

TOWN OF BENNINGTON ZONING ORDINANCE

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TOWN OF BENNINGTON ZONING ORDINANCE

Article I. Title

This ordinance shall be known and may be cited as the Zoning Ordinance of the Town of Bennington, hereinafter referred to as this Ordinance.

Article II. Purpose

In pursuance of the authority conferred by Chapters 672-677, New Hampshire Revised Statutes Annotated, and for the purpose of promoting the health, safety and general welfare as well as preventing the overcrowding of land, harmonious development of community, and protection of natural resources, now therefore, the following Ordinance is hereby enacted by the voters of the Town of Bennington, New Hampshire, in official town meeting convened.

Article III. Applicability

No building shall be erected or used and no land shall be used or subdivided except in accordance with the provisions of this Ordinance. All other uses of land or buildings are hereby expressly prohibited except those which are permitted in this Ordinance or which legally existed upon the adoption of this Ordinance.

Article IV. Zoning Ordinance Provides Minimum Standards

The requirements and regulations of this Ordinance are minimum standards for the protection of the public health, safety and welfare and in no way shall be construed to preclude the lawful exercise of authority vested in other boards or officials nor shall it be construed to prohibit the applicant from exceeding said standards at its option. Where this is a conflict between this Ordinance and other statutes and all local ordinances and regulations, the most restrictive standard shall prevail.

Article V. Separability

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

Article VI. Districts

A. Districts The Town of Bennington is divided into four (4) districts as follows:

- | | |
|--------------------------|-----|
| 1. Industrial | I |
| 2. Village | V |
| 3. Commercial/Recreation | C/R |
| 4. Rural/Agricultural | R/A |

B. Districts Defined

1. The Village District (V) shall be bounded and described as follows:

Beginning at a point on the center line of the Contoocook River, which point is an approximate distance or 130 feet Southerly from the intersection of Antrim Road and Starrett Road and is an extension of the center line of Starrett Road and contiguous to the boundary of the Industrial District described herein,

then Northerly on the center line of Starrett Road an approximate distance of 430 feet to a point that is the intersection of the center line of Starrett Road and the extension of the lot line of Lot #23 and Lot #24 as shown on Tax Map #9,

then turning and running Westerly an approximate distance of 280 feet to an angle point, in the lot line,
then generally Northerly and Northeasterly along the line contiguous to the Industrial District to a point which is 239 feet West of Bible Hill Road and is on the Easterlymost Northern boundary of Lot #29 on Tax Map #9,

then Easterly for an approximate distance of 250 feet to a point on the center line of Bible Hill Road which point approximately 640 feet North of the intersection of Bible Hill Road and Starrett Road,

then Southerly along the center line of Bible Hill Road to a point which is 200 feet North of the center of the intersection of Bible Hill Road and Starrett Road,

then East along that perpendicular and across Bible Hill Road to a point on a perpendicular 600 feet from the East of the center line of Bible Hill Road,

then Southerly along a line 600 feet from and parallel to Bible Hill Road and across the Cemetery Road to and along a line parallel to and 600 feet from the center line of Eaton Avenue to a point on the Francestown Road (Route 47) 600 feet Northeasterly of the center of the intersection of Eaton Avenue and Francestown Road (Route 47),

then on a Southerly diagonal to a point on Carkin Brook that intersects the center line of Greenfield Road (Route 31),

then following the center line of Carkin Brook under the Greenfield Road (Route 31), then under the Old Greenfield Road, and then under the South Bennington Road to a point on a perpendicular west of the South Bennington Road on the low water mark of the West side of the Contoocook River, then Southerly following the low water mark of the Contoocook River to a point on the border of the Hancock/Bennington Town Line,

then following the Town Lines Westerly, then Northerly to a point 700 feet Northwest and perpendicular to the center line of US Highway Route 202,

then on a parallel to and 700 feet from the center line of US Highway Route 202 to a point on the center line of Pierce Street that is 700 feet from the center of the intersection of US Highway Route 202 and Pierce Street,

then to a point North on a perpendicular 250 feet from the center line of Pierce Street,

then along a line 250 feet North of and parallel to the center line of Pierce Street Easterly to the East sideline of the Boston & Main railroad tracks,

then Southerly, Easterly and Northerly along the line contiguous to the Industrial District to the point of beginning.

This district excluded the overlapping area specified as part of the Industrial District.

2. The Industrial District (I) shall be bounded and described as follows:

Beginning at a point on the center line of the Contoocook River, which point is an approximate distance of 130 feet Southerly from the intersection of Antrim Road and Starrett Road and is an extension of the center line of Starrett Road,

then Northerly on the center line of Starrett Road an approximate distance of 430 feet to a point that is the intersection of the center line of Starrett Road and the extension of the lot line of Lot #23 and Lot #24 as shown on Tax Map #9,

then turning and running Westerly an approximate distance of 280 feet to an angle point in the lot line,

then Northerly across Lot #24 an approximate distance of 250 feet to a point on the lot line between Lot #24 and Lot #22, said point being an approximate distance of 80 feet Easterly of an angle point on said lot line between Lot #24 and Lot #22,

then Northeasterly for an approximate distance of 600 feet to a point at the Northwesterly corner of Lot #28 on Tax Map #9 and the Northeasterly corner of Lot #22 on Tax Map #9,

then continuing Northeasterly for an approximate distance of 475 feet to a point an approximate distance of 239 feet west of Bible Hill Road,

then turning and running generally Northwesterly an approximate distance of 207.71 feet along the common boundary of the Northeasterly lot line of Lot #29 on Tax Map #9 and the Westerly lot line of Lot #66 on Tax Map #10 and the Southwesterly lot line of Lot #67 on Tax Map #10 to the most Northeasterly corner of Lot #29 on Tax Map #9,

then turning and running Westerly along the Northerlymost boundary of Lot #29 as shown on Tax Map #9 an approximate distance of 280.68 feet to the East side line of the Boston and Main Railroad right-of-way,

then Northerly along the East side line of the Railroad right-of-way an approximate distance of 750 feet to a point on the center line of a 3-foot by 5-foot box culvert beneath the right-of-way,

then Westerly through the center line of said culvert and continuing Westerly to a point that is on the center line of the Contoocook River,

then continuing upstream along the current line of the Contoocook River and under the Antrim Road to a point intersecting an extension of the Southerly boundary of Lot #6 on Tax Map #9, then turning Westerly along said extension to the Southeast corner of Lot #6 at Route 202,

then turning Southeasterly along the East side line of Route 202 an approximate distance of 1,400 feet to a point, said point being on the Westerly extension of the South boundary of Lot #18 on Tax Map #9 and the North boundary of Lot #8 on Tax Map #9 and in the intersection of this extension and Route 202,

then turning and running Easterly along said extended line and the South boundary of Lot #18 and the North boundary of Lot #8 an approximate distance of 1,035 feet to a point on the East side line of the Boston and Maine Railroad right-of-way,

then turning and running Southerly along the East side line of the Railroad right-of-way to Pierce Street,

then turning and running Easterly along the North side line of Pierce Street across the Contoocook River to the Easterly boundary of Lot #8 on Tax Map #10,

then continuing generally North along the East boundary line of Lot #8 on Tax Map #10 to a point which is the Northeast corner of Lot #8 and on the South boundary line of Lot #110 on Tax Map #10,

then turning and running Westerly along the most Northerly boundary of Lot #8 and Southerly boundary line of Lot #10 on Tax Map #10 an approximate distance of 70 feet to the center line of the tailrace of the Pierce Station Power House,

then turning and running Northerly along the center line of the tailrace and the Contoocook River to the point of beginning (to include the island shown as Lot #14 on Tax Map #9).

Also included in the Industrial District are: Lots #1 and #17 on Tax Map #1 (Powder Mill Pond Dam and Station) and Lots #87 on Tax Map #7 (Monadnock Station Dam and Power House).

3. The Commercial/Recreation District (C/R) shall be bounded and described as follows:

Beginning at the Southwest corner marker at the Bennington/Deering Town Line which marker is 1,328 feet west of the Town Line Marker to the Towns of Bennington, Deering and Frankestown,

then generally Southwesterly to a point 400 feet West of Mountain Road at the Northeast by West right angle corner or turn of Mountain Road, then turning and running Easterly to said corner,

then Southerly along Mountain Road an approximate distance of 3,050 feet,

then turning and running Easterly an approximate distance of 2,080 feet to the Bennington Town Line then following the Bennington Town Line to the point of beginning.

4. The Rural/Agricultural District (R/A) shall be bounded and described as follows: to include all the area in Bennington that is not a part of the Industrial, Village and Commercial/Recreational Districts.

The Districts established in this Ordinance are shown on maps on file in the offices of the Town of Bennington which maps are a part of this Ordinance. These maps are titled "Bennington, New Hampshire Zoning Map"; "Flood Boundary and Floodway Map, Town of Bennington, New Hampshire"; Water Resource Protection Map.

