

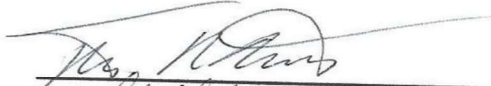
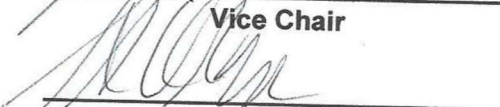

# ZONING ORDINANCE



## TOWN of MIDDLETON, NH

Approved: January 9, 2017

Adopted: March 11, 2017

 _____ Vice Chair	<u>11/9/17</u> Date
 _____ Member	<u>11-9-17</u> Date
 _____ Member	<u>11-9-17</u> Date
_____ Ex Officio	_____ Date

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## **ARTICLE 1 – TITLE**

This document shall be referred to as “Town of Middleton, NH Zoning Ordinance, as amended.”

## **ARTICLE 2 - PURPOSE AND AUTHORITY**

In accordance with the authority conferred by the New Hampshire Revised Statutes Annotated (RSA) 674:16, 17 as amended, and for the purpose of promoting the health, safety, morals, orderly, growth and general welfare of the Town, the following Ordinance is hereby enacted by the voters of the Town of Middleton, New Hampshire, in official Town Meeting convened.

The purpose of this ordinance further being to lessen congestion in the street; to secure safety from fires, panic and other dangers; to promote health and the general welfare; provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, solid waste facilities, water, sewage, schools, parks, child day care; and to assure the proper use and conservation and preservation of natural resources and other public requirements. This ordinance is constructed with consideration for the rural character of the Town and it’s suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

Additionally, it shall preserve and enhance historic New England settlement patterns. Maintaining and respecting historic building styles and rural lifestyles is encourage by preserving existing historic downtown structures and structural elements such as the Old Town Hall and historic settlement and use patterns, through new municipal and service opportunities.

## **ARTICLE 3 – OFFICIAL ZONING MAP**

The Zoning Districts identified in this Ordinance are bounded as shown on the map entitled “Zoning Map of Middleton New Hampshire,” hereinafter referred to as the “Middleton Official Zoning Map,” is located in the Middleton Municipal building and made a part of this Ordinance.

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

The Middleton Official Zoning Map for the Town is to be used to determine exact Zoning District boundaries and shall be certified as the Official Zoning Map of the Town by the Town Clerk upon adoption of this Ordinance. The certified Middleton Official Zoning Map, and any amendment that affects the Zoning Map, shall be filed with the Planning Board.

#### **ARTICLE 4 - BOUNDARIES**

A district boundary shown on the Zoning Map as approximately following the right-of-way of a road, a shoreline of a body of water, or property line, shall be construed as following such line. If the District classification of any land is in question, it shall be deemed to be in the most restricted adjoining district. The Zoning Board of Adjustment shall determine the location of a district boundary upon an appeal from an administrative decision of the Code Enforcement Officer.

#### **ARTICLE 5 – BASE ZONING DISTRICTS**

Any use not listed is not permitted, except where otherwise provided for in this article.

- A. **PURPOSE AND OBJECTIVE.** For the purpose of this Ordinance, the Town of Middleton shall be divided into the eight districts:
1. **RURAL RESIDENTIAL DISTRICT (ZONE RR):** This district includes land that shares characteristics that render it appropriate for primarily residential development, while retaining rural characteristics. The minimum lot size is 5 acres.
  2. **SUNRISE LAKE DISTRICT (ZONE SRL):** This district includes virtually all property located around Sunrise Lake. It is primarily a residential district. A primary purpose of this district is to protect the health, safety and welfare of an area surrounding the Lake, where no public sewer system exists or is proposed, yet where development has occurred on hundreds of legal lots of record that are non-conforming because of their small lot size.
  3. **RESIDENTIAL-COMMERCIAL DISTRICT/INDUSTRIAL (ZONE B-1):** This district is created to allow commercial and certain industrial uses by special exception while still allowing residential growth to occur while retaining the heritage and unique qualities of Middleton. In order to do so, this Ordinance guides development of Middleton to ensure: (1) a mix and variety of uses; (2) that development occurs in a manner which maintains the visual character and architectural scale of existing development in the district.
  4. **WETLANDS CONSERVATION DISTRICT (ZONE W):** This District shall act as an overlay zone, overlying all land in the Town.

5. **FLOOD PROTECTION DISTRICT (FP):** This District shall act as an overlay zone for those area delineated by the National Flood Insurance Program as being within the 100-year floodplain.
6. **AQUIFER PROTECTION DISTRICT (AP):** This District shall act as an overlay zone, overlying all land in the Town.
7. **SHORELAND PROTECTION DISTRICT (SP):** This District shall act as an overlay zone, overlying all land in the Town.
8. **MIDDLETON 4 CORNERS DISTRICT (M4C):** The purpose of this District is to provide a concentrated area for mixed uses in the central core of Middleton. A variety of uses in a mixed and balanced environment is encouraged to develop a village center that forms a civic focus for the rural character and quality of life servicing the community and its residents.

The Districts as established in Article 5 are shown on a map(s) on file at the Middleton Town Offices, which map(s) is made a part of this Ordinance. The map is entitled, "Middleton, New Hampshire Zoning Map – Town wide."

9. **USES PERMITTED BY SPECIAL EXCEPTION:** All uses allowed by Special Exception must meet the conditions of Article 5 of this Ordinance.

**B. GENERAL DIMENSIONAL REQUIREMENTS.**

1. Lot Size. The minimum lot size shall be **five (5) acres**, although the Planning Board may require that lots in new subdivisions be larger than **five (5) acres** based on the circumstances of the case.
2. Frontage. There shall be a **two hundred (200) foot** minimum road frontage per individual lot on a Town accepted and maintained year-round road.
3. Setbacks. Structures, excluding steps and terraces, shall be at least fifty (50) feet from a property line abutting a public or private road and at least twenty (20) feet from all other property or right-of-way lines.
4. Flood Hazard. The construction of any new building(s) or structure(s) in the Town, in the downstream area of Sunrise Lake Dam within two hundred (200) feet of either side on the brook to Silver Street is strictly prohibited.

**ARTICLE 5A - BASE ZONING DISTRICTS USES**

**A. RURAL RESIDENTIAL DISTRICT**

## 1. Permitted Uses.

- a. Single-family houses.
- b. Two-family houses.
- c. Farms and agricultural operations.
- d. Sale of products that are raised, produced and processed on the premises, provided that seasonal roadside stands must be set back at least **twenty-five (25) feet** from the adjacent public road. Year-round, permanent structures for sale of products must receive site plan approval from the Planning Board.
- e. Essential services.
- f. Back lots are allowed providing they have **five (5) acres** of area in the body of the lot, which minimum area does not include the area of the neck, or strip of land which provides frontage access. Back lots must have at least **fifty (50) feet** of frontage on a Town approved and accepted road.

## 2. Accessory Uses.

- a. Customary accessory buildings and uses.
- b. Home Businesses, according to **Article 36**
- c. Signs, according to **Article 18**

3. **Set Backs.** Structures, excluding steps and terraces, shall be at least **fifty (50) feet** from any property line abutting a public or private road and at least **twenty (20) feet** from all other property or right-of-way lines.

For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within **ten (10) feet** of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

4. **Special Exceptions.** Provided they meet the following criteria, with the approval of the Board of Adjustment and receive a site plan approval of the Planning Board.
- a. Cemeteries provided their sole access is not through a local residential street.
  - b. Churches and other buildings for the purpose of religious worship providing they are located adjacent to an arterial or collector street.



- c. Institutions for higher education, providing they are located adjacent to an arterial street.
- d. Group nursery schools or group day care center\*, provided they are located adjacent to a collector street.

\* As used here, day care center shall mean a group day care center for the care and supervision of more than **twelve (12) children**. As defined by the State of New Hampshire:

1. Group child center for the care of **thirteen (13)** or more children under the age of **five (5)**.
2. Group day care nursery for the care of **five (5)** or more children under the age of **three (3)**.
3. Family group day care (treated herein as a home business in Middleton) for the care of **seven (7) - twelve (12) children**.

- e. Police and fire stations provided they are located adjacent to an arterial street.
- f. Public and parochial schools provided they are located adjacent to an arterial street.
- g. Contractors' offices and their storage yards provided:
  1. They are located adjacent to an arterial street.
  2. No unscreened outside storage is permitted within **three hundred (300) feet** of the neighboring houses.
  3. All buildings are set back at least **one hundred (100) feet** from the road.
  4. No parking of trucks or storage of equipment shall be permitted within the front yard. All parking and storage shall be screened from neighboring views or be more than **three hundred (300) feet** from the nearest neighboring house.
  5. A site plan is approved by the Planning Board generally showing the extent of use.
  6. Minimum site size is **five (5) acres**.
- h. Publicly or privately owned and/or operated parks, playgrounds, golf courses, community recreational center, including public swimming pools, provided they have frontage on and access from a State or Town accepted

road and libraries provided access is approved by the Planning Board.

- i. Recreational uses, privately owned as follows, provided they are adjacent to an arterial or collector street.
  1. Golf courses.
  2. Country clubs.
  3. Semi-public swimming pools.
  4. Tennis courts/clubs.
  5. Sportsmen's clubs.
- j. Convenience or "general store" provided the following criteria are met:
  1. Maximum size of the store is one thousand (1,000) square feet of retail sales space.
  2. No other such store exists within one (1) mile driving distance.
  3. Store must be located on a collector or arterial street.
  4. Store must have a residential appearance, both in external architectural style and materials used.
  5. Screening must be provided on all sides except the side facing the roadway according to the following:
    - i. Screening shall be provided for visual separation of incompatible uses as required in each zone. Where screening is required, it shall provide an effective visual buffer by:
    - ii. Use of existing vegetation and terrain where possible, or
    - iii. New plantings, grade separation, fences, etc.
  6. Hours of operation shall not exceed 6 a.m. to 11 p.m.
  7. Parking must be provided according to Article 36.
  8. Where screening is required, it must be reviewed and approved by the Planning Board during their site plan review procedure.

9. The visual buffer or screening must be maintained at all times by the landowner. This requirement is mandatory regardless of any change in ownership.
  10. Store must be setback at least **one hundred-fifty (150) feet** from the nearest residence.
  11. Minimum lot size is **two (2) acres**.
  12. Minimum frontage is **two hundred (200) feet**.
  13. A minimum of **twenty (25) feet** of landscaped green space must be provided and maintained around the perimeter of the site.
- k. Commercial Kennel provided it is located on a collector or arterial street and adequate provisions for noise suppression, odor control and animal health (according to New Hampshire state kennel standards) are met.

## B. SUNRISE LAKE DISTRICT

**Purpose.** To protect the health, safety and welfare of an area surrounding Sunrise Lake, where no public sewer system exists or is proposed, yet where development has occurred on hundreds of legal lots of record that are non-conforming because of their small lot size, the Planning Board has created a Sunrise Lake District Zone.

1. Permitted Uses:
  - a. Single family houses.
  - b. Essential Services
2. Accessory Uses:
  - a. Customary accessory buildings and uses.
  - b. Home occupations, according to local covenants And/or the regulations of this Ordinance, whichever is more restrictive.
  - c. Signs, according to local covenants.
3. Set Backs. Structures, excluding steps and terraces, shall be at least **fifty (50) feet** from any property line abutting a public or private road and at least **twenty (20) feet** from all other property or right-of-way lines.

For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within **ten (10) feet**

of a side property line. No electricity or plumbing may be installed on or in such accessory structure.<sup>1</sup>

4. Special Exceptions. Provided they meet the following criteria, with the approval of the Board of Adjustment and receive a site plan approval of the Planning Board.
  - a. Churches and other buildings for the purpose of religious worship providing they are located adjacent to an arterial or collector street.
  - b. Publicly owned and/or operated parks, playgrounds, golf courses, community recreational centers, including public swimming pools and libraries provided access is approved by the Planning Board.

**C. B-1 DISTRICT RESIDENTIAL, COMMERCIAL AND LIGHT INDUSTRIAL.**

1. Permitted Residential Uses.

- a. Single family houses.
- b. Two-family houses.
- c. Farms and agricultural operations.
- d. Sale of agricultural products that are raised, produced and processed on the premises, provided that seasonal roadside stands must be setback at least **twenty (25) feet** from the adjacent arterial street. Year-round, permanent structures for sale of farm products must receive site plan approval from the Planning Board and must be located adjacent to an arterial street.
- e. Essential services.
- f. Convalescent and nursing homes, churches, schools, playgrounds, parks, golf courses and tennis courts.
- g. For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within ten (10) feet of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

2. Permitted Commercial Uses.

- a. Appliance Stores.
- b. Art supplies and gallery supplies.
- c. Bakeries.

- d. Barber shops.
- e. Beauty shops.
- f. Book or stationary stores.
- g. Camera and photo supplies.
- h. Candy, soda fountain or ice cream stores.
- i. Clothing stores.
- j. Craft or hobby shops.
- k. Delicatessens.
- l. Drug stores.
- m. Dry cleaners.
- n. Florist shops.
- o. Food store/supermarket.
- p. Gift or notions shops.
- q. Glass, china, jewelry stores.
- r. Garden shops.
- s. Grain and feed stores.
- t. Home products-may be bought, sold and exposed for sale.
- u. Hardware stores.
- v. Music stores.
- w. Offices (professional, medical, business).
- x. Paint and wallpaper stores.
- y. Police and fire stations.
- z. Post Office.
- aa. Restaurants
- bb. Shoe stores.
- cc. Gasoline service stations, with site reviews
- dd. Studios for professional work (art, dance, photography)
- ee. Tailor shops
- ff. Essential services.
- gg. Banks
- hh. Laundromats
- ii. Car Wash.
- jj. Mortuaries
- kk. Retail stores

3. Permitted Light Industrial uses are permitted by special exception provided they meet the performance standards prescribed herein:

- a. Laboratories.
- b. Contractors' storage and equipment yards.
- c. Machine shops.
- d. Printing or publishing shops.
- e. Business or industrial schools.
- f. Sawmills, wood yards.
- g. Storage or wholesaling and warehousing in enclosed buildings that meet fire safety recommendations.

- h. Retail sales and service of new or used heavy equipment, boats, automobiles, trucks and recreational equipment.
- i. Manufacturing, with site reviews.
- j. Accessory commercial and industrial uses.
- k. Welding service and supply.
- l. Sand, gravel, rock and earth excavations and processing, with site reviews, and must also meet the requirements of RSA 155-E.

**D. MIDDLETON 4 CORNERS DISTRICT**

For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected **within ten (10) feet** of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

**1. Permitted Residential Uses.**

- a. Single-family dwellings.
- b. Two-family dwellings.
- c. Mixed uses with up to two dwelling units per lot/structure.

**2. Permitted Commercial Uses.**

- a. Retail (including and limited to establishments providing consumable products and related items to the general public, sometimes with provision of related services and that produce, sometimes with provision of related services, and that produce minimal off-site impacts, such as antiques, art, bicycles, books, drugstores, florists, electronic items and repair, pets, videos, etc).
- b. Professional Services (including but not limited to: attorneys, accountants, etc.)
- c. Personal Services (including but not limited to barber shops, beautician shops, cleaners, etc.).
- d. Offices (professional, medical, business, financial).
- e. Governmental Uses (Police and fire stations, libraries, post office, etc.)
- f. Restaurants.
- g. Churches.
- h. Schools.
- i. Day care facilities.
- j. Studio for professional work.
- k. Essential Services.

**3. Mixed Uses.**

Mixed uses on the same lot and in the same structure are permitted in the Middleton 4 Corners District in accordance with the following requirements.

- a. Mixed uses are permitted on the same lot.

- b. Residential uses and commercial uses on the same lot are permitted.
- c. Residential uses and commercial uses in the same structure are permitted.
- d. Multiple structures on the same lot are permitted provided that one of the structures has at least fifty (50) percent of its floor area devoted to non-residential uses.
- e. No more than two (2) dwelling units are permitted on the same lot or in the same structure.
- f. A Site Plan Review is required prior to establishing a mixed use or a change of use on a mixed use property.
- g. All uses permitted as part of a mixed use shall be permitted uses.

#### 4. **Prohibited Uses.**

Prohibited uses not listed are hereby prohibited, including but not limited to automotive sales and service, drive through facilities, manufacturing facilities, industrial facilities, etc.

#### E. **ADDITIONAL REVIEW.**

In accordance with **RSA 674:43 and 44**, the Middleton Planning Board is hereby authorized to review, as part of its Site Plan Review Regulations, the establishment, change, or expansion of non-residential uses or multi-family uses (three unit or more on a single lot). As part of the regulation the Board may require preliminary review of site plans and professional assistance during the review process, including recuperation of reasonable costs therefore.

- 1. Additional provision may be adopted for specific uses, impacts and structures such as gasoline stations, lighting, canopy setbacks, accessory uses, etc.
- 2. The Board may provide for architectural review as part of the Site Plan Regulations in the Middleton 4 Corners District and shall consider the Middleton Master Plan and the document entitled "Plan NH Middleton 4 Corners".

### **ARTICLE 6 LOT STANDARDS**

#### A. **PERMITTED RESIDENTIAL USES.**

- 1. Minimum Lot Size: **Five (5) acres.**
- 2. Minimum Frontage: **Two Hundred (200) feet; or fifty (50) feet** for backlots.
- 3. Set Backs: Structures, excluding steps and terraces, shall be at least **fifty (50) feet** from any property lines abutting a public or private road and at least **twenty (20) feet** from all other property or right-of-way lines.

For any Nonconforming Lot at the time this Ordinance is adopted, an accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within **ten (10) feet** of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

4. Maximum Height: **Thirty-five (35) feet** in rural residential, **twenty-four (24) feet** in Sunrise Lake District.

## B. COMMERCIAL USES.

1. Minimum Lot Size: **One (1) acre** or larger, according to soils on the site for on-site subsurface sewage disposal; **sixty thousand (60,000) square feet** for back lots.
2. Minimum Frontage: **One hundred (150) feet; fifty (50) feet** for back lots.
3. Set Backs: Structures, excluding steps and terraces, shall be at **least one hundred (100) feet** from any property line abutting a public or private road and at **least fifty (50) feet** from all other property or right-of-way lines.

For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within **ten (10) feet** of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

1. Minimum Vegetated Open Space: **Forty (40) percent.**
2. Minimum **thirty (30) feet** wide greenbelt of open space along right of way to adjacent street, **twenty (20) feet** along side lot lines where they abut commercial lots, and **thirty (30) feet** along side lot lines where they abut residential lines.
3. Minimum Rear Yard: Same as side yard. A vegetated greenbelt **of fifty (50) feet** must be maintained where the rear lot line abuts a residential or undeveloped lot.
4. Maximum Height: **Thirty-five (35) feet.**
5. Traffic Impact: All proposed uses which will generate more than one hundred (100) new vehicle trips per day must provide a traffic impact statement to the Zoning Board of Adjustment to show that it will not adversely impact traffic on the adjacent road, or, if there will be a significant impact, that the proposed use will make improvements to correct the impact, or escrow money for the Town to make the improvements.
9. Architectural Appearance: The proposed structure must present an appearance that is in keeping with the residential character of the area. Types of materials and style of roof, for example, shall generally conform to a



residential character. For example, flat roofs and steel siding would not be considered appropriate.

10. Parking: according to Article 36 of this Ordinance.

C. **LOT STANDARDS FOR LIGHT INDUSTRIAL USES BY SPECIAL EXCEPTION.**

1. Minimum Lot Size: **One (1) acre** or larger, according to soils on-site subsurface sewage disposal according to Table of Minimum Lot Sizes; **sixty (60,000) square feet** for back lots.
2. Minimum Frontage: **150 feet; 50 feet** for back lots.
3. Minimum Front Setback: **100 feet; 50 feet** in Industrial Park with access from an internal park road.
4. Minimum Side Yard: **100 feet** when it abuts an existing residential lot; **fifty (50) feet** when it abuts a commercial lot; **30 feet** when it abuts an industrial lot.

For any Nonconforming Lot at the time this Ordinance is adopted, any accessory structure up to and including **one hundred twenty (120) square feet** and not on a permanent foundation may be erected within **ten (10) feet** of a side property line. No electricity or plumbing may be installed on or in such accessory structure.

5. Minimum Vegetated Open Space: **Forty (40) percent.**
6. Minimum **thirty (30) feet wide** greenbelt of open space along right-of-way to adjacent street:
  - a. **Twenty (20) feet** alongside lot lines abutted by commercial lots,
  - b. **Thirty (30) feet** alongside lot lines abutted by residential lots,
  - c. **Ten (10) feet** alongside lot lines abutted by an industrial lot.

No greenbelt may be required alongside lot lines in an industrial park or grouping of more than three lots if the Planning Board concurs upon their site plan approval and overall green space is met.

7. Minimum Rear Yard: Same as Side Yard. A vegetated greenbelt of **fifty (50) feet** must be maintained where the rear lot line abuts a residential or undeveloped lot. In no instance shall there be less **than ten (10) feet** landscaped rear yard, even in an industrial park.
8. Industrial uses are permitted provided that smoke emitted by any stack shall not equal or exceed the State of New Hampshire standards as published in the Rules Governing Control of Air Pollution, State of New Hampshire, 1987, Air Resource

Board, Public Information Permitted Unit, Hazen Drive, Concord, New Hampshire, and as amended. Provided also that noise outside of lot lines does not exceed in intensity that of average weekday traffic on the surrounding streets so as not to be objectionable due to intermittence, beat frequency or shrillness; and no objectionable, obnoxious, or dangerous concentrations or quantities of odor, dust, fly ash, gases or fumes are emitted and no excessive vibration is caused. Wastewater must be of equal or higher quality than the proposed receiving waters.

9. Notwithstanding the definition of “lot” contained herein, commercial and industrial uses may have more than one principal structure on a lot provided there is at least **fifty (50) feet** of separation between such structures.
10. Maximum Height: **Thirty-five (35) feet.**
11. Traffic Impact: All proposed uses which will generate more than **one hundred (100)** new vehicle trips per day must provide a traffic impact statement to the appropriate Board (Planning Board for permitted uses, Zoning Board of Adjustment for special exceptions), to show that there will be no adverse impact on traffic on the adjacent roadway, or if there will be a significant impact, that the proposed use will make improvements to correct the impact or escrow money for the Town to make the improvements.
12. All proposed commercial and industrial uses must provide a landscaping plan and architectural renderings showing that the buildings will present a reasonable appearance that is generally in keeping with the scale and style of the surroundings.
13. Parking: as required by **Article 36**

**Table of Minimum Lot Sizes** (in square feet) and

Factors for Determining Maximum Sewage Loading for Commercial and Industrial Development Only

Minimum lot size is **forty-three thousand five hundred sixty (43,560) square feet** or greater as provided in the table below:

Slope Classification	Slope %	Soil Grouping				
		1	2	3	4	5

AB	0-8%	30,000 1.0	39,000 1.3	48,000 1.6	43,000 1.45	N/A
C	8-15%	33,000 1.1	43,000 1.43	53,000 1.76	48,000 1.6	N/A
D	15-25%	36,000 1.2	46,800 1.56	62,000 2.08	52,000 1.73	N/A
E	25-35%	39,000 1.3	50,700 1.69	72,000 2.4	57,000 1.90	N/A

NOTE: New Hampshire Water Supply and Pollution Control Commission regulations should be consulted for further “lot size by soil type” information for situations not covered herein.

## ARTICLE 7

### AQUIFER CONSERVATION OVERLAY ZONING DISTRICT (Adopted March 12, 2024 – replaces previous version)

- A. PURPOSE** To help maintain the quality of living in the Town of Middleton, as set forth in the Master Plan, the Town believes that an adequate water supply is indispensable to its citizens' health, welfare, and safety. Such an adequate supply is also essential to maintaining the ecological balance of the natural environment of the Town, an environment that the Town wishes to protect. These water resources are subject to an ever-increasing demand for new and competing uses. Thus, the Town declares and determines that such water resources, whether occurring above or below ground, constitute a precious, finite, and invaluable public resource. These resources should be protected, conserved, and managed in the interest of present and future generations. This Ordinance intends to preserve the water resources from contamination by regulating land uses that could contribute pollutants to designated wells and aquifers identified as being needed for present and future public water supply.
- B. AUTHORITY** The Town of Middleton hereby adopts this Ordinance pursuant to the authority granted under **RSA 674:16** as an Innovative Land Use Control in accordance with **RSA 674:21**. This Ordinance shall be administered, including the granting of conditional permits, by the planning board.
- C. SPECIAL CONDITIONS.** The following conditions shall apply to all uses in this District unless exempt under Article 7 Section H:
1. Any new or expanded uses that will render impervious more than 15 percent or more

than 2,500 square feet of any lot, whichever is greater, must apply for a special exception. A stormwater management plan must also be prepared, which the planning board determines is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services.

2. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
3. Facilities where regulated substances are stored, must be secured against unauthorized entry utilizing a door and gate that is locked when authorized Personnel are not present and must be inspected weekly by the facility owner;
4. Outdoor storage areas for regulated substances, associated material, or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
5. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers, and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
6. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when the material is not being transferred from one container to another;
7. Before any land-disturbing activities, all inactive wells on the property, not in use or properly maintained when the Plan is submitted, shall be considered abandoned and must be sealed per We 604 of the New Hampshire Water Well Board Rules.
8. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be prepared and performed to mitigate adverse impacts on hydrology and the dewatering of nearby drinking water supply wells.
9. Sanitary wastewater discharge to septic and leaching systems shall conform to the regulations set forth in the New Hampshire Water Supply & Pollution Control Division Regulation;
10. All liquid or solid waste other than normal septic effluent shall be temporarily stored on-site and disposed of in a manner approved by the Planning Board;
11. Monitoring wells shall be established for all industrial and commercial uses utilizing or storing hazardous or toxic materials. The Planning Board shall determine the number, construction, and location of these wells. These wells shall be checked for compliance with the Interim Primary Drinking Water Regulations and Secondary Drinking Water Regulations as provided for in the Safe Drinking Water Act of 1977 or subsequent revisions. The checking of wells shall take place periodically as required by the

Planning Board, and the results reported to the Planning Board and such other boards and officials as the Planning Board deems appropriate;

12. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier<sup>1</sup> at its perimeter.
13. Use of pesticides, herbicides, animal manures, and other potentially dangerous leachables shall comply with **RSA 430:28, et seq.** and the NH Code of Administrative Rules. It must be stored in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food (June 2011) and any subsequent revisions. No fertilizer, except low phosphate, slow-release nitrogen fertilizer, or limestone, may be used on lawns or areas with grass. Storage of these materials shall not be outdoors;
14. Site review shall be required by the Planning Board when an industrial or commercial use is altered within this District to a service that involves the use, storage, or disposal of hazardous or toxic materials;
15. No more than **fifty (50) percent** of the buildable area of a lot shall be rendered impervious;
16. Stormwater drainage shall be handled according to the best management practices.

**D. PERMITTED USES.** All uses permitted by right in the base zoning district where the property lies are permitted in the Aquifer Conservation District unless they are Prohibited Uses or Special Exceptions. All uses must comply with the Special Conditions unless specifically exempt under Article 7 Section H.

**E. PROHIBITED USES.** The following uses are not permitted in the Aquifer Conservation District.

1. Storage of petroleum or related products, except within the buildings, to be heated by such products and in small quantities of several gallons for use in small engines, such as lawnmowers or rototillers.
2. Automobile service stations and junk or salvage yards.
3. The development or operation of gasoline stations.
4. Outdoor storage of road salt or other deicing chemicals or dumping of snow containing road salt or other deicing chemicals as a result of removal from other

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<sup>1</sup> A positive limiting barrier (PLB) is a depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow and contain spilled substances within the perimeter of the impervious area. PLBs are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).

