers within its boundaries. Within the Rye Beach Precinct one must comply primarily with the Precinct’s zoning ordinance and, where it is silent, one must also comply with the Zoning Ordinance of the Town of Rye, New Hampshire.

SECTION 105 ORIGINS:

This ordinance represents a simplification, reorganization, statutory update and clarification of the zoning regulations in effect in the Town of Rye as of the date of its enactment. It replaces the zoning ordinance adopted on March 11, 1969, which had been amended several times. The Town of Rye’s first zoning ordinance was enacted in 1953.

ARTICLE II USE DISTRICTS

SECTION 200 ESTABLISHMENT OF USE DISTRICTS:

The Town of Rye is hereby divided into the following use districts:

- Single Residence District (SR)
- General Residence District (GR)
- Public Recreation District (REC)
- Business District (B)
- Commercial District (C)
- Conservation District (CON)
- Industrial District (I)

Each district may be referred to hereinafter by its respective abbreviation.

SECTION 201 ZONING MAP:

201.1 Establishment: The districts aforesaid and the boundaries of such districts shall be such as shown upon a map prepared by the Rye Planning Board entitled "ZONING MAP TOWN OF RYE Rockingham County, New Hampshire 1992" and drawn by James W. Sewall Company at a scale of 1" = 1000', together with all notations, references, and other matter and things set forth and, or attached thereto, on file in the office of the Town Clerk of the Town of Rye, New Hampshire. This same map is hereby adopted and shall be known as the Official Zoning Map of the Town of Rye, and shall be certified by the Selectmen and the Town Clerk, and the Selectmen and the Town Clerk shall make all changes as may be effected by any amendment or changes in this ordinance, such things to be made properly and promptly. (Rev. 1993, 2002, 2007, 2010)

Amended March 9, 2010 to enlarge the Commercial District by moving the boundary between the Commercial District and the Single Residence District this is located west of Lafayette Road and north of Breakfast Hill Road a distance of 800 feet further to the west so that the new boundary is 1300 feet from Lafayette Road and to add a new Multi-Family Dwelling Overlay District, per section 307 of this Ordinance.

201.2 Location: The original of said Zoning Map shall remain on file in the records of the Town Clerk and copies thereof shall be available at all times through the Selectmen and Town Clerk.

201.3 Final Authority: Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which is on file with the Town Clerk shall be the final authority as to the current zoning status of any area within the Town of Rye.

201.4 Boundaries of Districts: Where uncertainty exists with respect to the boundaries of the various districts, as shown on the map accompanying and made a part of this ordinance, the following rules shall apply:

- A. The district boundaries are streets unless otherwise shown, and where the districts designated on the map accompanying and made a part of this ordinance are bounded approximately by streets, said street centerline shall be construed to be the boundary of such district. The district boundaries along streets are generally defined by a line parallel to such street line and a designated number of feet there from as appears on the said map.

- B. Where the district boundaries are not otherwise indicated and where the property has been divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the designated districts on the map accompanying and made a part of this ordinance are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such district unless said boundaries are otherwise indicated on the map.
- C. In subdivided property, the district boundary lines on the map accompanying and made a part of this ordinance shall be determined by the use of the scale contained on such map.
- D. Where not otherwise provided for, or a question exists, the Planning Board shall determine the exact boundary line.

SECTION 202 APPLICABILITY OF USE DISTRICT REGULATIONS:

202.1 Use: No building shall be erected, reconstructed, or structurally altered nor shall any building or land be used for any purpose other than is permitted in the district in which such building or land is located.

202.2 Height: No building shall be erected, reconstructed, or structurally altered to exceed the height herein established for the districts in which such building is located.

202.3 Yards: No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this ordinance nor shall the density of population be increased in any manner except in conformity with the area regulations as hereinafter provided.

202.4 Lots: In the Single Residence and General Residence Districts only, there shall be no more than one (1) principal building on one (1) lot. (Rev. 1992)

A. Lots with two or more dwellings: A lot which has two or more dwellings is a nonconforming use. On such lots, the following are prohibited expansions of a nonconforming use. (See Section 602.1)

- Increasing the building footprint of a dwelling.
- Enlarging the bulk of a dwelling.
- Adding decks, porches or other appurtenances to a dwelling, including roof decks.
- Enlarging decks, porches or other appurtenances of a principal building.

This provision applies to all lots which have two or more dwellings, including lots having such dwellings in the condominium form of ownership. (Adopted 3/14/06)

202.5 Septic Systems: Construction of septic systems shall be set back twenty (20) feet from side and rear lot boundaries in order to preclude flowage onto abutting property. Alteration, repairs, or replacement or extensions of existing systems must comply with NH Department of Environmental Services requirements. (Rev. 1995) (Rev. 3/11/2014).

202.6 Corner Lots: On corner lots, the driveway shall exit only to the lesser traveled street. On a corner lot, frontage, depth and front yard requirements shall be met for both streets.
(Rev. 1995)

202.7 (Reserved)

202.8 Government Uses: All publicly owned lands and buildings, including playgrounds and parks under the control of the Town, School District, County, or State, also all property which by the laws of the State of New Hampshire is exempt from taxation in whole or in part, shall comply with the requirements of the zoning district(s) in which they are located.

202.9 Prohibited Uses: There shall not be permitted in any district any:

- A. Junk yards.
- B. Apartment houses.
- C. Retail or wholesale sale of fireworks; storage of fireworks intended for sale; or display for sale of fireworks. (Adopted, March 2011)
- D. Any use or thing which is injurious, noxious, or offensive to the neighborhood.

202.10 Buffer Adjacent to Residential Districts: Non-residential uses of land which abuts a boundary of a residential zoning district shall provide a fifty (50) foot wide buffer between the use and the Residential District Zone Boundary. Said buffer shall include natural or added planting of evergreens which will screen non-residential uses from residential areas during winter months. Where the buffer area is developed, further encroachment may occur only by special exception.
(Rev. 1995)

A. Buffer between Residential and Non-Residential Uses: In circumstances where a buffer will not be provided by Section 202.10, a fifty (50) feet wide buffer, measured from the property line, shall be provided, as follows. Said buffer shall include natural or added planting of evergreens which will screen non-residential uses from residential areas during winter months.

- 1) New residential building or development shall provide such a buffer from an existing non-residential use not permitted by right in a residential district or the boundary of an abutting non-residential district.
- 2) New non-residential building or development of uses not permitted by right in a residential district shall provide such a buffer from an existing residential use. Within the Commercial District, such a buffer is not required around a nonconforming residential use existent as of March 9, 2005.

If new residential development and new non-residential development are part of the same land development, the buffer shall be provided around the non-residential development in the residential districts and around the residential development in the non-residential districts. (Rev 2005)

202.11 Conversion of Seasonal Dwelling Units: Conversion of existing seasonal dwelling units shall be allowed in all zoning districts provided that: (Adopted 1992)

- A. There shall be a minimum lot size of 7,000 square feet per dwelling unit;
- B. There shall be a minimum of 600 square feet ground floor area per dwelling unit;
- C. There shall be State and/or Town approved septic system or Town sewer with sufficient capacity available;
- D. There shall be two (2) off street parking spaces per dwelling unit;
- E. Inspection and approval shall be obtained from the Rye Fire Department for heating system.
- F. Water lines shall be located in accordance with the governing regulations of the appropriate water purveyor; and (Rev. 1993)
- G. An occupancy permit shall be obtained from the Town of Rye.

202.12 Adult Establishments: (Adopted 1994 and Revised 2009)

- A. In order to mitigate their harmful effects on neighborhood children and residential neighborhoods, adult bookstores, adult video stores, adult motion picture theaters, adult cabarets, adult arcades and establishments governed by RSA Chapter 314-A, Body Art shall not be permitted:
 - 1. On any parcel located 500 feet or less from the boundaries of the Single Residence and General Residence Districts, as measured along street frontage; or
 - 2. Within 500 feet of the property line of any mobile home park.
- B. In order to prevent a concentration of adult establishments in one area, which would tend to encourage blight, devalue property and increase crime, no adult establishment shall be permitted within 1000 feet of another adult establishment.

202.13 Upland Soils: All lots shall have at least 44,000 square feet of upland soils, of which at least 30,000 square feet shall be contiguous. (Adopted 3/14/00)

202.14 Access to Lots: Access to a lot shall be over its own frontage. (While a lot may be reached via a shared driveway by permission of the Planning Board for safety reasons, a lot shall not be considered suitable for development unless it is accessible over its own frontage.) (Adopted 3/14/00)

202.15 Expiration of Special Use/Conditional Use Permits: An approved but unused special use permit or conditional use permit shall lapse two (2) years from the date of approval unless substantial construction relative to the permit has begun on the site or unless the planning board has approved an extension for good cause. Applications for an extension shall be subject to the hearing and notice requirements applicable to the original permit. (Adopted 3/11/14)

202.16 Medical Marijuana Facility. (Adopted 3/10/2015)

- A. In order to mitigate their harmful effects on neighborhood children and residential neighborhoods, any medical marijuana facilities shall not be permitted:
 - 1. On any parcel located 500 feet or less from the boundaries of the Single Residence and General Residence Districts, as measured along street frontage; or
 - 2. Within 500 feet of the property line of any mobile home park.
- B. In order to prevent a concentration of medical marijuana facilities in one area, which would tend to encourage blight, devalue property and increase crime, no medical marijuana facilities shall be permitted within 1000 feet of another medical marijuana establishment.

SECTION 203 SINGLE RESIDENCE DISTRICTS (SR):

203.1 Permitted Uses: In a SR District the following uses are permitted:

- A. Single family detached dwelling
- B. Church.
- C. Home Occupations. (Amended 2001)
 - 1. Home Occupations are characterized by customers coming to the business location such as:
 - a. Personal Services, e.g., hairdressing, food preparation, tailoring, etc.
 - b. Professional Services by members of recognized professions, e.g., doctors, engineers, architects, dentists, teachers, consultants, etc.
 - 2. Requirements.
 - a. Such occupations shall be carried on by a person at the dwelling used as the person's private primary residence.
 - b. Such occupation shall not occupy an area larger than one-third of the area of such residence interior.
 - c. No more than one other person shall be employed.
 - d. There shall be no display from the street nor advertising except in a professional or announcement sign not exceeding four square feet in area.
 - e. There shall be no disturbance to the local environment visually or from noise, noxious fumes, night time lighting, excessive traffic, or any other actions beyond what is customary in the neighborhood.
- D. Public school education use.

- E. Farm, including the sale of products grown on the premises only.
- F. General municipal recreation use.
- G. Aquaculture, but only within the Wetlands Conservation District.
- H. Golf courses, provided that the golf course is an 18 hole course comprising at least 6,000 yards in length with a minimum of 60 acres in size, including a golf course as part of individual residential lot development, provided that said lots conform to all dimensional, area and other requirements of this ordinance. (Adopted 3/9/99)
 - 1. Accessory uses customarily incidental to a golf course such as tennis, paddle tennis, swimming pool, pro shop, clubhouse, practice facilities, social and business functions, storage, maintenance, food and beverage facilities and other related accessory uses are permitted.
 - 2. Any plan for additional facilities or expansion of existing facilities must receive Planning Board site development approval.
 - 3. Roadways within any golf course related development shall be built to Town standards, provide for public access and be maintained by the developer, by a homeowners' association or by individual homeowners.
 - 4. Any golf course developments shall comply with all other sections of the Town's subdivision and land development regulations.
- J. Small Wind Energy Systems, pursuant to the requirements of Section 508 of this ordinance. (Adopted 2009)
- I. Accessory uses customarily incidental to the above. (Renumbered 1999)

203.2 Uses Permitted By Special Exception: In the SR District, the following uses are permitted by special exception:

- A. Cemetery.
- B. Greenhouse or horticultural enterprise.
- C. Hospital, nursing facility, assisted living facility, religious or educational institution. (Revised 2009)
- D. Municipal use.
- E. Public utility building or use necessary for the public welfare.
- F. (Reserved) Rev. 1999
- G. Condominium Conversions in accordance with S 503.
- H. Mobile Homes in accordance with S 400.

- I. Quarries, Pits and Turf Farms in accordance with S 502.
- J. Bed & Breakfast Facilities, subject to limitations for customary home occupations in Section 203.1.C and subject also to site plan review by the Planning Board. (Adopted 3/14/00)
- K. Business Use of Residence. A property owner may use a residential property for a business use (other than a permitted home occupation) by special exception, provided that the following requirements are met, in addition to the requirements of Section 701.3. (Adopted 2003)
 - 1. The use is subordinate to a single family detached dwelling.
 - 2. The proprietor of the business is the owner-occupant of the property.
 - 3. Not more than three persons, in addition to the proprietor, shall be employed in the business. Not more than one of the three allowed employees may be employed on the premises.
 - 4. The business use shall not occupy an area greater than one-third of the floor area of the interior of the residence. Some or all of the business activity may be located in an accessory building to the residence, such as a garage or barn, but, if so, the total area occupied by the business (i.e. within the residence and/or within the accessory building) shall not be greater than one-third of the floor area of the interior of the residence.
 - 5. There shall be no more than two (2) commercial vehicles kept at the premises. Heavy construction equipment, such as backhoes bulldozers and dump trucks are not allowed. Only two axle business vehicles are allowed.
 - 6. All parking associated with the business use shall be off-street, including any employee parking. Such parking shall not be located within 50 feet of the street line and shall be screened from adjacent properties.
 - 7. The following business uses are prohibited: retail sales; kennels; automobile or small engine repair or maintenance, welding and any other uses which involve the storage on the property of motor vehicles or the parts thereof; uses which involve the storage of hazardous materials or substances.
 - 8. Businesses which generate more than 12 trips per day (including employee trips) based upon the most recent trip generation data published by the Institute of Traffic Engineers (ITE) are prohibited.
 - 9. Signage, as permitted for a home occupation by Section 203.1 C (2) (d) is allowed.
 - 10. The business use shall not detract from the residential character of the property, of the neighborhood, or of abutting properties. It shall not adversely affect the use and peaceful enjoyment of abutting residential properties.
 - 11. The business use shall not:

- a. Generate levels of noise, vibration, glare, smoke, dust, fumes, odors, or heat that are not customary in a typical residential neighborhood of Rye.
- b. Generate nonresidential truck deliveries more than once a day.
- c. Utilize the exterior spaces of residential structures or yard spaces for storage, display or other activities associated with the business in a manner that is not customary for a typical residential use.

203.3 Dimensional Requirements:

- A. **Rear Yards:** There shall be behind every building a yard having a minimum depth of one quarter of the depth of the lot, or thirty (30) feet, whichever is the less.
- B. **Side Yards:** There shall be on each side of every building a side yard having a minimum width of twenty (20) feet.
- C. **Front Yards:** There shall be in front of every building a front yard having a minimum depth of forty (40) feet, provided that no front yard need be deeper than the average of the depths of front yards on the lots next thereto on either side, a vacant lot, or a lot occupied by a building with a front yard more than forty (40) feet deep being considered as though occupied by a building with a front yard forty (40) feet deep.
- D. **Corner Clearance:** On a corner lot, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of two and a half and ten feet above the center line grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection of such street lines.
- E. **Building Area:** No dwelling shall occupy more than fifteen percent (15%) of its lot. Every dwelling unit shall have a minimum ground floor area of 960 square feet, except that dwellings having living quarters on more than one floor above the basement may be reduced in ground floor area to 720 square feet, provided that a minimum living space of 960 square feet be provided therein. Open porches, garages, carports, barns, sheds, and un-walled covered areas shall not be included as ground floor area or living space, but their additional area, together with the dwelling, shall occupy no more than fifteen percent (15%) of its lot. (Revised 3/9/99)
- F. **Area of Lot per Family:** No building shall be erected on a lot containing less than sixty-six thousand (66,000) square feet. The frontage of any lot shall be at least 200 feet and the depth of any lot shall be at least 150 feet, but in combination shall constitute the required area of 66,000 square feet. (Revision posted 11/20/98 and adopted 3/9/99. See also Section 601.1)
- G. **Height:** No building shall exceed thirty-five (35) feet in height.

SECTION 204 GENERAL RESIDENCE DISTRICTS (GR):

204.1 Permitted Uses: In a GR District the following uses are permitted:

- A. Any use permitted in a single residence district.
- B. Dwellings consisting of two single-family units to be used by not more than two families per dwelling, subject to the requirements of S 204.3 F.
- C. Accessory use customarily incident to any of the above uses.

204.2 Uses Permitted By Special Exception: In the GR District the following uses permitted by Special exception:

- A. Cemetery.
- B. Greenhouse or horticultural enterprise.
- C. Hospital, nursing facility, assisted living facility, religious or educational institution. (Revised 2009)
- D. Municipal use.
- E. Public utility building or use necessary for the public welfare.
- F. (Reserved) Rev. 1999
- G. Condominium Conversions in accordance with S 503.
- H. Mobile Homes in accordance with S 400.
- I. Quarries, Pits and Turf Farms in accordance with S 502.
- J. Bed & Breakfast Facilities, subject to limitations for customary home occupations in Section 203.1.C and subject also to site plan review by the Planning Board. (Adopted 3/14/00)

204.3 Dimensional Requirements:

- A. **Rear Yards:** There shall be behind every building a rear yard having a minimum depth of one-fourth of the depth of the lot or thirty (30) feet, whichever is the less.
- B. **Side Yards:** There shall be on each side of every building a side yard having a minimum width of twenty (20) feet.
- C. **Front Yards:** There shall be in front of every building a front yard having a minimum depth of thirty (30) feet, provided that no front yard need be deeper than the average of the depths of front yards on the lots next thereto on either side, a vacant lot, or a lot occupied by a building with a front yard more than thirty (30) feet deep being considered as though occupied by a building with a front yard thirty (30) feet deep.

- D. **Corner Clearance:** On a corner lot nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and one-half and ten feet above the center line grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said streets fifty (50) feet from the point of the intersection of such street lines.
- E. **Building Area:** No dwelling shall occupy more than thirty percent (30%) of its lot. Every dwelling shall have a minimum ground area of 960 square feet except that dwellings having living space on more than one floor above the basement may be reduced in ground floor area to 700 square feet. Open porches, garages, carports, paved driveways and other impervious areas, barns, sheds, and unwallled covered areas shall not be included as ground floor area or living space but their additional area, together with the dwelling, shall occupy no more than thirty percent (30%) of its lot. However, no dwelling unit shall provide less than 600 square feet of floor area per family. (Revised 3/9/99)
- F. **Area of Lot Per Family:** No single-family dwelling or building shall be erected on a lot containing less than forty-four thousand (44,000) square feet. Two-family dwellings require a minimum of eighty-eight thousand (88,000) square feet of lot area. The frontage of any single-family dwelling lot shall be at least 150 feet and the depth of a lot shall be at least 150 feet. The frontage of any two-family dwelling lot shall be at least 200 feet and the depth of a lot shall be at least 200 feet.
- G. **Height:** No building shall exceed thirty-five (35) feet in height.

SECTION 205 (Reserved)

SECTION 206 (Reserved)

SECTION 207 (Reserved)

SECTION 208 CONSERVATION DISTRICT (CON) (Adopted 1989)

208.1 Purpose: The purpose of the Conservation District is to permanently preserve unique natural resources from inappropriate development.

208.2 Permitted Uses. In the Conservation District only the following uses are permitted:

- A. Open space, forestry, conservation areas.
- B. Aquaculture that does not involve any construction of buildings or structures.
- C. Hiking trails, nature trails, picnic areas, bicycling trails, cross country skiing trails, and horseback riding trails, including bridges and wooden walkways appurtenant thereto.
- D. Nature centers, interpretative centers.
- E. Blinds for observing or photographing wildlife, birds and waterfowl.

- F. Uses accessory to any of the above permitted uses provided no buildings are constructed.

208.3 Uses Permitted By Special Exception: Accessory buildings customarily incidental to a permitted use, such as trail shelters, picnic shelters, sanitary facilities, and the like.

208.4 Prohibited Uses: Commercial, business, industrial and residential uses and Small Wind Energy Systems are prohibited in the Conservation District. (Revised 2009)

208.5 Dimensional Requirements:

- A. Minimum rear yard: thirty (30) feet.
- B. Minimum side yard: twenty (20) feet.
- C. Minimum front yard: forty (40) feet.

SECTION 209 PUBLIC RECREATION DISTRICTS (REC):

All lands owned by the Town of Rye, the Rye School District and the State of New Hampshire reserved for recreational purposes are classed as Public Recreation Districts and shall be used only for recreational purposes.

SECTION 210 BUSINESS DISTRICTS (B). (Rev. 1992)

210.1 Permitted Uses: In a B District the following uses are permitted:

- A. Any use permitted in any residential district, including accessory uses so authorized, and subject to all limitations there applicable.
- B. Retail establishment for the sale of groceries, dry goods, and other items commonly related to the retail grocery business.
- C. Drug stores, barber shop, beauty parlor, tailor shop, TV service, retailing of toys and hobby crafts, bicycle shop and other similar uses.
- D. Gift, novelty, and sports shops.
- E. Restaurant, tearoom, ice cream shop, or similar place serving food or beverage.
- F. Motel, tourist camp, lodging house, and hotel, but only in accordance with the provisions of Section 504 of this ordinance, insofar as applicable.
- G. Business, financial, professional or government offices. (Rev. 1996)

210.2 Uses Permitted by Special Exception: In a Business Zone the following uses are Permitted by Special Exception:

- A. Greenhouse or horticultural enterprises.
- B. Hospital, nursing facility, assisted living facility, religious or educational institution. (Revised 2009)

- C. Municipal use.
- D. Public utility building or use necessary to the public welfare.
- E. Membership club.
- F. Condominium Conversions in accordance with S 503.
- G. Mobile Homes in accordance with S 400.
- H. Quarries, Pits and Turf Farms in accordance with S 502.
- I. Any use of the same general character as any of the uses herein allowed.

210.3 Dimensional Requirements.

- A. **Rear Yards:** There shall be behind every building a rear yard having a minimum depth of one-quarter of the depth of the lot or thirty (30) feet, whichever is less.
- B. **Side Yards:** There shall be on each side of every building a side yard having a minimum width of twenty (20) feet, except that twenty (20) feet between cabins shall be sufficient on a tourist camp site.
- C. **Front Yards:** There shall be in front of every building a front yard having a minimum depth of thirty (30) feet.
- D. **Corner Clearance:** On a corner lot, the same corner clearance shall be provided as required in residence districts.
- E. **Building Area:** No more than forty percent (40%) of the area of any lot shall be occupied by buildings. The building requirements for dwellings in this district shall be the same as specified for dwellings in a General Residence District. No principal building other than a dwelling on a lot in this district shall have less than 1,200 square feet of ground floor area, excepting tourist camps.
- F. **Buffer Adjacent to Residential Districts:** If applicable, the buffer requirements of 202.10 shall apply.
- G. **Area of Lot:** No single-family dwelling or any other building shall be erected on a lot containing less than forty-four thousand (44,000) square feet, except for tourist camp sites. Tourist camp sites require a minimum of 2,200 square feet. Two-family dwellings, as permitted in the district, shall require a minimum of eighty-eight thousand (88,000) square feet of lot area. The frontage of a lot shall be at least 150 feet and the depth of a lot shall be at least 150 feet.
- H. **Height:** No building shall exceed thirty-five (35) feet in height.

210.4 Prohibited Uses: The sale of gasoline, diesel fuel, kerosene products and liquefied Petroleum gas is prohibited in the Business District. (Adopted 2001)

SECTION 211 COMMERCIAL DISTRICTS (C):

211.1 Permitted Uses: In a C District the following uses are permitted:

- A. Any use permitted in any residence district including accessory uses so authorized and subject to all limitations there applicable except that residential uses, including single family dwellings and two family dwellings, are not permitted. (Revised 3/14/00)
- B. As permitted uses, any uses permitted in the Business District by Sections 210.1 B through F, and subject to all limitations there applicable.
- C. New automobile salesrooms, new boat salesrooms, new trailer salesrooms, farm machinery salesrooms, lumber yard and building supplies.
- D. Professional offices, financial institutions, general retailing of goods and services.

211.2 Uses Permitted By Special Exception: In a C District the following uses are permitted by special exception:

- A. Any use of the same general character as any of the uses hereinbefore specifically permitted.
- B. The following uses, provided that the use shall not be detrimental or injurious to the neighborhood by reason of the emission of odor, fumes, smoke, vibrations, or noise of any other cause, to wit:
 - 1. Wholesale establishments for manufactured solid materials.
 - 2. Gasoline stations.
 - 3. Public garages.
 - 4. Diners.
- C. Cemetery.
- D. Greenhouse or horticultural enterprise.
- E. Hospital, nursing facility, assisted living facility, religious or educational institution. (Revised 2009)
- F. Municipal use.
- G. Public utility building or use necessary for the public welfare.
- H. Membership club.
- I. Condominium Conversions in accordance with S 503.
- J. Mobile Homes in accordance with S 400.
- K. Quarries, Pits and Turf Farms in accordance with S 502.

- L. Commercial Recreation. (Added, March, 2012)

211.3 Dimensional Requirements.

- A. **Rear Yards:** There shall be behind every building a rear yard having a minimum depth of twenty-four (24) feet.
- B. **Side Yards:** There shall be on each side of every building a side yard having a minimum width of twenty (20) feet.
- C. **Front Yards:** There shall be in front of every building a front yard having a minimum depth of thirty (30) feet, except along Lafayette Road, where the front yard shall have a minimum depth of sixty (60) feet. (Rev. 1996)
- D. **Corner Clearance:** On a corner lot, the same corner clearance shall be provided as required in residence districts.
- E. **Building Area:** No more than seventy-five percent (75%) of the area of any lot shall be occupied by buildings.
- F. **Area of Lot:** No building shall be erected on a lot containing less than forty-four thousand (44,000) square feet. The frontage of any lot shall be at least 150 feet and the depth of any lot shall be at least 150 feet.
- G. **Height:** No building shall exceed thirty-five (35) feet in height.