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

1. Where boundary is indicated as a highway, street, alley, railroad, watercourse or town boundary, it shall be construed to be the centerline thereof on such a town boundary.
2. Where boundary is indicated as approximately parallel to a highway, street, alley, railroad, watercourse or town boundary, it shall be construed to be parallel thereto and at such distance from as shown on the zoning map.
3. If no dimension is given on the zoning map, the location of any boundary shall be determined by use of the scale shown on zoning map.
4. Any boundary within 10 feet of a property line shall be considered to coincide with such property line.
5. Lots lying in more than one District. When a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restrictive portion of the lot shall extend not more than thirty (30) feet into the more restrictive portions provided the lot has frontage on a street in the less restrictive district.
6. In any instance where there is doubt as to the location of the zoning district boundary, the Zoning Board of Adjustment shall determine the location of such boundary consistent with the intent of this Ordinance and zoning map.

D. Permitted Uses

1. Village District is intended to provide compact areas within which commercial and business uses necessary to service the needs of the community may function.

Permitted uses in the village district are as follows:

1. Single family residences;
2. Places of worship;
3. Retail business establishments;
4. Professional offices;
5. Real estate offices;
6. Grocery or general store primarily serving the every-day needs of the resident population;
7. Bank or financial institution;
8. Indoor theaters;
9. Private clubs;
10. Gasoline station for the sale of fuel and petroleum products for motor vehicles;
11. Restaurant, cafeteria, bakery and confectionary;
12. Two-family dwellings (i.e. duplexes);
13. Accessory uses and buildings;
14. Home occupations;
15. Multi Family Housing

2. Rural/Agricultural District

This district is designed to accommodate residential uses in what is commonly recognized as being a rural environment. Agriculture is also permitted.

Permitted uses in the Rural/Agricultural District are as follows:

1. Single family residences;
2. General farming, including horticulture, dairying, livestock and poultry raising and other agricultural enterprises or uses;
3. Commercial agricultural uses, such as nurseries, greenhouses and stables;
4. Two family dwellings (i.e. duplexes);
5. Cluster development, provided the maximum density in this district is not exceeded;
6. Sawmills, limited to the production of not more than 5,000 board feet per day;
7. Accessory uses and buildings;
8. Home occupations.

3. Commercial/Recreational Zone

This district is designed to enhance and encourage the provision of recreational opportunities within the Town of Bennington.

Permitted uses in the Commercial/Recreational District are as follows:

1. Single family residences;
2. Condominium development;
3. Cluster development;
4. Restaurants;
5. Hotels and motels;
6. Retail establishments;
7. Office space;
8. Recreational facilities, including but not limited to golf courses, skiing facilities, tennis facilities, riding facilities, health spas;
9. Two family dwellings (i.e. duplexes);
10. Accessory uses and buildings;

4. Industrial District

The Industrial District is intended to accommodate the Town's major industry and provide for manufacturing, processing, treatment, research, warehousing, storage and distribution where there is a minimum danger of explosion or other hazards to health and safety.

Permitted uses in the Industrial District are as follows:

1. Manufacturing, processing and treatment;
2. Warehousing and storage, with the exception of dangerous industrial waste unless said storage and warehousing of such waste is in compliance with all state and federal regulations;
3. Distribution and transportation facilities;
4. Research laboratories;
5. Retail facilities and incidental services and uses;
6. Hydro-energy facilities;
7. Accessory uses and buildings.

Article VII. General Requirements

- A. Sanitary Protection. All dwellings and sanitary systems shall be constructed and maintained in accordance with standards set by the New Hampshire Water Supply and Pollution Control Commission, by the Town Subdivision Regulations and other applicable health and sanitary codes.
- B. No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity to regulations herein specified for the district in which it is located.
- C. Area, Frontage, Setback and Height: No lot in district shall be developed or built upon unless the lot meets all of the minimum requirements for that district set forth in the following table; if, however, a lot located in the Rural/Agricultural District meets all of the requirements for that district, with the exception of the frontage requirement, limited development of that lot may be allowed, provided the lot meets the additional criteria for “buildable back lots” as set forth at Section L of this Article:

<u>District</u>	<u>Lot Size</u>	<u>Frontage</u>	<u>Side Setback</u>	<u>Front Setback</u>	<u>Height</u>
Industrial	5 acres	500 feet	100 feet	100 feet	35 feet
Village	½ acre	100 feet	15 feet	30 feet	35 feet
Commercial/ Recreation	2 acres	200 feet	30 feet	50 feet	35 feet
Rural/ Agriculture	2 acres	200 feet	30 feet	50 feet	35 feet

- D. Usable Area. All lot areas in all zones shall be calculated to exclude all slopes in excess of 25 percent and all areas characterized as wetlands by virtue of high water table, poor soils, plant indicator species (See RSA 403-A).
- E. Lot Area Coverage. Unless otherwise provided in this Ordinance, no use shall be permitted to cover an area of the lot exceeding 30 percent of the total lot.
- F. Duplexes. A duplex shall be constructed on a lot size sufficient to satisfy the district requirements for two separate dwelling units.
- G. Manufactured Housing. Manufactured housing shall be placed on a permanent foundation, shall be treated like conventional stick built housing, and is permitted in all areas of the Town excepting the Village District and the Industrial District. Manufactured Housing shall conform to the 1976, United States Department of Housing and Urban Development Mobile Home Construction and Safety Standards, as amended through 1986.
- H. Temporary Permits. Temporary permits may be issued by the Board of Selectmen for a period not to exceed six (6) months for the placement of trailers, or manufactured housing or portable structures used for offices, storage and locker purposes incidental to construction projects, provided such permits are conditioned by agreement of the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period, not to exceed six months as long as construction is actively pursued.

I. Accessory Uses and Buildings. Any accessory use or any accessory building which is customarily incidental to the principal use or building and subordinate to it and located on the same lot with the principal use or building shall be permitted in all districts.

J. Non-conforming Uses.

1. Any lawful use of the land or of the building part thereof at the time of the adoption of this Ordinance may be continued, although such use does not conform to the provisions of the Ordinance, provided, however, that:
 - a. A non-conforming use may not be changed to another non-conforming use. A non-conforming use may not be expanded or enlarged.
 - b. A non-conforming use which has been discontinued for one year or more may only be reestablished in conformance with the terms of this Ordinance.

K. Non-conforming Lots of Record.

1. In any district in which single family detached dwellings are permitted, such a dwelling and customary accessory buildings may be erected on a vacant lot which was a lawful lot of record as of date of the zoning regulations making said lot non-conforming. Such buildings may be erected even though the lot does not conform to the area or frontage requirements of the Ordinance
2. The applicable district requirements for setbacks and other requirements not involving area or frontage shall still apply to non-conforming lots of record.
3. No structure or building shall be erected on a non-conforming lot of record unless the septic system requirements of the State of New Hampshire are complied with.
4. In the event two contiguous non-conforming lots of record are in common ownership and do not individually meet the district requirements for setback and other requirements not involving area and frontage they shall be deemed to constitute a single lot for the purpose of complying with this Ordinance and shall not be sold or transferred as separate lots.

L. Buildings or Use of Back Lots. Construction of dwellings or other buildings on a “back lot” (i.e. a lot having insufficient frontage) shall be permitted only in the Rural/Agricultural District, and only if such back lot fulfills all of the other criteria and requirements for lots located in that district, and also meets the additional requirements of this section; back lots meeting both set of criteria shall be called “buildable back lots”:

1. Uses Permitted on Buildable Back Lots: The uses permitted on buildable back lots shall be those set forth in Article VI, 2, 1-2, 7-8.
2. Access to Private Way: Each buildable back lot must have direct access to a “private way” (as defined in Article XVII of this Ordinance). Vehicular access between the back lot and the public way or street must be achieved by way of driveway over the private way, which driveway satisfies all of the requirements for driveways as established by the Board of Selectmen. In addition:
 - a. Each private way shall have a width of no less than fifty (50) contiguous feet;

- b. In recognition of the potential for future subdivision of land behind or beyond a buildable back lot, each private way must be suitable for possible upgrade to road construction standards as specified in the Bennington subdivision regulations;
 - c. No private way shall be located within five hundred (500) feet of another private way on the same side of the public way accessed by the private way; and
 - d. The buildable back lot shall have no less interest in the private way accessing that buildable back lot than a deeded easement, running with the land and allowing free, unobstructed, and unlimited right to use the private way as a means of access.
3. Area: The minimum lot size for a buildable back lot shall be four (4) acres, or six (6) acres if the buildable back lot is located within the water resources protection zone
4. Number of Buildable Back Lots: No more than two (2) buildable back lots shall be accessible over a single private way.
5. Setback from Public Way: There shall be a minimum distance of one hundred fifty (150) feet between the extreme edge of any building or any projection thereof located on a buildable back lot and the nearest edge of the public way accessed by the private way.
6. Setback from Private Way: There shall be a minimum distance of fifty (50) feet between the extreme edge of any building or any projection thereof located on a buildable back lot the nearest point of the private way; in instance where all or part of the private way is located on the buildable back lot itself, the private way shall end no closer than fifty feet from any point or edge of any building located on the buildable back lot.
7. Application of Zoning Regulations: Buildable back lots, and all structures and buildings located thereon, are subject to all of the provisions of this Ordinance which are not specifically affected or contradicted by this section.
8. Future Subdivision:
 - a. Any future subdivision obtaining access over an existing private way shall be permitted only if the private way is upgraded to road construction standards as specified in the Bennington Subdivision Regulations;
 - b. No future subdivision to be accessed by an existing private way will be permitted if the subdivision will create a nonconforming use with respect to an existing lot that is not part of the subdivision; and
 - c. Additionally, no future subdivision to be accessed by an existing private way will be permitted unless the subdivision shall have the effect of bringing existing buildable back lots accessed by the same private way into conformance with all of the conditions and requirements imposed by this Ordinance for lots in the Rural/Agricultural District which are not back lots. Accordingly, and without limiting the further application of this subsection, if a future subdivision includes the use of an existing private way as a means of access between a public way and the proposed subdivision: (1) then any existing buildable back lot accessed by that same private way must have a minimum of two hundred (200) feet of frontage (or three hundred fifty (350) feet if the buildable back lot is located within a water resources protection zone) on a street or road included in the proposed subdivision plan; and

(2) any building or structure located on the existing buildable back lot must be no closer than fifty (50) feet from the edge of such proposed street or road.

