



## Joint Committee of the Planning Board & Planning, Licenses, & Development Committee

### AGENDA

**January 19, 2021 (Tuesday) at 6:30 PM**

This meeting will be conducted remotely.\* The public may access this meeting by using the options provided in the box on the right side of this agenda.

1. **Statement of Authority to Hold Remote Meeting**
2. **Call to Order & Roll Call**
3. **Continued Public Workshop**

**Ordinances O-2020-10 & O-2020-11** – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (*Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus*); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts. The full text of the ordinances and the proposed Land Development Code is available at [www.keenebuildingbetter.com/lcd](http://www.keenebuildingbetter.com/lcd), or by appointment at City Hall. To make an appointment, email [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us) or call (603) 352-5440.

- a. **Review of Articles 25 & 28 of the proposed City of Keene Land Development Code**
- b. **Continued Discussion on Congregate Living / Social Service Uses**
- c. **Public Comment**

4. **Next Meeting – February 8, 2021**
5. **Adjourn**

#### OPTIONS FOR ACCESSING THIS MEETING:

- **To participate online:**
  - Go to [www.zoom.us/join](http://www.zoom.us/join)
  - Enter Meeting ID - 893 8296 4232
- **To participate by telephone:**
  - Call (646) 558-8656 or (888) 475-4499 (*toll-free*)
  - Enter Meeting ID - 893 8296 4232
- **Technical Issues:** If you encounter issues accessing this meeting call (603) 209-4697 during the meeting.
- **Meeting Information** (including agendas and minutes) will be available on the Joint Committee webpage at: [ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee](http://ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee).
- **If you have concerns** related to accessing/participating in this or future public workshops, please contact City staff at 603-352-5440 or via email at: [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us)
- **Written comments** on the ordinances may be emailed in advance of the meeting to: [communitydevelopment@ci.keene.nh.us](mailto:communitydevelopment@ci.keene.nh.us) or mailed to: City Hall, 3 Washington St, 4<sup>th</sup> Floor, Keene, NH 03431.
- **Cheshire TV** will broadcast this meeting live on Channel 1302.

\*In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.

# ARTICLE 25. APPLICATION PROCEDURES

25.1 REVIEW BODIES & ADMINISTRATORS.....	25-2	25.12 SITE PLAN REVIEW.....	25-37
25.2 COMMON APPLICATION & REVIEW PROCEDURES.....	25-6	25.13 ADMINISTRATIVE PLANNING REVIEW.....	25-48
25.3 ZONING TEXT OR ZONING MAP AMENDMENT.....	25-12	25.14 CONDITIONAL USE PERMITS.....	25-50
25.4 LAND DEVELOPMENT CODE AMENDMENTS.....	25-15	25.15 HISTORIC DISTRICT CERTIFICATE OF APPROPRIATENESS.....	25-52
25.5 ZONING VARIANCE.....	25-17	25.16 STREET ACCESS PERMIT.....	25-58
25.6 ZONING SPECIAL EXCEPTION.....	25-19	25.17 FLOODPLAIN DEVELOPMENT PERMIT.....	25-61
25.7 EXPANSION OR ENLARGEMENT OF A NONCONFORMING USE.....	25-22	25.18 SIGN PERMIT.....	25-64
25.8 EQUITABLE WAIVER OF ZONING DIMENSIONAL REQUIREMENTS.....	25-24	25.19 EARTH EXCAVATION PERMIT.....	25-66
25.9 ZONING ADMINISTRATOR WRITTEN INTERPRETATION.....	25-26		
25.10 SUBDIVISION REVIEW.....	25-27		
25.11 PLANNING BOARD ADVICE & COMMENT.....	25-36		

## 25.1 REVIEW BODIES & ADMINISTRATORS

This Section describes the powers and duties of the review and decision-making authorities pursuant to this LDC.

### 25.1.1 Establishment

The review and decision-making authorities specified in this LDC are established by the City Code of Ordinances, including the City Charter.

### 25.1.2 Powers & Duties

**Table 25-1** provides a summary of which authority makes recommendations or decisions on each application type.

### 25.1.3 Designees

Certain officials within this LDC are cited as having powers that may also be administered by a designee. The ability to direct powers to a designee applies to the actions of such officials throughout this LDC.

### 25.1.4 Limit of Authority

The omission of a citation in this LDC to any authority conferred upon the officials and decision-makers under the constitution or laws of the State of NH or the City Code of Ordinances, including the City Charter, shall not be construed as limiting the actions of such officials and decision-makers taken in accordance with and in reliance upon such authority.

### 25.1.5 City Council

In addition to other general authority by state law or the City Code of Ordinances, including the City Charter, the City Council shall have the following powers pursuant to this LDC.

- A.** To initiate, hear, and/or decide on proposed amendments to this LDC, including amendments to the zoning map or text.
- B.** To adopt and periodically update a schedule of fees for applications and permits specified in this LDC.

- C.** To hear and decide on requests for the formal layout and acceptance of public infrastructure.
- D.** To hear and decide on requests for waivers from Article 22 - "Public Infrastructure" of this LDC, except as provided for in **Section 22.5.6** related to Street Access Standards.

### 25.1.6 Joint Committee of the Planning Board and Planning, Licenses & Development Committee

In addition to other general authority by the City Code of Ordinances, the Joint Committee of the Planning Board and Planning, Licenses and Development Committee shall have the authority to make recommendations to the City Council on proposed amendments to this LDC, including amendments to the Zoning Map or text of the Zoning Regulations.

### 25.1.7 Zoning Board of Adjustment

In addition to other general authority by state law or the City Code of Ordinances, the Zoning Board of Adjustment shall have the following powers pursuant to this LDC.

- A.** To hear applications for and authorize variances from the Zoning Regulations.
- B.** To hear and decide on applications for special exceptions from the Zoning Regulations.
- C.** To hear and decide on applications to expand or enlarge a nonconforming use.
- D.** Hear and decide on applications for an equitable waiver of dimensional requirements from the Zoning Regulations.
- E.** To hear and decide on appeals of an administrative decision of the Zoning Administrator.
- F.** To hear and decide on appeals of decisions of the Historic District Commission in granting or denying certificates of appropriateness.
- G.** To hear and decide on requests for extensions to approvals for an expansion or enlargement of a nonconforming use.

### 25.1.8 Planning Board

In addition to other general authority by state law or the City Code of Ordinances, the Planning Board shall have the following powers pursuant to this LDC.

- A.** To make recommendations to the City Council on proposed amendments to this LDC, including amendments to the Zoning Map or text of the Zoning Regulations.
- B.** To initiate, hear, and decide on proposed amendments to the Site Development Standards and Subdivision Regulations of this LDC.
- C.** To hear and decide on major site plan review applications.
- D.** To hear and decide on applications for subdivisions, including boundary line adjustments, and conservation residential development subdivisions.
- E.** To hear or decide on voluntary merger applications, or appoint a designee to hear or decide on such applications.
- F.** To hear and decide on conditional use permit applications.
- G.** To hear and grant waivers from the Site Development Standards and Subdivision Regulations of this LDC.
- H.** To hear and decide on street access permits for commercial, industrial, and multifamily sites.
- I.** To hear and decide on appeals of an administrative decision on street access permits.
- J.** To hear and decide on earth excavation permit applications.
- K.** To hear and decide on requests for extensions to major site plan, subdivision, and conditional use permit approvals.

### 25.1.9 Minor Project Review Committee

In accordance with NH RSA 674:43(III), the Minor Project Review Committee is hereby designated by the Planning Board to have the following powers pursuant to this LDC.

- A.** To hear and decide on minor site plan review applications.
- B.** To review and comment on proposed projects for site plan review or subdivision review prior to the formal submission of a site plan or subdivision application.
- C.** To hear and decide on requests for extensions to minor site plan approvals.

### 25.1.10 Historic District Commission

In addition to other general authority by state law or the City Code of Ordinances, the Historic District Commission shall have the following powers pursuant to this LDC.

- A.** To hear and decide on major project applications for a certificate of appropriateness.
- B.** To hear and decide on appeals of an administrative decision of the Community Development Director, or their designee, on minor project applications for a certificate of appropriateness.
- C.** To initiate, hear, and decide on proposed amendments to the Historic District Regulations in this LDC.
- D.** To hear and decide on requests for extensions to certificates of appropriateness.

### 25.1.11 Conservation Commission

In addition to other general authority by state law or the City Code of Ordinances, the Conservation Commission shall have the authority to make recommendations to the Planning Board on surface water protection conditional use permit applications, and earth excavation permit applications.

### 25.1.12 Zoning Administrator

The City of Keene Zoning Administrator, or their designee, has the following duties and powers pursuant to this LDC.

- A. To review and make decisions on voluntary merger applications, as designated by the Planning Board.
- B. To make written interpretations of and issue administrative decisions in accordance with the Zoning Regulations of this LDC and the Zoning Map.
- C. To review and make decisions on applications to expand a nonconforming structure.
- D. To review applications for completeness for all matters decided by the Zoning Board of Adjustment.

### 25.1.13 Community Development Director

The Community Development Director, or their designee, shall have the following duties and powers pursuant to this LDC.

- A. To review and decide on minor modifications to previously approved site plans.
- B. To review and verify that proposals for development or redevelopment (excluding single-family and two-family dwellings), which do not meet the thresholds for site plan review, conform with the Site Development Standards prior to the issuance of a building permit.
- C. To review and decide on voluntary merger applications, in the absence of the Zoning Administrator.

### 25.1.14 Building & Health Official

The Building and Health Official, or their designee, shall have the following duties and powers pursuant to this LDC.

- A. To interpret, administer, and enforce the State Building Code.
- B. To review and make decisions on floodplain development permits.

- C. To enforce provisions of this LDC with respect to property outside of the right-of-way, including the authority to issue stop-work orders and fines for violations of this LDC, in accordance with **Article 27** - "Enforcement" of this LDC.

### 25.1.15 Public Works Director

The Public Works Director, or their designee, shall have the following duties and powers pursuant to this LDC.

- A. To develop technical standards and specifications in accordance with **Article 22** of this LDC.
- B. To perform engineering inspections of public infrastructure and service connections in accordance with **Article 22** of this LDC, and to levy and collect fees for such inspections.
- C. To approve the street geometry, construction methods and materials of streets.
- D. To review and make decisions on service connection permits.
- E. To review and approve, and to suspend, revoke or modify permits required in accordance with **Article 22** of this LDC.

### 25.1.16 City Engineer

- A. To review and decide on street access permit applications for single-family or two-family dwellings, agricultural uses, or temporary street access.
- B. To review and make recommendations to the Planning Board on street access permit applications.
- C. To assign street numbers for individual structures.
- D. To review applications for subdivisions, site plans, building permits, street access permits, and conditional use permits for compliance with **Article 12** of this LDC, and make recommendations to the Planning Board on hillside protection conditional use permits applications.