SECTION 212 INDUSTRIAL (I) DISTRICTS:

212.1 Permitted Uses: In an I District the following uses are permitted:

- A. Any use permitted in a commercial district, other than residential uses, and subject to all limitations respectively there applicable.
- B. Commercial processing establishment, the principal activities of which shall be the preparation of goods which are customarily delivered for consumption directly to their ultimate consumption outlet.
- C. Production establishment, the principal activities of which are other than manufacturing. Production may include processing and assembly of goods, together with associated administration, management, research, testing, freight handling, storage, and distribution.
- D. Trucking terminal.

212.2 Uses Permitted By Special Exception: In an I District the following uses are permitted by special exception:

- A. Any use of the same general character as any of the uses hereinbefore specifically permitted.

- B. Manufacturing of all sort, provided that the use shall not be detrimental or injurious to the neighborhood by reason of the emission of odor, fumes, smoke, vibrations, or noise or any other cause.
- C. Greenhouse or horticultural enterprises.
- D. Hospital, nursing facility, assisted living facility, religious or educational institution. (Revised 2009)
- E. Municipal use.
- F. Public utility building or use necessary to the public welfare.
- G. Membership club.
- H. Condominium conversions in accordance with S 503.
- I. Mobile homes in accordance with S 400.
- J. Quarries, gravel pits or turf farms in accordance with S 502.

212.3 Dimensional Requirements.

- A. **Rear Yards:** There shall be behind every building a rear yard having a minimum depth of twenty (20) feet.
- B. **Side Yards:** There shall be on each side of every building a side yard having a minimum width of twenty (20) feet.
- C. **Front Yards:** There shall be in front of every building a front yard having a minimum depth of forty (40) feet.
- D. **Corner Clearance:** On a corner lot, the same corner clearance shall be provided as required in residence districts.
- E. **Building Area:** No more than seventy-five percent (75%) of the area of any lot shall be occupied by buildings.
- F. **Area of Lot:** No building shall be erected on a lot containing less than forty-four thousand (44,000) square feet. The frontage of any lot shall be at least 150 feet and the depth of any lot shall be at least 150 feet. (Rev. 1992)
- G. **Height:** No building shall exceed thirty-five (35) feet in height, unless by special exception.

ARTICLE III OVERLAY DISTRICTS

SECTION 300 ESTABLISHMENT OF OVERLAY DISTRICTS:

The following overlay districts are hereby established:

- Wetlands Conservation District
- Flood Hazard District
- Historic District
- Coastal Area District
- Wireless Telecommunications Facilities District (WTF District adopted 3/9/99)
- Aquifer and Wellhead Protection District (APD District adopted 3/11/08, Rev 3/11/14)
- Multi-Family Dwelling District (MFD adopted 3/9/2010)
- Rye Landfill Groundwater Management Zone (RL-GMZ District adopted 3/12/2013)

In the areas of Rye which are included in an overlay district, the regulations of the overlay district shall apply in addition to the regulations of the applicable use district. Where regulations in a use district and an overlay district conflict; the regulation of the most restrictive district shall apply.

SECTION 301 WETLANDS CONSERVATION DISTRICT (Adopted 1977)

301.1 Definition of District: The Wetlands Conservation District comprises any and all of the following areas within the Town of Rye: (Rev. 1995, Rev., March 2012)

- A. Tidal marshes, fresh water marshes, and streams and ponds.
- B. Wetlands.

The above descriptions are solely determinative of the boundaries of the areas within the Wetlands Conservation District. As a general guide, the following delineate the location of the areas comprising the District: Town of Rye Hydric Soils, produced by Rockingham Planning Commission, 12-20-94; Hydric Soils & 2010 Aerial Photo, Rye, NH 2010.

301.2 Delineation of Wetlands: (Adopted, March 2012)

- A. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1*, January 1987. The hydric soils component of delineations shall be determined in accordance with the manual *Field Indicators for Identifying Hydric Soils in New England* (Version 3, April 2004), published by the New England Interstate Water Pollution Control Commission.
- B. Vernal pools shall be delineated based on the characteristics listed in the definition of vernal pools found in Appendix A.

301.3 Disputes about Wetlands Boundaries: Disputes about the locations of wetlands boundaries as determined by the building inspector or the planning board may be appealed to the zoning board of adjustment as an administrative appeal pursuant to Section 701.1 of this ordinance. The zoning board of adjustment may call upon the services of an independent NH Certified Wetlands Scientist to examine said area and report his or her findings to the Board for their determination of the boundary. NH Certified Wetlands Scientist is interpreted to mean a person

qualified in wetlands delineation and who is licensed by the State of New Hampshire. (Rev. 1992, 1995 & renumbered 1995, Rev.2012)

301.4 Purpose: In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables. (Renumbered 1995 and 2012)

- A. To control the development of structures and land uses on naturally occurring wetlands, this would contribute to pollution of surface and ground water by sewage.
- B. To prevent the destruction of natural wetlands which provide flood protection, recharge the ground water supply, and the augmentation of stream flow during dry periods.
- C. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of unwise use of wetlands.
- D. To encourage those uses that can be appropriately and safely located in wetland areas.
- E. To preserve wetlands for other ecological reasons such as those cited in RSA 483-A.
- F. To preserve and enhance those aesthetic values associated with the wetlands of this Town.

301.5 Permitted Uses in Tidal Marshes and Fresh Water Marshes: Within the areas defined by S 301.1-A any use is permitted that does not result in the erection of any structure or sign larger than four (4) square feet, or alter the surface configuration by the addition of fill or dredging, and that is otherwise permitted by the Zoning Ordinance and State and Federal laws. (Renumbered 1995 and 2012)

- A. Tidal Marshes and ponds: There shall be no cutting of live trees with a diameter of four and one-half (4-1/2) inches or more, measured four and one-half (4-1/2) feet above ground level within the fifty (50) foot Border Zone of the tidal marshes and the ponds of S301.7 A.2. A woods road to a maximum width of fifteen (15) feet may be made and maintained. Removal of dead and dying trees is permitted. (Amended 1990)
- B. Agriculture, such as harvesting marsh hay and gathering cast-up seaweed for fertilizer.
- C. Wildlife refuge.
- D. Recreation, such as boating, swimming, hiking, photography, and painting.
- E. Conservation areas and nature trails.
- F. Piers, wharves, floats or boat landings may be erected by a property owner on his own land at Rye Harbor, Little Harbor, Sagamore Creek, or in other tidal creeks of this Town with the necessary State and Federal approvals. There shall be no piers, wharves, jetties, or other structures erected on the ocean beaches or rocky headlands of Rye that shall project from the extreme high tide mark out from the land to or toward the ocean.

- G. The following structures are permitted on the tidal wetlands: fences, footbridges, catwalks, and wharves provided said structures are so constructed on posts or pilings as to permit the unobstructed flow of the tide, do not obstruct navigation on the tidal creeks, and preserve the natural contour of the marshes.
- H. All other uses not delineated in S 301.5 are prohibited.

301.6 Permitted Uses in Wetlands: Permitted uses include any use that does not result in the erection of any structure or signs or alter the surface configuration by the addition of fill or dredging and that is otherwise permitted by the Zoning Ordinance and State and Federal laws. Permitted uses are: (Renumbered 1995 and Amended 2012)

- A. Forestry: tree farming.
- B. Recognized conservation areas and nature trails, wildlife refuge.
- C. Non-motorized recreation.
- D. Where existing streams and drainage ways whose flow of water has become impeded by excessive vegetation of any kind or by fallen trees, logs, silt, natural detritus, or by any other means, the owner may have this condition corrected.
- H. All other uses not delineated in S 301.6 are prohibited.

301.7 Uses Permitted By Special Exception. (Renumbered 1995 and Amended 2012)

- A. **Pipelines and Transmission Lines:** Persons or corporations wishing to construct pipe lines or transmission lines for the delivery of essential public services across any designated wetland in the Town of Rye must, in addition to complying with all other local and State regulations, apply for a special exception from the Zoning Board of Adjustment and deposit a performance bond with the Selectmen to ensure that post-construction conditions are restored as nearly as possible to the original grade and appearance along the construction route. The amount of the refundable bond shall be determined by the Selectmen sufficient to pay the full costs of site restoration should the applicant fail to comply with the intent of this paragraph and terms of his permit.
- B. **Roads:** The construction of roads and driveways requires a special exception from the Zoning Board of Adjustment, which may be issued where it is shown that, due to existing conditions, no alternative route is feasible, in addition to meeting the existing requirements for special exceptions. (Rev. 1997)
- C. **Accessory buildings** not intended for human habitation and not having a septic system. (Added, 2012)
- D. Water impoundment and removal by land owners. (Added, 2012)
- E. Agriculture and aquaculture. (Added, 2012)
- F. Exceptions may not be granted: (renumbered 2012)
 - 1. Unless it is essential to the productive use of land not so zoned.

2. Unless it can be shown that such construction shall have a minimal detrimental impact upon the wetland.
3. Economic advantage alone shall not be deemed sufficient reason for the above mentioned exceptions.

301.8 Wetlands Buffer. (Amended 1990 & renumbered 1995 and 2012 & Rev. 3/11/14)

A. **Buffer Description.** The Wetlands Buffer shall include all land:
(Amended 2001, Rev 2012) (Rev 03/11/2014)

1. Within 100 feet of the edges of all tidal marshes, bays, estuaries, rivers, river tributaries and creeks, as defined by the highest flooding of the ocean tides; the edges of Eel Pond, Burke's Pond, Brown's Pond and East Rye Pond as defined by the high-water mark; the edges of all natural perennial streams and vernal pools; ponds one (1) acre or larger in size as defined by the high-water mark; and freshwater marshes, as defined by vegetation. (Rev 03/11/2014)
2. Within 75 feet of wetlands one (1) contiguous acre or larger in size. (Rev. 2002, Rev 2012)
3. Within 100 feet of wetlands one (1) contiguous acre or larger in size located within the Berry's Brook watershed, as depicted on a map titled "Berry's Brook Watershed Rye, New Hampshire Wetland Soils and Tax Parcels March 2003." Copies of the map are on file with the Town Clerk and in the Planning Department Office. (Adopted 2002, Rev 2012, Rev 3/11/2014)

B. **Buffer Restrictions.** The following restrictions shall apply in the Wetlands Buffer. Where such restrictions conflict with other requirements of this ordinance, the stricter regulation shall apply. (Amended 2002)

1. Surface alteration by the addition of fill, excavation or dredging is prohibited.
2. Septic systems are prohibited.
3. Uses permitted by S 301.5 are permitted, provided that there is no surface alteration by the addition of fill, excavation or dredging.
4. Signs that identify historic, conservation or wildlife areas are permitted.
5. a. Forestry and woodlot management is permitted in accordance with sound forestry management practices provided that no more than fifty percent (50%) of the basal area shall be cut.
b. In other situations, thinning of existing brush and trees is permitted provided that there be no:
 1. Clear Cutting; or

2. Cutting of live trees greater than four and one-half inches (4-1/2") in diameter, measured at a height of four and one-half feet (4-1/2') above ground level.
6. Uses permitted by Special Exception pursuant to S 301.7 may be permitted by Special Exception in the Wetlands Buffer, subject to the requirements of S 301.7. (Rev 3/10/15)
7. All other uses are prohibited.

301.9 Exemptions. Utilities such as the Rye Water District, Aquarion, the Rye Sewer Commission, Eversource and CATV providers are exempt from the requirements of the Wetlands Conservation District for trenching and for the installation of poles and overhead wires for utilities located within the rights-of-way of town roads; state highways and private streets and for trenching and installation of poles and overhead wires for utility replacements or repairs serving buildings existent as of the effective date of this exemption, which is March 8, 2016.

Exempt work shall be accomplished in accordance with Best Management Practices (BMP's) as described in "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials", NH DES, January 2004, as amended; "Innovative Stormwater Treatment Technologies Best Management Practices Manual" NH DES, 2002 as amended; and "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials", NH DES, January 2004, as amended.

SECTION 302 FLOOD HAZARD DISTRICT

A separate ordinance exists for controlling development and building activity within the Rye Floodplain. The ordinance is the Rye Floodplain Development and Building Ordinance. The regulations in this ordinance overlay and supplement the regulations in the Town of Rye Zoning Ordinance for the purposes of administration and appeals under State law. If any provision of this Floodplain 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.

SECTION 303 HISTORIC DISTRICT (Adopted 3/14/78, Amended 3/11/08)

303.1 Definition of District: The Rye Historic District is defined as that area from the west end of Grange Park to the intersection of Central and Washington Roads within five hundred (500) feet on either side of the centerline of Washington Road. Also included in the Rye Historic District are the State of New Hampshire Isles of Shoals islands and the Brackett Road Massacre Site and the historic Cable House located at 20 Old Beach Road.

303.2 Purposes: The purposes of the Historic District are to preserve for generations to come the unique collections of historically, architecturally and culturally significant buildings and structures which characterize the Town of Rye, New Hampshire, to encourage their maintenance and restoration, and to insure that new buildings and structures and alterations to existing buildings and structures, and uses of buildings and structures within the District are in visual harmony with their neighbors in order that a district be preserved which will reflect the cultural, social, economic, political, and architectural history of the Town of Rye, New Hampshire, conserve and maintain property values in such District, foster civic beauty, strengthen the local economy, and generally

provide an opportunity to benefit the education, pleasure and welfare of all the citizens of the municipality.

303.3 General Description of District: The Rye Historic District is predominately composed of Pre-Revolutionary, Federal and Victorian residential, commercial and municipal structures dating from 1724. Typically, the facades of the buildings average forty (40) feet wide, and between 1-1/2 to 2-1/2 stories high. The average street frontage of a building lot is seventy-five (75) feet; the average setback is ten to fifteen feet from the edge of the street right-of-way. The average percentage of openings (doors, windows, etc.) as a percentage of the facade is 25 to 40 percent; the usual construction materials and surface treatment is wood clapboards; the usual roof shape is peaked; the usual architectural details are Pre-Revolutionary; and the usual landscaping/ground covers are grass, shrubs, and trees. A detailed inventory of the buildings and structures of the District is on file with the Town Clerk and Tax Collector. Copies are available at the Public Library and from the Historic District Commission. (Amended 2008)

303.4 Certificates of approval: Any person wishing to construct, alter, repair, move, demolish, or otherwise change the exterior appearance of a structure within the District or construct a new structure within the District or institute a new use of land or buildings within the District must obtain a Certificate of Approval from the Historic District Commission before any other building permits otherwise required by the Town are obtained. However, if the action is a repair where like materials are replacing like materials, only notification of the Historic District Commission is required. When this case applies, the Building Inspector's Office will send a copy of the building permit to the Historic District Commission. (Rev. 1997, 2008)

A. Application Procedures:

1. Applications for Certificates of Approval are available from the Building Inspector.
2. Applicants for a Certificate of Approval shall show:
 - a. Ownership and description of land involved (areas and addresses).
 - b. Ownership and description of buildings involved.
 - c. Names and addresses of abutting property owners and those directly across the street.
 - d. A description of the work proposed to be done, which should include, as appropriate, a sketch of the site and the buildings located on the site drawn to scale, and photographs, sketches, architect's renderings or plans, and/or other visual aids. The description shall contain detailed dimensions when any structural features are to be altered or a new building constructed, or when otherwise requested by the Commission.
3. Upon receipt of a completed application form, the Historic District Commission will normally within fifteen (15) days:
 - a. Determine that the application is of no interest and notify the applicant in writing that he may proceed; or
 - b. Determine that the application is of interest and schedule a public hearing. (Amended 2008)

B. Public Hearings:

1. Notice of public hearings shall be advertised in a newspaper of general circulation in the Town, shall be posted in at least two (2) public places, and shall be sent by certified mail to abutting property owners and those owning property directly across the street, at least five (5) days in advance. (Rev. 1998)
2. Public hearings shall be open to the general public and testimony may be received from any party.

C. Decisions by Historic District Commission.

1. Certificates of Approval or Notices of Disapproval shall be issued within forty-five (45) days of the filing of an application, unless the applicant agrees to a longer period of time.
2. Decisions of the Historic District Commission shall be made in accord with the guidelines for decisions in S 303.5.
3. Failure to issue the certificate within the specified period of time shall constitute approval by the commission. (Amended 2008)
4. Decisions of the Historic District Commission shall be appealable to the Board of Adjustment.

- D. Enforcement:** No building permit shall be issued until a certificate of approval has been filed with the building inspector; but in the case of disapproval, disapproval shall be binding upon the building inspector or other duly delegated authority, and no permit shall be issued. Otherwise, enforcement shall be as provided by NH RSA 674:49 and S 803 of the Rye Zoning Ordinance.

303.5 Guidelines for Decisions on Appropriateness: The following principles shall be followed in the granting of a Certificate of Approval within the Historic District.

- A. If the proposed construction will not have any visible impact on the exterior of the building or structure, it shall be deemed of no interest.
- B. Routine repair to existing structures not involving any other exterior changes shall be deemed of no interest.
- C. When determining the appropriateness of all other alterations, restorations, or remodeling of existing structures or sites, the following criteria will be appropriate, in which case the applicant shall state the criteria he is using and the Commission shall decide accordingly.
 1. Structures or sites of importance because of a moment in history, be it the date of occupancy by a celebrated personage, or the happening of an event, should be altered only so as to be more in conformity with the appearance at that moment in time.

2. Structures or sites of importance because of their date of construction should be altered to restore features of their original appearance unless the structure has been altered at some later time and that alteration is in keeping with the character of the District, or is notable in its own right, in which case as an alternative, such altered appearance shall be maintained.
 3. Structures or sites which are important in the history of architecture as unique or exceptionally fine examples of their style should be altered only so as to retain their original appearance.
 4. Structures or sites merely typical of their age and style should be altered in a fashion of that age or style, if in keeping with the character of the District.
 5. The commission shall have the power to review the architectural treatment of the exterior features and finish of structures.
- D. New structures and buildings and those being moved into the District from outside the District must conform in general size and scale, but need not conform in precise architectural style to the existing structures within the District. Such a structure must meet the zoning requirements of the Town in the following specifications:
1. Overall height and width.
 2. Street frontage.
 3. Set back from the street.
 4. Number of stories.
 5. In addition, it shall conform to the general style of the District by being similar to neighboring structures in all of the following six criteria: (Rev. 1997, 2008)
 - a. Openings within the facade as a percentage of the facade, i.e., doors and windows.
 - b. Similarity of construction materials and surface texture, i.e., rough, smooth, wood, brick, etc.
 - c. Similarity of roofs, i.e., slopes and shapes.
 - d. Similarity of architectural details, i.e., cornices, lintels, arches, porches, balustrades, wrought iron work, chimneys, etc.
 - e. Similarity of landscaping and ground covering; i.e., grass, brick, granite, etc.
 - f. Similarity of colors to existing structures.
- E. Before a building or other structure is demolished or moved out of the District, the applicant shall in good faith prepare a detailed plan for the re-use of the site which the

Commission determines will meet the requirements for a Certificate of Approval. Such Certificate of Approval for demolition and re-use shall only be granted upon a showing by the applicant that to deny such Certificate would result in a hardship unique to the property in question and that such hardship is not common to neighboring properties within the District.

F. **Signs:** (Adopted 1997, Amended 2008)

1. The goals and objectives of the Rye Historic District Commission in reviewing and approving applications for signs within the Historic District or considering requests for exceptions are:
 - a. To insure that the visual impact of all signs is consistent with the historical and architectural characteristics of the Historic District.
 - b. To maintain the Rural Character of Rye.
 - c. To assure safe use of public ways by pedestrians, bicyclists and motorists.
 - d. To promote the general visual attractiveness of the Historic District.
2. Size - No sign in the Historic District may be larger than eight (8) square feet except temporary signs announcing events which may be no larger than sixteen (16) square feet and these may be displayed not more than fourteen (14) days before an event and must be removed within one (1) day following an event. 'Service by Signs', i.e., advertising signs such as Painting By..., Roofing By..., etc, are not permitted in the Historic District. (Rev. 2008)
3. Number of signs/lot - Each lot in the Historic District shall have no more than (1) sign and one (1) off premise business directional sign. A maximum of two (2) additional on-premise business directional signs are permitted per lot. In the case of multiple occupancies, the building owner is responsible for a single overall signage plan providing multiple listings within this specification.
4. Materials - Materials appropriate to the Historic District such as wood, brass, glass, or wrought iron will be permitted. Banners may be of cloth or soft vinyl. Signs may use two (2) or three (3) colors plus white and should blend in color scheme with the structure with which they are associated. Traditional styles of fonts shall be used for lettering.
5. Illumination - In addition to the criteria of Section 501.4, the source of a sign's illumination shall not be visible from any residence and shall not interfere with the vision of drivers on public streets.
6. Trademarks and Product Names - These are to be discouraged on permanent signs in favor of names of proprietors, business owners, and business names. No Trademarks, Sales Marks, Product Names, or other commercial advertising may appear on temporary signs announcing events. This is not to preclude temporary product or food signs displayed by vendors at their place of business during business hours.

- G. **Solar Collectors:** The Rye Historic District Commission has jurisdiction over solar collectors as appurtenant exterior fixtures of buildings in the Rye Historic District. Solar panels require the Historic District Commission's review and approval. The Historic District Commission shall evaluate applications on a case-by-case/property-by-property basis. (Adopted March 12, 2013)

The Commission takes into consideration five factors in evaluating solar panel installation, including:

1. The structure's historic character and architectural importance,
2. The purpose of the installation,
3. Alternative means to conserve energy,
4. Visibility from adjacent public streets and adjoining properties and
5. The project's design and compatibility with the structure.

The essential form and integrity of the historic property and its environment should be unimpaired.

Site Mounted: Consider solutions that respect the building's historic setting by locating arrays in an inconspicuous location, such as a rear or side yard, low to the ground, and sensitively screened further to limit visibility.

Roof Mounted: Solar panels should be flush with or mounted no higher than a few inches above the existing roof surface. They should not be visible above the roofline of a primary façade. On a flat roof, solar panels should be set back from the edge.

Insure that solar panels, support structures and conduits blend into the surrounding features of the historic resource. Visibility of solar panels and support structures can be substantially reduced if the color matches the historic resource and reflectivity is minimized.

Solar panel installations should be reversible. The use of solar roof tiles, laminates, glazing or other technologies that require removal of intact historic fabric or that alter permanently or damage such fabric, shall be avoided. Consider placing solar panels on an existing non-historic addition or on an accessory structure. In cases where new buildings or new additions to historic buildings are proposed, the placement of the solar panels should be on the new construction. Avoid disjointed and multi-roof solutions.

- H. Exceptions to the above, based on hardship, may be considered and granted by the Commission. (Re-indexed 1997, 2007, 2013)

SECTION 304 COASTAL AREA DISTRICT (Adopted 1991)

304.1 Definition of District: Generally, the Coastal Area District includes the coastal area lying between Odiorne's Point State Park and the Rye Beach Precinct. It is bounded on the east by the Atlantic Ocean and, generally, on the west by the ecosystem of marshes that parallels the coastline west of Ocean Boulevard. It includes all of the areas known as Fairhill Manor, Wallis Sands, Concord Point, North Beach, Foss Beach, Rye Harbor, and Locke's Neck and most of the Jenness Beach area. The precise boundaries of the Coastal Area District are delineated on a map entitled Coastal Area Overlay District.

304.2 Purpose: The management of land uses in Rye’s Coastal Area requires a special regulatory approach because:

- A. The coastal area is virtually “built-up,” at a density much greater than that of the rest of Rye.
- B. Coastal resources are uniquely valuable to our society, and the preservation of coastal resources is a high local, state and federal priority.
- C. Coastal land is a scarce resource, thus development and redevelopment pressures are intense, even during times of slow economic growth.
- D. Parts of the coastal area will be the only areas in Rye which have public sewerage.

The uniqueness of the coastal area is recognized in the **Rye Master Plan** and the revisions thereto. The regulations established herein are designed to accomplish the goals, objectives and recommendations of the **Rye Master Plan** in a manner that balances the public’s right to the preservation of coastal resources with the property rights of private individuals.

304.3 Vacant Non-Conforming Lots: For variance applications to build on a an existing non-conforming lot located within the Coastal Area District, the Board of Adjustment shall apply the following criteria in order to determine whether the application is contrary to the public interest and/or observes the spirit of the Zoning Ordinance. (Rev. 3/14/00)

This section shall not apply to variance applications to create a new nonconforming lot by subdivision. In Paragraphs A and B below, the 7000 square feet standard applies only to existing lots of record. It is not to be construed as a minimum lot size for subdivision purposes. (Rev. 3/14/00)

- A. Building on lots less than 7,000 square feet in area shall be prohibited.
- B. For lots 7,000 square feet in area or larger, the lot shall not be materially smaller than developed lots in the surrounding area. In making this determination, the Board shall first consider developed abutting lots. If there are an insufficient number of such lots to make a determination, the Board shall then consider the size of developed lots within the same block. If there still are an insufficient number of developed lots, the Board shall consider the size of developed lots in the neighborhood.
- C. Development of the lot shall not create drainage problems for adjacent properties and streets and shall not worsen existing drainage problems.
- D. The lot shall have frontage on a street.
- E. Sufficient sewage treatment capacity shall be available for lots within the Town’s Sewer Service Area. For other lots, a state-approved on-site waste disposal system shall be required.

304.4 Building Height: Within the Coastal Area District, building height shall not exceed 28 feet. (Rev. 3/14/00)

304.5 Coverage: Within the Coastal Area District, no dwelling shall occupy more than fifteen percent (15%) of its lot. The dwelling plus open porches, accessory buildings, paved driveways, sidewalks and other impervious surfaces shall not occupy more than thirty percent (30%) of the lot. (Rev. 3/14/00)

304.6 Tourist Accommodation Uses: (Adopted March, 2012)

A. Purpose. The purpose of this section is to allow land housing tourist accommodation uses which may have become economically or functionally obsolete to be redeveloped in residential use at densities compatible with the density of the surrounding area. Reference is made to the Preliminary Draft Report titled “*Coastal Land Use Issues,*” dated November 15, 1990.

Notwithstanding any other provisions of the zoning ordinance, in the Coastal Area Overlay District motels and tourist camps and accessory uses thereto may be razed and the land redeveloped for residential use in accordance with the provisions of this subsection.