M. Multi Family Housing: Three (3) to five (5) single-family attached dwelling units may be allowed on one lot provided the following conditions are met:

1. There shall be no more than one (1) residential building per lot and no more than five (5) dwelling units in that building.
2. The use is not otherwise prohibited by the ordinance on the lot in question.
3. Dwelling units are not to be used or rented as transient quarters and the right to rent or sublet shall not be permitted for periods of less than thirty (30) days.
4. In the case of multi-family conversions, site plan approval is obtained from the Planning Board.
5. Lot need to be a minimum of one (1) acre, plus ten-thousand (10,000) square feet per dwelling unit above two.
6. Frontage Requirements:
 - a. New Construction – A lot shall have one hundred (100) feet of frontage plus fifty (50) feet for each unit more than two.
 - b. Multi-Family Conversions– A lot shall have one hundred (100) feet of frontage plus twenty-five (25) feet for each unit more than two.
7. Setback Requirements:
 - a. New Construction – Front setback shall be forty (40) feet and side setback shall be thirty (30) feet.
 - b. Multi-Family Conversion – Front setback shall be thirty (30) feet and side setback shall be twenty-five (25) feet.

Article VIII. Off Street Loading and Parking

Adequate off street loading and parking shall be provided whenever any new use is established or any existing use is enlarged in accordance with the following minimum specifications:

1. All new construction of institutional, commercial or industrial uses requiring off street loading facilities shall provide such facilities so that delivery vehicles are parked outside of the street right-of-way.
2. A single parking space shall be 10 feet by 20 feet in area and have adequate area for maneuvering.

3. Schedule of requirements:

<u>Uses</u>	<u>Minimum Off-street Parking Spaces Required</u>
Single Family	2 spaces per unit
Multifamily residential use	2 spaces per dwelling
Elderly multifamily residential use	1 space per unit
Hotel/Motel tourist accommodation lodging unit	1 space per unit
Commercial and industrial use	2 spaces for each three anticipated patrons and/or employees on the premises at any one time
Public assembly, church, theater, hall, auditorium	1 space for every four seats

4. The Planning Board may require greater parking capacity in cases where the proposed use will have a parking demand that could exceed these minimum standards.

5. Off street parking facilities shall be provided on the same lot as the principal use they are intended to serve, or, by permission of the Zoning Board of Adjustment, not further removed than 400 feet from said premises.

Article IX. **Signs**

A. Signs shall be considered structures within the context of this Ordinance.

B. In all districts signs or advertising devices shall conform to the following regulations:

1. No sign shall be placed in such a position as to endanger motor vehicle or pedestrian traffic or obscure or otherwise cause confusion with official street or highway sign signals.
2. No sign other than official street signs or traffic direction signs shall be maintained within the street right-of-way.
3. No land or building or structure shall be used for the display of any commercial message other than for the use or activity carried on the lot upon which the sign is situated.
4. No sign shall project over public rights-of-way.
5. No portable signs shall be permitted.
6. No flashing or animated signs with movable parts or intermittent lighted to create the visual effect of movement are permitted.
7. No signs shall project above the ridge or parapet line of the building.
8. No signs shall project more than 6 inches out from and parallel to the walls to which it is attached.

9. One on-premises sign is permitted for any legally established business.
10. Signs shall be constructed of durable materials and shall be maintained in good condition and repair.
11. No sign shall exceed 20 square feet in total area.
12. No freestanding sign shall exceed 16 feet in height.
13. The above regulations shall not apply to non-illuminated signs and window posters that are displayed from within a building.
14. Each business located 50 feet or more from the street line having this setback in open land may display one freestanding sign not to exceed 32 square feet on each of two sides and must not be located nearer to the street lot line than one-half the depth of the required front yard.
15. Temporary signs for construction purposes. The Board of Selectmen may authorize for a period of time, not to exceed ninety (90) days, the location of a sign not exceeding 12 square feet in area which is incidental to construction projects and shall refer to the use or activity occurring on the lot on which the sign is situated. It shall be a condition of the zoning permit issued for such a sign that the sign be removed at the end of the construction period but in no event shall exceed 90 days. Such permits may be renewed for an additional 90 days if construction continues for that period.

Article X. Water Resource Protection Zone

1. Purpose and Authority

Pursuant to the authority granted under RSA 674, Section 21, the Town of Bennington hereby adopts the following regulation. The purpose of this Article is, in the interests of public health, safety and general welfare, to protect, preserve and maintain existing and potential ground water recharge areas within and adjacent to the known aquifer from future adverse land use practices.

This is to be accomplished by regulating land uses which would contribute polluted water to designated aquifers and recharge areas identified as being needed for present and future public water supply.

The Water Resource Protection Zone is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying base district zoning. In all cases, the more restrictive requirement(s) shall apply.

2. Zone Defined

The Water Resource Protection (WRP) Zone shall be bounded and described as follows:

Beginning at a point on the town line between Bennington and Greenfield. Said point being 400 feet Easterly from the center line (CL) of Route 31,

thence generally Northerly, Northwesterly, Northerly and Northwesterly parallel to and 400 feet Easterly of the CL of said Route 31 to a point on the division line between Lot 1 Map 3 of the Town of Bennington Property Map (April 1985

revision) and Lot 24 Map 7, said point being 400 feet Northeasterly from the CL of Route 31,

thence Northwesterly about 6,650 feet to a point opposite the "Well Road" as shown on Map 15 of said Bennington Property Map and 400 feet Easterly of the CL of Bible Hill Road,

thence generally Northerly and Northwesterly parallel to and 400 feet Easterly of the CL of said Bible Hill Road (also known as the Antrim-Bennington Road) to a point 400 feet Southeasterly of the CL of the Antrim-Francestown Road,

thence generally Northeasterly, Southeasterly, and Easterly parallel to and 400 feet South of the CL of said Antrim-Francestown Road to a point about 425 feet Southerly of the Southwest corner of Lot 1 Map 21 of said Bennington Property Map,

thence generally Northerly 425 feet to the Southwest corner of said Lot 1 Map 21 as shown on said Bennington Property Map,

thence Northeasterly approximately 1,024 feet along the Westerly line of Lot 1 Map 21,

thence continuing Northwesterly approximately 297 feet,

thence continuing Northerly 353 feet,

thence continuing Westerly approximately 590 feet,

thence continuing Northerly approximately 700 feet to the CL of Durgin Road (also known as Cross Road or Sawmill Road),

thence generally Southwesterly along the CL of said Durgin Road about 1,550 feet to the CL of the Antrim-Francestown Road,

thence generally Southwesterly along the CL of said Antrim-Francestown Road about 2,170 feet to the Contoocook River,

thence upstream along the CL of said Contoocook River to a point where the Antrim-Bennington town line turns and runs Westerly from said river,

thence Westerly along said Antrim-Bennington town line to the CL of US Highway 202,

thence generally Southerly along the CL of said Route 202 about 7,120 feet to its intersection with the CL of Pierce Street,

thence Southwesterly about 4,025 feet to the Northwest corner of Lot 1 Map 8 of said Bennington Property Map,

thence Southerly by the Bennington-Hancock town line to its intersection with the Bennington-Greenfield town line,

thence Easterly by the said Bennington-Greenfield town line to the point begun at.

3. Incorrectly Designated Zone

When the actual boundary of the Water Resource Protection Zone is in dispute by any owner or abutter, the Planning Board, at the owner/abutter's expense and request, may engage a professional geologist or hydrologist to determine more accurately, the precise boundary of said zone.

4. Prohibited Uses

A. The following uses shall not be permitted in the Water Resource Protection Zone:

1. Disposal of solid waste other than brush or stumps;
2. Subsurface storage of petroleum and other refined petroleum products;
3. Outdoor unenclosed or uncovered storage of salt;
4. Commercial animal feed lots where animals are kept;
5. Mining of land pursuant to RSA 155E;
6. Automobile service and repair shops;
7. Junk and salvage yards;
8. Cluster development

B. The following uses shall not be permitted in the Water Resource Protection Zone unless such uses are in compliance with all state and federal regulations:

1. Disposal of liquid or leachable wastes except from single family subsurface disposal systems;
2. All on-site handling, disposal, storage, processing or recycling of hazardous or toxic materials;
3. All business uses involving the use, treatment or disposal of substances which could be harmful to the aquifer or recharge area.

