

**LAND USAGE
Chapter 127**

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(HISTORY: Adopted by the Annual Town Meeting of the Town of Fitzwilliam 3-10-87 as Art. 2; amended by Special Town Meeting 12-22-87 by Arts. 1 through 6; amended by ATM 3-8-88 by Arts. 3 through 11; amended by STM 11-1-89 by Arts. 4-12; amended by ATM 3-12-91 by Arts. 2 & 3; amended by ATM 3-10-92 by Arts. 2 through 14; amended by ATM 3-8-94 by Arts. 2 & 3; amended by ATM 3-12-96 by Arts. 2 through 4; amended by ATM 3-9-99 by Arts. 2 through 5; amended by ATM 3-14-2000 by Arts. 2 & 3; amended by STM 10-4-00 by Art. 1; amended by ATM 3-12-02 by Arts. 3 & 4; amended by STM 9-18-02 by Arts. 1 through 5; amended by ATM 3-11-03 by Art. 4; amended by ATM 3-9-04 by Arts. 4, 5, 7, 8 & 9; amended by ATM 3-8-05 by Arts. 3, 6 & 7; amended by ATM 3-14-06 by Arts. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14; amended by ATM 3-13-07 by Arts. 2,3,4,5.

**GENERAL REFERENCES
Code of the Town of Fitzwilliam**

- Planning Board - Chapter 55
- Building construction - Chapter 97
- Site Plan Review - Chapter 219
- Subdivision of Land - Chapter 221

**ARTICLE I
General Provisions**

§ 127-1 Statutory authority.

The Town of Fitzwilliam Land Use Bylaw is adopted under RSA 672-677.

§ 127-2 Purpose.

The purpose of the Land Use Bylaw is to promote and conserve the health and welfare of the inhabitants of the town; to secure safety from fire, flood, panic and other dangers; to facilitate the adequate provision of transportation, drainage, sewer disposal, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the preservation of natural resources and the prevention of bight and pollution of the environment; to avoid undue concentration of population; to encourage the most appropriate use of the land; and to carry out the intent of the 2003 updated Fitzwilliam Comprehensive Planning Program (Master Plan).¹

§ 127-3 Definitions.²

It is intended that the meaning of the word be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. In this chapter, the following terms shall have the following meanings:

BUILDING - A structure enclosed with exterior walls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property.

DWELLING UNIT - A room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease containing independent cooking, sanitary and sleeping facilities and physically separated from any other rooms or dwelling units which may be in the same structure. **(Amended by STM 11-1-89 by Art. 8)**

¹ Editor’s Note: A copy of the 2003 Fitzwilliam Master Plan is on file in the Land Use Office.

² Editor’s Note: Language pertaining to the capitalization of defined terms, as they originally appeared in the uncodified version of the Land Usage Bylaw, was deleted from this section by the editor prior to publication.

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FAMILY - A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of six (6) or more persons shall not be deemed a "family" unless at least half of them are related by blood, marriage or adoption, including wards of the state.

FRONTAGE - A continuous lot line along the side line of a street.

LOT - An area of land undivided by any street, in one (1) ownership, with definitive boundaries ascertainable from the most recently recorded plan or deed which corresponds in location and boundaries with a parcel shown on the Official Tax Maps of the Town of Fitzwilliam or a deed or plan duly recorded in the Cheshire County Registry of Deeds.

OPEN SPACE - Those areas of a lot on which no building or structure is permitted, except as otherwise provided by this chapter, and which are not used for parking, storage or display.

STREET - An improved public way laid out by the Town of Fitzwilliam or the Cheshire County Commissioners or the State of New Hampshire; or a way with which the Fitzwilliam Town Clerk certifies is maintained by public authority and used as a public way; or a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Regulations; ³ or a way in existence as of September 3, 1970, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and buildings erected or to be erected thereon. A public or private way shall not be deemed to be a "street" as to any lot of land that does not have rights of access to and passage over said way. For the purpose of this chapter, the term "street" shall include the entire right-of-way associated with any street. (Amended by STM 11-1-1989 by Art. 4)

STRUCTURE - A combination of materials assembled to give support or shelter, such as buildings, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, signs and fences, but not including driveways, walkways and other paved areas, underground storage tanks, septic tanks and septic systems and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

USE, ACCESSORY - Any use which is incidental and subordinate to a principal use.

USE, PRINCIPAL - The main or primary use of any land or lot.

**ARTICLE II
Land Use Districts**

§ 127-4 Establishment of districts.

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

	RESIDENTIAL DISTRICTS
Residence 1	R-1
Rural	Rural
	BUSINESS DISTRICTS
Village Center Business	VCB
General Business	GB
	INDUSTRIAL DISTRICTS
Light Industrial	LI

³ Editor's Note: See Ch. 221, Subdivision of Land.

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General Industrial	INDUSTRIAL DISTRICTS continued GI
Agricultural-Recreation-Conservation	SPECIAL DISTRICTS ARC
Floodplain	OVERLAY DISTRICTS FP
Cluster Development	CD
Wetlands Protection	WP (Added by ATM 3-12-1991 by Art. 2)
Wireless Communication	WC (Added by STM 10-4-2000 by Art. 1)

§ 127-5 Land Use Map.

The land use maps described below are part of this chapter. Location and boundaries of the districts are shown on the land use maps, which may be amended and are collectively referred to as the “Land Use Map.”⁴

- A. Land Use Districts for the Town of Fitzwilliam
- B. Flood Insurance Rate Map and Flood Boundary and Floodway Map.

§ 127-6 Interpretation of Boundaries.

For the purposes of interpretation of the Land Use Map, the following shall apply:

- A. District boundaries that follow streets, railroads or water courses shall be deemed to coincide with the mean center line thereof.
- B. District boundaries whose exact locations are not indicated by means of dimensions, but which appear to follow a property or lot line, shall be the property or lot line that existed at the time the district boundary was established.
- C. District boundaries which appear to run parallel to the side lines. Dimensions between the district boundary line and the streets shall be measured perpendicular to the side line of such street.
- D. Where a district boundary, other than an overlay district boundary, divides a lot which was in single ownership on June 22, 1982, or on the effective date of any amendment changing the boundaries of one (1) of the districts in which the lot or a portion of the lot lies, the regulations applicable to either district may be extended to as much of the lot as lies within thirty (30) feet of the adjacent district boundary.
- E. General Industrial District: Using the Town tax Maps and following lot lines, the northern border of the district begins on Map 11, including lot 54 on the east side of Route 12 and lot 56 on the west side of Route 12, and includes each lot immediately adjacent to Route 12 in a southerly direction, up to Warren Hill Road on the east side of Route 12, and up to and including lot 11 on Map 8 on the west side of Route 12. **(Added by STM 11-1-1989 by Art. 12)**

⁴ Editor’s Note: The Land Use Districts Map, Flood Insurance Rate Map, Flood Boundary and Floodway Map, and the Wetlands Map originally accompanying this bylaw, are on file in the office of the Board of Selectmen.

- F. The Land Use District Map of the Town is amended by placing the approximately 7.4 acre parcel identified as Tax Map 15; Lot 57-1 in the Residence 1 (R-1) land use district. **(Added by ATM 3-11-2003 by Art. 4)**

**ARTICLE III
Principal and Accessory Uses**

NOTE: This section of the chapter has three (3) major parts; the Table of Principal Uses should be consulted to determine the principal and accessory uses or activities which are allowed on any parcel of land in Fitzwilliam. The reader is advised to consult the Floodplain District regulations in all cases because they may also apply to the land in question.

TABLE OF PRINCIPAL USES ⁵ - The Table of principal Uses designates which principal land uses are allowed in each land use district. Each principal use category listed on the left-hand column of the table corresponds to one (1) of the principal use definitions in § 127-8 through § 127-13.

PRINCIPAL USE DEFINITIONS - Sections 127-8 through 127-13 contain the definitions of the principal land uses classified by this chapter.

ACCESSORY USE REGULATIONS - Section 127-14 contains the regulations applicable to uses which are accessory to principal land uses permitted in the various districts.

§ 127-7 Interpretation of Table of Principal Uses and Definitions.

- A. No land, structure or building shall be used except for the purposes permitted in the district as set forth in this section unless otherwise permitted in this chapter. The words used to describe each principal use contained in § 127-8 through § 127-13, inclusive, are intended to be definitions of such uses.
 - (1) A use is permitted by right in any district under which it is denoted by the letter "Y".
 - (2) A use is prohibited in any district under which it is denoted by the letter "N".
 - (3) A use denoted by the letters "SE" may be permitted by special exception from the Board of Adjustment. **(Amended by STM 11-1-1989 by Art. 9)**
 - (4) Reserved ⁶
- B. If an activity might be classified under more than one (1) of the principal use definitions, the more specific definition shall determine whether the use is permitted. If the activity might be classified under equally specific definitions, it shall not be permitted unless both principal uses are permitted in the district.
- C. Except in the case of a cluster development approved by the Planning Board under the provisions of this chapter, no more than one (1) principal use along with customary incidental accessory uses shall be permitted on any lot.

⁵ Editor's Note: The Table of Principal Uses is included at the end of this chapter.

⁶ Editor's Note: Former Subsection A (4), regarding uses specially permitted by the Board of Selectmen, was repealed by STM 11-1-1989 by Art. 9.

§ 127-8 **General Uses.**

- A. Agriculture: Commercial cultivating and harvesting general crops, including the storage of necessary farm equipment on parcels of less than five (5) acres and raising of livestock if on parcels of more than five (5) acres.
- B. Conservation: The use of land in its natural state or improved with trails or resource management programs that do not significantly alter its natural state.
- C. Excavation: The excavation of earth on a lot, including but not limited to sand, gravel, rock, soil or construction aggregate produced by quarrying or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock, the excavation of which is not exclusively regulated by the State of New Hampshire. The excavation which is incidental to and in connection with the necessary excavation and grading of a site for a building or structure and its appurtenant driveways or parking facilities, for which a permit has been granted by either the Code Enforcement Officer or the Board of Selectmen; or the construction of a street approved under the Subdivision Regulations, ⁷ shall not be considered “excavation” for the purposes of this chapter. In those districts denoted by the designation “SE”, excavation shall require a special permit from the Board of Adjustment in addition to an excavation permit from the Planning Board pursuant to the provisions of RSA 155-E, as amended. In those districts designated by the letter “N” excavation is not permitted. **(Amended by STM 11-1-1989 by Art. 10)**
- D. Recreation: Noncommercial outdoor facilities for activities such as horseback riding, skiing, ice skating, swimming and tennis.
- E. Livestock Keeping: Livestock as defined in RSA 427:33 II, is permitted in the Town of Fitzwilliam in accordance with the Department of Agriculture’s Best Management Practices and the UNH Cooperative Extension Housing and Space Guidelines for Livestock.

(Livestock is defined in RSA 427:33 II as cattle, horses, swine, sheep, goats, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk, fallow deer, red deer, reindeer, and other species of animal susceptible of use in the production of meat and meat products.) **(Amended by ATM 3-14-06 by Art. 3, Amended by ATM 3-11-2008 by Art. 2)**

§ 127-9 **Residential Uses.**

No more than one (1) building for dwelling purposes shall be located upon a lot.

- A. Single-family dwelling: A detached dwelling unit designed as the residence of one (1) family, including manufactured housing as defined in RSA 674:31 and pre-site-built housing as defined in RSA 674:31-a.
- B. Single family dwelling with an apartment: A single-family dwelling, built or altered for use for not more than two (2) dwelling units, provided that one (1) of the dwelling units is no larger than eight hundred (800) square feet in gross floor area and either the single-family dwelling or the apartment is occupied by the owner of the property. **(Amended by ATM 3-14-06 by Art. 4)**
- C. Two-family (duplex) dwellings: A building or structure containing two (2) dwelling units, as defined by this chapter. **(Added by STM 11-1-1989 by Art. 7)** ⁸
- D. Dwelling conversions: A single-family dwelling or other residential building in existence prior to April 1, 1987, with less than four (4) dwelling units altered and used for not more than four (4) dwelling units where the lot on which the building is located shall contain not less than ten

⁷ See Ch. 221, Subdivision of Land.

⁸ Editor’s Note: This Article also redesignated former Subsection C as Subsection D.

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thousand (10,000) square feet of land per dwelling unit and where one (1) of the units is occupied by the owner of the property. In the VCB District, the preceding requirement that the lot on which the building is located shall contain not less than ten thousand (10,000) square feet of land per dwelling unit shall not apply.

- E. Multifamily dwellings: A building or structure containing three (3) or more dwelling units, as defined in this chapter. See § 127-19 B. for lot size and density requirements. **(Added by STM 11-1-1989 by Art. 8)**
- F. Temporary Dwellings: A motor home or van, pick-up camper, recreational trailer and tent trailer or any portable, temporary dwelling for recreational, camping, travel or seasonal use may not be used as a permanent dwelling.

Property owners may house such units on their property as accessory to an existing primary residential use providing the intent is to store the unit or to use the unit for temporary recreational use of the property owner or non-paying guest. Such units shall meet all required setbacks.

If temporary housing is needed while permanent housing is under construction, a permit may be obtained from the Code Enforcement Officer for the period following issuance of a building permit until a certificate of occupancy is issued.

If the Code Enforcement Officer finds, by a preponderance of evidence using the following criteria, that the unit is being used as a permanent residence, appropriate action will be taken. The criteria are as follows:

- Utility connections (electric, telephone, cable)
- Students registered in school
- Address on driver's license
- Existence of additions, porches, decks, other out buildings
- Septic and/or water connections
- No proof of residence elsewhere
- Clearly immobilized camper

(Amended by ATM 3-14-06 by Art. 5)

§ 127-10 Governmental, Institutional and Public Service Uses.

- A. Municipal: Use of land, buildings and structures by the Town of Fitzwilliam.
- B. Educational: Use of land, buildings and structures for providing learning in a general range of subjects on land owned or leased by the state or any of its agencies, subdivisions or bodies politic.
- C. Religious: Use of land, buildings or structures for religious purposes by a religious sect or denomination.
- D. Nursing home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care.
- E. Public or private utility facilities: Facilities, equipment and structures necessary for conducting a service by a public service corporation.

§ 127-11 **Business Uses**

- A. Retail store: an establishment engaged in displaying and selling goods or merchandise within a building to the general public or to business establishments, which goods or merchandise are not intended for resale, except that a garden center, florist or commercial greenhouse may have an open-air display of horticultural products. All buildings shall be limited in size to a maximum of forty thousand (40,000) square feet in gross floor area. This limitation shall be applied as follows:
 - 1. The forty thousand (40,000) square foot limitation shall apply to individual retail stores for which permits are sought and also to the cumulative sum of related or successive permits for retail stores that are part of a larger project, such as piecemeal additions to a building or multiple buildings on a lot or adjacent lots.
 - 2. For purposes of this section, the gross floor area of a retail store shall include gross floor area and the area of all portions of the site outside of the exterior walls of buildings used for the display, storage, or sale of any goods, wares or merchandise.
 - 3. The gross floor area of adjacent stores shall be aggregated in cases where the stores (1) are engaged in the selling of similar or related goods, wares or merchandise and operate under common ownership or management; (2) share check stands, a warehouse, or a distribution facility; or (3) otherwise operate as associated, integrated or co-operative business enterprises.
 - 4. Stores over 15,000 square feet are required to submit market feasibility and traffic impact studies by an independent consultant chosen by the town, the cost of which is to be paid by the developer, and include a plan for reusing the building should the retailer vacate the space.
- B. Business or professional office: A business or professional office, a medical office or out-patient clinic including laboratories incidental thereto.
- C. Financial: A bank, loan agency or similar facility.
- D. Restaurant: An establishment where food and beverages are sold within a building to customers for consumption at a table or counter, on a patio closed on all sides with entrance to the patio normally available only from the building, off the premises as carry-out orders, except that drive-up service shall not be allowed, or any combination of the above. In the VCB District, such uses shall have a maximum gross floor area of five thousand (5,000) square feet.
- E. Hotel, inn or motel: A facility providing transient lodging accommodations to the general public.
- F. Bed and breakfast: A facility providing transient lodging and breakfast with the resident owner.
- G. Combined business and dwelling: A building used for business uses and for not more than four (4) dwelling units.
- H. Lodge or club: A facility used by a noncommercial organization which is characterized by formal written membership requirements.
- I. Funeral home: An undertaking or funeral establishment.
- J. Veterinary care: A facility where animals are given medical or surgical treatment and where boarding of animals is limited to short-term care incidental to the medical or surgical treatment.
- K. Commercial kennel: An establishment where dogs, cats or other pets are kept for the purpose of sale, breeding or boarding care.
- L. Personal service facility: Establishments providing services involving the care of a person or his or her apparel, such as a barbershop, laundry or dry-cleaning shop, diaper service, shoe repair,

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steam baths, reducing salons and health clubs and clothing rental shop. In the VCB District, such uses shall have a maximum gross floor area of three thousand (3,000) square feet.