**Table 25-1: Development Applications Decision Authority**

Application Type		Zoning Board of Adjustment	Planning Board	Minor Project Review Committee	City Council	Historic District Commission	Joint Committee	Conservation Commission	Zoning Administrator	Community Development Dir.	City Engineer	Floodplain Administrator
Amendments to the LDC	Articles 1-18 & 22-28				D / PH		PW					
	Articles 19 & 20		D / PH		D / PH		PW					
	Articles 21				D / PH	D / PH	PW					
Zoning	Amendments to Zoning Text / Zoning Map				D / PH		PW					
	Variance	D / PH										
	Special Exception	D / PH										
	Equitable Waiver	D / PH										
	Enlarge or Expand Nonconforming Use	D / PH										
	Expand Non-conforming Structure	D / PH										
	Zoning Administrator Decision								D			
Sub-division Review	Subdivision		D / PH	PS								
	Conservation Residential Development Sub.		D / PH	PS								
	Boundary Line Adjustment		D									
	Voluntary Merger								D			
Site Plan Review	Administrative Planning Review									D		
	Minor Project			D / PH								
	Major Project		D / PH	PS								
Conditional Use Permit (CUP)	Hillside Protection		D / PH	PS							R	
	Surface Water Protection		D / PH	PS				R				
	Telecommunications		D / PH	PS								
	Congregate Living & Social Service		D / PH	PS								
	Solar Energy System		D / PH	PS								
Historic District	Minor Project									D		
	Major Project			PS		D / PH						
Other Permits	Floodplain Development											D
	Sign								D			
	Street Access		D								D	
	Earth Excavation		D / PH					R				

"R" = Recommendation "D" = Final Decision "PW" = Public Workshop "PH" = Public Hearing "PS" = Presubmission Meeting Required

## 25.2 COMMON APPLICATION & REVIEW PROCEDURES

### 25.2.1 Applicability

The following requirements are common to many of the application review procedures in this LDC. Additional or slightly varying application and/or review requirements and procedures may be specified elsewhere in this Article or LDC.

### 25.2.2 Application Requirements

#### A. Pre-Submission Meeting

Prior to formal submittal of an application, the applicant may request a pre-submission meeting with the Minor Project Review Committee together with other City staff.

1. The purpose of this meeting is to review the proposed project when it is still at a conceptual stage, to identify any potential concerns with project design, and to ensure that the applicant is aware of all information that must be submitted with the application.
2. This meeting does not require a formal application or fees.
3. Some applications require attendance at a pre-submission meeting prior to application submission. Such requirement shall be specified in this LDC.

#### B. Submittal Requirements

1. All applications pursuant to this LDC shall be submitted in accordance with the requirements of this Article, and the established submittal requirements of the appropriate review or decision-making authority.
2. Applications pursuant to this LDC shall be filed with the appropriate review or decision-making authority, or their designee, on forms provided by the Community Development Department, or the Public Works Department for street access or service connection permits.

3. Application submission deadlines shall not be waivable, unless otherwise specified in this LDC.

#### C. Application Fees

1. Upon submittal of an application, any applicable fees shall be paid in accordance with the LDC Fee Schedule in Appendix B of the City Code of Ordinances.
2. No refund of the fee, or any part of the fee, shall be made unless the application is withdrawn prior to noticing the application for a public hearing or decision, in which case, the applicant may be eligible for a refund of the notice fee.
3. Application fees shall not be waivable, unless otherwise specified in this LDC.

#### D. Exemptions from Submittal Requirements

1. An applicant may make a request to the appropriate review authority, or their designee, to exempt their application from specific submittal requirements, when such requirements are not applicable to the evaluation of the application and are not necessary for proper documentation of the project.
2. Exemption requests shall be made at the time of application submission and shall include a brief explanation as to why the information specified for exemption is not relevant to the appropriate review authority's evaluation of the application.
3. The appropriate review authority may grant an exemption of specific submittal requirements, if it finds that the information is not applicable to its determination of whether the applicant complies with this LDC.
4. In the event the appropriate review authority determines that the information specified for exemption is necessary for it to complete its review, then it shall notify the applicant as soon as possible and table the application to give the applicant time to provide the required information.

## **E. Completeness Review**

- 1.** An application is not considered complete until all necessary forms, submittal requirements, and applicable fees are received by the appropriate review authority or its designee.
- 2.** If the appropriate review authority, or its designee, finds that the missing application materials or information are central to its review of the application, then the application shall not be accepted and shall be returned to the applicant along with any submitted application fees.
- 3.** If the appropriate review authority, or its designee, finds that the application is missing materials or information that are necessary for proper documentation, but are not central to the review of the application, it shall provide written notice of the application's nonconformance to the applicant, and shall permit the applicant to provide the required materials or information by a specified revision deadline. If the missing materials or information are not received by this revision deadline, the appropriate review authority, or its designee, shall have the authority to reject the application.
- 4.** At the discretion of the appropriate review authority or its designee, any substantive changes made by the applicant to the scope of the project or to materials included in a submitted application following the specified revision deadline may require resubmittal of the entire application and a new completeness review.
- 5.** Applicants wishing to appeal a determination of completeness may do so to the appropriate authority by submitting a letter indicating the request for appeal. The appeal request shall outline the basis for the incompleteness finding and shall provide specific explanation for why the applicant believes the application meets the submission requirements.

## **F. Withdrawal of Application**

Unless otherwise specified in this LDC, an application may be withdrawn at any time prior to the final decision on the application. Requests for withdrawal shall be made in writing by the applicant to the appropriate review or decision-making authority.

- 1.** Applications to amend this LDC, including the Zoning Regulations or Zoning Map, may be withdrawn by the applicant in accordance with this Section.

## **G. Burden of Proof**

It shall be the sole responsibility of the applicant to demonstrate that their application satisfies all applicable standards of review.

### **25.2.3 Staff Review**

- A.** Prior to consideration of an application pursuant to this LDC by a city board or commission, City staff may prepare a staff report for the application, which contains a brief summary of the proposal and a summary analysis of how the proposal relates to the applicable standards in this LDC.
  - a.** Sample motions, including any suggested findings and/or conditions, may also be provided in this report.
  - b.** Such staff report shall be shared with the board or commission in advance of the meeting, and shall be made available to the public.
- B.** Some applications pursuant to this LDC may require review and comment from other City departments, prior to a public hearing or action on the application. Comments received from City staff in other departments following their review of an application shall be forwarded to the appropriate review or decision-making authority and shall be shared in writing with the applicant as soon as they are all received.



### 25.2.4 Public Notice

The general public notice requirements for applications and procedures subject to this LDC, including, but not limited to, notice of public body meetings and public hearings, are included in this Section. **Table 25-2** indicates the type of public notice required for applications that require public notice in accordance with state law or the City Code of Ordinances.

#### A. Mailed Notice

1. When a mailed notice is required, the applicant shall submit 2 sets of mailing labels for each abutter or person entitled to such notice, in accordance with state law or the City Code of Ordinances, and a mailing fee equal to the cost of the current United States Postal Service Certified Mail rate, at the time of application submission, unless otherwise specified in this LDC.
2. The appropriate review authority, or their designee, shall be responsible for issuing the mailed notice.
3. The mailed notice shall include, at a minimum, the date, time, place, and purpose of such public hearing; the names of the applicant and property owner; and the address of the subject property. Such information shall be current to within 10-days of application submittal.
4. The mailed notice shall be sent to the address used for mailing local property tax bills, which may be obtained from the City of Keene Assessing Department.
5. The required timeframe for issuing mailed notice is specified in **Table 25-2**. This timeframe shall not include the day such notice is postmarked or the day of the public hearing or public meeting at which the application is first considered.

#### B. Published Notice

1. When published notice is required, the appropriate review authority, or their designee, shall publish notice in a newspaper of general circulation within the City, and in at least 2 public places.
2. The required timeframe for issuing published notice is specified in **Table 25-2**. This timeframe shall not include the day notice is posted or the day of the public hearing or public meeting at which the application is first considered.
3. At the time of application submission, the applicant shall submit a fee to cover the cost of the published notice in accordance with the LDC Fee Schedule in Appendix B of City Code of Ordinances.
4. The published notice shall include, at a minimum, the date, time, place, and purpose of such public hearing; the names of the property owner and applicant; and the address of the subject property.

### 25.2.5 Site Visits

- #### A. Submittal of an application in accordance with this Article shall be deemed as granting permission to City staff, the appropriate review or decision-making authority, or their designees, to enter onto the subject property for purposes of review.
1. Permission to visit the property extends from the date an application is submitted until the project is formally denied or construction of an approved project is complete, a certificate of occupancy has been issued, or final security has been returned to the applicant, whichever occurs later.
  2. If an applicant wishes to place limitations upon access to the property subject to review, then the limitations shall be requested in writing at the time of application. Any such request shall include the reasons for the limitations, and the appropriate review authority shall use reasonable judgment in determining the

**Table 25-2: Public Notice Requirements**

Application Type	Notice Type			# Days <sup>1</sup>	
	Mailed	Published	On-Site		
	Amendments to this LDC	●	●	10	
Zoning	Amendments to Zoning Text or Zoning Map	●	●	10	
	Variance	●	●	5	
	Special Exception	●	●	5	
	Equitable Waiver	●	●	5	
	Expand or Enlarge Non-conforming Use	●	●	5	
Sub-division Review	Subdivision	●	●	10	
	Conservation Residential Development	●	●	10	
	Boundary Line Adjustment	●		10	
Site Plan Review	Minor Project	●	●	10	
	Major Project	●	●	10	
Conditional Use Permit	Hillsides Protection	●	●	●	10
	Surface Water Protection	●	●	●	10
	Tele-communications	●	●	●	10
	Congregate Living & Social Services	●	●	●	10
	Solar Energy System	●	●	●	10
Historic District	Major Project	●	●	○	5
Other	Earth Excavation Permit	●	●		10

○ = The requirements of on-site posting of notice for a public hearing for major project applications for a certificate of appropriateness shall be limited to proposals related to demolition of a structure in the Historic District.

<sup>1</sup>The number of days before a public hearing or public body meeting that notice is to be issued, not including the day of posting/postmark or day of public hearing/meeting.

extent to which the request may be granted.

- B. City boards and commissions may elect to conduct a formal site visit of a project site prior to the meeting at which an application will be considered. The decision to schedule a formal site visit shall be at the discretion of the board or commission chairperson or vicechairperson.

### 25.2.6 Public Hearing Procedures

#### A. Applications Subject to Public Hearing

**Table 25-1** summarizes which types of applications require a public hearing. If an application is not listed, this indicates that a public hearing is not required for that application.

#### B. Conduct of the Public Hearing

Public hearings shall be conducted in accordance with all applicable requirements of this LDC, the City Code of Ordinances, state law, and the rules of the board or commission conducting the public hearing. During the public hearing, the following may occur.

1. The presiding officer of the decision-making authority shall call the proceedings to order and announce that the public hearing has begun.
2. The applicant or their legal counsel or representatives shall present in support of the application, and answer questions from the decision-making authority.
3. City staff may present on the application, with respect to its conformance with the regulations in this LDC, and shall share comments from other City departments that reviewed the application. City staff may also answer questions from the decision-making authority.
4. The presiding officer shall open the public hearing for public testimony.
  - a. Each person who speaks at a public hearing shall state their name and address for the record.
  - b. Any abutter or other person with a direct interest in the application may testify at the public hearing or in

writing either before or at the public hearing. Other persons may testify at the discretion of the decision-making authority.