5. Density and Use

Development in the Water Resource Protection Zone shall be limited to single family residential uses on lots consisting of 3 acres or more and 350 feet of frontage or more. Impervious surfaces shall not exceed 20 percent of any lot. Where the lot is served by public water and sewer, the density shall be as provided in the underlying zone.

Article XI. Flood Plain Protection Zone

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

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Hillsborough, N.H." dated September 25, 2009 or as amended, together with the associated Flood Insurance Rate Maps dated September 25, 2009 or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

Item I – Definition of Terms: The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Bennington.

“Area of Special Flood Hazard” is the land in the floodplain within the Town of Bennington subject to a one-percent or greater chance of flooding in any given year. Zone(s) A and AE on the Flood Insurance Rate Map (FIRM).

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

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

“Building” – see “structure”.

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

“FEMA” means the Federal Emergency Management Agency.

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

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

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

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

“Flood Insurance Study” – see “Flood Elevation Study”

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

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

“Floodway” – see “Regulatory Floodway”.

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

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

“Historic Structure” means any structure that is:

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

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

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

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

“Mean Sea Level” means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“New Construction” means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

“100-year flood”-see “base flood”.

“Recreational Vehicle” means a vehicle which is:

- a. built on a single chassis;

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

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

“Special Flood Hazard Area – (See “Area of Special Flood Hazard”).

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

“Start of Construction” includes substantial improvements, and means the date the building permit was issued, provided the actual start of the construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual state means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

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

“Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50 percent of the market value of the structure. The market value of the structure would equal:

1. The appraised value prior to the state of the initial repair or improvement, or;
2. In the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

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

Item II

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

Item III

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in special flood hazard area, all new construction or substantial improvements shall:

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

Item IV

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

Item V

For all new or substantially improved structures located in Zone A & AE the applicant shall furnish the following information to the Building Inspector:

- a. the as-built elevation (in relation to the NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement,
- b. if the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed,
- c. any certification of floodproofing.

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

Item VI

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

Item VII

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.
2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meets the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”
4. Along watercourses that have not had a Regulatory Floodway designated or determined by a Federal, State or other source; no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
5. Along watercourses with a designated Regulatory Floodway, no encroachments, including fill new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

Item VIII

1. In special flood hazard areas the Building Inspector shall determine the 100 year flood elevation in the following order of precedence according to the data available:
 - a. In Zone AE refer to the elevation data provided in the community’s Flood Insurance Study and accompanying FIRM.
 - b. In A Zones the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any Federal, State or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, sit approvals).
2. The Building Inspector’s 100 year flood elevation determination will be used as criteria for requiring in Zones A & AE, that:
 - a. all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;

- b. that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
 - i. be floodproofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - ii. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - iii. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
- c. all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- d. Recreational vehicles placed on sites within Zone AE shall either:
 - i. Be on the site for fewer than 180 consecutive days;
 - ii. Be fully licensed and ready for highway use, or
 - iii. Meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (c)(6) of Section 60.3
- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
 - i. The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
 - ii. The area is not a basement
 - iii. Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Item IX – Variations and Appeals:

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

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
 - a. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - b. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 - c. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
 - a. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 or \$100 of insurance coverage, and
 - b. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

4. The community shall:
 - a. Maintain a record of all variance actions, including their justification for their issuance, and
 - b. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator

Article XII. Open Space Residential Development

- A. **AUTHORITY:** The Open Space Residential Development (OSRD) Ordinance has been adopted by Town Meeting Vote of the Town of Bennington, New Hampshire pursuant to RSA 674:21, Innovative Land Use Controls.
- B. **PURPOSE:** The purpose of the OSRD Ordinance is to facilitate implementation of the goals, policies, and objectives of the Bennington Master Plan, and thus to:
 1. Promote a more efficient use of land requiring a smaller network of streets and utilities;
 2. Promote the preservation of open space, farmland, recreation areas, green space, fields and woods, valuable wildlife habitat, water resources and outstanding topographic, natural, cultural, and historic features;
 3. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;
 4. Discourage the sprawling, land-consuming form of development usually resulting from conventional subdivision;

5. Promote the efficient provision of municipal services and protect existing and potential water supplies;
 6. Maintain the rural and scenic character of the Town of Bennington;
 7. Reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes;
 8. Promote the siting of buildings which is sensitive to existing natural and historic features;
 9. Protect the value of real property;
 10. Create compact neighborhoods accessible to open space amenities and with a strong community identity and quality of life;
 11. Provide for a variety of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups;
 12. Implement adopted land use, transportation, and community policies, as identified in the Town's Master Plan.
- C. DEFINITIONS: The following definitions specifically apply to this section of the zoning ordinance.

Basal Area - The cross sectional area of a tree measured at a height of 4 1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees.

Common Area - Any land area, other than open space, set aside for common ownership as a result of an OSRD, including areas for common facilities.

Common Facilities - Built facilities which are commonly owned by the property owners within an OSRD. Common facilities may be proposed but are not required. They may include streets, rights of way, common buildings, wells, water and waste treatment systems, and recreation facilities.

Common Open Space - A type of Open Space within an OSRD, which is not individually owned but is designated and intended for the common use or enjoyment of the residents of the development, and in some cases the general public.

Estate Lot - Any lot ten acres or larger created as part of an OSRD.

Homeowners Association - A private non-profit organization (corporation, association, or other legal entity) established by the developer to manage, maintain, support, and finance the common facilities and common open space of an OSRD, and to enforce certain covenants and restrictions.

Open Space - Undeveloped land set aside for common or individual ownership as a result of an OSRD, with conservation easements and other deeded restrictions to ensure that the land will remain permanently open and undeveloped. A condition of OSRD approval is that open space may not be further subdivided.

Open Space Residential Development (OSRD) - A form of residential development where the density of dwelling units is no greater than would be permitted in the district in which the OSRD is located, but where the lot size and other dimensional standards may be reduced in exchange for the preservation of permanently protected open space, recreational land, forests, and/or farmland. Tracts of land developed as an OSRD may be under single or consolidated ownership.

Soil Based Carrying Capacity of a Lot - A number that is calculated by adding together the Soil Carrying Capacity of each of the different areas of soil on that lot.

Soil Carrying Capacity - A number that is calculated for a given area of a certain type of soil by dividing that given area by the required area for that soil type as found in Appendix 1 of Soil Based Lot Sizing, Society of Soil Scientists of Northern New England, SSSNNE Special Publication No. 4, Version I, September, 2003.

D. APPLICABILITY OF OSRD:

1. Ten Acre Minimum. In any residential subdivision consisting of ten (10) contiguous acres or more in single or consolidated ownership, an applicant may apply for an OSRD under this Article. The minimum acreage may be waived by the Planning Board in instances where an applicant demonstrates that the criteria in Article XII.2 are met.
2. Required for Special Land Features. The Planning Board may require an applicant to use an OSRD subdivision design if the property possesses one or more of the following special features:
 - a. Large contiguous tracts of unfragmented land;
 - b. Agricultural land with soils designated as prime or of statewide significance by the U.S. Natural Resource Conservation Service soil surveys;
 - c. Rare, threatened, or endangered species or exemplary natural communities according to the New Hampshire Natural Heritage Inventory (Department of Resources and Economic Development);
 - d. Frontage on any surface water body ten (10) acres or greater, or on any third or fourth order stream, as shown on topographical maps published by the U.S. Geological Survey and as specified by the Strahler method as found in the *Handbook of Applied Hydrology*, section 4-2, 1964;
 - e. A portion of an aquifer with a transmissivity in excess of 1,000 sq. ft. per day as shown on the Stratified Drift Aquifer Maps published and updated by the N.H. Department of Environmental Services;
 - f. Unique natural, cultural, and/or historical features as identified in the most current version of the Bennington Master Plan.

- E. PROCEDURES: OSRD plan submission, review and approval procedures shall be as described in the Bennington Subdivision Regulations, Section XII. OSRDs with uses other than single family detached dwelling units are also subject to Site Plan Review by the Planning Board.
- F. PERMITTED USES: Residential uses, accessory uses, and incidental recreational uses, which may or may not include recreation facilities for use by the general public, shall be allowed within an OSRD. All other uses are prohibited.
1. Residential uses may include dwelling units in the following form:
 - a. Single family detached residential dwellings;
 - b. Two-family dwellings;
 - c. Residential condominiums, up to a maximum of six (6) dwelling units per structure. (Any OSRD that includes proposals for condominium ownership shall comply with all applicable state statutes regulating the condominium form of ownership);
 - d. Multi-family dwellings; up to a maximum of six (6) dwelling units per structure;
 - e. Housing for persons fifty-five (55) years of age and over;
 - f. Accessory Dwelling Units.
 2. Active recreational uses shall only be allowed in the Common Area and may include:
 - a. Racquet and other hard surface courts;
 - b. Swimming pool and facilities;
 - c. Clubhouses and other common recreational facilities;
 - d. Ball fields;
 - e. Golf courses;
 - f. Horse stables;
 - g. Playgrounds and related equipment.
 3. Passive recreational uses allowed in the Common Area and Open Space, unless under specific easement, may include:
 - a. Nature and hiking trails;
 - b. Jogging and walking trails;
 - c. Bicycle trails;
 - d. Cross country ski trails;

- e. Horseback riding trails;
 - f. Common gardens and arboretums;
 - g. Benches and picnic tables;
4. Agricultural uses to include row crops, orchards, and forestry practices.