- M. General services: Establishments providing services to the general public or to business establishments, such as equipment rental and leasing, building cleaning, photocopying, telephone answering, word processing or secretarial services; computer service bureaus; facilities for dancing, martial arts or music instruction; facilities for the repair of appliances, office equipment, bicycles, lawnmowers or similar equipment; and food catering facilities. In the VCB District, such uses shall have a maximum gross floor area of three thousand (3,000) square feet.
- N. Studio: A facility used as a place of work by an artist, photographer or artisan.
- O. Building trade shop: An establishment for the use by the practitioner of a building trade such as a carpenter, welder, plumber, electrician, mason or similar occupation.
- P. Commercial recreation: Indoor or outdoor facilities, operated as a business and open to the public for a fee, such as facilities for ice-skating, roller-skating, racket sports, bowling, horseback riding, swimming and miniature golf.
- Q. Commercial and trade school: A private education facility for profit, including training centers and business schools.
- R. Amusement facility: Indoor facilities open to the public for a fee or admission charge, such as a theater, cinema or video arcade.
- S. Motor vehicle service station or car wash: A facility for outdoor sale of motor vehicles fuels, related products and services, provided that all the major maintenance and servicing of vehicles shall be conducted entirely within a building and a car wash.
- T. Motor vehicle repair or body shop: An establishment where the principal service is the repair of automobiles or similar light motor vehicles, provided that all major maintenance and servicing of vehicles shall be conducted within a building.
- U. Light vehicular and equipment sales: A salesroom and related facilities, including but not limited to open-air display, for the sale of automobiles, motorcycles, recreational vehicles and similar vehicles, boats or light industrial or farm equipment.
- V. Parking facility: Commercial parking open to the public for automobiles and similar light motor vehicles.
- W. Antique/Craft Shop: An establishment engaged in displaying and selling antiques, crafts, or similar items within a building to the general public or business establishments.

§ 127-12 Industrial Uses.

- A. Warehouse: A facility for the enclosed storage of goods and materials where the wholesale of goods and materials is permitted, provided that it is incidental to the warehouse use.
- B. Mini-warehouse: An enclosed facility containing separate spaces, no larger than four hundred (400) square feet each, leased or rented on an individual basis.
- C. Construction yard: A facility or area for storage, open or enclosed, of construction equipment or materials.
- D. Lumberyard: A facility for the open or enclosed storage and sale of building materials, except that in the General Business District the open or outdoor storage or display of building materials is prohibited.

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- E. Heating fuel sales and service: A facility for the storage and retail sale of heating fuels and the sales and service of heating equipment where the storage of heating fuel in containers is permitted, provided that such storage is incidental to the retail sale of heating fuel.
- F. Heavy vehicular sales or repair garage: A salesroom and related facilities, including but not limited to open-air display of trucks, buses, construction and industrial equipment; establishments for the repair of trucks, buses, construction and industrial equipment, provided that all major repairs shall be conducted within a building.
- G. Light manufacturing: A printing or publishing plant; manufacturing of building systems and components; fabrication and assembly of electronic components, precision instruments or other high-technology products; manufacture of light metal products, hardware and office supplies; or similar light manufacturing plants and facilities.

§ 127-13 Prohibited Principal Uses.

In addition to the uses listed below, all uses that pose a present or potential hazard to human health, safety, welfare or environment through the emission of smoke, particular matter, noise or vibration or through fire or explosive hazard or glare are expressly prohibited in all land use districts.

- A. Heavy manufacturing: Asphalt, block, bottling concrete or fertilizer plants, monument works, paper or pulp mill, refinery, rendering or smelting plants or slaughterhouses.
- B. Storage: Non-municipal dump, salvage materials yard, including non-operable motor vehicles, tank farm, open or outdoor storage in the Light Industrial District.
- C. Amusement: An amusement park, outdoor cinema, stadium or coliseum.
- D. General: Rental of automobiles, trucks or trailers, including truck trailers, development of water resources for private commercial sale, landing or takeoff of motorized aircraft, hospital, mobile home park, mobile home sales, privately owned cemetery, trailer camp, facility for truck or trailer cleaning and washing and truck terminal.

§ 127-14 Accessory Uses.

Accessory uses shall be permitted in all districts on the same lot with the principal use subject to the following provisions:

- A. Accessory uses permitted in the residential districts and dwellings in the nonresidential districts.
 - (1) Private garage or carport for not more than four (4) motor vehicles, solar system, greenhouse, tool shed or barn, swimming pool or tennis court, provided that such recreational facilities are used only by the residents and their guests.
 - (2) (a) Home Occupation - Does Not Require Site Plan Review
 - Home Occupation - An occupation, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and does not involve more than occasional business vehicular traffic to the property. Examples include, but are not limited to, artists, desktop publishers, software developers, craftsmen, and people who work at home and conduct business by mail or electronic communications.
 - (1) The activity must be conducted entirely within the residence or accessory building.
 - (2) The activity shall have minimal impact that includes no offensive noise, traffic, vibration, smoke, dust, odors, heat, glare or unsightliness is produced.

- (3) The activity must be owned, operated, or managed by residents of the dwelling unit. There shall be no more than one employee on the premises at one time.
- (4) The activity must be clearly incidental and secondary to the primary use of the premises as a residence.
- (5) The activity must not change the character of the premises or the surrounding neighborhood. There shall be no window displays or other features not normally associated with residential use.
- (6) Adequate on-site parking must be provided for all vehicles at or coming to the site.

(b) Home Business - Requires Site Plan Review

- (1) The activity must be conducted entirely within the residence or an accessory building.
- (2) The activity shall have minimal impact that includes no offensive noise, traffic, vibration, smoke, dust, odors, heat, glare or unsightliness is produced.
- (3) The activity shall be owned, operated, or managed by residents of the dwelling unit. There shall be no more than four employees on site at any given time.
- (4) The activity shall be clearly incidental and secondary to the primary use of the premises as a residence.
- (5) The activity must not change the character of the premises or surrounding neighborhood. There shall be no window displays or other features not normally associated with residential use.
- (6) Adequate on-site parking must be provided for all vehicles at or coming to the site.
- (7) Proof of compliance with all applicable environmental controls is required. This includes all overlay districts (Conservation District, Floodplain District, Aquifer Protection Districts and Wetlands Overlay District.)
- (8) The total exterior space for business shall be no more than ¼ of the lot or five thousand (5,000) square feet, whichever is less, and shall be restricted to the storage of vehicles and equipment but all such activities, equipment, and storage shall be permanently screened from view of abutters and from public ways by buffers such as plantings, fences or topography.

(3) The renting of rooms or boarding for not more than four persons, except that, by special exception from the Board of Adjustment, the renting of rooms or boarding to more than four persons may be allowed. In either case, the service shall be operated by a resident of the premises. **(Amended by STM 11-1-1989 by Art.9)**

B. Accessory uses permitted in the General Business District.

- (1) The rental of automobiles, light trucks or utility trailers and similar light motor vehicles, provided that such rental is secondary to the operation of a motor vehicle service station permitted under § 127-11 S., Motor vehicle service station or car wash or a use permitted under § 127-11 M., General services, or § 127-11 V., Light vehicular and equipment sales.
- (2) Truck or trailer cleaning and washing for the conduct of the principal use.
- (3) Drive-up facilities in a bank may be authorized by the Planning Board as part of the site plan review process, provided that the Board is satisfied that such facilities will pose no hazard or nuisance to vehicles or pedestrians. **(Amended by STM 11-1-1989 by Art.9)**

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C. Accessory uses permitted in the Light Industrial District.

(1) Uses necessary in connection with scientific research or scientific development or related production may be authorized by special exception from the Board of Adjustment. **(Amended by STM 11-1-1989 by Art. 9)**

(2) Truck or trailer cleaning and washing, provided that the trucks or trailers are necessary for the conduct of the principal use of the property.

D. Accessory uses permitted in the General Industrial District.

(1) Truck or trailer cleaning and washing, provided that the trucks or trailers are necessary for the conduct of the principal use of the property.

(2) Rental of heavy trucks, including truck trailers and industrial equipment, provided that such rental service is secondary to a heavy vehicular sales establishment permitted under § 127-12 F., Heavy vehicular sales and repair garage.

E. Accessory uses permitted in any district.

(1) Wind machines designed to serve a principal use on a lot may be authorized by special exception from the Board of Adjustment, provided that the Board of Adjustment finds that the wind machine is set back from all lot lines at least the distance equal to the height of the tower from its base on the ground to the highest extension of any part of the wind machine. The Board of Adjustment may allow the wind machine to exceed the maximum height limitations established by this chapter, provided that the setback requirement stated above is met. **(Amended by STM 11-1-1989 by Art. 9)**

(2) A mobile home may be placed on the site of a residence which has been rendered uninhabitable by accident, provided that it is used for a period not to exceed 12 months as the primary residence of the owners of the residence that has been rendered uninhabitable.

(3) Farm products grown on the premises may be sold on the premises.

(4) Where not otherwise permitted, a greenhouse may be authorized by special exception from the Board of Adjustment where the principal use of the property is agriculture. **(Amended by STM 11-1-1989 by Art. 9)**

**ARTICLE IV
Overlay Districts**

**§ 127-15 Floodplain Overlay District.
(Amended by ATM 3-8-1994 by Art. 2; ATM 3-8-1994 by Art. 3; ATM 3-12-1996 by Art. 2, ATM3-14-2006 by Art. 8)**

A. Authority. This section, adopted pursuant to the authority of RSA 674:16, shall be known as the "Town of Fitzwilliam Floodplain Overlay District." The regulations in this section shall overlay and supplement the regulations in this chapter, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this section 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.

B. Applicability. 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 Cheshire, NH" dated May 23, 2006 or as amended, together

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with the associated Flood Insurance Rate Maps dated May 23, 2006 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference.

- C. Definition of terms. The following definitions shall apply to this Floodplain Overlay District and shall not be affected by the provisions of any other ordinance of the Town of Fitzwilliam.

AREA OF SPECIAL FLOOD HAZARD - The land in the floodplain within the Town of Fitzwilliam subject to a one-percent or greater possibility of flooding in any given year. The area is designated as "Zone A" on the FHBM and is designated on the FIRM as "Zone A."

BASE FLOOD - The flood having a one-percent possibility of being equaled or exceeded in any given year.

BASEMENT - The area of a building having its floor subgrade on all sides.

BUILDING - See "structure."

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

FEMA - The Federal Emergency Management Agency.

FLOOD or FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; 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, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) - An official map incorporated with this chapter, on which FEMA had delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Fitzwilliam.

FLOOD INSURANCE STUDY see flood elevation study.

FLOODPLAIN or FLOOD-PRONE AREA - Any land area susceptible to being inundated by water from any source. (See definition of "Flooding.")

FLOODPROOFING - Any combination of structural and nonstructural additions, changes or adjustments to structures which reduces or eliminates flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOODWAY - See "Regulatory Floodway."

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

HIGHEST ADJACENT GRADE - The highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

HISTORIC STRUCTURE - Any structure that is:

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

LOWEST FLOOR - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable no elevation design requirements of this chapter.

MANUFACTURED HOME - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term “manufactured home” includes park trailers, travel trailers and other similar vehicles placed on site for greater than one hundred eighty (180) days.

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 - 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.

ONE-HUNDRED-YEAR FLOOD - See “Base Flood.”

RECREATIONAL VEHICLE - A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towed by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY - 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 increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

SPECIAL FLOOD HAZARD AREA - An area having flood, mudslide and/or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, AI-30, A.E, A99, AH, VO, VI-30, VE, V, M or E. (See “Area of Special Flood Hazard.”)

STRUCTURE - For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

START OF CONSTRUCTION - Includes substantial improvements and means the date the construction permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, 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 - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENTS - Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specification which are solely necessary to assure safe living conditions or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an "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 - 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.

- D. All proposed development in any special flood hazard area shall require a permit. Development within seventy-five (75) feet of a wetland is subject to the requirements of Article IV, § 127-16.1 of the Land Usage Chapter of the Fitzwilliam Town Code.
- E. The Code Enforcement Officer shall review all construction permit applications for new construction or substantial improvements to determine whether the proposed building site is in a flood-prone area. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and 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.

- F. Where new or replacement water and sewer systems, including on-site systems, are proposed in flood-prone areas, the applicant shall provide the Code Enforcement Officer with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- G. The Code Enforcement Officer shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as-built elevation, in relation to mean sea level, of the lowest floor, including the basement, of all new or substantially improved structures and include whether or not such structure contains a basement; if the structure has been flood-proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.
- H. The Code Enforcement Officer shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 22 U.S.C. § 1334. It shall be the responsibility of the applicant to certify these assurances to the Code Enforcement Officer.
- I. Prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Code Enforcement Officer. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer, including notification of all scheduled state and local wetlands hearings.
- (1) Within the altered or relocated portion of any watercourse, the applicant shall submit to the Code Enforcement Officer certification provided by a registered professional engineer assuring that the flood-carrying capacity of the watercourse has been maintained.
- (2) The Code Enforcement Officer shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:
- No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.
- J. Determination of one-hundred-year flood elevation.
- (1) In Zone A, the Code Enforcement Officer shall obtain, review and reasonably utilize any one-hundred-year flood elevation data available from federal, state, development proposals submitted to the community (for example, subdivisions, site approvals, etc.) or other sources.
- (2) The Code Enforcement Officer's one-hundred-year flood elevation determination will be used as criteria for requiring in Zone A that:
- (a) All new construction and substantial improvements of residential structures have the lowest floor, (including basement) elevated to or above the one-hundred-year flood level.
- (b) All new construction and substantial improvements of nonresidential structures have the lowest floor, (including basement) elevated to or above the one-hundred-year flood level or, together with attendant utility and sanitary facilities, shall:

(1) Be flood-proofed so that below the one-hundred-year flood elevation the structure is watertight, with walls substantially impermeable to the passage of water.

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

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

(c) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactures home is at or above the base flood level and shall 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 A shall either be on the site for fewer than one hundred eighty (180) consecutive days, be fully licensed and ready for highway use or 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 that the enclosed areas meet the following requirements: the enclosed area is unfinished or flood-resistant, usable solely for parking of vehicles, building access or storage; the area is not a basement and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(1) A minimum of two (2) 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.

(2) The bottom of all openings shall be no higher than one (1) foot above grade.

(3) Openings may be equipped with screens, louvers or other covering or devices, provided that they permit the automatic entry and exit of floodwaters.

§ 127-16 Cluster Development Overlay District.

The Planning Board may grant a special permit for a cluster development in R-1 and Rural Districts for single-family detached dwelling and accessory structures, subject to the following:

- A. Purpose. The purpose of cluster development is to encourage the preservation of common land for conservation, agriculture, open space and recreational use; to preserve historical or archaeological resources; to protect existing and potential municipal water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall planning; to promote better utilization of land in harmony with its natural features and with the general intent of this chapter through a greater flexibility in design; and to allow more efficient provision of municipal services.

B. Cluster standards. The following standards shall apply to all cluster developments:

(1) Minimum tract size. Cluster developments shall be located upon a tract of land which has area of at least six (6) acres in the R-1 District or twelve (12) acres in the Rural District.

(2) Number of building lots permitted.

(a) The total number of building lots in a cluster development shall be no greater than the number of building lots that would otherwise be allowed in the district in which the land is located. In making the determination of the number of allowable building lots, the Board shall require that the applicant provide evidence, satisfactory to the Board, that the number of lots shown on the proposed cluster development plan is no greater than the number of lots that could otherwise be developed. In the case where building lots as laid out under conventional land use standards lie within any numbered or unnumbered A Zones of the Floodplain District, the planning Board shall allow such lots to be counted as building lots in the proposed cluster development, if it finds that:

(1) No building or development would take place with the floodway if such lots were to be developed under conventional land use; and

(2) A minimum of ninety-eight percent (98%) of the original natural surface storage volume of the lot would be preserved if such lots were to be developed under conventional land use.

(b) In any case, the planning Board shall consider the recommendations of the State of New Hampshire Board of health, Conservation Commission and the Engineering Department of the Town of Fitzwilliam in making said determination.

(3) Dimensional requirements. Where the requirements of this section differ from or conflict with the requirements of Article V, the requirements of this section shall prevail. The following minimum dimensional requirements shall be observed in all cluster developments. The Planning Board may, in appropriate cases, impose further restrictions upon the tract or parts thereof as a condition to the granting of a special permit. **(Amended by ATM 3-13-07 by Art. 2)**

(a) Minimum lot area: in the R-1 District, not less than forty thousand (40,000) square feet per building lot and, in the Rural District, not less than eighty thousand (80,000) square feet per building lot.

(b) Frontage: not less than one hundred (100) feet.

(c) Minimum front yard: no less than fifty (50) feet.

(d) Minimum side and rear yards:

10 feet for Residential (R-1) and 20 feet for Rural Districts

(e) Minimum lot width: not less than one hundred (100) feet.

(f) Maximum lot coverage: 15%

(g) Maximum height: 36 feet

(h) Natural buffer at right of way into property

(i) Setback from boundary of development - Structures in the cluster development shall be sited to minimize the impact on abutting property; no structure within a cluster may come closer to the boundary of the development than 100 feet.

The permitting authority may reduce these dimensional requirements upon clear demonstration that the proposed development offers exceptional advantages.

(4) Streets. Streets serving the cluster development must be laid out and constructed to meet standards outlined in the Fitzwilliam Subdivision Regulations. (See Sections 221-25 and 221-26.

C. Common land. Not less than thirty percent (30%) in the R-1 District and forty percent (40%) in the Rural District of the total area of the tract to be developed as a cluster development shall be dedicated as common land.