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5. Disposal of liquid or leachable waters, including On-site disposal of septage generated off-site or sewer and septage lagoons except for one-unit residential subsurface sewage disposal systems.
6. Disposal of solid waste, including developing or operating a solid waste landfill
7. Disposal or storage of hazardous materials and wastes except
  - a. Household hazardous wastes may be stored at the residence where they intend to be used. This in no way implies that such storage may occur for commercial purposes.
  - b. Temporarily as necessary in the ordinary course of business. A permit and adequate containment facilities are required for such temporary storage.
8. Use of leach field degreasing materials.
9. Industrial use and discharge of process waters or other wastes generated by industrial uses.
10. Removal of Sand and gravel within ten (10) feet of the seasonal high-water table unless the Planning Board grants an exception in accordance with all Middleton Earth Excavation Regulations in effect and RSA 155-E:11.

#### **F. USE BY SPECIAL EXCEPTION.**

1. Uses permitted by Special Exception shall be the same as those in the base zoning district unless listed as prohibited in Article 7 Section E of this Ordinance or otherwise involved in one or more of the following:
  - a. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time, provided that an adequate spill prevention, control, and countermeasure (SPCC) plan, in accordance with Article 7 Section F, subsection 4, is approved by the local Fire Department, Health officer or Emergency Management officer.
  - b. Any use that will render more than 15 percent or 2,500 square feet of any lot impervious, whichever is greater.
  - c. Any activities that involve the blasting of bedrock.
2. In addition to the special exception requirements of **Article 32** of this Ordinance,

the following information shall be provided to the Zoning Board of Adjustment during the Special Exception process:

- a. An environmental impact study completed by a registered professional engineer with expertise in groundwater hydrology concluding that the use will impact the aquifer equal to or less than an average single-family dwelling.
3. Special Exceptions shall develop stormwater management and pollution prevention plans and include information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators (US EPA, Feb 2009). The Plan shall demonstrate that the use will:
  - a. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post- Construction) Stormwater Management, ( NHDES, 2008 or later edition)
  - b. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
  - c. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);
  - d. Maintain a minimum of four feet of vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high-water table as determined by a licensed hydrogeologist, soil scientist, engineer, or other qualified professionals as determined by the Planning Board.
4. Special Exceptions using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Fire Chief, Health officer, or Emergency Management officer, who shall determine whether the Plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:
  - a. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
  - b. Contact list and phone numbers for the current facility response coordinator(s), cleanup contractors, and all appropriate federal, State, and local agencies who must be contacted in case of a release to the

environment.

- c. A list of all regulated substances in use and locations of use and storage;
  - d. A prediction of the direction, rate of flow, and total quantity of a regulated substance that could be released where experience indicates a potential for equipment failure.
  - e. A description of containment and diversionary structures or equipment to prevent regulated substances from infiltrating the ground.
  - f. List of positions within the facility that require training to respond to spills of regulated substances.
  - g. Prevention protocols must be followed after an event to limit future significant releases of any regulated substance.
4. In granting such approval, the Planning Board must determine that the proposed use will comply with the Special Conditions in Article 7 Section C and all applicable local, State, and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure the completion of construction of any facilities required for compliance with the Special Conditions.

**G. EXISTING NON-CONFORMING USES.** Existing non-conforming uses may continue without expanding or changing to another non-conforming use. Still, they must comply with all applicable state and federal requirements, including Env-Wq 401 and Best Management Practices Rules.

**H. EXEMPTIONS.** The following uses are exempt from the specified provisions of this Ordinance as long as they comply with all applicable local, State, and federal requirements:

- 1. Any private residence is exempt from all Special Conditions;
- 2. Any business or facility where regulated substances are stored in containers with a capacity of fewer than five gallons is exempt from Article 7 Section C, Special Conditions, subsections 3 through 6;
- 3. Storage of heating fuels for on-site use or fuels for emergency electric generation provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Special Condition 3;



4. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Special Conditions 3 through 6;
5. Storage and use of office supplies are exempt from Special Conditions 3 through 6;
6. The temporary storage of construction materials on a site where they are to be used is exempt from Special Conditions 3 through 6 if incorporated within the site development project within six months of their deposit on the site;
7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI is exempt from all provisions of this Ordinance;
8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and 501.01(b) are exempt from Special Conditions 3 through 6;
9. Underground and aboveground storage tank systems that comply with applicable state rules are exempt from inspections under Article 7 Section K of this Ordinance.

**I. INCORRECTLY DESIGNATED AREAS.** When the boundary of the Aquifer Conservation District is disputed, the Planning Board, at the complainant's expense and authorization, may engage a professional geologist or hydrogeologist to determine the precise location of the Aquifer Conservation District boundaries in the properties affected. A report of their findings shall be submitted to the Planning Board and shall include but not be limited to the following:

1. A revised soil map of the area in question prepared by a soil scientist qualified in hydrologic studies, along with a written report of their on-site field inspection and test boring data.
2. A revised hydrogeological map prepared by a Professional Geologist ("P.G.") or a Professional Engineer ("P.E."), including a written report.
3. The Planning Board may adjust the boundary of this District based on the evidence provided as set forth above. It shall reserve the right to withhold action of any plat pending the results of an on-site inspection by the Board or its appointed agent. It shall act to approve or disapprove the Plan within **sixty-five (65) days** of submission, or such further time as deemed necessary, but not to exceed an additional **ninety (90) days** as may be approved by the Selectboard.

**J. RELATIONSHIP BETWEEN LOCAL REQUIREMENTS. STATE AND** Where the State and the municipality have existing requirements, the more stringent shall govern.

**K. MAINTENANCE AND INSPECTION**

1. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Special Conditions shall be recorded to run with the land on which such structures are located at the Registry of Deeds for Strafford County. The description so prepared shall comply with the requirements of RSA 478:4-a.

2. Inspections may be required to verify compliance with Special Conditions. Such inspections shall be performed by the Code Enforcement Office at reasonable times with prior notice to the landowner.

3. All properties in the Groundwater Protection District known to the designated agent<sup>4</sup> as using or storing regulated substances in containers with a capacity of five gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article 7 Section H, shall be subject to inspections under this Article.

4. The Town of Middleton may require a fee for compliance inspections. The property owner shall pay the fee. The Town of Middleton shall establish a fee schedule as provided for in RSA 41-9:a.

**L. ENFORCEMENT PROCEDURES AND PENALTIES.** Any violation of the requirements of this Ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C.

**ARTICLE 8 - WETLAND CONSERVATION OVERLAY ZONING DISTRICT**

A. **PURPOSE AND INTENT.** The purpose of this Ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas with standing water and that have been found to be subjected to high water tables for extended periods of time. To identify and protect Vernal Pools within the Town of Middleton. Such areas shall be identified on any and all Building Permit Plats, Driveway Plans, Development Regulations and any other application or permit for the alteration of land or construction of a road or structure, along with the other formerly

adopted requirements in the this Ordinance and Regulations, before any review or construction to any plat shall take place.

1. It is intended that this article shall:
2. Prevent the development, on naturally occurring wetlands, of structures and land uses which will contribute to pollution of surface and ground water by sewage or toxic substances;
3. Prevent the destruction of or significant changes to, natural wetlands that provide flood protection;
4. Protect unique and unusual natural areas;
5. Protect wildlife habitats and maintain ecological balances;
6. Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas; and
7. Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities that might be required as a result of misuse or abuse of wetlands.

B. **WETLANDS DEFINED.** As defined by the New Hampshire Department of Environmental Services Wetland Bureau, which identifies wetlands per the following:

1. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 Environmental Laboratory, Department of the Army (January 1987) and
2. Field Indicators for Identifying Hydronic Soils in New England (version 2, July 1998), New England Interstate Water Pollution Control Commission.

Accordingly, a wetland is defined as an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of Vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

C. **DISTRICT BOUNDARIES.**

1. **Wetland Conservation District.** The Wetland Conservation District is defined as those areas delineated as wetlands defined herein and buffers/setbacks as required under the zoning ordinance.
2. **Additional Studies Required:** The Planning Board may engage an independent certified wetland scientist to review the wetland delineation on a property if in its opinion there is a question as to the accuracy of said

delineation. The cost of said review, if required, shall be paid for by the applicant/landowner.

- D. **PERMITTED USES.** Permitted uses are those which will not require the erection or construction of any structures or buildings, will not alter the natural surface configuration by the addition of fill or by dredging, and uses that otherwise are not permitted by the Zoning Ordinance. Permitted uses may include the following:
1. Forestry-tree farming, using best management practices in order to protect streams from damage and to prevent sedimentation;
  2. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
  3. Wildlife refuges;
  4. Parks and recreation uses consistent with the purpose and intent of this article;
  5. Conservation areas and nature trails;
  6. Open spaces as permitted or required by the subdivision regulations or the Zoning Ordinance.
- E. **CONDITIONAL USE PERMIT.** In accordance with **NH RSA 674:21** (innovative Land Use Controls) the Planning Board may grant a Conditional Use Permit to allow for a reasonable reduction of the required setbacks or to permit a fill, dredge, or construction operation within a wetland after consideration of the following as applicable.
1. Size and environmental value of the wetland in question.
  2. Size and scope of the wetland and/or buffer impact.
  3. Necessity of the proposed buffer reduction and/or proposed wetland impact as it relates to the proposed project within the limitations of other applicable zoning and regulatory requirements.
  4. Perpetual protection of other wetlands within the Town through legally binding restrictions. Variables to be considered include but are not limited to; size, environmental value, hydrologic value, significant natural value, scenic concerns, hydrologic association with another water body (including ponds and rivers), provision of public access.

5. Mitigation methods and efforts accepted by the State of New Hampshire Wetlands Bureau and the Conservation Commission.
  6. Comment of the Conservation Commission.
- F. **SPECIAL PROVISIONS.** No part of a wetland may be considered as part of the minimum size requirement of any lot.

## **ARTICLE 9 FLOODPLAIN DEVELOPMENT DISTRICT**

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

The following regulations in this Article shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Rate Map, Town of Middleton, New Hampshire, Strafford County which are declared to be a part of this Ordinance and are hereby incorporated by reference.

- B. **DEFINITION OF TERMS.** The following definitions shall apply only to this Floodplain Development District, and shall not be affected by or affect the provisions of any other ordinance of the Town of Middleton.
1. **Area of Special Flood Hazard.** The land in the floodplain within the Town of Middleton subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE.
  2. **Base Flood.** The flood having a one percent possibility of being equaled or exceeded in any given year.
  3. **Basement.** Any area of a building having its floor sub grade on all sides.
  4. **Building.** See Structure.
  5. **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, or storage of equipment or materials.
  6. **FEMA.** The Federal Emergency Management Agency.

7. **Flood or Flooding.** A general and temporary condition of partial or complete inundation or normally dry land areas from:
  - a. The overflow of inland or tidal waters;
  - b. The unusual and rapid accumulation or run-off of surface waters from any source.
8. **Flood Elevation Study.** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.
9. **Flood Insurance Rate Map (FIRM).** An official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Middleton.
10. **Flood Insurance Study.** See Flood Elevation Study.
11. **Floodplain or Flood-Prone Area.** Any land area susceptible to being inundated by water from any source. (See definition of Flooding).
12. **Flood Proofing.** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
13. **Floodway.** See Regulatory Floodway.
14. **Functionally Dependent Use.** A use that 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 longterm storage or related manufacturing facilities.
15. **Highest Adjacent Grade.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
16. **Historic Structure.** Any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district

- or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - 1. By an approved state program as determined by the Secretary of the Interior, or
    - 2. Directly by the Secretary of the Interior in states without approved programs.
17. **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 non-elevation design requirements of this Ordinance.
18. **Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in manufactured home parks or subdivisions.
19. **Manufactured Home Park Subdivision.** A parcel (for contiguous parcels) of land divided into two or more manufactured lots for rent or sale.
20. **Mean Sea Level.** The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.
21. **New Construction.** 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, 2017, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which 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.

22. **100-Year Flood.** See Base Flood.
23. **Recreational Vehicle.** A vehicle that is:
  - a. Built on a single chassis;
  - b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
  - c. Designed to be self-propelled or permanently towable by a light duty truck; and;
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
24. **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 cumulatively increasing the water surface elevation more than a designated height.
25. **Special Flood Hazard Area.** (See "Area of Special Flood Hazard"). Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.
26. **Start of Construction.** Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the 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.
27. **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 (50) percent** of the market value of the structure before the damage occurred.

28. **Substantial Improvement.** Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should equal:
- a. The appraised value prior to the start of the initial repair or improvement, or
  - b. In the case of damage, the value of the structure prior to the damage occurring.

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

29. **Violation.** 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 under **Section E, Section H(2)(b), or Section G(4)** of this article is presumed to be in violation until such time as that documentation is provided.
30. **Water Surface Elevation.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988(or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains.

- C. **PERMIT.** All proposed development in any special flood hazard areas shall require a permit.
- D. **REVIEW OF BUILDING PERMIT.** The Selectboard or its duly authorized agent shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

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

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

- F. **NEW OR IMPROVED STRUCTURES.** For all new or substantially improved structures located in Zones A, AE, the applicant shall furnish the following information to the Selectboard or its duly authorized agent:
- a. The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement;
  - b. If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed;
  - c. Any certification of flood proofing.

The Selectboard or its duly authorized agent shall maintain for public inspection, and shall furnish such information upon request.

G. **OTHER PERMITS.** The Selectboard or its duly authorized agent shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

H. **RIVERINE SITUATION.**

In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such

notification to the Selectboard or its duly authorized agent, in addition to the copies required by **RSA 482-A:3**. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Selectboard or its duly authorized agent, including notice of all scheduled hearings before the Wetlands Board;

- a. The applicant shall submit to the Selectboard or its duly authorized agent, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- b. The Selectboard or its duly authorized agent shall obtain, review, and reasonably utilize any floodway data available from federal, State, or other sources as criteria for requiring that all development located 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.

- c. Along watercourses that have not had a Regulatory Floodway designated or determined by a federal, State or other source; no new construction, substantial improvements, or other development (including fill) shall be permitted within zones and AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

#### I. **SPECIAL FLOOD HAZARD AREAS.**

- a. In special flood hazard areas the Selectboard or its duly authorized agent shall determine the one hundred (100)-year flood elevation in the following order of precedence according to the data available:
  - i. In zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM or FHBM;
  - ii. In unnumbered A zones the Selectboard or its duly authorized agent shall obtain, review, and reasonably utilize any one hundred (100)-year flood elevation data available from any federal, State or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals);
- b. The Selectboard or its duly authorized agent's **one hundred (100)-year** flood elevation determination will be used as criteria for requiring in Zones A, and AE that:

- i All new construction or substantial improvement of residential structures has the lowest floor (including basement) elevated to or above the **one hundred (100)-year** flood elevation;
- ii That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the one hundred **(100)-year flood** level; or together with attendant utility and sanitary facilities, shall:
  - 1. Be flood proofed so that below the one hundred **(100)-year** flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards or practice for meeting the provisions of this Article.
- c. Recreational vehicles placed on sites within Zones A and AE shall either:
  - 1. be on site for fewer than one hundred (180) consecutive days;
  - 2. be fully licensed and ready for highway use, or
  - 3. Meet all standards of **Section B** of this article and the elevation and anchoring requirements for "manufactured homes" in Section H (2)(d) of this article.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- d. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces;
- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

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

**J. VARIANCES AND APPEALS.**

1. Any order, requirement, decision or determination of the Selectboard or its duly authorized agent made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - a. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - b. that if the requested variance is for activity within a designated regulatory floodway, no increases in flood levels during the base flood discharge will result;
  - c. that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - a. the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
  - b. such construction below the base flood level increases risks to life and property.Such notification shall be maintained with a record of all variance actions.
4. The community shall:

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

## **ARTICLE 10 OPEN SPACE CONSERVATION/CLUSTER DEVELOPMENT**

- A. **PURPOSE.** The purpose of this section is to allow, by Planning Board approval, Open Space Conservation/Cluster Development. The purpose of such Development is to conserve agricultural and forestlands, habitat, water quality, rural character and scenic areas that might otherwise be lost through conventional development, by encouraging environmentally sound development of land. To accomplish this purpose, greater flexibility and creativity in design is encouraged. Specific objectives are as follows:
1. Implement the Master Plan philosophy, vision, policies and implementation strategies.
  2. Discourage development sprawl and consumption of rural agricultural, forest, habitat and scenic land.
  3. Conserve areas with productive soils for continued agricultural and forestry use by preserving blocks of land large enough to allow for economic and ecologically sensitive operations.
  4. Encourage the preservation and enhancement of habitat for plant and animal communities, including rare species.
  5. Conserve land that protects water quality and quantity, including watersheds and buffers along streams and rivers, wetlands and floodplains, ponds and lakes and land overlying aquifers.
  6. Protect scenic views and special elements of rural character.
  7. Conserve historic settings, cultural features, archeological sites and structures that serve as significant visible reminders of Middleton's history.
  8. Create compact neighborhoods accessible to open space amenities by providing for outdoor recreational needs of the subdivision residents and/or the community at large, by including trails, scenic and tranquil beauty, community gardens and playgrounds and other recreational uses such as snowmobiling machines.

9. Create continuous open space or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible.
10. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
11. Locate the buildings and structures on those portions of each site that are most appropriate for development considering the visual impact and the environmental and conservation value of the site.
12. Minimize water runoff and non-point source pollution by reducing the land area covered by impervious surfaces and using Best Management Practices.

In addition to the above listed objectives/benefits to the Town and the environment, developers should achieve cost saving with Open Space Conservation/Cluster Development because of the reduced requirements for constructing roads and other infrastructure.

**B. APPLICABILITY.**

1. Open Space Conservation/Cluster Development is allowed by Planning Board approval. Open Space Conservation/Cluster Development is encouraged for all major subdivisions and minor subdivisions if a road is required per the Subdivision Regulations. Cluster development will provide a more efficient use of land resulting in the preservation of natural landforms, wetlands, wildlife and waterfowl habitats, significant vegetation and agricultural lands and other natural resources.  
Notwithstanding other provisions of this Zoning Ordinance, authority is hereby granted to the Planning Board, as allowed under **RSA 674:21 (II)**, to issue a conditional use permit to modify the Dimensional Requirements of this Section as specified herein to permit the clustering of residential dwelling units and improve the use and management of the open space. Such modifications shall be consistent with the purposes and standards of this Section so:
  - a. The use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation or undue violation of the character of the neighborhood.
  - b. The use will not be injurious, noxious, or offensive and thus detrimental to the neighborhood.
  - c. The use will not be contrary to the public health, safety, or welfare by reason of undue traffic congestion or unhealthful emissions or waste disposal, or similar adverse causes or conditions.

- d. The location and size of the use, the nature and intensity of the operations involved the size of the site in relation to the proposed use and the location of the site with respect to the existing, or future street giving access to it shall be such that it will be in harmony with the neighborhood.
- e. The location, nature, and height of buildings, walls, and fences will not discourage the appropriate development and use of the adjacent land and buildings or impair the value thereof.

Said modifications shall not be construed as the granting of a variance to relieve hardship or require a Special Exception(s).

- 2. Applicants are especially encouraged to consider Open Space Conservation/Cluster Development whenever the property possesses one or more of the following special features:
  - a. Agricultural land used for producing crops, hay (forage), and/or forestry.
  - b. Rare, threatened or endangered species or known habitat area for those species.
  - c. Frontage on a pond, lake, perennial stream or river.
  - d. A portion of a watershed, wellhead and aquifer protection area.
  - e. A portion of a snowmobile trail network.
  - f. Steep slope land covering more than twenty (20) percent of the total area of the property.
  - g. Historic, cultural, archeological sites and/or structures.
- 3. Phased Subdivision Applications - This Open Space Conservation/Cluster Development Section shall apply to the phased subdivision of a parcel over a period of time through separate successive applications. The requirements of this section shall apply to phased applications for each phase as though the development of the entire parcel were proposed in one application at one time. The total permitted density will be based upon the acreage and the characteristics of the original parcel that existed as of the date of the application.
- 4. Previously approved subdivisions having valid final approval may reapply to develop the property under this Section.

### **C. DEVELOPMENT STANDARDS.**



1. **Permitted Districts and Land Uses.** Open Space Conservation/Cluster Development shall be permitted in the zoning districts as provided in **Article 5.**
2. **Maximum Density.** The maximum density of dwelling units permitted shall be consistent with the municipality's adopted Master Plan and Zoning District(s) in which the Open Space Conservation / Cluster Development Subdivision is located, provided in no case shall the density exceed the soil carrying capacity to accommodate a sewage disposal system for each residential dwelling unit as required by the State and Subdivision Regulations.
3. **Parcel Lot Size.** There is no minimum Parcel Lot size, except as required by the State including accommodating a sewage disposal system based on soil conditions to protect groundwater quality. All costs of preparing soil data to determine the minimum lot size shall be borne by the applicant.
4. **Dwelling Unit Lot Size.** There is no minimum Dwelling Unit Lot size, except as required by the State. The minimum lot area for residential dwelling sites shall be flexible to allow for consideration of dwelling sites and types, landscape and topography, adjacent open space and access.
  - a. Dwelling Unit Lot size may vary based on the soil capability to accommodate sewage disposal systems as determined by the State and per the municipality's Subdivision Regulations.
  - b. Dwelling Unit Lot shapes may be irregular and shared driveways are permitted.
  - c. Dwelling Unit Lots shall be laid out and graded to eliminate flood or stagnant water pools. No water shall be permitted to run across a street on the surface, but shall be directed into catch basins and/or pipes underground in a pipe of not less than twelve (12) inches in diameter.
5. **Residential Dwelling Units.** The total number of residential units allowable within an Open Space Conservation/Cluster Development shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional subdivision design. The total number of units allowed shall be determined using the formula in the Article entitled "Residential and Commercial Units Maximum.
6. **Sewage Disposal Systems.** Shared sewage disposal systems may be permitted provided the requirements of the State Department of Environmental Services are met, including appropriate provisions for legal obligations related to maintenance and replacement. Said systems may be located in the Open Space area provided the area shall not be sold to another property owner. All sewage disposal systems shall meet state and municipal setback requirements from poorly and very poorly drained soils.

7. **Parking.** The number of parking spaces required for a residential cluster development shall be two spaces per dwelling unit. At least one parking space shall be in an enclosed attached or detached garage.
8. **Dwelling Unit.** A dwelling unit shall contain a minimum square footage of finished livable floor area, not including the basement, or any garage, deck, porch or covered walkway. The dwelling unit shall include a full basement with poured foundation and concrete floor; reflect the Town's historic New England building character and have a minimum roof pitch of a **five (5) foot rise** for every **twelve (12) feet** in length (5:12) for the main roof area. "Dwelling Uni" for purposes of implement **Section 6.02** shall not include "manufactured housing" as defined pursuant to RSA 674:31, but may include "pre-site built housing" as defined pursuant to **RSA 674:31-a**.
9. **Landscaping.** Landscaping shall be installed per a landscape plan approved by the Planning Board. Said landscape plan shall show the type, location, and size of trees, shrubs, ground cover and other walls, fences, lighting and other features to stabilize the soil and enhance the development. Said Plan shall retain all possible trees.
10. **Street and Neighborhood Lighting.** Street and neighborhood lighting, if any, shall be low intensity, and fully screened to maintain a dark sky.
11. **Pedestrian and Bicycle Paths.** Designated pedestrian and bicycle paths shall be provided/ installed within the development where the lack thereof would give rise to safety concerns. In addition, designated pedestrian and bicycle paths within the development and to adjacent developments, neighborhoods and areas in the Town are encouraged, where appropriate, in order to foster a sense of community, for the convenience of the residents, and to maximize preservation of the natural resources (e.g. through use of a designated pathway versus use of multiple undesignated pathways). Where appropriate, pedestrians and bicyclists may share the same pathway. Pedestrian paths shall be separated from the paved roadway by a minimum of **five (5) feet**.
12. **Utilities.** (Electrical, Telephone, Cable, Street Lighting and Other Overhead Wired Utilities). All utilities shall be installed underground, unless the Planning Board finds that such installation is unfeasible.
13. **Open Space Area Location and Design.**
  - a. A minimum of **fifty (50) percent** of the buildable area of the Parcel Lot shall be permanently designated as Open Space area by covenant recorded at the Registry of Deeds and shown on the recorded subdivision plan. Exclusions from the buildable area are:

1. Land considered unbuildable (steep slope land, wetland soils, rock outcrops and floodplains).
  2. Land covered by existing rights-of-way, utility easements, and structures such as dwellings, garages, storage sheds, patios, parking areas, driveways.
  3. Setbacks and lawns.
- b. The designated Open Space shall not be used for additional building lots.
- c. In evaluating the acceptability of a proposed Open Space area, the Planning Board shall consider the extent to which the location and design of the area achieves the following objectives:
1. Large enough areas of land are conserved to retain ecosystem function and habitat integrity.
  2. Large enough areas of land are conserved to sustain agriculture or forestry operations and buffer them from nearby development.
  3. Trail, or stream corridors and shoreland buffers are provided from building lots.
  4. Linkages or contiguity with existing or potential conservation areas on abutting properties are provided.
  5. Scenic views from public roads and prominent ridgelines are conserved.
  6. Purposes of this section (see **Section 6.02 A. "Purpose"**) are achieved.
  7. Area(s) of sufficient size that is suitable for active recreational use.
- d. Reasonable efforts must be made to locate Open Space adjacent to Open Space in an adjoining property or properties to the satisfaction of the Planning Board.
- e. At least fifty **(50) percent** of designated Open Space shall be designated as Open Space Conservation Area and shall be maintained in an undisturbed Natural Condition.

- f. Limited access to Open Space may be allowed in the form of walking, hiking, snowmobiling or biking paths, the total area of which must be no more than **two (2) percent** of the total Open Space area.
- g. Of the remaining designated Open Space a minimum of **ten (10) percent** should be designated “Open Space Homeowners’ Recreation Area” and may be used for passive or active recreation or for the location of stormwater management facilities.
- h. If used for stormwater management, all design, construction, maintenance and public safety requirements shall be met using the design criteria set forth in the municipality’s stormwater management Best Management Practices.
- i. If used for active recreation, impervious cover shall not exceed five (5) percent of this Open Space Homeowners’ Recreation Area.
- j. Areas set aside for parks and playgrounds to be dedicated or reserved for the public use and/or common use of all property owners shall be of reasonable size and character for neighborhood playgrounds or other recreational uses.

**D. DIMENSIONAL REQUIREMENTS**

**1. Setbacks:**

- a. Frontage distance, rear, front and side yard setbacks may be reduced to **fifty (50) percent** of the requirements in the zoning district subject to the following:
  - 1. The Parcel Lot front yard setback shall be **thirty (30) feet**.
  - 2. The required setbacks from Dwelling Unit Lot lines and from street rights-of-way within the Open Space Conservation/Cluster Development may be reduced, but no structure shall be located within **fifteen (15) feet** of any lot line or within twenty (20) feet of any street right-of-way within the Open Space Conservation/Cluster Development.
  - 3. **Landscaped Buffer.** A landscaped buffer strip shall be provided along the perimeter of the Parcel Lot except: where access streets into the development are located, where adjacent land is part of an open space area or conservation easement, or where clusters of residential dwelling units on adjacent lots or developments are adjacent to each other. The buffer strip shall have a minimum width equal to 1/5 of the required Parcel Lot frontage of the applicable zoning district, except

along existing improved public streets, where the buffer strip shall have a minimum width equal to **one half (1/2)** of the required Parcel Lot frontage. The buffer strip shall be owned in fee and managed by an association of the owners of the lots within the development.