5. The applicant shall be given an opportunity to respond to any testimony raised by city staff or the public and to answer any questions raised by the decision-making authority.
6. The presiding officer shall close the public hearing following public testimony, and the decision-making authority shall openly deliberate on the application before reaching a decision.
7. The decision-making authority shall evaluate the application based upon the submitted application materials and any evidence presented at the public hearing, pursuant to any applicable approval standards or regulations in this LDC.
8. Once a public hearing is closed, no further public testimony shall be taken, unless the presiding officer chooses to reopen the public hearing for additional testimony or argument.

#### **C. Decisions**

When the decision-making authority has completed its deliberation it will either approve, approve with conditions, disapprove an application. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial.

#### **D. Continuations**

The decision-making authority conducting the public hearing, upon a majority vote of its members, may continue a public hearing. No new notice (published, mailed or on-site) is required to reopen the public hearing, if the hearing is continued to a date specific, provided that a public announcement of the future date, time, and place of the continued hearing is made and recorded in the minutes.

### **25.2.7 Hiring of Consultants**

- A. At any point prior to a decision on an application, the appropriate review or decision-making authority may determine that it needs additional information from the applicant to complete its review, including, but not limited to, special studies or technical analysis.
- B. The cost of any such information or consultants shall be at the applicant's expense, and failure to agree to pay for the cost of the information or consultant(s) shall be ground for denial of the application.
- C. The appropriate review or decision-making authority shall make every effort to be reasonable in its requests for information or consulting services, recognizing that such studies can add both time and cost to a project.
- D. City staff shall follow the City's purchasing procedures for hiring a consultant on behalf of the applicant.
- E. With respect to Planning Board applications, decisions regarding the need to hire consulting services and the scope of the consultant's work may be made by the Planning Board Steering Committee, prior to the Board's determination of completeness on an application.

### **25.2.8 Notice of Decision**

A written notice of decision including the minutes of the public hearing at which a vote was taken to approve, conditionally approve, disapprove, or continue an application before the review or decision-making authority shall be placed on file at the Community Development Department, unless specified otherwise in this LDC, and shall be available for public inspection within 5 calendar days of such vote.

### **25.2.9 Conditional Approval**

- A. For some conditions established as part of a conditional approval, a compliance hearing may be required.

1. The appropriate decision-making authority, or their designee, will inform the applicant at the time of the conditional approval if a compliance hearing will be required.
  2. The applicant shall pay for all abutter notification and public notice associated with a compliance hearing in accordance with the LDC Fee Schedule in Appendix B of the City Code of Ordinances.
- B.** Conditions for which approval may become final without further public hearing based upon evidence of satisfactory compliance include any of those listed below.
1. Conditions which are in themselves administrative or involve minor plan changes that do not require discretionary judgment on the part of the decision-making authority.
  2. Conditions with regard to the applicant's obtainment of permits or approvals granted by other boards, commissions or agencies.

#### **25.2.10 Modifications to Approved Plans**

Unless another method is expressly provided by this LDC, any request to amend or revise an approved application shall be considered a new application, which shall be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City.

#### **25.2.11 Expirations**

In such event that an approval expires, including conditional approvals, the following shall occur.

- A.** All site work associated with the expired approval shall immediately be halted.
- B.** Prior to initiating additional site work associated with the expired approval, a new application shall be submitted and reviewed in accordance with this LDC.
- C.** Any uses of the property associated with the expired approval shall be prohibited.

## 25.3 ZONING TEXT OR ZONING MAP AMENDMENT

### 25.3.1 Description

The standards and requirements set forth in the Zoning Regulations of this LDC (Articles 2 through 18), and the boundaries of zoning districts as shown on the City's Zoning Map may be amended in response to changed conditions or changes in the City's goals or policy.

### 25.3.2 Authority

The City Council, after receiving a recommendation from the Planning Licenses and Development Committee and the Planning Board, shall take action on requests to amend the Zoning Regulations or Zoning Map.

### 25.3.3 Submittal Requirements

An applicant seeking to amend the City's Zoning Regulations or Zoning Map shall submit a completed Zoning Amendment application to the City Clerk, which shall include the following.

- A. A typed or neatly printed narrative explaining the purpose and effect of, and justification for the proposed change.
- B. A properly drafted ordinance containing the proposed zoning amendment in a format meeting the requirements of the City Clerk.
- C. If a zoning map amendment is proposed, 2-copies of a map clearly displaying the zoning district boundary proposed to be changed and the surrounding area. One copy shall be 8½-in by 11-in, and the other shall be at the City Tax Map Scale.
- D. 4-sets of mailing labels and a notarized list of each property owner within the area proposed for a zoning map amendment, including property directly abutting the area proposed to change. Such list and labels shall include the owner's name and mailing address and the tax map parcel number for each property subject to the proposed amendment.

- E. If a proposed zoning amendment would change the zoning district boundary of or the minimum lot sizes and permitted uses in a zoning district containing 100 or fewer parcels, 4-sets of mailing labels and a notarized list of property owners of each property subject to the proposed amendment shall be submitted, in addition to the requirements of the foregoing section. Such list and labels shall include the owner's name and mailing address and the tax map parcel number for each affected property.
- F. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs of published and mailed notice (when required) for both the public workshop and public hearing. Mailed notice shall be First-Class Mail.

### 25.3.4 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for proposed amendments to the Zoning Regulations or Zoning Map.

#### A. First Reading of City Council

1. Once an application for an amendment to the Zoning Regulations or Zoning Map is determined to be complete, the City Clerk shall forward it to the City Council for a first reading, and to the Community Development Department for review.
2. The City Council shall refer the application, including the draft ordinance, to the Planning, Licenses and Development Committee, and Joint Committee of the Planning, Licenses, and Development Committee and the Planning Board.

#### B. Staff Report

1. Upon receipt of the completed application, the Community Development Department shall review the proposed change(s), in coordination with other City departments. This review shall evaluate consistency of the proposed change with the City's Comprehensive Master Plan.

2. This review will be summarized in a staff report that will be submitted to the Joint Committee of the Planning, Licenses and Development Committee and Planning Board in advance of the first public workshop on the application.

### **C. Joint Public Workshop**

1. Upon receipt of the application and draft ordinance from the City Council, the Joint Committee of the Planning, Licenses and Development Committee and the Planning Board shall hold a public workshop, with published and mailed notice.
2. This public workshop is not a due process public hearing and is intended to: prepare information for the City Council on the proposed change; provide a method by which the City Council and the Planning Board may receive public comment and assistance throughout a changing legislative process; and, afford an opportunity for adjustment to or modification of the draft ordinance.
3. At the public workshop, the applicant, or their representative, shall present on the proposed amendment. The Community Development Director, or their designee, shall present the staff report.
4. The Joint Committee of the Planning, Licenses and Development Committee and the Planning Board may make changes to the proposed ordinance throughout the public workshop process, without any requirement that additional published or mailed notice be provided.
5. At the conclusion of the public workshop, the Planning Board shall vote on the degree to which the proposal is consistent with the City's Comprehensive Master Plan and the Planning, Licenses and Development Committee shall vote on a recommendation as to when the public hearing should be held.
6. Following the public workshop, the Community Development Director, or their designee, shall submit the following

materials to City Council.

- a. Any revisions to the draft ordinance recommended by the Joint Committee of Planning, Licenses and Development Committee and the Planning Board.
- b. The staff report.
- c. Minutes of the public workshop(s) held on the draft ordinance.

### **D. Council Public Hearing**

1. Upon receipt of a recommendation to hold a public hearing from the Planning, Licenses and Development Committee, the City Council shall schedule a public hearing on the application and draft ordinance.
2. The City Clerk shall provide published and mailed notice of the public hearing in accordance with NH RSA 675:7.

### **E. Decision on Application**

1. After closing the public hearing, the City Council shall refer the application and draft ordinance back to the Planning, Licenses and Development Committee for its recommendation.
2. Further comment from the public on the application and draft ordinance will not be accepted at this meeting of the Planning, Licenses, and Development Committee.
3. Following receipt of a recommendation from the Planning, Licenses, and Development Committee, the City Council shall vote to approve or disapprove the application.

### **25.3.5 Filing**

Following approval by City Council, amendments to the text of the Zoning Regulations or the Zoning Map shall be placed on file with the City Clerk in accordance with NH RSA 675:8, and a copy of the amended regulations shall be sent to the NH Office of Strategic Initiatives (OSI) for filing, pursuant to NH RSA 675:9; provided, however, that failure to file the amended regulations with OSI shall not affect their validity.

### 25.3.6 Approval Standards:

The City Planning Board shall make written findings of fact on, and the City Council shall consider, the following criteria when deciding on an application for a zoning text or zoning map amendment:

- A.** The proposed zoning amendment is consistent with the spirit and intent of this LDC and the City's Comprehensive Master Plan.
- B.** The proposed zoning amendment is compatible with the existing form, pattern, use and zoning of nearby property, or it reflects a change in City goals and policy.

## 25.4 LAND DEVELOPMENT CODE AMENDMENTS

### 25.4.1 Description

The standards and requirements set forth in the City of Keene Land Development Code (also referred to as "this LDC"), may be amended from time to time. The process for amending this LDC varies depending upon which article or articles are proposed to change. The process for amending the Zoning Regulations, which are contained in **Articles 2 through 18** of this LDC, shall be as described in **Section 25.3**.

### 25.4.2 Authority

The City Council, after receiving a recommendation from the Planning Licenses and Development Committee and the Planning Board, and from the Historic District Commission with respect to amendments to **Article 21**, shall take action on proposed amendments to this LDC.

### 25.4.3 Procedure

In addition to the common application and review procedures of this Article, the following procedures shall apply with respect to proposed amendments to this LDC.

**A. Articles 1 through 18, and Articles 22 through 28.** For amendments proposed to Articles 1 through 18 and Articles 22 through 28 of this LDC, the same application and review procedures shall be followed as those described in **Section 25.3** of this LDC, with respect to amendments to the Zoning Regulations and Zoning Map.

**B. Articles 19 and 20 - "Subdivision Regulations" and "Site Development Standards."** For amendments proposed to Articles 19 and 20 of this LDC, the following procedures shall apply.

- 1. Planning Board Public Hearing.** In accordance with NH RSA 675:6, the Planning Board shall hold a public hearing on the proposed amendments, and shall decide on whether they should be approved, approved with amendments, or denied. If

the Planning Board denies the proposed amendments, the process shall come to an end.

- a.** Notice for this public hearing shall be provided pursuant to NH RSA 675:7.

**2. Introduction to City Council.** Following either approval or approval with amendments by the Planning Board, the proposed amendments shall be submitted to City Council as a draft ordinance.

**3. City Council Review.** Following submission to City Council, the draft ordinance shall follow the same application and review procedures described in **Section 25.3** of this LDC, with respect to Zoning Text and Zoning Map amendments.

**4. Filing.** Following approval by City Council, the amended regulations shall be certified by a majority of the Planning Board, and shall be placed on file with the City Clerk in accordance with NH RSA 675:8. A copy of the amended regulations shall be sent to the NH Office of Strategic Initiatives (OSI) for filing pursuant to NH RSA 675:9; provided, however, that failure to file the amended regulations with OSI shall not affect their validity.

**C. Article 21 - Historic District Regulations.** For amendments proposed to Article 21 of this LDC, the following procedures shall apply.