(1) The ownership of common land shall either be conveyed to the Town of Fitzwilliam and accepted by it for open space, conservation, agriculture, outdoor recreation or park use, or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, or be conveyed to a trust or corporation owned or to be owned by the owners of the lots within the development. In any case where such land is not conveyed to the Town of Fitzwilliam, a perpetual restriction enforceable by the Town of Fitzwilliam shall be recorded providing that such land be kept in its open or natural state and not be built upon or developed except as provided for in § 127-16 C. (2).

(2) The common land shall be used for open space, conservation, agriculture, outdoor recreation or park purposes. The common land shall be in one (1) or more parcels of a size, shape and location appropriate for its intended use as determined by the Planning Board. The common land shall remain unbuilt upon except that a maximum of five percent (5%) of such land may be devoted to paved areas or structures accessory to active outdoor recreation and consistent with the open space use of the land.

(3) Each parcel of common land shall be provided with access of twenty (20) feet wide, which shall be identified on the plan.

D. Application for a special permit. Any person who desires a special permit for a cluster development shall submit a written application to the Planning Board. Each such application shall be accompanied by the following information:

(1) A cluster development site plan showing all of the information required for a definitive subdivision plan, as specified in the Town of Fitzwilliam Subdivision Regulations, as amended,⁹ and showing the following additional information: soil characteristics as shown on the Soil Conservation Service Maps; wetlands as defined by RSA 483-A:1 et seq., (the Wetlands Protection Act); existing floodplain boundary lines; proposed location of dwellings; all setback lines; garages, driveways, proposed and existing wells and septic systems on the parcel and abutting properties; proposed finished grades of the land; existing perimeter of trees; and the proposed use of the common land, including all improvements intended to be constructed thereon, and the proposed ownership of all common land.

(2) Sketch plan(s) at the same scale as the cluster development site plan or other satisfactory assurance that the number of lots shown on the cluster development site plan is no greater than the number of single-family buildable lots that could otherwise be obtained.

(3) Copies of all instruments to be recorded with the cluster development site plan, including the proposed common land deed, if applicable, the membership trust and perpetual restriction.

E. Planning Board action.

(1) In determining whether to grant a special permit for a proposed cluster development, the Planning Board shall consider:

(a) The general objectives of cluster development.

(b) The existing and probable future development of surrounding areas.

⁹ Editor's Note: See Ch. 221, Subdivision of Land.

(c) The appropriateness of the proposed development in relation to the topography, soils and other characteristics of the tract in question.

(d) The recommendations of the Historical Commission, Recreation Commission, Code Enforcement Officer, Fire Department and the Fitzwilliam Water District.

(2) Changes in lot shape or layout of development. The Board may require changes in lot shape and layout as it deems necessary to secure the objectives of this chapter.

(3) Special permit conditions. The Planning Board shall not grant a special permit for a cluster development if it appears that the granting of such a permit would be detrimental to the health, safety or welfare of the neighborhood or town, be inconsistent with the intent of cluster development or would result in unsuitable development. The Planning Board may impose additional conditions and safeguards in order to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Fitzwilliam.

- F. Revision of cluster development plan. Any change in the number of lots, the layout of streets, any significant changes in the reserved common land, its ownership or use, or any other conditions stated in the original special permit shall require that a new special permit be issued in accordance with the provision of this chapter.
- G. Limitation of subdivision. No lot shown on a plan for which a permit is granted under this section may be further divided so as to reduce the area of any lot for the purpose of creating an additional building lot(s) and a condition to that effect shall be shown on the recorded plan.

§ 127-16.1 Wetlands Protection Overlay District.
(Added by ATM 3-12-1991 by Art. 2; Amended by ATM 3-10-1992 by Arts. 4 - 11 and Art. 13; Amended by ATM 3-9-2004 by Art. 4; Amended by ATM 3-8-05 by Arts. 3 & 4)

A. Authority and purpose.

(1) By the authority granted in RSA 674:16 and 674:17 and 674:20 and 674:21 and in the interest of public health, safety and general welfare, the Fitzwilliam Wetlands Protection Overlay District (WPOD) is hereby established to regulate the use of land subject to standing water or extended periods of high water table, defined herein as "wetlands." The purpose of regulating activities in wetlands is to assure proper use of natural resources and to provide other public benefits in accordance with RSA 674:17. Specifically, the intent is to protect the following wetland values:

- (a) Groundwater quality and quantity.
- (b) Surface water quality and quantity.
- (c) Stormwater runoff quality, quantity and flood control.
- (d) Erosion and sedimentation control.
- (e) Wild flora and fauna. **(Amended by ATM 3-10-1992 by Art. 4)**
- (f) Recreation and aesthetics.

(2) The function of wetlands.

(a) Wetlands remove pollution from waters that flow through them, and recharge underground aquifers. This protects and guarantees the town's water supply. They store water during the wettest parts of the year and release it at a constant rate to maintain regular stream flows, thus preventing serious flooding.

(b) Wetlands provide critical breeding and nesting habitats for a wide variety of plants and animals, including migratory waterfowl and fish, and provide an array of commercial products, from cranberries and timber to fish and shellfish. They offer wide-spread opportunities for hunting, fishing, boating, nature study and photography, thus enhancing the quality of life. **(Amended by the ATM 3-10-1992 by Art. 5)**

(c) Wetlands, because of the gasses they emit and absorb, such as methane, nitrogen and carbon dioxide, help to maintain the planet's atmospheric balance.

(3) Therefore, the purpose of this section is to:

(a) Control and/or prevent the development of structures or land uses on wetlands which could contribute to the pollution of surface or groundwater or alter the character of the area.

(b) Prevent the destruction of, or changes in, wetlands which could interfere with their ability to provide flood protection in wet periods and stream augmentation in dry periods.

(c) Prevent unnecessary town expenditures which could arise from damages caused by the inappropriate development and use of wetlands.

(d) Preserve aesthetic quality, protect wild flora and fauna and maintain ecological balance. **(Amended by ATM 3-10-1992 by Art. 6)**

(e) Protect potential and existing water supplies and aquifers and protect property values.

(f) Encourage low-intensity uses which can be solely located in wetlands and are consistent with the purposes of this section.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTER - Includes the following activities:

(1) Removal, excavation or dredging of soil.

(2) Modification of existing drainage characteristics, including disturbance of water levels, water table or storm runoff patterns.

(3) Dumping, discharging or placement of fill of any kind.

(4) Placement of equipment or structures within a surface water.

(5) Activities which have the potential of polluting areas within the district.

(6) Introduction of normative plant and animal species. **(Amended by the ATM 3-10-1992 by Art. 8)**

APPLICANT - Any person requesting a determination, conditional use approval or special exception, as provided herein.

BOGS - Peat or muck deposits of significant depths, characterized by a distinct group of trees and plants which have adapted to the highly acidic conditions presented in "bogs." "Bogs" usually develop in undrained glacial depressions. Typical vegetation includes sphagnum moss, leatherleaf, sheep laurel, cranberries, pitcher plant, cotton grass, sweet gale, black spruce and larch.

BOTTOMLAND FORESTS - Lowlands along streams and rivers which are periodically flooded. These are often forested and are sometimes called "bottomland hardwood forests". Typical plant species include cottonwood, silver maple, black willow, sycamore and wood nettle.

EMERGENCY PROJECT - A project which requires that work must be undertaken and substantially completed within thirty (30) days in order to avert a real imminent danger to the public.

HYDRIC SOILS - Soils which are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. "Hydric soils" are either organic (muck and peat) or mineral soil. "Hydric mineral soils" will have a seasonal high water table generally within twelve (12) inches of the surface, and the dominant soil color of low chroma (e.g., gray) within eighteen (18) inches of the surface.

HYDROPHYTES - Macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

MARSHES - Treeless wetlands dominated by soft-stemmed herbaceous plants. The surface of the "marsh" is covered with water year-round, though seasonal fluctuations in water depth are to be expected. "Marshes" range from the wet meadow variety to deep marshes which can be covered by several feet of water. Typical plants include cattail, reed, bulrush, willow, buttonbush, wild rice, purple loosestrife, pickerelweed and smartweed. "Shallow marshes" (i.e., wet meadows) include soft rush, beak rush, tussock sedge, blue flag, sweet flag and joeypy weed.

PERSON - Any individual, group of individuals, company, corporation, trust or any other legal entity, and its heirs, agents or assigns.

POLLUTION - An adverse change in chemical or physical properties.

STRUCTURE: A combination of materials assembled to give support, shelter or enclosure of persons, animals, goods, or property of any kind, such as buildings, towers, masts, sheds, roofed storage areas, swimming pools or other objects or equipment that will adversely affect the wetland values that the WPOD is designed to protect; but not including driveways, walkways, signs and fences, and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

(Amended by ATM 3-14-2006 by Art. 9]

SWAMPS - Areas where the water table is at or near the ground surface for a significant part of the year. The vegetational community consists mostly of trees and woody shrubs. In some areas, reed-grass-dominated wetlands are also called "swamps." Typical shrubs and trees include red maple, viburnum, speckled alder, sensitive fern, highbush blueberry, American elm, swamp white oak, yellow birch, eastern hemlock, white and green ash, white cedar, skunk cabbage, silky dogwood and arrowwood.

WETLANDS - "Wetlands" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **[Amended by the ATM 3-8-05 by Art. 3.¹⁰]**

C. District boundaries.

(1) The Wetlands Protection Overlay District (WPOD) is hereby determined to include all wetlands, as defined in Subsection B above, and any uplands/non-wetlands within a seventy-five-foot buffer zone surrounding the wetlands.

(a) Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by water. For purposes of this classification, "wetlands" must have one (1) or more of the following three (3) attributes:

¹⁰ Editor's Note: Article 4, ATM 3-8-05, re-designated former subsection B-1, 2 & 3 as C-1-a, b & c.

- (1) At least periodically, the land predominantly supports hydrophytes.
- (2) The substrate is predominantly undrained hydric soils.
- (3) The substrate is nonsoil and is saturated with water or covered by shallow water for at least thirty (30) consecutive days during growing season each year.

(b) "Wetlands" include but are not limited to:

- (1) Any freshwater wetland, which includes marshes, swamps, bogs and wooded bottomlands.
- (2) Any surface waters, such as lakes, ponds, rivers, streams and intermittent streams and land under said waters.
- (3) Any land subject to flooding.

(c) Determinations of the boundaries between "wetlands" and "uplands" shall be made in accordance with methods outlined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands in the version published in January of 1989. **(Amended by the ATM 3-10-1992 by Art. 7)**

(2) The WPOD is an overlay zoning district. When the WPOD is superimposed over another zoning district, the more restrictive regulations shall apply.

D. Procedural requirements. Any person planning to perform an activity which may alter a wetland as defined herein shall first obtain authorization as described below (unless the activity is exempt). The applicant should refer to the Fitzwilliam Wetlands Map for a general indication of wetlands areas. The map is based on poorly and very poorly drained soils as identified by the United States Soil Conservation Service's Soil Survey of Cheshire County and is available at the Town Hall. It should be noted that the map is a guide and does not prove or disprove the existence of wetlands or replace the need for on-site evaluation.

(1) Applications for a construction permit, subdivision approval, site plan review, etc., shall locate and depict relevant WPOD areas on the plans for the parcel of land.

(2) If the proposed activity is in the WPOD, the applicant shall meet with the Conservation Commission to determine the extent and location of the wetlands area(s). The Conservation Commission may request that the applicant provide on-site studies or other information necessary to make their determination. If the Conservation Commission determines that no wetlands will be affected, no further WPOD regulations shall apply to the application. If the Conservation Commission determines that wetlands will be affected, they shall refer the applicant to the Planning Board and may make recommendations to the Planning Board regarding the application.

(3) Planning Board review.

(a) The Planning Board shall review the application to determine whether it is consistent with the purposes of this section. The applicant is responsible for defining the limits of work, extent of the WPOD, accurate delineation of the wetlands and providing information requested by the Board. Should the Planning Board or Conservation Commission require additional information or question the validity of the information supplied, an expert may be hired by the town to assist in the review. The costs of said services shall be the responsibility of the applicant. If the Planning Board determines that the application requires a public hearing, the applicant shall be responsible for an

application fee and abutter notification fees, to be paid in advance, and to be established by the Board of Selectmen. **(Amended by ATM 3-9-2004 by Art. 4)**

(b) The Planning Board shall either:

(1) Reject the application if, after a public hearing, it is determined not to be in compliance with the purposes of this section;

(2) Issue conditional use approval, in conjunction with the criteria described in Subsection D(4) below; or

3) Refer the applicant to the Board of Adjustment.

(c) If the work meets the conditional use approval conditions as defined in Subsection D(4) below, the Planning Board may authorize the proposed activities with an order of conditions as deemed necessary. If the proposed activity is beyond the conditional use scope, the Planning Board shall refer the applicant to the Board of Adjustment to apply for a special exception.

(d) The Planning Board shall forward copies of all determinations to the Conservation Commission, and to the Board of Adjustment, if applicable. The Conservation Commission shall coordinate the referral of all pertinent information to the Hew Hampshire Wetlands Board.

(4) Conditional use approval may be granted by the Planning Board (RSA 674:21) after a public hearing, provided that the proposed activity complies with all of the following:

(a) The activity is a productive and reasonable use of the land and is in compliance with the purpose of this section.

(b) Design, construction and maintenance methods are established to minimize detrimental impacts to the wetlands and restoration is provided for.

(c) No reasonable alternative exists which would avoid wetlands alteration or lessen the impacts.

(d) The altered wetland area is less than two thousand (2,000) square feet. Such wetland replacement shall be contiguous to the disturbed wetlands. **(Amended by ATM 3-10-1992 by Art. 9)**

(5) Special exceptions.

(a) If an application is referred to the Board of Adjustment, it shall conduct a public hearing to determine if the issuance of a special exception is warranted, taking into consideration the recommendations of the Planning Board, the Conservation Commission and public testimony.

(b) Special exceptions may be granted only if all of the following criteria are met:

(1) The use for which approval is sought is not feasible on a portion of the lot which is outside of the WPOD.

(2) The design and construction of the proposed use will, to the extent possible, be consistent with the purpose and intent of this section.

(3) The total area of altered wetland does not exceed the lesser of five thousand (5,000) square feet or ten percent (10%) of the wetland area on the property.

(4) Accepted methods and procedures are to be followed for construction. **(Amended by ATM 3-10-1992 by Art. 10)**

(5) The proposed use will not create a hazard to individual or public health, safety or welfare and will not diminish the wetlands values identified in Subsection A.

(6) No reasonable alternative exists which would avoid wetlands alteration or lessen the impacts.

(6) Special provisions.

(a) No septic tank or leach field may be constructed or enlarged less than seventy-five (75) feet from any wetlands.

(b) Wetland areas, excluding bodies of water, may be used to satisfy minimum lot requirements, provided that seventy-five percent (75%) of the minimum required lot size is contiguous nonwetland and that the contiguous nonwetland area is sufficient in size and configuration to adequately accommodate all required utilities, such as a wellhead and sewage disposal for on-site septic tanks and leach fields.

(c) Prior wetlands alterations on a piece of property shall be considered in the review of any further applications submitted pursuant to this section for that property.

(d) No underground fuel storage tank or tank containing other hazardous materials shall be placed in the WPOD. **(Amended by ATM 3-10-1992 by Art. 11)**

(e) No new structure or building greater than one hundred (100) square feet in area can either be erected in or moved onto a wetland or within the seventy-five (75) foot area bordering the wetland. **[Amended by ATM 3-14-2006 by Art. 9]**

(7) Exemptions. The following activities are exempt from the requirements of the WPOD or exempt from the procedural requirements as noted:

(a) Maintaining, repairing or replacing an existing and lawfully located structure or public utility, provided that the work conforms to the general standards adopted in this section.

(b) Emergency projects, which may commence prior to receiving authorization, provided that notification will be provided within twenty-four (24) hours of commencement of work and an application will be submitted within three (3) business days and only that work necessary for abatement of the emergency is performed. **(Amended by ATM 3-10-1992 by Art. 13)**

(c) The construction of a single driveway, of the minimum width practical, across an existing right-of-way drainage swale, provided that the length of the disturbed area is less than thirty (30) feet, no other access is feasible from the road and the Conservation Commission is first consulted.

(d) The construction of fences, footbridges, catwalks, footpaths or nature trails, provided that they are constructed on posts or piles where applicable to permit unobstructed flow of water, the natural contour of the wetland is preserved and the Conservation Commission has been consulted.

(e) Notwithstanding any other provisions of this section, the construction of additions and extensions to existing structures shall be permitted within the WPOD, provided that:

- (1) The structure lawfully existed prior to the effective date of this section;
- (2) The proposed construction conforms to all other applicable town ordinances and regulations; and
- (3) The construction is not in a wetland.

(f) Forestry and tree farming, provided that the state forestry regulations, as described in the most recent issue of the New Hampshire Department of Resources and Economic Development Resource Manual titled "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," are observed and that any alterations to topography and drainage patterns are restored to their original condition and that applicable wetlands values are not diminished.

(g) Agriculture, provided that no pesticides, fertilizers, waste from livestock, or any other substances that may enter and pollute the wetlands are used and that the normal drainage patterns are not altered. **[Amended by ATM 3-14-2006 by Art. 10]**

(8) Other permits. Nothing in this section relieves the applicant of any responsibilities for meeting any applicable state or federal requirements, permit processes, etc. Proof of any necessary state and/or federal permits and/or approvals may be required as a condition of any approvals pursuant to this section.