4. **Parcel Lot Frontage.** The minimum frontage on an access road to the Parcel Lot shall be one hundred (100) feet. This may be divided in **two (2) fifty (50)** foot frontage widths to provide two points of ingress/egress.
5. **Street Design.** Streets shall:
  - a. Be curved to follow the natural topography with no straight segment extending farther than **three hundred (300) feet**.
  - b. Where appropriate, provide for a bicycle path.

E. **OPEN SPACE AREA DESIGNATIONS, PROTECTION, AND OWNERSHIP**

1. The boundaries of designated open space, recreation, stormwater management, and naturally vegetated Conservation Areas shall all be clearly delineated on the subdivision plans including plats and marked in the field with signage approved by the Planning Board to distinguish these areas from private property.
2. Open Space areas shall be permanently protected as Open Space by covenant recorded at the Registry of Deeds and shown on the recorded subdivision plan/plat.
3. The designated Open Space areas shall not be used for additional lots or development and shall be so noted on the recorded subdivision plan/plat.
4. Open Space areas shall be conveyed, prior to the sale of any lots, to one of the following, subject to the approval of the Planning Board:
  - a. The Town of Middleton and accepted by the Selectboard for parks, open space or other specified conservation uses.
  - b. The State of New Hampshire for permanent open space uses.
  - c. To a private non-profit organization, which is exempt from taxation under Section 501 (c)(3) or similar provision of the Internal Revenue Code, and whose principal purpose is the conservation of open space with the financial and organization means for perpetual stewardship, such as the Audubon Society of New Hampshire or the Society for the Protection of New Hampshire Forests.

- d. A corporation or trust, such as a homeowners' association, owned or to be owned by the owners of the lots or dwelling units within the subdivision.
  - e. A private landowner such as a farmer or forest manager, golfing club, or cross- country ski operator that will manage the Open Space for uses consistent with the purposes of this Section.
5. Conveyances to the town or state will be subject to permanent deed restrictions or permanent conservation easements. Conveyances to private entities will be subject to a permanent conservation easement granted to the Town of Middleton or organization qualified under Section 4(c) above and recorded at the Strafford County Registry of Deeds. Provisions of such deed restrictions or conservation easement shall include:
- a. No further subdivision.
  - b. No residential, industrial or commercial development.
  - c. No roads except for agriculture, forestry, or passive outdoor recreation conducted according to Best Management Practices.
6. General public access to the Open Space Conservation Area will not be required unless the land is conveyed in fee simple to the Town or State, or if a specific public trail corridor easement is proposed. Except in the aforesaid cases, the rights to post land and limit access will remain with the landowner.
- F. **OPEN SPACE MANAGEMENT.** The developer may structure the management of the Open Space in one or more of the above methods. The Planning Board shall approve the arrangements for the ownership, control and maintenance of the Open Space as part of the subdivision plan approval. No changes in use or management of the Open Space via homeownership, bylaw amendments, or other means shall be made without the approval of the Planning Board. Said prior approval requirement shall be so noted in the recorded "Declaration of Covenants" and Homeowner's Association Bylaws.
- G **HOMEOWNERS ASSOCIATION.** A homeowners association shall be created to own and/or manage the Homeowners' Recreation Area Open Space lands and facilities and any other Open Space as approved by the Planning Board, unless an alternate ownership arrangement satisfactory to the Planning Board is implemented. If a homeowners association is created to own and/or manage the Homeowners' Recreation Area Open Space lands and facilities and any other Open Space as approved by the Planning board, then the following provisions shall apply.
- 1. Covenants for mandatory membership in the homeowners association, setting forth the owner's rights, interest and responsibilities, shall be required and

approved by the Planning Board and shall be included in the deed for each lot and where applicable, the Declaration of Covenants.

2. A management plan for the Homeowners' Recreation Area land and facilities by the individual lot owners as a homeowners' association shall be required and approved by the Planning Board. The Planning Board shall approve any amendments thereto by the homeowners' association.

## H **CONSERVATION EASEMENT.**

1. If Open Space is owned by a separate entity, other than the homeowners' association, a conservation easement shall be established for the Open Space area as defined in subsection 3 below and shall be offered to the municipality.
2. A conservation easement, established as defined in subsection 3 below may be transferred to an established and designated land trust organization whose purposes is to conserve open space and/or natural resources. This option is recommended for natural Open Space Conservation areas. Such transfer is allowable provided:
  - a. The organization is acceptable to the Planning Board and is a bona fide conservation organization with perpetual existence;
  - b. The conveyance contains appropriate provision for proper reversion or retransfer in the event that organization becomes unwilling or unable to continue carrying out its functions; and
  - c. The developer and the organization sign a maintenance agreement acceptable to the Planning Board.
3. The conservation easement shall:
  - d. Protect Open Space from future development, subdivision, and environmental damage by restricting the Open Space area from any future building or subdivision; and the removal of soil, trees and other natural features except as is consistent with conservation, recreation or agricultural uses or uses accessory to permitted uses.
  - e. Provide that residents have access to the Open Space at all times.
  - f. State whether Open Space is for the benefit of subdivision residents only or may be open to residents of the municipality.
  - g. Provide for ongoing management, enforcement and related funding.

## I **OPEN SPACE MANAGEMENT RESPONSIBILITIES.** An Open Space management entity shall assure the Open Space shall be protected in perpetuity from all forms of

development except as shown on the approved Subdivision Plan and it will never be changed to another use. The management entity shall:

3. Describe all allowable and unallowable uses and activities within such Open Space as approved by the Planning Board,
4. Provide detailed standards and schedules for maintenance of the Open Space including vegetative management, and
5. Allow for county or municipal maintenance of Open Space in the event that maintenance specified under a homeowners' agreement is not complied with.

## **ARTICLE 11 – RECREATIONAL CAMPGROUNDS AND CAMPING PARKS**

This provision is enacted to allow the placement of seasonal Recreational Campgrounds and/or Camping Parks within specific areas of the community, to provide standards for their use, and to promote growth of the Middleton economic base.

- A. **LIMITATIONS.** Recreational camping parks or residential tenting and recreational camping vehicles shall be located in accordance with this Article. A recreational camping park lawfully existing on the effective date of this Article may be maintained as a non-conforming use, provided that when such use or portions thereof shall have been discontinued or abandoned, the use of such land or portion thereof shall thereafter conform to the provisions of this Ordinance. Recreational campgrounds and camping parks shall not be expanded unless the expanded portion thereof is in conformance with the provisions of this Article.
- B. **GENERAL.**
  1. **Licensing.** All recreational campgrounds and camping parks shall be properly licensed by State and other applicable government agencies.
  2. **Applications.** The Planning Board shall have authority to accept applications, impose application fees, review site plans, and approve or deny applications for any new or proposed recreational campground or camping park and/or the expansion thereof.
  3. **Permitted Locations.** A recreational campground or camping park shall be located only in a zoning district where it is classified as a permitted use or is permitted by Conditional Use Permit.
  4. **General Conditions.** A recreational campground or camping park shall adhere to the following requirements:



- a. **Campsite Size.** The minimum campsite size for a recreational vehicle or tent shall be **one thousand square feet (1,500) square feet** for a cabin or cottage

**Placement.** No site within the recreational camping park shall be located within one hundred feet (100) feet) of any boundary, except the waterfront boundary of the park. The minimum boundary setbacks may be reduced to as little as fifty feet (50) feet by Conditional Use Permit. All sites shall be set back from the waterfront boundary to comply with **Article 3.**

- b. **Internal Setbacks.** All setbacks within the campground or park shall be as follows:
1. Campsite perimeters shall be setback **thirty (30) feet** from surface water and very poorly drained wetlands (unless larger minimums are established elsewhere in these regulations).
  2. Campsite perimeters shall be setback **fifty (50) feet** from any permanent or incidental structure.
  3. Campsite perimeters shall be setback **ten (10) feet** from internal roads.
  4. Cabins or cottages shall be setback **twenty (20) feet** from other cabins or cottages.
  5. Minimum campsite width shall be **fifteen (15) feet.**
  6. Minimum distance between Campsite perimeters shall be **twelve 12 feet.**

All other setbacks shall comply with **Article 3.**

- c. **Marking.** Each site shall be clearly marked by non-removable metal stakes, clearly identifiable permanent vegetation, or other approved methods.
- d. **Permanent Residence and/or Office:** One residential home/office occupied by the recreational campground or camping park owner or manager and his or her immediate family will be permitted. This building will be required to meet the full lot requirements for a single family residence based on the Zoning District in which the recreational campground or camping park is located, as well as to comply with local building and other codes and regulations.

- e. **Decks.** No permit is required for a deck under **one hundred fifty (150) square feet** used for a recreational vehicle as long as the following conditions are met:
  - 1. The deck meets all State and Town setbacks; and
  - 2. Meets all applicable State and Town buildings codes.

## **ARTICLE 12 – PERFORMANCE STANDARDS (GENERAL)**

These standards are created to ensure that development is compatible with the rural character of the Town. These standards will serve to maintain the rural quality and peaceable enjoyment of residences, neighborhoods, village centers, and other occupied establishments or areas that are located in close proximity to the proposed development. An applicant shall submit appropriate data at the time of site plan review to substantiate those performance standards will not be violated when the use is put into operation.

- A. **Noise.** No noise shall be produced that is objectionable to the public due to intermittence, beat, frequency, shrillness or volume;
- B. **Vibration.** No vibration shall be produced which is transmitted through the ground and/or discernible beyond the boundary line;
- C. **Odor.** No odor shall be produced that is detrimental to the health and welfare or which interferes with the comfort of the public;
- D. **Glare or Heat.** A use that produces heat, intense glare, bright light or reflection of will be kept to a minimum onto neighboring properties;
- E. **Pollution.** Emission into the air, water, or ground of dust, dirt, fly ash, fumes, vapors, liquids, solids, gases or hazardous waste or hazardous substances which could be injurious to human health, animals or vegetation, detrimental to the enjoyment of adjoining or nearby property or which could soil or stain persons or property at any point beyond the lot line is prohibited. Emissions into the atmosphere shall not exceed the limits set by, and shall meet the regulations and standards of all applicable local, state and federal regulatory agencies;
- F. **Traffic.** Truck traffic shall not be permitted that will unreasonably disturb surrounding neighborhoods.
- G. **Aesthetic Compatibility.** All buildings and structures shall be aesthetically compatible in scale and appearance with the existing buildings and structures in the vicinity.

## ARTICLE 13 – PERFORMANCE STANDARDS FOR AREAS WITHIN THE RESIDENTIAL II SHOREFRONT DISTRICT

- A. The purpose of this section is to provide standards for work within the Residential II Shoreland District, which will protect and preserve the high water quality in the lakes and ponds in the Town of Middleton.
- B. Areas in the district within two hundred fifty (250) feet of a lake or pond shall comply with the requirements of **RSA 483-B**, the “Comprehensive Shoreland Protection Act” and any amendments thereto.
- C. Construction activities within this district shall be completed in a manner, which will ensure that the natural hydrologic features and functions of the site are maintained to the maximum extent possible. Site disturbance shall be minimized. Vegetation outside the project area shall be maintained. The project area shall be depicted on site plans submitted as part of the building permit process.
- D. Best Management Practices (“BMP” techniques shall be employed to ensure that runoff from the site, both during and after construction, is discharged into the ground and does not reach the surface water.
- E. Any change to the exterior footprint or roofline of a structure shall require an infiltration trench under the drip edge(s) of the structure and along the lower side of the driveway/ parking area to promote infiltration and minimize runoff. Other suitable BMP, such as a rain garden, may be substituted for infiltration trenches when demonstrated to be appropriate.

Wherever there is a conflict between **RSA 483-B** and the requirements of this Ordinance, the more restrictive standard shall apply.

## ARTICLE 14 – PRIVATE CAMPSITES

- A. **Private Campsite Permitted.** A private campsite is permitted in accord with Article 3, Table 1.
- B. **Limitations.** A private campsite is subject to the following requirements:
  - 1. One private campsite per lot is allowed for a period no longer than 120 days, consecutive.
  - 2. A private campsite associated with the construction of a permitted single-family dwelling or duplex shall be allowed for up to one year while a building permit is valid, or completion of construction, whichever occurs first. The Planning Board may allow the private campsite to remain for up to **two (2)** additional years if in

its judgment the applicant has diligently pursued construction of the single family dwelling or duplex, and has made substantial construction progress.

3. No campsite shall be used for any means as a permanent residence.
  4. A private campsite placement on any lot shall conform to the setback requirements in Article III, Table 2.
  5. Solid waste and sewerage shall be disposed of in a lawful manner.
  6. A parcel owner shall not receive any form of compensation from use of a private campsite.
  7. Any camping vehicle connected to a water supply shall be hooked to a Sewage Disposal System approved by the NH Department of Environmental Services.
- C. **Storage of Private Camping Structures.** Nothing herein shall preclude the storage of an unoccupied recreational vehicle on private property provided all other State and local requirements are met. Tents and similar structures shall be collapsed and stored when unoccupied. Likewise, recreational vehicles, including campers and pop-ups, shall be stored in their fully collapsed, road- ready configuration, disconnected from all utilities, while unoccupied.

#### **ARTICLE 15 – RESIDENTIAL AND COMMERCIAL UNITS MAXIMUM (Rescinded 3/16/2017)**

#### **ARTICLE 16 – WATERFRONT ACCESS**

- A. **Purpose.** This Article establishes criteria for non-waterfront lots and non-waterfront dwelling units to acquire access to any lake, pond or watercourse.
- B. **Prohibition.** A lot that is contiguous to the shoreline of any lake, pond or watercourse is prohibited from allowing, by grant, lease or otherwise, a right to cross it for the purpose of providing to any other lot access to the lake, pond or watercourse, except as permitted in this Article and **RSA 483-B:9** entitled “Minimum Shoreland Protection Standards”.
- C. **Definitions.** For purposes of this Article, see **Article 36** “Definitions” for the meaning of “Recipient Lot or Recipient Dwelling Unity,” “Servient Waterfront Lot,” and “Exclusive Shoreland Frontage.”
- D. **Minimum Standards.** The minimum exclusive shoreland frontage required is **one hundred fifty (150) feet** for the first recipient lot and dwelling unit thereon. For each additional dwelling unit on the recipient lot, an additional **one hundred (100) feet** of exclusive shoreland frontage is required.

The minimum exclusive shoreland frontage required is **one hundred fifty (150) feet** for each recipient dwelling unit not located on a recipient lot.

- E. **Additional Requirements.** The Planning Board shall, when necessary to protect water quality, safety, or health, ensure there is sufficient access/ingress, parking area and toilet facilities on or near the servient waterfront lot for each recipient lot and recipient dwelling unit.
- F. **Subdivision Approval Required.** Any granting of waterfront access shall be considered a subdivision, and prior to granting waterfront access to a Recipient Lot or Recipient Dwelling Unit, the owner of the Servient Waterfront Lot shall obtain subdivision approval from the Planning Board.
- G.

## **ARTICLE 17 - SEASONAL DWELLING CONVERSION**

- A. **Purpose.** This Article establishes the requirements for the conversion of seasonal dwellings to permanent occupancy.
- B. **Application.** This Article applies to the conversion of any seasonal dwelling regardless of date of construction or occupancy.
- C. **Conversion/Requirements.** The conversion of a seasonal dwelling to a home that is, or may be used as the primary or year-round dwelling, shall not be allowed unless the following conditions are met:
  - 1. **Septic System.** The applicant must submit proof of compliance with **RSA 485A:38** in full accordance with Env-Wq 1004.15 & 1004.16, any all other pertinent sections of the Administrative Rules of the New Hampshire Department of Environmental Services as they pertain to conversion to fulltime use or occupancy of existing structures.
  - 2. Holding tanks are not permitted.
- D. **Permit.** A person seeking to convert a seasonal dwelling to year-round occupancy shall obtain an occupancy permit from the Middleton Code Enforcement Office to ensure compliance with all applicable town and state codes.

## **ARTICLE 18 – SIGNS**

**PURPOSE.** The intent of this Article is to allow the erection of a sign or signs, for the purpose of providing information and advertising, in an orderly, effective, and safe manner. Restrictions on type, location and size of signs are to protect the public from hazardous and

distracting displays and create an attractive environment that is conducive to local business, industry, and tourism, yet in keeping with the rural character of the community.

A. **PERMIT REQUIRED.** Any applicant wishing to erect a sign, which is not exempt under this Article, shall first obtain a building permit from the Town. The application shall contain, at a minimum, the following information:

1. Name(s), address and telephone number of the applicant;
2. Name(s), address and telephone number of the property owner(s), if different;
3. Tax map and lot number(s) of the premises where the sign is to be located;
4. Purpose of the sign;
5. Zoning district in which the sign is to be located;
6. Sketch drawn to scale of premises, showing location of sign on lot or on building, together with its dimensions and coloring.
7. Sketch drawn to scale showing design of the sign, materials to be used, method of construction and means and position of attachment to the building or the ground;
8. A description of any illumination to be used on or in the sign;
9. Any other information reasonably requested by the building inspector to allow the building inspector to make a determination whether the proposed sign conforms to this Ordinance and/or other applicable regulations.

B. **EXEMPT SIGNS.** The following signs are exempt from the sign regulations of this Ordinance, but may not be exempt from state sign regulations:

C.

1. **Government Sign.** A sign erected by the municipal, State, or federal government that is required for the public safety and welfare.
2. **Preexisting Sign.** A sign that qualifies as a non-conforming structure.
3. **Private Property/Trespass Sign.** A sign that indicates the existence of private property, or which forbid trespassing, hunting, or other such activities. Such signs shall be spaced at least **fifty (50) feet** apart and shall not exceed **two (2) square** feet each.
4. **Indoor Sign.** A sign, including a window display, which is located within a residence or structure whose primary purpose is for human habitation, whether as a residence, business, etc.

5. **Incidental Private Property Sign.** A sign located on private property and intended to regulate or guide activities within the property even though such sign may incidentally be visible off the property.
6. **Special Event Sign.** A sign for an annual or special event, such as a fair, political rally, fund-raiser, and the like shall be permitted for not more than **twenty-eight (28) days** preceding the event and **two (2) days** following the event. **One (1)** such sign is exempt per property.
7. **Real Estate Sign.** A sign used in advertising the property for sale or lease. A real estate sign shall clearly indicate that the real estate is for sale, as opposed to other articles (such as a car, boat, etc.) that may also be located on the property. **One (1)** real estate sign [**two (2)-sided**] is permitted per property not exceeding **nine (9) square feet** per side. Two off-site directional arrows shall be permitted. If an agency has more than one lot for sale on a street, **only one (1)** directional sign is allowed.

Within **seventy-two 72 hours** of the transfer of title of the property, all real estate signs shall be removed from the property.

8. **Contractor/Artisan Sign.** A sign advertising the presence of a contractor, mason, electrician, plumber, or other artisan on a property during construction on a property. One contractor/artisan sign (**two-sided**) is permitted per contractor/artisan per property not exceeding **nine (9) square feet** per side, provided the contractor/artisan is not the owner or tenant of the property, and is actively employed on the property on a full-time basis.
9. **Political Sign.** A sign that supports a candidate, party, or political ideal. A political sign shall be exempt for a period of **ninety (90) days** prior and **seven (7) days** subsequent to any town, State, or federal election. The term "election" shall include any town or school district annual or special meeting.
10. **Directional Sign.** A sign having no commercial message, indicating entrance and/or exit to a site, with a message area of **two square feet** or less (per side if two-sided).

A legally approved business is allowed one off-site directional sign no larger than **two (2) square feet** (per side if two-sided) and must meet Town sign standards.

11. **Non-Commercial Identification.** A sign with a message area of one square foot or less, which bears only a property number, post office box number, name of occupant, other non-commercial identification, or a message of the following type: "open", "closed", "now hiring", "vacancy", "no vacancy", etc.

12. Temporary holiday decoration sign. A temporary holiday lighted or unlighted decoration, or lighted or unlighted sign that proclaims “Happy Holidays,” “Merry Christmas,” “Happy Hanukah,” “Happy Easter,” or other calendar-specific secular or non-secular event. Temporary holiday decoration signs are permitted unless determined by the Codes Enforcement Officer to constitute a hazard to public safety due to excessive brightness causing a distraction to operators of motor vehicles, or for any other reason.
13. Private Yard Sale Sign. A sign for a yard sale is permitted for not more than **seven (7) days** preceding the event and shall be removed within twenty-four hours following conclusion of the event. **One (1)** such sign is exempt per property, and such signage is allowed for a maximum of three such events per calendar year.

D. **DESIGN STANDARDS.**

1. No more than **one (1)** non-free standing sign, with a maximum aggregate area of **thirty (32) square feet**, is permitted on a premises with the following exceptions:
  - a. Two signs shall be permitted if the business fronts on two roads in which case the total area of each sign shall not exceed **thirty (32) square feet**.
  - b. The maximum aggregate area shall not exceed nine (9) square feet if the primary use of the premise is any of the following: a dwelling; home enterprise; rest, convalescent, and nursing home; private nursery school; kindergarten; child care center; public, educational, historical, institutional, and non-profit organization use.
  - c. The maximum aggregate area shall not exceed **nine (9) square feet** for the following: temporary real estate or artisan sign; yard/garage sale; or roadside stand.
2. Only **one (1)** free-standing sign with a maximum aggregate area of **fifty (50) square feet** is permitted per lot, but two signs shall be permitted if the business fronts on two roads in which case the total area of each sign shall not exceed **fifty (50) square feet**.
3. A sign shall not, by reason of location, size, color, or design interfere with public traffic or be confused with or obstruct the view or effectiveness of any official traffic signal or traffic marking.
4. A sign shall have a maximum height, from the ground to the uppermost point, of **twenty (20) feet**.



5. A sign shall be illuminated only by an external light source and each light source shall be located, directed and/or shielded such that it is not visible at any point along the property boundary, nor from any right-of-way or neighboring property.
6. A sign must be attractive and in keeping with the neighborhood.
7. A sign shall not be placed within the side or rear lot line setbacks, but can be placed within the front lot line setback.
8. A wall sign shall be subject to the following additional requirements:
  - a. No wall sign shall extend above the top of the wall upon which it is mounted.
  - b. No wall sign, or any part thereof, shall project more than **ten (10) inches** from the wall upon which it is mounted.
  - c. No wall sign shall extend beyond the left and right extremities of the wall to which it is mounted.
9. A projecting sign shall be subject to the following additional requirements:
  - a. No projecting sign shall project more than **five (5) feet** beyond the wall, porch or edge of the building in the direction of the street, nor shall any portion of the projecting sign be closer than **two (2) feet** to the face of the street curb or curb line.
  - b. No portion of any projecting sign shall be less than eight (8) feet above grade level.
  - c. No projecting sign shall have a vertical dimension greater than three (3) feet.
10. A sign for a multiple use development (such as a shopping center with more than one business) may have a total area of up to **one hundred (100) square feet** by Special Exception. In the event the multiple use development qualifies to have more than one (1) sign, then each sign may have a total area of up to **one hundred (100) square feet** by Special Exception.

E. **PORTABLE SIGN.**

A new business may use a portable sign while awaiting the arrival of a permanent sign. A portable sign shall be allowed only after a permit for permanent sign has been

obtained, and only until the permanent sign is installed, or for sixty (60) days, whichever is shorter.

F. **PROHIBITED SIGNS.**

1. A sign that advertises any business or other commercial venture that has permanently ceased conducting business.
2. A search light or the use of a search light or similar bright light beam to attract attention.
3. A sign that incorporates in any manner any flashing or moving illumination or with illumination which varies in intensity or varies in color, that has any visible moving parts, visible revolving parts, or visible mechanical movement of any description, or other apparent visible movement achieved by electric pulsations or by actions of normal wind current or otherwise, except when not visible from motor vehicles traveling on public roadways. A hanging sign which simply swings in the wind, clock and time and temperature signs and barber poles shall be exempt provided it complies with all other provisions of the Zoning Ordinance. A time, date and temperature sign may include a device indicating digital time and temperature, but shall not change in any interval that indicates flashing.
4. A sign, which by reason of size, location, content, coloring, or manner of illumination, obstruct the vision of drivers, or pose an unreasonable distraction to drivers, or obstruct or detract from the visibility or effectiveness of any traffic sign or control device on public streets and roads.
5. A sign which obstructs free ingress to or egress from a fire escape, door, window or other required exit way.
6. A sign on public property or public right-of-way, unless erected by a governmental body, or unless required to be so located by order of a governmental body. No sign located on public property or a public right-of-way shall bear any commercial advertising or announcement.
7. String lights or bare bulb illumination, other than temporary holiday decorations, which are unshielded from view from off the property on which they are located.
8. Flame as a source of illumination.
9. An oversized pennant, banner, spinner, streamer or balloon except for occasions such as grand openings and then only with special written permission of the Selectmen. Use shall be limited to a **fifteen (15) day** period and shall not be erected again for a period of **thirty (30) days** thereafter. This does not include banners containing the word "open" or some other salutation

and less than fifteen (15) square feet in size which will be permitted at any time that the business is open.

10. A sign or sign structure which constitutes a hazard to public safety or health.

11. Franchise architecture is considered excessive signage and is not permitted.

G. **MAINTENANCE AND OBSOLESCENCE.** All signs and sign structures shall be properly maintained and kept in a neat and proper state of maintenance and appearance. A sign of any type and located within any District found by the Selectboard or its duly authorized representative to be in a state of disrepair or considered dangerous, shall be repaired or removed on order of the Selectboard or its duly authorized representative. Upon failure to comply with the order of the Selectboard or its duly authorized agent within the time specified, the Selectboard or its duly authorized agent shall cause removal of this sign and any expense resulting there from shall be borne by the owner of the property upon which the sign is located, or the owner of the sign, or both.

H. **NON-CONFORMING SIGN.** A sign lawfully in existence prior to the adoption of these regulations that does not conform to these regulations shall be permitted to continue and be maintained. No change in type, size of message area or support structure, height, location, message, illumination, number or material shall be permitted without application to and approval from the Town. Permitted changes may allow reduction in any one or more of the non-conforming aspects, but shall not allow any nonconforming aspect of the sign to increase in non-conformity.

I. **SIGNS ALLOWED BY SPECIAL EXCEPTION OR CONDITIONAL USE PERMIT**

The following may be allowed by Special Exception:

1. A sign whose height exceeds twenty (20) feet. However in no event shall a sign's height exceed thirty (30) feet **thirty (30) feet**.
2. More than one free-standing sign.
3. More than one sign per premises.
4. A sign that advertises an off-site business or activity provided the sign does not exceed **nine (9) square feet** in area.
5. An internally illuminated sign, but only in the Business and Commercial District, and subject to reasonable restrictions as may be imposed by the local land use board to include limiting the degree of illumination, requiring appropriate shielding, and limiting hours of illumination, all to minimize the intrusion of light onto adjacent properties.

6. A sign up to **one hundred (100) square feet** in area to advertise shopping centers and similar multiple-use developments and businesses.
7. Additional signs in any district.
8. Roof sign.
9. A Window sign that is brightly lit from the rear or internally illuminated.
10. A sign located within a side or rear lot line setback.

Requirements for a Special Exception for a sign:

1. Any person desiring consideration for a Special Exception by the Zoning Board of Adjustment shall file an application with the Board and in addition to other requirements imposed by this Ordinance attach to it the following information:
  - a. A map or site plan showing the location of the building, structure, or lot to which the sign is to be attached or erected, and showing the position of the sign in relation to nearby buildings and public thoroughfares. Such a map or site plan must be to scale.
  - b. A plan (or picture) showing the design of the sign, materials used, method of construction, and means and position of attachment to the building or the ground. Plans must be drawn to scale.