B. Special Use Permit Required. Any such redevelopment requires a Special Use Permit from the planning board. The planning board may approve a Special Use Permit which complies with the requirements of this section and the requirements of the planning board’s *Land Development Regulations* for major site developments. Applications for a Special Use Permit shall be submitted to the planning board and reviewed in accordance with the planning board’s procedural requirements for major site developments.

C. Types of Dwellings Allowed. Single-family, two-family and multi-family dwellings, including townhouses are allowed. The condominium form of ownership is allowed as a matter of right. The approvals required by Section 503 of this ordinance are not required.

D. Density.

1. Notwithstanding the minimum lot size requirements of the underlying use district, the density of a redeveloped site may equal but not exceed the residential density of the Coastal Subarea in which the site is located, as set forth below.

<u>Subarea of Coast</u>	<u>Maximum Allowed Density (Dwelling Units per Acre)</u>
Jenness Beach	5
Lockes Neck (Straws Point)	1
North Beach	3
Wallis Sands	4.5
Fairhill Manor	4

The planning board may require lower densities if necessary to make a proposed redevelopment compatible with its environs based on consideration of factors such as wetlands, configuration of the parcel, septic capability, setbacks of abutting buildings, building massing, drainage or other characteristics of the site which affect sound land planning.

2. For the purposes of this section, the Coastal Subareas are as follows:

- Jenness Beach: That part of the Coastal Area Overlay District which lies between the Rye Beach Precinct and the unnamed way which bisects Foss Circle and between the Rye Beach Precinct and Old Town Way, including lots accessed by Old Town Way.
- Locke's Neck: That part of the Coastal Area Overlay District which lies between the Jenness Beach Subarea and Tax Map 8/Parcel 56.
- North Beach: That part of the Coastal Area Overlay District which lies between Tax Map 17/Parcel 78 and Parsons Creek.
- Wallis Sands: That part of the Coastal Area Overlay District which lies between Parsons Creek and Wallis Sands State Beach.
- Fairhill Manor: That part of the Coastal Area Overlay District which lies north of the Wallis Sands State Beach.

3. Alternate Determination of Density. An applicant for a special use permit who believes the maximum density set forth in the table in § D (1) does not reflect the density of the neighborhood around the site proposed for redevelopment may submit to the planning board a plan delineating the neighborhood around the site proposed for redevelopment and calculations of the median and mean residential lot sizes within the neighborhood. The burden shall be on the applicant to demonstrate to the planning board that the delineated neighborhood demonstrates density characteristics more applicable to the proposed redevelopment site than the maximum density set forth in the table in § D (1) .

- a. The planning board has the sole discretion to approve, disapprove or modify the neighborhood used to determine the maximum allowed density. If the neighborhood is disapproved, the maximum density set forth in the table in § D (1) shall apply.
- b. A neighborhood shall always include the following:
 - 1) Lots within 500 feet of the subject parcel as measured along streets on which the subject parcel has frontage.
 - 2) Lots having dwellings located within 200 feet of the subject lot.
 - 3) Lots from which one could view a dwelling sited on the subject site.
- c. Upon review of the proposed site plan, the planning board may require lower densities than the density of the surrounding neighborhood if necessary to make a proposed redevelopment compatible with its environs based on consideration of factors such as wetlands, configuration of the parcel, septic capability, setbacks of abutting buildings, drainage or other characteristics of the site which affect sound land planning.

E. Yards, Corner Clearance. The yard and corner clearance requirements of the General Residence District, Sections 204.3, A to D shall apply to any redeveloped site.

- F. Coverage. Dwellings plus open porches, decks, accessory buildings, patios, paved walks, paved driveways and other impervious surfaces shall not occupy more than 30% of the parcel.
- G. Building Spacing. All buildings, including parking structures and accessory buildings, shall be separated by at least 25 feet.
- H. Determinations Required for Special Use Permit Approval. Prior to approving a Special Use Permit, the planning board shall determine, by a vote on the record, that the proposed redevelopment meets each of the following standards.
1. All requirements of Section 304.6 have been met. (This may be a single vote on the record).
 2. The granting of the Special Use Permit will not be detrimental to adjacent property or the neighborhood.
 3. The granting of the Special Use Permit will not be detrimental to the public safety, health or welfare.
 4. The granting of the Special Use Permit will not be contrary to the public interest.
 5. The architecture of the proposed dwellings is compatible with the architecture of dwellings located within 300 feet of the site.
 6. The proposed redevelopment will not overburden municipal services.
- I. Conditions. In approving a Special Use Permit, the planning board may attach such conditions to its approval as it deems necessary to further the objectives of this section, the zoning ordinance and the public health, safety and general welfare.
- J. Fees. The planning board shall charge an application fee for a Special Use Permit in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I. (g).
- K. Conflicts. Where the provisions of this section conflict directly with another requirement of the zoning ordinance or a requirement of the planning board's *Land Development Regulations*, the provisions of this section shall govern. Otherwise, all other requirements of the zoning ordinance and the planning board's *Land Development Regulation* shall apply, including Section 509 Demolition Review.
- L. Authority. This subsection is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.
- M. Appeal. Pursuant to RSA 676:5, III., appeals of any planning board decisions made pursuant to this section shall be taken to the superior court, not to the board of adjustment.

SECTION 305: WIRELESS TELECOMMUNICATIONS FACILITIES DISTRICT.

(Adopted 3/9/99)

See Section 505 for the description of the Wireless Telecommunications Facilities District and the regulations which apply to wireless telecommunications facilities.

SECTION 306: AQUIFER AND WELLHEAD PROTECTION DISTRICT (Adopted 3/11/2008) (Rev 3/11/14) (Rev 3/10/15)

306.1 Authority: The Aquifer and Wellhead Protection District is an Innovative Land Use Control adopted pursuant to RSA 674:16 and RSA 674:21, I. (j). (Rev 3/10/15)

306.2 Purpose: The purpose of the Aquifer and Wellhead Protection District is to protect, preserve and maintain the groundwater resources and groundwater recharge areas in the Town of Rye. The objectives are:

- A. To protect the public health and general welfare of the citizens of Rye.
- B. To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers.
- C. To assure the availability of public and private water supplies for future growth of the Town in accordance with the Master Plan.
- D. To encourage land uses that can appropriately and safely be located in the aquifer recharge areas.

306.3 Definitions: The Definitions applicable to this section are as follows: (Added 3/10/2015)

- A. Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- B. Gasoline station: means that 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.
- C. Impervious Coverage or Impervious. Any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, and unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways, storage areas, compacted gravel including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers and wood.
- D. Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- E. 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.

- F. Seasonal high water table: The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.
- G. Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
- H. Snow dump: For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.
- I. Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
- J. Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

306.4 Boundaries of District:

- A. **Location.** The Aquifer and Wellhead Protection District is an overlay district that includes all of the area portrayed as Stratified-Drift Aquifers on a map titled “Stratified-Drift Aquifer Map Rye, N.H. and all the area within the Rye Water District Wellhead Protection Area (WHPA) as delineated on the Official Zoning Map.
- B. **Appeal.** Where the boundaries of the Aquifer and Wellhead Protection District are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the planning board. Upon receipt of a written appeal, the planning board (or building inspector) shall suspend further action on any pending application related to the area under appeal and shall engage, at the landowner’s expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the Aquifer and Wellhead Protection District relative to the property in question.
- C. **Lots Split By District Boundary.** If 50% or more of the area of a lot is within the Aquifer and Wellhead Protection District, the requirements of Section 306.5, A. shall apply to the entire lot. If feasible, on-site waste disposal systems on any lot partially within the Aquifer and Wellhead Protection District shall be located on the portion of the lot outside of the district.

306.5 Use Regulations:

- A. **Prohibited Uses.** The following uses are prohibited in the Aquifer and Wellhead Protection District:
 - 1. Disposal of solid waste.
 - 2. Storage or disposal of hazardous waste.

3. Subsurface storage of heating oil, gasoline or other refined petroleum products, except for heating oil stored in a tank in the basement of a building.
4. Gasoline stations or sale of gasoline or petroleum products.
5. Industrial use which discharges contact type process waste water on site. Non-contact cooling water is permitted.
6. Outdoor storage of road salt or other de-icing materials.
7. Snow dump/dumping of snow from off-site.
8. Animal feed lot.
9. Automotive service, auto repair shop, car wash.
10. Junk yard, salvage yard.
11. Dry-cleaning establishment, laundry.
12. Earth excavation, mining.
13. All on site handling, disposal, storage, processing or recycling of hazardous or toxic materials except for materials used for normal residential, agricultural or silvacultural activities or those related to the production and testing of drinking water.
14. Injection well that disposes of waste in the ground.
15. The commercial storage of fertilizers, animal manure and compost unless in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets and Food, July 2008, and subsequent revisions, and for an agricultural use already in existence at the time of this ordinance. (Rev 3/10/2015)
16. Deposit, discharge or release of leachable wastes.
17. Septage lagoon. (Added 3/10/15)
18. Petroleum bulk plants or terminals. (Added 3/10/15)

B. Uses Requiring a Conditional Use Permit.

1. In the Aquifer and Wellhead Protection District, the following uses require a conditional use permit from the planning board. The planning board may establish procedures for the review and approval of conditional use permits, including requirements for information to be submitted with an application for a conditional use permit.

- a. Retirement Community Development (RCD).
 - b. Golf course.
 - c. Greenhouse or horticultural enterprise.
 - d. Hospital, nursing facility or home for the elderly.
 - e. Mobile home park, mobile home subdivision.
 - f. Any use with septage loading of 2500 g.p.d. or greater.
 - g. Automobile sales, boat sales, farm machinery sales.
 - h. Lumber yard, building supply sales.
 - i. Any commercial or industrial use located over a Stratified-Drift Aquifer having a transmissivity of greater than 2000 square feet per day, as portrayed on a map titled "Stratified-Drift Aquifer Map Rye, N.H."
 - j. Any use requiring a hydrogeologic study per Section 306.6, A.
 - k. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater. (Added 3/10/15)
 - l. Any activities that involve blasting of bedrock. (Added 3/10/15)
 - m. 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 306.5(C)(7), is approved by the Fire Department. (Added 3/10/15)
2. Applicants for conditional uses shall develop, and submit for review and approval by the planning board, stormwater management and pollution prevention plans. The plans shall demonstrate that the use will: (Added 3/10/15)
- a. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management (DES, 2008), as amended;
 - b. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - c. 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);
 - d. Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil

scientist, engineer or other qualified professional as determined by the Planning Board.

- C. **Requirements for a Conditional Use Permit.** The planning board may grant a Conditional Use Permit for those uses listed above only after a public hearing and written findings of fact are made that all of the following conditions are met.
1. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
 2. Adequate safeguards will be in place to prevent accidental spillage of substances or materials which may be harmful to groundwater from reaching the aquifer.
 3. The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined.
 4. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.
 5. The proposed use complies with all other applicable sections of this Section.
 6. The planning board may require that the applicant provide data or reports prepared by a qualified hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The planning board may engage such professional assistance as it requires to adequately evaluate such reports and to evaluate the proposed use.
 7. Conditional uses using regulated substances have submitted a spill prevention, control and countermeasure (SPCC) plan approved by the Fire Chief, with a determination that the plan will adequately prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. The SPCC plan shall include: (Added 3/10/15)
 - a. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
 - b. 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.
 - c. A list of all regulated substances in use and locations of use and storage;
 - d. 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.
 - e. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

306.6 Special Requirements: Within the Aquifer and Wellhead Protection District:

A. Hydrogeologic Study.

1. A hydrogeologic study shall be required for:
 - a. Uses whose septic system (or septic systems) is designed for a septage loading of 2500 g.p.d. or greater.
 - b. Any use altering more than 50,000 square feet of natural terrain.
 - c. Subdivisions of five (5) lots or more, unless all lots are greater than 2 acres.
2. A qualified hydrogeologist shall perform the hydrogeologic study. Studies shall be sufficiently detailed to evaluate impacts to the aquifer beneath and surrounding the proposed development site. All hydrogeologic studies should include the following components, at a minimum: (Added 3/10/15)
 - a. Install permanent monitoring wells with locking well casings.
 - i. For any site that meets the criteria for a hydrogeological study, a minimum of four wells should be installed – one up-gradient of the area of expected groundwater impact (septic systems, stormwater discharge, etc.) and three within - down-gradient of the expected source areas. Wells should be installed to adequately characterize the groundwater flow direction and water quality in the aquifer.
 - ii. On projects of 10 acres or more, one well should be installed per 3 to 4 acres, depending on site topography and expected groundwater flow direction.
 - b. Take split spoon samples of the overburden material to verify subsurface material characteristics.
 - c. Determine representative hydraulic conductivity of aquifer/overburden materials using in-situ permeability tests, grain size analysis or both.
 - d. Complete one or more borings to the bedrock surface.
 - e. Water levels at wells, once equilibrated, should be measured at least two times.
 - f. Water quality results at wells and on-site surface water features to determine background water quality for field parameters – pH, temperature, and specific conductance, as well as for ammonia-nitrogen, nitrate-nitrogen, and chloride at each well and at representative surface water locations.
 - g. An assessment of geologic characteristics, groundwater flow direction, groundwater flow velocity and ambient water quality.

- h. A nitrogen loading analysis at site buildout with subsurface treatment units simulated and located so that nitrate concentrations will not exceed the current state standard limit.
 - i. Summary of background information on any off-site source areas that may impact site water quality.
 - j. All laboratory data, field data, and calculations used in the study shall be included as report appendices.
 - k. The Planning Board may require additional components to be included as part of the hydrogeological study.
 - l. All monitoring wells will be maintained as per RSA 482-B: 15. Those that will not be retained for long-term monitoring will be properly abandoned as per NHDES guidance contained in Environmental Fact Sheet WD-DWGB-22-16. An abandonment report will be submitted to the building inspector when complete.

- B. Coverage.** The impervious coverage of a lot shall not exceed 25%. However, impervious coverage may be increased to that allowed by the underlying use district if the applicant submits a stormwater management plan to the planning board for review and approval. As part of its review, the planning board shall determine, among other things, whether the plan provides for adequate recharge on the property to be developed and whether the plan is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services, as amended. (Rev 2/10/15)

- C. Drainage.** To the extent possible, all runoff from impervious surfaces shall be recharged on site and diverted toward areas covered with vegetation for surface infiltration. Dry wells may be used only where other methods are not feasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.

- D. Salt, De-icing.** Streets, roads, driveways and parking areas shall be constructed so that the need for direct application of road salt and de-icing substances is eliminated or minimized to the greatest extent possible. Runoff from such surfaces shall be channelized to avoid, or minimize to the greatest extent possible, groundwater contamination, consistent with *Best Management Practices for Urban Stormwater Runoff*, NHDES, January 1996, or revisions thereto. (Rev 2/10/15)

- E. Safeguards.** For all non-residential uses, provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.

F. Fertilizers: Fertilizers shall not be applied within the Aquifer and Wellhead Protection District between October 1st and April 1st. (Added 2/10/15)

G. Manure: Animal manure storage and management will be carried out using Best Management Practices as referenced in Manual of Best Management Practices for Agriculture in New Hampshire, June 2011 or current version. (Added 2/10/15)

306.7 Performance Standards: Within the Aquifer and Wellhead Protection District the performance standards set forth in this section shall apply to all existing and proposed uses, except as exempted by Subsection *F*.

A. Regulated Substances. For the purposes of this section regulated substances are petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-5 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 gasses at normal atmospheric temperature and pressure.

B. Storage and Containment of Regulated Substances. (Rev 2/10/15)

1. All regulated substances stored in containers with a capacity of 5 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.
2. 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.
3. 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.
4. 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. The containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
5. 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.

C. 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. (Added 2/10/15)

D. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter. (Added 2/10/15)

- E.** Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells. (Added 2/10/15)

F. Exemptions. The following are exempt from the performance standards of this section.

1. Private residences are exempt from all performance standards.
2. Any use where regulated substances are ~~not~~ stored in containers with a capacity of less than 5 gallons is exempt from Performance Standards B.2 through 5.
3. 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 Standards B.2 through 5.
4. 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 B.2 through 5.
5. Storage and use of office supplies is exempt from Performance Standards B.2 through 5.
6. Temporary storage of construction material on a site where they are to be used is exempt from Performance Standards B.2 through 5.
7. Household hazardous waste collection projects regulated under NH Admin Rules Env-Wm 401.03(b) (1) and 501.01(b) are exempt from Performance Standards B.2 through 5.
8. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance. (Added 2/10/15)
9. Underground storage tank systems and above ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XIV of this ordinance. (Added 2/10/15)

G. Inspections.

1. Inspections may be required to verify compliance with these performance standards. Such inspections shall be performed by the Building Inspector or such other person(s) designated by the board of selectmen. Inspection shall be performed at reasonable times with prior notice to the owner.
2. All properties within the Aquifer and Wellhead Protection District known to be using or storing regulated substances in containers with a capacity of 5 gallons or more, except exempt uses, shall be subject to inspections.

3. The board of selectmen may establish a reasonable fee for such inspections to be paid by the property owner, as allowed by RSA 41-9: a.
4. 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 Rockingham County. The description so prepared shall comply with the requirements of RSA 478:4-a. (Added 2/10/15)

306.8 Non-Conforming Uses: Existing uses not conforming to the requirements of the Aquifer and Wellhead Protection District may continue in the district in the form in which they exist at the time of the adoption of this ordinance (but may not be expanded) unless they pose a direct hazard to the aquifer or are actually introducing some foreign substances (such as oils, salts, chemicals, etc.) into the aquifer. In the latter case, the selectmen shall issue an immediate cease and desist order to stop the offending activity or process from continuing in the district. Existing uses must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practice Rules. The Town Public Works Facility/Recycling Center is exempt from the provisions of the Aquifer Protection Overlay District.

306.9 Interpretations, Appeals: The Aquifer and Wellhead Protection District is an Innovative Zoning Control adopted pursuant to RSA 674:21. In accordance with RSA 676:5, III., decisions interpreting and applying the requirements of the district may be appealed first to the planning board and then to the superior court (but not to the zoning board of adjustment.)

306.10 Wellhead Protection Area: The ZONING MAP TOWN OF RYE depicts a Wellhead Protection Area (WHPA) around the Rye Water District's (RWD's) three wells. The WHPA consists of a 4000 ft. radius around the Bailey Brook and Cedar Run wells. Around the Garland Road well it is determined based on hydrological information. Within the WHPA, new septic systems must be high performance, de-nitrifying septic systems and all uses must comply with the Best Management Practices set forth in NH Departments of Environmental Services Regulations Part Env-Wq 401. (Adopted, March 2011) (Rev 3/10/15)

306.11 Sanitary Protective Radius: A Sanitary Protective Radius of 400 feet exists around each of the RWD's three wells. As required by NH Department of Environmental Services Regulations Part Env-Dw 302, the area within the Sanitary Protective Radius shall be maintained in a natural state at all times. Only activities or uses approved by the RWD may occur within the Sanitary Protective Radius. (Adopted, March 2011)

306.12 Recertification: Every two years, or on or before any transfer of title, after issuance of a conditional use permit, the property owner or occupant or homeowners association, as applicable, shall file an affidavit with the building inspector certifying that the property remains in compliance with: (i) all conditions of the conditional use permit; (ii) all applicable special requirements of § 306.6; and, (iii) all applicable performance standards of § 306.7. Failure to file such an affidavit shall be deemed a rebuttal presumption that the property is not in compliance. (Adopted March 11, 2014)

306.13 Enforcement Procedures and Penalties: Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C. (Adopted March 10, 2015)

SECTION 307: MULTI-FAMILY DWELLING DISTRICT (adopted 3/9/2010)

307.1 Purpose: The purpose of the Multi-Family Dwelling Overlay District is to provide for multi-family housing in appropriate locations in Rye in order to comply with the requirements of RSA 674:59.

307.2 Description of District: The Multi-Family Dwelling Overlay District is comprised of the Route 1 /Lafayette Road Commercial District (except land owned by the Rye Conservation Commission); and all land in Rye within 800 feet westerly of the Route 1/Lafayette Road Commercial District. More specifically, the overlay district covers the following parcels as depicted on town tax maps.

- All of the following parcels on Tax Map 10: Parcels Nos. 1, 2, 3, 4, 4.1, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15-3, 15-4, 16, 17, 18, 19, 20, 66, 67, 68, 69, 70, 82, 83, 84, 85.
- All of the following parcels on Tax Map 14: Parcels Nos. 4, 5, 6, 7, 9, 10, 12, 17, and 18.
- The portions of the following parcels located within 1300 feet of Lafayette Road: Tax Map 14 – Parcels Nos. 8, 11.
- The portions of the following parcels located within 500 feet of Lafayette Road: Tax Map 14 – Parcels Nos. 13, 16; Tax Map 10 – Parcel 13.

307.3 Special Use Permit: Within the Multi-Family Dwelling Overlay District multi-family dwellings and multi-family developments require a Special Use Permit from the planning board pursuant to Section 402 of this ordinance.

SECTION 308: RYE LANDFILL GROUNDWATER MANAGEMENT (RL-GMZ) DISTRICT. (Adopted March 12, 2013)

308.1 Purpose: The purpose of the RL-GMZ is to protect public health by restricting groundwater use down gradient of the former Rye town landfill. The groundwater quality is being monitored under a Groundwater Management Permit issued by the New Hampshire Department of Environmental Services (NHDES).

308.2 Extent of RL-GMZ: The extent of the RL-GMZ shall be as referenced by NHDES Permit as the Rye Landfill Groundwater Management Zone (GMZ), specifically including Tax Map 10 Lot 5 and Tax Map 10 Lot 82. The area contains monitoring wells that survey groundwater quality.

308.3 Regulations: Within the RL-GMZ the pumping of groundwater from any well or other structure for residential, commercial or industrial drinking water purposes is prohibited.

**ARTICLE IV
PLANNED DEVELOPMENTS**

SECTION 400 MOBILE HOME PARKS AND SUBDIVISIONS:

400.1 General: The use, rental or maintenance of mobile homes or house trailers shall be permitted within the Town of Rye only in approved developed park sites and mobile home subdivisions or under temporary permits as per S 400.7.

400.2 Special Exception Required for Mobile Home Parks: Mobile home parks are permitted only as a special exception authorized by the Zoning Board of Adjustment.

400.3 Criteria for Special Exceptions: The Zoning Board of Adjustment shall not grant a special exception for a mobile home park unless all of the following criteria are met.

A. **Planning Board Approval:** The Rye Planning Board must certify its approval in writing, indicating that the proposed park is in harmony with the purposes of the Town of Rye Master Plan.

B. **Tract Size:** No mobile home park shall be located on a tract of less than ten (10) acres.

C. **Location: No mobile home park shall be located on a tract that is:**

1. Inaccessible from good roads.
2. Close to swamps or other potential breeding places for insects and rodents.
3. On poorly drained land.
4. On land subject to flooding, erosion, fire, safety or traffic hazards.
5. On land which is exposed to chronic nuisances such as noise, smoke, fumes and odors.

D. **Interior Access:**

1. No park site shall be developed unless adequate access for trailers and attached vehicles, fire-fighting equipment, fuel delivery, refuse collection and other service vehicles is provided. Where the park site or individual trailer parking spaces do not abut directly on a street, paved access roads, located within not less than thirty-two (32) foot right-of-way shall be provided.
2. The area of every park site shall be large enough to provide for (a) the designated number of individual trailer spaces, (b) necessary access roads and service streets, (c) adequate parking for motor vehicles, and (d) essential service, play, maintenance, and office facilities.
3. Every access road and service street within a park site shall have a pavement width of not less than twenty (20) feet, shall have a well-drained stabilized or paved surface, maintained in good repair, and at night well-lighted; provided, however, that where parking is permitted on one side of the street only, the total

width of such streets shall be not less than twenty-six (26) feet, and that where parking is permitted on both sides of the street, the total width of such street shall not be less than thirty-two (32) feet.

E. Spatial Requirements.

1. **Area:** No individual mobile home or trailer space shall contain less than the greater of: (1) 15,000 square feet, or (2) the area required by NH Admin. Rules WS 1004:03. The bounds of each space shall be clearly marked.
2. **Yards:** No mobile home and trailer shall be parked less than ten (10) feet from the side of any individual trailer space, and there shall be not less than twenty (20) feet between any two trailers. No trailer, vehicle, or building in any trailer park shall be located less than one hundred (100) feet from any residential building located on any adjacent lot or from the centerline of any street.
3. **Parking Area:** Not less than one hundred fifty (150) square feet of motor vehicle parking space shall be provided in every park site for each individual trailer or mobile home space in addition to minimum trailer space requirement, and all such spaces shall have a well-drained, stabilized, or paved surface, maintained in good repair.
4. **Laundry Area:** Not less than one hundred fifty (150) square feet of laundry drying space shall be provided in every park site for each four (4) individual mobile home or trailer spaces, and all such space shall have a well-drained stabilized or paved surface, maintained in good repair.
5. **Play Area:** Not less than one hundred (100) square feet of play space for each individual mobile home or trailer space shall be provided and restricted in every park site exclusively to playground use, and such spaces shall be protected from streets and parking areas, and shall have a well-drained, stabilized or paved surface, maintained in good repair.

F. Utility and Sanitation Requirement: No mobile home or trailer shall be without adequate hygiene and sanitation facilities. Water supply service, plumbing, sewage disposal and treatment, electric power service, bottled gas service, heating equipment and fuels, refuse and garbage storage and disposal, and insect and rodent control shall be provided in full conformity with the applicable provisions of the Building Code and all pertinent state and local water pollution, building and health regulations, ordinances and statutes.

G. Drainage: Each space shall be well-surfaced or seeded to provide adequate drainage beneath and adjacent to any trailer parked thereon.

H. Bond: Prior to approval of a plan for a mobile home park, the developer must post an adequate bond with the Town assuring that the park and its sites and roads are constructed in conformance with such plans, specifications and requirements. The Town Council shall review said bond prior to its acceptance, and the mobile home park approval shall not be issued prior to approval of the bond by counsel.