(9) Time limit. The approving Board shall have the authority to issue approval subject to conditions, including time limitations as deemed appropriate. (Amended by ATM 3-10-1992 by Art. 14) Bonding/letter of credit. Prior to final approval pursuant to this section, the applicant may be required to submit a security to the Board of Selectmen. The security shall be in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel, to insure that the construction has been carried out in accordance with the approved design.

E. Enforcement.

(1) The Planning Board, Conservation Commission, town officers, consultants and their agents shall have the authority to enter privately owned property for the purpose of performing their duties under this section and may make or cause to be made such examinations, surveys or samplings as deemed necessary.

(2) The Selectmen are responsible for enforcement of this section and the assessment of penalties as they may deem appropriate. Such penalties may be fines and/or orders of restoration. All costs, fees and expenses in conjunction with such action shall be assessed as damages against the violator.

F. Burden of Proof. The applicant shall have the burden of proof by a preponderance of credible evidence that the proposed work will not have an unacceptable, significant or cumulative effect

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upon the wetland values protected by this section. Failure of the applicant to provide suitable evidence may be cause for denial.

- G. Severability. The invalidity of any provision of this section shall not affect the validity of any other provision nor any prior decisions made on the basis of the valid provisions of this section.

**§ 127-16.2 Wireless Communication Facility Ordinance and Overlay District.
(Added by STM 10-4-2000 by Art. 1; Amended by STM 9-18-2002 by Arts. 1-5; Amended
by ATM 3-9-2004 by Art. 5)**

- A. Authority.

This ordinance is adopted by the Town of Fitzwilliam on October 4, 2000 in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:I, II.

- B. Purpose and Goals.

This ordinance is enacted in order to establish general guidelines for the siting and safe operation of Wireless Communications towers and antennas and to enhance and fulfill the following goals:

(1) Preserve the authority of the Town of Fitzwilliam to regulate and to provide for reasonable opportunity for the siting of wireless communications facilities, by enhancing the ability of providers of wireless communications services to provide such services to the community quickly, effectively, and efficiently.

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

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

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

(5) Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Fitzwilliam.

(6) Provide continuous maintenance and safety inspections for any and all facilities.

(7) Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for the Town of Fitzwilliam to remove these abandoned towers to protect the citizens from imminent harm and danger.

(8) Provide for the removal or upgrade of facilities that are technologically outdated.

(9) Provide for Operation Permit and Proof of Insurance.

- C. Definitions.

ALTERNATIVE TOWER STRUCTURE - Innovative siting techniques shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA - Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth. This definition is not to be construed to include residential rooftop antennas and/or satellite dishes.

CO-LOCATION - Siting of multiple antennas on a single tower.

FAA - An acronym that shall mean the Federal Aviation Administration.

FCC - An acronym that shall mean the Federal Communications Commission.

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

PLANNING BOARD or BOARD - Shall mean the Town of Fitzwilliam Planning Board, the regulator of this ordinance.

PREEXISTING TOWERS and ANTENNAS - Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

WIRELESS COMMUNICATIONS FACILITIES - Shall mean any structure, antenna, tower, or other device which provides licensed transmission or reception of radio or television signals, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services. **[Amended by ATM 3-14-2006 by Art. 11]**

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

D. Siting Standards.

(1) General.

The uses listed in this section are deemed to be permitted uses that may require further review under this ordinance in accordance with Section G. Conditional Use Permits. However, all such uses must comply with other applicable ordinances and regulations of the Town of Fitzwilliam (including Site Plan Review). The following represents the siting standards for the listed uses as delineated by the districts in which they are located in the Town of Fitzwilliam.

(a) Principal or Secondary Use

Subject to this ordinance, an applicant who successfully obtains permission to site under this ordinance may construct wireless communications facilities as a second and permitted use in addition to

the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to, set-back requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance, shall not be deemed to constitute the expansion of a non-conforming use or structure. Nor shall facilities be deemed to be an "accessory use".

(2) Use Districts.

Wireless Communication Overlay District excludes the Historic, Village Center Business, General Business, and Wetlands Protection Overlay Districts as well as Recreational and Conservation lands.

Beginning at one half (1/2) mile from the intersection of Route 119 and East Lake Road on Route 119 West to the Richmond Town line.

Beginning at .76 of a mile North from the intersection of Route 12 and Route 119 and extending .225 of a mile on the West side of Route 12, based on the current tax maps. (July 2002) **(Amended by STM 9-18-2002 by Art. 1)**

Beginning at one half (1/2) mile from the intersection of Route 119 and Route 12 East on Route 119 to the Rindge Town line.

Beginning at one half (1/2) mile from the intersection of Route 119 and Route 12 South on Route 12 to the Winchendon Town line.

The width of the Telecommunications Overlay District is 300 yards from the centerline of Routes 119 and 12.

All wireless communications tower applicants shall apply for a permitted use with conditional use permit.

Shall not be sited in wetlands, or the Wetlands Protection Overlay District, or in the Floodplain District even if these districts are located in the Wireless Communications Overlay District.

(3) Height Requirements. **(Amended by STM 9-18-2002 by Arts. 2 & 3)**

These requirements and limitations shall preempt all other height limitations as required by the Town of Fitzwilliam Zoning Ordinance and shall apply only to wireless communications facilities. These height requirements may be waived through the conditional use permit process only if the intent of the Ordinance is preserved (e.g. where a 100' tower would not increase adverse impacts but provide a greater opportunity for co-location) in accordance with Section H. Waivers.

	New Tower Construction	Co-location of pre-existing tower	Co-location on existing structure
Wireless Communications Overlay District	80'	A minimum height to achieve functionality as supported by technical data	A minimum height to achieve functionality as supported by technical data

E. Applicability.

(1) Public Property.

Antennas or towers located on property owned, leased or otherwise controlled by the Town may be exempt from the requirements of this ordinance, except that the uses are only permitted in the zones and areas as delineated in Section D. 2 Use Districts. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects, subject to state law and local ordinance, to seek the partial exemption from this ordinance.

(2) Amateur Radio; Receive Only Antennas.

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

(3) Essential Services and Public Utilities.

Wireless communications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for wireless communications facilities is a use of land, and is addressed by this article.

F. Construction Performance Requirements.

(1) Aesthetic and Lighting.

The guidelines in this subsection (A), shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements, in accordance with Section H. Waivers, only if it determines that the goals of this ordinance are served thereby.

- (a) Towers shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color so as to reduce visual obtrusiveness.
- (b) 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. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
- (c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

- (d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (e) Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

(2) Federal Requirements.

All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for removal, in accordance with Section J. Removal of Abandoned Antennas and Towers, of the tower or antenna, as abandoned, at the owners' expense through the execution of the posted security.

(3) Building Codes - Safety Standards.

To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time. 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 thirty (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 J. Removal of Abandoned Antennas and Towers, of the tower or antenna, as abandoned, at owner(s) expense through execution of the posted security.

(4) Additional Requirements for Wireless Communications Facilities.

These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

(a) Setbacks and Separation.

- (1) Towers must be set back a distance equal to 125% of the height of the tower from any site boundary or District setback, whichever is greater. **(Amended by ATM 3-9-2004 by Art. 5)**
- (2) Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
- (3) Towers 80' in height and taller, shall not be located within one quarter (1/4) mile of any existing tower 80' in height or taller. **(Amended by STM 9-18-2002 by Arts. 4 & 5)**

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

(c) Landscaping.

- (1) Towers shall be landscaped with a buffer of plant materials that effectively screens the views of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound. Natural vegetation is preferred.
- (2) In locations where the visual impact of the tower would be minimal, the landscaping requirements may be reduced or waived entirely.
- (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
- (4) Shall not be sited in wetlands, the Wetlands Protection Overlay District, or the Floodplain District even if those areas are in the Wireless Communications Overlay District.

G. Conditional Use Permits.

(1) General.

All applicants under this ordinance shall apply to the Planning Board for a Site Plan Review, in accordance with the requirements as provided for in the Town’s Site Plan Review Regulations. In addition, applicants under this ordinance shall also be required to submit the information provided for in this section.

(2) 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.

(a) Procedure on application.

The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. The Board may impose conditions on the entire site to bring it into compliance with all current Town regulations.

(b) Decisions.

Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

(c) Factors considered in Granting Decisions.

- (1) Height of proposed tower or other structure.
- (2) Proximity of tower to residential development or zones.
- (3) Nature of uses on adjacent and nearby properties.
- (4) Surrounding topography.
- (5) Surrounding tree coverage and foliage.

- (6) Design of the tower with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Proposed ingress and egress to the site.
- (8) Availability of suitable existing towers and other structures as discussed in Section G.3.D.
- (9) Visual impacts on viewsheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- (10) Availability of alternative tower structures and alternative siting locations.

(3) Information Required.

Each applicant requesting a Conditional Use Permit under this ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200' away), and any other information deemed necessary by the Planning Board to assess compliance with this ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

- (a) The applicant must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the Town at large including demonstration of a realistic analysis or multiple sites and the need for the proposed height.
- (b) The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
- (c) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.
- (d) Each applicant for an antenna and/or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (e) If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of:

- (1) Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
 - (2) Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
 - (3) Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (4) Substantial Evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (5) Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (6) Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
- (f) The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless communications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Fitzwilliam, and grounds for denial.
- (g) The applicant shall submit the engineering information detailing the size and coverage for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:4 (g).

H. Waivers.

(1) 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 provision of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenience by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

- (a) 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.

- (b) The waiver will not, in any manner, vary the provisions of the Town of Fitzwilliam Zoning Ordinance, Fitzwilliam Master Plan, or Official Maps.
- (c) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
- (d) 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:
 - (1) Topography and other Site features.
 - (2) Availability of alternative site locations.
 - (3) Geographic location of property.
 - (4) Size/magnitude of project being evaluated and availability of co-location.

(2) Conditions.

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

(3) Procedures.

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

I. Bonding, Security and Insurance.

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with Section J. Removal of Abandoned Antennas and Towers. Bonding and surety shall be consistent with the provision in the Subdivision Regulations¹¹. Furthermore, the Planning Board shall require an annual submission of proof of adequate insurance covering accident or damage.

J. Removal of Abandoned Antennas and Towers.

Any antenna or tower that is not operated for a continuous period of 180 days shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

K. Permit to Operate.

The tower owner/operator shall file, on a bi-annual basis (twice yearly), a Declaration of Use to continue operation.

¹¹ Editor's Note: See Ch. 221 Subdivision of Land.

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The owner shall provide certified proof of a satisfactory safety inspection of all facilities on a quarterly basis. Failure to provide these proofs shall constitute abandonment and require the tower to be removed within 90 days.

127-16.3 Historic District Overlay Ordinance (Added by ATM 3-11-08)

Authority. The Town of Fitzwilliam voted to establish, lay out and define the Historic District of Fitzwilliam at the annual town meeting on March 10, 1970. In describing the existing boundaries of the District, this ordinance incorporates the four amendments made to the original layout of the District. This ordinance, to be adopted in accordance with RSA 674:46 (1983), outlines the authority of the District and provides the legal framework for all decisions made by the Historic District Commission.

This section shall be known as the Fitzwilliam Historic District Overlay. The regulations in this section shall overlay and supplement the regulations in this chapter, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this section 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.

Purpose. The Historic District Overlay is created to preserve and safeguard the heritage of the Town of Fitzwilliam by:

1. Preserving structures and places of historic and architectural value;
2. Preserving a district in the municipality which reflects elements of its cultural, social, economic, political and architectural history;
3. Conserving property values;
4. Fostering civic beauty; and,
5. Maintaining the existing architecture of the district.

Boundaries. The Historic District is bounded on the East by Tax Map 15/ Lots 30, 31, 9-4, 9-3, 9-2, 33, Tax Map 39/Lots 29 and 30, Tax Map 32/Lot 42, Tax Map 34/Lots 5 and 1, Tax Map 15, Lot 60 and Tax Map 11/ Lots 44 and 59; on the North by Tax Map 15/ Lots 30, 9, 10, 11-2 and 11-1; on the West by Tax Map 15/ Lots 11, 6, 3, 3-1 and 1; on the South by Tax Map 15, Lot 1, Tax Map 11/ Lot 18, Tax Map 30/Lots 5, 6 and 9, Tax Map 11/ Lot 28, Tax Map 29/Lot 24, and Tax Map 11/ Lots 41, 42, 59.

Membership. The Historic District Commission shall consist of not fewer than five (5) members or more than seven (7) members, one of whom shall be a member of the Board of Selectmen. An Historic District may have up to five alternate members. Members shall be appointed by the Board of Selectmen.

Qualifications. Each Historic District Commission member shall be a resident of the Town of Fitzwilliam. In determining each member’s qualifications, the Board of Selectmen shall take into consideration the appointee’s demonstrated interest and ability to understand, appreciate and promote the purposes of the Historic District Commission. Terms of regular and alternate members shall be in accordance with RSA 673:5 and RSA 673:6.

Certificate of Approval. Except as provided herein, it shall be unlawful for any owner or person to alter, construct, repair, move, demolish, or change the use of any structure or place located within the Historic District without applying for and receiving from the Commission a Certificate of Approval for such activity

A Certificate of Approval shall not be required for remodeling or repairs where the exterior appearance of the structure is not changed.

All application reviews are conducted in accordance with Rules of Procedure adopted by the Historic District Commission and based on criteria set forth in the Historic District Regulations and Guidelines.

Regulations and Design Guidelines. The Regulations and Design Guidelines are incorporated by reference in this ordinance. They set forth detailed and specific criteria that adhere to the following principles:

1. Every reasonable effort shall be made to employ a compatible use for a property that requires minimal alteration to the building, structure or site and its environment, or to use a property for its originally intended purpose.
2. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
3. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and its significance shall be recognized and respected.
5. Distinctive stylish features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
8. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical architectural or cultural material and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.

Amendment. Historic District Commission Regulations and Design Guidelines shall be amended in the following manner as required in RSA 675:6.

- a. The Commission shall hold a public hearing within the Historic District prior to amendment.
- b. The Commission may amend the regulation upon completion of the public hearing by an affirmative vote of a majority of its members.
- c. No regulation so amended shall be legal or have any force and effect until copies of it are certified by a majority of the Commission and filed with the Town Clerk.

Interpretation. Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure or place within the Historic District.

Enforcement. This ordinance shall be enforced in accordance with the provisions of Article X of the Land Use Ordinance and violators shall be subjected to the penalty provisions contained therein.

Appeals. Any person aggrieved by a decision of the Historic District Commission shall have the right to appeal concerning such decision to the Board of Adjustment. Upon appeal, the Board of Adjustment shall review the decision of the Historic District Commission to determine whether the decision conforms to the provisions under this ordinance and the rules of procedure and regulations adopted herein.

Effective Date. This ordinance shall take effect upon adoption.

**ARTICLE V
Dimensional Regulations**

§ 127-17 Conformance Required.

No land shall be used and no structure or building shall be used or construction begun, except in accordance with Article V, Dimensional Regulations, and the Table of Standard Dimensional Regulations, unless otherwise specifically permitted in this chapter.

§ 127-18 Calculation of Dimensional Requirements.

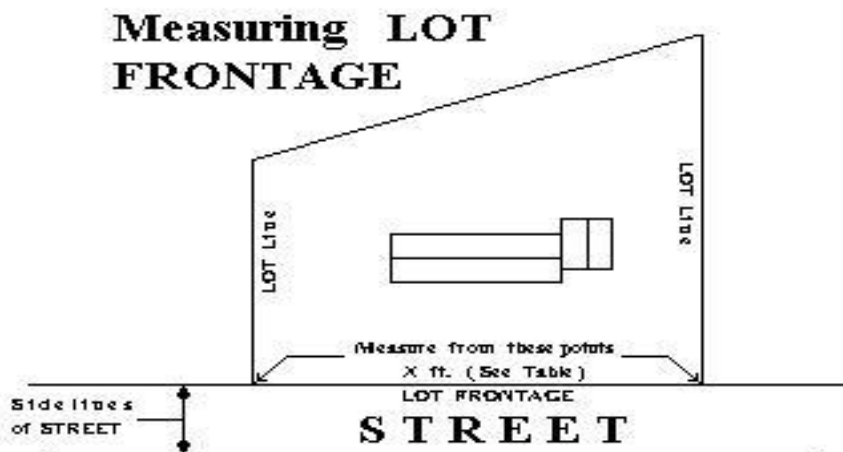
The following shall apply:

A. Lot Area.

Lot area shall be determined by calculating the area within a lot, including any area within the lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area.

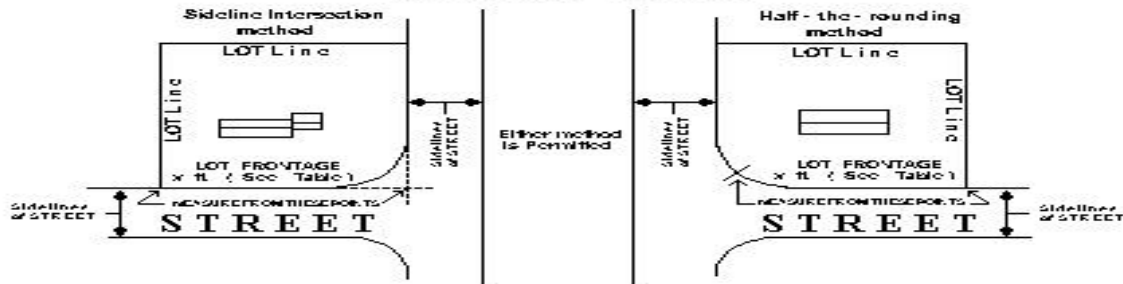
B. Frontage.