### **ARTICLE 19 – YARD SALES**

A yard sale is permitted in all districts and is subject to the following requirements:

- A. A sign for a yard sale shall be in conformance with the requirements of Article 18.
- B. A yard sale shall occur only during daylight hours. Its location and method of operation will cause no unreasonable disturbance, impedance to normal traffic flow, or compromise safety in the neighborhood and the general public.
- C. The premises shall be cleared of trash and debris will be removed immediately at the conclusion of the yard sale. All items not sold shall be removed from the site or stored in a permitted structure or in an area out of the public view within forty-eight (48) hours of the conclusion of the yard sale.

### **ARTICLE 20 – HOUSING FOR OLDER PERSONS**

The maximum density for Housing for Older Persons is **one (1)** dwelling unit per buildable acre for lots located in the Rural Residential District (RR) and Residential-Commercial District/Industrial (B-1); and **two (2)** dwelling units per buildable acre in the Residential District (RR).

The allowable number of dwelling units per building in a multi-family structure for Housing for Older Persons is a maximum of four (4). Each dwelling unit shall have a maximum of two (2) bedrooms and a minimum of seven hundred fifty (750) square feet of indoor living area. For the purpose of this definition covered walkways, basements and garages shall not be construed as a portion of any building.

The number of full-time residents of a single dwelling unit in a residential community approved under this Article shall not exceed **three (3)**.

A residential community approved under this Article must contain the following requirements. However, the Planning Board may waive strict adherence to one or more of the following requirements if it makes specific findings that the need addressed by the requirement (a) can be met by an alternative on-site or nearby resource, or (b) given the location or other characteristics of the proposed residential community, the requirement is rendered unnecessary:

- A. A year-round recreation/ social center to provide social activities for residents of the **fifty-five (55)** and older community. A first aid room to include such items as an automatic defibrillator, eye wash kit, complete first aid kit, etc., shall be part of this facility;
- B. Compliance with design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended, for all residential structures with **four (4)** or more dwelling units and the community/ recreation center. In residential structures with fewer than dwelling four units, each dwelling unit will be designed to allow for future conversion to Architectural Barrier Free Design Code for the State of New Hampshire, as amended;
- C. A back-up generator capable of providing power to all dwelling units and the community/ recreation center during a power outage;
- D. Walking trails;
- E. Care and maintenance of all interior and outdoor common areas, and the exterior of all structures; and
- F. A passenger van for the group transportation needs of residents of the **fifty-five (55)** and older community.

Parking: In residential communities qualifying as Housing for Older Persons, a minimum of **two and one-quarter (2.25)** spaces of off-street parking, not to include garages, shall be provided per dwelling unit.

## ARTICLE 21 – ASSISTED LIVING FACILITIES/LIFE CARE FACILITIES

The maximum density for Assisted Living Facilities/ Life Care Facilities is **two (2)** dwelling units per buildable acre for lots located in the Rural Residential District (RR), **one (1)** dwelling unit per buildable acre in Residential-Commercial District/Industrial District (B-1); The allowable number of dwelling units in a multi-family structure for Assisted Living Facilities/ Life Care Facilities is a maximum of fifteen (15). Key components of this type of facility include congregate dining facilities, common living/ community/ recreation room, and staff on- site twenty **(24)-hours** our a day.

Each dwelling unit created as part of an Assisted Living Facility/ Life Care Facility shall have a maximum of two (2) bedrooms and a minimum of seven hundred fifty **(600) square feet** of indoor living area. For the purpose of this definition covered walkways, basements and garages shall not be construed as a portion of any building. The number of full-time residents of a single dwelling unit in these facilities shall not exceed **three (3)**.

As an alternative, Assisted Living Facilities/ Life Care Facilities may take the form of a single-family dwelling or group home where residents have a private or shared bedroom with common dining and living areas. In a room used as sleeping accommodation in Assisted Living/ Life Care Facilities, the number of full-time residents shall not exceed **two (2) persons**.

All components of the Facility approved under this Article must comply with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended, and may include a combination of dwelling units and private or shared sleeping accommodations provided all other requirements of this Article are satisfied.

Parking: Facilities qualifying as Assisted Living Facilities/ Life Care Facilities shall provide a minimum of **one (1.0) space** per dwelling unit, not to include garages, plus **one half (0.5)** space per room used as sleeping accommodations, plus one space per employee for the number of employees on the largest work shift.

## ARTICLE 22 – HOME ENTERPRISES

- A. There are four categories of home enterprises (including professions and trades) that may be conducted as an accessory use to a residential use on the same parcel:
1. **Home Business** - A business, profession, or trade that 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, and people who work at home and conduct business by mail or electronic communication.

2. **Professional Uses and Customary Home Occupations** - A business, profession or trade that is conducted by a resident of the premises, entirely within the residence or an accessory building, and involves an increase in traffic for clients, patients, associates, or employees. Examples include but are not limited to: doctors, dentists, lawyers, home daycare facilities, accountants, and beauticians.
3. **Home Industry** - A business or trade that is conducted by a resident of the premises, but not necessarily entirely enclosed within structures. A Home Industry involves an increase in traffic for employees and delivery vehicles, and a minimal increase in traffic for clients. A Home Industry may also involve the use or exposure to toxic or waste products that may be harmful to people or the environment. Examples include but are not limited to: craftsmen, wholesale bakery or other wholesale food production, small engine and boat repair.
4. **Home Office** - A home office, subject to the following standards, shall be permitted in all zoning districts, regardless of lot size. A home office meeting all the standards outlined below requires no permit or approval from the Town or the Planning Board.
  - a. No employees shall be permitted to work on the premises, except for family members who reside in the dwelling; b. No signs shall be permitted, either on or off site;
  - c. No customers or clients shall be seen at the residence;
  - d. The area devoted to the home office shall not exceed twenty-five **(25) percent** of the gross floor area of the dwelling unit, excluding the basement;
  - e. No outside storage shall be permitted;
  - f. One company vehicle shall be permitted as an accessory to a home office; and
  - g. Deliveries and pick-ups related to the activities of the Home Office shall be of a nature that is consistent with a residential neighborhood.

A home-based business not meeting any one or more of the above standards shall be considered a home enterprise and subject to the appropriate level of review as described in Paragraphs B. through E. of **Article 22** Home Enterprises.

- B. **General.** All three categories listed in **Section A** above are subject to the following requirements. In addition, home businesses are subject to the provisions in **Section C**, professional and customary home occupations are subject to the provisions of **Section D**, and home industries are subject to the provisions of **Section E**.
1. The activity must be operated by one or more residents of the dwelling unit.
  2. The activity must be incidental and secondary to the primary use of the premises as a residence.
  3. 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.
  4. Required parking must be accommodated off-street, except in locations in the Sunrise Lake Village District. When possible, parking areas shall be located at the side or rear of the residence or accessory buildings.
  5. Proof of compliance with all applicable environmental controls is required, including the requirements of the following overlay districts: Aquifer Conservation Overlay Zoning, District, Wetland Conservation Overlay Zoning District, and Floodplain Development Overlay Zoning District.
  6. Site Plan Review at the appropriate level is required for all home enterprises.
  7. Business signage is permitted for home enterprises provided it complies with the requirements of **Article 18** Signs, Paragraph D Design Standards Subparagraph 1.a. of this Ordinance.
- C. **Home Businesses.** Home businesses are permitted in all districts where Single Family Residence is a permitted use without the need for a Special Exception or Conditional Use Permit, if in compliance with the requirements of **Section B**, above, and the following:
1. The activity must be conducted entirely within the residence or an accessory building.
  2. Not more than two non-resident persons shall be employed in the activity at the site.
  3. There shall be no exterior display, no exterior storage of materials or equipment, and no other variation from the residential character of the premises.



4. Any resident wishing to establish a home business shall submit a request on the form provided by the Planning Board to the Planning Board's designee for review. If the Planning Board's designee determines that the proposed home business is in compliance with the regulations listed above, then he/she shall sign the form stating that the proposed home business is in compliance with this section and does not require approval under Section D or E.

D. **Professional Uses and Customary Home Occupation.** Professional Uses and Customary Home Occupations are permitted Conditional Use Permit from the Planning Board in all zoning districts where Single Family Residences are a permitted use, except the Sunrise Village District (SRL) or Shoreland Protection District (SP), if in compliance with the requirements of Section B, above, and the following:

1. The activity must be conducted entirely within the residence or an accessory building.
2. Not more than four (4) non-resident persons shall be employed in the activity at the site.
3. There shall be no exterior display, no exterior storage of materials or equipment, and no other variation from the residential character of the premises.
4. The Professional Use and Customary Home Occupation shall not generate traffic that is inconsistent with the traffic associated with a single-family residence.
5. The Professional Use and Customary Home Occupation shall not necessitate more than **six (6)** parking spaces for clients, patients, non-resident employees, or other business related demands.
6. The Professional Use and Customary Home Occupation shall not entail more than occasional visits by commercial vehicles.

E. **Home Industries.** Home industries are permitted in the Rural Residential District (RR) by Conditional Use Permit from the Planning Board, if in compliance with the requirements of Section B, above, and the following:

1. The parcel on which the Home Industry is operated must be a minimum of three (3) acres in size.
2. Not more than six (6) non-resident persons shall be employed in the activity at the site.

3. The Home Industry may be conducted outdoors in part, but all such activities, equipment, and storage shall be permanently screened from the view of abutters and from public ways by buffers such as plantings, fences, and/or topography.
4. The impact on abutters of the outdoor operation of machinery or equipment associated with the Home Industry shall be considered when evaluating the Conditional Use Permit.
5. No more than twenty-five percent (25%) of the lot area, exclusive of areas covered by buildings, shall be used for home-based industry activities including outdoor storage or parking.
6. The Planning Board must determine that access to the premises by all vehicles that are anticipated to commonly serve the Home Industry will do so without adversely affecting safety in the vicinity, whether those vehicles are based on the premises or elsewhere.
7. Compliance with NH Department of Environmental Services' Best Management Practices is required, as applicable.

## **ARTICLE 23 – FAMILY COMPOUND**

A. **PREFACE.** It is recognized that the “family” is an integral part of society as a whole, and Middleton in particular. Family businesses are commonplace, as too is family involvement in non- business activities, such as worship, recreation, and tending to the needs of the home. There are many forces at work that act to drive families apart, including the labor market, ease of travel, technology, cost of living, and societal pressures. We are living longer than ever. Families can often span 4 generations.

The increase in real estate prices may make it difficult for families to spend blocks of time together, by interfering with the financial ability of families to buy separate parcels of land in close proximity to one another.

It is with the above observations as the backdrop that family compounds are provided a place in the Middleton landscape.

However, and as a caveat to the would-be owner(s) of a family compound, caution and prudence should be exercised. A family compound, which ceases to be used solely for “family” may become subject to enforcement action in order to bring it into compliance with the Zoning Ordinance. Careful planning is encouraged, although not required, that would allow for future subdivision of the family compound into separate lots of record that comply with the Zoning Ordinance in effect at the time the family compound ceases to qualify as such. Although no one knows what the requirements of the Zoning Ordinance will be at any time in the future, thoughtful planning in the

present may soften or eliminate possible problems for future heirs or generations when the family compound is no longer a viable alternative.

This Article allows and provides standards for family compounds.

- B. **STANDARDS.** It is encouraged, but not required, that each dwelling be located on the parcel in such a way that, if subdivided, each dwelling will be located on a conforming lot, to include required minimum lot size, road frontage, setbacks, etc.
1. Separate water supply and sewage disposal for each dwelling is not required. However, it is encouraged that each dwelling be located on the parcel in such a way that, if subdivided, each dwelling will have sufficient area available for separate water supply and sewage disposal.
  2. A maximum of three (3) dwelling units per lot.
  3. A shared driveway serving all the dwelling units on a lot is allowed. However, it is encouraged that each dwelling be located on the parcel in such a way that, if subdivided, each dwelling will have the ability for direct driveway access to a street.

Title to the property, to include the land and all dwelling units must be vested in the same owner, which shall be one (1) an individual, two (2) or more persons related by blood or marriage, or two (2) a New Hampshire entity whose shares or member interests are all held by one or more persons related by blood or marriage. "Related by blood or marriage" means persons who have a valid marriage or civil union certificate, or who are related by virtue of being lineal ascendants or descendants, brother, sister, uncle, aunt, niece, nephew, or first cousin. When title is vested in two (2) or more persons, either directly or through ownership in an entity, either the deed shall recite the nature of the familial relationships between the vested interests, or the holders of the vested interests shall provide a statement to the Town reciting the nature of the familial relationships between the vested interests signed by the holder of each vested interest.

4. Each dwelling must comply with the provisions of the Shoreland Water Quality Protection Act (**RSA 483-B**). The key provisions are summarized as follows: If the parcel is a shorefront parcel, only **one (1)** dwelling unit per **one hundred fifty (150) feet** of shoreland frontage (the average of the distances of the actual natural shoreline footage and a straight line drawn between property lines) is allowed (**RSA 483-B:9, V(d)(2)(A)**); and for lots located within **two hundred fifty (250) feet** of a shoreline that do not have direct frontage, only one dwelling unit per **one hundred fifty (150) feet** of lot width, as measured parallel to the shoreland frontage, is permitted (**RSA 483-B:9, V(d)(2)(B)**).

5. The use of single-family dwellings in a family compound is limited to family members and occasional guests. No rent may be charged for any dwelling unit in the family compound.

**ARTICLE 24 - ACCESSORY DWELLING UNITS (Replaces ARTICLE 24 effective June 1, 2017)**

I. Authority. This section is enacted in accordance with the provisions of RSA 674:71 73 and RSA 674:21.

II. Purpose. The purposes of the accessory dwelling unit ordinance are to:

- (a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
- (b) Provide flexible housing options for residents and their families.
- (c) Integrate affordable housing into the community with minimal negative impact.
- (d) Provide elderly citizens with the opportunity to retain their homes and age in place.

III. Definition.

An “accessory dwelling” unity shall be connected to the principal dwelling unity that is within or attached to a single-family dwelling and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

An “attached accessory dwelling” unity shall be connected to the principal dwelling unit by a shared wall or roof and enclosed structure with doors to both units.

IV. Conditional Use Permit Required Pursuant to RSA 674:21 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory dwelling units in accordance with the restrictions and requirements of this section.

V. Criteria for Approval.

All of the following criteria must be met in order for the zoning board/planning board/building inspector to approve the construction of an accessory dwelling unit:

- (a) A maximum of one (1) accessory dwelling unit may be permitted on property located in zoning districts that allow single-family dwellings and must be located within or attached to the principal single family dwelling unit.
- (b) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
- (c) All municipal regulations applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to, lot and building dimensional requirements. A minimum of two parking spaces shall be provided for the accessory dwelling unit.
- (d) The applicant for a conditional use permit shall demonstrate adequate provisions for water supply and sewage disposal for the accessory and primary dwelling units in accordance with RSA 485.A:38. Water and wastewater systems for the principal and accessory dwelling units may be combined or separate.
- (e) Either the principal dwelling unit or the accessory dwelling unit must be owner occupied. The owner must demonstrate that one of the units is their principal place of residence. Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership. Transfer of either dwelling unit to condominium ownership is not permitted.
- (f) Accessory dwelling units shall maintain an aesthetic continuity with the principal dwelling unit as a single-family dwelling.
- (g) An accessory dwelling unit size may not be restricted to less than 750 square feet.
- (h) Detached Accessory Dwelling Units. Detached accessory dwelling units are permitted. Detached accessory dwelling units shall require that the lot be 20 percent larger than the minimum lot size required in the residential zone it is proposed.
- (i) The accessory dwelling unit shall have no more than 2 bedrooms.

#### VI. Occupancy Permit Required

Prior to occupancy of the accessory dwelling unit, the homeowner shall complete an ADU application and submit to the Planning Board and Code Enforcement Officer for approval of the permit for construction of an accessory dwelling unit. Upon completion of such construction the Code Enforcement Officer will issue an occupancy permit if all criteria are met.

## ARTICLE 25 – WORKFORCE HOUSING

- A. **PURPOSE:** The purpose of this section is to provide reasonable and realistic opportunities for the development of multi-family and work force housing within Middleton. It is intended to promote the continued availability of a diverse supply of home ownership and rental opportunities. This section was established in order to meet the goals related to workforce housing provisions set forth in the Middleton Master Plan and to meet the State of New Hampshire requirement that all communities provide realistic opportunities for the development of needed workforce housing. At the same time, the Town enacts this Section to assure that any such housing meets reasonable standards and conditions for approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life protection.
- B. **AUTHORITY:** This section is created in accordance with the provisions of **RSA 674:58- 674:61**. In addition, this innovative land use Ordinance is adopted under the authority of **NH RSA 674:21** and is intended as a “Inclusionary Zoning” provision as defined in **NH RSA 674:21 (I)(k) and 674:21 (IV)(a)**.
- C. **DEFINITIONS:**
1. “Affordable” – Housing with combined rental and utility cost or combined mortgage loan debt services, property taxes, and required insurance that do not exceed thirty percent (30%) of a household’s gross annual income.
  2. “Multi-Family Housing” – Any structure containing three (3) or more residential units, each designed for occupancy by an individual household;
  3. “Workforce Multi-Family” – For the purpose of workforce housing developments, means a building or structure containing five (5) or more dwelling units, each designed for occupancy by an individual household.
  4. “Elderly Affordable Housing”:
    - a. Housing which is intended for sale and which is affordable to households whose head or spouse or sole member is **sixty-two (62) years old** with an income no more than **ninety percent (90%)** of the median income, applicable to Middleton, as published annually by the United States Department of Housing and Urban Development (HUD);
    - b. Rental housing which is affordable to households whose head or spouse or sole member is **sixty-two (62)** or older with an income no more than **fifty percent (50%)** of the median income applicable to Middleton, as published annually by HUD.
  5. “Workforce Housing”: Workforce housing developments may consist of:

- a. Housing which is intended for sale and which is affordable to a household with an income of no more than **one hundred percent (100%)** of the median income for a **four (4)** person household for counties and metropolitan areas of the State of New Hampshire, applicable to Middleton, as published annually by the HUD;
  - b. Rental housing which is affordable to a household with an income of no more than **sixty percent (60%)** of the median income for a **3-person** household for counties and metropolitan areas of the State of New Hampshire, applicable to Middleton, as published annually by the HUD. Housing developments that exclude minor children from more than **twenty (20%)** percent of the units, or in which more than **fifty percent (50%)** of the dwelling units have fewer than **two (2)** bedrooms, shall not constitute workforce housing for the purposes of this section.
6. The terms “workforce housing” and “affordable housing” are used interchangeably throughout this ordinance.

**D. APPLICABILITY:**

- 1. Developments under this section shall be permitted within the Rural Residential District (RR) and Residential Commercial District/Industrial (B-1) by Conditional Use Permit issued by the Planning Board.
- 2. Developments under this section shall not be permitted within the Sunrise Village District.

**E. PROCEDURAL REQUIREMENTS:** Any applicant who applies to the planning board for approval of a development that is intended to qualify as workforce housing under this section shall follow the Town’s application procedures for a site plan and/or Subdivision approval as defined in the Town’s Site Plan and/or Subdivision Regulations. The applicant shall also provide with the initial application(s), a statement of intent for the development to qualify as workforce housing per **RSA 674:60**. Failure to file such a statement of intent at the time of submission of the initial application to the Planning Board shall constitute a waiver of the applicant’s appeal rights under **NH RSA 674:61**, but shall not preclude an appeal under other applicable laws.

**F. DEVELOPMENT STANDARDS:** Unless otherwise stated herein, housing developments pursuant to this ordinance shall meet the requirements of the Town of Middleton Zoning Ordinance, Subdivision Regulations, and Site Plan Regulations, as applicable.

1. Density:

- a. Density shall be determined by the Density and Minimum Dimensional Requirements for each of the Middleton Zoning Ordinances.

- b. In a mixed income development where there are both market-rate and workforce and/or elderly affordable housing units, a minimum of **twenty-five percent (25%)** of the dwelling must qualify as workforce housing and/or elderly affordable housing. The housing units shall be interspersed throughout the overall development unless otherwise approved by the Planning Board.
- c. The maximum number of units per building in a housing development pursuant to this section shall be **eight (8) units** unless located within the Sunrise Lake Village District (SRL).

2. Density Bonus:

- a. A site plan or subdivision plan which guarantees **thirty percent (30%)** of units proposed with the development (including all units allowed by density bonuses) reserved as workforce housing, May be approved with an increase of **fifteen percent (15%)** in the density of the site. The Planning Board may allow a reduction of the minimum lot sizes and setbacks of the district to accommodate the increased site density.
- b. A site plan or subdivision which guarantees **thirty percent (30%)** or more of units proposed with the development reserved as workforce serviced by municipal sewer and water can accumulate a maximum bonus equal to **twenty-five percent (25%)**.
- c. The maximum allowed density shall not exceed that which may be allowed under NH Department of Environmental Services Septic System Design Rules and shall be applicable on the date of site plan and/or subdivision application to the Planning Board.

3. Dwelling units:

- a. Single-family duplexes and multi-family can qualify as workforce and/or elderly affordable housing;
- b. Dwelling units qualifying as workforce housing and elderly affordable housing shall be compatible in architectural style and exterior appearance with the market rate dwellings of similar type in the proposed development and shall not impact the abutting properties. Said housing units shall be interspersed throughout the overall development. The structures must also include energy efficient construction that will ensure affordable annual operation long-term;
- c. Housing shall be so designed as to provide minimal impact to a site, complement and/or be accessory to any other existing or proposed uses on the site;



- d. Any multi-family housing shall be sufficiently screened and buffered in such a way as to mitigate any impact on abutting single-family residential uses;
  - e. Housing development as upper story units over an allowed commercial or office use is encouraged;
4. In a mixed income development where there are both market-rate and workforce housing units, the dwelling qualifying as Workforce Housing shall be made available for occupancy on approximately the same schedule as a project's market rate units. A schedule setting forth the phasing of the total number of units shall be established prior to final approval by the Planning Board. Said schedule shall be filed at the registry of Deeds and be properly updated with the Town and Registry as a condition of release of building permits.
- a. Frontage, Setbacks, and Yard Regulations: Structures may be located in any manner on the site that meet this Ordinance's requirements and objectives, and provided that the following dimensional standards are met:
  - b. Proposed dwelling units that have their frontage on existing public roads shall have frontages and front yard setbacks as required in the underlying zoning district or applicable overlay district.
  - c. Proposed dwelling units shall have the required building setbacks for the underlying zoning district or applicable overlay district along the abutting property lines.

**G. ADMINISTRATION OF UNITS- SALES OR RENTALS:**

- 1. In the event of a unit sale or transfer of an owner- occupied unit, the buyer will be certified for income eligibility under this section by an agency with expertise acceptable to the Town, prior to the sale or transfer. A copy of said certification will be provided to the seller.
- 2. In the event of a rental or renewal of an affordable rental unit, the renter will be certified for income eligibility under this section by an agency with expertise acceptable to the Town, prior to the rental or renewal. A copy of said certification shall be provided to the landlord. Rental units cannot be sublet to a third party by the current renter of record.
- 3. In the event rental units are sold, the requirements set forth in a Master Plan pertaining to deed restrictions and recorded housing agreements will apply.
- 4. A certification fee will be charged for each sale, transfer, or rental term for a unit. The fee will be paid by the purchaser or renter of the unit, as designated by the Town.

5. A third party non-profit organization or property management entity shall be responsible for income verification and ongoing affordability compliance. The designated organization or company shall provide appropriate reports to the Planning Board on these two issues when necessary. The Planning Board may adopt regulations to aid in the implementation and administration of this section pertaining to workforce housing developments.

H. **AFFORDABILITY:**

1. Units will be sold with deed restrictions and a recorded housing agreement, in a form satisfactory to the Planning Board, that limits, for a period of **thirty (30) years** renewable upon sale or transfer, the resale value of the unit to not more than the purchase price multiplied by a factor of **one (1)**, plus the percentage increase in median income from the year of initial occupancy until the year in which the unit is resold, plus the cost of property improvements, other than normal maintenance, made by the owner.
2. Units will be rented with deed restrictions and a recorded housing agreement, in a form satisfactory to the Planning Board, that limits, for a period of **thirty (30) years**, renewable upon each rental, the rental price for each unit to an affordable price as determined by the formula set forth above in a Master Plan updated to the year in which the subsequent tenant assumes occupancy, unless no such tenant is found after **sixty (60)** day good faith effort. Total gross rent to be charged to subsequent tenants shall not exceed the gross rent at the time of initial occupancy times a factor equal to **one (1)** plus the percentage increase in the median area income, updated to the year in which the subsequent tenant occupies the unit.

- I. **ANNUAL REPORT:** A third party non-profit or for-profit organization or property management entity shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of affordable units have been maintained in accordance with the income restrictions set forth in this section. Such reports shall be submitted to the Planning Board or its designee, and shall list the contract rent and occupant household incomes of all affordable units for calendar year and the dates of initial occupancy for each household. Failure to file a complete with certification by the owner shall be considered a violation of the Middleton Zoning Ordinance.

## **ARTICLE 26 – HOME BASED CONTRACTOR YARD**

- A. **PURPOSE:** To recognize existing home based contractor yards and allow their continued operation; to establish districts where new home based contractor yards will be a permitted use and site development standards for those new home based contractor yards; to maintain or enhance Middleton’s rural character, aesthetic charm and property values.

- B. Home Based Contractor Yards are permitted as per Article 3, Table 1, subject to the following:
1. The parcel on which the Home Based Contractor Yard is located must be a minimum of **five (5) acres** in the Rural Residential District (RR) and Residential-Commercial District/Industrial (B-1).
  2. Not more than **six (6)** non-resident persons shall be employed in the activity at the site.
  3. All equipment and materials shall be stored in a neat and orderly manner and whenever possible shall be screened from the view of abutters and from public ways by buffers such as structures, plantings, topography, natural vegetation, fences, and/or siting of the Home Based Contractor Yard on the parcel.
  - 4.
  5. The Home Based Contractor Yard shall not occupy more than **twenty five percent (25%)** of the lot area and shall not exceed **two (2) acres** whichever is less, exclusive of areas covered by buildings. This restriction is not applicable to a Home Based Contractor Yard located in the Residential-Commercial District/Industrial (B-1).
  6. All parking and storage related to the Home Based Contractor Yard shall comply with the building setbacks for the zoning district in which the Home Based Contractor Yard is located.
  7. Compliance with NH Department of Environmental Services Best Management Practices is required, as applicable.
- C. Home Based Contractor Yards existing prior to November 1, 2009 shall have registered with no fee with the Code Enforcement Officer on or before April 1, 2010. Subject to these regulations, such pre-existing home based contractor yards shall be allowed to continue to operate in their present (prior to November 1, 2009) location, provided ownership of the business supported by the Home Based Contractor Yard remains in the same family operating the Home Based Contractor Yard as of November 1, 2009. Such pre-existing Home Based Contractor Yards shall be exempt from the provisions of Paragraph B.1. of these regulations, but shall comply with the remainder of these regulations by January 1, 2012.

## **ARTICLE 27 – PERSONAL WIRELESS SERVICE FACILITIES**

### **A. AUTHORITY**

This Ordinance is adopted by the Town of Middleton pursuant to New Hampshire **RSA 674:16**, grant of Power and **RSA 674:21**, Innovative Land Use Controls, and procedurally under the guidance of **RSA 675:I, II**. This Ordinance grants the Middleton Planning Board the authority to issue Special Use permits for telecommunications facilities consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town. The granting of a Special Use Permit for a Telecommunications facility shall be subject to the requirements outlined herein.