400.4 Foundation and Additions Prohibited: No permanent additions, skirting, foundations, lean-tos, sheds, or rooms shall be permitted, provided, however, that open porches with awnings may be installed. Trailer wheels shall not be removed, although stands and/or stabilizers may be added. In the event that wheels are removed, permanent skirting installed, or the trailer attached permanently to the ground, the trailer shall immediately become subject to all the provisions of the Building Ordinance. Excessive materials shall not be stored under any trailer.

400.5 Commercial Purposes Prohibited: No unoccupied mobile home or trailer shall be stored or exhibited for sale for commercial purposes within a park site or in any residence district.

400.6 Mobile Home Subdivisions: Such subdivision shall have a minimum of ten (10) lots and shall comply in all other respects with the Rye Subdivision Regulations and shall be restricted to mobile homes.

400.7 Mobile Home Standards: All mobile homes located in mobile home parks and subdivisions shall meet the standards for manufactured housing of NH RSA 674:31.

400.8 Temporary Permits: The Board of Adjustment may after public hearing, grant a temporary permit not to exceed ninety (90) days for a single mobile home or house trailer to be placed upon a lot in any district and used by the owner or owner's immediate family. No such permit shall be renewable without further public hearing. The storage of no more than one (1) mobile home, motor home, or camping trailer shall be permitted on any lot.

SECTION 401 RETIREMENT COMMUNITY DEVELOPMENTS (RCD'S) (Adopted 2006, Amended 2008, Rev 3/11/14)

401.1 Authority: This section is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.

401.2 Purpose: The purpose of this section is to provide flexibility of zoning regulations in order to encourage the construction of small residential neighborhoods spread throughout Rye which are designed and constructed to meet the unique needs of people 62 years of age and over, while ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health safety and general welfare of the inhabitants of Rye.

401.3 Special Use Permit Required: Retirement Community Developments (RCD's) require a Special Use Permit from the planning board. The planning board may approve a Special Use Permit for an RCD which complies with the requirements of this section and the requirements of the planning board's *Land Development Regulations* for major site developments. Applications for a Special Use Permit shall be submitted to the planning board and reviewed in accordance with the planning board's procedural requirements for major site developments. The planning board may amend its *Land Development Regulations* to include special requirements for the review and approval of RCD's.

401.4 Requirements for RCD's:

A. Location: An RCD may be located in any zoning district in Rye, except within the Rye Beach Precinct. An RCD shall not be located within ½ mile of another RCD, as measured between boundaries of the RCD parcels, along existing street lines.

B. Parcel Size: The minimum parcel size for an RCD shall be 10 acres, which may include wetlands.

C. Frontage: An RCD shall have a minimum contiguous frontage on a Class V Road or better of 150 feet. Each dwelling within an RCD shall face upon either an existing Class V Road or better or on a private way constructed within the RCD. (Amended 2008)

D. Number of Dwelling Units: An RCD shall have a minimum of eight (8) dwelling units, but not more than sixteen (16) dwelling units.

E. Density: The density of an RCD shall not be greater than four (4) dwelling units per contiguous upland acre. No single contiguous area of uplands on a parcel shall have a density greater than four (4) dwelling units per acres. The density is the maximum allowed, and it may be reduced by the planning board if the characteristics of the site; or the configuration of the site plan; or the relationship of the RCD to its environs so warrant.

F. Bonus for Affordable Housing: At its discretion, the planning board may approve a maximum number of dwelling units up to twenty-two (22) and a density not to exceed eight (8) dwelling units per contiguous uplands acre, provided that at least 15% of the total dwelling units are affordable housing units. To be considered as an affordable housing unit, a dwelling shall meet the following requirements.

1. Occupancy by a person(s) who would meet the income and asset limitations established by the Town for the elderly property tax exemption program.
 - a. If owned, the principal, interest, taxes and condominium association fees shall not be more than 40% of the income of the occupants.

The planning board may enact such regulations as are necessary to administer the affordable housing bonus provision and the continuing compliance with it.

G. Types of Dwellings: Dwelling types shall be of an architectural type and style deemed by the planning board to be compatible with the neighborhood and may include single family detached dwellings, duplexes and multi-family dwellings. There shall be no more than four (4) dwelling units in a single building. An RCD may have more than one type of dwelling. Site development review (i.e. site plan review) shall be required for all RCD's including RCD's composed of single and two family dwellings.

H. Homeowner's Association: All RCD's shall have a Homeowner's Association. The Condominium Declaration and By-Laws shall be approved by the planning board in accordance with the planning board's *Land Development Regulations*.

I. Bonus for Excellence in Design: The planning board may award a bonus of one or two dwelling units, total, beyond the 16 dwelling units allowed by Section 401.4 D., for excellence in design. In awarding the bonus the planning board may consider factors including but not limited to preservation of rural character, provisions for walking trails from the site to community facilities, innovative use of open space; and architecture. The planning board may enact amendments to its *Land Development Regulations* relative to the process and criteria by which the bonus may be awarded.

J. Building Spacing/Setbacks:

1. **Building Spacing:** All buildings in an RCD, including parking structures and accessory buildings, shall be separated by at least 25 feet.
2. **Setbacks:** No principal or accessory building or structure shall be located closer than 75 feet to a property line or street line. However, the planning board may reduce this requirement to 50 ft. upon a determination that the scale and location of a building will not be incompatible with or detrimental to the use and enjoyment of the adjacent parcel.

K. Buffer: The perimeter of all RCD's shall be a landscaped buffer zone at least 25 feet in width, which may consist in whole or in part of existing natural tree growth.

L. Occupancy: The occupancy of an RCD shall be restricted solely to persons age 62 or older, with no exceptions.

M. Bedroom/Floor Space: There shall be no more than two (2) bedrooms per dwelling unit. The minimum square footage of living space per unit shall be 800 sq. ft. and the maximum square footage of living space per unit shall be 1800 sq. ft.

N. Parking: Each dwelling unit shall be provided with a one car garage attached or in close proximity to the unit and one other parking space. Additionally, a plan for an RCD shall include adequate parking for visitors, as determined by the planning board.

O. Town Wide Limitations: RCD's are exempt from the Growth Management limitations of Article IX. A Special Use Permit shall not be approved for any RCD which would result in the total number of dwelling units in RCD's in the Town of Rye exceeding 2% of the total year round dwelling units in town, exclusive of units located within an RCD. (Explanatory Note: As of December 31, 2005, this would allow 51 RCD units in the town).

P. Bonus for Cluster Layout: The planning board, at its discretion, may approve an RCD of up to twenty (20) dwelling units if the proposal is for a cluster layout of streets and dwellings and if at least 50% of the parcel is preserved as common open space. Recreation and Community Facilities with impervious surfaces, any community buildings and all permanent structures will not be considered as part of the open space calculation for Cluster Layout. The area computation of the open space for the Bonus for Cluster Layout shall not include road rights of way, public or private.

The open space shall be permanently protected using a conservation easement as open space or common land for the purposes of recreation, conservation, park, trails or public easement forestry or agriculture. The Planning Board at its discretion may require that the open space or some portion be publicly accessible via easements.

The open space of an RCD shall be visible from a Town or state road wherever possible. The clustered buildings should not be seen from a town or state road or from a town street.

The planning board may enact amendments to its *Land Development Regulations* relative to the process and criteria by which the bonus may be awarded. (Adopted, 2008)

Q. Recreation and Community Facilities: An RCD may include recreation and community facilities intended for the use and enjoyment of residents and their guests, such as tennis courts, swimming pools, picnic/cookout areas and facilities; outdoor sitting areas; gardens; gazebos; and community buildings. The total surface area of community buildings within an RCD, footprint and any stories above, shall not exceed 100sq. feet per bedroom.

Based on the scope of the facilities, additional considerations may need to be evaluated, for example, if the number of guests could be substantial, parking calculations and septic loading must be considered with the anticipated use. (Adopted, 2008)

401.5 Determinations Required for Special Use Permit Approval: Prior to approving a Special Use Permit for an RCD, the planning board shall determine, by a vote on the record, that the RCD meets each of the following standards.

1. All requirements of Section 401.4 have been met. (This may be a single vote on the record).
2. The granting of the Special Use Permit will not be detrimental to adjacent property or the neighborhood.
3. The granting of the Special Use Permit will not be detrimental to the public safety, health or welfare.
4. The granting of the Special Use Permit will not be contrary to the public interest.
5. Unless otherwise prohibited by State or Federal law, the applicant will make reasonable provisions to assure that residents of Rye will have an opportunity to reside in the RCD.

401.6 Conditions: In approving a Special Use Permit, the planning board may attach such conditions to its approval as it deems necessary to further the objectives of this section, the zoning ordinance and the public health, safety and general welfare.

401.7 Variances: Approval of an RCD is a privilege, not a right. The requirements of Section 401.4, A, D, E and O, which regulate the location, size, and density of RCD's and of Section 401.4, O, which regulate the total number of RCD units in town are fundamental to the intent of this innovative zoning provision. Any variance from the provisions thereof is hereby deemed to be inconsistent with the spirit and intent of the zoning ordinance and contrary to the public interest.

401.8 Waivers: An applicant may apply for waivers to the requirements of Section 401.4 C, B, G, J, K, L, M, N provided such waiver does not deviate from the requirement by more than 20% and provided that 2/3 of the planning board members present and voting determine that: (Rev March 11, 2014)

1. A unique and identifiable specific circumstance of the land warrants granting of a waiver.

2. The granting of the waiver will not be detrimental to adjacent property or the neighborhood.
3. The granting of the Special Use Permit will not be detrimental to the public safety, health or welfare.
4. The granting of the Special Use Permit will not be contrary to the public interest.

401.9 Fees: The planning board shall charge an application fee for a Special Use Permit for an RCD, in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I. (g).

401.10 Conflicts: Where the provisions of this section conflict directly with a requirement of the zoning ordinance or a requirement of the planning board's *Land Development Regulations*; the provisions of this section shall govern. Otherwise, all other requirements of the zoning ordinance and the planning board's *Land Development Regulation* shall apply to an RCD.

401.11 Appeal: Pursuant to RSA 676:5, III, appeals of any planning board decisions made pursuant to this section shall be taken to the superior court, not to the board of adjustment.

401.12 Webster at Rye: Webster at Rye is not an RCD. None of the provisions of this section apply to Webster at Rye. (Adopted 3/14/06)

SECTION 402 MULTI-FAMILY DWELLINGS & MULTI-FAMILY DEVELOPMENTS: (Adopted 3/9/2010)

402.1 Authority: This section is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.

402.2 Special Use Permit Required: Within the Multi-Family Dwelling Overlay District multi-family dwellings and multi-family developments require a Special Use Permit from the planning board. The planning board may approve a Special Use Permit which complies with the requirements of this section and the requirements of the planning board's *Land Development Regulations* for major site developments. Applications for a Special Use Permit shall be submitted to the planning board and reviewed in accordance with the planning board's procedural requirements for major site developments. The planning board may amend its *Land Development Regulations* to include special requirements for the review and approval of multi-family dwellings.

402.3 Requirements for Multi-Family Dwellings and Developments.

A. Location: Multi-family dwellings may be located in the Multi-Family Dwelling Overlay District.

B. Parcel Size: The minimum parcel size shall be 2 acres, which may include wetlands.

C. Frontage: A multi-family dwelling or a multi-family development shall have a minimum contiguous frontage on a town or state road or street of 150 feet. The planning board may allow the frontage requirement to be met on a private street provided the requirements of section 402.3, F are met and further provided that the planning board determines: (Amended March 8, 2016)

- 1 The private street is a street depicted on a subdivision plat approved by the planning board; and
2. Adequate provisions exist for maintenance and repair of the private street; and
3. Frontage on a private street will not result in an adverse impact on community facilities or community services; and
4. Frontage on a private street will not be contrary to the public health, safety or welfare.

D. Number of Dwelling Units: A multi-family dwelling shall not have more than 8 dwelling units. A multi-family development shall not have more than 40 dwelling units. The subdivision of land shall not be used to circumvent the 40 unit limitation.

E. Density: The density of a multi-family development shall not be greater than six (6) dwelling units per contiguous upland acre located in Rye. No single contiguous area of uplands on a parcel shall have a density greater than six (6) dwelling units per acre. The density is the maximum allowed, and it may be reduced by the planning board if the characteristics of the site; or the configuration of the site plan; or the relationship of the development proposal to its environs so warrant.

F. Workforce Housing: At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multi-family development shall be workforce housing units (“WF units”). The WF units shall be allocated as nearly as possible to individual dwellings based on the same ratio as exists for the multi-family development. Where the allocation does not work out evenly, the planning board shall have the authority to approve the allocation among dwellings, but the overall 51% limitation on the development shall be controlling.¹ (Amended, March 2011)

At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multi-family dwelling on a single lot (i.e. a multi-family dwelling that is not part of a multi-family development) shall be workforce housing units.

The Planning Board shall impose conditions on the approval of multi-family dwellings and multi-family dwellings which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58. Such conditions may include requirements for restrictive covenants and/or liens. (March, 2011)

¹ Example: An applicant proposed a MF Development of 24 dwelling units (d.u.’s) in 4 dwellings, 6 d.u.’s per dwelling. The 24 unit development must have at least 5 WF units (20% of 24 = 4.8) but not more than 13 (51% of 24 = 12.2). If the applicant proposes 10 WF units, the overall ratio of the development is 41.7% (10/24). This works out to be 2.5 WF units per dwelling for the 4 dwellings. The planning board would have the authority to approve an allocation of 3 WF units to each of 2 dwellings and 2 WF units to each of the other 2 dwellings. Another Example: An applicant proposed a MF Development of 40 dwelling units (d.u.’s) in 5 dwellings, 8 d.u.’s per dwelling. The 40 unit development must have at least 8 WF units (20% of 40 = 8) but not more than 21 (51% of 40 = 20.4). If the applicant proposes the maximum of 21 WF units, the overall ratio of the development is 52.5% (21/40). Each dwelling would be allocated 4 WF units, with the extra unit allocated to one of the 5 dwellings.

G. Density Bonus: At its discretion, the planning board may approve a density not to exceed eight (8) dwelling units per contiguous uplands acre, provided that at least 30% of the total dwelling units are workforce housing as defined by RSA 674:59. If the bonus is awarded, no single contiguous area of uplands on a parcel shall have a density greater than eight (8) dwelling units per acre.

H. Building Spacing: All buildings, including parking structures and accessory buildings, shall be separated by at least 25 feet.

I. Parking: Each dwelling unit shall be provided with a one car garage attached or in close proximity to the unit and one other parking space. Site plans shall include adequate parking for visitors, as determined by the planning board

402.4 Determinations Required for Special Use Permit Approval: Prior to approving a Special Use Permit, the planning board shall determine, by a vote on the record, that the multi-family dwelling or multi-family development meets each of the following standards.

1. All requirements of Section 402.4 have been met. (This may be a single vote on the record).
2. The granting of the Special Use Permit will not be detrimental to adjacent property or the neighborhood.
3. The granting of the Special Use Permit will not be detrimental to the public safety, health or welfare.
4. The granting of the Special Use Permit will not be contrary to the public interest.

402.5 Growth Management: The following provisions apply to multi-family dwellings which receive a Special Use Permit pursuant to this section. (Amended, March 8, 2016)

A. For multi-family dwellings and multi-family developments which may be affected by the limitations of Article IX- Growth Management, the planning board may require a Phasing Plan. Any such phasing plan shall assure proportional build out of workforce housing units.

B. Multi-family dwellings and multi-family developments shall be exempt from the Equitable Distribution requirements of Section 901.2, C.

C. If the limitations of Article IX would allow building permits for at least 50% of the dwelling units in a multi-family dwelling or a multi-family development but not all of the units, building permits may be issued for all of the units (i.e. for the entire dwelling). However, the occupancy permits for the remaining units above the limitation shall not be issued until building permits become available under Article IX. In such circumstances, the subsequent town wide building permit limitations shall be reduced accordingly.

D. Waiver. The planning board may waive the requirements of section 402.5, C and/or section 901.2, B, provided that after a duly noticed public hearing it determines on the record that each of the following criteria is met: (Added, March 8, 2016)

1. Applicability of the requirement(s) will make financing of the multi-family dwelling or multi-family development infeasible; and
2. The waiver will not result in an adverse impact on community facilities or community services; and
3. The waiver will not be contrary to the public health, safety or welfare.

402.6. Conditions: In approving a Special Use Permit, the planning board may attach such conditions to its approval as it deems necessary to further the objectives of this section, the zoning ordinance and the public health, safety and general welfare.

402.7 Fees: The planning board shall charge an application fee for a Special Use Permit for a multi-family dwelling or multi-family development, in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I. (g). Any special fees established by the planning board shall be reduced proportionally for applications which propose workforce housing. (i.e. The fee for a proposal having 20% workforce housing shall be reduced 20%).

402.8 Conflicts: Where the provisions of this section conflict directly with another requirement of the zoning ordinance or a requirement of the planning board's *Land Development Regulations*; the provisions of this section shall govern. Otherwise, all other requirements of the zoning ordinance and the planning board's *Land Development Regulation* shall apply to multi-family dwellings and multi-family developments.

402.9 Appeal: Pursuant to RSA 676:5, III, appeals of any planning board decisions made pursuant to this section shall be taken to the superior court, not to the board of adjustment.

SECTION 403 CONSERVATION LAND DEVELOPMENTS (CLD's) (Adopted 3/9/2010)

403.1 Authority: This section is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.

403.2 Purposes: The purposes of this section are: (1) to preserve Rye's rural character by allowing natural land features and/or open spaces to be conserved while providing greater flexibility for the residential development of larger parcels of land; (2) to encourage environmentally sound land planning and create attractive living environments through creative placement of housing; and (3) to encourage the building of well planned housing developments which will blend units of workforce housing into neighborhoods available to all prospective residents of Rye.

403.3 Special Use Permit Required: Conservation Land Developments (CLD's) require a Special Use Permit from the planning board. The planning board may approve a Special Use Permit for a CLD which complies with the requirements of this section and the requirements of the planning board's *Land Development Regulations*. Applications for a Special Use Permit shall be submitted to the planning board and reviewed in accordance with the planning board's *Land Development Regulations*. The planning board may amend its *Land Development Regulations* to include special requirements for the review and approval of CLD's.

403.4 Requirements for Conservation Land Developments. (CLD's)

A. Location: CLD's may be located in the Single Residence and Commercial Districts.

B. Parcel Size: The minimum parcel size for a CLD shall be 20 acres of land located in Rye.

C. Frontage: A CLD shall have a minimum contiguous frontage on a town or state road or street of 150 feet. Each dwelling within a CLD shall face upon either an existing town or state road or street or on a private way constructed within the CLD.

D. Number of Dwelling Units.

1. A CLD shall have a minimum of 10 dwelling units, but not more than 35 dwelling units.
2. **Yield Plan:** The number of dwelling units in a CLD shall be determined by a Yield Plan submitted by the applicant to the planning board for review and approval.
 - a) The Yield Plan shall portray a build out of the subject parcel which complies with existing zoning and subdivision regulations. The Yield Plan may include wetlands crossings which in the judgment of the planning board might reasonably be expected to be approved by NH DES and the Rye ZBA.
 - b) The number of dwelling units in a CLD shall not exceed 130% of the number of dwelling units portrayed by the approved Yield Plan.
 - c) A Yield Plan shall not be approved by the planning board without a hearing and notice to abutters pursuant to RSA 676:4.
 - d) The planning board shall not accept jurisdiction over a special permit application for a CLD until the Yield Plan has been approved.
 - e) The approval of a Yield Plan is part of the process for submitting and application for approval of a CLD. Approval of the Yield Plan may be appealed only after a final decision approving the CLD special permit application.
 - f) The planning board may enact regulations governing the content of Yield Plans and the procedures for review and approval of Yield Plans.

E. Density: No single contiguous area of uplands on a parcel shall have a density greater than four (4) dwelling units per acre. The density is the maximum allowed, and it may be reduced by the planning board if the characteristics of the site; or the configuration of the site plan; or the relationship of the CLD to its environs so warrant.

F. Workforce Housing: At least 20% but not more than 40% of the dwelling units in a CLD shall be workforce housing as defined by RSA 674:58. Workforce housing units may be rental units or ownership units. Workforce housing units shall be located throughout the CLD and not all grouped together, in an integrated pattern acceptable to the planning board. The architectural style of workforce housing dwellings shall be compatible with the architectural style of other dwellings in the CLD. The Planning Board shall impose conditions on the approval of a CLD which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58. Such conditions may include requirements for restrictive covenants and/or liens. (Amended, March 2011)

G. Types of Dwellings: Dwelling types shall be of an architectural type and style deemed by the planning board to be compatible with the neighborhood and may include single family detached dwellings, duplexes and town house style multi-family dwellings. There shall be no more than five (5) dwelling units in a single dwelling. A CLD may have more than one type of dwelling. Site development review (i.e. site plan review) shall be required for all CLD's including CLD's composed of single and two family dwellings.

H. Homeowner's Association: All CLD's shall have a Homeowner's Association, unless the CLD is composed entirely of rental housing. The Condominium Declaration and By-Laws shall be approved by the planning board in accordance with the planning board's *Land Development Regulations*.

I. Bonus for Excellence in Design: The planning board may award a bonus of three to five dwelling units, total, beyond the number of units allowed by Section 403.4 D, for excellence in design. In awarding the bonus the planning board may consider factors including but not limited to preservation of rural character, provisions for walking trails from the site to community facilities, innovative use of open space; architecture; and "green building"/energy efficient measures. The planning board may enact amendments to its *Land Development Regulations* relative to the process and criteria by which the bonus may be awarded.

J. Building Spacing: All buildings in a CLD, including parking structures and accessory buildings shall be separated by at least 25 feet.

K. Buffer: The perimeter of all CLD's shall be a landscaped buffer zone at least 50 feet in width, which may consist in whole or in part of existing natural tree growth.

L. Flexible Planning Provisions

- 1. Lot size, frontage:** In a CLD the planning board may approve lot sizes and frontages less than the minimum requirements of this ordinance. "Zero Lot Line" developments may be approved.
- 2. Setbacks:** The planning board may approve building setbacks less than the minimum yard size requirements of this ordinance provided the building spacing requirement of Section 403.4, J is met and provided that no dwelling shall be closer than 10 feet to a street or parking area.

M. Parking: Each dwelling unit shall be provided with a garage attached or in close proximity to the unit and one other parking space. A plan for a CLD shall include adequate parking for visitors, as determined by the planning board.

403.5 Open Space Requirements: At least 50 percent of the land area of a CLD shall be preserved in perpetuity by deed restriction or conservation easement as common open space accessible to the residents of the CLD. The open space shall be integrally related to the development of the parcel. Driveways, access roads and parking shall not be located within the open space. Recreational and community facilities such as playgrounds, tennis courts, pathways, ball fields, trails, etc. may be located within the open space.

A. Wetlands: Not more than 25% of the area preserved as open space may be wetlands as defined by this ordinance.

B. Contiguous Open Space: At least 40% of the area preserved as common open space must be contiguous. All pieces of preserved common open space shall have a minimum contiguous area of three (3) acres.

C. Buffer: The buffer required by Section 403.5, K. may be part of the preserved common open space.

D. Common Leachfield: A common leachfield may be part of the common open space if adequately screened, as determined by the planning board, but it may not occupy the buffer required by Section 403.5, K.

E. Ownership of Common Open Space: The common open space may be owned by a Homeowners Association, the Rye Conservation Commission or some other conservation entity acceptable to the Rye Planning Board.

1. The common open space shall be subject to deed restrictions requiring its permanent preservation as open space. Such restrictions shall run with the land.
2. The common open space shall be accessible to all residents of the CLD.
3. The common open space may be preserved by a Conservation Easement granted to the Rye Conservation Commission or some other conservation entity acceptable to the planning board. All easement restrictions shall run with the land.
4. The fee deed or easement deed for the common open space shall be reviewed and approved by town counsel.

F. Reduction of 50% Requirement: The requirement that the minimum preserved common open space be 50% of the CLD parcel size may be reduced to 40% by the planning board in the following circumstances:

1. 10 contiguous acres or more of non-wetlands are preserved as common open space; or
2. The open space abuts other open space owned by the Town of Rye; Rye Conservation Commission (including Conservation Easements); the State of New Hampshire; the Rye School District; or the Rye Water District and the Rye Conservation Commission recommends the reduction; or
3. 75% of the non-wetland areas being preserved are soils where the depth to ledge is greater than two (2) feet but less than four (4) feet; or
4. The open space contributes to the establishment of connected corridor(s) of open space, accessible to the public, throughout the town; or
5. The open space is arranged so that the dwellings of the CLD are not visible from an existing town or state road or street.

403.6 Determinations Required for Special Use Permit Approval: Prior to approving a Special Use Permit for a CLD, the planning board shall determine, by a vote on the record, that the CLD meets each of the following standards.

1. All requirements of Section 403.4 have been met. (This may be a single vote on the record).
2. The granting of the Special Use Permit will not be detrimental to the public safety, health or welfare.
3. There will be no greater diminution of surrounding property values than would be created under any other use or development permitted in the underlying zone.
4. The character of the area will not be adversely affected. In evaluating this requirement the planning board shall consider the following factors:
 - a) Compatibility of architecture.
 - b) The capacity of nearby intersections and transportation corridors.
 - c) The protection of environmentally sensitive areas.
 - d) The maintenance of view sheds.
 - e) The protection of cultural resources.
5. The granting of the permit will not result in undue municipal expense.

403.7 Growth Management: The following provisions apply to CLD.

- A. For CLD's which may be affected by the limitations of Article IX- Growth Management, the planning board may require a Phasing Plan. Any such phasing plan shall assure proportional build out of workforce housing units.
- B. CLD's shall be exempt from the Equitable Distribution requirements of Section 901.2, C.
- C. If the limitations of Article IX would allow building permits for at least 50% of the dwelling units in a multi-family dwelling but not all of the units, building permits may be issued for all of the units (i.e. for the entire dwelling). However, the occupancy permits for the remaining units above the limitation shall not be issued until building permits become available under Article IX. In such circumstances, the subsequent town wide building permit limitations shall be reduced accordingly.

403.8 Conditions: In approving a Special Use Permit, the planning board may attach such conditions to its approval as it deems necessary to further the objectives of this section, the zoning ordinance and the public health, safety and general welfare.