G. REQUIREMENTS FOR OPEN SPACE AND COMMON AREA:

1. Fifty percent (50%) of the OSRD tract must be set aside as permanently protected open space through the use of covenants, easements, and/or deed restrictions as set forth in the Bennington Subdivision Regulations.
 - a. No more than fifty percent (50%) of the open space may consist of wetlands, surface waters, flood plains, or areas with unaltered slopes greater than twenty-five percent (25%) provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this ordinance;
 - b. Streets and driveways shall not be counted as open space.
2. All recreational facilities, common areas, and common open space shall be reasonably accessible to all residents of the development.
3. The common area shall not include any land designated as wetlands, unaltered slopes greater than twenty-five percent (25%), or flood plain areas.
4. In evaluating the acceptability of proposed Open Space and Common Areas, the Planning Board shall consider the extent to which the location and design of the area achieves the following objectives:
 - a. Large enough blocks of land are conserved to retain ecosystem function and habitat integrity;
 - b. The development protects all flood plains, wetlands, and steep slopes from clearing, grading, filling, or construction (except as may be approved for essential infrastructure or active or passive recreation amenities);
 - c. Large enough blocks of land are conserved to sustain agricultural or forestry operations and buffer them from nearby development;
 - d. Access to and/or benefits from the Common Open Space are provided to the greatest number of dwelling units within the subdivision;
 - e. The development provides preserved open space that is reasonably contiguous. To the greatest extent practicable, this land should be designed as a single block with logical, straightforward boundaries. Long thin strips of conservation land should be avoided, unless the conservation feature is linear, or unless such configuration is necessary to connect with other open space, streams or trails;

- f. Linkages or contiguity with existing or potential conservation areas on abutting properties are provided. Open Space should be designed where possible as part of larger contiguous and integrated greenway systems;
- g. Development is designed around existing hedgerows and treelines between fields or meadows;
- h. Scenic views and vistas, particularly as seen from public streets, are left unblocked or uninterrupted. Siting new construction on prominent hilltops or ridges is avoided while taking advantage of lower topographic features;
- i. Development is designed around and preserves sites of historic, archeological, or cultural value and their environs, in order to safeguard the character of the feature, including stone walls, springs houses, barn foundations, cellar holes, and earthworks and burial grounds;
- j. The development protects the rural character of roadsides, and improves public safety and vehicle carrying capacity of the street, by avoiding development that fronts directly on existing public streets;
- k. The development provides landscaping for common areas, cul-de-sac islands, and shade trees on new streets.

H. DENSITY:

1. The maximum number of dwelling units for an OSRD subdivision shall be determined by use of a yield plan, which is a conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots may entail the use of site specific soil mapping and soil carrying capacity. For purposes of determining the number of OSRD dwelling units, each conceptual conventional lot must meet the requirements of a buildable lot for a single family dwelling unit as defined in the zoning district in which the OSRD is located and meet all other applicable requirements of the Zoning Ordinance and Subdivision Regulations. The Planning Board shall adopt regulations that provide for the generation of a yield plan in accordance with this section.
2. There shall be no further subdivision of an approved OSRD.

I. DENSITY BONUS FOR INNOVATIVE OPEN SPACE PROTECTION:

The Planning Board may award the development a density bonus that increases the maximum number of dwelling units available under conventional subdivision by a maximum of twenty-five percent (25%) for those applicants that meet the following criteria. Density bonuses awarded for preserving frontage lots shall be in addition to the above twenty-five percent (25%). In no event may the number of dwelling units exceed the soil based carrying capacity for the entire parcel.

With the exception of front lot bonuses, density bonuses may be awarded ONLY in zoning districts where the minimum lot size under conventional zoning is three (3) acres or more. Density bonuses shall be awarded in accordance with the following:

1. Additional Open Space Bonus - Where the proposed OSRD plan shows sixty percent (60%) or more of the tract as open space protected as such in perpetuity, the development shall be awarded a density bonus of ten percent (10%),

Or

Where the proposed OSRD plan shows seventy percent (70%) or more of the tract as open space protected as such in perpetuity, the development shall be awarded a density bonus of twenty percent (20%).

2. Trails Bonus - Where there is a linking of existing/proposed trails or open space networks with trail corridors through the site, and the general public is granted access to these trails in perpetuity, the development shall be awarded a density bonus of five percent (5%). The minimum nature of public access required to trigger this bonus is pedestrian traffic. The instrument granting access, acceptable to the planning board, shall restrict the use of motorized vehicles where appropriate.
3. Agricultural Land and Use Bonus - Where the development protects agriculturally valuable lands and provides permission for their use as such in perpetuity, the development shall be awarded a density bonus of up to ten percent (10%), to be determined by the Planning Board. If the portion preserved for agricultural use is equal to 25% or more of the tract, then the full bonus may be awarded, with a smaller bonus awarded for smaller percentages, but also taking into consideration the importance of the land for preserving the rural character of the Town. The instrument granting use, acceptable to the Planning Board, may reasonably restrict the type of intensity of farming to occur to prevent nuisances. This provision only requires that permission is available; the fact that agricultural uses are not pursued at any particular time does not affect the validity of the bonus.
4. Forest Management Bonus - On sites where the open space to be preserved is mostly mature forest (70% or greater), where thirty percent (30%) or less of the basal area will be cut, and where the cutting is well distributed and will be based on a management plan developed by a NH Licensed Forester and approved by the Planning Board, the development shall be awarded a density bonus of fifteen percent (15%).
5. View Shed and Viewpoint Bonus - The development may be awarded a density bonus of five percent (5%) if it protects in perpetuity view sheds and associated viewpoints, which are lands or corridors of land that contribute to the visual landscape of the Town, including items such as open fields containing stonewalls.
6. Historic Features Bonus - The development may be awarded a density bonus of five percent (5%) if it protects in perpetuity historically significant buildings and landscapes, identified as such in the Master Plan, that include buildings and associated uses that are maintained and visually separated from the developed portion of the OSRD. Structures or landscapes not identified as such through the Master Plan may be determined by sufficient evidence presented to the Planning Board during review of the development. Such evidence may include comment from the Heritage Commission or Bennington Historical Society, listing or eligibility for listing on the National Register of Historic Landmarks, or other qualified statements of historic value.

7. Frontage Lots - Where a development is proposed such that all potential lots that could front on a public street existing at the time of application have been preserved in a natural undeveloped condition, the development shall receive, in addition to any bonus awarded under this section, a bonus of one (1) additional dwelling unit for every potential frontage lot so preserved, up to a maximum bonus of 4 additional dwelling units.
- J. **ADDITIONAL DENSITY FOR 1 & 2 BEDROOM DWELLING UNITS:** The total number of bedrooms shall be considered in the calculation of the number of dwelling units allowed in an OSRD.
1. The development may be awarded a number of additional 1 or 2 bedroom dwelling units equal to fifty percent (50%) of the number of proposed 1 or 2 bedroom principal dwelling units allowed under the yield plan.
 2. If such additional density is allowed, the 1 & 2 bedroom dwelling units upon which the calculation is based and those 1 & 2 bedroom dwelling units awarded as a bonus shall be subject to deed restrictions restricting them to 1 or 2 bedroom dwellings and prohibiting the construction of an associated accessory dwelling unit.
- K. **DIMENSIONAL CONTROLS FOR OSRD TRACT:**
1. **Frontage:** The minimum frontage for a tract on which an OSRD is proposed shall be a contiguous one-hundred (100) feet and of sufficient length to provide safe access for a right-of-way of at least fifty (50) feet.
 2. **Setbacks:** There shall be a minimum setback of seventy-five (75) feet along all property boundaries of the tract for all structures, including accessory structures, parking areas, driveways and internal streets. Entrance streets connecting the OSRD to the external street system may cross the setback area.
 3. **Buffers:**
 - a. A landscaped buffer no less than fifty (50) feet deep shall be provided where appropriate to screen the development from public streets and adjacent properties. Entrance streets connecting the OSRD to the external street system may cross the buffer area. The natural vegetation shall be retained whenever possible. If the natural vegetation is not sufficient to serve as an effective visual screen, landscaping shall be required to provide such a screen. Landscaping may include berms and/or decorative fencing of an appropriate height, and shall be installed under the conditions set forth in the Bennington Subdivision Regulations.
 - b. This buffer area shall be part of the common area, and shall be subject to the same restrictions that apply to that area.
 - c. Frontage lands on streets existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks.