## **B. PURPOSE AND OBJECTIVES**

This Ordinance is enacted to establish general guidelines for the siting of telecommunications towers and antennas and to fulfill the following objectives:

1. Preserve the authority of Middleton to regulate and to provide reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of telecommunications providers to deliver these 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, safety, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, viewsheds, prosperity through protection of property values and the rural character of the Town.
3. Require co-location and provide for minimal impact siting through technology assessment, evaluation of current and future location options, innovative siting techniques, and siting possibilities beyond the political jurisdiction to the Town.
4. Permit the construction of new towers only where all other reasonable options have been exhausted and to encourage the construction and configuration of towers and antennas, which minimize adverse visual impact.
5. Provide for regular maintenance and safety inspections of all facilities.
6. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance.
7. Provide for the removal or upgrade of facilities that are technologically outdated.

## **C. DEFINITIONS**

“Alternative Tower Structure” innovative siting techniques that shall mean man-made trees, clock towers, 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 (PSC), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

“Buildings and Related Structures” shall mean any structure, improvement, land development, or infrastructure, including rights-of-way, necessary for the operation of telecommunication facilities defined in this section.

“Co-location” means locating wireless communication facilities from more than one provider 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 the average existing ground level within ten feet of the tower location at the time of application to the highest point on the tower or other structure, including antennas or other appurtenances.

“Telecommunications Facility” shall mean any structure, antenna, tower or other device which provides, but is not limited to the following services; commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), enhanced SMR, person communications service (PCS), paging and similar services that are marketed to the general public.

#### D. **APPLICABILITY**

1. Amateur Radio; Receive-Only Antennas. This Ordinance shall not govern any tower or antenna that is less than **twenty (20) feet** in height above the house ridge and no greater than 60 feet in height that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
2. Essential Services and Public Utilities. Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities. Siting for telecommunications facilities is considered a use of land subject to Planning Board review.

#### E. **GENERAL REQUIREMENTS**

1. **PERMITTED BY SPECIAL USE PERMIT.** Telecommunications facilities are permitted by Special Use Permit provided that all standards set forth in this Article are met as well as all other applicable Ordinances and Regulations (including Site Plan Review). Existing towers or structures that are not presently used as telecommunications facilities must meet all requirements of this Ordinance once

they are proposed for use as a telecommunication facility. Applicants proposing an increase in height of an existing telecommunications facility must also meet all requirements of this Ordinance.

2. **FFA AND FCC REGULATIONS.** 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 with six 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 stands and regulations shall constitute grounds for the removal, at the owner's expense through the execution of the posted security.
3. **PRINCIPAL OR SEDONDARY USE.** Subject to this Ordinance, an applicant who successfully obtains permission to site under this Ordinance as a second and permitted use may construct a telecommunications facility in addition to the existing permitted use. 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 deterring whether the installation of a tower or antenna complies with 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 tower or antenna may be located on a leased parcel with such lot. Telecommunications facilities that are installed in accordance with the provisions of this Ordinance are not considered an expansion of a non-conforming use or structure, nor shall such facilities be deemed to be an accessory use.
4. **HEIGHT.** The maximum height of a telecommunications facility proposed under this regulation shall be as follows including antennas and all other appurtenances:
  - a. **Maximum of Two hundred (200) feet.**
5. **AESTHETICS AND LIGHTING.**
  - a. Towers shall maintain a non-glossy, galvanized steel finish or be painted a neutral color (subject to FAA requirements) to reduce visual obtrusiveness. The use of alternative tower structures is strongly encouraged by the Town. If electrical service is not provided from the road to the Lot that the tower will be placed upon then all electrical service to the site shall be placed underground from the last pole nearest to the site, however, Solar Power would be the preferred method of electric power. Such plans shall be submitted upon application for review. If lighting is required the governing authority may review

the available lighting tower alternatives and approve the design that would cause the least disturbance to the surrounding views.

- b. At a telecommunications facility site, the design of buildings and related structures, including utility service to the facility, shall use materials, colors, textures, screening and landscaping that will allow it to blend with the natural setting and built environment. These buildings and related structures shall also be subject to all other Site Plan Review requirements. The profile of any built structures shall not project above topographic high points on the lot.
- 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 compatible with the existing structure, and shall be made as visually unobtrusive as possible. In no case shall the height of any antenna be more than 20 feet greater than the height of the existing structure with which it is associated, and shall not exceed the maximum height limitation of **two hundred (200) feet**.
- d. Towers and related structures shall not be lighted unless required by the FAA or other applicable authority.
- e. Telecommunications facilities shall not contain any permanent or temporary signs, writing, or graphical representation of any kind, other than warning or safety signs placed within **ten (10) feet** of the ground surface.

## 6. **BUILDING CODES, SAFETY STANDARD.**

To ensure the structural integrity of towers, antennas, and accessory structures, the owner of a tower shall ensure that it is maintained in compliance with standards published by the Electronic Industry Association and Local Building Codes. Telecommunications facilities shall be surrounded by secured fencing not less than **six (6) feet** in height and shall be equipped with an appropriate anti-climbing device. 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 to the owner of the tower, the owner shall have **thirty (30) days** to bring the facility into compliance with such standards. If the owner fails to bring such tower into compliance within **thirty (30) days**, such action shall constitute abandonment and grounds for the removal, in accordance with Section I of this Ordinance, of the tower and antenna(s) at the owners' expense through execution of the posted security.

## 7. **SETBACKS AND SEPARATION RREQUIREMENTS.**

The following requirements shall supersede any other applicable standards of the Zoning Ordinance that are less strict:

- a. Towers must be set back a minimum distance equal to the tower height from all lot lines and set back a distance equal to **one hundred twenty-five percent (125%)** of the height of the tower from any off-site residential structures.
  - b. Towers, guy wires, and accessory structures must satisfy all other setback requirements of the Middleton Zoning Ordinance.
  - c. A telecommunications tower or antenna over sixty (60) feet in height shall not be located within 2 miles of an existing tower or antenna over sixty (60) feet in height, whether or not such existing tower is located within the Town of Middleton.
8. **LANDSCAPING/NATURAL GROWTH BUFFER.** Landscaping/Natural Growth Buffer. Telecommunications facilities shall be landscaped with a buffer of native plant materials that effectively screens the view of the tower from occupied portions of adjacent property. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible and constitute the preferred method of screening and plantings.
9. **SECURITY FENCING.** Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an approved anti-climbing device.
10. **TOWERS EXCLUDED.**
- a. Construction of telecommunications facility towers is specifically excluded from areas within a horizontal distance of **three hundred (300) feet** of topographic summits greater than 700 feet elevation National Geodetic Vertical Datum, or three hundred (300) feet from a ridge line leading to such topographic summit.
  - b. No telecommunications facility shall be constructed within **one thousand (1,000) feet** of a historically or culturally significant location designated as such by Town of Middleton, State of New Hampshire or Federal Government Agencies.
11. **CO-LOCATION.** A permittee shall cooperate with other telecommunications providers in co-locating additional antennas on towers or existing structures, provided that such proposed co-locators have received approval by Special Use Permit from the Town. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided that such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Such good faith shall include sharing technical information to evaluate the feasibility of co-locations. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other



users, the Town may require a third party technical study at the expense of either or both the applicant and permittee.

F. **SUBMITTAL REQUIREMENTS.** All applicants under this Ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the Town of Middleton Site Plan Review Regulations. Applicants shall also be required to submit the following information:

1. A map showing the service area and an explanation of need.
2. A map showing the locations and service areas of other existing or proposed sites operated by the applicant which are close enough to impact service within the Town's borders.
3. A diagram and/or map showing the viewshed of the proposed telecommunications facility, including all buildings and accessory structures.
4. Photo simulations from at least **four (4)** directions, which simulations adequately represent the appearance of the completed structure when viewed from inhabited areas and/or traveled roads within the Town.
5. A site and landscaping plan which also meets the requirements of Site Plan Regulations.
6. If the applicant is proposing a new tower, written evidence demonstrating that no existing structure within two miles of Town borders can accommodate the applicant's proposed antenna. This evidence can consist of:
  - a. Substantial Evidence that no existing tower or structures are located within the geographic area.
  - b. Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements or do not have sufficient structural strength to support applicant's proposed equipment.
  - c. Substantial Evidence that the applicant's proposed antenna would cause electromagnetic interference with the existing antenna(e) on the towers or structures, or vice-versa.
7. An agreement with the Town that allows for the maximum allowance for colocation upon the new telecommunications structure. Such statement shall become a Condition to any approval, and shall, at a minimum, require that the applicant supply available co-location for reasonable fees and costs to other telecommunications providers.
8. Engineering information detailing the size and coverage required for the telecommunications facility location. Structural plans shall bear the seal of a

qualified Professional Engineer licensed in the State of New Hampshire. The Planning Board may have any submitted information reviewed by a consultant of their choice for verification of any claims made by the applicant regarding technical limitations and feasibility of alternative locations, or any other matter required by the applicant. Cost for this review shall be borne by the applicant in accordance with **NH RSA 676:4,1(g)**.

9. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines .
10. 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 and any other information deemed necessary by the Planning Board to access compliance with this Ordinance.
11. Copies of original signed contractual commitments from service providers. Applicants without signed commitments shall be deemed speculative and are not allowed.

#### **G. ISSUANCE OF CONDITIONAL USE PERMITS.**

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

1. Procedure on application. The Planning board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and **RSA 676:4**.
2. Decisions. Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and Denial shall be in writing and based upon substantial evidence contained in the written record.
3. Factors Considered in Granting Decisions.
  - a. Height of proposed tower or other structure.
  - b. Proximity of tower to residential development or zones.
  - c. Nature of uses on adjacent and nearby properties
  - d. Surrounding topography.

- e. Surrounding tree coverage and foliage.
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- g. Proposed ingress and egress to the site.
- h. Availability of suitable existing towers and other structures as discussed G.3.C.
- i. Visual impacts on viewsheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- j. Availability of alternative tower structures and alternative siting locations.

H. **WAIVERS.** Where the Planning Board feels that extraordinary hardships, technical difficulties, or unreasonable expense would result from strict compliance with the foregoing regulations, or to encourage innovative approaches to providing telecommunications services, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations.

The Board shall only approve any waivers(s) when a majority of those present and voting, where proper quorum requirements are met, shall find that any waiver would not be detrimental to the public safety, health or welfare, or be injurious to other property; would promote the public interest; and will substantially secure the objectives and requirements of these regulations. A petition for any such waiver shall be submitted in writing by the applicant along with the application for Board review.

I. **SECURITY AND INSURANCE.** Recognizing the extremely hazardous situation present by abandoned or unmonitored towers, the Planning Board shall set the form and amount of yearly 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 or unwilling to remove the tower in accordance with Section I. Furthermore, The Planning Board shall require the annual submission of proof of adequate insurance covering accident or damage. Such insurance shall provide for a minimum **thirty (30) days notice** of cancellation to the Town.

J. **REMOVAL OF ABANDONED ANTENNAS AND TOWERS.** Any antenna or tower that is not operated for a continuous period of **six (6) months** shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections and operation. The owner shall remove the abandoned structure within **ninety (90) days** of receipt of a declaration of abandonment from the Planning Board notifying the owner of such abandonment. A

declaration of abandonment shall only be issued following a public hearing, notice per Town Regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within **ninety (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. **INSPECTION, ENFORCEMENT.** The owner of the telecommunications facility shall provide for quarterly structural and safety inspections to be conducted by a licensed Professional Engineer experienced in the evaluation of telecommunications structures. The results of these inspections shall document compliance with applicable FCC requirements and shall be submitted on a quarterly basis to the Town of Middleton's Code Enforcement Officer. If
- If deficiencies are noted during an inspection, the owner must notify the Code Enforcement Officer within five (5) days of completion of the inspection. Enforcement of the provisions of this Ordinance shall be in accordance with New Hampshire RSA 676. 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, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Section I, of this Ordinance and the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.
- L. **SEVERABILITY.** The invalidity of any part of this Ordinance shall not affect the validity of the remainder of this Ordinance. The provisions of this Ordinance are severable.

## **ARTICLE 28 – SMALL WIND ENERGY SYSTEMS ORDINANCE**

- A. **PURPOSE.** This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the Public's health safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.
- B. **DEFINITIONS.** The following definitions shall apply for the purpose of administration of this Article 24A:

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

Modification. Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

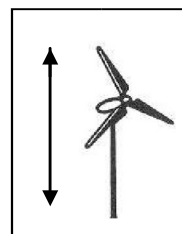
Net Metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

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

Shadow Flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

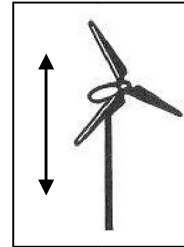
Small Wind Energy System. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of one hundred (100) kilowatts or less and will be used primarily for onsite consumption. A wind energy system which has a rated capacity of twenty-five (25) kilowatts or greater is defined as a commercial system and will be permitted in Residential-Commercial District/Industrial (B-1). For the purpose of this ordinance, the term "small wind energy system" does not apply to roof mounted or integrated roof mounting systems, which are not currently permitted in the town.

System Height. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



Tower. The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower Height. The height above grade of the fixed portion of the tower, excluding the wind generator.



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

#### C. **PROCEDURE FOR REVIEW**

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:
  - a. Property lines and physical dimensions of the applicant's property.
  - b. Location, dimensions, and types of existing major structures on the property.
  - c. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - d. Tower foundation blueprints or drawings.

- e. Tower blueprints or drawings.
  - f. Setback requirements as outlined in this ordinance.
  - g. The right-of-way of any public road that is contiguous with the property.
  - h. Any overhead utility lines.
  - i. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - j. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - k. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - l. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - m. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - n. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
3. Abutter and Regional Notification: In accordance with **NH RSA 674:66**, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per **RSA 36:55**. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in **NH RSA 36:57, IV**.
4. Any costs associated with the Building Plan and Application is borne by the applicant.

D. **STANDARDS**

- a. The building inspector shall evaluate the application for compliance with the following standards:
  - a) Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the

center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings Abutting Property	on Property Lines of Abutting Property and Utility	Public Roads
0	1.5	1.1	1.5

- i. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b) **Tower:** The maximum tower height shall be restricted to thirty (35) feet above the tree canopy within three hundred (300) feet of the small wind energy system. In no situation shall the tower height exceed **one hundred fifty(150)** feet.
- c) **Sound Level:** The small wind energy system shall not exceed **fifty (55) decibels** using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d) **Shadow Flicker:** Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than **thirty (30) hours** per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e) **Signs:** All signs, including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs. No sign shall be mounted higher than ten (10) feet from the ground.
- f) **Code Compliance:** The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.



- g) Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including, but not limited to, **14 C.F.R. part 77, subpart B** regarding installations close to airports, and the New Hampshire Aviation regulations including, but not limited to, **NH RSA 422-b** and **NH RSA 424**.
- h) Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts without restricting the owner's access to the optimal wind resources on the property.
  - i. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - ii. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include, but are not limited to, white, off-white or gray.
  - iii. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- j.) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to **NH RSA 362-A: 9**.
- k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 10 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to

prevent unauthorized access.

l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

#### E. **ABANDONMENT**

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out of service for a continuous **twelve (12) month** period. After the **twelve (12) months** of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within **thirty (30) days** from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within **three (3) months** of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector has the right to remove the small wind energy system at the owner's expense.

F. **VIOLATIONS**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. **PENALTIES**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed **by NH RSA 676:17**.

F. **ABUTTER AND REGIONAL NOTIFICATION:**

Per **NH RSA 674:66**, all abutters shall be notified. Abutters shall be afforded a **thirty (30) day** comment period prior to final action on the application. An abutter may appeal the issuance of an approval to the ZBA pursuant to **NH RSA 676:5**. Notice of the application shall be provided to the Selectboard.

An application for a small wind energy system shall be reviewed pursuant to **NH RSA 36:56** to determine whether the small wind energy system will have regional impact, as defined in **NH RSA 36:55**. If so, the Strafford Regional Planning Commission and the affected municipalities shall be notified by certified mail, which shall be provided thirty (30) days to submit comment prior to final action on the application.

The cost of abutter and regional notifications shall be borne by the applicant.

## **ARTICLE 29 – OUTDOOR WOOD-FIRED HYDRONIC HEATER**

1. **NUISANCE.** No person shall operate an OWHH unit in such a manner as to create a public or private nuisance. For the purpose of this Article and in addition to “nuisance” as defined by state law, regulation and/or court decision, a nuisance is deemed to be created by OWHH unit operated through use of prohibited or inappropriate fuels for the OWHH.
2. **STANDARDS.** All outdoor wood fired hydronic heaters will have to be applicable to a Phase I or Phase II unit effective April 1, 2009 and must meet all unit requirements and setbacks to **NH RSA 125-R** except for the following provisions.
3. **INSTALLATION AND SITING.** As of April 1, 2010 only OWHH units that are EPA-approved Phase II shall be installed.
  1. Units must be at least **fifty (50) feet** from any property line;

2. Units must have a permanent attached stack that is at least **two (2) feet** higher than the peak of the roof of a residence or place of business within **three hundred (300) feet** and not served by the OWHH units.
4. **PERMITTING AND OPERATION.** A building permit is required for the installation of all OWHH units. The following information shall be supplied (in addition to other documents normally required by the Code Office) prior to a building permit being issued:
1. Written plans for the propose OWHH unit, whether in hard copy or digitized format, to include, at a minimum:
    - a. The make and model of the OWHH.
    - b. The precise location of the proposed OWHH unit on the subject property.
    - c. A statement by the owner that the OWHH, when installed, will conform in all respects to all federal, state and local law and regulations.

2. All other necessary permits (plumbing, electrical, etc.)  
 Prior to operation, all OWHH units require a final inspection and approval by the Code Enforcement Officer.

Any OWHH units installed or operated within the Town of Middleton must comply with all applicable federal, state and local laws and regulations.

## **ARTICLE 30 – CONFORMING AND NON-CONFORMING STRUCTURES AND USES – GRANDFATHER CLAUSE**

### **A. NON-CONFORMING STRUCTURES AND USES.**

1. **CONTINUANCE.** Any lawful use of land or of a structure or part thereof at the time of adoption of this Ordinance may be continued provided, however, that:
  - a. A non-conforming use shall not be changed to another non-conforming use.
  - b. Except as noted below, an expansion of a non-conforming use is prohibited except by variance by the Zoning Board of Adjustment.
  - c. A variance is not required if the expansion is a natural expansion which does not change the nature of the use, does not make the property proportionately less adequate, and does not have a substantially different impact on the neighborhood.

- d. A non-conforming structure may be expanded provided that any expansion meets the setback requirements as required by the regulations for the district in which the structure is located.
  - e. A non-conforming structure may be expanded upward provided that the upward expansion occurs within the existing footprint of the structure, shall not extend any lower than the estimated seasonal high-water table and meet NH-DES Shoreland standards, where applicable.
  - f. No part of a structure shall be located within the one hundred (100) year floodplain.
2. **RESTORATION AND RECONSTRUCTION.** Non-conforming structures or uses destroyed by fire, natural disaster, or other means may be repaired or replaced within **two (2) years** if the degree of non-conformity is not increased.
3. **ABANDONMENT.** Abandonment of a non-conforming structure or use shall constitute the termination of the right to continue or re-establish the nonconforming structure or use. A non-conforming structure or use shall be considered abandoned if:
- a. There is the intention to abandon or relinquish the use.
  - b. There is some overt act or failure to act that carries the implication that the owner neither claims nor retains any interest in the use.
  - c. The non-conforming structure or use has been abandoned for one year or more.

### **ARTICLE 31 – ZONING BOARD OF ADJUSTMENT**

- A. **ESTABLISHMENT.** In accordance with the provisions of NH RSA 673:1, the Town of Middleton hereby establishes a Zoning Board of Adjustment.
- B. **MEMBERSHIP.** In accordance with **NH RSA 673:3**, the Zoning shall consist of **five (5) members**. These five members shall be appointed by the Selectboard and shall serve terms in accordance with **NH RSA 673:5**. Membership shall conform to the multiple board membership requirements of **NH RSA 673:7**.

The Selectboard shall also appoint up to five (5) alternate members to the Zoning Board of Adjustment. Alternate members shall serve terms in accordance with **NH RSA 673:6**.

- C. **DUTIES.** As per NH RSA 674:33, the Zoning Board of Adjustment shall have the authority to hear and decide upon appeals from administrative decisions, applications for

Special Exceptions, and applications for variances from the Zoning Ordinance. All business of the Board shall be conducted in accordance with **NH RSA 674:33** and the Board's adopted procedures.

- D. **FEES.** The Zoning Board of Adjustment is hereby authorized to impose reasonable fees upon an applicant for matters pertaining to requests for Variances (where the applicant is not required or expected to also submit an application to the Planning Board arising out of the same operative facts) and requests for Special Exception for the expense of consultant services to review documents. Any such fees shall be subject to the provisions of **NH RSA 673:16**.

### **ARTICLE 32 - SPECIAL EXCEPTION**

- A. The Zoning Board of Adjustment may, in appropriate cases, and subject to safeguards as determined by the Board, grant a permit for a Special Exception.
- B. The Board, in acting on an application, shall take into consideration the following conditions:
1. The proposed use(s) shall be only those allowed in this Ordinance by Special Exception;
  2. The proposed use(s) is/are consistent with the adopted Master Plan;
  3. The specific site is an appropriate location and is of adequate size for the use;
  4. The use, as developed, will not adversely affect the character of the area in which the proposed use will be located;
  5. There will be no nuisance or serious hazard to vehicles or pedestrians;
  6. The use will not place excessive or undue burden on Town services and facilities;
  7. There would be no significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood in which the use would be located.
- C. Before approval by the Board of Adjustment of any exception, a public hearing shall be held with at least **fifteen (15) days'** notice of time and place of the public hearing published in a newspaper of general circulation in the Town and a legal notice thereof shall also be posted in at least **three (3)** public places in the Town. All abutters shall be notified by the Board of Adjustment by certified mail at least **one (1) week** prior to any public hearing regarding said site. The names and addresses of the abutters shall be supplied by the applicant on a plot plan to be submitted to the Board of Adjustment
- D. If the Zoning Board of Adjustment approves an application for a Special Exception, it shall impose relevant conditions specified in all applicable specific standards in this Ordinance.

The Board shall also impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including, but not being limited to, the following:

1. Yards larger in area or in any specified dimension than those required by the Ordinance;
2. Screening of all or part of the premises of the proposed use by walls, fencing or planting;
3. Modification of the design of any building involved in the proposed use;
4. Parking facilities greater than those otherwise required under this Ordinance;
5. Limitations of the number of occupants or employees upon the premises, and restrictions of the method and/or time of operation and use, and of size or extent of facilities;
6. Limitations upon the size, location and/or lighting of signs more restrictive than those otherwise imposed by the Article 20 of this Ordinance, including the prohibition of signs where, in the opinion of the Board, their display would be contrary to the purposes of the Ordinance;
7. Requiring that any future enlargement or alteration of use be accomplished only with the approval of the Zoning Board of Adjustment and Planning Board.

### **ARTICLE 33 – CONDITIONAL USE PERMIT**

- A. The Planning Board may, in appropriate cases, and subject to safeguards as determined by the Planning Board, grant a conditional use permit per NH RSA 674:21 for a land use.
  1. The proposed use(s) shall be only those allowed in this Ordinance by Conditional Use Permit;
  2. The proposed use(s) is/are consistent with the adopted Master Plan;
  3. The specific site is in an appropriate location and of adequate size for the use;
  4. The use, as developed, will not adversely affect the character of the area in which the proposed use will be located;
  5. There will be no nuisance or serious hazard to vehicles or pedestrians;
  6. The use will not place excessive or undue burden on Town services and facilities;

7. There would be no significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood in which the use would be located.
  8. If the Conditional Use is for a Boat Launch Facility, the Planning Board shall consider whether the addition of the boat launch facility will pose an increased risk of infestation by invasive species (such as milfoil, etc.) to the Town's natural resources and, if so, what steps will be taken to eliminate the increased risk.
- B. The Planning Board, in acting on an application, shall take into consideration the following conditions:
- C. If the Planning Board approves an application for a conditional use permit, it shall impose relevant conditions (in addition to any imposed above or pursuant to its Site Plan Review Regulations or otherwise) specified in all applicable specific standards in this Ordinance. The Board shall also impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including, but not being limited to, the following:
1. Yards larger in area or in any specified dimension than those required by the Ordinance;
  2. Screening of all or part of the premises of the proposed use by walls, fencing or planting;
  3. Modification of the design of any building involved in the proposed use;
  4. Parking facilities greater than those otherwise required under this Ordinance;
  5. Limitations of the number of occupants or employees upon the premises, and restrictions of the method and/or time of operation and use, and of size or extent of facilities;
  6. Limitations upon the size, location and/or lighting of signs more restrictive than those otherwise imposed by the Article 18 of this ordinance, including the prohibition of signs where, in the opinion of the Board, their display would be contrary to the purposes of the Ordinance;
  7. Requiring that any future enlargement or alteration of use be accomplished only with the approval of the Planning Board; and
  8. If the Conditional Use Permit is for a Boat Launch Facility, the Planning Board may impose such additional conditions (in addition to any imposed above or pursuant to its Site Plan Review Regulations or otherwise) as it finds reasonably appropriate and necessary to safeguard the neighborhood and/or



natural resources of the Town, or otherwise serve the purposes of this Ordinance, including, but not limited to, the following:

- a. The size and type (to include whether motorized or not) or watercraft allowed to use the boat launch.
  - b. The number of watercraft allowed to use the boat launch in any given period.
  - c. The dates, days and hours of operation.
  - d. The use (public or private) of the facility.
- D. Prior to the granting of a conditional use permit for a Boat Launch Facility, and in addition to the requirements set forth in Sections 1 and 2 above, the Planning Board shall ensure that all of the requirements set forth in the definition of “Boat Launch Facility” are met, failure of which the request for conditional use permit shall be denied.

#### **ARTICLE 34 – VARIANCE**

Appeals to the Zoning Board of Adjustment may be made by any aggrieved person or by others in accordance with New Hampshire Revised Statutes Annotated as amended.

**VARIANCE:** A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the terms of the Zoning Ordinance. For a variance to be legally granted you must show that your proposed use meets all five (5) of the following conditions, which you must address on the application, as well as at the public hearing where your application will be heard.

In order to be granted a variance, you will need to prove the following:

- A. The proposed use would not diminish surrounding property values,
- B. Granting the variance would not be contrary to the public interest,
- C. Granting the variance would do substantial justice,
- D. The use is not contrary to the spirit of the ordinance, and
- E. Literal enforcement of the provisions of the ordinance would not result in unnecessary hardship.

#### **ARTICLE 35 – APPEAL**

Any person seeking to appeal a decision of the Zoning Board of Adjustment, Planning Board, or any administrative decision must comply with the provisions of **NH RSA Chapters 676 and 677**. It is strongly recommended that anyone seeking to appeal a decision consult with legal counsel. Although the clerks for the various Middleton boards and departments may be able to assist a person in directing him or her to the proper forms for appeals to the Zoning Board of Adjustment for certain matters, they are unable to provide any person with legal advice. Failure to perfect a right of appeal within time limits prescribed by New Hampshire statutes and otherwise may result in the denial of the appeal.

## **ARTICLE 36 - DEFINITIONS**

**ACCESSORY USE.** A use which is dependent on or pertaining to the permitted use, i.e., subordinate use of the property occasioned by the main use and an incident of it, rather than a principle use in and of itself. An accessory use shall be a use that is customarily associated with the primary use. An accessory use shall not require the existence of a primary use on a lot provided the accessory use is consistent with the permitted uses in the zoning district, and either (1) the primary use is located on a contiguous parcel under the same ownership, or (2) the lot is otherwise unbuildable for a permitted use due to topographical or other unique characteristics of the lot.