Frontage shall be measured in a continuous line along the side line of a street between the points of intersection of the side lot lines with the street.

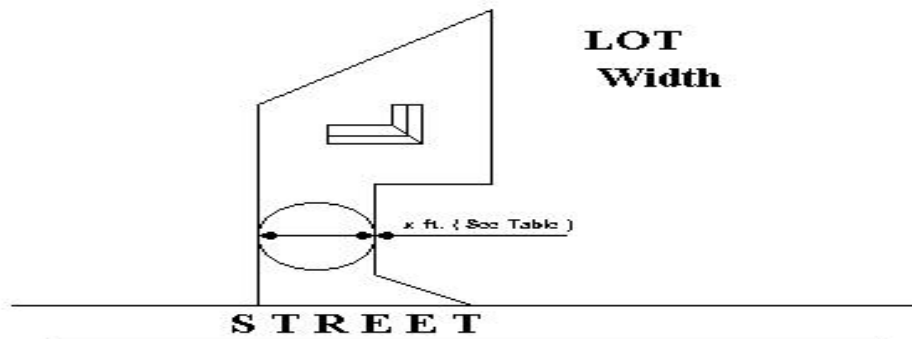


- (1) Frontage for a corner lot may be measured either to the point of intersection of the extension of the side line of the rights-of-way or to the middle of the curve connecting the side line of the intersecting streets.

Measuring LOT FRONTAGE (Corner LOT)

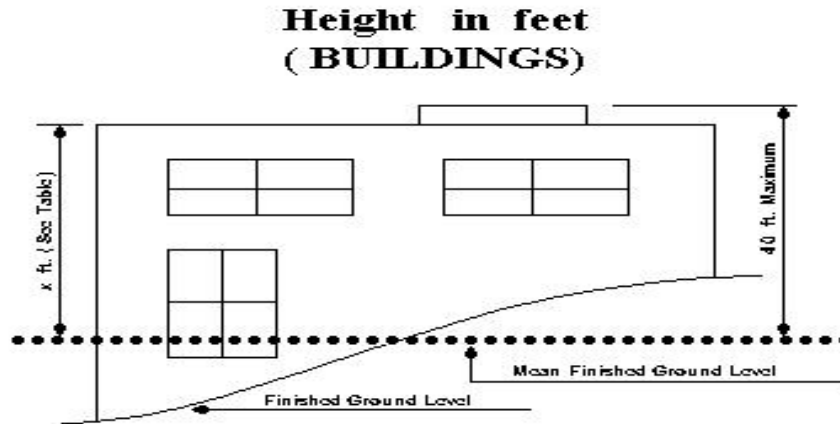


- (2) If a lot has frontage on more than one (1) street, the frontage on one (1) street only may be used to satisfy the minimum lot frontage.
- (C) Lot Width. Lot width shall be determined by measuring the diameter of the largest circle which can be located along a continuous, but not necessarily straight, line from the lot frontage to the principal structure on the lot without the circumference intersecting the side lot lines.



- (D) Front Yards. Front yards shall be the distance measured in a straight line between the lot frontage and the nearest point of any building or structure. A lot having frontage on two (2) or more streets shall have two (2) or more front yards, each of which shall comply with the requirements of the front yard provisions. In no case shall any building or structure be located closer to the side line of a street than the minimum required front yard.
- (E) Side and Rear Yards. Side and rear yards shall be the distance measured in a straight line from the nearest point of any building or structure to each side or rear lot line.
- (F) Building Coverage. The building coverage shall be determined by dividing the total ground area of all buildings on a lot, including roof overhangs greater than one and five-tenths (1.5) feet, carports and canopies, whether or not such carports or canopies are part of a building, by the total lot area.
- (G) Height in Feet.
 - (1) Height in feet, structures. Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire structure to the highest extension of any part of the structure.

- (2) Height in feet, buildings. Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire building at each exterior wall to the top of the highest roof beams of a flat roof or to the mean level of the highest gable or slope of a hip roof. In all districts, appurtenant structures located upon the roof of a building may extend above the height limit but in no case shall they exceed forty (40) feet in height when combined with the height of the building nor in the aggregate occupy more than twenty percent (20%) of the roof plan area unless authorized by Special Exception from the Board of Adjustment. **(Amended by STM 11-1-1989 by Art. 9)**



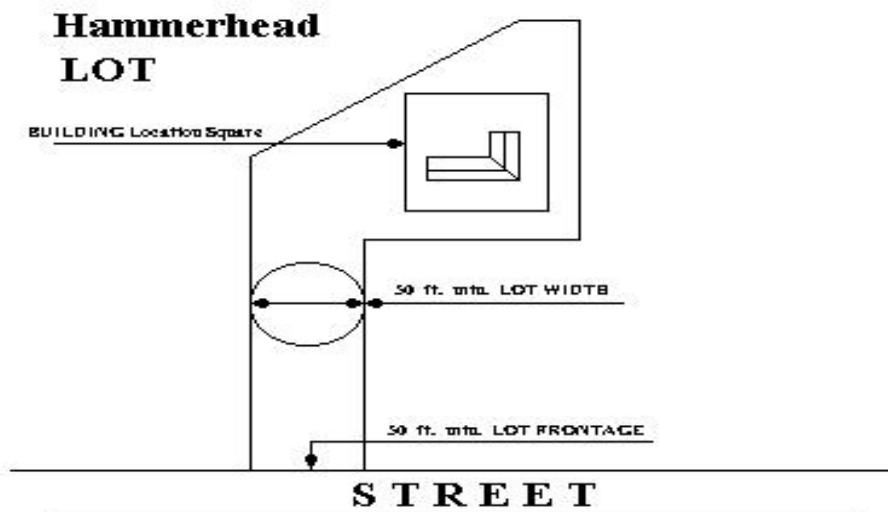
§ 127-19 Special Provisions and Exceptions.

- (A) Location of Structures. Unless otherwise specified in this chapter, no structure shall be located within the required yard area of any lot except walls or fences no more than eight (8) feet in height, uncovered steps, ramps or terraces, signposts, pedestrian lighting facilities with a height of less than ten (10) feet, flagpoles or similar structures.
- (B) Multifamily Dwellings. In all districts, the minimum lot size for multifamily dwellings shall be not less than one hundred twenty thousand (120,000) square feet for the first four (4) bedrooms in any such multifamily dwelling, plus ten thousand (10,000) square feet for each additional bedroom. **(Amended by STM 11-1-1989 by Art. 8)**
- (C) Frontage Exceptions.
- (1) Frontage exception lots. In the residential districts, the minimum lot frontage may be reduced by fifty (50) feet per lot (frontage reduced in the R-1 District to one hundred feet (100) and in the Rural District to two hundred fifty (250) feet), provided that the minimum lot area required for each such lot is doubled (lot increased in the R-1 District to eighty thousand (80,000) square feet and in the Rural District to two hundred forty thousand (240,000) square feet.)
- (2) Curved Street exception lots. Excluding a cul-de-sac, in all districts any lot whose entire frontage is on the outside side line of a curved street having a radius less than three hundred (300) feet shall be permitted to reduce its minimum frontage to one hundred twenty five (125) feet for a lot located in the R-1 District and one hundred fifty (150) feet for a lot located in the Rural District.
- (3) Cul-de-sac lots. In all districts, the minimum lot frontage for a lot may be reduced to one hundred (100) feet per lot, provided that each such lot fronts entirely on a cul-de-sac with a slide line radius of sixty-two and five-tenths (62.5) feet or greater and provided, further,

that no more than three (3) such reduced frontage lots shall have frontage on the cul-de-sac.

(D) **Hammerhead Lots. (Amended by the STM 11-1-1989 by Art. 11, Amended by the ATM 03-13-2007 by Art. 3)**

- (1) Any minor subdivision approved after November 1, 1989 may not be further subdivided using a hammerhead lot. Any major subdivision approved after March 13, 2007 may not include a hammerhead lot. In all districts, the Planning Board, in its sole discretion, when exercising its subdivision regulation authority on all other lots of record, may permit the creation of not more than one (1) hammerhead lot per subdivision. Each hammerhead lot so created shall at a minimum contain:
 - (a) A lot area of at least eighty thousand (80,000) square feet in the R-1, General Business and Village Center Business Districts and one hundred sixty thousand (160,000) square feet in all other districts.
 - (b) A minimum lot frontage and lot width of at least fifty (50) feet; and
 - (c) A building location square of at least one hundred fifty (150) feet per side in the R-1, General Business and Village Center Business Districts and two hundred (200) feet per side in all other districts.
- (2) Such building location square shall contain an area of land which, in the opinion of the Planning Board, is suitable as a building site, and any building erected on the lot shall be located within the building location square.



(E) **Height of Buildings in the General Industrial District.**

- (1) In the General Industrial District, the height of buildings may be increased by right above forty (40) feet, provided that:
 - (a) The minimum open space provided on the lot is forty-five percent (45%) or more;
 - (b) The maximum building coverage on the lot is twenty-five percent (25%) or less; and

§ 127-19

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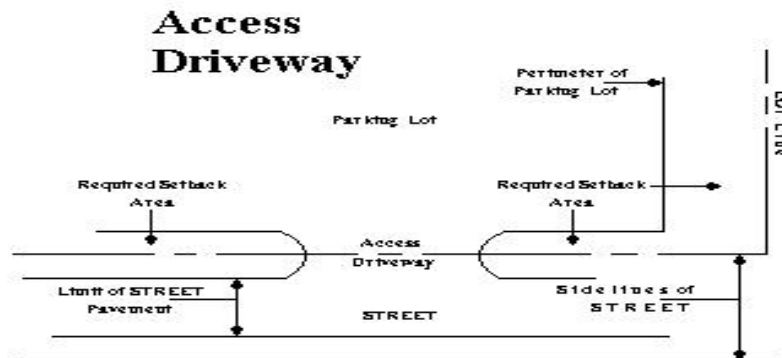
- (c) The maximum height of the building is forty (40) feet or less.
- (2) The Board of Adjustment may authorize by Special Exception that appurtenant structures located upon the roof of any building in compliance with the above may extend above the height limit but in no case shall they exceed forty (40) feet in height when combined with the height of the building nor in the aggregate occupy more than twenty percent (20%) of the roof plan area. **(Amended by STM 11-1-1989 by Art. 9)**
- (F) All reduction to dimension in the Table of Standard Dimensional Regulations for porches or building additions to be by Special Exception. **(Amended by ATM 3-9-1999 by Art. 3; Amended by ATM 3-8-2005 by Art. 6)**

ARTICLE VI
Parking

§ 127-20 Definitions.

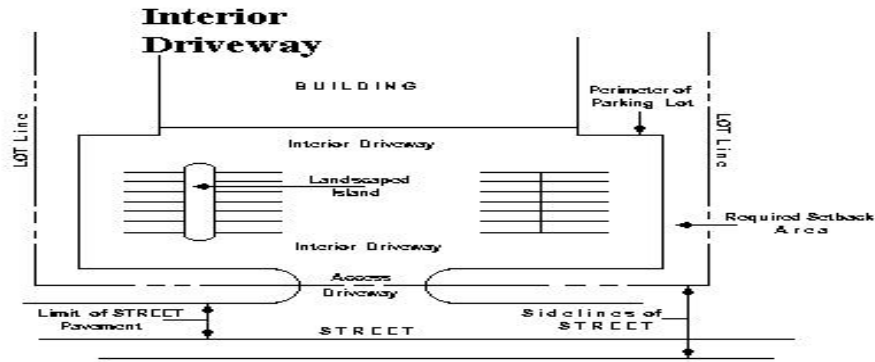
For the purpose of this Article, the following terms shall have the following meanings:

ACCESS DRIVEWAY - The travel lane that allows motor vehicle ingress from the street and egress from the site and includes the area between the edge of street pavement to the area within the lot where the access driveway is no longer within the minimum parking area setback required under § 127-27 A.

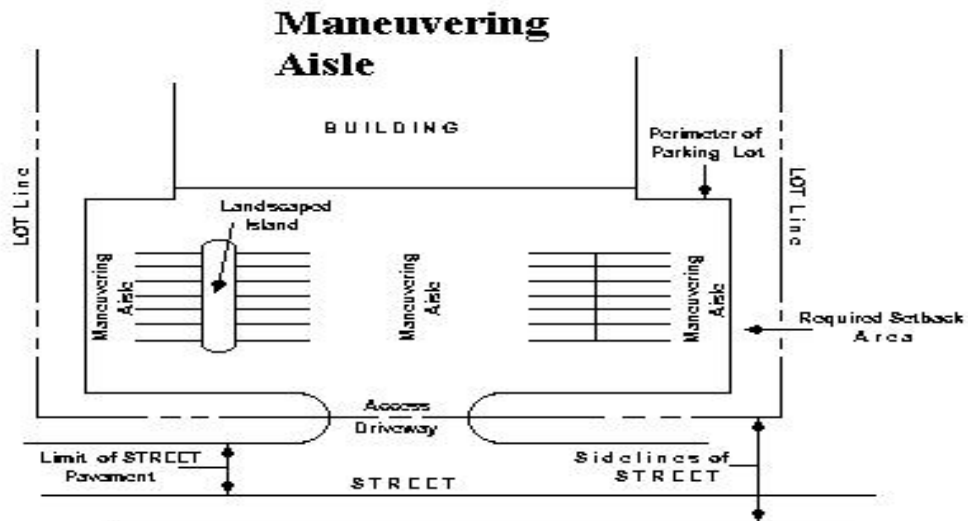


BUILDING SERVICE AREA - A room or rooms in a building used to house electrical or mechanical equipment necessary to provide utility service to the building, such as a boiler room.

INTERIOR DRIVEWAY - A travel lane located within the perimeter of a parking lot which is not used to directly enter or leave parking spaces. An "interior driveway" shall not include any part of the access driveway.



MANEUVERING AISLE - A travel lane located within the perimeter of a parking lot by which motor vehicles directly enter and leave parking spaces.

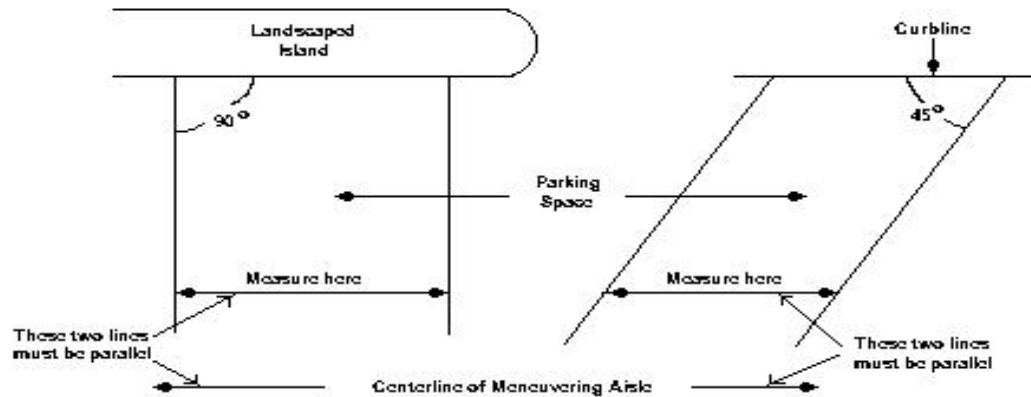


NET FLOOR AREA - The total of all floor areas of a building, including basement and other storage areas, but not including stairways, elevator wells, rest rooms, common hallways, and building service areas.

PARKING STALL LENGTH OF LINE - The longitudinal dimension of the stall measured parallel to the angle of parking.

WIDTH OF PARKING STALL - The linear dimension measured across the stall and parallel to the maneuvering aisle.

Width of Parking Stall



§ 127-21 General Provisions.

- (A) Except as provided in § 127-23, no building or structure shall be located upon any lot and no activity shall be conducted upon any lot unless the required parking facilities are provided on site in accordance with this Article.
- (B) Change of Use. The use of any land or structure shall not be changed from a use described in one section of the Schedule of Parking Uses ¹² to a use in another section of the Schedule, nor shall any net floor area of a building be increased in any manner unless the number of parking spaces required for the new use is provided.
- (C) Undetermined Uses. Where the use of a building or buildings has not been determined at the time of application for a Construction Permit or Special Exception, the parking requirements applicable to the most intensive use allowed in the district where such undetermined use is to be located shall apply; provided, however, that the number of parking spaces actually built need not exceed the number required by the actual use or uses of the building. **(Amended STM 11-1-1989 Art. 9)**
- (D) Relief from Parking Regulations by Special Permit from the Planning Board. Relief from the parking regulations may be granted by special permit from the Planning Board where the Board finds that it is not practicable to provide the number of parking spaces required and either, in the case of a change from a nonconforming use to a conforming use, that the benefits of a change to a conforming use outweigh the lack of parking spaces or, in the case of a change from one conforming use to another conforming use, that the lack of parking spaces will not create undue congestion or traffic hazards on or off the site, provided that in either case the Planning Board shall require the maximum practicable number of parking spaces.

§ 127-22 Schedule of Parking Uses.

- (A) Comparable Use Requirement. Where a use is not specifically included in the Schedule of Parking Uses, it is intended that the regulations for the most nearly comparable use specified shall apply.