L. DIMENSIONAL CONTROLS FOR LOTS IN SUBDIVISION:

1. Lots on pre-existing town streets: For each lot developed along a public street existing at the time of application, the minimum frontage, minimum lot size, and all other dimensional controls shall be those which are required in the underlying zoning district in which the OSRD is located.
2. Frontage on New Subdivision Streets: In the interest of flexibility and creative site designs, there shall be no minimum frontage requirements for individual lots on new subdivision streets within an OSRD.
3. Lot size for lots using a community waste water system: In the interest of flexibility and creative site designs, there is no minimum lot size for lots within an OSRD that use a community waste water system. All developments shall contain some form of lot delineation or lines that designate a reasonable amount of land attributable to each lot taking into consideration the type of structure(s) on that lot and as acceptable to the Planning Board.
4. Lot size for lots proposed to have individual septic systems: For those lots proposed to have individual septic systems, the following requirements must be met:
 - a. The soil based carrying capacity of the lot must be equal to the number of proposed dwelling units for that lot. Allowances may be made for dwelling units of less than 4 bedrooms, per the Bennington Subdivision Regulations.
 - b. A lot must contain a minimum area of at least 20,000 square feet of contiguous non-wetland area per proposed dwelling unit, exclusive of setbacks, and must meet all other requirements of the Bennington Zoning Ordinance pertaining to septic system design and location. The contiguous non-wetland area must be able to contain a square with a minimum dimension as follows:

Size of Required Non-wetland Area	Contiguous Minimum Dimension
20,000 sq. ft.	75 ft.
40,000 sq. ft.	100 ft.
60,000 sq. ft.	125 ft.
for every additional 20,000 sq. ft.	an additional 25 ft.

5. Setbacks: In the interest of flexibility and creative site designs, there shall be no minimum setback requirements for individual house lots within an OSRD.

M. DRIVEWAYS AND STREETS:

1. All subdivisions using the OSRD provisions shall include the construction of an entrance street providing access to the development from a junction with a public street. This street shall be built in accordance with the Bennington Subdivision Regulations. Wherever possible, taking into consideration conservation and space limitation of the individual parcel, such street shall be of a design such that there is only one entrance onto any public street in existence at the time of application. Whenever possible, the entrance street to the development shall be located such

that the maximum distance attainable can be provided on each side of the street to protect neighboring homes from traffic.

2. The design of the street network shall provide for access to adjacent developed areas, or shall reserve right-of-ways for future connection to adjacent properties which, in the judgment of the Planning Board, are likely to be developed. This objective shall be secondary to the goal of protecting the open space.
3. Internal streets in an OSRD may be considered for design waivers in accordance with the Bennington Subdivision Regulations. The Planning Board may deny any and all of these waivers where future connections to other streets is reasonably possible or anticipated.
4. All driveways, including those for lots fronting on public streets existing at the time of application, shall be located on an internal subdivision street.

N. COMMUNITY WATER AND WASTE WATER SYSTEMS: An OSRD may include a community or common water and/or waste water system for individual households. Such systems shall be installed by the subdivider and shall be installed under the conditions set forth in the Bennington Subdivision Regulations. Community waste water systems shall be located in the common area unless the Planning Board determines they may be located in the Open Space.

O. OWNERSHIP OF OPEN SPACE AND COMMON LAND:

1. The developer shall hold, manage and maintain open space, common land and common facilities within an OSRD until completion of all improvements, whereupon the developer shall transfer the ownership and management and maintenance responsibilities as set forth in Subsections O.2 and 3.
2. Common areas and common facilities within an OSRD shall be owned by and bound by a homeowner's or condominium association or similar form of common ownership set by the developer. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. Articles of association or incorporation must be acceptable to the Planning Board and to the Town Counsel. The requirements for the homeowners association shall be as set forth in the Bennington Subdivision Regulations.
3. Common Open Space shall be owned by one or a combination of the following:
 - a. A homeowner's or condominium association or similar form of common ownership set by the developer;
 - b. A conservation trust or private nonprofit organization such as the Society for the Protection of NH Forests, The Audubon Society, or the Monadnock Conservancy, which has as its purpose the preservation of open space through ownership and control;
 - c. The Town of Bennington, subject to acceptance by the town, which shall maintain the land as open space for the benefit of the general public of Bennington;
 - d. The State of New Hampshire for permanent open space uses;
 - e. A private landowner such as a farmer or forest manager that will manage it for uses consistent with the provisions of this ordinance.

4. Any Estate Lot may retain open space in private ownership subject to the approval of the Planning Board.
- P. **PERMANENT PROTECTION OF OPEN SPACE:** All open space in an OSRD, whether held privately or in common, shall be restricted in perpetuity as open space through the use of conservation easements that legally restrict the development rights to that property.
1. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and similar provisions.
 2. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or the Town of Bennington, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the Purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.
- Q. **ENFORCEMENT:** The enforcement of this Article is vested with the Board of Selectmen. Upon any well-founded information that this Article is being violated, the Selectmen shall, within 14 days, undertake such steps as are legally available to them pursuant to RSA 676:15, 17, 17-a, 17-b.
- R. **SEVERABILITY:** The invalidity of any provision of this Article shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Article.
- S. **EFFECTIVE DATE:** This Article shall take effect March 9, 2004, and as amended.

Article XIII Excavation

No individual shall engage in commercial excavation of earth materials without securing from the Planning Board a Special Use Permit in accordance with RSA 674:21 and this ordinance, and a gravel permit pursuant to RSA Chapter 155-E. The Planning Board shall grant a Special Use Permit when all of the following conditions have been satisfied by the applicant:

1. The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood;
2. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
3. Provisions shall be made for operation of the excavation in a manner such that it will not create a nuisance or health or safety hazard;
4. The Planning Board shall establish the hours of operation of the proposed excavation in order to address the particular concerns raised by the individual application and abutters;

5. The proposed excavation shall be situated a minimum of 1000-feet from any other existing excavation;
6. The proposed excavation shall be situated a minimum of 500-feet from an existing residence or business;
7. The proposed excavation shall be situated a minimum of 200-feet from a property boundary line, except that with the permission of the abutter it may be permitted as near as 50-feet from said boundary line;
8. Excavation shall be permitted within the Rural Agricultural Zone only; and not within the Water Protection Zone;
9. Excavation shall not be permitted nearer than 6-feet from the seasonal high ground water level unless the applicant intends to subject the property to a conservation easement such that no future residential or commercial use shall be made of the property.

The Planning Board may adopt regulations implementing the provisions of this special use requirement and may attach such conditions as may be deemed to be prudent and necessary in order to permit the excavation and accommodate the interests of the public. The Special Use Permit shall not be required for minor topographical adjustments.

Article XIV Special Exception

The Zoning Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant permits for uses permitted as a special exception as set forth in this section. Before reaching a decision under this section, three members of the Board shall have viewed jointly the subject area. Said viewing shall be noted in their records. The Board, in acting on the application for special exception must find that all of the following conditions are met:

- A. Light industry is permitted in the Rural/Agricultural Zone by special exception provided that:
 1. Each lot is located adjacent to and has frontage on a public street or highway of at least 500-feet and is located on a lot of at least 5 acres.
 2. The highway shall be adequate to accommodate the intended use.
 3. No noise, dust, dirt, fly-ash, smoke or other objectionable materials shall be emitted into the air nor shall noise which is objectionable due to volume, frequency or shrillness be transmitted outside the property from which it originates.
 4. Adequate buffering from adjoining properties must be provided to the satisfaction of the Board of Adjustment and Planning Board.
 5. The specific site is an appropriate location for such a use.
 6. No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.
 7. Adequate and appropriate facilities shall be provided for the proper operation of the proposed use. No more than 50 percent of the tract may be developed.

- B. Guest cottages in association with primary dwellings may be permitted by special exception in the Rural/Agricultural District only if all the following conditions are met:
1. There shall be no more than one guest cottage on each lot.
 2. The guest cottage shall be for the sole use of guests or members of the family of the residents of the principal dwelling, and shall not be a rental property.
 3. The area of the lot accommodating the principal dwelling and the guest cottage shall not be less than four (4) acres.
 4. The total living area of the guest cottage shall be less than seven hundred (700) square feet.
 5. The sewage disposal system designed for the guest cottage shall have been approved by the New Hampshire Division of Water Supply and Pollution Control and must meet any other applicable regulations.
 6. The guest cottage unit shall comply with all other ordinance of the Rural/Agricultural District.
- C. The addition of not more than one (1) accessory dwelling unit to a primary dwelling unit may be allowed by special exception if all the following conditions are met:
1. Such addition is within or attached to the primary dwelling unit.
 2. The person or persons who own the lot shall reside in either the accessory dwelling unit or the primary residence.
 3. The accessory dwelling unit shall be occupied as a residence by no more than two (2) persons, at least one of whom shall be related by blood, marriage or adoption to the person or persons residing in the primary residence.
 4. The accessory dwelling unit shall have a minimum floor area of 300 square feet, but shall not be greater than 25 percent of the total floor area of the building.
 5. The accessory dwelling unit shall have a separate entrance and shall have adequate egress in case of fire or other hazard.
 6. No change shall be made to the exterior of the residence that would detract from its appearance as a one family residence.
 7. The sewage disposal system design for the residence, either existing or as it may be modified, shall have been approved by the New Hampshire Division of Water Supply and Pollution Control and must meet any other applicable regulations.
 8. The accessory dwelling unit shall comply with all other ordinance of the Village District, Rural/Agricultural District and the Water Resource Protection Zone.