**ACCESSORY DWELLING UNITS.** An "accessory dwelling unit" means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

**AGRICULTURAL - COMMERCIAL.** The production, keeping, or maintenance, for sale, lease, of plants and/or animals useful to humans, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock including, beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof; bees and apiary products; fur animals; fruits of all kind; vegetables; or lands devoted to a soil conservation or forestry management program.

**AGRICULTURAL PERSONAL.** The production, keeping, or maintenance, for personal use, of plants, trees, shrubs and/or animals.

**ANTENNA ARRAY.** A collection of antennas attached to a mount to send and receive radio signals.

**ASSISTED LIVING/LIFE CARE FACILITY.** A living arrangement in which persons with special needs reside in a facility that provides assistance with everyday tasks such as meal preparation, bathing, dressing, and taking medication. These facilities may provide apartment living for an individual or couple in multi-unit structures, where the residents have a choice of taking their meals in a congregate dining room or individually in their apartments. Or such facilities may be a single-family residence or group home where residents have a

private or shared bedroom with common living and dining facilities. These facilities may provide a combination of these types of living arrangements.

**AVERAGE TREE CANOPY HEIGHT.** An average height found by inventorying the height at above ground level (AGL) of all trees over **twenty (20) feet** in height within a **four hundred (400) foot** radius of the proposed facility.

**BARN.** A structure for sheltering livestock, storing hay or other agricultural products, or housing equipment that is on a parcel that is, in some way, part of the agricultural operation or use on that parcel. Examples of can include barns, sheds, poultry houses, etc. Buildings of any type (or land) used for commercial or industrial purposes are not qualified agricultural property. Commercial purposes include, but are not limited to, commercial storage, commercial processing, commercial distribution, commercial marketing, and commercial shipping operations.

**BASE DENSITY.** The initial density permitted under the property's residential zoning district, i.e., the number of dwelling units per acre.

**BASEMENT.** That part of a building that is wholly or partly below ground level.

**BED AND BREAKFAST.** An existing structure or a new or existing single-family dwelling, in which the live-in owner or manager provides up to **eight (8)** guest rooms to the general public at a daily rate or on a short-term basis of less than **thirty (30)** days. Guest rooms may have private or shared baths. Breakfast service is included in the daily rate and limited to registered guests only.

**BEST MANAGEMENT PRACTICES.** Methods that have been found to be the most effective and practical means of preventing or reducing pollution.

**BOAT AND MARINE CRAFT DEALER.** A place of business whose primary activity is the sale of watercraft, marine engines, and whose secondary activity is the sale of related accessories such as docks, lifts, trailers, life jackets, boat fuel additives, cleaning products, etc. Such a business will also be allowed to conduct watercraft and marine engine repairs and maintenance.

**BOAT LAUNCH FACILITY.** A facility for the launching of watercraft on a body of water.

- A. Public - Owned and/or operated by a governmental agency.
- B. Commercial - Owned or operated by a non-governmental person or organization open to the public on a demand basis.
- C. Group - Owned or operated by a condominium, campground, homeowners association or other group and open only to members of that group.
- D. Private - Privately owned and for the use of the property owner.

**BOAT STORAGE FACILITY.** One or more buildings used for the cold weather warehousing or storage of boats and watercraft owned by third parties. A boat storage facility shall not include the storage of boats or watercraft for sale or resale by a boat dealer.

**BUILDABLE AREA.** That portion of a parcel upon which a structure may be erected. Exclusions from the buildable area are: steep slopes; wetland soils; rock outcrops; floodplains; proposed or existing rights- of-way and utility easements; and state and local required setbacks.

**BUILDING.** A structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

**BUILDING WIDTH.** The dimension that runs roughly parallel to the street.

**BUSINESS AND COMMERCIAL.** Activities involving the sale of goods or services carried out for profit.

**CAMPSITE.** A designated area located in a recreational campground or camping park that is for use by either one recreational vehicle, one tent, or a similar shelter.

**CAMPSITE, PRIVATE.** A designated area not located in a recreational campground or camping park that is for use by either one recreational vehicle, one tent, or a similar shelter.

**CAREGIVER.** A person, paid or unpaid, who cares for someone requiring frequent, although not necessarily daily assistance, with normal day-to-day activities due to a disability, frailty, mental health problems, learning or developmental disabilities or age (children or the elderly).

**CARETAKER.** A person who cares for a property in exchange for rent-free living accommodations with the possibility of additional compensation; or a person who lives in a residential unit of a mixed-use premises and who, in exchange for rent and/or other consideration, is responsible for overseeing and/or operating the business portion of the mixed-use premises.

**CHURCH.** A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

**CO-LOCATION** (in relation to personal wireless service facilities). The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

**COMMERCIAL USE.** Activity involving the sale of goods or services carried for profit, where the use is in the primary use of the property.

**CONSERVATION EASEMENT.** A legal agreement between a landowner and a land trust, government agency or other qualified party that permanently limits uses of land to protect conservation values. It allows the property owner to continue to own and use the land and to sell it or pass it on to heirs. The easement may permit or restrict public access, allow or disallow recreational use and development, and similar provisions. Easements are recorded and linked to the title of the land, regardless of its subsequent ownership. **(Per NH RSA 477:45, 477:46, and 477:47)**

**DAY-CARE CENTER OR FAMILY DAY-CARE.** An establishment or individual that provides childcare and supervision and is required, due to the number of children cared for, to be licensed by the state.

**DEVELOPMENT.** Any construction or grading activities on real estate for other than agricultural or forestry practices.

**DWELLING UNIT. One (1)** or more rooms, designed, occupied, or intended for occupancy as a separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a family maintaining a household.

**DWELLING UNIT, TWO-FAMILY.** A building containing **two (2)** dwelling units that may be located one over the other or side-by-side, including condominium units.

**DWELLING, MULTI-FAMILY.** A building containing three to four dwelling units that may be located one over the other or side-by-side, including condominium units.

**DWELLING, SINGLE FAMILY.** A building containing one dwelling unit that is not attached to any other dwelling by any means, including but not limited to manufactured homes as defined by **NH RSA 674:31** and pre-site built homes as defined by **NH RSA 674:31-a**, and is surrounded by open space, yards, or trees.

**EASEMENT.** The authorization by a property owner for the use by another and for a specific purpose of any designated part of his/her property.

**ESSENTIAL TOWN SERVICES.** Municipal facilities such as Town Hall, police and fire stations, schools, libraries, maintenance and disposal facilities, etc.

**ESSENTIAL SERVICES.** The erection, construction, alteration or maintenance by public utility companies, town or other governmental agencies of underground or overhead gas, electrical, water transmission or distribution systems, to include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories, in connection

therewith and reasonably necessary for the furnishing of adequate services by such public utilities, town or other governmental agencies for the public health, safety and general welfare, but not including building.

**EXCLUSIVE SHORELAND FRONTAGE.** That portion of a servient waterfront lot that is set aside for the exclusive use of a non-waterfront lot or non-waterfront dwelling unit.

**FACTORY OUTLET STORE.** A building or unit devoted exclusively to the retail sale of commodities manufacture or produced on the same lot.

**FALL ZONE.** The area on the ground from the base of the ground mounted personal wireless service facility that forms a circle with a diameter equal to the height of the personal wireless service facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**FAMILY.** One or more persons living as a single housekeeping unit.

**FRANCHISE ARCHITECTURE.** Building designs and/or architectural elements that are trademarked or identified with a particular business, franchise, corporation or chain.

**FRONTAGE.** A lot dimension that is contiguous to (1) a public road; (2) a private road, (3) a body of water, other than access, provided that, in the case of shore lots, shoreland (or shoreline) frontage shall be the average of the distances of the actual natural shoreline footage and a straight line drawn between property lines. Driveways to single rear lots shall not be construed as frontage. For lots with frontage on more than one street, street frontage setbacks shall be the dimensions measured from all such streets.

**FUEL STORAGE.** Any storage of fuel exceeding two thousand (2,000) gallons.

**GARAGE, RESIDENTIAL.** A building that is capable of storing up to four (4) passenger motor vehicles and in which no occupation or commercial endeavor occurs.

**GUYED TOWER.** A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**HAZARDOUS MATERIALS.** See definition of "Toxic Materials".

**HISTORIC PRESERVATION SITE.** A site, property, building(s), or area determined by the Heritage Commission to be an historic site, meeting certain criteria as established by the Commission, and determined to be worthy of preservation.

**HOLDING TANK.** A sealed tank with no outlet to a dry well or other effluent disposal area and which stores septage or other wastes until the wastes can be pumped out and hauled to an approved disposal site. A holding tank is not an individual sewage disposal system as defined in **NH DES Env-Wq 1002.40**.

**HOME BASED CONTRACTOR YARD.** An area and/or building used to store operable construction equipment, trucks, construction supplies, building equipment and raw materials for an individual or for a contractor engaged in one or more building or other construction business, including, but not limited to: plumbing, electrical, structural, finish, demolition, transportation, masonry, excavating, landscaping or other construction work. Normal maintenance of equipment is allowed in a contractor yard.

The definition of a home-based contractor yard shall not apply to those instances where materials are to be used for the improvement of the property on which the materials are stored, provided stored materials are used on-site or removed from the site within 180 days of delivery. The Building Inspector and Code Enforcement Officer are authorized to extend the 180-day limit.

For the purpose of this definition the following are not considered Home Based Contractor Yards but are considered an accessory use on a parcel where there is an existing residential use and the equipment described below is owned and operated by an occupant of the residence:

1. One operational pick-up truck and associated plows, trailers, and similar equipment; or
2. Up to three pieces of operational construction-related vehicles or equipment. (Such accessory use is allowed and does not require registration with the Code Enforcement Officer.)

For the purpose of this definition the following are not considered Home Based Contractor Yards and, therefore, are not permitted by this Article:

1. A junkyard as defined by State statute;
2. Equipment or materials used for blasting.

**HOME BUSINESS.** Accessory use of a professional or service character that has been customarily carried out in the home and conducted within the dwelling by the residents thereof, which is clearly secondary to the dwelling use for living purposes and does not change the character thereof.

**HOMEOWNERS' ASSOCIATION.** A private corporation, association or other legal entity organized in accordance with state law and established by the developer for the benefit and enjoyment of its members.

**HOUSING FOR OLDER PERSONS.** Housing for older persons as provided by the Fair Housing Law (42 U.S.C. 3601, et seq) as amended, having a similar definition as "housing for older person" as defined under 42 U.S.C. 3607(b)(2) and further restricted and defined by **NH RSA 354-A:15**, as housing:

- A. Provided under any State or Federal program that is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
- B. Intended for, and solely occupied by, persons **sixty-two (62)** years of age or older; or
- C. Intended and operated for occupancy by persons **fifty-five (55)** years of age or older, and
  1. **One hundred percent (100%)** of the occupied units are occupied by at least one person who is **fifty-five(55) years** of age or older, except surviving spouses, and no occupants are under the age of nineteen (19) years. When a unit is resold or rented, it must be occupied by at least one person who is **fifty-five (55) years** or older.

In the event that an occupant who is **fifty-five(55)** years of age or older dies or permanently leaves the dwelling unit due to disability, a surviving spouse under the age of **fifty-five (55)** years shall be allowed to remain in the dwelling unit provided that any new occupant(s) to that unit must be **fifty-five (55)** years or older;

2. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent to provide housing for persons **fifty-five (55)** years or older; and
3. The housing facility or community complies with rules for verification of occupancy, which shall provide for verification by reliable surveys and affidavits in compliance with rules issued by the Secretary of the US Department of Housing and Urban Development.

**HOTEL.** Short-term lodging accommodations offered to the general public at a daily rate and supervised at all hours by a person-in-charge. All rooms are accessed through an inside lobby and interior corridors, and include private baths but no individual cooking facilities. May include the following accessory uses: restaurant, bar, tavern, meeting/function rooms, and/or recreational facilities such as pools, fitness facilities, etc. May include food service to registered guests and the general public.

**IMPERVIOUS COVER.** Any surface that cannot effectively absorb or infiltrate rainfall.

**INDUSTRIAL & LIGHT INDUSTRIAL.** Industrial activity involving the manufacturing, packaging, assembly, or wholesale distribution of finished products from previously prepared material, including but not limited to: bakeries, bottling, pharmaceutical, machine shops, precision instruments, watchmakers, musical instrument construction, toys and sporting goods construction, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, and the packaging of foods. Light Industrial uses also include a self-storage facility,



and industrial activity involving research and development and/or the manufacturing, packaging, assembly, wholesale distribution, warehousing and/or storage of finished products. Light Industrial uses do not include the processing of raw materials or salvaging operations, shall discharge no hazardous or toxic waste on site, and must be environmentally non-polluting. Light Industry does not include on-site packaging or assembly operations that are part of a business whose primary purpose is retail sales of goods.

All light industrial uses located on NH Route 16 shall be shielded from view by use of a natural woodland buffer or other screening method as approved by the Planning Board.

**IN-LAW APARTMENT.** A portion of an owner-occupied single-family dwelling, or related accessory structure, to be occupied by another family member, a caregiver or caretaker, which includes its own kitchen, bathroom and living area.

**INN.** A structure and related accessory structures, either attached to or detached from the primary structure, in which the live-in owner or manager provides up to 16 guest rooms to the general public at a daily rate or on a short-term basis of less than **thirty (30)** days. Guest rooms may have private or shared baths. May include the serving of on-site prepared meals to registered guests and the general public.

**LATTICE TOWER.** A type of mount with multiple legs and structural cross bracing between the legs that is self-supporting and freestanding.

**LOT.** An area of land of limited size whose present or future use entails a structure used as a residence or for other approved purposes.

**LOT DWELLING UNIT LOT.** A parcel of land subdivided within a (parcel lot) capable of being used for a residential dwelling unit that is of sufficient size to meet the minimum requirements for use, building coverage, and area.

**LOT FLAG.** A lot having reduced frontage requirements where the sole access to the lot takes the form of the pole of the flag and the main portion of the lot takes the form of the flag attached to the pole. The area of the pole is not included in the minimum lot area calculation. Only one such lot is permitted per parent parcel.

**LOT OF RECORD.** Any lot containing a separate and distinct description as of the adoption of this Ordinance.

**LOT PARCEL LOT.** A parcel of land capable of being occupied that is of sufficient size to meet the minimum requirements for use, building coverage, and area.

### **MANUFACTURED HOUSING**

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. "Manufactured Home" shall include "manufactured housing" as defined pursuant to

**NH RSA 674:31.** 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**.

**MARINA.** A business establishment having frontage on navigable water and its principal use providing for hire off shore moorings or docking facilities for boats, and which may also provide accessory services such as boat repair and construction, boat and related sales, indoor and outdoor storage of boats and marine equipment, bait and tackle shops, and marine fuel service facilities.

**MAST** (in relation to personal wireless service facilities). A thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

**MIXED-USE.** The use of a property that includes a business use and a residential use.

**MIXED USE BUILDINGS.** A building containing two or more units, which units are capable of being used for business, commercial and/or residential purposes.

**MOBILE HOME.** The words "mobile home" shall mean manufactured housing as defined by **RSA 674:31**.

**MODULAR BUILDING.** Per **NH RSA 205-C:1 (XI)** means any building of closed construction, which is made or assembled in manufacturing facilities off the building site, for installation, or assembly and installation, on the building site. This definition shall not be construed to include any structure labeled in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974, nor shall it include single-wide structures under 750 square feet, provided that they are not for residential or classroom use, nor shall it include any recreational vehicle or park trailer as defined in American National Standards Institute A119.2, Standard for Recreational Vehicles, or A119.5, Standard for Park Trailers, or any building type not subject to the requirements of nationally recognized model building codes.

**MONOPOLE** (in relation to personal wireless service facilities). A thicker type of mount than a mast that is self-supporting with a single shaft of wound steel or concrete or other material that is designed for the placement of antennas and arrays along or within the shaft.

**MOTEL/ MOTOR INN.** Same requirements as for “Hotel,” except some or all guest rooms are accessed directly from the exterior of the structure, and not necessarily supervised at all hours by a person-in-charge.

**MUNICIPAL WASTEWATER SYSTEM.** A wastewater collection, treatment, and disposal system that is owned and operated by a municipality.

**MUSEUMS.** An establishment operated as a repository or collection of nature, scientific, or literary curiosities or objects of interest or works of art. Museums may have gift shops, but the primary purpose is the display of objects for public benefit, not retail sales.

**NANO BREWERY.** A brewery that produces less than **two thousand (2,000) barrels (sixty-three thousand (63,000) gallons)** a year.

**NATURAL CONDITION.** The topography and vegetation of an area that is unaltered by clearing and grading during construction and protected in perpetuity.

**NON-CONFORMING USE.** A use that does not conform to the regulations herein, but which was lawfully maintained at the time this Ordinance (or amendment thereto that rendered the use non-conforming) became effective.

**NON-CONFORMING LOT.** A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of the Zoning Ordinance but which fails, by reason of such adoption, revision, or amendment, to conform to the present requirements of the Zoning Ordinance.

**NON-CONFORMING STRUCTURE.** A structure that does not conform to the regulations herein, but which was lawfully maintained at the time this Ordinance (or amendment thereto that rendered the structure non-conforming) became effective.

**NON-POINT SOURCE POLLUTION.** Pollution that is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes such as rainfall, storm water runoff, or groundwater seepage rather than direct discharges.

**OFFICE.** A room or group of rooms used for conducting the affairs of a business, profession, service industry, or government.

**OPEN SPACE.** A portion of a development site that is permanently set aside for public or private uses and will not be developed. Said open space may be composed of Conservation Area Open Space and/or Homeowners' Recreation Area Open Space.

**OPEN SPACE CONSERVATION AREA.** Typically an undisturbed or naturally vegetated portion of a development site that is permanently set aside for public or private use and will not be developed.

**OPEN SPACE CONSERVATION/CLUSTER DEVELOPMENT SUBDIVISION.** A subdivision that sites houses on smaller dwelling unit lots with a density that will not exceed the density permitted in conventional subdivision. Additional land that would have been allocated to individual lots is converted to common shared Open Space for the subdivision residents and/or the community. It is protected in perpetuity. Typically, road frontage, lot size, setbacks and other traditional subdivision regulations are redefined to permit the developer to preserve

ecologically sensitive areas, historical sites or other unique characteristics of the land being subdivided.

**OPEN SPACE – HOMEOWNERS’ RECREATION AREA.** The area of Open Space remaining after the Open Space Conservation Area has been designated. The area may be used for passive or active recreation or storm water management.

**OUTDOOR WOOD-FIRED HYDRONIC HEATER.** The device described in **NH RSA 125-R:1, V**, including outdoor wood boilers, generally and collectively referred to as “OWHH.” These are also called outdoor wood-fired heaters and outdoor wood furnaces.

**PARKING FACILITY.** The use of land which constitutes the principal use, for the temporary parking of motor vehicles including but not limited to a parking lot, a parking structure, or a parking garage.

**PARKING SPACE, ON-PREMISES.** For the purposes of this Ordinance, an on-premises parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required on-premises parking areas for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street, and so that any automobile may be parked without moving another.

**PREMISES.** The area occupied by a business or other public enterprise. When more than one business occupies a single building or lot, each business area shall be considered separate premises.

**PERMITTED USE.** Use specifically allowed in a zoning district, excluding illegal uses and noncon-conforming uses.

**PERSONAL SERVICES (OR SERVICE USE).** A commercial use, which primarily provides services to people or businesses. There may be incidental retail or office activity, but the primary commercial activity is service. Examples include, but not limited to, beauty salons and barbershops.

**PRE-SITE BUILT HOME.** A structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this subdivision, presite built housing shall not include manufactured housing, as defined in **NH RSA 674:31**.

**RECIPIENT LOT OR RECIPIENT DWELLING UNIT.** A lot or dwelling unit (usually, but not exclusively, a non-waterfront lot or dwelling unit) located in Middleton, NH that has the benefit of a grant, lease, easement or other conveyance of a right for water access over another lot.

**RECOGNIZED PHYSICAL DISABILITY.** A factual finding made by the Zoning Board of Adjustment that will allow the Zoning Board of Adjustment to grant a variance from the terms of a Zoning Ordinance without finding a hardship arising from the condition of a premises subject to the Ordinance, when reasonable accommodations are necessary to allow a person or persons of advanced age or with such recognized physical disability to reside in or regularly use the premises, provided that any variance granted under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance. In granting any such variance, the Zoning Board of Adjustment may provide, in a finding included in the variance that the variance shall survive only so long as the particular person with the recognized physical disability has a continuing need to use the premises. It is contemplated this provision (as codified in **NH RSA 674:33, V**) will be invoked when, for example, a need arises for a so called “mother-in-law apartment” to care for an aged or ailing relative, or when a person having a recognized physical disability requires alterations to the premises to accommodate such disability, which alterations might otherwise be precluded.

**RECREATIONAL CAMPGROUND OR CAMPING PARK.** A parcel of land under single ownership, consisting of a minimum of **ten (10) acres** used primarily for transient or temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residence, excluding camps set apart for recreational purposes for boys and girls.

**RESIDENCE.** A structure designed for residential occupancy by one or more families, but excluding hotels, motels, tourist homes and overnight cabins.

**RESIDENTIAL.** Restricted to or occupied by residences.

**RESTAURANT.** Any establishment, however designated, at which prepared food and/or drink is sold for immediate consumption, usually to patrons seated within an enclosed building. Neither a snack bar nor a bed and breakfast shall be deemed to be a restaurant.

**RESTAURANT, STANDARD.** A restaurant that is neither a “restricted restaurant,” nor a “drive-thru restaurant”.

**RESTAURANT, DRIVE-THRU.** A restaurant designed, in whole or in part, to cater to or accommodate the consumption of food and/or beverage in automobiles on or off the premises of such establishment.

Typically, but not always, a drive-thru restaurant will have a window from which patrons may purchase and obtain food without exiting their automobile.

**RESTAURANT, RESTRICTED.** A restaurant that can accommodate **sixty (60)** or fewer patrons, is open not more than **five (5) days** per week, is **thirty-five thousand (3500) square feet** or less, provides no “take out” service, and server not more than **two (2)** meals per day. Typically, but not always, a restricted restaurant is a “mom and opp” venture

located in a residence that is converted into a restaurant, and serves only sit-down meals. They usually offer home cooking, or nouveau or “niche” cuisine, and are often seasonal.

**RETAIL ESTABLISHMENT.** A structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this subdivision, pre-site built housing shall not include manufactured housing, as defined in **NH RSA 674:31**.

**RIDGELINE, MAJOR.** A ridgeline that is prominently visible from an open space, waterway or roadway within the town. A major ridgeline is characterized by the lack of a topographical backdrop, i.e. where the sky is visible beyond the ridge. Identified major ridgelines shall include but not be limited to the following:

**SEASONAL DWELLING.** A dwelling unit, or structure containing a roof and that may contain cooking, sleeping, and/or sanitary facilities whose primary use or occupancy is or has been for less than nine (9) months out of twelve (12) consecutive months.

**SECURITY BARRIER.** A barrier that restricts an area from unauthorized entry or trespass.  
**SEPARATION** (in relation to personal wireless service facilities). The distance between one carrier’s antenna array and another carrier’s antenna array.

**SERVIENT WATERFRONT LOT.** A lot that is contiguous to the shoreline of any lake, pond or watercourse, and which is subject to a grant, lease, easement or other conveyance of a right that provides water access to any other lot.

**SETBACK.** The distance from the edge of a lot to a structure or other temporary or permanent obstruction. For purposes of administering and interpreting this definition, the purpose of the area of a setback is to promote the public health, welfare and safety by, among other things, providing a buffer between contiguous properties, providing open space and access between buildings and other obstructions, promoting fire safety, and promoting aesthetics to preserve property values. The typical setback area is to remain free of all structures, as well as manmade and manufactured items such as parking lots, motor vehicles, equipment and debris, but may include items generally necessary for inclusion in the setback area, by way of example, access (e.g. driveway), boundary designation (e.g. fence), overhead or underground utilities, mailbox, boat dock, etc.

**SETBACK, FRONT.** A setback extending across the full width of a lot between the front lot line and the foremost point of the foremost structure excluding steps and septic systems.

**SETBACK, REAR.** A setback extending across the full width of a lot between the rear lot lines and the rear most part of the structure nearest to the rear lot line excluding steps and excluding septic systems.

**SETBACK, SIDE.** A setback extending between a side lot line and the nearest structure to it extending from the required rear setback and excluding steps and septic systems.

**SEWAGE DISPOSAL SYSTEM.** Any onsite sewage disposal or treatment system that receives either sewage or other wastes, or both. For the purposes of this definition, this means all components of the system, including the leach field.

**SIGN.** Any structure, device, lighting fixture or natural object including the ground itself or any part thereof or any device attached thereto, or painted or represented thereon, which shall be used to identify, advertise, or attract attention to any object, product, place, activity, person, institution, organization, firm, group, commodity, profession, enterprise, industry, or business, or which shall display or include any letter, word, model, number, banner, flag, pennant, insignia, device or representation used as in announcement, direction or advertisement, and which is intended to be seen from off the premises or from a parking lot. The word "sign" shall

not include the structure that supports the sign face, but only the sign face itself. The word "sign" shall not include signs that are affixed to the inside of windows and glass doors of enclosed buildings except for illuminated signs.

In addition to the above, the following types of signs shall be further defined as follows:

- A. **Free Standing sign:** A sign supported by one or more uprights, poles, or braces placed in or upon the ground.
- B. **Illuminated Sign:** A sign that provides artificial light directly or through any transparent or translucent materials, from a source of light connected with such sign or a sign illuminated by a light focused upon or directed chiefly at the surface of the sign.
- C. **Off-Premises Advertising Sign:** A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.
- D. **Permanent Sign:** Any sign that is not a temporary sign.
- E. **Portable Sign:** A sign that is placed erected or constructed on any movable or portable base, sled, trailer, vehicle, stand or device of any type where the principal use of such base, sled, trailer, vehicle, stand or device is for the purpose of displaying a sign face which is capable of being moved or transported from one location to another.
- F. **Projecting Sign:** A sign that projects from, and is supported by a wall, porch of any other part of a building.
- G. **Roof Sign:** Any sign erected and maintained upon or above the roof of any building.

- H. **Temporary Sign:** A sign constructed of cloth, canvas, fabric, wood, paper or other similar material with or without a structural frame and intended for a limited display.
- I. **Wall Sign:** A sign, which is attached directly to, or painted upon, a building wall and which does not extend more than **ten (10)** inches there from, nor extend above the roof line.

**SIGN AREA.** The total area of the sign faces including any framing surrounding the face. The area of the supports, posts, poles and braces or other supporting structure shall not be included as part of the sign area. On dual-faced signs only the area of one sign face (the largest face) shall be used in calculating the total sign area. When individual letters are mounted separately on the surface of a building wall, the spaces between the letters shall be included in calculating the area of the sign. When signs are constructed of separate parts, such as separate boards attached to a post or hung together by hooks, the space between the boards shall be included in calculating the total sign area.

**SLOPE.** The average steepness of the land surface under consideration. For determining lot size categories, Natural Resource Conservation Service slope ranges shall be used. Slope shall be determined by the preparation of a topographic plan or by on-site measurement through the use of a clinometer.

**SLOPE-STEEP SLOPE LAND.** Land with slopes of **twenty-five percent (25%)** or more.

**SNACK BAR.** A food service facility located at a public or community playground, playfield or park operated solely by the agency or group operating the recreational facilities, and for the convenience of the patrons of the facility.