403.9 Fees: The planning board shall charge an application fee for a Special Use Permit for a CLD, in addition to its fee for site plan or subdivision approval and any fees for investigation and review allowed by RSA 676:4, I. (g).

403.10 Conflicts: Where the provisions of this section conflict directly with a requirement of the zoning ordinance or a requirement of the planning board's *Land Development Regulations*; the provisions of this section shall govern. Otherwise, all other requirements of the zoning ordinance and the planning board's *Land Development Regulation* shall apply to a CLD.

403.11 Appeal: Pursuant to RSA 676:5, III, appeals of any planning board decisions made pursuant to this section shall be taken to the superior court, not to the board of adjustment.

**ARTICLE V
SPECIAL REGULATIONS**

SECTION 500 OFF-STREET PARKING AND LOADING: (Rev. 1992)

500.1 Size of Parking Spaces: All parking spaces required herein shall have a minimum size of ten (10) feet in width by eighteen (18) feet in length.

500.2 Minimum Number of Parking Spaces: The number of parking spaces required by the “Table of Minimum Off-Street Parking Requirements” shall be provided for: (1) any new building, structure or land use; (2) any existing dwelling enlarged by more than twenty-five percent (25%); (3) any existing dwelling or other building in which new dwelling units are built; (4) any conversion of seasonal dwelling units to year-round occupancy; (5) condominium conversions; and, (6) any expansion or change of use of a non-residential or multi-family building, structure or site.

- A. All required parking shall be provided on the same lot or on abutting lots under common ownership. Parking spaces shall have adequate and safe driveways and means of circulation and shall have access/egress to the street on which the lot has frontage without crossing other lots.
- B. Parking requirements for uses not listed in the “Table of Minimum Off-Street Parking Requirements” shall be based upon the requirements for the most similar listed use in the table.
- C. For mixed uses the parking requirement shall be determined by the sum of the requirements for component uses. Examples: shopping centers, office parks with general and medical offices, auto sales and service establishments, etc.
- D. The Planning Board may require additional parking during site plan review if it determines that application of the “Table of Minimum Off-Street Parking Requirements” will not provide adequate off-street parking. However, the Planning Board shall not allow fewer parking spaces than required by the table. (See following pages)

TABLE OF MINIMUM OFF-STREET PARKING REQUIREMENTS

TYPE OF USE	Minimum Number of Required Parking Spaces
RESIDENTIAL	
Single family dwelling	2
Other dwellings	2 per dwelling unit
Dwelling units in mixed-use structure	1.5 per dwelling unit
Elderly housing	0.5 per dwelling unit
Group residence	0.33 per resident
Mobile home	2
Home occupation	1 per 100 s.f. business use but no fewer than 1

TYPE OF USE	Minimum Number of Required Parking Spaces
INSTITUTIONAL	
Hospital, nursing home, sanitarium	1 per 2 beds
Church, places of public assembly, theatre, auditorium	1 per every 5 seats or 1 per each 100 sf (if no seats)
Libraries, museums, community centers	1 per every 400 sf gross floor area
Membership Club	1 per every 200 sf gross floor area
SCHOOLS	
Elementary, junior high	4 per classroom
Senior high	2 per classroom plus 1 per 5 students
Day care, pre-school	1 per employee plus 1 per 6 children in maximum session
COMMERCIAL	
Motel, hotel	1 per rental unit plus 1 per employee plus restaurant component if applicable
Lodging house, tourist home, bed & breakfast, tourist camp	2 plus 1 per rental unit
Restaurant (excluding fast-food establishments)	1 per 3 seats, plus 1 per employee on maximum shift plus 1 per 2 bar stool.
Restaurant (fast-food), including pizza restaurants	1 per 2 seats plus 1 per each employee on maximum shift; or 1 per 50 sf of gross floor area, whichever is greater
Office (medical or dental)	1 per 100 sf gross floor area; or 5 per doctor, whichever is greater
Office (general)	1 per 300 sf or 1 per employee, which-ever is greater
Office (other professional)	1 per 250 sf gross floor area; or 1.5 per employee or staff member, whichever is greater
Retail	1 per 200 sf of gross sales area plus 1 per 600 sf of storage area plus restaurant component if applicable
Furniture store, appliance store, carpet sales	1 per 600 sf gross floor area

TYPE OF USE	Minimum Number of Required Parking Spaces
Personal service	1 per 250 sf gross floor area
Bank	1 per 300 sf gross floor area
Automobile sales	1 per 300 sf gross floor area
Automobile service	4 per service bay
Bowling alley	4 per lane
Health club, fitness center, racquet club	1 per 3 persons capacity; or 1 per 400 sf gross floor area, whichever is greater plus restaurant component, if applicable
Outdoor display area or outdoor storage	1 per 1000 sf gross area
Funeral home	1 per 100 sf of assembly areas and viewing rooms but no fewer than 10
INDUSTRIAL	
Warehouse, truck terminal	1 per employee on maximum shift; or 1 per 1000 sf gross floor area, whichever is greater
Manufacturing	1 per employee on maximum shift; or 1 per 600 sf of gross floor area, whichever is greater
RECREATION	
Bowling alley	4 per lane
Golf driving range	1 per tee plus 1 per employee
Miniature golf	1.5 per Hole
Golf course	4 per hole and 50% of accessory use component if applicable
Swimming pools	1 per 75 sf Water area
Skating rink	1 per 300 sf Rink area
Marina	1.5 per Berth (slip) - at least 10% of spaces large enough to accommodate cars and trailers
Racquet courts	4 per Court
Community center, Recreation center, Amusement center	1 per 250 sf Gross floor area or 1 per 4 patrons at maximum capacity

TYPE OF USE	Minimum Number of Required Parking Spaces
	(whichever is greater)
Other outdoor, recreational or, amusement Facilities	1 per 4 patrons at capacity

500.3 Location of Parking Spaces: No off-street parking shall be located within the required front yard area nor within ten (10) feet of any lot line in any district.

500.4 Off-Street Loading: In addition to the required off-street parking spaces, uses shall be provided with adequate off-street loading spaces.

SECTION 501 SIGNS AND OUTDOOR ADVERTISING:

501.1 Permitted Size of Signs: There shall be permitted in the following zones no sign larger than:

- A. In any residence district, no signs larger than four (4) square feet.
- B. In any Business District, no signs larger than sixteen (16) square feet.
- C. In any Commercial District, no signs larger than twenty-five (25) square feet.
- D. In any Public Recreation District, no signs at all other than municipal or State signs no larger than sixteen (16) square feet.

501.2 Special Exception to Size Limitations: The Board of Adjustment may allow in any zone, as a special exception, a non-illuminated temporary sign of a size not to exceed thirty-two (32) square feet in area for a period not to exceed one (1) year. In Commercial Districts, the Board may allow as a special exception a sign of a size not to exceed sixty-four (64) square feet in area.

501.3 Number of Signs Per Lot: No more than one (1) sign advertising or promoting a single business or activity (including “For Sale” signs) shall be permitted upon any lot or tract of land in single ownership, except as a special exception, provided nevertheless, that in commercial or industrial districts, up to three (3) signs upon such a lot or tract of land in single ownership promoting a business or activity carried on upon the same lot or tract of land may be permitted, and any larger number only as a special exception.

501.4 Illumination Criteria: Moving, fluttering, blinking or flashing lights or signs are prohibited. Lighting shall not glare on abutting properties or on public streets. No sign shall be illuminated by other than light-emitting diode (LED), incandescent or fluorescent light. No illuminated sign shall outline any part of a building such as a gable, roof, sidewalk or corner. Wherever sign “area” is referred to in this Zoning Ordinance, it shall mean the area of one side of a not more than two-sided sign, or one-half of the total area of a sign of not more than two sides. Temporary (non-permanent), holiday lighting is excluded from the above restrictions. (Rev 3/10/15)

501.5 Construction Requirements: Every sign shall be constructed of a durable material and shall be maintained in good condition and repair at all times.

501.6 Off-Premises Signs: In all zoning districts, only the following off-premises signs shall be permitted: (Adopted 1993).

- A. Business directional signs located within a state highway right-of-way pursuant to RSA 236:84 and N.H. Admin. Rules TRA 602.
- B. Other business directional signs, provided that: such signs shall not be located on the same road on which the business is located; no more than two such signs shall be permitted per business; and such signs shall comply with the following limitations. (Revised 1996)

Signage Limitations (Maximum)
Posted Speed (mph)
36 or Greater 35 or Below

Ht. of Letters (inches)	4	3
Panel Height (inches)	13	9
Panel Width (feet)	5	4

- C. Temporary directional signs for real estate sales, provided that such signs shall not exceed four (4) square feet in area; that such signs shall remain in place no longer than sixty (60) days; and that no more than two (2) such signs shall be permitted per advertised property.
- D. Political signs that are in full compliance with RSA 664:14 to RSA 664:17a.

All other off-premises signs, including billboards, are prohibited.

501.7 Historic District: See Section 303.5 G for additional signage requirements applicable to the Historic District. (Rev. 1997, Amended 2008)

501.8 Temporary Signs: Temporary signs are permitted in the Business and Commercial Districts for not longer than 60 days, subject to the following limitations. (Adopted 2012)

- A. No more than two (2) temporary signs per lot.
- B. The building inspector shall approve the location of a temporary sign.
- C. Off-premises temporary signs are prohibited.
- D. Total signage on the lot, including temporary signs, shall comply with the size limitations of Section 501.1.

Temporary signs are all signs not permanently affixed to the ground, to a structure or to another sign.

SECTION 502 QUARRIES, PITS, and TURF FARMS:

502.1 Quarries and Pits: Quarries, gravel pits and sand pits and accessory buildings and uses thereto are permitted as temporary land uses incidental to the development of neighborhoods within the Town of Rye, provided that:

- A. An application is filed with the Building Inspector. Said application shall contain forms and plans in accordance with Section 3 of the Rye Building Code.
- B. Applicant submits a bond with the application in an amount to be determined by the Selectmen as adequate for assuring the removal of any temporary building or use.
- C. The Zoning Board of Adjustment, after a duly called public hearing, shall rule that such building or use is not detrimental or injurious to the neighborhood.
- D. A permit is issued by the Building Inspector. Said permit shall not be for a period longer than one (1) year, but it may be renewed under like conditions for successive periods of not more than one (1) year each.

502.2 Turf Farms: No land shall be stripped of its turf or topsoil or made into a water trap of any sort except as a special exception and with such bond from the applicant as the Selectmen shall deem sufficient to assure that the applicant refills, replants or adequately regrades or landscapes such land to conform with the lands surrounding the same.

SECTION 503 CONDOMINIUM CONVERSIONS OF EXISTING DWELLING UNITS: (Amended 1982 and 2007)

503.1 Permitted By Special Exception: In any district, conversion of existing dwelling units to condominium ownership shall be permitted as a special exception granted by the Board of Adjustment, only if all the provisions herein are met.

503.2 Plan Requirements: A complete set of site plans and floor plans, as well as a complete set of all condominium documents must be filed with the Board of Adjustment upon application for the special exception.

- A. The plans shall show the location of all utilities on the site and shall indicate the location of all water connections and locations where the shutoff valve will be located for each particular unit in the case of a condominium project containing more than one unit. The plans shall indicate whether or not additional meters other than those existing or additional lines from the street will be required as a result of the condominium conversion.
- B. In the case of seasonal properties the condominium declaration and other documents which are recorded in the Registry of Deeds shall indicate on their face that the property may only be used for seasonal purposes and the months when the property may be used shall be indicated in the documents.

503.3 Criteria for Special Exceptions:

- A. The dwelling units which are subject to the request for condominium conversion must, at the time of the request for condominium conversion, exist as legal dwelling units pursuant to the ordinances of the Town of Rye. The burden shall be on the petitioner to demonstrate that the units sought to be converted have legal status.
- B. Each dwelling unit of the condominium shall contain a minimum of six hundred (600) square feet of floor area.
- C. The off-street parking requirements of the Town of Rye existing as of the date of the request for condominium conversion must be met.
- D. The proposed conversion of the existing dwelling unit to condominium ownership shall not adversely affect the values of surrounding properties.
- E. The proposed conversion to condominium ownership must not be injurious or detrimental to the neighborhood or town.
- F. The septic system and/or private sewer system standards of the New Hampshire Department of Environmental Services and the Town of Rye existing as of the date of the request for condominium conversion must be met or exceeded by all systems used by the dwelling units associated with the condominium conversion, and a certificate to that effect must be filed with the Board of Adjustment; based on review of Town records by the Building Inspector or an on-site inspection of systems and soil conditions by a professional engineer. (Rev 3/11/2014)
- G. For condominium conversions involving detached dwellings, if the amount of land designated as common area is less than 90% of the area of the parcel, not designated for buildings and individual unit owners' vehicles, each limited common area assigned to a detached dwelling shall meet the minimum lot area and frontage requirements of this ordinance. (Adopted 2003 and Amended 3/14/06).

503.4 Tourist Accommodation Units: (Adopted 2007)

It is hereby determined that tourist accommodation and transient units such as tourist cabins, hotel and motel units and lodging houses (i.e. "tourist units") are different land uses than dwelling units and have different impacts on the land than dwelling units, whether such dwelling units are seasonal or year round.

- A. Tourist units are sporadically occupied during all but the peak 10 weeks of the summer season. Even during that 10 week period, occupancy typically depends on favorable weather. Due to the lower occupancy levels, tourist units have less impact than dwelling units on:
 - 1. Water consumption and overall septage loading of the land.
 - 2. Automobile useage. Thus, they result in less traffic congestion, less air pollution and less consumption of fuel.
 - 3. Solid waste generation. Thus, the impact on waste disposal facilities and services is less.

4. Demand for fire protection and emergency medical services.
- B. Tourist units require fewer parking spaces than dwelling units. Therefore, the impact on the land from erosion and pollution due to surface water runoff is less.
 - C. Tourist units have less impact than dwelling units on municipal facilities such as the library, recreation facilities and permitted beach parking areas.
 - D. Tourist accommodation enterprises have always had a greater allowed density under this ordinance than dwelling units. The ordinance has always recognized that more land is required to support a dwelling unit than a tourist unit.
 - E. In this zoning ordinance, tourist units have always been identified as specific business uses permitted only in the Business and Commercial Districts. Tourist units are not permitted in the Single and General Residential Districts.
 - F. Tourist units have always been specially permitted business uses under Section 504 of this zoning ordinance.
 - G. Tourist units are regulated as “Trade and Commerce” under Title XXXI, RSA Chapter 353 “Hotels, Tourist Cabins, Etc.”

503.5 Accessory Apartments: An accessory apartment approved as a special exception pursuant to Section 506 of this ordinance is required by Section 506 to be a subordinate rental unit. Thus, an approved accessory apartment may not be converted to an ownership unit under the provisions of this section. (Adopted 2007)

503.6 “Grandfathered” In-Law Apartments: In 1998 the enactment of Section 506 providing for Accessory Apartments, revoked and replaced Section 202.7 of the zoning ordinance, which had allowed a property owner to make interior changes to existing buildings or to construct additions for residential use by members of the owner’s family (i.e. so called “mother-in-law apartments”).

The conversion to condominium ownership of any lawfully existing apartment created prior to March 10, 1998 under Section 202.7 shall include lawfully binding restrictions in the deed and in the condominium documents which permanently restrict ownership, occupancy and use of the apartment to members of the family of the owner of the principal dwelling unit located on the property. (Adopted 2007)

SECTION 503-A CONDOMINIUM CONVERSION OF EXISTING COMMERCIAL SPACES (Adopted 2007)

503-A:1 Permitted by Conditional Use Permit: In any district, conversion of existing commercial spaces within commercial buildings shall be permitted as a conditional use permit granted by the planning board, only if all of the provisions herein are met.

503-A: 2 Plan Requirements: A complete set of the site plans required by the *Rye Planning Board Land Development Regulations* and a complete set of all condominium documents and floor plans shall be filed with the planning board. The plans and documents shall meet the requirements of Section 503.2 of this ordinance.

503-A:3 Public Hearing: The planning board shall hold a public hearing on all applications for conditional use permits with notice as required by the *Rye Planning Board Land Development Regulations*. The hearing may be combined with any hearing required for site plan and/or subdivision approval.

503-A: 4 Criteria for Conditional Use Permit: All applications for a conditional use Permit shall comply with the following requirements. The applicant for a conditional use permit has the burden of establishing that the requirements are met. Prior to approving an application for a conditional use permit, the planning board shall make findings on the record that each of the requirements are met.

- A. The building which is the subject of the request for condominium conversion must, as of the date of the application for condominium conversion, exist as a legal commercial building pursuant to the ordinances of the Town of Rye.
- B. Each unit of the condominium shall contain a minimum of six hundred (600) square feet of floor area. Adjacent existing commercial spaces within a building may be combined and renovated to meet this requirement.
- C. The off-street parking requirements of this ordinance as of the date of the application for condominium conversion must be met.
- D. The proposed conversion to condominium ownership shall not adversely affect the values of surrounding properties.
- E. The proposed conversion to condominium ownership shall not be injurious or detrimental to the neighborhood or town.
- F. The septic system and/or private sewer system standards of the Town and of the NH Department of Environmental Services existing as of the date of the application for condominium conversions shall be met or exceeded by all units and buildings associated with the condominium conversion. A certificate to that effect must be filed with the planning board based on a review of town and state records by the building inspector or an on-site inspection of systems and soil conditions by a professional engineer.
- G. For condominium conversions involving detached buildings, if the amount of land designated as common area is less than 90% of the area of the parcel not designated for buildings and individual unit owners' vehicles, each limited common area assigned to a detached building shall meet the minimum lot area and frontage requirements of this ordinance.
- H. The proposed conversion to condominium ownership shall not be injurious or detrimental to the health, safety or general welfare of the owners or occupants of the units, buildings or sites which are part of the proposal.

SECTION 504 TOURIST CAMPS, MOTELS, HOTELS AND LODGING HOUSES:

504.0 General: No unit, motel or cabin shall be permitted on any site within a Single Residence District or General Residence District and no site for use by tents or recreational trailers shall be permitted in any district except as provided in Section 400.8.

504.1 Lot Area for Tourist Camps: No tourist camp shall be established on any premises of less than forty-four thousand (44,000) square feet and there shall be no more than ten (10) units per forty-four thousand (44,000) square feet of land.

504.2 Land Area per Unit for Tourist Camps: No tourist camp unit shall contain less than two thousand two hundred (2,200) square feet of land. No tourist camp unit shall be permitted to accommodate more than one overnight cabin or housekeeping cabin.

504.3 Permits: It shall be unlawful for any person to establish, or maintain, or to permit to be established or maintained upon any property owned or controlled by him, a tourist camp, motel, hotel or lodging house in the Town of Rye, New Hampshire, unless there exists a valid permit therefore granted by the Selectmen and existing in compliance with the provisions of this ordinance. The application for such a permit shall be accompanied by plans of the proposed or existing tourist camp, motel, hotel or lodging house, showing the location of all buildings, driveways, toilet facilities, baths, laundry facilities, slop sinks, and other improvements and such permit may be granted to anyone meeting the requirements as outlined. A minimum annual permit fee of ten dollars (\$10.00) per unit of each tourist camp, motel, hotel or lodging house shall be paid before such permit shall be issued. Such permit is in addition to, and shall in no event be deemed a substitute for, the requirements for a building permit and, construction of any such tourist camp, motel, hotel or lodging house must in all such aspects comply with the provisions of this ordinance applicable.

504.4 Plumbing and Sanitary Requirements: All tourist camp, hotel or motel units shall be provided with a minimum of one (1) lavatory, one (1) toilet, and one (1) bathtub or shower for each such unit. In addition, there shall be provided a minimum of five hundred (500) gallons in septic tank capacity, with a suitable septic drainage field, for each such unit. There shall also be provided suitable laundry facilities suitably screened from public view for each ten (10) units, or any fraction thereof. All plumbing and sanitary facilities must conform to both the Town and State Ordinances.

504.5 Garbage: The management shall provide not less than one (1) tightly covered can of not less than twenty (20) gallon capacity for each and every tourist camp and motel unit. Garbage and refuse so collected shall be deposited not less than twice weekly by the management in such garbage disposal area as the Town shall designate for this purpose.

504.6 Lighting: Every tourist camp, motel, hotel or lodging house shall have adequate exterior and interior lighting to assure safe access to and from, and use of, the premises by clientele as well as by Town police and firemen, as the circumstances may require, all of which lighting is to be provided by, and at the expense of the owner or management, or both.

504.7 Accommodations: No accommodation at any tourist camp, motel, hotel or lodging house shall be occupied by more persons than are permitted by sound public health practices. In no event shall any such temporary dwelling unit provide less than sixty (60) square feet per adult person and fifty (50) square feet per child.

504.8 Limitation of Residence: No unit shall be occupied in any month other than from May 15 through October 15, excepting the owner or proprietor thereof and bona fide employees, unless approved for year-round occupancy by the Building Inspector, who shall ascertain that (1) there is sufficient parking under winter conditions (2) there is sufficient leach field capacity, (3) there is adequate and safe heating system, and (4) no occupant other than owner, his immediate family, or bona fide employees shall remain in residence more than five (5) months in any one year.

504.9 Record of Guests: The manager of every tourist camp, motel, hotel or lodging house shall require all persons using the same to register his or her name, home address, and car license number. (Amended March 8, 2016)

504.10 Enforcement: The Selectmen of the Town of Rye, New Hampshire, shall have the power to promulgate any additional rules and regulations they deem necessary for the enforcement of the provisions of this Ordinance.

SECTION 505 WIRELESS TELECOMMUNICATIONS FACILITIES (Adopted 3/99, Rev. 3/11/2014)

505.1 Definitions. (Adopted 3/11/2014)

BASE STATION: A station at the base of a mount or in the area near the PWSF that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

COLLOCATION: The placement or installation of new PWSFs on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. “Collocation” does not include a “substantial modification.”

EQUIPMENT COMPOUND: An area surrounding or near the base of a tower or mount supporting a PWSF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the PWSF.

MODIFICATION: The replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification.

MOUNT: The structure or surface upon which antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding utility poles.

PERSONAL WIRELESS SERVICE FACILITY ((PWSF): Any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. 332(c) (7) (C) (ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services.

SUBSTANTIAL MODIFICATION: The mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

- (a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
- (b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
- (c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2500 square feet; or
- (d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage. (Rev March 11, 2014)

Alternative Tower Design: Shall mean innovative tower design techniques that include man-made trees, clock towers, bell steeples, light poles, and similar alternative-design tower structures that camouflage or conceal the presence of towers or antennas.

Antenna: Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCP), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any band width whether it be integral to a tower, microwave or satellite dish structure.

Dish: Shall mean any parabolic or spherical microwave antenna reflecting surface structure used for telecommunications.

FAA: Shall mean the Federal Aviation Administration.

FCC: Shall mean the Federal Communications Commission.

Height: Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is antenna.

Preexisting Structures: Shall mean any existing structure that could safely be utilized as a support structure for antenna mounting. (e.g. water tower)

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

Wireless Telecommunications Facilities: Shall mean any antenna tower, or other structure which is intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum based transmissions/receptions.

505.2 Purpose: These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Rye to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to furnish such services to the community quickly, effectively, and efficiently.
- B. Balance the Town's responsibility to provide reasonable opportunities for wireless telecommunications facilities with the other objectives of this zoning ordinance and with the goals and objectives of the Rye Master Plan.
- C. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to persons and property and property values.
- D. Provide for co-location and minimal impact siting options through an assessment of technology, electronic compatibility, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- E. Permit the construction of new towers only when all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- F. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Rye.
- G. Provide for the timely maintenance and safety inspections for any and all facilities.
- H. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger.
- I. Provide for the removal or upgrade of facilities that are technologically outdated. Provide for the removal of inactive facilities.

505.3 Wireless Telecommunications Facilities District and Map: (Rev. 2003)

The Wireless Telecommunications Facilities District shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows :

<u>Map/Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled By</u>	<u>Map Key</u>
10/4-1	Breakfast Hill	New Water Tank	Rye Water Dist.	TC-1
7/108; 108-1; 109 & 112	South from Garland Rd.	Water wells & pumping (See Note 1 below)	Rye Water Dist.	TC-3
Map 12	Rye Center	(See Note 2 below)		TC-2
18/34	Lang's Corner	School Soccer Field	Rye School	TC-5
7-96	Off Grove Rd.	Conservation Land	Rye Conservation Comm. (Adopted 2003)	

*Portion of "Perkins Heirs Parcel," west of Grove Road, Conservation Land, Rye Cons. Com. (Adopted 2004)

Note 1. At site TC-3 towers and other telecommunication facilities are prohibited within the 400 ft. sanitary radius exclusion zone of the Rye Water District water wells. (Revised 2009)

Note 2. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including Bethany Church, provided that such facilities do not exceed 20 feet height above the existing structure. Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with Section 303.

505.4 Permitted Uses within the Telecommunications Facilities District: In addition to uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Special Use Permit as provided for in Section 505.7. All such uses must comply with other applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

Prior to approving an application for a special use permit, the Planning Board shall determine that all requirements of this ordinance will be met.

- A. **Principal or Secondary Use:** Antennas and towers may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of telecommunications facilities as a secondary use as long as all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a tower or an antenna on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the towers or antennas may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

* This portion of the "Perkins Heirs Parcel" measures approx. 150' X 780', north of and adjacent to Tax Map 7 Lot 96, easterly of the PSNH Power-line.

- B. **Height Requirements:** These requirements and limitations shall preempt all other height limitations as required by the Town of Rye Zoning Ordinance and shall apply only to telecommunications facilities. Telecommunication tower height for each site must be substantiated and this evidence reviewed by the Town’s consultant (at applicant’s expense) and approved by the Planning Board. No tower shall exceed 150 feet except in Zone TC-3 and on Parcel 7-962 and on the portion of the “Perkins Heirs Parcel” rezoned on March 9, 2004, where the limit is 190 feet. (Amended 2003, 2004)
- C. **Amateur Radio; Receive-Only Antennas:** This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.
- D. **Essential Services & Public Utilities:** Wireless telecommunications facilities shall not be considered infrastructure essential services, public utilities or public utilities buildings, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for telecommunications facilities is a use of land, and is addressed by this article.