**1. Historic District Commission Public Hearing.** In accordance with NH RSA 675:6, the Historic District Commission shall hold a public hearing on the proposed amendments, and shall decide on whether they should be approved, approved with amendments, or denied. If the Historic District Commission denies the proposed amendments, the process shall come to an end.

- a.** Notice for this public hearing shall be provided pursuant to NH RSA 675:7.



2. **Introduction to City Council.** Following either approval or approval with amendments by the Historic District Commission, the proposed amendments shall be submitted to City Council as a draft ordinance.
3. **City Council Review.** Following submission to City Council, the draft ordinance shall follow the same application and review procedures described in **Section 25.3** of this LDC, with respect to Zoning Text and Zoning Map amendments.
4. **Filing.** Following approval by City Council, the amended regulations shall be certified by a majority of the Historic District Commission, and shall be placed on file with the City Clerk in accordance with NH RSA 675:8. A copy of the amended regulations shall be sent to the NH Office of Strategic Initiatives (OSI) for filing pursuant to NH RSA 675:9; provided, however, that failure to file the amended regulations with OSI shall not affect their validity.

## 25.5 ZONING VARIANCE

### 25.5.1 Description

Zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of the Zoning Regulations. The purpose of the variance process is to provide a narrowly limited means by which relief may be granted from the unforeseen applications of the Zoning Regulations of this LDC.

### 25.5.2 Initiation

The applicant for a variance shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.5.3 Authority

The Zoning Board of Adjustment has the authority to authorize variances from the provisions of the Zoning Regulations of this LDC, subject to the requirements of this Article, the Zoning Regulations, and NH RSA 674:33.

### 25.5.4 Submittal Requirements

An applicant for a zoning variance shall submit a completed variance application to the Community Development Department, which shall include the following.

- A.** A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed variance, including a response to each of the variance criteria.
- B.** A scaled plot plan clearly displaying the location and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C.** A notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject

parcel and all owners of property located within 200-ft of the subject property; the applicant; and holders of conservation, preservation, or agricultural preservation restrictions. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.

- D.** 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- E.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### 25.5.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for a zoning variance.

- A.** Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B.** The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C.** Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D.** The Zoning Board of Adjustment shall give reasons for all decisions on variance applications and shall make reference to the appropriate sections of the Zoning Regulations, where applicable.

### 25.5.6 Approval Standards

The Zoning Board of Adjustment may authorize a variance from specific requirements of the Zoning Regulations only when the Board finds that all of the following conditions apply.

- A.** The variance will not be contrary to the public interest.
- B.** The proposed variance is not contrary to the spirit of this chapter.
- C.** By granting the variance substantial justice would be done.
- D.** The values of surrounding properties would not be diminished.
- E.** Literal enforcement of the provisions of the Zoning Regulations would result in unnecessary hardship.

#### **25.5.7 Expiration**

- A.** Any variance granted by the Zoning Board of Adjustment shall be void if the use or structure authorized by the variance has not been begun within 2-years from the date of final approval.
- B.** Any application for an extension shall be heard as a new application; any other time limitation shall be specifically prescribed by the Zoning Board of Adjustment.

## 25.6 ZONING SPECIAL EXCEPTION

### 25.6.1 Description

A special exception seeks permission to do something that the Zoning Regulations permit only under certain special circumstances. All special exceptions shall be made in harmony with the general purpose and intent of the Zoning Regulations of this LDC and shall be in accordance with the rules contained therein.

### 25.6.2 Initiation

The applicant for a special exception shall either own the fee simple interest in the property(s) that are the subject of the review or have written permission of the fee simple owner.

### 25.6.3 Authority

The Zoning Board of Adjustment shall have the authority to hear and decide special exceptions from the provisions of the Zoning Regulations of this LDC, subject to the requirements of this Section and NH RSA 674:33.

### 25.6.4 Submittal Requirements

An applicant for a special exception shall submit a completed special exception application to the Community Development Department, which shall include the following.

- A.** A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed special exception, including a response to each of the special exception criteria.
- B.** A scaled plot plan clearly displaying the location and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C.** A notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject

parcel and all owners of property located within 200-ft of the subject property; the applicant; and holders of conservation, preservation, or agricultural preservation restrictions. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.

- D.** 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- E.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### 25.6.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for a special exception.

- A.** Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B.** The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C.** Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D.** The Zoning Board of Adjustment shall give reasons for all decisions on special exception applications and shall make reference to the appropriate sections of the Zoning Regulations, where applicable.

### 25.6.6 Approval Standards

The Zoning Board of Adjustment may approve a special exception application, only when the Board finds that all of the following conditions apply.

- A. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all the applicable standards in this LDC for the particular use.
- B. The proposed use will be established, maintained and operated so as not to endanger the public health, safety, or welfare.
- C. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.
- D. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.
- E. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.
- F. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.
- G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.

### 25.6.7 Conditions

- A. In the event that the Zoning Board of Adjustment decides to approve a special exception, they may choose to impose conditions and restrictions as are directly related to and incidental to the proposed special exception. Such conditions may address limits on location, scale, intensity, design, lighting, signs, hours of operations, provisions for recreation and open space, buffers and screening, and other

performance standards. Examples of such conditions may include, but shall not be limited to, the following.

- 1. Setbacks larger than the minimums required by the Zoning Regulations.
  - 2. Landscaping and/or screening of the premises from the street or adjacent property in excess of the minimum requirements of the Zoning Regulations.
  - 3. Modification of the design of any building, structure, or site feature involved in the proposed use.
  - 4. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of the Zoning Regulations.
  - 5. Limitation of the number of occupants or employees upon the premises and restrictions of the method of operation, the time of operation and use, and the size or extent of the facilities.
  - 6. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
  - 7. Off-street parking spaces in excess of the minimum requirements of the Zoning Regulations.
  - 8. Regulation of the number, size, and/or lighting of signs more stringent than the requirements of the Zoning Regulations.
- B. Failure to comply with any condition or restriction constitutes a violation of the special exception, which shall be enforced through the provisions established in **Article 27** of this LDC.

### 25.6.8 Modifications to Approved Applications

No use allowed by a special exception may be enlarged or increased in intensity without approval from the Zoning Board of Adjustment for a new special exception. The Zoning Administrator may, however, allow for an exception to this restriction for the following circumstances.

- A.** There is an addition or expansion of 20% or 500 sf of gross floor area, whichever is less, of the area of the existing structure.
- B.** The addition of any accessory structure customarily found in association with the use allowed by the special exception.

#### **25.6.9 Expiration**

- A.** A special exception granted by the Zoning Board of Adjustment shall be valid if exercised within 2-years from the date of final approval, or as further extended by the Zoning Board of Adjustment for good cause. Within this 2-year time period, the use must be started or construction begun on the structure.
- B.** Any application for an extension shall be heard as a new application; any other time limitation shall be specifically prescribed by the Zoning Board of Adjustment.

## 25.7 EXPANSION OR ENLARGEMENT OF A NONCONFORMING USE

### 25.7.1 Description

A nonconforming use of a structure or land may be expanded or enlarged with approval from the Zoning Board of Adjustment, provided such expansion or enlargement does not violate any of the basic zone dimensional requirements of the zoning district in which it is located.

### 25.7.2 Initiation

The applicant seeking approval to expand or enlarge a nonconforming use shall either own the fee simple interest in the property(s) that are the subject of the review or have written permission of the fee simple owner.

### 25.7.3 Authority

The Zoning Board of Adjustment shall have the authority to hear and decide on applications to expand or enlarge a nonconforming use.

### 25.7.4 Submittal Requirements

An applicant shall submit a completed application to the Community Development Department, which shall include the following.

- A. A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed expansion or enlargement of a nonconforming use, including a response to each of the relevant approval standards.
- B. A scaled plot plan clearly displaying the location and dimensions of all existing structures and open spaces, as well as any proposed changes to the site, such as, but not limited to, additions to existing structures or the construction of new structures.
- C. A notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property; the applicant;

and holders of conservation, preservation, or agricultural preservation restrictions. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.

- D. 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- E. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### 25.7.5 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications to expand or enlarge a nonconforming use.

- A. Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B. The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C. Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.

### 25.7.6 Approval Standards

The Zoning Board of Adjustment may approve an application for an expansion or enlargement of a nonconforming use, only when the Board finds that all of the following conditions apply.

- A. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.
- B. There will be no nuisance or serious hazard to vehicles or pedestrians.

- C. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

#### **25.7.7 Conditions**

In the event that the Zoning Board of Adjustment decides to approve the application, they may choose to impose conditions and restrictions as are directly related to and incidental to the proposed expansion or enlargement.

#### **25.7.8 Expiration**

- A. An approval granted by the Zoning Board of Adjustment to expand or enlarge a nonconforming use shall be valid if exercised within 2-years from the date of final approval, or as further extended by the Zoning Board of Adjustment for good cause. Within this 2-year time period, the expansion or enlargement of the use must be started.
- B. Any application for an extension shall be heard as a new application; any other time limitation shall be specifically prescribed by the Zoning Board of Adjustment.



## 25.8 EQUITABLE WAIVER OF ZONING DIMENSIONAL REQUIREMENTS

### 25.8.1 Description

In situations where a lot or structure is discovered to be in violation of a physical layout or dimensional requirement of the Zoning Ordinance, and such lot or structure is not legally nonconforming, a waiver from the requirement may be sought under certain conditions.

### 25.8.2 Applicability

- A.** An equitable waiver shall only apply to waivers from physical layout, mathematical or dimensional requirements, and shall not apply to use restrictions.
- B.** An equitable waiver shall not be construed as a nonconforming use and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the Zoning Regulations.

### 25.8.3 Initiation

The applicant for an equitable waiver of dimensional requirements shall either own the fee simple interest in the property(s) that are the subject of the review or have written permission of the fee simple owner.

### 25.8.4 Authority

The Zoning Board of Adjustment shall have the power to hear and decide on equitable waivers of zoning dimensional requirements, subject to the requirements of this Section and NH RSA 674:33-a.

### 25.8.5 Submittal Requirements

An applicant for an equitable waiver of dimensional requirements shall submit a completed application to the Community Development Department, which shall include the following materials.

- A.** A written narrative that describes the property location, owner of the subject property, and explains the purpose and effect of, and justification for, the proposed waiver, a response to each of the equitable waiver criteria.

- B.** A scaled plot plan clearly displaying the locations and dimensions of all structures and open spaces on the lot in question and on the adjacent lots.
- C.** A notarized list of abutters, which shall include all owners of property that directly abuts and/ or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property; the applicant; and holders of conservation, preservation, or agricultural preservation restrictions. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.
- D.** 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- E.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### 25.8.6 Procedure

In addition to the common application and review procedures of this Article and NH RSA 676:5 through 676:7, the following review and approval procedures shall apply to applications for an equitable waiver of dimensional requirements.

- A.** Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Zoning Board of Adjustment for a public hearing.
- B.** The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
- C.** Prior to deciding on the application, the Zoning Board of Adjustment shall render, as appropriate, findings of fact by majority vote.
- D.** The Zoning Board of Adjustment shall give reasons for all decisions on equitable waiver of dimensional requirements applications and shall

make reference to the appropriate sections of the Zoning Regulations, where applicable.