**SPECIAL EXCEPTION.** A use of a building or lot that may be permitted under this Ordinance only upon application to the Board of Adjustment and subject to the approval of that Board, and only in cases where the words "Special Exception" in the Ordinance pertain.

**SOIL CARRYING CAPACITY.** The ability of the soil to accommodate a sewage disposal system as determined by dividing the given area of each soil type by the required area per State standards.

**STORMWATER MANAGEMENT.** The use of structure or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes and/or peak flow discharge rates.

**STRUCTURE.** Anything constructed or erected for the support, shelter or enclosure of persons, animals, goods, or property of any kind, with a fixed location on or in the ground, such as a well, or attached to something having a fixed location on or in the ground, excluding patios, driveways, walkways, parking lots, whether paved or not; fences; flagpoles less than **45 feet** in height; and walls less than **forty-two inches (42")** in height which do not obstruct a driver's line of sight. It shall not include a minor installation such as a fence no greater than **forty-two inches (42")** high, or mail box.



**STRUCTURE, TEMPORARY.** A structure without any foundation or footing and removed when the designed purpose or use has ceased. The structure shall not be connected to water or sewer. Examples include a Quonset hut, portable shelter, portable garage, moving/storage container (i.e. PODS®), portable shed, etc. A temporary structure shall not include a storage trailer or tractor trailer unless it is completely shielded from public (including neighbors') view by permitted structures, distance, and/or vegetation. No Temporary Structure shall be allowed to remain in place longer than **nine (9) months**. Temporary structures are required to meet the setbacks as provided in this ordinance.

**TOXIC MATERIALS.** Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkyls, asphalt and roofing tars, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules, Section Wq 410.04(1), in New Hampshire Solid Waste Rules He-P 1901.03(v), and in the Code of Federal Regulations 40 CFR 261. Wastes generated by the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board:

- A. Chemical and bacteriological laboratory operation, including laboratory operations in educational Institutions;
- B. Dry cleaning and laundries;
- C. Electronic circuit manufacturing;
- D. Metal plating, finishing and polishing;
- E. Painting, wood preserving and furniture stripping;
- F. Pesticide and herbicide application;
- G. Photographic and printing processes;
- H. Medical facilities, including doctor's offices and hospitals;
- I. Funeral homes, parlors, and embalmers.

**UNBUILDABLE LAND.** The area of a site that includes steep slopes; wetland soils; rock outcrops; floodplains; proposed or existing rights-of-way; drainage and utility easements; and state and local required setbacks as they apply to the parent parcel

**UNIT.** An area within a building that is separated by solid walls from other portions of the building and which is capable of being sold or leased.

**VERNAL POOLS.** A temporary body of water providing essential breeding habitat for certain amphibians and invertebrates and does not support fish.

**YARD SALE.** The sale of assorted items, usually second hand, at noncommercial premises. The term “yard sale” shall include garage sale, porch sale, barn sale, cellar sale, tag sale, et cetera. “Yard Sale” shall not include “Yard Sale Business.”

**YARD SALE BUSINESS.** The sale of assorted items, usually second hand, at noncommercial premises, which occurs more frequently than **[1] three (3)** weekends, **[2] five (5)** consecutive weekdays, or **[3] six (6)** days total of any calendar year. This term applies also to the following types of sales when they exceed the above-described frequencies: garage sale, porch sale, barn sale, cellar sale, tag sale, and Etcetera. “Yard Sale Business” shall not include “Yard Sale.”

## **ARTICLE 37 – USES AND STRUCTURES NOT PERMITTED ARE PROHIBITED**

Any use or structure that is not listed in this Ordinance as a permitted use or structure, or that is not listed as a use or structure permitted by Special Exception, is prohibited.

## **ARTICLE 38 – SPLIT ZONE LOTS**

- A. **BASE ZONES.** In the event that a lot is divided by a base zoning district boundary, each section of the lot shall be used in conformity with the regulations of the base zoning district in which it lies. The regulations of either base zoning district may be extended into the other district up to **one hundred (100)** feet by an application for Special Exception. The application shall include the specifics of the use proposed for the lot, and any approval issued shall be contingent upon the lot being used for the stated purpose. In the absence of specific language to the contrary issued by the Zoning Board of Adjustment as part of any approval issued, the base zoning district boundary shall revert to its original location upon termination of the proposed use.
- B. **OVERLAY ZONES.** Overlay zones by their nature do not adhere to lines of property ownership and regularly divide lots. Any portion of a lot that is within one or more overlay zone(s) shall comply with the regulations of the overlay zone(s).

## **ARTICLE 39 – PERMIT REQUIRED**

A permit shall be obtained from the administering authority prior to undertaking any activity regulated by this Ordinance, or for the construction, erection, alteration, movement, or placement of any structure. The administering authority shall ensure that the proposed use

or structure meets all the requirements of this Ordinance. Provided, however for a one-story detached unheated accessory structure (i.e. tool shed, storage shed, children's playhouse) not exceeding **one hundred twenty (120)** square feet the administrating authority shall issue a permit provided the structure complies with applicable setback requirements.

#### **ARTICLE 40 - SEPARABILITY**

If any section, provision, portion, clause, or phrase of this regulation is held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair, or invalidate any other section, provision, portion, clause, or phrase of this regulation.

#### **ARTICLE 41 – CONFLICT WITH OTHER REGULATIONS**

Where the provisions of this Ordinance conflict with any local, state, or federal rule, ordinance, or regulation, the provision imposing the more stringent standard shall apply.

#### **ARTICLE 42 – ADMINISTRATION, ENFORCEMENT AND PENALTY**

- A. **ADMINISTRATION:** The Middleton Town Selectboard or their duly authorized representative shall administer the provision of this Ordinance, in accordance with the New Hampshire Revised Statutes Annotated, as amended. Penalties for violation of this Ordinance shall be as provided for by **NH RSA 676:15, NH RSA 676:17**, and other statutes, as amended.
- B. **ENFORCEMENT:** The Selectboard may appoint a Building Inspector/Code Enforcement Office annually to be the administrative office of this Ordinance. He/she shall receive applications and fees for erection or alteration of buildings and electric wiring thereof as provided in this Ordinance; shall keep records of all applications; promptly survey and inspect all building; alterations or use or uses under this Ordinance, and may issue permits for erection, alteration or remodeling of all proposed, accept and deposit with the Town Treasurer all fees collected by his/her building, if in his/her opinion the proposal complies with the law of the state, this Ordinance and other Town Ordinances and By-Laws. Provided that in any instance where license or permit fees for uses are required his/her permits shall constitute only an approval on which the proper authority has been made.

The Middleton Selectboard or their duly authorized representative is hereby designated to administer, implement, and enforce the provisions prescribed by law. Shall act in cooperation with the Police Chief, Fire Chief, Road Agent and Health Office in any matter in which their duties as prescribed by law may coincide or conflict; and shall take such action in the enforcement of this Ordinance and as may further be directed by the Selectboard.

- C. **PENALTIES.** Any person, persons, firm, or corporation violating any of the provisions of this Ordinance shall be subject to a fine up to **one hundred dollars (\$100.00)** and all fees for each violation. Each day that any violation is allowed to continue constitutes a separate offense, as notified by certified mail.
- D. **EFFECTIVE DATE.** This Ordinance shall take effect upon its passage at Town Meeting.
- E. **PREVIOUS ORDINANCE.** Any and all Zoning Ordinances heretofore enacted by the Town of Middleton are hereby repealed upon passage of this ordinance.
- F. **AMENDMENTS.** This Ordinance may be amended by a majority vote of any legal Town Meeting when such amendment is published in the Warrant calling for the meeting, in accordance with NH RSA 675:3, NH RSA 675:4, NH RSA 675:5, and NH RSA 675:7 and other statutes, as amended.

**ARTICLE 43 – PROCEDURES FOR CONVERSATION SUBDIVISIONS  
(Adopted September 2006)**

- A. **Process Overview.** The sequence of actions prescribed in this article is as listed below. These steps shall be followed sequentially and may be combined only at the discretion of the Planning Board:
  - 1. Preliminary Consultation Discussion.
  - 2. Design Review and Environmental Resource - Yield Plan submittal
  - 3. Yield equation and yield plan review and recommendation.
  - 4. Submission hearing, preliminary plan, and yield equation/plan approval.
  - 5. Site walk.
  - 6. Application Submission and Review.
  - 7. Action / Decision.
- B. **Preliminary Application Discussion.** Optional process under **NH RSA 676:4.** A preapplication discussion is strongly encouraged between the applicant, the site designer(s), and members of the Planning Board. The purpose of this informal meeting is to introduce the applicant and the site designer(s) to the regulations and procedures and to discuss the applicant's objectives in relation to the town requirements. The town may designate a consultant experienced in development design and in the protection of natural features and greenway lands to meet with the applicant and to attend meetings as authorized under these regulations and **NH RSA 676:4.**

- C. **Design Review and Environmental Resource-Yield Plan submittal.** Preliminary session required pursuant to **NH RSA 674:35**. The purpose of a Yield Plan is to determine the number of units that an applicant could reasonably be expected to build on the parcel being proposed for open space development under current zoning and current state regulations, without the flexibility offered by the open space development provisions of the zoning ordinance.

At the Environmental Resource and Yield Plan discussion the applicant shall submit the environmental resource and yield plan for review. The submissions shall not be required to meet standard engineering specifications or surveying standards for purposes of a final plan, however, the environmental characteristics of the site shall be determined and delineated in accordance with applicable professional standards. This application shall also be filed with the Town of Middleton Conservation Commission for review and comment.

- a. Environmental Resource and Yield Plan. The application shall include a sketch plan showing the delineation of environmental resources on the site and the maximum number of dwelling units that would be reasonably achievable under the zoning ordinance and subdivision regulations for a conventional design, consistent with the minimum lot size, lot widths, setbacks, and all other applicable provisions, purposes, and objectives of the zoning ordinance and subdivision regulations in place at the time of the submission and compare it to the number of dwelling units proposed. This plan is intended to utilize required design information for the open space application and overlay a sketched conventional subdivision. At a minimum, the following information shall be provided:
  - i. Property boundaries;
  - ii. Streams, rivers, lakes, wetlands, as defined in this ordinance and associated zoning buffers and vernal pools;
  - iii. Topographic contours at **two (2)-foot** intervals;
  - iv. General vegetation characteristics;
  - v. General soil types showing with reasonable certainty, the ability to provide on-site septic facilities if not on public sewer service;
  - vi. A sketch of lot lines and setbacks showing reasonable building envelopes; vii. A sketch of potential rights-of-ways for roads and utilities in compliance with the subdivision regulations;
  - viii. Archaeological sites, cemeteries and burial grounds

- ix. Land on the parcel that has been set aside from development as part of a conservation easement, development agreement, or other similar legal restriction;
  - x. Existing roads and structures;
  - xii. Existing abutting conservation land and trails.
  - xiii. Waivers that would be required for approval and statement of justification for the waiver under the relevant provision of the applicable subdivision regulation.
  - xiv. Wetland impacts that would be required for conventional design.
  - xv. A Yield Plan may not utilize:
    - Land for which the applicant(s) does not possess the right to develop (such as otherwise restricted land).
    - Land within utility rights-of-ways.
  - xvi. To the extent a Yield Plan would require permits from other agencies, such as a State Wetlands Permit, the applicant shall have the burden of establishing by clear and convincing evidence that the permit will likely be approved.
  - xvii. Lands that are restricted from use or development by a deed restriction or any other legally applicable limitation on development rights or use, such lands shall not be considered eligible for development.
- b. Delineation of Minimum Required Open Space. The calculation of the Minimum Required Open Space, as required by Section 3.06 of the Middleton Zoning Ordinance sets the baseline for the open space calculations. This calculation is meant to be a numerical calculation that relates to an actual physical description of the area of the parcel to be protected as open space. The area of the parcel that is to be set aside must meet the minimum requirements of the developable land base calculations. As a practical matter, the open space will likely be larger given the inclusion of wetlands in the final parcel. The calculation insures that adequate uplands and “developable” land is set aside to further the multiple purposes of the open space design ordinance.

**D. Yield plan review and recommendation.** If the Board retains a planning or engineering consultant, the consultant shall use the environmental resource and yield plan submission to make a recommendation on the validity of the yield plan and a preliminary recommendation on the delineation of the restricted open space in accordance with these regulations and the Open Space Design Ordinance. The recommendation shall be forwarded to the Planning Board review at the submission hearing.

- E. **Submission hearing, preliminary plan, and yield plan approval.** “Preliminary Plan” refers to a preliminarily engineered sketch plan drawn to illustrate initial thoughts about a conceptual layout for open space lands, house sites, and street alignments. This is the stage where drawings are tentatively illustrated, before heavy engineering costs are incurred in the design of any proposed subdivision layout. The approval of the yield plan shall be considered “acceptance” in accordance with **NH RSA 676:4**.
- F. **A submitted Yield Plan** The plan shall be approved by the planning board only after a public hearing with notice per **NH RSA 676:4(I)(d)**. This approval shall constitute the baseline calculation for the number of dwelling units and shall constitute acceptance of the plan sufficient in detail to proceed to the formal design phase of the actual open space subdivision.
- G. **Sitewalk.** The Planning Board may schedule a mutually convenient date to walk the property with the applicant and site designer. The purpose of this visit is to familiarize town officials with the property's special features, and to provide an informal opportunity to offer guidance (or at least a response) to the applicant regarding the tentative location of the conservation land and potential house locations and street alignments.
- H. **Application Review. Four-Step Process.** Each sketch plan or Conceptual Preliminary Plan shall follow a four-step design process, as described below. When the conceptual Preliminary Plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that these four design steps were followed by their site designers in determining the layout of their proposed streets, house lots, and greenway lands.
- a. *Designating the Open Space.* During the first step, all potential conservation areas are identified and shall delineate all wetlands, floodplains, and slopes over **twenty-five (25) percent**, and shall include identification of the most sensitive and noteworthy natural, scenic, and cultural resources on that remaining half of the property. The applicant shall locate the restricted open space using the location criteria contained in the Open Space Development Ordinance and these regulations.
  - b. *Location of House Sites.* During the second step, potential house sites are tentatively located. Because the proposed location of houses within each lot represents a significant decision with potential impacts on the ability of the development to meet the evaluation criteria contained above, subdivision applicants shall identify tentative house sites on the preliminary plan.
  - c. *Street and Lot Layout.* The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on both the Conservation Areas. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over **fifteen (15) percent** shall be strongly

discouraged. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs to be maintained by the town and to facilitate easy access to and from homes in different parts of the property. Where cul-de-sacs are necessary, those serving six or fewer houses may be designed with “hammer-heads” facilitating three-point turns. Cul-de-sacs serving more than six homes shall generally be designed with a central island containing indigenous trees and shrubs (either conserved on site or planted).

In situations where more formal, "neo-traditional," or village-type layouts are proposed, Steps Two and Three may be reversed, so that the location of house sites follows the location of streets and squares.

- d. *Lot Lines*. The fourth step is simply to draw in the lot lines (where applicable). These are generally drawn midway between house locations and may include Lshaped "flag-lots".
- I. **Decisions**. For the yield approval, the decision shall be in the form of a vote. Yield plan decisions are made on limited submission of information, as contemplated by this development approach, and shall not be binding if further information is discovered during the process that results in modifications to the result. The conditional and final approval at the completion of the formal application review shall be issued in accordance with **NH RSA 676:3 and NH 676:4**.

#### **ARTICLE 44 – RESIDENTIAL OPEN SPACE DESIGN IMPLEMENTING REGULATIONS (adopted September 2006)**

##### **A. Open Space Plan Evaluation Criteria**

In evaluating the layout of house sites and open space, the following criteria will be considered by the Planning Board as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purposes of this ordinance. Diversity and originality in layout shall be encouraged to achieve the best possible relationship between development and conservation areas. Accordingly, the Planning Board shall evaluate proposals to determine whether the proposed preliminary plan represents an appropriate balance of the following objectives as they may be relevant to the site:

1. Protects and preserves all floodplains, wetlands, and steep slopes by minimizing impacts resulting from clearing, grading, filling, or construction.
2. Preserves and maintains mature woodlands, existing fields, pastures, meadows, managed forest lots, and orchards, and creates sufficient buffer areas to minimize conflicts between residential and agricultural uses. For example, locating house lots and driveways within or along wooded areas is generally recommended, with two exceptions.



- a. Where significant wildlife habitat or mature woodlands that raise an equal or greater preservation concern, as determined by the Board in accordance with intent of the ordinance.
  - b. The second involves predominantly agricultural areas, where remnant tree groups provide the only natural areas for wildlife habitat.
3. If development must be located on open fields or pastures because of greater constraints in all other parts of the site, dwellings should be sited on the least prime agricultural soils, or in locations at the far edge of a field, as seen from existing public roads. Other considerations include whether the development will be visually buffered from existing public roads, such as by a planting screen consisting of a variety of indigenous native trees, shrubs, and wildflowers (specifications for which should be based upon a close examination of the distribution and frequency of those species found in a typical nearby roadside stone wall).
4. Maintains or creates an upland buffer located on the parcel of open space being protected of natural native species vegetation of a depth sufficient to protect and maintain the ecological stability of adjacent wetlands and surface waters, including creeks, streams, springs, lakes ponds and vernal pools. Given other flexibility in design offered in this development option, the sufficiency of a buffer to wetlands shall be set at 50-feet. This buffer is higher than that required by the Middleton Zoning Ordinance due to the increased impact of dense development and flexibility in design options.
5. Leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public thoroughfares. For example, in open agrarian landscapes, a deep "nobuild, no-plant" buffer is recommended along public roads where those views or vistas are prominent or locally significant. The concept of "foreground meadows," with homes facing the public thoroughfare across a broad grassy expanse is strongly preferred to mere buffer strips, with or without berms or vegetative screening. In wooded areas where the sense of enclosure is a feature that should be maintained, a deep "no-build, no-cut" buffer should be provided, to preserve existing vegetation.
6. Avoids the concentrated siting of new construction on prominent hilltops or ridges, by taking advantage of lower topographic features.
7. Protects wildlife habitat areas of species listed as endangered, threatened, or of special concern by State or Federal law.
8. Designs around and preserves sites of historic, archaeological, or cultural value, and their environs, insofar as needed to safeguard the character of the feature, including stone walls, spring houses, barn foundations, cellar holes, earthworks, and burial grounds.

9. Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads. Establishes buffer zones along the scenic corridor of rural roads with historic buildings, stonewalls, and so on.
10. Landscapes common areas (such as community greens), cul-de-sac islands, and both sides of new streets with native species shade trees and flowering shrubs with high wildlife conservation value.
11. Includes a pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site, between properties and activities or special features within the neighborhood open space system. Roadside footpaths should connect with off-road trails, which in turn should link with potential open space on adjoining undeveloped parcels (or with existing open space on adjoining developed parcels, where applicable).
12. Fragmentation of open space should be minimized so that these resource areas are not divided into numerous small parcels located in various parts of the development. To the greatest extent practicable, this land shall be designed as a single block with logical, straightforward boundaries. Long thin strips of conservation land shall be avoided, unless the conservation feature is linear or unless such configuration is necessary to connect with other streams or trails. The open space shall generally abut existing or potential open space land on adjacent parcels (such as in other subdivisions, public parks, or properties owned by or eased to private land conservation organizations). Such subdivision open space shall be designed as part of larger contiguous and integrated greenway systems.

**B. Yield Bonus Administration.**

Pursuant to the Town of Middleton Zoning Ordinance, if certain required criteria are met, the Planning Board may award the development a yield bonus. The total yield bonus awarded to a particular development authorized under this section for innovative protection bonuses shall not exceed the requirements of the ordinance.

The bonus shall be applied to the number of lots achievable under the yield plan. Where a final number is greater than **five tenths (.5) of one**, the yield number may be rounded up to the next whole number. The minimum density bonus regardless of percentage achieved shall be one lot. In no event shall the total density bonus exceed the soil-based carrying capacity for the entire parcel.

1. **Additional open Space Provided.** In order to grant this yield bonus, the Planning Board must determine that the open space provided exceeds **seventy-five (75) percent** of the total parcel area and that no less than **the fifty (50) percent** of the protected area is buildable.

2. Public Access Bonus - Where the public is granted access to the open space, the development may be awarded a density bonus of five (5) percent. The nature of public access required to trigger this bonus is pedestrian traffic. The instrument granting access, acceptable to the Planning Board, may reasonably restrict the use of motorized vehicles. Designated trail corridors alone may be deemed sufficient only if the corridor connects existing public accessible lands and/or continues an existing trail and the site must provide parking for access to the trail.
3. Additional Protection Bonus - The Planning Board shall determine when and where the development protects important natural and cultural resources considering the following:
  - a. Viewsheds, which are lands or corridors of land that contribute to the visual landscape of the town, including items such as open fields containing stone walls, mature stands of trees, visible water bodies and their natural buffers.
  - b. Historically significant buildings and landscapes, identified as such in the Master Plan, that include buildings and associated uses that are maintained and visually separated from the developed portion of the development. Structures or landscapes not identified as such through the Master Plan may be determined by sufficient evidence presented to the Planning Board during review of the cluster development. Such evidence may include review of historic literature, listing or eligibility for listing on the National Register of Historic Landmarks, or other qualified statements of historic value.
  - c. Valuable wildlife and environmental areas that are otherwise buildable land, proven as such through an environmental resource inventory by a qualified wildlife biologist specializing in either flora or fauna and consistent with guidance of New Hampshire State Wildlife Plan. Reports by a wetlands or soil scientist alone shall not satisfy this criteria.
  - d. Linking open space parcels with existing open space networks.
4. Density bonus for frontage lots. The Planning Board may grant this bonus when it determines that a potential lot with the required legal frontage, on a roadway existing at the time of application within the Town of Middleton, for the underlying district has been preserved in a natural condition.

**C. Open Space Use and Management**

1. Natural features shall generally be maintained in their natural condition, but may be modified to improve or restore their overall ecological condition and natural processes, as recommended by natural resource professionals and in

compliance with a Planning Board approved land stewardship plan. Permitted modifications may include:

- a. Woodland management for health and maintenance and for sustainable commercial extraction.
  - b. Reforestation.
  - c. Meadow management for habitat and viewsheds.
  - d. Wetlands management.
  - e. Stream bank restoration and protection.
  - f. Buffer area landscaping.
2. To preserve scenic views, ridge tops and hilltops should be contained within common open space wherever possible. Trees shall not be removed from ridge tops or hilltops.
  3. To preserve existing and encourage new agricultural operations.
  4. The boundaries of common open space shall be marked by natural features wherever possible, such as stonewalls, edges of woodlands, streams, or individual large trees. Where no such natural demarcations exist, additional plantings, fences, or other landscape features should be added to enable residents or the public, if applicable, to distinguish where common open space ends and private lot areas begin. Where structural demarcations, such as fences, are used, they shall be the minimum needed to accomplish this objective.
  5. Trails in common open space that are located within **fifty (50) feet** of homes in the development shall be identified by plantings, markers, fences, or other landscape features.
  6. No portion of the minimum required open space shall be less than **fifty (50) feet** in width unless the area contains a trail, or a trail to be built.
  7. Safe and convenient pedestrian access and access for maintenance purposes shall be provided to all common and open space areas that are not used for agricultural purposes, in accordance with the following:
    - a. At least one access point per **ten (10)** houses shall be provided; having a width of no less than fifty (50) feet unless the applicant can demonstrate that, due to natural site constraints, meeting the width requirement would run counter to the objectives of this Section.
    - b. Access to common open space used for agriculture may be restricted for public safety and to prevent interference with agricultural operations.
  8. Maintenance and operation of common facilities.

- a. The land which qualifies as Open Space under Section 3.06 of the zoning ordinance must be owned by either a homeowners' association or a public body, in such type of legal entity as the planning board deems appropriate.
  - b. A plan and narrative for the use, maintenance, and insurance of all common facilities, including provisions for funding, shall be provided to and approved by the Planning Board prior to final approval. The plan shall be considered a material condition of the approval. Such plan shall:
    - (1) Define ownership.
    - (2) Establish necessary regular and periodic operation and maintenance responsibilities.
    - (3) Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.
    - (4) Include a Land Stewardship Plan specifically focusing on the long term management of open space lands.
  - c. In the event that the association established to own and maintain common areas and facilities, or any successor organization thereto, fails to properly maintain all or any portion of the aforesaid common areas or facilities, the Town may serve written notice upon such association setting forth the manner in which the association has failed to maintain the aforesaid common areas and facilities. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made. Upon failure to comply within the time specified, the association, or any successor organization, shall be considered in violation, in which case the Town shall have the right to enter the premises and take the needed corrective actions. The costs of corrective actions by the Town shall be assessed against the properties that have the right of enjoyment of the common areas and facilities. This authority shall be documented in the application and the documents establishing the association. The recitation shall include a description of the parcel, enforcement authority under **NH RSA 674:21-a**, and the Land Stewardship Plan.
9. The Land Stewardship Plan shall include a narrative, based on the site analysis required by the special use permit, describing:
- a. Existing conditions, including all natural, cultural, historic, and scenic elements in the landscape;
  - b. Objectives for each common open space area, including:

- (1) The proposed end state for the area and the measures proposed for achieving the end state.
- (2) Proposed restoration measures, including:
  - (a) Measures for correcting increasingly destructive conditions, such as erosion.
  - (b) Measures for restoring historic features.
  - (c) A maintenance and operations plan identifying activities needed to maintain the stability of the resources, including mowing schedules, weed control measures, planting schedules, and clearing and cleanup measures and schedules.

**C. Design Standards for Building Sites**

1. In locating house sites, disturbance to woodlands, stonewalls, and individual mature trees shall be minimized. However, when the objective is to preserve prime farmland soils and large areas of contiguous land suitable for agricultural use, dwellings may be located within woodlands. House locations and lots that are located in wooded areas shall have cut limitations delineated and approved by the Planning Board. These limitations shall be field marked prior to the issuance of building permits for individual lots. The clearing limitations are meant to provide sufficient areas for the construction of a dwelling, yard area, driveway, garage, accessory structures, a well, and private onsite waste treatment system.
2. In accordance with the intent to promote the largest possible areas of conservation parcels that are managed for ecological integrity and to ensure maximum opportunity for passive recreation, absent a waiver granted by the board, the maximum lot size for any residential lot in an open space development shall be no larger than 1 acre. Waivers may be granted where a larger lot achieves one or more of the purposes of the regulations.

**D. Design Guidelines for Roadways, Shared Access Ways, Trails, and Other Facilities.**

1. General Design. All roadways shall be designed in accordance with the Middleton Subdivision Regulations.
2. Connectivity. It is the intent of this ordinance that most open space design developments do not include provisions for connectivity of roadways where the majority of house sites are located. If connectivity is desired by the Board for future development purposes and/or reasons of health and safety, the Board may require secondary roads to serve the house sites and encourage the use of separate connector roads to serve as the mode of interconnectivity.

3. **Design Flexibility.** The Board shall consider greater flexibility in specific adherence to design requirements related to curve and tangent requirements, pavement width, right-of-way width and clearing requirements. This flexibility shall be exercised in the pursuit of site design that minimizes impacts to the site, minimizes road length, and provides flexibility in siting dwellings.
4. Trails shown on plans shall be built to DRED specifications for walking trails. Trails may be bonded, if not built, but the bond for full construction costs shall be in place prior to the issuance of the first certificate of occupancy for any structure in the development. If the trails are to be constructed, they shall be built prior to final coat of pavement being placed on the roadway.