505.5 Construction Performance Requirements:

A. Tower Structural Design:

1. Towers shall be structurally designed to accommodate a minimum of four (4) antenna levels. The application for a special use permit shall include the certification of a professional engineer registered in the State of New Hampshire that the tower is capable of structurally supporting four (4) antenna locations. As a condition of approval, any applicant proposing to build a new tower shall certify, in a form acceptable to the Planning Board, that it will allow three (3) other antennas to be co-located on the tower, including antennas of other carriers. This certification shall be executed as an agreement in a form acceptable to town counsel.
2. All tower components, including antennas, shall be designed to avoid accelerated failure as caused by wind excitations that could occur at or near the fastened natural frequency of these components.
3. All fasteners shall have proven self-locking features.
4. Towers including attachments thereto and ground anchors must be able to withstand wind loads as required by the standards published by the Electronic Industry Association or meet the set back requirements of Section 505.6.A1.
5. Tower components must be made from durable, non-corroding non-rusting materials.

- B. **Federal Requirements:** All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and retrofit of existing towers and antennas is required by any Federal agency,

then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months or the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

C. Tower Maintenance and Inspection Requirements:

1. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.
2. **Tower Inspection:** Inspection of the facility shall be carried out every three years by an independent professional structural engineer to verify adequate tower system structural integrity. Inspection to verify structural integrity shall also be accomplished after any storm having local wind velocities in excess of 65 mph as measured by a tower mounted anemometer with continuous recording. Local measurement may be waived by the Planning Board where wind velocities can be obtained from another reliable source. The cost of these inspections shall be borne by the tower owner. An inspection report shall be submitted to the Rye Building Inspector and the Planning Board for each required inspection.
3. If any inspection reveals that a tower constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 60 days to bring such tower into compliance with such inspection recommendations and code standards. If the owner fails to bring such tower into compliance within 60 days, such action shall constitute abandonment and grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

D. Aesthetics and Lighting: The guidelines in this subsection, shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements only if it determines that the goals of this ordinance are better served thereby.

1. Towers shall be painted a color blending in with surroundings so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.
6. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 50 feet wide outside the perimeter of the compound. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

505.6 Additional Requirements for Wireless Telecommunications Facilities: These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

A. Setbacks and Separation:

1. If the requirements of Section 505.5A are not met, then the towers must be set back a distance equal to 120% of the height of the tower from the edge of the property on which they are located.
2. Towers, guys, anchor structures, and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Towers must be set back a minimum of 120% of tower height from any building used for residential, business or commercial purposes (except buildings which are part of the telecommunication facilities).
4. Towers must be set back a minimum of 100 feet from wetland soils, marshes and year-round streams and ponds.

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

505.7 Special Use Permits:

A. General: All Wireless Telecommunications Facilities, whether located within the Wireless Telecommunications Facilities District or elsewhere, shall require a Special Use Permit from the Planning Board. All applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements and procedures in the *Rye Planning Board Land Development Regulations*. In addition, applications under this ordinance shall also be required to submit the information provided for in paragraphs B and C below. (Amended, March 2011)

B. **Plan Requirements:** Each applicant requesting a Special Use Permit under this ordinance shall submit a scaled plan in accordance with the *Rye Planning Board Land Development Regulations* and further information including:

1. A scaled elevation view; this shall be a three dimensional perspective color-rendered drawing of the proposed site and abutters' property and buildings up to a radius of 500 feet.
2. Topography.
3. Radio frequency coverage.
4. Tower height requirements.
5. Setbacks to adjacent uses (up to 225 ft. away); location of all buildings and structures within 500 feet of proposed tower.
6. Driveways and parking.
7. Fencing.
8. Landscaping.
9. Lighting (if required by FAA) electric power requirements, location and configuration of power access.
10. Signage (limited to basic identification and safety information).
11. Tree cutting at site.
12. Permit(s) from State of New Hampshire and Rye Board of Adjustment allowing crossing of wetlands, if required.

C. **Other Information Required:** In order to assess compliance with this ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulation on radio frequency (RF) exposure guidelines.
2. The applicant shall submit written proof that an evaluation has taken place, as well as the results of evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal 30 day comment period, and the Town process shall become part of the application requirements. Applicants shall identify all environmental impacts and mitigation plans and schedules.
3. Each applicant for an antenna or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and

those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers.

The Planning Board may share such information with other applicants applying for approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

4. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence may consist of:
 - a. Substantial evidence that no suitable existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.
 - b. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
 - c. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d. Substantial evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - e. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable.
 - f. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
 - g. Information on how many wireless facility sites each provider will require, other sites outside of Rye being considered, type of use (analog or digital) and impact of future technology on tower height.
 - h. Information on what sites outside the Town of Rye are being considered for other sites.
 - i. Information on how future technology may reduce or eliminate the need for tall antenna sites.

- j. Information on how the siting of a wireless facility affects the ability to allow a competitor's antennas on the same property.
 - k. Information on what wireless carriers use the system known as CMI/HIC which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones.
 - l. Information on whether there are any of the carriers using CMIL/HIC in other cities and towns.
 - m. Information on whether it is feasible for carriers to locate base station equipment underground.
5. The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. The Agreement shall be reviewed and approved by town counsel. Such agreement shall become a condition to any approval. This agreement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Rye.

D. **Issuance of Special Use Permits:** In granting the Special Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

- 1. **Decisions:** Possible decisions rendered by the Planning Board, include approval, conditional approval, or denial of the special use permit. All decisions shall be rendered in writing, in accordance with RSA 676:3. Notice of Decision shall be filed within 72 hours and in the event of denial shall include written reasons for same. In accordance with the National Wireless Telecommunications Siting Policy Section 332© (47 U.S.C.332©), a denial shall be based upon the substantial evidence contained in the written record.
- 2. **Factors to be Considered in Reviewing Applications:**
 - a. Height of the proposed tower or other structure does not exceed that which is essential for its intended use and public safety within the limits of Section 505.4B.
 - b. Proximity of tower to residential development or zones.
 - c. Nature of uses on adjacent and nearby properties.
 - d. Surrounding topography.
 - e. Surrounding tree coverage and foliage.
 - f. Design characteristics of the tower that have the effect of reducing or eliminating visual obtrusiveness.

- g. Structural safety margin of the tower system with wind velocities of 75 mph (measured at or near the top).
- h. Proposed ingress and egress to the site.
- i. Availability of suitable existing towers and other structures as discussed in Section 505.7.C.4.
- j. Visual impacts on view sheds, ridge lines, and other impacts caused by tower location, tree and foliage clearing and placement of incidental structures.
- k. Impact on view from any public park, public beach, natural scenic vista, historic building or site or major view corridor.
- l. That the proposed facility/tower/dish is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.
- m. That monopoles have been carefully considered for use.
- n. Compatibility with surrounding land uses and the neighborhood.
- o. The goals and objectives of the Rye Master Plan.

505.8 Bonding, Security and Insurance: Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and the amount of security that represents the costs for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable or unwilling to remove the tower in accordance with Section 505.9. Satisfactory security shall be submitted to the Town and approved by town counsel prior to any Planning Board approval. Upon construction of the tower, the Planning Board shall also require a certificate of appropriate insurance covering the constructed facilities, with ten days notice of any changes in coverage.

505.9 Removal of Abandoned Antennas and Towers: Planned tower deactivation or abandonment by lessee or owner shall be the subject of prompt noticing of the Rye Building Inspector and the Planning Board. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the lessee or owner of said tower provides proof of quarterly inspections. The lessee or owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the lessee or owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

505.10 Consultant Fees: The Board may retain the services of a consultant qualified in wireless telecommunications services and a consultant qualified in tower structures to review the application and all associated information. The Board may further require, pursuant to RSA 676:4 I (g) that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full. This provision shall

not limit or restrict in any way the Board's ability to require other investigative studies under its site plan review authority.

505.11 Waivers: Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

A. Requirements for Waivers:

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

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

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

505.12 Compliance with RSA 12-K: 7: (Adopted, March 2011) (Rev 3/11/14/)

- A. Upon receipt of an application to construct a new tower or to complete a substantial modification to an existing tower or mount which will be visible from any other New Hampshire municipality within a 20 mile radius, the town shall:

1. Provide written notification of such application to the other municipality, per RSA 12-K:7, I (b); and
 2. Publish a notice in a newspaper customarily used for legal notices by the town, as required by RSA 12-K: 7, I (b). Such notice shall be published not less than 7 days nor more than 21 days prior to the date of any public hearing which may be required.
- A. For applications to the Zoning Board of Adjustment relative to a proposed Wireless Telecommunications Facility, the building inspector shall provide the above notifications required by RSA 12-K:7.

505.13. Collocations/Modifications: Pursuant to RSA 12-K: 10, collocations and modifications are exempt from the requirements of §'s 505.3 to 505.11. Applicants for collocation or modification shall apply to the building inspector for a building permit. The building inspector's review and decision shall comply with RSA 12-K: 10, II. This exemption does not apply to substantial modifications of existing towers, mounts or PSWFs. (Adopted 3/11/14)

SECTION 506 ACCESSORY APARTMENTS (Adopted 3/10/98)

506.1 Purpose: The Town of Rye recognizes the public need for the provision of a variety of housing types, including efficient and affordable housing for singles, couples, single parents, elderly and new households. Throughout the town opportunities exist within under utilized and/or large single family dwellings to create small accessory apartments to meet these needs, as well as to provide a source of income and other assistance for property owners. To accomplish this purpose and to protect the health, safety and welfare of the existing neighborhoods, accessory units may be permitted subject to the following requirements.

506.2 Special Exception: The Board of Adjustment may grant a special exception to allow the construction of, addition to, renovation of and use and occupancy of a single family dwelling in the Single Residence District only, in order to create one subordinate rental accessory apartment unit as an integrated part of said single family dwelling, in accordance with the following performance standards.

506.3 Performance Standards: In addition to making the determinations required by Section 701.3 of this ordinance, the Board of Adjustment shall determine that an accessory apartment complies with the following standards.

- A. Each accessory apartment shall have a minimum floor area of 600 sf and a maximum floor area of 1200 sf and shall contain, at a minimum, a separate cooking area with a kitchen sink, one full bathroom, and not more than two bedrooms. (Rev. 2002)
- B. Each accessory unit shall be limited to a maximum occupancy of three persons, not more than two of whom may be greater than 18 years of age.
- C. Two additional off-street parking spaces shall be provided for the accessory apartment.
- D. The accessory unit shall be constructed and maintained in such a manner as to retain the appearance and character of the structure and site as a single family dwelling.
- E. The principal dwelling unit on the premises shall comply with the floor area requirements of Section 203.3, E, of this ordinance.

- F. The property owner shall reside on the premises.
- G. An approval shall be obtained from NHDES relative to the adequacy of the on site waste disposal system.
- H. An approval shall be obtained from the applicable supplier of public water or certification of a well of adequate capacity shall be provided.
- I. All other zoning requirements shall be met.

506.4 Applications: All applications for special exceptions shall include the following information:

- A. A property layout, including existing or proposed septic system.
- B. A parking plan.
- C. A floor plan of all rooms on the premises and the uses thereof.
- D. Plans for access and egress.
- E. Approval of the Fire Chief.
- F. Elevation views of buildings whenever exterior changes are proposed.

506.5 Recertification: Every two years after approval and when the dwelling is sold, the owner of the dwelling and all adult occupants of the accessory apartment shall file an affidavit with the Building Inspector certifying that the owner lives on the premises and that the occupancy of the accessory unit complies with Section 506.3 B.

SECTION 507 STORM WATER MANAGEMENT

507.1 Purpose: It is the intent of this section to regulate building and land development so that surface water drainage from building and land development does not adversely affect adjacent properties, watercourses or the town's storm drainage system.

507.2 Drainage Onto Adjacent Properties: No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage flowing onto an adjacent property unless a drainage easement allowing such flowage in perpetuity is recorded.

507.3 Drainage Into Watercourses/Town Drainage System: No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage or flowage into existing water courses or into the town's storm drainage system unless the Public Works Director determines that the water course or drainage system will have the capacity to accommodate the additional flow, both now and in the future.

507.4 Drainage and Grading Plan: The Building Inspector may require submission of a detailed drainage and grading plan at his/her sole discretion and at the expense of the property owner whenever there is a question regarding compliance with this section. (Rev. 2002)

SECTION 508 SMALL WIND ENERGY SYSTEMS (Adopted 2009)

508.1 Authority: This ordinance is adopted in accordance with RSA 672:1, as amended by Chapter 357 of the NH Session Laws of 2008, and RSA 674:39, which is effective July 11, 2009.

508.2 Purpose: The purpose of this ordinance is to provide for distributed generator/small wind energy systems intended primarily to reduce on-site consumption of utility power in appropriate locations, while minimizing any adverse visual, safety and environmental impacts of a system. Small wind energy systems increase local energy independence, reduce pressure on the local electricity grid and reduce pollutants from traditional forms of energy.

508.3 Definitions: The following definitions shall apply to this section.

Fall zone: The potential fall area for the small wind energy system. It is measured by using 120% of the total system height as the radius around the center point of the base of the tower. *E.g.* If the total system height is 60 feet, the fall zone would be defined by a circle with a radius of 120% of 60 feet = 72 feet around the tower (as measured from the center of the base of the tower.)

Flicker: The moving shadow created by the sun shining on the rotating blades of the wind turbine.

Meteorological tower (met tower): A temporary tower which includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. Met towers are only those towers whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Net metering: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system which is fed back into the electric distribution system over a billing period.

Power grid: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow: The outline created on the surrounding area by the sun shining on the small wind energy system.

Small wind energy system: A wind energy conversion system consisting of: (1) a vertical or horizontal wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 60 kilowatts or less and will be used primarily for onsite consumption, or (2) a horizontal or vertical turbine mounted on a building and associated control or conversion electronics, which has a capacity of 60 kilowatts or less and will be used primarily for onsite consumption.

Tower: The monopole or guyed monopole structure that supports a wind turbine.

Total system height: The vertical distance from grade to the tip of the wind turbine blade when it is at its highest point.

Tower height: The height above grade of the fixed portion of the tower, excluding the wind turbine.

Wind turbine: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

508.4 Permits: The installation or modification of a small wind energy system shall require a Building Permit from the building inspector and a Conditional Use Permit (CUP) from the planning board. The permits shall be applied for simultaneously. The planning board shall prepare a single permit application for this purpose.

A. Required Information. The information required by Section 508.6 shall be submitted with the application.

B. Abutter Notice. The building inspector shall comply with the notice requirement of RSA 674:62, which provides abutters with a 30 day comment period prior to issuance of a building permit. The building inspector's notice may be mailed concurrently with the planning board's notice of its hearing on the CUP application.

508.5 Conditional Use Permit:

A. Review Process. CUP applications shall be processed in accordance with the Rye Planning Board's procedures for Major Site Developments (i.e. major site plans). Upon the request of the applicant, the planning board shall grant waivers of its requirements for soils plans, surface water drainage plans and erosion control plans where no purpose would be served by reviewing such plans.

B. Approval of CUP. Prior to approving an application for a CUP, the planning board shall determine that all of the requirements of Section 508.7 are met.

C. Appeal. In accordance with RSA 674:21 and RSA 676:5, III, appeals of planning board decisions on applications for a Conditional Use Permit may be taken to the superior court as provided by RSA 677:15.

508.6 Required Information: Applications for a Building Permit/CUP shall include the following information.

1. A site plan stamped by a professional engineer or land surveyor licensed by the State of New Hampshire showing:
 - i) Property lines and physical dimensions of the applicant's property.
 - ii) Location, dimensions, and types of existing major structures on the property.

- iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment, including equipment associated with hybrid systems.
 - iv) Setback requirements.
 - v) The right-of-way of any public road that is contiguous with the property.
 - vi) Any overhead utility lines.
 - vii) Any wetland, marsh, stream, pond, ocean or other water body within the fall zone.
 - viii) Tree and vegetation cutting at the site.
 - ix) The planning board may require the applicant to submit a computer enhanced view shed analysis.
2. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed), nameplate generation capacity.
 3. If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
 4. Tower foundation blueprints or drawings.
 5. Tower blueprint or drawings.
 6. Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
 7. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
 8. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
 9. List of Abutters.

508.7 Criteria: All small wind energy systems shall comply with the following requirements. The applicant has the burden of providing sufficient information to establish that the criteria are met.

A. Setbacks.

1. A small wind energy system mounted on a tower shall be set back a distance equal to 120% of the total system height from:
 - a Any public road right-of-way, unless written permission is granted by the governmental entity with jurisdiction over the road.
 - b Any overhead utility lines.

- c All property lines, unless the affected land owner provides written permission through a recorded easement allowing the small wind energy system's fall zone to overlap with the abutting property.
 - d Any travel way, including but not limited to driveways, parking lots, nature trails or sidewalks.
 - e Wetlands, marshes, streams, ponds, the ocean (measured from the highest observable tide line) and water bodies.
2. Small wind energy systems shall meet all yard setbacks for the zoning district in which the system is located.
 3. The setback shall be measured to the center of the tower's base.
 4. Guy wires used to support the tower are exempt from all setback requirements, but shall be located on the same lot as the tower.

B. Tower.

1. Lattice towers are prohibited.
2. Tower height shall not exceed 140 feet.
3. The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the wind turbine.
4. In reviewing the proposed height in an application for a CUP, the planning board may consider the "rule of thumb" that the bottom of rotor blades should be at least 30 feet above any obstruction within 300 feet. The planning board may also consider that increased tower height may yield high returns on power production.

C. Building Mounted Systems. Building mounted small wind energy systems may be located only on those parts of a building which comply with yard setback requirements.

1. The application of a CUP/Building Permit shall include the certification of a structural engineer licensed by the State of New Hampshire that the building will safely support the small energy wind system.
2. In no case shall the total height exceed twice the height of the building.

D. Sound Level. The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the property line, except during short-term events such as severe wind storms and utility outages.

E. Shadowing/Flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. The applicant has the burden of proving that there will not be significant shadow flicker impacts. Significant shadow flicker is more than 30 hours per year on an occupied building. Potential shadow flicker shall be addressed either through siting or mitigation measures.

- F. Signs. All signs, both temporary and permanent, are prohibited on the small wind energy system, except as follows: (1) manufacturer's or installer's identification on the wind turbine; and (2) appropriate warning signs.
- G. Code Compliance. The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code and the Rye Building Code.
- H. Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424. Evidence of compliance or non-applicability shall be submitted with the application.
- I. Visual Impacts. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access the wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the wind resources.
1. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, turbine design or appearance, buffering, and screening of ground mounted electrical and control equipment.
 2. The color of the small wind energy system shall either be a neutral stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment, as approved by the planning board. The owner shall be responsible for maintaining the color or the small wind energy system over time.
 3. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
 4. All electrical conduits shall be underground. All electrical conduits and control wiring shall be underground or wireless.
 5. Towers will be landscaped with a buffer of plant material that effectively screens the view of the tower compound from adjacent residential properties.
- J. Utility Connections. If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A: 9.
- K. Access. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

- L. Approved Wind Turbines. The manufacturer and model of the wind turbine to be used in the proposed small wind energy system must be approved by the California Energy Commission or the New York State Energy Research and Development Authority; or, when approval lists become available, by the Small Wind Certification Council or the State of New Hampshire.
- M. Clearing. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

508.8 Abandonment:

- A. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- B. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to, removal of the wind turbine and tower and related above grade structures and restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after-conditions.
- C. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Building Inspector shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
- D. If the owner fails to respond to the Notice of Abandonment or if after review by the Building Inspector it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind turbine and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system, the town shall have the authority to remove it pursuant to the process set forth in RSA 676:17-a.
- E. The Planning Board may require the applicant for a CUP to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the time of construction to cover costs of the removal in the event the town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism to accommodate the rate of inflation over 15 years.

508.9 Meteorological (Met) Towers: The construction of a met tower for the purpose of collecting data to develop a small wind energy system, shall abide with the following requirements;

- A. The construction, installation or modification of a met tower shall require a building permit and shall conform to all applicable sections of the NH State Building Code and the Rye Building Code. The information required by Section 508.6 shall be submitted with the application for a building permit.
- B. Met towers shall be permitted on a temporary basis not to exceed 18 months.
- C. Met towers shall comply with all requirements of Section 508.7.
- D. A conditional use permit is not required to construct, install or modify a met tower.

SECTION 509 DEMOLITION REVIEW (Adopted 2009) (Rev. 3/12/2013)

509.1 Purpose: The purpose of this section is to encourage the preservation of buildings and places of historic, architectural and community value.

509.2 Demolition: For the purposes of this section, the word “demolition” means the act of pulling down, destroying, removing or razing a building or part of a building or commencing the work of total or substantial destruction with the intent of completing the same. It does not include interior demolition which does not alter the appearance of the exterior of the building.

509.3 Demolition Subject to Review: Any demolition within the Town of Rye shall be subject to the requirements of this section where:

- A. The demolition is greater than five hundred (500) square feet of gross floor area; and
- B. The building was constructed more than fifty (50) years before the date of application for a demolition permit. (Revised March 12, 2013)

509.4 Demolition Review Committee: A Demolition Review Committee is hereby established consisting of three persons and two alternates.

- A. The Demolition Review Committee members shall be appointed by the Board of Selectmen to three year terms, with the initial terms staggered as one, two and three year terms, respectively. The initial terms of alternates shall be staggered as two and three year terms, respectively.
- B. One member of the Demolition Review Committee shall be a member of the Historic District Commission; one member shall be a member of the Planning Board; and one member shall be a representative of the Rye Historical Society.
- C. If the Town establishes a Heritage Commission pursuant to RSA’s 673:1, 673:4-a, the Demolition Review Committee shall be comprised of three (3) members of the Heritage Commission and two alternates appointed by the Chair of the Heritage Commission. If the Demolition Review Committee already exists pursuant to Paragraph B, above, such appointments shall be made as replacements for the existing Demolition Review Committee members as the terms of the existing members expire.

509.5 Demolition Review Procedure:

- A. When an application for a demolition permit, or a building permit involving demolition, or a site plan review involving demolition is made, or a formal written application is submitted to the Building Inspector for a determination under this article, the Building Inspector will determine if the building, or section of the building, meets the criteria of Section 509.3. If it does, the Building Inspector shall:
 - 1. Notify the applicant in writing within five (5) business days of the filing that the demolition must be reviewed before proceeding and that the delay will not exceed forty-nine (49) days.
 - 2. Within five (5) business days forward the application to each member of the Demolition Review Committee.
- B. The Demolition Review Committee shall meet within five (5) business days of receipt of the application and make one of the following two determinations.
 - 1. If the Demolition Review Committee determines that the building is not potentially significant, it shall, within three (3) business days of making that determination, notify the Building Inspector of the determination. In such case, a demolition permit may be issued by the Building Inspector provided all other requirements applicable to the demolition have been met.
 - 2. If the Demolition Review Committee determines that the building is potentially significant, it shall schedule a public hearing within twelve (12) business days of making that determination, and within three (3) days of making that determination notify the Building Inspector of it. Notice of the public hearing shall be posted in two public places and published at least five (5) days prior to the hearing, not including the day of the hearing or the day of posting.
- C. Within five (5) business days of the Demolition Review Committee's decision to hold a public hearing, the Building Inspector shall notify the applicant that a sign identifying the building as proposed for demolition and the date, time, and place of the public hearing on the proposed demolition is ready for posting in a visible location on the building or site. Posting of the sign within five (5) business days of receiving notification from the Building Inspector shall be the responsibility of the applicant.
- D. The Demolition Review Committee shall hear all public testimony regarding demolition of the building. The owner or his representative shall be invited to attend the hearing.
- E. At the conclusion of the hearing, the Demolition Review Committee shall either:
 - 1. Notify the Building Inspector in writing within three (3) business days of the decision if the building is found to be not significant, in which case demolition may proceed, provided all other requirements applicable to the demolition have been met.

2. Hold a meeting between the Demolition Review Committee and the owner (or owner's representative) within ten (10) business days of the public hearing to discuss alternatives to demolition if the Demolition Review Committee determines the building is significant and its loss potentially detrimental to the community.
- E. The demolition review process shall not delay the issuance of a demolition permit by more than the 49 days provided by Section 509.5, A.1, except in the following circumstances.
1. An owner's (or his/her representative's) unwillingness or inability to meet with the Demolition Review Committee shall extend the period until such a meeting is held and for 20 days following the date of the meeting.
 2. An owner's delay in posting the sign required by Section 509.5, C shall extend the period by the number of days of delay in posting the sign.

509.6 Demolition:

A. If no alternatives to demolition have been identified and agreed to by the applicant, after the meeting provided for in Section 509.5, E.2, the applicant is free to proceed with demolition, provided all other requirements for demolition are met. Prior to demolition, and if the applicant is in agreement, the Demolition Review Committee shall photographically document the building. The Demolition Review Committee shall also encourage the applicant to salvage significant architectural features.

B. Nothing in this article shall be construed to prevent immediate demolition where public safety is at stake and the building has been determined by the Building Inspector to be a public hazard and demolition is the only viable recourse.

509.7 Criteria: In determining if a building is "potentially significant" or "significant" the Demolition Review Committee shall consider whether:

A. The building is of such interest or quality that it would meet national, state or local criteria for designation as an historic, cultural or architectural landmark.

B. The building is of such unusual or uncommon design, texture or materials that it could not be reproduced or could be reproduced only with great difficulty and expense.

C. The building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.

D. Retention of the building would help preserve and protect an historic place or area of historic interest.

**ARTICLE VI
NON-CONFORMING LOTS, NON-CONFORMING
USES AND NON-CONFORMING
BUILDINGS AND STRUCTURES**

SECTION 600 GENERAL:

At the time this ordinance takes effect, all lawful lots, buildings, structures and uses, which would not be otherwise allowed in the district where the same is located by the terms of this ordinance, are declared to be non-conforming and shall be subject to the regulations set forth herein. All non-conforming lots, buildings, structures and uses when this ordinance takes effect may continue indefinitely in their present or any similar use. Nothing in this ordinance shall be deemed to restrict the sale or lease of any such non-conformity by the new owner or lessee.