### 25.8.7 Approval Standards

The Zoning Board of Adjustment shall grant an application for an equitable waiver from the zoning dimensional requirements, if it makes all of the following findings, pursuant to NH RSA 674:33-a.

- A.** The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.
- B.** The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.
- C.** The physical or dimensional violation does not constitute a public or private nuisance, nor diminishes the value of other property in the area, nor interferes with or adversely affects any present or permissible future uses of any such property.
- D.** Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.
- E.** In lieu of the first two findings in this list, the owner may demonstrate that the violation has existed for 10 or more years, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the City or any person directly affected.

## 25.9 ZONING ADMINISTRATOR WRITTEN INTERPRETATION

### 25.9.1 Description

The provisions of the Zoning Regulations of this LDC cannot, as a practical matter, address every specific zoning issue. As such, the Zoning Administrator has the authority to make interpretations of the Zoning Regulations, so long as their interpretation does not add to or change the essential content of these regulations.

### 25.9.2 Initiation

Anyone may submit an application for a written zoning interpretation, provided the request is for the purpose of furthering actual development.

### 25.9.3 Authority

The Zoning Administrator shall have the authority to make interpretations concerning the provisions of the Zoning Regulations of this LDC.

### 25.9.4 Submittal Requirements

A person or entity seeking a written interpretation of the Zoning Regulations shall submit a completed written zoning interpretation form to the Community Development Department. A completed form shall include the following.

- A. A written narrative that describes the property location and owner of the subject property if the question of interpretation relates to a specific tract of land.
- B. The section of the Zoning Regulations from which a written interpretation is requested.
- C. An explanation of the zoning question or issue for which the applicant is seeking an interpretation and any supporting documentation.
- D. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.

### 25.9.5 Procedure

- A. Within 21 business days following the submission of a completed application, the Zoning Administrator shall render a written opinion or interpretation in response.
- B. The Zoning Administrator shall provide the written interpretation to the applicant and the property owner (if the property owner is not the applicant and if the question of interpretation relates to a specific tract of land).
- C. The Community Development Department shall maintain an official record of all written interpretations.

### 25.9.6 Expiration

If amendments are made to the Zoning Regulations in accordance with this LDC and state law, which might alter or affect a written interpretation issued by the Zoning Administrator prior to such amendments, the written interpretation shall no longer be valid.

**25.10 SUBDIVISION REVIEW**

**25.10.1 Description**

Subdivision review allows for the orderly division or consolidation of lots, as well as the alteration or adjustment of lot boundary lines.

**25.10.2 Initiation**

The applicant for subdivision review shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

**25.10.3 Authority**

- A.** The Planning Board shall have the authority to hear and decide on applications for subdivision review including boundary line adjustments and conservation residential development subdivisions.
- B.** For voluntary merger applications, the Planning Board designates the Zoning Administrator as their designee to review and decide on such applications, and in their absence, the Community Development Director.

**25.10.4 Applicability**

Subdivision review shall be required for the following types of subdivisions.

- A. Subdivision.** Any division of a lot, tract or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease or building development.
- B. Conservation Residential Development Subdivision.** Applications for subdivision review consisting of 3 or more proposed lots and the layout and construction of a new road, where the existing parcel to be subdivided is located in either the Rural, Low Density, or Low Density-1 zoning districts, and meets the minimum lot size requirements specified in **Article 19**, shall follow the conservation residential development subdivision process set forth in **Section 19.3** of this LDC.

- C. Boundary Line Adjustment.** The adjustment of boundary lines between 1 or more contiguous, preexisting approved or subdivided lots.
- D. Voluntary Mergers.** The merger of 2 or more contiguous pre-existing approved or subdivided lots owned by the same property owner.

**25.10.5 Submittal Requirements**

An applicant for subdivision review shall submit a completed application on the appropriate form to the Community Development Department, and shall provide sufficient information to enable City staff and the Planning Board to evaluate the proposal for compliance with this LDC. Submittal requirements for the different types of subdivision review are included below.

**A. Voluntary Merger Applications**

A completed voluntary merger application shall include the following.

- 1.** A completed and notarized voluntary merger form.
- 2.** A map, drawn to scale, displaying the layout and boundaries of the lots proposed to be merged.
- 3.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.

**B. Subdivision & Boundary Line Adjustment Applications**

A completed application for subdivisions and boundary line adjustments shall include the following.

- 1.** A written narrative describing the type, scope and scale of the proposal including the following information.
  - a.** The sizes of the existing and proposed lot.
  - b.** Existing and proposed uses.
  - c.** The location of access points for the existing and proposed lots.

- d. An explanation of how the proposal complies with the applicable standards in this LDC.
2. A complete plan set prepared and certified by a NH licensed surveyor (7-copies on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file), which shall include the following materials.
    - a. A location map of the proposed subdivision or boundary line adjustment.
    - b. An existing conditions plan (at a scale of 1-in = 100-ft or a larger scale) showing all parcels affected by the proposal, and depicting the following information.
      - i. Contours of at most 5-ft intervals
      - ii. Owner names and tax map parcel numbers for all abutters.
      - iii. Boundaries and acreage of the existing lot(s) subject to review.
      - iv. Surface waters, including wetland areas delineated by a NH certified wetland scientist, and any manmade waterways, ponds, ditches, etc.
      - v. Precautionary and prohibitive slopes.
      - vi. Delineation of 100-year floodplain and floodways as shown on current FIRM maps.
      - vii. Location of any public streets, rights-of-way, and easements.
      - viii. Location of existing structures, wooded and vegetated areas, site features (e.g. fences, walls, ground-mounted equipment, utilities, stormwater facilities, wells, septic systems, stone walls, etc.), driveways, and parking areas on the subject property, and to the extent practicable on directly abutting properties.
- c. A proposed conditions plan (at a scale of 1-in = 100-ft or at a larger scale) showing all parcels affected by the proposal, and depicting the following information.
    - i. Owner names and tax map parcel numbers for all direct abutters.
    - ii. Boundaries and acreage of the proposed lots subject to review.
    - iii. Location of any existing structures or site features, driveways, parking areas, public streets, rights-of-way, easements, surface waters (including wetland areas delineated by a NH certified wetland scientist), precautionary and prohibitive slopes, 100-year floodplain and floodways delineation, and wooded and vegetated areas that are displayed on the existing conditions plan, and are proposed to remain.
    - iv. The location of proposed structures and site features, lot lines, public streets, rights-of-way, easements, driveways and parking areas.
3. Any additional information the Planning Board, or its designee, may reasonably deem necessary to determine compliance with the applicable regulations of this LDC.
  4. Any technical reports prepared by a NH licensed engineer or qualified professional, which may be required or reasonably requested by the Planning Board, or its designee, based on the nature and scope of the proposal. Such reports may include, but are not limited to drainage, traffic, and/or soils analyses.
  5. A notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property. This notarized list shall include the name and mailing address of

the property owner, the property street address, and the tax map parcel number for each affected property.

6. 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
7. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### C. Conservation Residential Development Subdivision Applications

In addition to the submittal requirements for a subdivision or boundary line adjustment in **Section 25.10.5.B**, a completed application for a proposed conservation residential development subdivision shall include the following.

1. An overview plan (1-copy on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file), which displays the entire tract and any existing public roads, public or private protected lands, woodlands areas, surface waters, and precautionary or prohibitive slopes located within 200-ft of the tract.
2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in **Section 19.3 of this LDC**.
3. A yield analysis (1-copy on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file) to determine the number of residential units that may be permitted within a conservation residential development subdivision. Although this plan shall be drawn to scale, it need not be based upon a field survey. The yield analysis may be prepared as an overlay to the existing conditions plan.
  - a. The yield analysis shall be performed by applying a conventional subdivision layout, including lots conforming to the dimensional standards of the underlying zoning district and

streets needed to access such lots. The conventional layout shall reflect a development density and pattern, taking into account surface waters, floodplains, steep slopes, existing easements or encumbrances, and the suitability of soils for private subsurface wastewater disposal if City sewer service is not available.

4. A proposed conditions plan including the following.
  - a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.
  - b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.
  - c. The location and dimensions of any proposed roads, sidewalks, and trails.
5. A landscaping plan (1-copy on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file) providing the following information:
  - a. The location and outline of existing wooded and vegetated areas and proposed changes to the outline of these areas.
  - b. The location, species and size of all landscaping materials proposed to be installed on the site, including street trees.
  - c. A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and at maturity as well as the number of each species to be installed.
6. Written documentation of the process applied by the applicant in the layout of the proposed conservation residential development subdivision to ensure that proposed or future development does not adversely impact primary and secondary conservation areas as defined in **Section**

**19.3 of this LDC.**

**25.10.6 Submittal Requirement Exemptions**

- A.** An applicant may make a request to the Community Development Director, or their designee, to exempt their application from specific submittal requirements.
- B.** Any exemption granted by the Community Development Director, or their designee, shall be evaluated and approved by the Planning Board during its review of application completeness. If the Board determines the exempted material is necessary to complete its review of the application, they may deny the exemption request and determine the application to be incomplete.
- C.** If a requested exemption is not granted by the Community Development Director, or their designee, the applicant may appeal the decision to the Planning Board prior to the Board's determination of application completeness.

**25.10.7 Application Submittal Deadline**

A completed application shall be submitted to the Community Development Director, or their designee, no later than 26-business days prior to the Planning Board meeting date at which the applicant desires the application to be reviewed.

**25.10.8 Procedure**

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for subdivision review.

**A. Voluntary Merger Procedure**

- 1.** Except where such merger would create a violation of then-current ordinances or regulations, all voluntary merger applications shall be approved administratively, and no public hearing shall be required.
- 2.** No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by

the Planning Board, or its designee, shall be filed for recording in the County Registry of Deeds, and a copy sent to the City of Keene Assessing Department.

- 3.** No such merged parcel shall thereafter be separately transferred without subdivision approval.

**B. Boundary Line Adjustment Procedure**

- 1.** All boundary line adjustment applications shall be reviewed by the Planning Board without a public hearing. However, mailed notice to abutters is required.
- 2.** An updated survey showing the boundary line adjustment, and all metes and bounds of the revised parcels shall be prepared by the applicant following approval from the Planning Board, and shall be filed with the Community Development Department for recording in the County Registry of Deeds.

**C. Subdivision & Conservation Residential Development Subdivision Procedure**

- 1. Presubmission Meeting.** Applicants for subdivision review that propose the creation of 3 or more lots shall attend a pre-submission meeting at least 2-weeks prior to the Planning Board submittal deadline.
- 2. Staff Determination of Application Completeness.** Within 2-business days following the application submittal deadline, the Community Development Director, or their designee, shall complete an initial review of the application to evaluate whether the submittal requirements have been met.
  - a.** If the missing application materials or information are necessary for proper documentation, but are not central to the initial departmental review, the applicant will be permitted to provide the required materials or information by the revision deadline of 14-calendar days prior to the corresponding regularly scheduled Planning Board meeting date.