¹² Editor's Note: See § 127-22, Schedule of Parking Uses.

§ 127-22

- (B) **Mixed Use Requirements.** In the case of mixed uses, the requirements shall be the sum of the requirement calculated separately for each area of use, so that adequate space shall be provided to accommodate the cars of all persons on the premises at any one time. Parking spaces for one use shall not be considered as providing the required spaces for any other use, except when it can be clearly demonstrated that the need for parking occurs at different times.
- (C) **Schedule of Parking Uses.**

Use	Parking Spaces Required
Dwelling and Home Occupation	2 for each dwelling unit and, where nonresidents are employed or where retail sales are conducted, the Board of Adjustment shall have the authority under § 127-14 A. (2) to require the number of parking spaces which it deems to be adequate and reasonable.
Hotel, Inn or Motel	1 for each bedroom, plus 1 for each employee on the largest shift
Educational	1 for each staff position, plus 1 for each 5 persons of rated capacity of the largest auditorium, plus 1 for each student vehicle which can be expected at any one time on the premises.
Nursing Home	1 for each 2 beds, plus 1 for each employee on the largest shift
Retail Store, General and Personal Services, Financial, Studio, Building Trade or Restaurant with no seating	1 for each 180 square feet of net floor area
Business or Professional Office	1 for each 200 square feet of net floor area
Restaurant, Religious, Funeral Home, Lodge	1 for each 3 seats, plus 1 for each employee on the largest shift or club or other place of assembly
Motor Vehicle Service Station or Repair or Body Shop	3 for each service bay, plus 1 for each employee on the largest shift
Industrial	1 for each 2,000 square feet of net floor area for the first 20,000 square feet, plus 1 for each additional 10,000 square feet of net floor area and 1 per employee on the largest shift

§ 127-23

§ 127-23 Exception in VCB District.

In the Village Center Business District, the Board of Selectmen may authorize by special permit an off-street parking facility not located upon the same lot with the associated use, provided that it finds that:

- A. The parking facility proposed is within the same Village Center Business District in which the use is located; and
- B. Such parking facility complies with all other requirements of this chapter.

§ 127-24 Off-street Loading Areas.

One (1) or more off-street loading area shall be provided for any business that may be regularly serviced by tractor-trailer trucks or other similar delivery vehicles, so that adequate areas shall be provided to accommodate all delivery vehicles expected at the premises at any one (1) time. Loading areas shall be located at either the side or the rear of each building and shall be designed to avoid traffic conflicts with vehicles using the site or vehicles using adjacent sites.

§ 127-25 Standard Parking Dimensional Regulations.

Off-street parking facilities shall be laid out and striped in compliance with the following minimum provisions:

Angle of Parking	Width of Parking Stall (feet)	Parking Stall Length of Line (feet)	Width of Maneuvering Aisle (feet)
90° (two-way)	9	18.5	24
60° (one-way)	10.4	22	18
45° (one-way)	12.7	25	14
Parallel (one-way)	8	22	14
Parallel (two-way)	8	22	18

§ 127-26 Small Car Stalls; Small Car Parking Dimensional Regulations.

- A. In parking facilities containing more than forty (40) parking stalls, thirty percent (30%) of such parking stalls may be for small car use, except for retail stores, personal service facilities, general services or restaurant uses. Such small car stalls shall be grouped in one (1) or more contiguous areas and shall be identified by a sign(s).
- B. Small Car Parking Dimensional Regulations. Off-street small car parking facilities shall be laid out and striped in compliance with the following minimum provisions:

Angle of Parking	Width of Parking Stall (feet)	Parking Stall Length of Line (feet)	Width of Maneuvering Aisle (feet)
90° (two-way)	8.5	15	24
60° (one-way)	9.8	18.5	18
45° (one-way)	12	21.5	14
Parallel (one-way)	8	18	14
Parallel (two-way)	8	18	18

§ 127-27 Design Requirements for Parking Facilities.

A. Business or Industrial Uses. Required parking spaces, loading areas and driveways shall be provided and maintained with suitable grading, paved surfaces and adequate drainage. No parking space or other paved surface, other than the access driveways or walkways, shall be located within ten (10) feet of any lot line, and, notwithstanding the foregoing, no parking space or other paved surface, other than access driveways or walkways, shall be located within the limits of a landscape buffer area.

(1) Each lot may have one (1) access driveway which shall be at least twenty-four (24) feet wide at its narrowest point but not more than thirty-six (36) feet wide at its widest point. Each lot may have one (1) additional access driveway for each two hundred (200) feet of frontage, provided that all such access driveway(s) shall be at least two hundred (200) feet apart on the lot measured from the center line of each access driveway. In the case of an access driveway which shall be used for one-way traffic only, the minimum width may be reduced to fourteen (14) feet at its narrowest point.

(2) Interior driveways shall be at least twenty (20) feet wide for two-way traffic and fourteen (14) feet for one-way traffic.

**ARTICLE VII
Signs and Advertising Devices
(Amended by ATM 3-9-1999 by Art.5)**

§ 127-28 Purpose. (Amended by ATM 3-13-2007 by Art.5)

This sign ordinance provides for the installation, maintenance and display of signs in the Town of Fitzwilliam. The provisions of this section shall govern the construction, alteration, repair and maintenance of all signs together with the associated appurtenant and auxiliary devices in respect to structural and fire safety. Signs not included in this ordinance are considered to be prohibited.

The purposes of the sign ordinance are to protect and improve community appearance and aesthetics, including protecting the health, safety and welfare of its citizens. The ordinance recognizes that any business needs identification and the public needs direction. The guiding principal of the ordinance is to provide opportunity for signage while at the same time assuring that signs should not destroy or detract from scenic vistas, compete unnecessarily with the natural environment, or proliferate in number. The ordinance also provides for three levels of sign size: two for the Industrial areas, one for the Residential districts and the third for the two Business Districts.

It is the intent of this Sign Ordinance to support the general provisions of the 2004 Fitzwilliam Master Plan, which seeks to preserve the visual New England rural character of Fitzwilliam and its Historic District. The following provisions were designed to encourage reasonable uniformity in the size, treatment and presentation of signs used to call attention to the existence of a business, activity, event, location or service.

§ 127-28.1 Definitions. (Amended by ATM 3-13-2007 by Art.5)

1. **Directional sign** - A sign limited to providing directional or guide information on the most direct or simple route for on-site public safety and convenience. Directional signs may be located adjacent to driveways. (Ex. IN, OUT, ENTRANCE, EXIT, PARKING)
2. **Event specific sign** - A non-prohibited temporary sign to be used to announce an event such as a festival, dance, business opening, sale, meeting, fund raiser, parade and information about political candidates and other events which have a short term conclusion.

§ 127-28.1

§ 127-28.2

3. **Free standing sign** - A self supporting sign not attached to any building, wall or fence but separate and affixed in or upon the ground. Included are pole signs, pylon signs, monolith and masonry wall type signs. This does not include portable or mobile trailer type signs.
4. **Grandfathered sign** - See Nonconforming sign.
5. **Lineal building frontage** - The length of a ground level straight line or lines parallel to and equaling the length of the building front that includes the main public entrance(s) or the side of the building fronting on the principal roadway. In the case of a multi-unit development the frontage of each separate building is additive for the purpose of determining permissible sign area.
6. **Mobile sign** - See Portable sign.
7. **Non-conforming sign** - A sign which does not comply with the provisions of this ordinance but which legally existed prior to the adoption of this sign ordinance.
8. **Portable sign** - A sign capable of being readily removed or relocated, and not attached to the ground, a building, a structure or another sign. This includes moveable signs mounted on a chassis, A frame and/or wheels or supported by legs.
9. **Sign** - Any fabricated sign or outdoor display structure, including its structure, consisting of any letter, figure, character, mark, point, plane, marquee, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter or illuminating device, which is constructed, attached, erected, fastened or manufactured in any manner so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, event, public performance, article, machine or merchandise, and displayed in any manner out of doors, or indoors as a window sign for advertising purposes.

A vehicle with such a display on its sides and which is parked at a location so as to display rather than to be used primarily as a vehicle is, by definition, a sign.

10. **Sign directory** - A listing of two or more business enterprises, consisting of a matrix and sign components.
11. **Sign structure** - The supports, uprights, bracing and framework for a sign.
12. **Sign surface area** - The entire area within a single continuous perimeter enclosing all elements which form an integral part of the sign. These include a square, rectangle, triangle, circle or another geometric figure which encompasses the facing of the sign, including copy insignia, background, or borders. In the case of an irregularly shaped sign, the sign area shall be computed by circumscribing the irregular shapes with a common geometric figure or figures. The structure supporting a sign and pole covers or architectural embellishments shall be excluded unless the structure is designed in a way to form an integral background of the display. Each face of a free standing sign shall constitute a separate sign except that two sided sign having the same message on each side shall be counted as one sign. In the case of a sign consisting of two or more sides where the angle formed between any two or more sides or the projections exceed 30 degrees, each side shall be considered a separate sign area.

127-28.2 Administration (Added by ATM 3-13-2007 by Art.5)

- A. **Administration** - The Board of Selectmen shall interpret and administer this sign ordinance except in the case of signs to be located and/or already located in the Historic District. All signs in the Historic District must be approved and their placement approved by the Historic District Commission prior to placement and construction and prior to application for any other permit required by this ordinance.

§ 127-28.2

§ 127-30

- B. Relief - Any relief sought from this sign ordinance, having been denied by the Selectmen and/or the Historic District Commission, may be brought before the Fitzwilliam Board of Adjustment.
- C. Enforcement - The Board of Selectmen shall be the enforcement authority of all provisions of the ordinance. The Code Enforcement Officer shall notify the violator(s) of the violation(s), along with any corrective action required. Violations of the sign ordinance are punishable by fines as cited in Article X of this Chapter.

§ 127-29 General Regulations.

The following regulations shall apply in all districts:

- A. No exterior sign or advertising device shall be erected except in the exact location and manner described in the permit.
- B. No sign which requires a sign permit under this chapter shall be erected except in the exact location and manner described in the permit.
- C. No sign shall be erected in a way that creates a traffic hazard or obscures or confuses traffic control.
- D. No sign shall be illuminated more than thirty (30) minutes after closing of any store or business.
- E. Only white or internally illuminated lights shall be used for illumination of a sign. The illumination from any sign shall be shaded, shielded, directed and maintained at a sufficiently low intensity and brightness and that it shall not affect the safe vision of operators of vehicles moving within the premises or on any adjacent public or private way.
- F. Any sign which advertises or identifies products, businesses, services or activities which are no longer sold, located or carried on at the premises shall be removed within sixty (60) days after notice by the Code Enforcement Officer.

§ 127-30 Permit Required.

Except for signs described herein, no sign shall be changed, altered in any way, or erected within the Town of Fitzwilliam without a permit from the Board of Selectmen or the Planning Board as part of the Site Plan Review process.

- A. Applicability. All signs require a sign permit, except as provided in § 127-32.
- B. Application.
 - (1) All applications for signs requiring a sign permit shall be obtained from the Code Enforcement Officer and shall include at least:
 - (a) The location, by street number, of the proposed sign.
 - (b) The name and address of the sign owner and the owner of the premises where the sign is to be located, if other than the sign owner.
 - (c) A scale drawing showing the proposed construction, method of installation or support, colors, dimensions, location of the sign on the site and method of illumination.
 - (d) Such other pertinent information as the Code Enforcement Officer may require to ensure compliance with this chapter and any other applicable law.

§ 127-30

§ 127-31

- (e) The application must be signed by the owner of the sign and the owner of the premises where the sign is to be located.
 - (f) The Code Enforcement Officer shall have the authority to reject any sign permit application which is not complete when submitted.
- C. Time Limitations. The Code Enforcement Officer shall approve or disapprove any application for a sign permit within sixty (60) days of receipt of the application.
- D. Fees. The Board of Selectmen shall establish and review as necessary a sign permit fee which shall be published as part of the sign permit application.

§ 127-31. Prohibited signs. [Amended by ATM 3-14-2006 by Art. 12]

This section intends to list specifically some prohibited signs. This list is not meant to be inclusive. Rather, it should be representative of the kinds of signs, which are prohibited in the community. The following are examples of prohibited signs:

- A. Any off-premises sign advertising or identifying a non-agricultural business, including off-premises directional signs bearing advertising or which are not a part of an approved sign plan.
- B. Illumination prior to 7:00 AM or after 9:00 PM of any signs in the Residential, Historic or Village Center Districts.
- C. Illumination of any signs in the Industrial and General Business Districts more than one half hour prior to or after the business is operating.
- D. Any sign which has visible moving parts, blinking, moving, or changing illumination, or any part consisting of banners, streamers, ribbons, inflatable parts or similar devices any or all of which have the potential of distracting the attention of motorists. There are three exceptions: the traditional moving signs of a barber pole, signs showing temperature and time and open flags as described in the exemption section.
- E. Any sign emitting sound, speech, or noise, including sound tracks.
- F. Any placement of a sign deemed by the Board of Selectmen, or their designate, to be unsafe, such as a sign which would interfere with the view of or by pedestrians or motorists.
- G. Any sign similar to traffic or directional signs and thus potentially confusing to pedestrians or motorists.
- H. Any sign illuminated in such a manner as to throw light directly onto any street, adjacent property, or upward towards the sky. Illumination which has the specific purpose of outlining any part of a building such as a gable, roofline, sidewalk, or corner, is prohibited by this section.
- I. Any flashing lights, intermittent lighting, or changing lighting or lettering.
- J. Any signs affixed to the roof of any structure in such a way as to project above or beyond the roofline.
- K. Signage which emits odor, vapor, smoke, sound or noise.
- L. Signs placed in the public right-of-way, including signs placed on utility poles.
- M. Signs which contain statements, words, or pictures of an obscene, indecent, or immoral character, such as will offend public morals or decency.

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N. Portable or mobile signs except as may be permitted in section 127-32.16 of this ordinance.

O. Signs attached to fences, trees, utility poles, rocks or other parts of a natural landscape, or in a position that will obstruct or impair traffic or in any manner create a hazard or disturbance to the health, safety and welfare of the general public.

§ 127-31.1 Special Exceptions.

Upon application, the Zoning Board of Adjustment may grant a Special Exception for size, number or location of signs in all districts provided that in the Board's sole discretion it finds that the conformation, location or distance from the highway of the premises would permit such special exceptions within the spirit of this ordinance. In addition to § 127-41 (E), all such signs in all districts should be reviewed by the Planning Board for the purposes of aesthetics and to remain within the spirit of the ordinance.

§ 127-31.2 Historic District (Amended by ATM 3-13-2007 by Art.5)

All signs to be placed in the Historic District, whether permit is required or whether permit is not required, by the provisions of this ordinance must be approved and their placement approved by the Historic District Commission prior to placement and construction and prior to application for any other permit required by this ordinance.

Historic District Commission review is to ensure the appropriateness or the placement, design, size, color and execution of signs within the Historic District so that they are visually compatible with structures and environment in the area.

1. Any proposed sign, sign structure or existing sign to be changed in size, color, or lettering, and other similar attributes is subject to approval by the Historic District Commission. The following are required for application to the Historic District Commission:
 - a. A detailed, to scale drawing showing the type of lettering, all dimensions and colors;
 - b. A description of materials to be used and methods of illumination, if any; and
 - c. A plan showing the sign's location on the building or property.

§ 127-32 Signs Which Do Not Require a Permit. [Amended by ATM 3-14-2006 by Art. 12]

The following types of signs do not require a permit, but which nevertheless must comply with the provisions of this chapter (especially height, set back and other restrictions).

1. Resident Identification Sign: Signs not exceeding three (3) square feet in area and bearing only property numbers, postal numbers, names and professions of occupants, or other, similar information.
2. Window Signs: In the Business or Industrial Districts shall not require a sign permit, provided that the aggregate display surface covers no more than twenty-five percent (25%) of the window or door on which they are placed. Such signs shall not be illuminated other than by standard lighting fixtures on the building. Window signs promoting a public service or charitable event shall not be calculated in the allowable twenty-five percent (25%).
3. Street signs in conformity with municipal or state requirements.
4. Directional signs, each no greater than four (4) square feet in area and no higher than six (6) feet off the ground, which display only information for motorists or pedestrians, such as signs indicating entrances, exits, or parking.
5. Any sign required by Federal, State, County or Local law.