SECTION 601 NON-CONFORMING LOTS:

In any district in which single family or two family dwellings are permitted, a dwelling and customary accessory buildings may be erected, as a variance obtained pursuant to Article VII, on any lot which was a lot of record on the effective date of this Ordinance, earlier variations thereof, or future amendments thereto, even though such lot fails to meet the district requirements for area or frontage or depth.

The following lots are considered buildable lots which are exempt from the variance requirements of this section and the merger requirements of Section 601.1, provided all other requirements are met:

1. Lots of record which met the requirements of the zoning ordinance for area, frontage and depth which were in effect on November 20, 1998, and
2. Lots which were delineated on a plan which was accepted for subdivision review by the planning board prior to November 20, 1998 and subsequently approved and which met the requirements for area, frontage and depth which were in effect on November 20, 1998.(Adopted 1999)

601.1 Merger Rule: (Repealed March 13, 2012)

601.2 Yard Dimensions: The applicable district requirements for yard dimensions and other requirements not involving area, frontage or depth, shall still apply to non-conforming lots of record.

601.3 Septic System Requirements: No structure or building shall be erected on a non-conforming lot of record unless the septic system requirements of both the State of New Hampshire and the Town of Rye are complied with. Approval of septic system design by the New Hampshire Department of Environmental Services shall not necessarily be considered proof of satisfaction of this requirement. (Rev 3/11/2014)

SECTION 602 NON-CONFORMING USES:

Lawful uses of land, structures or buildings existent at the effective date of this ordinance may be continued as non-conforming uses so long as they remain lawful, provided that:

602.1 Expansion: No such non-conforming use shall be enlarged, increased or extended.

In the SR and GR Districts, a lot which has more than one dwelling is a nonconforming use, and expansions of such dwellings are prohibited. See Section 202.4a. (Adopted 3/14/06)

602.2 Change to Another Non-Conforming Use: If no structural alterations are made, any non-conforming use of a building structure or land may be changed to another non-conforming use upon approval by the Board of Adjustment, after duly held public hearing, provided that the Board of Adjustment makes a specific finding that the proposed non-conforming use is equally or more appropriate to the district than the existent non-conforming use. In granting approval, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.

602.3 Replacement With Permitted Use: Any building, structure, or land in or on which a non-conforming use is replaced by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the non-conforming use may not thereafter be resumed.

602.4 Abandonment, Discontinuance, Destruction: Any and all non-conforming uses of land, buildings or structures which are abandoned, discontinued or vacated or which are partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm, tides, or other acts of God, may be resumed or restored and operated in their former non-conformity if same is done within three (3) years thereafter. The replacement uses (or buildings and structures, if applicable) must be in the same location, and of the same dimensions as before the damage, unless change of location of dimensions would make the replacement more conforming.

602.5 Multiple Non-Conforming Uses: Only the principal use of the premises concerned may be continued if it is non-conforming. A subsidiary, secondary or subordinate use of the premises may not be continued.

SECTION 603 NON-CONFORMING BUILDINGS AND STRUCTURES:

Where lawful buildings or structures exist at the effective date of this Ordinance which could not be built under the terms of this Ordinance by reason of restrictions on floor area, lot coverage, height, yard, location on the lot or other requirements concerning the building or structure, such buildings or structures may be continued as non-conforming buildings or non-conforming structures, so long as they remain lawful, provided that:

603.1 Expansion: Expansion of non-conforming parts of buildings or structures is not allowed. Those parts of any building or structure which are conforming may be expanded provided the expansion is conforming and the use is not changed. For example, if a non-conforming building encroaches into a yard area established by this ordinance, the bulk of

the building within the yard area shall not be expanded at all, either vertically or horizontally, within such yard area.

603.2 Abandonment, Discontinuance, Destruction: Any non-conforming building or non-conforming structure which is abandoned or vacated or which is partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm, tides, or other acts of God, may be resumed or restored and operated in its former (non-conformity) if same is done within three (3) years thereafter. If possible, the replacement of the building or structure shall conform to the requirements of this Ordinance with which it previously did not conform, as well as to all other requirements with which it did conform. Otherwise, the replacements of all non-conforming parts of the structure shall be in the same location and of the same dimensions, height and bulk, as before the damage occurred unless changes would make the replacment less non-conforming.

SECTION 604 SPECIAL EXCEPTION USES: (Rev. 1997)

A lawful use which existed at the effective date of this ordinance (or at the effective date of an applicable amendment) and which is permitted by special exception by this ordinance (or applicable amendment) is a legal “grandfathered” special exception. No approval from the Board of Adjustment is required for the continuance of such use as it existed on the effective date of this ordinance (or applicable amendment), but no such use shall be expanded without approval by the Board of Adjustment pursuant to Section 701.3. No use which has been granted a special exception by the Board of Adjustment subsequent to the effective date of this ordinance shall be expanded from the use approved by the Board of Adjustment without Board of Adjustment approval of the expansion pursuant to Section 701.3.

SECTION 605 PRIOR UNLAWFUL USES:

Nothing in this Ordinance or section shall validate any use which was declared unlawful or was prohibited by any prior zoning Ordinance of the Town of Rye, whether or not such unlawful or prohibited use had been prosecuted prior to, or at the time this Ordinance became effective, and no such unlawful or prohibited use shall be deemed conforming under the terms of this Ordinance.

**ARTICLE VII
BOARD OF ADJUSTMENT**

SECTION 700 ESTABLISHMENT OF BOARD OF ADJUSTMENT:

The Board of Adjustment, as established, is hereby continued as such. The word “Board” when used in this section shall be construed to mean the Board of Adjustment. The Board shall consist of five (5) members elected by town voters, each to be elected for three (3) years as the terms of appointed members expire. The Board of Adjustment shall appoint not more than five (5) alternate members to the Board. (Rev. 2001, 2003, 2013)

700.1 Meetings: Regular and special meetings of the Board shall be held at the call of the chairman or of a majority of the members of the Board at such time or times as the chairman or majority of the members of the Board may determine. The presence of three (3) members shall be necessary for a quorum.

700.2 Organization: The secretary shall keep minutes of the proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating the fact. The Board may adopt, from time to time, such rules and regulations as may be deemed necessary to carry into effect the provisions of this ordinance. The Board shall elect from the membership a chairman and vice chairman each year whose term shall run for the following calendar year and until his successor is elected.

SECTION 701 POWERS AND DUTIES:

The powers and duties of the Board shall be in all respects as prescribed by NH RSA 674:33, with any amendments thereto. Their powers and duties are:

701.1 Appeals: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement thereof or of any ordinance adopted pursuant thereto. Pursuant to RSA 676:5, III, a decision or determination of the planning board during subdivision or site plan review which is based upon the terms of the zoning ordinance, or upon any construction, interpretation or application of the zoning ordinance may be appealed under this section. (Rev. 1997)

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

701.3 Special Exceptions: To hear and decide special exceptions to the terms of the zoning ordinance upon which such Board is required to pass under such ordinance. In passing upon any application for a special exception, the Board shall deny any proposed use which it finds to be injurious or detrimental to the neighborhood. All special exceptions shall be in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained therein. Special exceptions shall be heard as appeals under this ordinance, and all procedural requirements for appeals hereunder shall apply thereto, in addition to any special provisions prescribed hereunder.

701.4 Equitable Waivers: To hear and decide applications for equitable waivers of dimensional requirements in accordance with the requirements of RSA 674:33-a. (Rev. 1997) (See full text of RSA 674:33-a at the end of Article VII).

701.5 Extension of District Boundaries: The Board may permit the extension of a district by not more than fifty (50) feet where the boundary line of a district divides a lot in a single ownership at the time of the passage of this ordinance. (Reindexed 1997)

701.6 Other Matters: The Board shall also hear and decide all matters referred to them or upon which they are required to pass under any other ordinance of the Town of Rye or under State Statute. (Reindexed 1997 & Revised 1997)

701.7 Exercise of Powers: In exercising the above mentioned powers, such Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. (Re-indexed 1997)

701.8 Special Conditions: In granting any special exception or variance to the above requirements, the Board of Adjustment may establish conditions or requirements which are considered necessary to carry out the spirit and intent of this ordinance. An approved but unused special exception and/or variance shall lapse (2) years from the date of approval unless substantial construction relative to the special exception and/or variance has begun on the site or unless the board of adjustment has approved an extension for good cause, provided that no such special exception or variance shall expire within 6 months after the resolution of a planning board application filed in reliance upon the variance. (Rev. 1994) (Reindexed 1997) (Rev. 3/9/99) (Rev. 3/11/14)

SECTION 702 APPEAL PROCEDURES:

702.1 Filing of Appeals: An appeal shall be taken within such time as shall be prescribed by the Board, by general rule, by filing with the officer from whom the appeal is taken, and with the Board, a notice of appeal, specifying the grounds thereof, together with a notice and filing fee. Such notice of appeal shall specify the names of all abutting owners to the premises concerned, to all of whom the Board shall give notice by mail of such appeal, insofar as practicable. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken, and on due cause shown. (Rev. 1992)

A. **Deadline for Filing Administrative Appeals.** Applications for administrative appeals pursuant to Section 701.1 shall be filed not later than 30 days from the date of decision in the following two circumstances:

1. Any final decision of the Planning Board on a subdivision, site plan review or lot line adjustment application.
2. Any decision of the Building Inspector which denies a permit.

Other administrative appeals shall be filed within a reasonable period of time of the decision being appealed. (Rev. 1996)

702.2 Effect of Appeal to Board: The effect of an appeal to the Board shall be to maintain the status quo. An appeal of the issuance of any permit or certificate shall be deemed to suspend such permit or certificate, and no construction, alteration, or change of use which is contingent upon it shall be commenced. An appeal of any order or other enforcement action shall stay all proceedings under the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal shall have been filed with such officer, that, by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life, health, safety, property, or the environment. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the officer from whom the appeal is taken and cause shown. (Revised 1997; See RSA 676:6)

702.3 Hearings and Notice: The Board shall fix a reasonable time for the hearing of appeal and give due notice thereof to the parties and decide the same within twenty-one (21) days. Notice of hearing shall be published at least once in a newspaper of general circulation in the Town of Rye, and mailed by registered or certified mail, to the parties and all abutters not less than seven (7) days prior to such hearing. Willful failure of the party filing such appeal to disclose in his notice of appeal the names of all abutting owners to the premises concerned shall be cause for denial of the appeal, or its continuation for new hearing on proper notice to all concerned at the option of the Board. Upon the hearing, any party may appear in person or by agent or by attorney. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate.

702.4 Decisions of Board:

- A. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as in its opinion ought to be made on the premises, and to that end shall have all the power of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this ordinance, the Board shall have the power of passing upon appeals to vary or modify any of its rules, regulations, or provisions relating to the construction, structural changes in equipment, or alterations of buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.
- B. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or decide in favor of the applicant any matter upon which they are required to pass under any such ordinance, or to effect any variation in such ordinance.
- C. The Board shall issue a final written decision which either approves or disapproves an application. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval.
- D. Board decisions and minutes shall be placed on file with the Town Clerk and made available for public inspection within 5 business days after the decision is made. (Rev. 2001, Amended March, 2011)

SECTION 703 REHEARING AND APPEAL:

Every decision of such Board shall be subject to review upon Motion for Rehearing filed with the Board of Adjustment within thirty (30) days after any order or decision of the Board, and to appeal to the Superior Court in accordance with the terms of the statute. Such motion or appeal may be taken by any person aggrieved or by an officer, department or board of the Town. This thirty day time period shall be counted beginning with the first day following the date upon which the Board voted to approve or disapprove the application and may be amended if minutes and notice of decision are not filed within the 5 business day requirement of Section 702.4, D, per RSA 677:2. (Rev. 2001, Amended March, 2011)

SECTION 704 JOINT MEETINGS:

The Board of Adjustment may conduct joint meetings or hearings on applications requiring permits from both the Board of Adjustment and Planning Board, as provided by NH RSA 676:2.

**ARTICLE VIII
ADMINISTRATION AND ENFORCEMENT**

SECTION 800 BUILDING INSPECTOR: (Rev. 1999)

This ordinance shall be administered by the Building Inspector, who shall be appointed by the Selectmen, and/or by any other town official or town employee who has been duly assigned responsibilities for administering the zoning ordinance by the Selectmen. The Board of Selectmen may also appoint a Deputy Building Inspector, who shall act in the absence, disability, or unavailability of the Building Inspector, with all of the same powers, duties, and authorities relative to the zoning ordinance. Whenever the words “Building Inspector” appear in this ordinance, the same may be read as “Deputy Building Inspector” or any other town officer or town employee to whom the Selectmen have assigned responsibilities for administering this ordinance.

SECTION 801 BUILDING PERMITS: (Rev. 1992 and Rev. 2009, Rev. 2012)

801.1 Building Permits Required: No land shall hereafter be used for building or development, and no building, structure, or subsurface waste disposal system hereafter erected, enlarged or moved in whole or in part for any purpose until a building permit shall have been issued by the Building Inspector showing that the use and development of the land, building, structure or subsurface waste disposal system complies with the provisions of this ordinance. No building, structure or subsurface waste disposal facility shall be altered without a building permit showing that the alteration complies with this ordinance. For the purpose of this ordinance such alterations costing less than \$1,500.00 shall not require a building permit fee.

801.2 Building Permit Applications: No application for a building permit shall be accepted or approved unless it is (1) filed in writing on a form prescribed by the Selectmen, (2) accompanied by the required permit fee, and (3) accompanied by a drawing or plat, in duplicate, showing the lot plan, the location of the building or use on the lot, accurate dimensions of the lot and building or use, and where for human habitation or use, showing location and specifications of means of waste and sewage disposal, means of access to such lot or use, and such other information as the Building Inspector may deem necessary to provide for the observance of the provisions of this ordinance.

A building permit application for a new dwelling on a lot or for a new building on a nonresidential lot shall include a Driveway Permit issued by the Public Works Director in accordance with the provisions of the Rye Planning Board’s *Land Development Regulations*. (Adopted March 2012)

801.3 Stakes and Markers: No applications for a building permit shall be approved until stakes or markers shall be fixed on the lot to indicate the location of lot lines and all corners of building(s), structure(s), and alterations proposed, and where the Building Inspector deems it necessary or desirable of the means of access thereto. Where the application is for land use not involving excavations, grading, or other development or use of the ground or landscape concerned, stakes or markers shall be fixed on the lot to indicate the location of lot lines and bounds of all such excavations, grading, or land development(s) proposed. No building permit for any work or project estimated to cost more than ten thousand dollars (\$10,000.00) shall be issued until the Building Inspector has inspected the premises and has satisfied

himself that all lot, building, structure, and land use stakes or markers are in place and comply with the provisions of this ordinance.

801.4 Issuance of Building Permits: A building permit may be issued upon such conditions as the Building Inspector, or when applicable, as the Board of Adjustment may deem necessary to assure the observance of the provisions of this ordinance. Any building permit issued shall authorize only such work or project as the application and the permit, taken together, reasonably allow.

A building permit for a new dwelling on a lot or for a new building on a nonresidential lot shall not be issued until such a Driveway Permit is obtained. (Adopted March 2012)

801.5 Revocation of Building Permit: The Building Inspector or the Selectmen may suspend or revoke any building permit upon determining that the work or project in process is not in conformity with the permit as granted, or is otherwise in violation of the terms of this Ordinance. In event of such suspension or revocation of a building permit, the work or project concerned shall immediately cease, or legal action to enforce such cessation shall forthwith be taken by the Selectmen.

801.6 Grading and Excavation Prohibited: Grading and excavation for foundations, on-site waste disposal systems and on site utilities shall not begin prior to the issuance of a building permit. (Adopted 2012)

801.7 Expiration of Building Permit: A building permit whether for a building, structure, material alteration or proposed land use, or otherwise under the authority of which no work has been commenced within one (1) year after issuance shall expire and become void upon such anniversary. A permit may be renewed only once, upon receipt of the required administrative fee for an additional twelve (12) months. (Amended 1990 and Renumbered 2012)

SECTION 802 CERTIFICATES OF OCCUPANCY:

No new building or structure or major reconstruction or addition shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Inspector and, except for dwellings, posted on the premises stating the purpose for which the building may be used in its several parts, the maximum permissible live loads on the several floors, the number of occupants that may be accommodated in the several stories, in case such number is limited by a provision of law or by permit, and all special stipulations of the permit, if any.

802.1 Certificates of Change of Occupancy:

- A. No change of occupancy shall be made in a building or structure that is not consistent with the last issued certificate of occupancy for such building or structure, unless a new certificate of occupancy is secured.
- B. The occupancy of a building or structure shall not be deemed to have changed because of a temporary vacancy or change of ownership or tenancy. The re-establishment in a building or structure, after a change of occupancy has been made, of a prior use that is not permitted in a new building or structure of the same type of

construction, is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

802.2 Inspections: Inspections required under the provisions of this code shall be made by the Building Inspector or his duly appointed assistant. The Building Inspector may accept reports of inspectors of recognized inspection services, after investigation of their qualifications and reliability. No certificate called for by any provision of this code shall be issued on such reports unless the same are in writing and certified to by a responsible officer of such service.

SECTION 803 ENFORCEMENT:

803.1 Enforcing Authorities: This ordinance shall be enforced by the Building Inspector or the Selectmen. For this purpose, the Board of Selectmen shall have concurrent jurisdiction with the Building Inspector for enforcement of this Ordinance.

803.2 Cease and Desist Orders: The Building Inspector may issue violation and cease and desist orders, including cease and desist orders permitted by RSA 676:17-a, as amended, personally, or by Town Counsel on his request, and further either the Building Inspector or the Selectmen in his stead as to enforcement hereof only, shall make such orders and decisions, and take any and all actions as may be deemed by him, or them, to be reasonably necessary to prevent violation of this Ordinance, as well as to secure the intent of this Ordinance. (Rev. 1992)

803.3 Duty of Selectmen to Enforce: It shall be the duty of the Board of Selectmen, upon any well founded information or upon complaint of the Building Inspector, to take any appropriate action or institute any legal proceedings necessary or desirable to prevent any unlawful use or development of any land, building, structure, or premises in violation of any provision of this Ordinance, whether or not such violation is present or only reasonably anticipated. For this purpose, the Selectmen shall take immediate steps to enforce the provisions of this Ordinance by seeking an injunction or other appropriate redress in the courts or by any other administrative or legal action reasonably calculated to enforce this Ordinance, including, without exception, seeking conviction of any violator of its terms under the penalty clause of this Ordinance.

803.4 Penalties: Penalties for violation of these regulations shall be as provided by NH RSA 676:17, as amended. (Amended March, 2011)

803.5 Injunctive Relief: In addition to other remedies provided by law, the building inspector or town legal counsel may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate or remove erections, construction, alterations or reconstructions that are in violation of this ordinance.

803.6 Recovery of Legal Costs: As permitted by NH RSA 676:17, as amended, the Selectmen and/or the Building Inspector shall seek to recover all costs and attorney's fees in any legal action necessary to enforce these regulations. (Rev. 1990)

ARTICLE IX
GROWTH MANAGEMENT
(Adopted 1987)

SECTION 900 AUTHORITY AND PURPOSE:

This ordinance is enacted pursuant to authority granted by NH RSA 674:22. It is intended to regulate and control the timing of development in accordance with the objectives of both the Master Plan and the Capital Improvements Program adopted by the Rye Planning Board. These two documents assess and balance the community development needs of the Town of Rye and consider regional development needs.

SECTION 901 BUILDING PERMIT LIMITATIONS:

901.1 Annual Limitation: The number of building permits for new dwelling units (hereinafter referred to as “building permits”) that are issued in a calendar year by the Town of Rye shall be limited to an amount that is 1.75 percent of the total dwelling units existent in Rye as of December 31 of the prior year. For the purposes of this ordinance the December 31 base of dwelling units shall be determined from the 1990 United States Census, updated with building permit data reported annually to the New Hampshire Office of State Planning. For the year 2009, the December 31, 2008 base of dwelling units is 2403 and the annual 1.75 percent limitation is 42. (Rev. 1995 and 2000 and 2009)

901.2 Issuance of Building Permits: The Building Inspector shall issue building permits on a “first come - first serve” basis, subject to the limitations set forth herein, which are designed to promote fairness in distributing permits throughout the year.

- A. **Application:** A person may apply for a building permit at anytime. If the Building Inspector is unable to issue a permit because of the limitations of this ordinance, the person making application shall be placed on a waiting list.
- B. **Issuance Schedule:** Throughout the year, the Building Inspector shall issue building permits in a manner that complies with the following schedule:

<u>Date</u>	<u>Maximum Allowable Building Permits (Aggregate)</u>
By February 28 (29)	No more than 15% of ann. lim.*
By April 30	No more than 35% of “ “
By June 30	No more than 60% of “ “
By August 31	No more than 80% of “ “

* Annual limitation

- C. **Equitable Distribution:** In order to assure equitable distribution of available permits, no single individual, partnership, corporation or other entity shall be issued more than four (4) building permits during a calendar year. However, after December 1, surplus permits may be issued to such individuals, partnerships, corporations or other entities if there is no other applicant remaining on the waiting list.

901.3 Carry Forward of Surplus: If on December 31 of any year the number of building permits issued was less than the number allocated for that year, the surplus shall be added to the annual limitation of the following year only, provided that the number of building permits for new dwelling units issued in any calendar year does not exceed 47. Table 1 below, illustrates how the carry forward operates.

**TABLE 1
EXAMPLE OF CARRY FORWARD CALCULATION**

Year	Base D/U	1.75% of Base	Annual Limitation	Actual Permits Iss.	Surplus Carried Fwd.
1	2006	35	35	30	5
2	2036	36	36+5=41	33	3*
3	2069	36	36+3=39	39	0
4	2108	37	37	37	0

* The important thing here is to recognize that the Surplus Carried Forward is $36-33=3$ not $41-33=8$.

901.4 Unused Permits: Permits that are issued but not utilized shall not be added back into the annual limitation.

901.5 Administrative Procedures: The Building Inspector is hereby authorized to establish administrative procedures necessary to implement this article. All such procedures shall be posted. The Building Inspector shall annually post, no later than January 10 of each year, the annual limitation and a numerical schedule of aggregate issuances.

SECTION 902 CONFLICTS:

In matters governed by this ordinance, this ordinance shall supersede conflicting local ordinances and regulations. (Renumbered 1995 formerly Section 903)

SECTION 903 SEVERABILITY:

Should any part of this ordinance be held invalid or unconstitutional by a court, such holding shall not affect, impair or invalidate any other part of this ordinance, and, to such end, all articles, sections and provisions of this ordinance are declared to be severable. (Renumbered 1995 formerly Section 904)

SECTION 904 EFFECTIVE DATE:

This ordinance shall take effect upon passage and shall supersede the present Growth Management Ordinance, which is Section XVIII of the Zoning Ordinance for the Town of Rye, New Hampshire. Said existing ordinance is hereby repealed. (Renumbered 1995 formerly Section 905)

**ARTICLE X
AMENDMENT, CONFLICTS,
SEVERABILITY AND EFFECTIVE DATE**

SECTION 1000 AMENDMENT:

This Ordinance may be amended from time to time as prescribed in NH RSA Chapter 675 or as prescribed by any statute amending, revising or replacing Chapter 675.

SECTION 1001 CONFLICTS:

In interpreting and applying the provisions of this ordinance, they shall be held to be minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreement between parties; provided, however, that where this ordinance imposes a greater restriction or higher standard upon the use of a building or premises or upon heights of buildings, or required larger streets or open spaces than are imposed or required by other ordinances, regulations or statutes, or by easements, covenants, or agreements, the provisions of this ordinance shall govern.

SECTION 1002 SEVERABILITY:

Should any section or provision of this ordinance be held to be invalid or unconstitutional by any court or authority of competent jurisdiction, such holding shall not affect, impair or invalidate any other section or provision of this ordinance, and to such end all sections and provisions of this ordinance are declared to be severable.

SECTION 1003 EFFECTIVE DATE:

This ordinance shall take effect upon its passage, and shall thereupon supersede all prior zoning ordinances of the Town of Rye

APPENDIX A

DEFINITIONS

For the purpose of this ordinance, as well as for the Building Code of Rye, New Hampshire, so-called, certain terms and words are herein defined as follows:

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this ordinance to have the meaning indicated in this section. The present tense includes the future; the singular number includes the plural, and the plural the singular; the word "used" includes the words "designed, arranged, or intended to be used"; the word "person" includes an individual, partnership, firm, association, corporation, or organization; the word "building" includes the word "structure"; the word "occupied" and the word "shall" are always mandatory and not merely directory. Subject to the foregoing rules of construction, the following definitions apply:

ACCESSORY BUILDING: Means a subordinate building on the same lot, whether attached or unattached to the main dwelling or building thereon.

ACCESSORY USE: Means any subordinate use of premises which customarily is accepted as a reasonable corollary to the principal use thereof.

ADULT ARCADE: Any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show Images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas." (Adopted 2009)

ADULT BOOK STORE: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas," or an establishment with a segment or section devoted to the sale or display of such material. (Adopted 1994)

ADULT CABARET: A nightclub, bar, restaurant, or similar commercial establishment which regularly features: 1. Persons who appear in a State of Nudity or Semi-Nudity; or 2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or; 3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area". (Adopted 2009)

ADULT ESTABLISHMENT: An adult book store, adult motion picture theater, adult cabaret, adult arcade, adult video store, or establishment governed by RSA Chapter 314-A, Body Art. (Adopted 1994 and Revised 2009)

ADULT MOTION PICTURE THEATER: An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas," for observation by patrons therein. (Adopted 1994)

ADULT VIDEO STORE: An establishment having as a substantial or significant portion of its trade the sale or rental of films, recordings or videotapes, whether for on premise or off premise use, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to “Specified Sexual Activities” or “Specified Anatomical Areas.” (Adopted 1994)

ANIMAL FEEDLOT: A commercial agricultural establishment where concentration of animals are confined and fed simultaneously. (Adopted 3/11/08)

APARTMENT HOUSE, APARTMENT: An apartment house is a building containing three or more separate dwelling units designed for, or used for, more or less permanent living quarters for persons or families on a commercial (rental) basis. An apartment is any separate dwelling unit so offered or furnished for more or less permanent occupancy within an apartment house, motel, hotel or other building.