D. Action by Board

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

1. Two copies of plans for the proposed development of a site for a special exception shall be submitted with an application for a permit and such plans shall show the location of all buildings, parking area, traffic access and circulation drives, open spaces, landscaping, lighting, signage and other pertinent information that may be necessary to determine that the proposed use meets the requirements, spirit and intent of this Ordinance. One copy of said plans shall be transmitted by the Board of Adjustment to the Planning Board for review.

2. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the proposed use and the location of the site with respect to the existing or future streets giving access herewith shall be such that it will be in harmony with the orderly development of the district and location, nature and height of buildings, walls and fences. In this regard, the Board may impose the following safeguards in addition to the applicable requirements of the Ordinance, including but not limited to the following:
 - a. Front, side or rear setbacks greater than the minimum requirements of the Ordinance;
 - b. Screen off parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, plantings or other devices;
 - c. Limitations of size, number of occupants, method or time of operation or extent of facilities
 - d. Regulation of number, designs and location of drives or other traffic features;
 - e. Off street parking or loading spaces beyond the minimum requirements of this Ordinance.

E. In no case may operations create more noise, fumes, odor or vibrations or other nuisances than would be created by any permitted uses in the district.

Article XV Zoning Board of Adjustment

A. Creation*

Within thirty (30) days after the adoption of this Ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall appoint a Board of Adjustment consisting of five members whose duties, terms and powers shall conform to the provisions of RSA Chapter 672 through 677 as amended. The Board of Selectmen shall appoint five alternate members to fill regular positions on the Zoning Board of Adjustment when a regular member is unable to attend.

*By action of the 1997 Town Meeting; both the ZBA and Planning Board are made elective Boards, RSA 673:3 and RSA 673:2, I.b

B. Variances

The Board of Adjustment may authorize a variance from the terms of the Ordinance only where the Board finds that all of the following conditions, defined in New Hampshire RSA 674, Section 33, apply:

1. No Diminution in the value of surrounding properties would be suffered.
2. Granting a variance would be a benefit to the public interest
3. Denial of the variance would result in an unnecessary hardship to the owner seeking it. An unnecessary hardship results only if the particular property is unduly restricted by the Ordinance or because of special conditions unique to that property which distinguishes it from all other similarly restricted. It is not the uniqueness of the plight of the owner, but uniqueness of the land causing the plight that is the criterion for unnecessary hardship. A variance is granted with respect to a piece of property and not with respect to the personal needs, preferences and circumstances of the property owner. The inability to use land for one particular purpose is irrelevant to whether a variance should be granted.
4. By granting the variance, substantial justice would be done.
5. The use must not be contrary to the spirit of the Ordinance.
6. The specific variance, as granted, shall be the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the lot or structure.

C. Appeals

Appeals to the Board of Adjustment may be taken by any person aggrieved by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer, in the manner prescribed by New Hampshire RSA 676:5, as amended, within the time limits set by the Board of Adjustment according to said statute. The cost of advertising, mailing and notices of the hearing as well as any special investigative studies necessitated by one application shall be paid by the person making appeal to the Board of Adjustment prior to the hearing.

D. Special Exceptions

The special exception is the use that would not be appropriate generally or without conditions, but which, if controlled as to number, area, location or relation to the neighborhood would not be detrimental to the public health, safety, order, comfort, convenience, appearance, prosperity or general welfare, as determined by the Board of Adjustment consistent with this Ordinance and as permitted in this Ordinance.

Article XVI Enforcement and Administration

A. Duty of Board of Selectmen

It shall be the duty of the Board of Selectmen to enforce and administer the provisions of this Ordinance. The Board of Selectmen or an appointed Building Inspector shall administer the zoning ordinance literally and shall not have the power to permit any use of land or building which is not in conformance with this Ordinance.

Pursuant to RSA 674:51, the Building Inspection shall enforce the State Building Code. The Building Inspector shall review and determine compliance of building plans, issue building

permits, inspect the work authorized by such building permits, issue appropriate use and occupancy certifications, and exercise other enforcement action as authorized by RSA 676.

B. Requirement of a Building Permit

A building permit shall be required prior to:

1. Beginning work on any construction projects covering more than one-hundred (100) square feet:
 - a. Placement of foundations
 - b. Moving or demolition of any structure
 - c. Placement of a building/structure on a lot (including mobile homes or manufactured housing)
2. Beginning work on any STRUCTURAL alterations, either exterior or interior
3. Beginning work on any alterations that result in a CHANGE OF USE, either exterior or interior
4. The placement or moving of any exterior sign.

Maintenance, repairs and redecoration that do not involve structural alterations or additions shall not require a building permit.

A building permit application shall be on a form provided by the Town, accompanied by all necessary descriptive information and a permit fee based on a schedule established by the Board of Selectmen.

A building permit shall be valid for one year.

The applicant shall have made an appreciable start (i.e. foundation installed and capped) within four months of the issuance of the building permit.

C. Penalty

A violation of this Ordinance shall be punished by a fine of not more than the maximum set by State law, with each day that such violation continues to be deemed a separate offense.

D. Enforcement

The Board of Selectmen shall enforce the provisions of this Ordinance by seeking an injunction, fines or other appropriate legal remedies in the local district court or superior court for the country.

Article XVII Definitions

In the interpretation and enforcement of this Ordinance, all words other than those specified below shall have the meaning implied by their context in their ordinarily accepted meaning.

The present tense shall include the future tense, the singular number includes the plural and the plural number includes the singular.

1. Accessory Building or Use: A building or use subordinate and customarily incidental to the main building or use on the same lot

2. Building: A structure forming a shelter for persons, animal, or property.
3. Building Height: Vertical distance measured from the average elevation of the proposed finished grade to the primary eaves, except for domestic radio and television antennas, silos for the storage of feed crops, church towers, water storage structures, chimneys or wind operated devices.
4. Dwelling: Building or part of the building which contains living and sleeping accommodations for permanent occupancy.
5. Dwelling Unit: One or more sleeping rooms arranged for use of one or more individuals living as a single housekeeping unit with cooking, living, sanitary and sleeping facilities.
6. Frontage: The contiguous distance along the lot line dividing a lot from either (a) a publicly maintained highway, excepting limited access highways as defined by RSA 230:44 and Class VI highways; or (b) an approved road shown on a recorded subdivision plan, as proposed by the Planning Board. When a lot borders on more than one public highway, the frontage shall be on the roadway on which the lot has the greatest length.
7. Light Industry: A use that has fifteen kw per 1000 square feet space or less or its equivalent. The assembly, manufacture, processing, packaging or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odor, smoke, vapor, or noise are effectively confined to the premises or disposed of so as to avoid any air pollution conducted in such a manner as to not be objectionable to adjoining properties.
8. Lot: Plot or parcel of land occupied or capable of being occupied in conformity with this Ordinance by one principal building and the accessory buildings for uses customarily incident thereto, including such open spaces as required by this Ordinance.
9. Lot Coverage: The percentage which aggregate building area and accessory buildings and paved area of the lot bears to the total area of the lot.
10. 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 the site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities which include plumbing, heating and electrical heating systems contained therein. Said housing is to conform to the 1986 US Department of Housing and Urban Development Manufactured Housing Code.
11. Condominium: Shall mean those uses and structures as defined in New Hampshire RSA 356-B
12. Motel/Hotel: Buildings containing lodging units consisting of a room or suite of rooms each with a separate entrance and its own lavatory facilities and offered or to be offered as sleeping accommodations for transient guests for compensation.
13. Front Setback: The distance from the boundary of the right-of-way line of a street(s) and the front line of a building or any projections thereof.

It is the intent of this Ordinance that side and rear setbacks be treated equally. Furthermore, if a lot is not four-sided or is otherwise irregularly shaped in any way, all setbacks, exclusive of the front, shall be treated identically.

Side Setback: The distance between the extreme edge of a building or any projection thereof and the side boundary lines of the lot.

Rear Setback: The distance between the extreme edge of a building or any projection thereof and the rear boundary line.

14. Home Occupation: A use conducted wholly within the principal structure which is customarily incidental and clearly subordinate to the use of the dwelling for residential purposes; is conducted by or carried on under direction of the family in residence and does not employ more than the equivalent of four (4) full-time employees; provides for off-street parking; does not utilize more than one-third (1/3) of the square footage of the dwelling; and, involves no change in the outward appearance of the dwelling, excepting the appearance of one sign whose size and location shall be subject to the approval of the Zoning Board of Adjustment. Home occupations shall include professional offices, real estate or insurance offices, hairdressing, dressmaking, manufacturing of crafts or food products.
15. Back Lot means a lot which does not meet the frontage requirements of this Ordinance.
16. Buildable Back Lot: means a back lot which satisfies all of the conditions for a buildable lot within the Rural/Agricultural District, and also satisfies all of the additional criteria set forth at Article VII, L.
17. Driveway: means a privately owned road which provides vehicular access across privately owned land onto either a public way or a private way.
18. Private Way: means a privately owned strip of land which provides a means of access between a buildable back lot and a public way. A private way may traverse two or more other lots, which lots need not be owned by the same owner as the buildable back lot(s) served by the private way.
19. Multi-Family Housing: Means a building or structure containing up to five (5) dwelling units, each designed for occupancy by an individual household.