## **ARTICLE 45 – SOLAR COLLECTION SYSTEMS (Adopted March 12, 2024)**

### **A. PURPOSE**

The purpose of this Ordinance is to accommodate solar energy collection systems and distribute generation resources in appropriate locations while protecting the public's health, safety, and welfare. The Town intends to facilitate the State and National goals of developing clean, safe, renewable energy resources in accordance with the enumerated policies of NH RSA 374-G and 362-F that, include national security and economic and environmental sustainability.

### **B. AUTHORITY**

This solar collection system ordinance is enacted in accordance with NH RSA 674:17(I)(j) and the purposes outlined in NH RSA 672:1-III-a as amended.

### **C. APPLICABILITY**

This Ordinance does not cover Solar installations designed to generate less than one kilowatt and is not connected to the electrical grid. However, they may be subject to other regulations.

- a. **Residential and Accessory Agricultural** – The Town will permit rooftop solar installations of less than 15KW by right in all zoning districts. Ground-mounted solar systems that are 15KW or less and one thousand (1000) square feet or less will not need Planning Board approval but will require approval from the Planning Department's Building Inspector.
- b. **Commercial** - Any person seeking to construct or to conduct any Commercial Solar Energy System for commercial use as defined in Article 36 of this Ordinance, shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Town Site Plan Review Regulations as well as a Conditional Use Permit. In addition, such applicant shall submit the information required in this

Ordinance. If any property owner/s wishes to install a ground and/or pole-mounted Commercial Solar Energy System, they must come to the Planning Board for a Conditional Use Permit that shows they have met the conditions listed above, as well as any other conditions, such as protecting the view shed of neighbors and passersby's, which the Planning Board may feel necessary to be in the best interests of the town and abutting residents in light of the purposes of this Ordinance and the purposes of the zoning district(s) in which the property is located.

## **D. GENERAL DEFINITIONS**

**Solar Access** – Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

**Building Integrated Photo Voltaic (BIPV) Systems**- a solar energy system that integrates photo voltaic modules into the building structure, such as solar shingles on the roof or the facade, which does not alter the relief of the roof.

**Collective Solar** – Solar Installations owned collectively through subdivision homeowner associations, co-housing, and other similar arrangements.

**Net Metering** – A billing mechanism authorized by **NH RSA 362-A** and corresponding regulations, credits solar customers for surplus electricity they generate and deliver back to the grid and allows them to pay only for their net electricity usage during the applicable billing cycle.

**Qualified Solar Installer** – A NH licensed electrician with specialized knowledge and corresponding skills related to the installation, construction, and operation of solar electrical equipment and who has received safety training on the hazards involved with solar installation.

**Residential** – as defined in Article 36 of this Ordinance.

**Solar Energy** – Radiant energy provided by the sun that can be collected in the form of heat or light by a solar collector.

**Solar Skyscape Easement**—A recorded easement pursuant to **NH RSA 477:51** sufficient to create a Solar Skyscape easement.

**Solar Storage Battery** – A device that reserves energy for later consumption that is charged by a connected solar connection system.

**Solar Thermal Systems** - System which converts solar radiation to thermal energy; system directly heats water or other liquid using sunlight; used for such purposes as space heating, cooking, domestic hot water, and heating pool water.



**Rated Nameplate Capacity** – Maximum-rated alternating current ("AC") output of solar collection system based on the design output of the solar system.

**Solar Land Coverage** – is defined exclusively to calculate the footprint of the land area occupied by the components of a solar array. The Solar Land Coverage is the land area that encompasses all elements of the solar collection system, including but not limited to mounting equipment, panels, and ancillary components of the system. This definition does not include access roads or fencing. It is not to be interpreted as a measurement of impervious surface as it may be defined in this Ordinance.

**Solar Collection System** - Includes all equipment required to harvest solar energy to generate electricity. The Solar Collection System includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Solar Collection Systems include only equipment up to (but not including) the stage that connection is made to the utility grid or site service point.

**Roof-Mounted System** – A solar collection system that is structurally mounted to the roof of a building or other permitted structure, including limited accessory equipment associated with the system, which may be ground mounted. It is installed parallel to the roof with a few inches gap. If the rooftop is flat, then the racking system is installed so the solar array is aligned at an angle. For calculating array sizes or solar land coverage under the solar definitions in this section, roof-mounted portions shall not be included if the system comprises roof and ground-mounted systems.

**Ground-Mounted System** – A solar collection system and associated mounting hardware affixed to or placed upon (such as ballasted systems) the Ground, including but not limited to fixed, passive, or active tracking racking systems.

**Commercial Carport Mounted System** – Any solar collection system of any size installed on a carport's roof structure over a parking area.

## **E. USE DEFINITIONS:**

**Accessory Residential Solar:** Any ground-mounted or roof-mounted solar collection system primarily for on-site residential use and consisting of one or more free-standing, Ground or roof-mounted solar arrays or modules, or solar-related equipment, intended to primarily reduce on-site consumption of utility power and with a rated nameplate capacity of 20 kW AC or less and that is less than 1000 square feet solar land coverage.

**Community Solar:** A commercial land use, per Article 36 of this Ordinance, that consists of one or more free-standing, ground-mounted solar collection systems regardless of nameplate capacity of up to 100 kW AC and less than 1 acre of solar land coverage and is intended for on-site consumption by a community group.

**Accessory Agriculture Solar:** Any ground-mounted or roof-mounted solar collection system designed to primarily reduce on-site consumption of utility power without a limit to

the rated nameplate capacity or solar land coverage, provided the existing agricultural use is preserved during installation.

**Primary Agriculture Solar:** Any ground-mounted solar collection system that is partially used to reduce on-site consumption of utility power and with a rated nameplate capacity of up to 1 MW AC in size or has a solar land coverage in excess of 5 acres provided the existing agricultural use is preserved at the time of installation where the excess power is sold to the utility company.

**Small Commercial Solar:** A land use that consists of one or more free-standing, ground-mounted solar collection systems with a rated nameplate capacity of up to 1 MW AC and less than 5 acres in solar land coverage.

**Large Commercial Solar:** A land use consisting of one or more free-standing, ground-mounted solar collection systems with a rated nameplate capacity of between 1 MW and 5 MW and between 5 and 25 acres in solar land coverage.

**Industrial Solar:** A land use that consists of one or more free-standing, ground-mounted solar collection systems, regardless of nameplate capacity, between 5 acres and 50 acres in solar land coverage.

**Utility Solar:** A land use that consists of one or more free-standing, ground-mounted solar collection systems regardless of nameplate capacity over 50 acres in solar land coverage and less than 30 MW in rated nameplate capacity.

**Solar Power Generation Station:** Any solar collection system over 30 MW in nameplate capacity. In no case shall a Solar Power Generation Station exceed 150 acres.

**Table of Permitted Solar Uses**

	Zoning District					
	Sunrise Lake Village District SRL	Residential-Commercial/Industrial B-1	Rural Residential RR	Middleton 4 Corners M4C	Commercial	Industrial
<b>Accessory Residential Solar</b>	P	P	P	P	P	P
<b>Community Solar</b>	X	P	P	P	P	P
<b>Accessory Agricultural Solar</b>	X	P	P	P	P	P
<b>Primary Agricultural Solar</b>	X	X	CUP	P	P	P
<b>Commercial Solar</b>	X	x	CUP	CUP	P	P
<b>Large Commercial Solar</b>	X	X	X	CUP	CUP	CUP
<b>Industrial Solar</b>	X	X	X	X	CUP	CUP

<b>Utility Solar</b>	X	X	X	X	CUP	CUP
<b>Solar Power Generation Station</b>	X	X	X	X	X	CUP

P = Use permitted by right with building and electrical permit.

CUP = Use permitted by Conditional Use Permit.

X = Use prohibited.

Site plan review is required for all solar uses except for Accessory Residential Solar and Accessory Agricultural Solar, following the Site Plan Review Regulations.

**F. SPECIFIC SOLAR SYSTEM REQUIREMENTS AND EXEMPTIONS:**

- a. A ground-mounted Accessory Residential Solar system shall not exceed the building height described in Article 6, Section A, paragraph 4 of this Ordinance at any point and shall be located in the rear yard between the primary structure and the rear lot line.
- b. A Commercial Use, as defined in Article 36 of this Ordinance, carport-mounted solar collection systems over parking areas are permitted in all zones without a Conditional Use Permit. A site plan review is required in accordance with the Site Plan Review Regulations.
- c. Roof-mounted solar collection systems of any size are permitted in all zones without a conditional use permit.
- d. When adding solar panels to historic properties, it is recommended that the roof or ground-mounted solar panels be mounted in inconspicuous locations when possible and be screened to limit visibility.
- e. Municipal Systems: All solar collection systems for municipal use are exempt from land use regulations pursuant to NH RSA 674:54.
- f. Setbacks: Solar collection systems shall be considered structures, require building permits, and comply with building setback requirements from lot lines for the entire system – including the panels. Tracking systems shall measure the setback from the point and time where the array is closest to the lot line. No portion of a system may cross into the setback.
- g. Building Height: Roof-mounted solar collection systems shall be exempt from building height limitations.
- h. Lot Coverage: Ground-mounted solar collection systems shall not be considered part of the maximum required lot coverage limitations and shall not be considered impervious surfaces. Impervious surface limitations related to stormwater management for solar collection systems shall be addressed per this Ordinance.

## **G. ADDITIONAL PERMITTED SITES:**

**A.** Solar Collection Systems of any size or type shall be permitted on the following sites if they remain Town-owned *municipal properties*:

1. *School Facilities: Map 12 Lot 24.*
2. *Municipal Building: Map 12 Lot 24-1.*
3. *Fire Station: Map 12 Lot 21*
4. *Old Town Hall: Map 12 Lot 20.*
5. *Highway Garage: Map 12 Lot 20-1.*
6. *Highway Department: Map 45 Lot 36, Lot 37.*
7. *Highway Department Ridge Road Pit: Map 12 Lot 24-2*
  8. *Highway Department Gravel Pit:  
Town of New Durham Map 219 Lot 12*

## **H. SOLAR COLLECTION SYSTEM CONDITIONAL USE PERMIT:**

**A.** The Planning Board encourages using tax maps, GIS, USGS, Google Earth, and other resources that provide enough detail to create a hand-drawn or computer-generated site plan for local land use board review. Engineers and Surveyors are required for larger projects or when critical environmental areas are present. Landscape architects or professional Landscapers may be engaged to address aesthetic concerns.

**B.** All applications for a solar energy system conditional use permit shall be made to the Planning Board in accordance with the submission and procedural requirement for conditional use permits set forth in Article 33 of this Ordinance, as they may be amended, with the additional information as set forth in General Application Criteria below.

## **I. GENERAL APPLICATION CRITERIA:**

### **A. System Layout Requirements**

1. A detailed sketch or plan showing the installation area of the site.
2. A detailed sketch of any land clearing or grading required for the installation and operation of the system.
3. The location of all equipment to be installed on-site, including utility connection point(s), storage battery, and equipment structures and equipment. To the maximum extent practical, all wiring associated with the utility connection shall be underground.
4. All equipment and structure locations, except for utility connections, shall comply with required setbacks.

## **B. Equipment Specification**

1. All proposed equipment or specifications must be included with the application.
2. Such information can be supplied via manufacturer specifications or detailed descriptions.

## **C. Emergency Response**

1. Access to the site for emergency response shall be provided and detailed in the plan.
2. A narrative or manual for the municipal Fire Department detailing response guidance and disconnection locations necessary for fire response.
3. Additional industry guidance documents that provide information about safety procedures for specific equipment on site shall be provided as needed to ensure adequate public safety.
4. Contact information for the solar collection system owner/operator shall be posted on-site at the access way and provided and updated to the Town.

## **D. Natural Resource & Views/Viewsheds Impacts and Buffers**

1. Solar collection systems shall be visually screened through the preservation of existing vegetation or a landscaped buffer in accordance with the following.
  - a. Plan: The buffering plan shall indicate the location, height, and spacing of existing vegetation to be preserved, areas where new planting will be required, and a statement that the buffering shall be maintained for the project's lifespan.
  - c. All solar systems shall have a visual buffer as required in the site plan review regulations from public ways and neighboring commercial/residential uses based on the viewsheds, contours of the land, and abutting land uses.
  - d. Areas within the viewshed of significant value as identified in the Master Plan shall include additional reasonable mechanisms to mitigate from a continuous and uninterrupted view of the system.

- E. **Fencing** shall be installed per the National Electrical Safety Code with a height of not less than 2.13 m (7 ft). Additionally, "Wildlife Friendly Fencing" is encouraged.

F. **Primary Agriculture Solar** should minimize impacts on farmland activities and Prime Farmland Soils (as defined and delineated by soil survey and definition of NH NRCS). Dual-use arrangements (solar and farming activities) are encouraged where practical.

1. Land clearing shall be limited to what is necessary for the installation and operation of the system and to ensure sufficient all-season access to the solar resource, given the land's topography.
2. Following construction, cleared land areas must be restored with native species consistent with the site's use as a solar collection system (such as slow growth or low ground cover).
3. The Planning Board Development Regulations shall detail erosion control measures during construction.

**G. ADDITIONAL REQUIREMENTS FOR LARGE COMMERCIAL, INDUSTRIAL, AND UTILITY (LC/IU) SOLAR:**

1. A licensed NH Professional Engineer shall prepare, and stamp all submitted plans, reports, and documentation.
2. A detailed pre-construction and post-construction plan identifying existing vegetation and areas to be cleared with specific identification of locations of buffer areas adjacent to neighboring uses and public ways.
3. LC/IU systems that disturb more than 10 acres of previously undisturbed land shall provide a natural resource inventory that details site conditions and habitat and mitigation efforts to reduce impacts to important species and habitats.
4. Efforts and practices that can provide for dual use of the site should be explored if feasible and encouraged where appropriate.
5. The applicant shall demonstrate effective stormwater infiltration, erosion control measures, and soil stabilization.

**J. ELECTRICAL REQUIREMENTS.**

1. The Electrical or Building Inspector shall approve all systems not connected to the grid, as required.
2. Grid-tied systems shall file a copy of a final approved interconnection with the Town prior to operation of the system.

**K. GLARE.**

An index measures glare and is required.

1. All proposed solar collection systems except for Accessory Residential Solar systems shall notify the Regional Federal Aviation Authority (FAA) Office and the local airport operator to inform the FAA operator about the proposed project and public hearing dates so that the agency can determine if the project presents any safety or navigational problems, especially if large.
2. A statement or study detailing potential significant glare onto abutting structures and roadways estimating the interaction of sun to panel angle, time of year, and visibility locations.
3. The Planning Board may require reasonable mitigation based on the above information. Mitigation may include the angle of panels, details on the anti-reflective nature of the panel coating, or any additional specific screening to minimize resulting impacts.
4. Mitigation through anti-reflective coatings shall have an index of refraction equal to or less than 1.30.

#### **L. NOISE.**

1. Estimates of equipment noise on the site based on equipment specification materials (such as inverters).
2. Noise levels at the property line shall be reasonable given the facility's location, with due consideration to the surrounding land uses and zone.

#### **M. STORMWATER.**

1. Ground-mounted systems that are required to secure a New Hampshire Department of Environmental Services Alteration of Terrain (AoT) Permit in accordance with NH RSA 485:17 shall apply for such permit. Receipt of the AoT permit shall be a condition precedent to any approval issued by the Planning Board for such a system.

- a. The final Permit issued by NH DES shall be incorporated by reference into the final Town approval. It shall be enforceable by the Town in accordance with this zoning ordinance.
- b. No further local review of stormwater and erosion control shall be required where a project is required to secure the NH DES AoT Permit.

2. Ground-mounted systems not requiring NH DES AoT Permit. Where a ground-mounted system does not require an AoT permit, the following shall apply:
  - a. If ground-mounted systems require land clearing and grubbing of mature forested cover to accommodate more than 30% of the solar land coverage area (provided such area of clearing and grubbing is also larger than 1 acre), the proposed system shall include a management plan for stormwater that is directly related to the impact of the solar collection system.
  - b. Ground-mounted systems where the solar land coverage area is larger than 1 acre and located on slopes greater than 5% shall include a management plan for stormwater.
3. The stormwater management plan shall include the following.
  - a. The stormwater study shall consider the nature of the solar panel installation and how the spacing, slope, and row separation can enhance stormwater infiltration. Percolation tests or site-specific soil information may be provided to demonstrate that recharge can be achieved without engineered solutions.
  - b. Additional information shall calculate the potential for concentrated runoff flows due to the panels, slope, soil type, and the impacts of other true impervious areas (such as equipment pads and roadways).
4. Required for all systems:
  - a. All ground-mounted systems shall be constructed in accordance with NH DES and UNH Cooperative Extension Best Management Practices for erosion and sedimentation control during the pre-construction, construction, and post-construction restoration period.
  - b. Post-construction: To enhance natural stormwater management, site conditions, and plantings, shall ensure that soil compaction areas have been restored to more natural conditions. Plantings shall be native species and are recommended to be beneficial habitats to songbirds, pollinators, and/or foraging specifics to maintain a healthy surface and subsurface habitat that can attenuate stormwater on the site.
  - c. All plans shall include a stormwater Operation and Maintenance Plan for incidental and Non-Incidental Disturbances and shall have an Operations and Maintenance (O&M) Plan to ensure that systems function as designed.

## **M. LIGHTING.**

On-site lighting shall comply with Development Regulations, Article 5.6.



## **N. BUFFER PLAN BUFFER**

All applications shall submit a detailed buffering plan demonstrating how the proposed ground-mounted solar installation will be incorporated into the local landscape to provide adequate screening along public ways and from abutting views. The use of evergreens is strongly recommended. The use of existing or created topography is encouraged to reduce visual impacts.

## **O. ABANDONMENT AND DECOMMISSIONING.**

1. Solar Collection Systems shall be deemed to be abandoned if operations have been discontinued for more than 12 months without the written consent of the Town (such as for reasons beyond the control of the owner/operator). An abandoned system shall be removed, and the site restored within 12 months of abandonment.
2. The Planning Board shall require the applicant to post a surety in an amount approved by the Board to guarantee that an abandoned system is removed and the site restored within the required 12-month timeframe. A licensed NH Professional Engineer, approved by the Planning Board, shall calculate said surety amount for review and approval by the Board that secures the guarantee of satisfactory removal and restoration for the Town. This calculation work shall be at the expense of the applicant/owner.

## **X. REQUIREMENTS FOR GRANTING A CONDITIONAL USE PERMIT (CUP):**

Criteria:

1. Standards of Review: Following a fully noticed public hearing on the proposed use, the Planning Board may issue a Conditional Use Permit if it finds, based on the information and testimony submitted concerning the application, that:
  - a. The use is authorized explicitly by the Table of Principal and Accessory Uses as a conditional use as described under **Use Definitions** of this Solar Ordinance.
  - b. The development in its proposed location will comply with all applicable requirements of the Site Plan Review Regulations not otherwise covered in this section and specific conditions established by the Planning Board.
  - c. The use will not materially endanger the public health or safety.
  - d. Required adequate screening shall be installed and maintained during the operative lifetime of the Solar Collection System Conditional Use Permit. The applicant shall sign an agreement with the Planning Board, which shall run with the land for screening to be maintained until the system is removed and the property restored.

- e. In granting a conditional use permit according to this section, the Planning Board may impose any reasonable conditions or restrictions deemed necessary to carry out the intended purpose of this Ordinance.

**Y. SITE PLAN REVIEW REGULATIONS APPLICABLE.**

- 1. The specific requirements for a Conditional Use Permit shall preempt any similar requirement in the Site Plan Review Regulations.

**Appendix:**

This appendix includes images and information about several types of solar installations and equipment.



Completed installation showing gaps between panels



Ballasted system, showing the distance between rows and the ballast blocks.





Racking equipment – before panel installation.



Commercial Carport Mounting



Residential Ground mounted system.



Pole-mounted system – agricultural site.



Tracker Mounted Residential System: Courtesy Revision Energy

Note: Examples of buffered systems:







**Great Hill Farm barn in Tamworth**

## ARTICLE 46 – IMPACT ORDINANCE

### Amended March 12, 2024 Replaces Article 46 – Enactment & Amendments

#### A. PURPOSE

The following Ordinance shall govern the assessment of impact fees for public capital facilities to accommodate increased demand on the capacity of these facilities due to new development. This Ordinance is authorized by RSA 674:16 and 674:21 as an innovative land use control to promote public health, safety, convenience, welfare, and prosperity; ensure that adequate and appropriate public facilities are available; and provide for the harmonious development of the Town of Middleton and its environs.

#### B. AUTHORITY

- (1) Impact fees may be assessed for new development to compensate the Town of Middleton and the Middleton School District for a proportionate share of the cost of the capital facility needs occasioned by new development. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.
- (2) The Planning Board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's proportional share of public facilities affected by the development.
- (3) Nothing in this Section shall be construed to limit the authority of the Planning Board or the Town to require exactions for off-site improvements, other conditions of approval, or to assess additional fees governed by other statutes, ordinances, or regulations.
- (4) Before assessing an impact fee for one or more of the public facilities enumerated above, the Planning Board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.

#### C. DEFINITIONS

**Impact Fee:** A fee or assessment imposed by the Town of Middleton upon



development, including subdivision, building construction, or other land-use change, to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned by the Town of Middleton District, including but not limited to; stormwater, drainage, and flood control facilities; public road systems and rights-of-way; Town office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; and public recreation facilities, not including public open space.

**Fee Payer:** The applicant for the issuance of a building permit that creates new development.

**Capital Facilities:** Facilities and associated structures, including but not limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; stormwater, drainage, and flood controls facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space.

**New Development Construction:** The creation of a new dwelling unit or units in the habitable portion of a residential building or the conversion of legally existing use or additions to that, which - would result in a net increase in the number of dwelling units; or construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building, or the conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment; however, new development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

**Off-Site Improvements:** improvements that are necessitated by a development but located outside the boundaries of a property subject to a subdivision plat or site plan approval by the Planning Board.

**Public Open Space:** means a parcel of land essentially unimproved and available to the public only for passive recreational uses such as walking, sitting, picnicking, table games, natural resource conservation, and similar uses. Town parks that do not include "public recreation facilities" constitute public open spaces within the meaning of this Article.

**Public Recreation Facilities:** means the land and facilities owned or operated by the Town of Middleton, other than public open space, which is

designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which includes equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs.

#### **D. ASSESSMENT METHODOLOGY**

**Computation:** Before assessing an impact fee required by the Planning Board for one or more of the public capital facilities listed above, the Planning Board shall adopt such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.

**Proportionality:** The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs that are reasonably related to the capital needs created by the development and to the benefits accruing to the development from the capital improvements financed by the fee.

**Conversion or Modification of Use:** In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessed for further use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.

**Existing Deficiencies:** Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

#### **E. ADMINISTRATION**

##### **(1) Accounting:**

- (a) In accordance with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Selectboard, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.
- (b) If bonds or similar debt instruments have been or will be issued by the Town of Middleton or the Middleton School District for the funding of capital

improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee may be applied to pay debt service on such bonds or similar debt instruments.

- (c) The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment and shall maintain an updated record of the current ownership, tax map, and lot reference number of properties for which fees have been paid under this Ordinance, for each building permit so affected for at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
  - (d) Impact fees collected may be spent from time to time by order of the Selectboard. They shall be used solely to reimburse the Town and the School District for the cost of public capital improvements for which they were collected or to recoup the cost of capital improvements made by the Town or School District in anticipation of the needs for which the impact fee was collected.
  - (e) If bonds or similar debt instruments have been or will be, issued by the Town or the School District to fund capacity-related facility improvements. In that case, impact fees may be transferred to pay debt service on such bonds or similar debt instruments.
  - (f) At the end of each fiscal year, the Town Treasurer shall provide a report to the Selectboard, giving a particular account of all impact fee transactions for the year. Additional reporting shall be made to NH DRA and IRS.
- (2) **Assessment:** All impact fees imposed under this Section shall be assessed at the time of planning board approval of a subdivision, site plan, or change of use as per the Planning Board approved Schedule of Fees. When no planning board approval is required or has been made before the adoption or amendment of this Ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with the development as determined by the Selectboard.
- (3) **Security:** In the interim between assessment and collection, the Selectboard may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable security measures to guarantee future payment of assessed impact fees.
- (4) **Collections:** Impact fees shall be collected as a condition for issuing a certificate of occupancy. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. The collection of impact fees shall be the responsibility of the Code Enforcement Officer. In projects where off-site improvements are to be constructed simultaneously with a project's development and where the Town has

appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this Section shall prevent the Selectboard, with the review by the Planning Board and the assessed party, from establishing an alternate, mutually acceptable schedule of payment.

- (5) Refund of Fees Paid:** The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
- (a)** When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within six (6) years from the date of the total and final payment of the fee; or
  - (b)** When the Town of Middleton, or in the case of school impact fees, the Middleton School District, has failed, within the period of six (6) years from the date of the total and final payment of such fee, to appropriate their proportionate non-impact fee share of related capital improvement costs.

#### **F. APPEALS:**

- (1)** A party aggrieved by a decision made by the Code Enforcement Officer relating to administrative decisions in the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board.
- (2)** A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Superior Court as provided by RSA 677:15, as amended.

#### **G. WAIVERS:**

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met concerning the public capital facilities for which impact fees are typically assessed.

- (a)** An applicant may request a full or partial waiver of school impact fees for those residential units lawfully restricted to occupancy by senior citizens aged 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive the school impact fee assessments on age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for at least 20 years. Upon expiration of the specified waiver period, any proposed change in use or conversion of residential units from age-restricted occupancy may be subject

to an assessment of impact fees.

- (b) A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board before the effective date of this Ordinance. Before granting such a waiver, the Planning Board must find that the proposed construction is entitled to the four-year exemption provided by RSA 674:39, according to that statute. This waiver shall not apply to phases of a phased development project where active and substantial development, building, and construction have not yet occurred in the phase in which construction is proposed. The Planning Board may agree to waive all or part of an impact fee assessment and accept, in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Before acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Selectboard for its review and consent and hold a public hearing prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind. It may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the Town to review such proposal, including consultant and counsel fees.

## **H. ADDITIONAL ASSESSMENTS**

Payment of the impact fee under this Article does not restrict the Town or the Planning Board from requiring other payments from an applicant, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

## **ARTICLE 47 – DATES OF ENACTMENT & AMENDMENT**

**Added March 12, 2024**

**(Replaces Previous Article 46 Dates of Enactment & Amendment)**

Adopted March 11, 1986

Amended March 10, 1987

Amended March 14, 1989

Amended March 13, 1990

Amended March 12, 1991

Amended March 10, 1992  
Amended March 9, 1993  
Amended March 12, 1994  
Amended March 14, 1995  
Amended March 11, 1996  
Amended March 9, 1999  
Amended March 14, 2000  
Amended March 13, 2001  
Amended March 12, 2002  
Amended March 11, 2003  
Amended March 9, 2004  
Amended March 8, 2005  
Amended March 14, 2006  
Amended March 13, 2007  
Amended March 11, 2008  
Amended March 10, 2009  
Amended March 9, 2010  
Amended March 8, 2011  
Amended March 13, 2012  
Amended March 12, 2013  
Amended March 11, 2014  
Amended March 10, 2015  
Adopted March 12, 2016  
Adopted March 11, 2017  
Amended March 12, 2024 – Article 7 Aquifer Conservation Overlay District  
deleted and replaced with newly worded content  
Amended March 12, 2024 – Article 45 Solar Collection System Ordinance  
added  
Amended March 12, 2024 – Article 46 dates of Enactment & Amendment  
replaced with Article 46 Impact Fee Ordinance  
March 12, 2024 – Article 47 Dates of Enactment & Amendment added