ASSISTED LIVING FACILITY: A State licensed facility which combines apartment living (including studio apartments) with a variety of support services including meals, assistance with personal care, housekeeping, laundry, social and recreational programs, oversight of residents medication, 24 hour security, on-site staff to respond to emergencies. Some assisted living facilities also offer specialized care for persons with dementia or Alzheimer's Disease. See RSA 151-E: 2.I. (Adopted 2009)

AQUACULTURE: The cultivation of the natural produce of water.

~~**AQUIFER:** A geologic formation, group of formations, or part of a formation that is capable of yielding sustainable quantities of groundwater usable for municipal or private water supplies. (Adopted 3/11/08) (Deleted 3/10/2015).~~

BASEMENT: A story wholly or partially underground and having more than one-half of its height below grade. A basement shall be counted as a story in a building if the vertical distance from the grade to the basement ceiling is over five (5) feet.

BUILDING: Any structure, either temporary or permanent, having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal, or property of any kind.

BUILDING HEIGHT: The height of a building is the vertical distance from the grade elevation to the highest point of the roof. See definition of **GRADE**.

BUSINESS: Trade or activity carried on for gain, including goods, services, and facilities offered or furnished to others for monetary or similar consideration.

CARPORT: A roofed, wall-less or semi-walled shed, projecting from the side of a building or entirely separated therefrom, that is used primarily as a shelter for vehicles.

CELLAR: Synonymous with basement; see definition of **BASEMENT**.

CHURCH: Buildings used or intended for use as places of worship, or for other religious uses such as meetings, training, instruction and communal dwelling places for religious personnel, including parish houses, convents, monasteries, rectories and parsonages.

COMMERCIAL: Having to do with or pertaining to business, such as the business use of property being called commercial. See definition of **BUSINESS**.

COMMERCIAL RECREATION: A privately owned use providing indoor or outdoor non-motorized recreational activities, or a combination of both, with or without seating for spectators, including basketball, football, baseball, softball, ice hockey, wrestling, soccer, tennis, racquetball, handball, squash, volleyball, rope courses, zip lines, miniature golf, golf driving range, skateboarding, cycling, bowling, swimming, weightlifting, gymnastics, and health and fitness, but not including firearms shooting ranges. A commercial recreation use may include accessory uses such as snack bars, restaurants (but no sales or service of alcoholic beverages) and retail sales of related recreational, sports or health and fitness items. Special events must comply with all town permitting requirements. (Adopted March, 2012)

CONDOMINIUM OWNERSHIP: Ownership of common real property vested in unit owners pursuant to New Hampshire's Condominium Act, NH RSA 356-B, as amended.

CONDITIONAL USE PERMIT: In this ordinance, the term "conditional use permit" is synonymous with the term "special use permit," as used in the New Hampshire RSA's. (Adopted 2007)

DEVELOPMENT: Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT: A district includes all the land, water, buildings, and uses within certain designated boundaries and constitutes a use classification within such boundaries as herein defined and as shown on the Zoning Map which is incorporated as part of this ordinance and the amendments thereto.

DWELLING: A building designed for or used primarily by one or more families for living quarters, but not including mobile homes, trailers of any kind, hotels, motels, lodging houses, institutional homes, residential clubs, tourist camps, cabins, or other commercial accommodations offered for occupancy. (1991)

DWELLING, SINGLE FAMILY: A detached building designed for or occupied exclusively by one family.

DWELLING, TWO FAMILY: A detached building designed for or occupied by two families exclusively, living independently and separately of each other therein.

DWELLING UNIT: One or more rooms arranged for the use of one or more persons living together as a single housekeeping unit, and having cooking, living, sanitary and sleeping facilities, but not including hotel, motel, tourist cabin (camp), lodging house, institutional home, residential club units or other similar commercial accommodations offered for occupancy. (Rev. 1991)

DWELLING UNIT, SEASONAL:

A dwelling unit not suitable for year round occupancy due to the presence of any one of the following conditions: (1) water supply and/or waste disposal pipes, pumps or other facilities susceptible to freezing; (2) no central year round heating system; (3) NH DES restriction of septic system to seasonal use. If uncertainty exists, the Building Inspector shall determine the seasonal or year-round status of a dwelling unit. (Adopted 2007)

EARTH EXCAVATION: The commercial taking of earth as defined by RSA 155-E: 1, I., II. (Adopted 3/11/08)

FAMILY: A family is: (1) an individual; (2) group of two or more persons related by blood, marriage, or adoption; or (3) not more than three other persons not so related; provided that in each of the foregoing, all three persons constituting any such group are normally living together and sharing the same living quarters.

FARM: Any parcel of land used primarily for agricultural purposes.

FIREWORKS: Means fireworks as defined in 27 C.F.R. 55.11. (Adopted, March 2011)

FLOOR: The more or less horizontal platform or portion of a building used to support the occupants and their furnishings and uses, generally laid perpendicular to and between the walls thereof.

FLOOR, GROUND: The ground floor is the floor of a building immediately above, and generally attached to, the foundation.

FOUNDATION: For the purposes of this ordinance, a foundation of a building or structure used for human habitation shall mean a continuous wall of masonry, masonry units, concrete, or similar materials supporting or intended to support such building or structure, the base of which is not less than three feet below ground level at the building line.

FRONTAGE: All that continuous side of a lot or tract of land abutting on one side of a street, or proposed street, measured along the street line. A corner lot must satisfy the frontage requirements of the district in which it is situated on one of its two street sides, and the depth requirements on the other street side.

GARAGE: An accessory building, joined or attached or entirely separate from the dwelling or main building it serves, and having a garage style door(s), the primary use of which is the storage or parking of not more than three motor vehicles. If the garage is used in conjunction with a multi-unit dwelling, the number of bays shall not exceed the number of units. (Amended 3/11/08)

GARAGE, PUBLIC: A public garage is a building designed or primarily used for the storage, maintenance, and repair of motor vehicles.

GRADE: (Revised 3/10/99) The elevation of the ground before any construction or alteration begins shall be referred to as the grade. Measurement from grade is determined by one of the following methods:

1) For lots with front yard depth of 100 ft. or less, grade shall be the elevation of the existing ground at the center of the exterior wall on the street side.

2) For building lots with frontage on more than one street, grade shall be the elevation of the existing ground at the center of the exterior wall on the nearer or nearest street side.

3) For lots with all yard depth to streets of more than 100 feet, grade shall be the average elevation of the ground around the building.

GROUNDWATER: Subsurface water that occurs beneath the water table in soil and geological formations. (Adopted 3/11/08 and 3/12/2013)

Groundwater Management Zone (GMZ): An area designated by the State through permit process as a component of the remediation of contaminated groundwater. The State issues permits or other similar controls for such zones that establish a time period and process for the monitoring and/or remediation of the groundwater. (Adopted 3/12/2013)

GROUNDWATER RECHARGE: The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface water, including lakes, streams and wetlands

HABITABLE FLOOR: Means any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation, or a combination thereof. A floor used only for storage purposes is not a “habitable floor.”

HEIGHT: See definition of **BUILDING HEIGHT**.

HOME: A person’s place of abode or residence; essentially synonymous with one’s dwelling. See definition of **DWELLING**.

HOME OCCUPATION: Means a business customarily carried on from the home, which is an accessory use only of, or to, the dwelling concerned, and which employs not more than one person outside the immediate family, and which is operated by a member of the family occupying the dwelling.

HOTEL: A building designed for or used commercially as more or less temporary living quarters for persons who are lodged with or without meals in which are ten or more sleeping rooms usually occupied singularly or by families of transients.

HOUSEKEEPING CABIN: Means a building designed, or used, for temporary living quarters for one person or a single family occupying it exclusively on a commercial (rental) basis and having a kitchen or cooking facilities therein.

HOUSE TRAILER: See definition of **MOBILEHOME**.

HYDRIC SOIL: A soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part. See NH ADMIN RULES Env-Ws 1002.36 (August 26, 1999). (Adopted 3-14-00)

HYDROGEOLOGIST: A person who by education and experiences is able to quantitatively analyze and interpret hydrology and is a licensed geologist, specializing in hydrology, in the State of New Hampshire according to Env-Ws 388.06(b). (Adopted 3/11/08)

IMPERVIOUS COVERAGE or IMPERVIOUS: Any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, and unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways, storage areas, compacted gravel including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers and wood. (From NH RSA 483-B: 4 Shoreland Water Quality Protection Act). (Revised 3/10/2015)

JUNK YARD: The use of any lot or parcel of land, or any part of a lot or parcel of land, for the open or exposed storage, keeping, sale, disposal or abandonment of food, garbage, refuse, old, used, wholly or partially dismantled, useless, broken or damaged articles, machines, machinery, automobiles, motor vehicles of any sort, clothing, furniture, building materials, building debris or

things of any sort. Such storage, keeping, placing for sale, disposal or abandonment of one or more unused, inoperative or unregistered motor vehicles on any lot or parcel of land, or portion thereof, shall constitute a junk yard. The term “junk yard” as so defined shall not be deemed to include any municipal dump or municipal refuse disposal area. (Revised March, 2012)

LEACHABLE WASTES: Waste materials, including, but not limited to, solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment, but not including leachate from on-site waste disposal systems. (Adopted 3/11/08)

LIVING QUARTERS: Any structure, or any portion of a structure, designed for or used primarily for living and sleeping accommodations by a person or family, and generally including cooking and sanitary facilities.

LIVING SPACE: All rooms or portions of a dwelling or structure designed for, or used primarily for living, cooking, eating, sanitary, recreational, or sleeping accommodations by a person, or family, as distinguished from storage or other such dead space. A screened porch/deck is not living space. A porch/deck which is enclosed part or all of the year with glass or other material is living space, whether or not heated. Where possible living space shall be calculated based on the exterior wall to wall dimensions of a dwelling unit for each floor having living space. For attached dwelling units and where storage/dead area are adjacent to living space measurements shall be from the mid-point of wall studs. Where upper floors do not extend the full width of the exterior walls (such as a cathedral ceiling and partial second floor) the calculation of living space shall be adjusted accordingly. (Amended, March 8, 2016)

LOT: The whole area of a single parcel of land, whether buildable or not, with any amount of square footage and ascertainable boundaries, undivided by a street.

LOT AREA: Means the extent in square feet of the surface of a lot. The lot area shall not include any part of the street upon which the lot fronts or abuts.

LOT CORNER: A corner lot is a lot situated at the junction of two or more streets.

LOT DEPTH: The average distance between the front or street line of the lot and the rear property line(s) measure perpendicular (or radial) to the street line. (Rev. 1996)

LOT LINES: The lines bounding a lot and dividing the lot from other lots, street, land, or water.

LOT OF RECORD: A lot described in a deed which has been lawfully recorded in the Registry of Deeds for the County of Rockingham, or which, if not so deeded, is a lot which is part of a subdivision, the plan of which has been lawfully recorded in such Registry of Deeds.

LOT WIDTH: The mean distance between the lot side lines measured on a line which is the mean direction to the front and rear lot lines.

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

MARINA: A public, private or commercial facility for docking and servicing of two or more boats, which for the purposes of this ordinance will be so limited as to number of slips, docks, moorings, gasoline pumps, storage facilities, and servicing facilities as not to be detrimental or injurious to the neighborhood.

MAY: The word “may” is permissive. (Adopted March, 2012)

MEMBERSHIP CLUB: An organized group sponsoring community, social or recreational activity.

MINING OF LAND: The removal of geological materials such as topsoil, sand and gravel, metallic ores, or bedrock. (Adopted 3/11/08)

MOBILEHOME/MOBILE HOME: Any vehicle, trailer, manufactured housing or assembled structure or portion of a structure designed for, or with accommodations for, occupancy as living quarters, which is readily moveable from place to place upon its own accessory wheels or trucks. Any such unit shall constitute a mobile home whether or not it constitutes such living quarters in a single structural unit or in two or more such units readily assembled as such living quarters upon a site. No mobilehome or trailer of any sort shall be deemed a dwelling by reason of its being placed upon, or having installed around or under it, a foundation of any sort.

MOTEL: A building or group of buildings containing rooms or living quarters in separate units, designed for or used principally for providing temporary living accommodations for automobile travelers on a commercial (rental) basis, and generally providing nearby automobile parking space serving such rooms or units.

MOTEL UNIT: A single overnight or living quarter’s unit of a motel.

MULTI-FAMILY DWELLING: A building containing three (3) or more dwelling units. (Adopted 3/9/2010)

MULTI-FAMILY DWELLING DEVELOPMENT: A land development consisting of two or more multi-family dwellings located on the same parcel. (Adopted 3/9/2010)

NEIGHBORHOOD: An area of land local to the use concerned, generally lying within a radius of 1,000 feet of such use for the purpose of this ordinance, but including all areas farther away from such use whenever the use creates a condition which by reason of noise, smoke, vibration, lighting, or other cause creates a detriment, hazard, or injury to an area more extensive in size.

NON-CONFORMING LOT: Any lot which does not conform to the area, frontage or depth requirements of the district in which it is located.

NON-CONFORMING STRUCTURE: Any building or structure, in whole or part, which does not conform to the regulations of the district in which the building or structure is located.

NON-CONFORMING USE: Any use of a land and/or a structure that does not conform to the provisions of the district in which it is located.

NURSING FACILITY: A State licensed facility which is primarily engaged in providing 24- hour care for residents needing: (a) skilled nursing care, medical monitoring, and related services; (b) rehabilitation services for the rehabilitation of injured chronically disabled or sick; (c) medication administration or

instruction and supervision; or (d) on a regular basis, health-related care and services (above the level of room and board) which can be made available to them only through facilities which provide 24 hour care. See RSA 151-E: 2, V. (Adopted 2009)

OFFICIALLY APPROVED: Shall mean conforming to town standards for similar construction or development and approved as so conforming by the Board of Selectmen or the appropriate town official or board.

OPEN SPACE: Means an unoccupied area of land not covered in any manner and open to the skies.

OVERNIGHT CABIN: Means a building designed or used for temporary living quarters for one person or a single family occupying it exclusively on a commercial (rental) basis, but having no kitchen or cooking facilities therein.

PERMANENT USE OR PERMANENT STRUCTURE: Any use or structure designed for, intended to be used, or used for a lengthy or extended duration of time, and generally intended for use, or used, for more than six (6) months in any one year.

RECHARGE AREA: The land surface areas from which groundwater recharge occurs. In this ordinance, the recharge areas are considered to be co-terminus with the boundaries of the Aquifer and Wellhead Protection District. (Adopted 3/11/08)

SHALL: The word “shall” is always mandatory and not directive. (Adopted March, 2012)

SHOULD: The word “should” is directory, as in a requirement that is expected but is not mandatory but is subject to the discretion of a reviewing board or administrative official. (Adopted March, 2012)

SHED: A “shed” is a structure. See definition of “structure.” (Adopted March, 2012)

SIGN: Any permanent or temporary advertisement, direction or communication, other than an identification sign, produced in whole or in part by the construction, erection, affixing or placing of the structure, device, letter, banner, pennant, streamer or placard on or over any land or on any structure, or produced by affixing or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface or suspended between any buildings or structures or which is designed to be seen from outside a building, provided, however, that signs placed or erected by the Town or State for the purposes of showing street names or traffic directions or regulations or for other municipal or governmental purposes shall not be included herein. (Rev. 1993 & 1997)

SIGN, BUSINESS DIRECTIONAL: A sign that provides directional information only to any privately owned business. Such sign shall contain only the name of the business, a directional arrow, distance and symbols (if applicable) arranged in accordance with Figures 1, 3, and 5 of the NH Department of Transportation Specifications for Business Directional Signs, Section 660. Such signs shall have a blue background over the entire sign face, and all copy shall be white. Where the NH Department of Transportation Specifications conflict with the size limitations of Section 501.6(B) of this ordinance, this ordinance shall govern. (Adopted 1993, Rev. 1996)

SIGN, IDENTIFICATION; An outdoor sign displaying the name or address of the occupant or identifying a permitted use or an accessory use. (Adopted 1993)

SIGN, OFF-PREMISES: Any sign identifying, advertising or giving directions to a business, person, activity, property or service not located on the premises where the sign is located. (Adopted 1993)

SLUDGE: Residual materials produced by the sewage treatment process. (Adopted 3/11/08)

SPECIFIED ANATOMICAL AREAS: Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered. (Adopted 1994)

SOLID WASTE: Any discarded or abandoned material including refuse, or sludge, as defined by New Hampshire Solid Waste Rules Env-Wm 101-103 & 2100-3700. Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations and from community activities. (Adopted 3/11/08)

SPECIFIED SEXUAL ACTIVITIES: Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; and fondling or other erotic touching of human genitals, pubic region, buttock or female breast. (Adopted 1994)

STORY: Means that part of a building or structure comprised between a floor and the floor or roof next above it.

STORY, HALF: A half-story is a story in a sloping roof, the area of which at a height of four (4) feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A half-story may also consist of a story of a building built at a different floor level than the story or stories of the same building to which it is attached and has access, so that at least one-half of its floor to ceiling height is below grade of the building.

SPECIAL EXCEPTION: Exceptions to the terms of this ordinance regarding the types of use which may be permitted in a particular district. Such exceptions are specifically listed by the terms of a particular district.

STORMWATER: As defined by RSA 132:1, II, as may be amended. (Adopted, March 12, 2013)

STREET: A public roadway which has been accepted by the Town, or such a roadway otherwise established by law as a Town or State highway, or an officially approved private road if not less than forty (40) feet in width, which affords means of access to abutting property.

STRUCTURE: Any temporary or permanently constructed, erected or placed material or combination of materials in or upon the ground, including, but not limited to buildings, mobile homes, radio towers, sheds and storage bins, storage tanks, portable carports, swimming pools, tennis courts and parking lots. The following are structures but are exempt from the dimensional requirements unless covered in other parts of the ordinance and codes. (Amended 2001, Revised March 12, 2013)

- a. Subsurface waste disposal facilities (See Section 202.5 and Building Code, Section 7.9.2);
- b. Fences and stone walls (See Building Code, Section 7.13);
- c. Driveways (See Planning Board Land Development Regulations); and

d. Fuel storage tanks (See NFPA requirements).

STRUCTURAL ALTERATION: Any change or addition to the basic structure of a building, including changes in supporting members of a building, such as bearing walls, columns, beams or girders, or any change in the interior or exterior walls, or any floor, roof or ceiling, or the addition of a room.

SUBSTANTIAL IMPROVEMENT: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. 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. The term does not, however, include either (a) any project for improvement of a structure to comply with existing State or Local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (b) any alteration of a structure listed on the National Register or Historic Places or a State Inventory of Historic Places.

TEMPORARY USE OR TEMPORARY STRUCTURE: Any use or structure designed for, intended to be used, or used only for a brief, or short duration of time, and in no case intended for use, or used, for more than six (6) months in any one year.

TOURIST CAMP: Means any parcel of land where two or more overnight or housekeeping cabins are located or to be located.

TOURIST CAMP UNIT: A section of ground in any tourist camp used, or designed for use, as a location for a single overnight or housekeeping cabin.

TOXIC OR HAZARDOUS MATERIALS: Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. Toxic or hazardous materials include, without limitation: volatile organic chemicals, petroleum products and additives such as MtBE, heavy metals, and radioactive materials as defined in (Groundwater Management and Groundwater Release Detection Permits, Env-Wm 1403.05). Wastes generated by, but not limited to, the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such activity can demonstrate the contrary to the satisfaction of the Planning Board.

(Adopted 3/11/08)

1. Airplane, boat and motor vehicle service and repair.
2. Chemical and bacteriological laboratory operation.
3. Dry cleaning.
4. Electronic circuit manufacturing.
5. Junk and salvage lots.
6. Metal plating, finishing and polishing.

7. Motor and machinery service and assembly.
8. On site handling, disposal, discharge, storage, processing or recycling of toxic or hazardous materials including bulk storage of toxic materials for resale or distribution (except for routine delivery of heating oils).
9. Paint production and painting, paint stripping, wood preserving and furniture.
10. Pesticide and herbicide production.
11. Photographic processing.
12. Printing.

TRANSMISSIVITY: A measure of the rate at which water will move through an aquifer. Transmissivity incorporates the hydraulic conductivity of the aquifer, aquifer thickness, water temperature and fluid properties to describe water movement. (Adopted 3/11/08)

UPLAND SOILS: Soils which are non-wetland soils. Such soils may be: (1) any soil other than poorly drained or very poorly drained soils, as delineated by High Intensity Soils (HIS) mapping done by a certified soils scientist; or (2) any non-hydric soil, as mapped by a certified soils scientist. (Adopted 3/14/00)

UNIT: For the purposes of this ordinance, as applicable, the word “unit” shall mean generally a distinct part of a whole structure or thing.

VARIANCE: Means a variation from the requirements of this ordinance.

VERNAL POOL: A surface water or wetland which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which typically has the following characteristics: (1) cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year; (2) forms in a shallow depression or basin; (3) has no permanently flowing outlet; (4) holds water for at least 2 continuous months following spring ice-out; (5) lacks a viable fish population; and (6) supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators as described in *Identification and Documentation of Vernal Pools in New Hampshire*, 2nd Ed., 2004 published by the NH Fish and Game Department. (Adopted, 2012)

WETLANDS: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and similar areas. (Adopted, 2012)

YARD: Means an open unoccupied space surrounding or adjoining a building on a lot, and in particular, shall mean as follows:

1. **Front Yard:** Means the required open space extending across the whole width of the front, or street side, of the lot between the side lines of the same lot, and running from the front (or street) line of the lot to the front line of the building, except for a corner lot as to which the front yard shall extend across both sides of the main building nearest the streets.

2. **Rear Yard:** Means the required open space extending across the whole width of the lot in the rear of the main building, except for a corner lot, as to which it is the area at the rear of the side yards.

3. **Side Yard:** Means the required open space extending along the side lot lines from the front line extended of the main building to the rear line extended of the same building, except for a corner lot, as to which the side yard limitations of the adjacent lots (as provided in this ordinance) shall apply.

Yield Plan: A plan or plan set that shows the maximum number of conforming building lots that is reasonably achievable under a conventional subdivision that conforms to the requirements of the Rye Zoning Ordinance and the Rye Planning Board Land Development Regulations. (Adopted 3/9/2010)

Zero Lot Line Development: A land development in which there are not lot lines. Dwellings (including single family detached dwellings and two family dwellings) may be owned as condominiums, with all land areas placed in either common ownerships or limited common ownerships. (Adopted 3/9/2010)



NOTES

1. The size of the symbol character shall be proportional to figure 5 for the largest square that can be entered within the symbol area provided by the type of sign being used. (See spaces designated "a" for sign types 1A and C, 2A and C, 3A and C, and 4 in Figures 1 and 2.)
2. The size of directional arrows shall be as presented in Figure 4. Directional arrows shall be centered horizontally and vertically as shown in Figure 3.
3. For the sign types shown in Figure 1, directional arrows shall be placed in the space designated "c" and as shown in Figure 3. For the sign type 4, Figure 2, straight ahead and left-turn arrows shall be placed at the left side of space "c" and a right-turn arrow shall be placed at the right side of space "c".

LEGEND

- | | | |
|------------------------|---------------------------|-----------------------|
| 1. Restaurant | 6. Camping - Trailer | 11. Stables |
| 2. Lodging | 7. Summer Sports | 12. Golf |
| 3. Automotive | 8. Winter Sports | 13. Telephone |
| 4. Automotive - Diesel | 9. Skiing - Cross Country | 14. Skiing - Downhill |
| 5. Camping | 10. Marina | |

FIGURE 5. - APPROVED SERVICE SYMBOLS

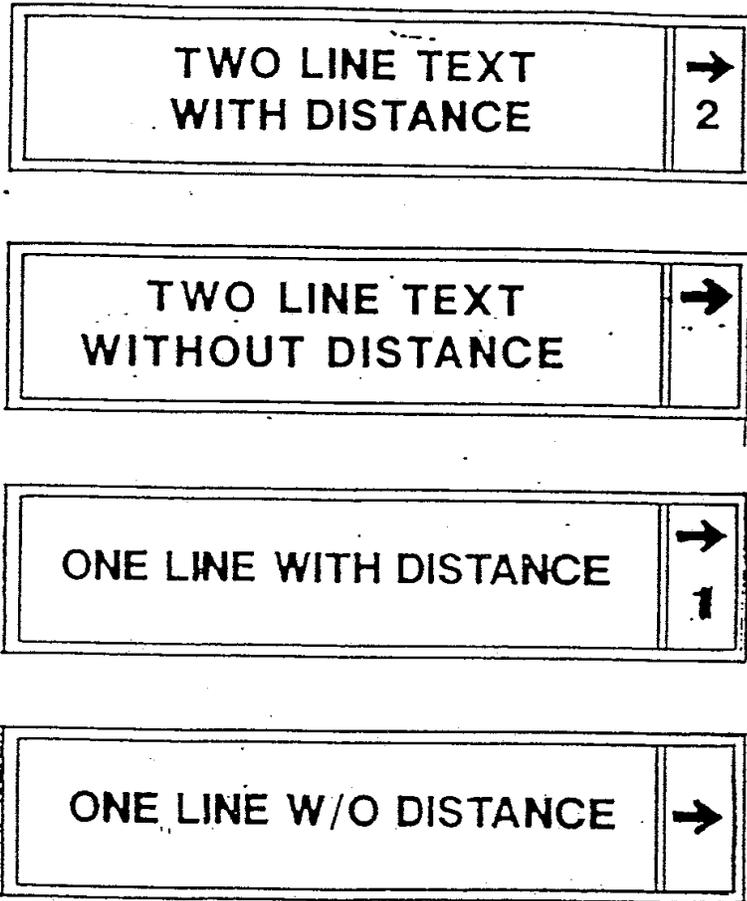


FIGURE 3-- Arrangement of text and placement of directional arrow, with and without distance. (Not to scale)