6. Legal notices such as “No Trespassing” or “No Hunting” and information signs erected or required by governmental bodies.
7. Business names and directional signs, no greater than three (3) located over or adjacent to doorways.
8. Signs located on rolling stock of licensed common carriers or registered motor vehicles fit for highway use and not used to defeat the spirit of this ordinance.
9. National, State, Provincial or Religious Flags, EXCEPT when used in such a manner or in such quantity as to draw attention to a commercial enterprise. No unrelated message may be used or attached to such a flag.
10. Political signs erected in conjunction with an election may be erected not more than four (4) weeks prior to the election and must be removed within two (2) days following the election.
11. Flags, usually 3 feet by 5 feet in size and usually red, white and blue in color, and solely containing one word such as open, antiques, food, or restaurant are permitted. Properties are limited to one flag unless the property is located on a corner and has two (2) sides on a public way in which case the property may use two (2) flags.
12. Signs no more than two (2) and each not to exceed six (6) square feet listing agricultural or horticultural products grown or produced by the resident seller, in season, for such operations as farm stands or Christmas tree sales.
13. Signs no greater than two (2) square feet in area and containing messages such as Open, Closed, Vacancy, No Vacancy and credit card, telephone, restroom, gasoline prices, and other similar informational messages.
14. Signs for construction in progress: One sign not greater than thirty (30) square feet, identifying the owner, contractor, architect or developer, to be erected not more than fourteen (14) days before construction begins and removed within thirty (30) days of completion or occupancy.
15. FOR RENT or FOR SALE signs meeting the following requirements:
 - (a) Must be placed by the property owner or licensed real estate broker or his/her agent.
 - (b) One sign, including off premise directional informational may be used in conjunction with specific property and with written permission of the owner of the property on which the sign located.
 - c. Signs not to exceed six (6) square feet in area.
 - d. Such signs as referred to in this section shall be removed within 10 days of transfer of title or the signing of a lease or rental agreement.
16. Temporary Signs: are signs that advertise special events erected subject to the following conditions:
 - (a) Charitable or community events or special commercial promotions, temporary signs may be erected on the premises of the person or organization conducting the event not earlier than three (3) weeks prior to an event and must be removed not later than two (2) days following the event. An organization may not have temporary signs in place for more than fifty (50) days in any calendar year.
 - (b) Temporary signs deemed to be in the public interest may be placed on Town property upon application to and approval by the Board of Selectmen.

(c) Temporary signs may not exceed the maximum size or maximum height permitted in the district in which they are placed.

(d) Daily Special Signs: May be placed on the premises only during open business hours and may not be larger than 3' x 4'.

17. Accessory signs such as “open, closed, sale and the like”, not exceeding three(3) square feet in area, and which are attached to signs for which permits have been issued.

18. Yard Sale and private owner merchandise sale signs for garage sales, tag or estate sales, and auctions, not exceeding four (4) square feet of sign surface area for a period not exceeding 7 days.

**§127-33 Signs Permitted in General Business and all Industrial Districts.
[Amended by ATM 3-14-2006 by Art. 12]**

Any principal use permitted in the Business or Industrial Districts may erect a sign or signs subject to the following:

A. Exterior Sign: Except as may otherwise be provided, one (1) exterior sign shall be permitted for each business, not including directional or informational signs. The exterior sign may be a wall sign or individual letter sign.

B. Wall Sign or Individual Letter Sign: A wall sign or individual letter sign on the exterior of the first floor of a building shall not exceed in area of one (1) square foot for each linear foot of the wall or forty (40) square feet in width, whichever is less. The length of signs of businesses occupying other than the first floor of a building shall not exceed eight (8) feet. No portion of a wall sign or individual letter sign shall project over the face of the building.

C. Secondary Signs: If a business has a direct entrance into the business in a wall other than the front wall, there may be a secondary sign affixed to such wall, and if the business has a wall, other than the front wall, that faces upon a street or parking area, there may be a secondary sign affixed to such wall whether or not such wall contains an entrance to the business; provided, however, that no business shall have more than two (2) secondary signs in any event. The total display surface of any secondary sign shall not exceed six (6) square feet.

D. Directory Signs: One (1) exterior directional sign listing the name and location of the occupants of the premises may be erected on the exterior wall of a building at each entrance or other appropriate location, provided that the display area shall not exceed one (1) square foot for each occupant identified on the directory sign.

E. Directional Signs: Directional signs may be erected near a street, driveway, or parking area if necessary for the safety and direction of vehicular or pedestrian traffic. The display area of each directional sign shall not exceed eight (8) square feet, and no directional sign shall be located more than six (6) feet above ground level if mounted on a wall of a building or more than three (3) feet above the ground if freestanding. Directional signs shall not advertise, identify, or promote any product, person, premises or activity, but may identify the street name/number and provide traffic directions.

F. Freestanding Business Signs:

1. One (1) freestanding business sign which identifies only the name of a business center or a business may be erected on a lot. The display area of a freestanding business sign shall not exceed thirty-two (32) square feet, and the height shall not exceed twelve (12) feet, provided that the sign has a seven (7) foot lift. Freestanding business signs shall be permitted in the Village Center Business District provided they are not larger than twelve (12) square feet in area and have been approved by the Historic District Commission.

2. A single business, single building, which is located on a corner lot may have 2 signs facing each public view. The total area for each sign is not to exceed thirty-two(32) square feet.

3. A group of 2 or more businesses and/ or industrial building may have one sign per entrance from a public road. Each sign is limited to a maximum of thirty-two (32) square feet of sign surface area and must be free standing. Individual occupants with a building or collection of buildings may have, in addition, one (1) sign with up to six (6) square feet of sign surface area per occupant on the exterior of the building. In addition to the above, each individual occupant may have one (1) sign with up to two (2) square feet of sign surface area at its rear entrance.

F. Freestanding Business Signs Table (Added by ATM 3-13-2007 by Art.5)

Table of Maximum Sign Dimensions

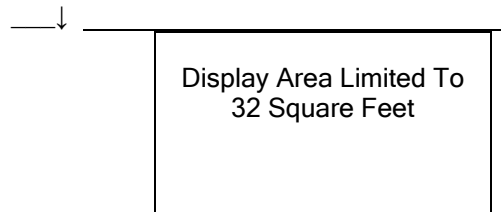
District	Building Signs		Free Standing Signs
Village Center Bus. General Business Light Industrial General Industrial	First Floor *40 square feet ↓	Other than first floor **40 square feet ↓	32 square feet ↓
Rural Residential	4 square feet ↓	4 square feet ↓	4 square feet ↓

*Not more than 1 sq.ft. of total signage area permitted per lineal foot of store front up to 40 sq.ft.

** Maximum length is 8 ft.

Free Standing Signs - Non residential

Maximum Height is 12 feet ground to top of sign

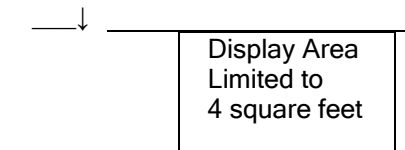


12 feet



Free Standing Signs - Residential

Maximum Height is 5 feet ground to top of sign



5 feet



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§ 127-33.1 Signs Permitted in All Districts. [Amended by ATM 3-14-2006 by Art. 12]

Signs identifying Home Occupations or other similar uses allowed under the terms of the zoning ordinance.

Only one (1) sign per premise, not to exceed four (4) square feet in area and maximum height is five (5) feet above surrounding ground level. All such signs are subject to any restrictions as to lighting etc. provided such signs conform in all other respects to the provisions of this chapter. All Home Occupation signs within the Historic District are subject to Historic District Commission approval.

§ 127-33.2 Hanging Signs.

The Board of Selectmen may permit a hanging sign instead of a wall or freestanding sign in such places and situations where such a sign would not interfere with safety or aesthetics.

§ 127-33.3 Amendment.

This ordinance was adopted by the Town of Fitzwilliam at Town Meeting, March 9, 1999 after public hearing by the Planning Board. It may be amended in accordance with the provisions of the State of New Hampshire Revised Statutes Annotated (RSA 675:3 and 4).

§ 127-33.4 Severability.

The invalidity of any provision of this ordinance shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this ordinance.

**ARTICLE VIII
Nonconforming Lots, Uses, Structures and Parking**

§ 127-34 Nonconforming Lots.

In any district, notwithstanding limitations imposed by other provisions of this chapter, a single lot legally in existence at the effective date of the adoption of this chapter may be built upon, provided that:

- A. Such lot must be in separate ownership and not contiguous with any other such lots in the same ownership or must be shown on a subdivision plat which has been approved under the duly constituted authority of the Fitzwilliam Planning Board.
- B. Yard requirements for other dimensions not involving area, depth or frontage of the lot shall conform to the provisions of this chapter for the district in which the lot is located.
- C. It shall be demonstrated to the satisfaction of the Board of Selectmen or their duly authorized agent that the lot can be used without hazard to the public health, safety and welfare and that adequate provisions have been made for water supply and wastewater disposal. The submittal of an approved septic system design and approval for construction issued by the New Hampshire Water Supply and Pollution Control Commission shall be deemed satisfactory evidence that this condition has been met.
- D. If two (2) or more contiguous, undeveloped lots, not part of the subdivision approved by the Fitzwilliam Planning Board, are in single ownership at the time of the passage or amendment of this chapter, and if each or any of the lots does not meet the minimum requirements for lot area, depth and/or frontage as established by this chapter, the lands involved shall be considered to be a single parcel for the purpose of this chapter, and no portion of said parcel shall be used or sold which does not meet the lot area, depth or frontage requirements established herein, nor shall any division of the parcel be made which leaves remaining lot area, depth or frontage below the requirements stated in this chapter.

§ 127-35 Nonconforming Uses.

- A. Continuation of Existing Use. See the requirements of the Zoning Act, RSA 672-677.
- B. Changing a Nonconforming Use. A nonconforming use may be changed to another nonconforming use by Special Exception from the Board of Adjustment, provided that the Board of Adjustment finds that the proposed use is more or equally in harmony with the character of the neighborhood and the applicable requirements of the zoning district than the existing use. **(Amended by STM 11-1-1989 by Art. 9)**
- C. Extending a Nonconforming Use. A nonconforming use may be extended in area by Special Exception from the Board of Adjustment. **(Amended by STM 11-1-1989 by Art. 9)**
- D. Abandonment. A nonconforming use which is abandoned shall not be resumed. A nonconforming use shall be considered abandoned:
 - (1) When a nonconforming use has been replaced by a conforming use;
 - (2) When a nonconforming use is discontinued for a period of one (1) year or more; or
 - (3) When a nonconforming use has been changed to another nonconforming use by Special Exception from the Board of Adjustment. **(Amended by STM 11-1-1989 by Art. 9)**

§ 127-36 Nonconforming Structures.

- A. Continuation of Existing Structure. The requirements of RSA 672-677 shall apply.
- B. Changing a Nonconforming Structure. A nonconforming structure may be altered, reconstructed, extended or structurally changed, provided that such alteration, reconstruction, extension or structural change conforms to all the dimensional requirements of this chapter.
- C. Restoration. If a nonconforming structure is damaged by fire, flood or similar disaster to an extent greater than fifty percent (50%) of its fair market value before it was damaged, it shall not be rebuilt or reconstructed without a Special Exception from the Board of Adjustment. No such special exception shall be granted unless the Board of Adjustment finds that:
 - (1) Such rebuilding or reconstruction will not be detrimental to the neighborhood; and
 - (2) To the extent possible, the structure will be rebuilt or reconstructed in conformity with the dimensional requirements of this chapter. **(Amended by STM 11-1-1989 by Art. 9)**

§ 127-37. Nonconforming Parking.

This chapter shall not be deemed to prohibit the continued use of any land or structure that is nonconforming with respect to parking requirements.

**ARTICLE IX
Administration**

§ 127-38 Board of Adjustment.

The Town of Fitzwilliam Board of Adjustment is hereby designated as the Board of Adjustment required by the Zoning Act of RSA 672-677. The Board of Adjustment shall act on all matters over which it has jurisdiction and in the manner prescribed by the following provisions:

- A. To hear and decide appeals if it is alleged that there is error in any order, requirement, decision or determination made by any administrative official in the enforcement, administration or interpretation of this chapter.
- B. To hear and decide applications for Special Exceptions except as otherwise provided in this chapter. **(Amended by STM 11-1-1989 by Art. 9)**
- C. To hear and decide petitions for Variances from this chapter.
- D. To hear and decide applications for Equitable Waiver of Dimensional Requirements. **(Added by ATM 3-14-2000 by Art. 2)**

§ 127-39 Construction Permit.

- A. No construction permit shall be issued unless the construction, alteration, or relocation for which the construction permit is sought complies with the provisions of this chapter. Upon passage of this chapter, it shall be unlawful to erect or relocate any building or structure or to alter any building or structure without first obtaining a permit from the Board of Selectmen or its duly authorized agent.
- B. Application. Any application for a construction permit shall be accompanied by:
 - (1) A description of the existing and the proposed use of land or structures on the development site.
 - (2) A plan drawn to scale and prepared by a registered professional engineer or a registered land surveyor, as appropriate to the data, showing the dimensions of the development site, the location and dimensions of all existing and proposed structures and the dimensions of all setbacks.
 - (3) Such further information as the Code Enforcement Officer may require to ensure enforcement of this chapter. The Code Enforcement Officer may waive the requirements of the preceding sentence if the Officer determines that the proposed work is of a minor nature.

§ 127-39.1 Growth Management Ordinance (Added by ATM 3-8-2005 by Article 7)

- A. Authority. This ordinance is enacted in accordance with RSA 674:22.
- B. Purpose. The purpose of this Growth Management Ordinance is as follows:
 - (1) Manage orderly growth and regulate and control the timing of development in Fitzwilliam, in coordination with the Master Plan and the Capital Improvement Program.
 - (2) Determine, monitor, evaluate and establish a rate of residential growth in the Town that does not unreasonably interfere with the Town's capacity for planned, orderly, and reasonable expansion of its services to accommodate such growth.

(3) Provide a mechanism to reduce the rate of residential growth to allow the Town time to correct any deficiencies that have developed, when school and municipal services or facilities are strained or overloaded.

C. Findings.

**SUMMARY OF FINDINGS OF FACT
AS ADOPTED BY THE FITZWILLIAM PLANNING BOARD ON JANUARY 18, 2005**

(1) Planning.

a) In public forums and town meeting votes, residents of Fitzwilliam have expressed a desire to maintain the Town's rural character and protect its natural resources.

(b) Many good planning measures have been adopted in the past, but Fitzwilliam is experiencing a period of unprecedented residential growth that threatens to undermine the desired objectives of Town residents.

(2) Population.

(a) Fitzwilliam's population is projected to grow 6% from 2000 to 2005, which is the same rate the Town grew in the ten years from 1990 to 2000.

(b) The abutting town of Troy experienced a negative population growth rate, -6.4%, from 1990 to 2000.

(c) Fitzwilliam's population is projected to grow 10.7% from 2000-2010, which is significantly higher than the 7.2% average growth rate of the four abutting New Hampshire towns.

(d) Fitzwilliam had more than double the population density (62.8 persons per square mile of land area) of the abutting town of Richmond (29.2) in 2003.

(3) Housing.

(a) From 1990-2000, Fitzwilliam experienced a 4.2% growth in housing, which is in sharp contrast with the average growth rate of -0.9 for the four abutting New Hampshire towns.

(b) The average number of building permits issued per year for new residential construction from 2000-2003 is more than double the average from 1990-1999.

(4) Services.

(a) Monadnock Regional Junior & High School has a student population of 1296. It was originally designed to accommodate 900 students.

(b) 73% of the current tax rate is allocated to education funding, a 26% increase since 2000.

(5) Regional Issues.

(a) The abutting Town of Rindge has adopted a Growth Management Ordinance, which is forcing developers to look for alternative building sites.

(b) The nearby Massachusetts towns of Winchendon and Gardner have also adopted Phased Growth By-laws.

D. Applicability.

(1) This ordinance applies to building permits for new residential dwelling units, as well as repair, replacement, reconstruction, or alteration of existing seasonal dwelling units if the proposed work will convert the unit for year-round residency.

(2) This ordinance does not apply to non-residential building permits or permits for expansion or alteration of existing year-round or seasonal structures as long as there is no increase in the number of year-round dwelling units.

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

(4) Any renewal of a building permit issued prior to the effective date of this ordinance shall be included in the growth management limitation on building permits in effect at the time of renewal.

E. Administration.

(1) The Planning Board and the Board of Selectmen are hereby authorized to establish administrative procedures necessary to implement this ordinance. All such procedures shall be posted.

(2) The baseline data for developing housing unit counts in Fitzwilliam and the four abutting New Hampshire towns is the 2000 United States Census. The four abutting New Hampshire towns are Rindge, Jaffrey, Richmond, and Troy. The Board of Selectmen will be responsible for reporting building permit data for Fitzwilliam and the four abutting towns required for the application of this ordinance.

(3) The Planning Board, at its first regularly scheduled meeting in February of each year, will report on the number of building permits issued for the previous calendar year for all residential dwelling units in Fitzwilliam and the four abutting towns. In addition, the Planning Board will report on the overall annual average percent increase in residential dwelling units for the four abutting towns, as well as Fitzwilliam, for the previous calendar year.

The percent increase in residential dwelling units will be calculated by dividing the number of permits issued for new residential dwelling units in a town in the previous calendar year by the number of residential units that existed in that town at the end of the year prior to the previous calendar year, and expressing the result of that calculation as a percent. The percentages calculated in this section will be used in Section F.1 to determine the number of building permits to be issued in the current calendar year for new residential dwelling units.

F. Equitable Allocation of Available Permits.

(1) The Planning Board, at its first regularly scheduled meeting in February of each year, will determine the number of building permits available for the calendar year by multiplying the previous year's overall average percent increase in residential dwelling units in the four New Hampshire towns abutting the Town of Fitzwilliam (as determined in Section E.3) by the Town's housing unit base at the conclusion of the immediate past calendar year. This number shall be rounded to the nearest whole number. However, the maximum number of building permits available in each calendar year shall not be greater than either:

(a) The average number of permits issued in Fitzwilliam over the previous five years, or

(b) The average number of permits issued in the four abutting New Hampshire towns over the previous five years.

All numbers shall be rounded to the nearest whole number.

(2) Within one week of the Planning Board's first regularly scheduled meeting in February of each year, the Planning Board will post a notice in the Town of the number of building permits allowed for that calendar year for the construction of new dwelling units. Building permits will issue as soon as possible thereafter according to the provisions of this ordinance.