Article XVIII Unsafe Structures

No owner or occupant of land shall permit buildings ruined by fire or natural causes to be left indefinitely. Said ruins shall be made safe within thirty (30) days after the date of the original damage or destruction. Within one year, the owner shall remove the ruins and grade the area to clear ground level or shall begin to rebuild or replace the structure in conformance with this ordinance.

Article IXX Impact Fees

Purpose: This ordinance is enacted pursuant to RSA 674:21, and in order to:

- Promote the public health, safety and welfare and prosperity;
- Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Bennington;

- Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;
- Provide for the harmonious development of the municipality and its environs;
- Ensure the proper arrangement and coordination of streets, and;
- Ensure streets of sufficient width to accommodate existing prospective traffic.

Definitions:

Impact Fee means a fee or assessment imposed upon development, including subdivision, building construction or other land-use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality’s proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including public open space.

Authority to Assess Impact Fees:

- The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance.

Assessment Methodology:

- The amount of any impact fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.
- Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

Administration of Impact Fees:

- Each in fact impact fee shall be accounted for separately, shall be segregated from the Town’s general fund, may be spent upon order of the governing body, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected to meet.
- All impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development.
- Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of a cash bond, letter of credit or performance bond so as to guarantee future payment of assessed impact fees.
- Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy; provided however, in projects where off-site improvements are to be constructed simultaneously with a project’s development, and where the Town has appropriated the

necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit.

- The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees.

Return of Impact Fee:

- If the full impact fee assessed under this ordinance is not encumbered or otherwise legally bound to be spent for the purpose for which it was collected within six years, the fee shall be refunded to the assessed party, with any accrued interest.
- Whenever the calculation of the impact fee has been predicated upon some portion of capital improvement costs being borne by the Town, a refund shall be made upon the failure of the Town Meeting to appropriate the Town’s share of the capital improvement costs within six (6) years from the date of payment thereof.

Applicability:

This ordinance shall not be deemed to affect the existing authority of the Planning Board over subdivisions and site plans, including, but not limited to the authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a).

Article XX Telecommunications Facilities

SECTION I: AUTHORITY

This Ordinance is adopted by the Town of Bennington on March 13, 2001 in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 2 1.

SECTION II: 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 Bennington to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.
- B. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.
- C. Reduce the adverse impacts such facilities may create on, including, but not limited to: flight corridors of migratory birds, aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.
- D. Preserve Bennington’s unique viewsheds and scenic values, in particular those associated with Crotched Mountain, Powder Mill Pond, and the Contoocook River corridor.

SECTION III: DEFINITIONS

- A. *Antenna*: Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

- B. **Average Tree Canopy Height:** Means the average height found by inventorying the height, above ground level of all trees over 20 feet in height for a radius of 150 feet.
- C. **Lattice Tower:** A type of mount that is self-supporting with multiple legs and crossbracing of structural steel.
- D. **Tower:** Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.
- E. **Telecommunications Facilities:** Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum-based transmission/receptions.

SECTION IV: LOCATION OF TELECOMMUNICATIONS FACILITIES

Telecommunications facilities may be permitted in all district, provided that they are camouflaged, hidden or disguised; this provision notwithstanding, in no case shall a lattice-type tower be permitted. In no case, however, shall such a facility be sited in a location that would impact any view to Crotched Mountain.

SECTION V: PERMITTED USES

- A. **Principal or Secondary Use.** Telecommunications facilities may be considered either principal or secondary uses. Having an existing-permitted use on site shall not preclude the addition of a telecommunications facility as a Secondary Use as long as all other provisions of the Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities 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.
- B. Any alteration of the original permitted use and device configuration of the facility will require a new approval.
- 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 Ordinance adopts the provisions and limitations as referenced in RSA 674:16,IV.
- D. **Essential Services & Public Utilities.** Telecommunication facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for WTF is a use of land, and is addressed by this Section.

SECTION VI: CONSTRUCTION PERFORMANCE REQUIREMENTS

- A. **Federal Requirements.** All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute

grounds for the removal, in accordance with Section X, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

B. Building Codes/Safety Standards. To ensure the structural integrity of towers and antennas, all facilities must be 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. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section X, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

C. Additional Requirements for Telecommunications Facilities. These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

1. Height. In no case may any new tower or other support be higher than 100 feet where there is no tree canopy, or 20 feet above the average tree canopy in the proposed location.
2. Setbacks and Separation. Towers shall be set back a distance equal to 125 percent of the height of the tower from any existing on-site structure and/or property line. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
4. Landscaping
 - a. A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.
 - b. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.
 - c. Existing mature tree growth and natural landforms 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.
5. Camouflaging
 - a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment

- b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobstrusive.
6. Balloon Test. The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon (s) is visible.
7. A plan shall be submitted indicating methods for addressing any adverse impacts on migratory bird populations.

SECTION VII: CONDITIONAL USE PERMITS

A. General. Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit. All such uses must comply with other applicable ordinances and regulations of the Town of Bennington. All applications will be subject to the Bennington Site Plan Review Regulations.

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

1. Procedure on Application

- a. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.
 - b. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.
8. Decisions. All decisions shall be rendered in writing, in accordance with RSA 676:3 and the National Wireless Telecommunications Siting Policy – Section 332(c)(47 USC 332(c)), which mandates that a denial be based upon substantial evidence contained in the written record.
9. Permit Review. All permits shall be reviewed every three years, following an inspection of the site by the Planning Board or designated agent. The purpose of this is to ensure continued compliance with all conditions of approval, and to review the status of the performance bond.

10. Factors Considered in Granting Decisions:

- a. Height of proposed tower or other structure does not exceed that which is essential for its intended use and public safety.
- 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 of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obstructiveness.
- g. Proposed ingress and egress to the site.
- h. Availability of suitable existing towers and other structures as discussed in subparagraphs D.3 and D.4 of this Section.
- i. Visual impacts on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- j. That the proposed facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or major view corridor.
- k. That the proposed wireless telecommunications facility, tower, or antenna is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.
- l. Availability of alternative tower structures and alternative siting locations.
- m. That the construction of the proposed facility will not result in undue disruption to the land from tree clearing, grading, road building, etc.

C. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:

- 1. Title block that shows the name of the development or project.
- 2. North arrow, date of plat, scale; name, address and seal of all persons preparing the plat.
- 3. Signature block for Planning Board endorsement.
- 4. Vicinity sketch and zoning district(s).
- 5. Total area of the parcel in acres and square feet.
- 6. Lot frontage.
- 7. Boundary lines and approximate dimensions and bearings.
- 8. Tax map and lot numbers.
- 9. Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
- 10. Physical features on the site and within 200 feet of the site.

11. Soil information based on the Hillsborough County Soil Survey.
12. All natural features, such as streams, ponds, wetlands, etc.
13. Existing and proposed grades and contours, and base flood elevations.
14. Shape, size, height, location and use of existing and proposed structures on the site.
15. Existing buildings and structures within 500 feet of the site.
16. Access to the site, with location and width of existing and proposed driveways.
17. A driveway permit granted from either the NH DOT or the Town of Bennington.
18. Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.
19. Final road profiles and cross sections for any new roads.
20. Locations and sizes of all electric and telephone lines on the site.
21. Existing and proposed fire hydrants and/or fire ponds.
22. Existing and proposed methods of handling stormwater runoff, and the direction of the flow indicated by arrows.
23. Sizes and locations of all stormwater drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.
24. Location, types, and sizes of all existing and proposed landscaping and screening.
25. Location of any proposed lighting.

D. 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. Propagation map showing proposed radio frequency coverage.
2. Photographic documentation of the balloon test.
3. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
4. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period. The Town

proceedings with respect to the proposed facility shall become part of the FCC application requirements.

5. 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. The evidence may consist of:
 - a. Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's requirements;
 - b. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
 - c. Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna(s) on the existing towers, or that existing towers or structures would cause electromagnetic interference with the applicant's proposed antenna;
 - d. Information on the number of sites for wireless telecommunication facilities each provider will require;
 - e. Information on sites outside of the Town for the particular coverage area that are being considered.
 - f. Information on how the siting of a wireless telecommunication facility will affect the ability to allow a competitor's antennas on the same property.
 - g. Information on whether any of the wireless telecommunications carriers providing service to Southwestern New Hampshire use the system known as cable micro-cell integrator/headend interface converter ("CMI/HIC") which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones; and
 - h. Information on whether there are any such carriers using CMI/HIC in surrounding cities and towns.
6. The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.
7. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
8. The applicant will provide the Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.
9. Upon request, the applicant will provide:

- a. Detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and
 - b. Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.
10. The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

SECTION VIII: WAIVERS

A. General. Where the Board finds that extraordinary hardships, 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:

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. 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; and
 - 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 for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

SECTION IX: BONDING AND SECURITY INSURANCE

A. The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

- B.** The term of the bond shall be negotiated with the Planning Board. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

SECTION X: REMOVAL OF ABANDONED ANTENNAS AND TOWERS

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 owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. 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 to 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.

SECTION XI: ADMINISTRATION AND ENFORCEMENT

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance. Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

SECTION XII: APPEALS

Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but to the Superior Court as provided by RSA 677:15.