3. **Departmental Review.** Once the Community Development Director, or their designee, has made an initial determination that an application is complete, copies of the application and associated materials shall be sent to the City's Engineering Division, Fire Department, Police Department, Zoning Administrator, and Building and Health Official for technical review.
  - a. City staff will be requested to return comments on the application to the Community Development Department within 5-business days of the distribution date.
  - b. The Community Development Director, or their designee, shall communicate departmental comments to the applicant, as soon as they are all received.
4. **Revision Deadline.** Any plan revisions or additional information requested of the applicant by City staff following departmental review of the application shall be delivered to the Community Development Department no later than the revision deadline of 14-calendar days prior to the corresponding regularly scheduled Planning Board meeting date. The revision deadline shall not be waivable.
5. **Site Visits.** At the discretion of the Community Development Director or Planning Board Chair, a formal Planning Board site visit to the subject property may be scheduled prior to the Planning Board public hearing on the application.
6. **Compliance with Zoning.**
  - a. Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
  - b. Applications shall be in compliance with the Zoning Regulations prior to the issuance of public notice for the public hearing.
7. **Notice of Public Hearing.** The Community Development Director, or their designee, shall forward applications for subdivision review to the Planning Board for a public hearing, and shall provide published and mailed notice of this public hearing pursuant to NH RSA 675:7(l).
8. **Board Determination of Application Completeness.** The Planning Board shall vote to determine whether the application is complete prior to opening the public hearing.
  - a. The Planning Board shall consider advice from the Community Development Director, or their designee, in reaching a determination of application completeness.
  - b. If the Planning Board determines that an application is incomplete, the Board will either issue a written decision of incompleteness or, with the applicant's consent, table the application until the next regular meeting of the Board.
9. **Public Hearing.** Upon reaching a finding that an application is complete, the Planning Board may open the public hearing for the application.
10. **Decision.** The Planning Board shall finish its review of an application within 65 calendar days of the meeting at which the Board accepted the application as being complete. If the Board feels that more time is needed, or if the applicant requests additional time, the timeframe provided for review under NH RSA 676:4 can be extended by mutual agreement of the Board and the applicant, so long as the applicant requests the extension in writing.

### 25.10.9 Filing

- A. Building permits shall not be issued until approved subdivision plans have been signed by the Planning Board Chair or Vice Chair. Said signature shall signify that the plan has been duly approved by the Board and that all



conditions precedent to plan signature have been met as specified in the approval.

- B.** Prior to Planning Board Chair or Vice Chair signature of a plan approved by the Board, the applicant shall:
  - 1.** Demonstrate to the satisfaction of the Community Development Director, or their designee, that all conditions of approval have been met as specified by the Board; and,
  - 2.** Provide complete copies of the approved plan set in a number and form as specified by the Community Development Department, including 2-copies of the approved subdivision plan, printed on mylar in a format pursuant to NH RSA 478:1-a and displaying the owners signature(s).
- C.** For approved conservation residential development subdivision applications, applicants shall also submit written documentation of any legal instruments required for the management of the designated Open Space land to the Community Development Department. Such documents are subject to the review and approval of the City Attorney prior to signature.
- D.** Unless otherwise specified in **Section 25.10**, the Community Development Department shall record the approved subdivision plan with the County Registry of Deeds.

#### 25.10.10 Approval Standards

Subdivision review by the Planning Board, or its designee, shall include an analysis of land characteristics and access potential to determine if each proposed new lot or each lot affected is of such character that it can be accessed and used for building in a manner that avoids or mitigates the potential for adverse impacts to health, safety, and welfare of the community and the environment. The criteria for Board determination are established in **Article 19** - "Subdivision Regulations" and **Article 20** - "Site Development Standards."

#### 25.10.11 Expirations

- A.** Any failure to meet the deadlines in this Section shall result in automatic expiration of Planning Board approval. This Section shall not be waivable.
- B. Conditional Approvals.** If an application is conditionally approved, the applicant has 180 calendar days (starting the day following the Board's decision) to meet any conditions that shall be met prior to signature of the Planning Board Chair on the plan.
  - 1.** All conditions that must be met after the plan is signed shall be satisfied within 2-years (starting the day following the Board's decision).
  - 2.** The applicant may request a reasonable extension of the time limit for satisfying the conditions prior to the Planning Board granting a conditional approval.
- C. Active & Substantial Development.** Active and substantial development of an approved project shall be completed within 2-years, starting the day following the Board's decision to approve or conditionally approve the application. Plans approved in phases shall be subject to a determination of active and substantial development for the current phase. For purposes of this Section, active and substantial development shall include all of the following.
  - 1.** Construction of and/or installation of basic infrastructure to support the development in accordance with the approved plan, including at least 1 building foundation wall/ footing, roadways, access ways, etc., to a minimum of gravel base and utilities placed in underground conduit ready for connection to proposed buildings/structures.
  - 2.** Construction and completion of drainage improvements to service the development in accordance with the approved plans.
  - 3.** All erosion control measures (as specified on the approved plans) shall be in place and maintained on the site.

4. Movement of earth, excavation, or logging of a site without completion of items 1-3 above, shall not be considered active and substantial development.

### 25.10.12 Extensions

- A. Prior to the expiration of an approval, an applicant may request an extension of the timeframe for meeting conditions or achieving active and substantial development from the Planning Board.
  1. No modifications to the approved or conditionally approved plan shall be considered in conjunction with the request to extend the deadline.
  2. Extension requests shall be submitted in writing to the Community Development Director, or their designee, at least 10-business days prior to the Planning Board Meeting at which the request will be considered.
- B. The maximum time length for each approved extension is 6-months for meeting conditions of approval and 1-year for achieving active and substantial development. An extension of the conditional approval deadline by 6-months will automatically extend the deadline for active and substantial development by 1-year.
- C. Under no circumstances shall an applicant be granted more than 3-extensions total for their application.
  1. **First Extension.** The Planning Board shall grant a first extension of the approval, if the applicant demonstrates the necessity of the extension and provides an update to the Board about the nature of the project and its status.
  2. **Second Extension.** Prior to expiration of the first extension, the Planning Board may grant the application a second extension, if said applicant demonstrates the necessity of the second extension and summarizes what changes, if any, have since occurred to applicable state law or City regulations.

- a. The Planning Board shall consider whether any changes identified by the applicant would have influenced the Board's initial decision with respect to the project. If the Planning Board finds that substantive changes to applicable state law or City regulations have been adopted that would have resulted in either modification of the project, the imposition of additional or different conditions in the approval, or disapproval of the project, then the extension request shall not be granted.

3. **Third Extension.** Prior to expiration of the second extension period, an applicant may request a third extension.

- a. Such extension shall only be granted by the Planning Board where an applicant can demonstrate that there are extraordinary circumstances that warrant a third extension of the deadline. Extraordinary circumstances may include, but not be limited to, litigation that is entered into after the conditional approval is granted and which prevents the applicant from completing conditions required for signature or from completing active and substantial development.
- b. If the extension request is denied by the Planning Board, prior to expiration of the approval, the applicant may submit an application for modification of the conditional approval to address concerns leading to the Board's denial of the extension.

### 25.10.13 Security

- A. The Planning Board shall have the authority to require applicants post a security deposit for the following.
  1. Public improvements, including but not limited to roads, sidewalks, parks, and utilities, and for performance of site improvements as specified by the Board at the time of approval.

2. All landscaping installed on a site to ensure its survival for 1 full growing season after installation (a minimum of 1-year).
3. Erosion and sedimentation control to assure that erosion control provisions are working, and required technical inspections take place.
4. "As Built" plans certified by a NH licensed surveyor or engineer that include the exact location, size, and materials of sewer, water, gas, drainage and any underground utilities (e.g. phone, electric, cable) as well as catch basins, hydrants, compensatory wetlands or flood storage areas, sidewalks, drainage basins, edge of pavement, edge of buildings, and other improvements as may be indicated by the Community Development Director or their designee.
  - a. After a project is completed and prior to release of any security, applicants shall digitally provide the complete set of "As-Built" plans in .dwg, .dxf, .shp or geodatabase format.
  - b. All digital plans shall be named using the following convention: "[Insert Project Name]\_As-Built".
  - c. All data should be provided in the NAD 1983 StatePlane New Hampshire FIPS 2800 (US Feet) coordinate system.
  - d. All CAD data should contain all assignment files to be plotted and projected appropriately.
  - e. Any missing or un-openable files will result in rejection of the submission.
5. Other elements of the project to ensure that they function concurrent with and subsequent to construction.

**B.** The security shall be in a form acceptable to the Community Development Director, or their designee, and shall be either a certified check made out to the City of Keene or a letter of credit.

1. Performance Bonds shall not be an acceptable form of security.
2. The Planning Board may require a written security agreement that specifies when various improvements will be completed. Such agreement may be required to link the completion of phases of improvement with the issuance of building permits or certificates of occupancy.

#### 25.10.14 Waivers

**A.** Unless otherwise set forth in this LDC, the Planning Board may grant a waiver from strict compliance with provisions of the Subdivision Regulations in **Article 19**, applicable Site Development Standards in **Article 20**, or subdivision review standards in **Section 25.10** on a case-by-case basis, so long as the Board finds, by majority vote, that:

1. Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations; and,
2. Granting the waiver will not increase the potential for creating adverse impacts to abutters, the community or the environment; and,
3. Consideration will also be given as to whether strict conformity with the regulations would pose an unnecessary hardship to the applicant.

**B.** The Planning Board may grant a waiver from the requirement that a subdivision be a conservation residential development subdivision, upon reaching a finding that:

1. That conservation values on a property would be better protected by a conventional subdivision design.

- 2.** That a conservation residential development subdivision would significantly detract from the character of the surrounding neighborhood.
  - 3.** That a conventional subdivision design provides the only reasonable alternative to developing the parcel to be subdivided given the parcel configuration and site constraints.
- C.** In granting a waiver, the Planning Board may require any mitigation that is reasonable and necessary to ensure that the spirit and intent of the standard being waived will be preserved, and to ensure that no increase in adverse impacts associated with granting the waiver will occur.
- D.** Any waiver request shall be in writing and shall cite the specific regulation or standard the waiver is requested from and the reason(s) it cannot be met.
- E.** Waiver requests shall be submitted following the same process and timeframe as is required for formal applications to the Planning Board.

## 25.11 PLANNING BOARD ADVICE & COMMENT

### 25.11.1 Description

Advice and comment is an opportunity for prospective applicants to seek preliminary advice from the Planning Board on project proposals in regards to their consistency with City policies, goals, standards and regulations. The primary purposes of this non-binding discussion are to:

- A. Inform the Planning Board about the concept for the proposed development and familiarize the Board with the location and general character of the land and its surroundings;
- B. Discuss the proposed project in light of the City's Comprehensive Master Plan, goals and policies; and,
- C. For the Board to provide the prospective applicant with guidance about the application and procedural requirements set forth in this LDC.

### 25.11.2 Submittal Requirements

- A. Information for the Planning Board to consider shall be submitted by the applicant to the Community Development Department no later than 10 business days prior to the regularly scheduled Planning Board meeting date at which the applicants desires to be on the agenda.
- B. Proposed plans or information may be submitted to the Planning Board for consideration, but specific design and engineering details shall not be discussed.
- C. Applicants submitting plans for Planning Board consideration should submit 3-copies on 22-in by 34-in sized paper and 1-copy on 11-in by 17-in sized paper.

### 25.11.3 Procedure

- A. Advice and comment is a preliminary and informal review and shall not require published or mailed notice or a public hearing.
- B. City staff are not required to conduct an analysis of the information submitted by the applicant.
- C. Anything said on the proposal by the applicant, Planning Board or City staff will not affect any subsequent review of the proposed development or redevelopment.