(3) The Town shall issue building permits for new dwelling units on a "first come-first served" basis, subject to the limitations set forth herein. In the event that the applications exceed the annual limitation determined in Section F.1. of this ordinance, those applications on the waiting list will be honored in January of the following year in chronological order, and will be counted toward the allowed total for that year.

(4) A person may apply for a building permit for a new dwelling unit at any time. The Town shall maintain a waiting list of all applications, and applicants shall be placed on a waiting list in chronological order, based on the date and time of receipt of the completed application at the Town Office.

(5) To ensure equitable distribution of available permits, no single individual, partnership, corporation, or other legal entity or its related or affiliated entities, or in the case of real persons, their immediate relatives or persons associated in business, may receive more than five (5) permits during any given calendar year. However, after December 1, surplus permits may be issued to such individuals, partnerships, corporations or other legal entities if there is no other applicant remaining on the waiting list. Entities created or individuals used for the purpose of evading the limitations of this ordinance shall not be considered separate entities or individuals.

(6) In order to be complete, building permit applications must be for lots approved by the Fitzwilliam Planning Board and registered in the Cheshire County Registry of Deeds, or lots of record also registered in the Cheshire County Registry of Deeds.

(7) Notwithstanding the aforesaid "first come-first served" policy, forty-five (45) percent of the available permits for the first calendar year this ordinance is in effect shall be reserved for owners of single lots of record or lots that are not part of a sub-division containing more than three (3) lots, provided that the building is intended to be the lot owner's permanent residence. The percent in the previous sentence will be recalculated each year in February by determining, for the previous three (3) years, the percent, of total building permits that were issued to owners of single lots of record or sub-divisions containing three (3) lots or less. The average of these percentages for the previous three (3) years, rounded to the nearest whole number, will replace the number 45 percent in the first sentence of this paragraph for the current calendar year.

(8) Permits issued shall expire and be returned to the pool of available permits in the event that substantial construction, meaning foundation and stick framing or equivalent, has not occurred within one year of issue. A renewal application must then be filed with the Board of Selectmen.

(9) A residential building permit approved under this ordinance shall be valid only for the site specified on the permit application. Should the property be conveyed, the permit shall run with the land, but the expiration date shall remain unchanged.

G. Exceptions.

(1) Bona fide, permanent affordable housing, as defined by the US Department of Housing and Urban Development and elderly housing as defined by NH RSA 354-A:15, Housing for Older Persons, may be excluded from this ordinance upon a finding by the Planning Board that the

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proposed project does provide such housing and provided said proposed housing complies in all other regards with the Fitzwilliam Zoning Ordinance and other applicable regulations.

(2) In the event of damage, destruction, or demolition of any dwelling, the dwelling may be rebuilt, provided that such construction does not result in any additional dwelling unit.

H. Surplus Permits.

If on December 31st of any year there are available building permits for new dwellings that have not been applied for, the surplus of that year shall not be utilized or added into the annual limitation for the following year.

I. Severability.

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

J. Conflicts.

In matters governed by this ordinance, this ordinance shall supersede conflicting local ordinances and regulations.

K. Effective Dates. (Amended by ATM 3-13-2007 by Art.4)

This ordinance amendment becomes effective upon adoption. The Planning Board shall annually review the need for the ordinance, including but not limited to population growth in the region and regional and community development, and send a status report to the Board of Selectmen by January 1 of each year the ordinance is in effect concerning growth and the progress Fitzwilliam has made toward improving its capital facilities. Findings will be updated with census figures as available. If the Planning Board finds that the capital facilities needs have been resolved, then it shall make a recommendation for rescission of this ordinance. However, if any school in the Monadnock Regional School District attended by Fitzwilliam students is at an enrollment of 90%, or greater, of the capacity of that school, as determined by the Monadnock Regional School District School Board, then the Planning Board may recommend continuance of the Ordinance.

L. Enforcement.

The Board of Selectmen shall be responsible for the enforcement of this ordinance.

M. Appeal.

Unless otherwise specified in this Ordinance, any decision under the Growth Management Ordinance may be appealed in the same manner provided by statute for appeals for the officer or Board making that decision, as set forth in RSA 676:5, RSA 677: 2-14 and RSA 677:15.

§ 127-40 Certificate of Occupancy Required. (Amended by ATM 3-12-2002 by Art. 3)

No newly constructed building or addition to an existing building, may be used or any new building changed in use until a Certificate of Occupancy is issued by the Board of Selectmen and their duly authorized agent.

A use legally existing at the time of passage of this chapter shall not be deemed to require a Certificate of Occupancy under this article until such time as the use of the structure is changed or expanded.

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A Certificate of Occupancy will be issued upon compliance with the following requirements, as determined by the Board of Selectmen or their duly authorized agent:

- A. The building and/or proposed use is in compliance with the Fitzwilliam Land Usage Code and, if applicable, any Special Exception or Variance to the same.
- B. The requirements incorporated in the Construction Permit have been met.
- C. Any and all conditions imposed by the Planning Board during Site Plan Review or Subdivision have been met.
- D. The structure is ready for occupancy in regard to being weather tight with heating, electricity, and plumbing installed, if applicable.

The Board of Selectmen may issue a conditional Certificate of Occupancy if they deem it is in the best interest of the Town.

§ 127-41 Special Exception Required for Certain Uses. (Amended by STM 11-1-1989 by Art. 9; Amended by ATM 3-9-1999 by Art. 4)

Certain uses are designated in this chapter as requiring a Special Exception. The Board of Adjustment is hereby designated to grant such Special Exceptions where authorized by this chapter in accordance with the standards set out herein.

- A. Rules, Regulations and Fees. The Board of Adjustment shall adopt and from time to time amend rules and regulations not inconsistent with the provisions of this chapter or RSA 672-677 or other applicable provisions of town ordinances and shall file a copy of said rules and regulations with the Town Clerk. Such rules shall prescribe as a minimum the size, form, contents, style and number of copies of plans and specifications, the Town Boards or Agencies from which the Board of Adjustment shall request written reports and the procedure for the submission and approval of such Special Exceptions. The Board of Adjustment may adopt and from time to time amend fees sufficient to cover reasonable costs incurred by the town in the review and administration of special permits.
- B. Application. Any person who desires to obtain a Special Exception shall submit a written application therefore to the Board of Adjustment. Each application shall be accompanied by the information required by the Board of Adjustment.¹³
- C. Reports from Town Boards or Agencies. The Board of Adjustment shall transmit forthwith a copy of the application and plan(s) to other Boards, Departments or Committees as it may deem necessary or appropriate for their written reports. Any such Board or Agency to which petitions are referred for review shall make such recommendation or submit such reports as it deems appropriate and shall send a copy thereof to the Board of Adjustment and to the applicant. Failure of any such Board or Agency to make a recommendation or submit a report within fifteen (15) days of receipt of the petition shall be deemed a lack of opposition.
- D. Public Hearing and Decision. The Board of Adjustment shall hold a Public Hearing no later than thirty (30) days after the filing of an application. The Board of Adjustment shall have the power to continue a Public Hearing under this Article if it finds that such continuation is necessary to allow the petitioner or applicant to provide information of an unusual nature and which is not otherwise required as part of the Special Exception application. The Board of Adjustment shall issue a decision no later than fourteen (14) days following the close of the hearing.

¹³ Editor's Note: See "Instructions for Appeal to the Zoning Board of Adjustment" located in the Town Offices.

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- E. **Mandatory Findings by the Board of Adjustment.** The Board of Adjustment shall not issue a Special Exception unless, without exception, it shall find that the proposed use:
 - (1) Is in harmony with the purpose and intent of this chapter.
 - (2) Will not be detrimental or injurious to the neighborhood in which it is to take place.
 - (3) Is appropriate for the site in question.
 - (4) Complies with all applicable requirements of this chapter.
 - (5) With respect to dimensional requirements establishes that there exist special conditions that make the meeting of these requirements unduly burdensome.

- F. **Special Exception Conditions.** The Board of Adjustment may impose such conditions, safeguards and limitations as it deems appropriate to protect the neighborhood or the town, including but not limited to:
 - (1) Dimensional requirements greater than the minimum required by this chapter.
 - (2) Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, plantings or other devices.
 - (3) Modification of the exterior features or appearance of the structure(s).
 - (4) Limitation of size, number of occupants, method and time of operation, and extent of facilities.
 - (5) Regulation of number, design and location of access drives, drive-up windows and other traffic features.
 - (6) Requirement of off-street parking and other special features.
 - (7) Requirement for performance bonds or other security.
 - (8) Installation and certification of mechanical or other devices to limit present or potential hazard to human health, safety, welfare or the environment resulting from smoke, odor, particulate matter, toxic matter, fire or explosive hazard, glare, noise, vibration or any other objectionable impact generated by any given use of land.

- G. **Time Limitation on Special Exception.** A Special Exception shall lapse if a substantial use thereof has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause within a period of time to be specified by the Board of Adjustment, not to exceed one (1) year from the date of grant thereof.

- H. **Effective Date of Special Exception.** No Special Exception or any modification, extension or renewal thereof shall take effect until a copy of the Notice of Decision has been recorded with the Town Clerk. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that, if such an appeal has been filed, it has been dismissed or denied.

§ 127-42 Variances.

A Variance from the specific requirements of this chapter, including a variance authorizing a use not otherwise permitted in a particular land use district, except uses prohibited in § 127-13, may be authorized by the Board of Adjustment.

- A. Rules, Regulations and Fees. The Board of Adjustment shall adopt and from time to time amend rules and regulations, not inconsistent with the provisions of this chapter or RSA 672-677 or other applicable provisions of the town ordinances, and shall file a copy of said rules and regulations with the Town Clerk. Such rules shall prescribe, as a minimum, the size, form, contents, style and number of copies of plans and shall prescribe, as a minimum, the size, form, contents, style and number of copies of plans and specifications, the Town Boards or Agencies from which the Board of Adjustment shall request written reports and the procedure for submission and approval of such permits. The Board of Adjustment may adopt and from time to time amend fees sufficient to cover reasonable costs incurred by the Town in the review and administration of Variances.
- B. Application. Any person who desires to obtain a Variance from the requirements of this chapter shall submit a written application to the Board of Adjustment on a form prescribed by the Board of Adjustment.
- C. Reports from Town Boards or Agencies. The Board of Adjustment shall transmit forthwith a copy of the application and plan(s) to other Boards, Departments or Committees as it may deem necessary or appropriate for their written reports.
- D. Public Hearing and Decision. The Board of Adjustment shall hold a public hearing no later than thirty (30) days after the receipt of an application by the Clerk of the Board of Adjustment. The Board of Adjustment shall have the power to continue a public hearing under this section if it finds that such continuance is necessary to allow the petitioner or applicant to provide information of an unusual nature and which is not otherwise required as part of the Variance application. The Board of Adjustment shall issue a decision on such Variance no later than fourteen (14) days following the conclusion of the public hearing. **(Amended by STM 11-1-1989 by Art. 5)**
- E. Mandatory Findings. Before granting any Variance from the provisions of this chapter, the Board of Adjustment shall make specific findings that all of the following conditions are present: **[Amended by ATM 3-14-2006 by Art. 14]**

For Area Variances:

- (1) There would not be a diminution in value of surrounding properties as a result of granting this variance.
- (2) The granting of this variance would not be contrary to the public interest.
- (3)(a) An area variance is necessary in order to allow the applicant to use the property as proposed because of the special conditions of the property.
- (3)(b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden.
- (4) By granting this variance substantial justice would be done.
- (5) The use contemplated by the applicant as a result of obtaining this variance would not be contrary to the spirit of the ordinance.

For Use Variances:

- (1) There would not be a diminution in value of surrounding properties as a result of granting this variance.
- (2) The granting of this variance would not be contrary to the public interest.
- (3)(a) The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property within its environment.

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(3)(b) There is not a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property.

(3)(c) The variance would not injure the public or private rights of others.

(4) By granting this variance substantial justice would be done.

(5) The use contemplated by the applicant as a result of obtaining this variance would not be contrary to the spirit of the ordinance.

F. Variances in the Floodplain Overlay District. **(Added by ATM 3-12-1996 by Art. 3)**¹⁴

(1) For Variances sought in connection with § 127-15, Floodplain Overlay District, the applicant shall have the burden of showing also that:

- (a) The Variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense.
- (b) 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) The Variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) The Zoning Board of Adjustment shall notify the applicant in writing that:

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 twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage and 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. The community shall maintain a record of all Variance actions, including the justification for their issuance, and report such Variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

G. Conditions and Safeguards. The Board of Adjustment may impose such conditions, safeguards and limitations as it deems appropriate upon the grant of any Variance.

H. Time limitations on Variance. Any rights authorized by a Variance which are not exercised within one (1) year from the date of grant of such Variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this section.

I. Effective Date of a Variance. No Variance or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the office of the Town Clerk. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that, if such an appeal has been filed, it has been dismissed or denied.

§ 127-43 **Equitable Waiver of Dimensional Requirements. (Added by ATM 3-14-2000 by Art. 2)**

A Waiver of Dimensional Requirements of this chapter may be authorized by the Board of Adjustment. The Board may grant an Equitable Waiver only for existing dimensional nonconformities provided the applicant can meet the required standards.

¹⁴ Editor's Note: This Article also provided for the redesignation of former Subsection F as Subsection G. Subsections G and H were subsequently redesignated as Subsection H and I, respectively.

When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance, enacted pursuant to RSA 674:16, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an Equitable Waiver from this requirement, if and only if the Board makes certain mandatory findings as listed in paragraph E. below.

Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An Equitable Waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to grant the correctness of plans reviewed by them or property inspected by them.

- A. **Rules, Regulations and Fees.** The Board of Adjustment shall adopt and from time to time amend rules and regulations not inconsistent with the provisions of this chapter or RSA 672-677 or other applicable provisions of Town ordinances and shall file a copy of said rules and regulations with the Town Clerk. Such rules shall prescribe as a minimum the size, form, contents, style and number of copies of plans and specifications, the Town Boards or Agencies from which the Board of Adjustment shall request written reports and the procedures for submission and approval of such Equitable Waivers. The Board of Adjustment may adopt and from time to time amend fees sufficient to cover reasonable costs incurred by the Town in the review and administration of such permit.
- B. **Application.** Any person who desires to obtain a dimensional waiver from the requirements of this chapter shall submit a written application to the Board of Adjustment on a form prescribed by the Board of Adjustment.
- C. **Reports from Town Boards or Agencies.** The Board of Adjustment shall transmit forthwith a copy of the application and plan(s) to other Boards, Departments, or Committees as it may deem necessary or appropriate for their written reports.
- D. **Public Hearing and Decision.** The Board of Adjustment shall hold a public hearing no later than thirty (30) days after the receipt of an application by the Clerk of the Board of Adjustment. The Board of Adjustment shall have the power to continue a public hearing under this section if it finds that such continuance is necessary to allow the petitioner or applicant to provide information of an unusual nature and which is not otherwise required as a part of the Equitable Waiver application. The Board of Adjustment shall issue a decision no later than fourteen (14) days following the close of the hearing.
- E. **Mandatory Findings.** Before granting any Equitable Waiver for Dimensional Requirements, the Board of Adjustment shall upon application by and with the burden of proof on the property owner, grant an Equitable Waiver from the requirement, if and only if the Board makes all of the following findings:
 - (1) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
 - (2) That the violation was not the outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

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- (3) That the physical dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (4) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

In lieu of the findings required by the Board under subparagraphs E (1) and (2), the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

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**ARTICLE X
Enforcement**

§ 127-44 Enforcement; Penalties for Offenses.

The Selectmen of the Town of Fitzwilliam are hereby designated as the officers charged with the enforcement of this chapter.

- A. Enforcement Action. The Selectmen, upon a written complaint of any citizen of Fitzwilliam or owner of property within Fitzwilliam or upon such Selectmen’s own initiative, shall institute any appropriate action or proceedings in the name of the Town of Fitzwilliam to prevent, correct, restrain or abate violation of this chapter. In the case where the Code Enforcement Officer is requested, in writing, to enforce this chapter against any person allegedly in violation of the same and the Code Enforcement Officer declines to act, the Code Enforcement Officer shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.
- B. Fine. Violation of this chapter shall be punishable by a fine of one hundred dollars (\$100.00) for each offense. Each day that such violation continues shall constitute a separate offense.

Violations of the sign ordinance within this chapter shall be punishable by a fine of ten dollars (\$10.00) for each offense. Each day that such violation continues shall constitute a separate offense. **[Amended by ATM 3-14-2006 by Art. 13]**

§ 127-45 Effect on other Laws and Regulations.

This chapter shall not be construed to authorize the use of any land or structure for any purpose that is prohibited by any other provision of the Revised Statutes Annotated or by any other bylaw, rule or regulation of the town, nor shall compliance with any such provision authorize the use of any land or structure in any manner inconsistent with this chapter, except as required by the Revised Statutes Annotated.

§ 127-46 Severability.

The invalidity of one (1) or more sections, subsections, sentences, clauses, or provisions of this chapter shall not invalidate or impair this chapter as a whole or any other part thereof.

§ 127-47 Supersession of previous rules an regulations.

Upon acceptance, this chapter will supersede all previous rules and regulations pertaining to Land Use Bylaws in the Town of Fitzwilliam.