## 25.12 SITE PLAN REVIEW

### 25.12.1 Description

Site plan review establishes a process for reviewing proposed improvements to commercial and multi-family structures to assure that such development, redevelopment, or use of land in the City occurs in a manner that is harmonious with surrounding properties, is consistent with the City's Comprehensive Master Plan and adopted land use policies.

### 25.12.2 Initiation

The applicant for site plan review shall either own the fee simple interest in the property(s) that are the subject of the review or have written permission of the fee simple owner.

### 25.12.3 Applicability

**A. Site Plan Review Thresholds.** Site plan review is required for the following types of improvements described in **Sections 25.12.3.A.1** (Major Site Plan) and **25.12.3.A.2** (Minor Site Plan). It shall not be required for single-family and two-family dwellings or their associated accessory uses, provided such dwellings are not attached to a mixed-use building or located on a mixed-use lot containing non-residential uses.

- 1. Major Site Plan.** Major site plan review is required for any proposal that meets or exceeds the below thresholds.
  - a.** New principal buildings or structures greater than 5,000 sf in gfa.
  - b.** Additions to existing buildings or structures that are greater than 15% of the gfa of the existing principal building.
  - c.** Change or increase of vehicle trips per day of 100, or per peak hour of 50.
  - d.** Installation of impervious surfaces (e.g. pavement or gravel) that exceeds 10,000 sf in contiguous area.
  - e.** Land disturbance that impacts 1-acre or greater of land area.

- f.** Modifications to the site or building (e.g. lighting, landscaping, façade alteration, etc.), which, at the discretion of the Community Development Director, or their designee, warrants major site plan review.
  - g.** Change of use, which at the discretion of the Community Development Director, or their designee, warrants major site plan review. Such determination shall be based on an evaluation of the impacts of the proposed use on both the subject parcel and the surrounding neighborhood.
- 2. Minor Site Plan.** Minor site plan review is required for any proposal that meets the below thresholds.
- a.** New principal buildings or structures that are between 1,000 and 5,000 sf in gfa.
  - b.** Additions to existing buildings or structures that are between 10% and 15% of the gfa of the existing principal building.
  - c.** Installation of impervious surfaces (e.g. pavement or gravel) that are 10,000 sf or less in contiguous area, which, at the discretion of the Community Development Director, or their designee, and based on the nature of the proposal, warrants minor site plan review.
  - d.** Land disturbance that impacts less than 1-acre of land area, which, at the discretion of the Community Development Director, or their designee, and based on the nature of the proposal, warrants minor site plan review.
  - e.** Modifications to the site or building (e.g. lighting, landscaping, façade alteration, etc.), which, at the discretion of the Community Development Director, or their designee, warrants minor site plan review.

review.

- f. Change of use, which at the discretion of the Community Development Director, or their designee, warrants minor site plan review. Such determination shall be based on an evaluation of the impacts of the proposed use on both the subject parcel and the surrounding neighborhood.

**B. Administrative Planning Review.** Proposed development or redevelopment, including change of use, associated with uses other than single-family and two-family dwellings that does not meet the thresholds for major or minor site plan review shall be reviewed by the Community Development Director, or their designee, to verify compliance with the Site Development Standards in **Article 20** of this LDC prior to the issuance of a building permit. The application and review procedures associated with Administrative Planning Review are described in **Section 25.13**.

**C.** Unless otherwise noted in this Section, the Community Development Director, or their designee, has the authority to determine, on a case-by-case basis, based on the nature of the proposal, whether the proposed work requires review by the Planning Board, Minor Project Review Committee, or City staff, or whether any review is necessary.

#### 25.12.4 Authority

**A. Major Site Plan Review.** The Planning Board shall have the authority to hear and decide on applications for: major site plans; requests for waivers from the Site Development Standards in **Article 20** and from the standards related to site plan review in **Section 25.12**; and minor site plans at the request of the applicant or where a conditional use permit or waiver is required.

**B. Minor Site Plan Review.** The Minor Project Review Committee shall have the authority to hear and decide on applications for minor site plans.

1. The Community Development Director has the authority to schedule a minor site plan application to be heard by either the Planning Board or the Minor Project Review Committee.
2. An applicant can request to have a minor site plan heard by the Minor Project Review Committee or the Planning Board.
3. The Minor Project Review Committee cannot act on a minor site plan application where either, a conditional use permit or a waiver from the Site Development Standards in **Article 20** or the site plan review standards in **Section 25.12** is required.

#### 25.12.5 Submittal Requirements

An applicant for site plan review shall submit a completed application on the appropriate form to the Community Development Department, and shall provide sufficient information to enable City staff and the respective decision-making authority to evaluate the proposal for compliance with this LDC. Submittal requirements for major and minor site plan review are included below. A completed application for major and minor site plan review shall include the following information.

- A.** A written narrative describing the type, scope and scale of the proposal including the following information.
  1. Existing and proposed uses
  2. An explanation of how the proposal complies with the Site Development Standards in **Article 20**.
- B.** A complete plan set certified by a NH licensed engineer or architect (7-copies on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file), which shall include the following materials.
  1. A location map of the proposed improvements.
  2. An existing conditions plan (at a scale of 1-in = 100-ft or a larger scale) showing all parcels affected by the proposal, and depicting the following information.

- a.** Contours of at most 5-ft intervals.
  - b.** Owner names and tax map parcel numbers for all direct abutters.
  - c.** Boundaries and acreage of the existing lot(s) subject to review.
  - d.** Surface waters, including wetland areas delineated by a NH certified wetland scientist, and any manmade waterways, ponds, ditches, etc.
  - e.** Precautionary and prohibitive slopes.
  - f.** Delineation of 100-year floodplain and floodways as shown on current FIRM maps.
  - g.** Location of any public streets, rights-of-way, and easements.
  - h.** Location of existing structures, wooded and vegetated areas, site features (e.g. fences, walls, ground-mounted equipment, utilities, stormwater facilities, wells, septic systems, stonewalls, etc.), driveways, and parking areas on the subject property, and to the extent practicable on directly abutting properties.
- 3.** A proposed conditions plan (at a scale of 1-in = 100-ft or at a larger scale) showing all parcels affected by the proposal, and depicting the following information.
- a.** Contours of at most 5-ft intervals.
  - b.** Owner names and tax map parcel numbers for all direct abutters.
  - c.** Boundaries and acreage of the lot(s) subject to review.
  - d.** Location of any existing structures or site features, public streets, rights-of-way, easements, driveways, parking areas, surface waters (including wetland areas delineated by a NH certified wetland scientist), precautionary and prohibitive slopes, 100-year floodplain and floodways delineation, and wooded and vegetated areas that are displayed on the existing conditions plan, which will not be altered or relocated.
  - e.** Location of proposed structures and site features, public streets, rights-of-way, and easements.
  - f.** Locations and design details for proposed provisions for vehicular and pedestrian traffic (e.g. parking areas, access driveways, and sidewalks, etc.).
- 4.** A grading plan (drawn at a scale of 1-in = 50-ft or at a larger scale) showing proposed erosion and sedimentation control and stormwater management facilities that will be constructed or utilized to control stormwater volume, velocity and water quality. This plan shall include the following.
- a.** Contours of at most 2-ft.
  - b.** All finish slopes that will exceed 25%.
  - c.** Surface waters (including wetland areas delineated by a NH certified wetland scientist), precautionary and prohibitive slopes, 100-year floodplain and floodways delineation, and wooded and vegetated areas.
  - d.** Location of existing and proposed structures, roads, rights-of-way, driveways, impervious surfaces, and easements (including utility or drainage).
  - e.** The location and dimensional information, as appropriate, of existing and proposed utilities (e.g. water lines, sewer lines, storm drain lines and catch basins, gas lines, gas storage tanks, fire hydrants, irrigation lines, grease traps, pump stations, ground water monitoring wells, ground water source wells, septic systems, electric lines, transformers, etc.).
  - f.** Location and design details for all proposed erosion and sedimentation



- control, and stormwater management structures, devices, and processes (e.g. catch basins and storm water lines, stormwater detention or retention ponds or devices, sediment settlement area, silt fences and other erosion control devices, flow dissipation measures, soil stabilization measures, etc.) and any other measures proposed to minimize erosion and sedimentation, and promote soil stabilization.
- g.** A note describing the procedures and timing for inspecting, maintaining, and repairing erosion and sedimentation control, and stormwater management structures, devices and processes.
  - h.** A note indicating the requirement for documenting all inspection and maintenance activities, all adverse impacts identified during inspections, and actions taken to remediate the adverse impacts.
- 5.** A landscaping plan (drawn at a scale of 1-in = 50-ft or at a larger scale) providing the following information.
- a.** The location, species and size of all landscaping materials proposed to be installed on the site.
  - b.** Plants shall be drawn to scale and shall show the drip line diameter of each plant at the time of planting and a second circle displaying the average drip line diameter at maturity.
  - c.** A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and maturity as well as the number of each species to be installed.
  - d.** A table indicating the number of trees and shrubs required and proposed to meeting landscaping or screening requirements of this LDC.
  - e.** Design details following best management practices for installing landscaping materials.
- 6.** A lighting plan providing the following information.
- a.** The location of existing and proposed structures, roads, rights-of-way, driveways, easements, lot lines, walkways, and sidewalks on the subject property and, to the extent practicable, on abutting properties.
  - b.** Location and outline of wooded and vegetated areas.
  - c.** Location of all existing and proposed exterior lighting fixtures with a notation differentiating the types of fixtures.
  - d.** Manufacturer's specifications (i.e. cut-sheets) for all proposed light fixtures, indicating the type of fixture and bulb, wattage of bulb, and height of fixture head.
  - e.** Photometric plan showing light intensity in foot candles across the site and immediately (minimum of 20-ft) beyond the perimeter of the site.
  - f.** An analysis of the minimum, maximum and average light intensity in foot candles for the site.
  - g.** A separate analysis for full lighting and security lighting shall be provided when security lighting is proposed by the applicant or required by the Planning Board.
- C.** Any technical reports prepared by a NH licensed engineer or qualified professional, which may be required or reasonably requested by the respective decision-making authority, based on the nature and scope of the proposal. Such reports may include, but are not limited to drainage, traffic, and/or soils analyses. They may also include historic evaluation, screening analysis, or architectural and visual appearance analysis.

- D. Elevations (3 color copies on 22" x 34" sized paper and 1-color copy on 11"x17" paper and an electronic pdf file) showing the visual appearance and architectural details of all proposed structures, with proposed façade height and length dimensions, construction materials, finishes, and colors clearly labeled. Landscaping should not be included on elevations.
- E. Additional color representations, simulations, or renderings of a proposed development may be required by the respective decision-making authority, during the review process.
- F. Any additional information the respective decision-making authority may reasonably deem necessary to determine compliance with the applicable regulations of this LDC.
- G. A notarized list of abutters, which shall include all owners of property that directly abuts and/ or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.
- H. 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- I. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

### 25.12.6 Submittal Requirement Exemptions

- A. An applicant may make a request to the Community Development Director, or their designee, to exempt their application from specific submittal requirements.
- B. Any exemption granted by the Community Development Director, or their designee, shall be evaluated and approved by the respective decision-making authority during its review of application completeness. If the Planning Board

or Minor Project Review Committee determines the exempted material is necessary to complete its review of the application, they may deny the exemption request and determine the application to be incomplete.

- C. If a requested exemption is not granted by the Community Development Director, or their designee, the applicant may appeal the decision to the Planning Board, in the case of major site plan applications, or the Minor Project Review Committee, in the case of minor site plan applications, prior to the respective decision-making authority's determination of application completeness.

### 25.12.7 Application Submittal Deadline

#### A. Major Site Plan Application

A completed major site plan application shall be submitted to the Community Development Director, or their designee, no later than 26 business days prior to the Planning Board meeting date at which the applicant desires the application to be reviewed.

#### B. Minor Site Plan Application

A completed minor site plan application shall be submitted to the Community Development Director, or their designee, no later than 9 business days prior to the Minor Project Review Committee meeting date at which the applicant desires the application to be reviewed.

### 25.12.8 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for site plan review.

#### A. Minor Site Plan Procedure

##### 1. Confirmation of Project Classification.

Upon receipt of a minor site plan application, the Community Development Director, or their designee, shall verify whether the request qualifies for classification as a minor site plan project in accordance with this LDC.

**2. Staff Determination of Application**

**Completeness.** Within 2 business days following the application submittal deadline, the Community Development Director, or their designee, shall complete an initial review of the application to evaluate whether the submittal requirements have been met.

**3. Minor Project Review Committee Review.**

Once the Community Development Director, or their designee, has made an initial determination that an application is complete, copies of the application and associated materials shall be sent to the Minor Project Review Committee for initial review at least 5 business days prior to the corresponding Minor Project Review Committee meeting date at which the public hearing on the application will be opened.

**4. Site Visits.** At the discretion of the Community Development Director, a formal site visit to the subject property may be scheduled prior to the Minor Project Review Committee public hearing on the application.

**5. Compliance with Zoning.**

- a. Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
- b. Applications shall be in compliance with the Zoning Regulations prior to the issuance of public notice for the public hearing.

**6. Notice of Public Hearing.** The Community Development Director, or their designee, shall forward applications for minor site plan review to the Minor Project Review Committee for a public hearing, and shall provide published and mailed notice of this public hearing pursuant to NH RSA 675:7(l).

**7. Committee Determination of Application Completeness.** The Minor Project Review Committee shall vote to determine whether the application is complete prior to opening

the public hearing.

- a. If the Minor Project Review Committee determines that an application is incomplete, the Committee will either issue a written decision of incompleteness or, with the applicant's consent, table the application until the next meeting of the Committee.

**8. Public Hearing.** Upon reaching a finding that an application is complete, the Minor Project Review Committee may open the public hearing for the application.

**9. Decision.** The Minor Project Review Committee shall finish its review of an application within 60-days of the meeting at which the Committee accepted the application as being complete.

- a. If the Committee feels that more time is needed, or if the applicant requests additional time, the timeframe provided for review under NH RSA 676:4 can be extended by mutual agreement of the Committee and the applicant, so long as the applicant submits a request for the extension in writing.

**10. Appeal.** Within 20 calendar days of the written decision issued by the Community Development Director, or their designee, the applicant may request to have the application placed on the agenda for the next regularly scheduled Planning Board meeting, following the submission requirements and procedures for major plan review.

**B. Major Site Plan Procedure**

**1. Presubmission Meeting.** Applicants for major site plan review shall attend a pre-submission meeting at least 2-weeks prior to the Planning Board submittal deadline.

**2. Staff Determination of Application Completeness.** Within 2 business days following the application submittal deadline, the Community Development Director, or their designee, shall complete an initial

review of the application to evaluate whether the submittal requirements have been met.

- a. If the missing application materials or information is necessary for proper documentation, but are not central to the initial departmental review, the applicant will be permitted to provide the required materials or information by the revision deadline of 14 calendar days prior to the corresponding regularly scheduled Planning Board meeting date.
- 3. Departmental Review.** Once the Community Development Director, or their designee, has made an initial determination that an application is complete, copies of the application and associated materials shall be sent to the City's Engineering Division, Fire Department, Police Department, Zoning Administrator, and Building and Health Official for technical review.
  - a. City staff will be requested to return comments on the application to the Community Development Department within 5 business days of the distribution date.
  - b. The Community Development Director, or their designee, shall communicate departmental comments to the applicant, as soon as they are all received.
- 4. Revision Deadline.** Any plan revisions or additional information requested of the applicant by City staff following departmental review of the application shall be delivered to the Community Development Department no later than the revision deadline of 14 calendar days prior to the corresponding regularly scheduled Planning Board meeting date. The revision deadline shall not be waivable.
- 5. Site Visits.** At the discretion of the Community Development Director or Planning Board Chair, a formal Planning Board site visit to the subject property may

be scheduled prior to the Planning Board public hearing on the application.

- 6. Compliance with Zoning.**
  - a. Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
  - b. Applications shall be in compliance with the Zoning Regulations prior to the issuance of public notice for the public hearing.
- 7. Notice of Public Hearing.** The Community Development Director, or their designee, shall forward applications for major site plan review to the Planning Board for a public hearing, and shall provide published and mailed notice of this public hearing pursuant to NH RSA 675:7(I).
- 8. Board Determination of Application Completeness.** The Planning Board shall vote to determine whether the application is complete prior to opening the public hearing.
  - a. The Planning Board shall consider advice from the Community Development Director, or their designee, in reaching a determination of application completeness.
  - b. If the Planning Board determines that an application is incomplete, the Board will either issue a written decision of incompleteness or, with the applicant's consent, table the application until the next regular meeting of the Board.
- 9. Public Hearing.** Upon reaching a finding that an application is complete, the Planning Board may open the public hearing for the application.
- 10. Decision.** The Planning Board shall finish its review of an application within 65 calendar days of the meeting at which the Board accepted the application as being complete. If the Board feels that more time is needed, or if the applicant requests additional time, the timeframe provided for review can be

extended by mutual agreement of the Board and the applicant, so long as the applicant requests the extension in writing.

### 25.12.9 Filing

- A. Building permits shall not be issued until approved site plans have been signed by the Chair or Vice Chair of the respective decision-making authority. Said signature shall signify that the plan has been duly approved by the decision-making authority and that all conditions precedent to plan signature have been met as specified in the approval.
- B. Prior to the signature of the Chair or Vice Chair of the respective decision-making authority on an approved site plan, the applicant shall:
  - 1. Demonstrate to the satisfaction of the Community Development Director, or their designee, that all conditions of approval have been met as specified by the respective decision-making authority; and,
  - 2. Provide complete copies of the approved plan set in a number and form as specified by the Community Development Department.

### 25.12.10 Modifications to Approved Site Plans

- A. The Community Development Director may approve modifications to site plans previously approved by the Planning Board or the Minor Project Review Committee, if they determine that the proposed modifications are not substantive in nature, and are fully in compliance with the Site Development Standards in **Article 20**, the Zoning Regulations (**Articles 2 through 18**) and other regulations in this LDC. The Community Development Director may consult with the Planning Board Chair to determine if the nature of the proposed modifications are minor and do not warrant consideration by the Planning Board or the Minor Project Review Committee.
- B. The Community Development Director shall file a report with the Planning Board of the site plan modifications that have been approved administratively at the next regular meeting of

the Planning Board following the Community Development Director's approval of such modifications.

- C. If the Community Development Director determines that the proposed revisions result in a major change to an approved site plan, then a new public hearing shall be required before the Planning Board in the case of major site plan applications, or the Minor Project Review Committee in the case of minor site plan applications, as required for a new application.

### 25.12.10 Approval Standards

All types of site plan review shall include an analysis of the potential impacts of the proposed use, development or redevelopment on the health, safety, and welfare of the community and the environment. The basis for this determination shall be the Site Development Standards in **Article 20**.

### 25.12.11 Expirations

- A. Any failure to meet the deadlines in this Section shall result in automatic expiration of Planning Board approval. This Section shall not be waivable.
- B. **Conditional Approvals.** If an application is conditionally approved, the applicant has 180 calendar days (starting the day following the decision of the Planning Board or Minor Project Review Committee on the application) to meet any conditions that shall be met prior to signature of the Chair or Vice Chair of the decision-making authority on the plan.
  - 1. All conditions that must be met after the plan is signed shall be satisfied within 2-years (starting the day following the decision on the application).
  - 2. The applicant may request a reasonable extension of the time limit for satisfying the conditions prior to the Planning Board or Minor Project Review Committee granting a conditional approval.
- C. **Active & Substantial Development.** Active and substantial development of an approved project shall be completed within 2-years,

starting the day following the Board's decision to approve or conditionally approve the application. Plans approved in phases shall be subject to a determination of active and substantial development for the current phase. For purposes of this Section, active and substantial development shall include all of the following.

1. Construction of and/or installation of basic infrastructure to support the development in accordance with the approved plan, including at least 1 building foundation wall/ footing, roadways, access ways, etc., to a minimum of gravel base and utilities placed in underground conduit ready for connection to proposed buildings/structures.
2. Construction and completion of drainage improvements to service the development in accordance with the approved plans.
3. All erosion control measures (as specified on the approved plans) must be in place and maintained on the site.
4. Movement of earth, excavation, or logging of a site without completion of items 1-3 above, shall not be considered active and substantial development.

### 25.12.12 Extensions

- A. Prior to the expiration of an approval, an applicant may request an extension of the timeframe for meeting conditions or achieving active and substantial development from the Planning Board, in the case of major site plan approvals, or the Minor Project Review Committee, in the case of minor site plan approvals.
1. No modifications to the approved or conditionally approved plan shall be considered in conjunction with the request to extend the deadline.
  2. Extension requests shall be submitted in writing to the Community Development Director, or their designee, at least 10 business days prior to the meeting of the respective decision-making authority at which the request will be considered.

B. The maximum time length for each approved extension is 6-months for meeting conditions of approval and 1-year for achieving active and substantial development. An extension of the conditional approval deadline by 6-months will automatically extend the deadline for active and substantial development by 1-year.

C. Under no circumstances shall an applicant be granted more than 3-extensions total for their application.

1. **First Extension.** The respective decision-making authority shall grant a first extension of the approval, if the applicant demonstrates the necessity of the extension and provides an update about the nature of the project and its status.

2. **Second Extension.** Prior to expiration of the first extension, the respective decision-making authority may grant the application a second extension, if said applicant demonstrates the necessity of the second extension and summarizes what changes, if any, have since occurred to applicable state law or City regulations.

a. The respective decision-making authority shall consider whether any changes identified by the applicant would have influenced the Planning Board's or Minor Project Committee's initial decision with respect to the project. If the respective decision-making authority finds that substantive changes to applicable state law or City regulations have been adopted that would have resulted in either modification of the project, the imposition of additional or different conditions in the approval, or disapproval of the project, then the extension request shall not be granted.

3. **Third Extension.** Prior to expiration of the second extension period, an applicant may request a third extension.

a. Such extension shall only be granted by the respective decision-making

authority where an applicant can demonstrate that there are extraordinary circumstances that warrant a third extension of the deadline. Extraordinary circumstances may include, but not be limited to, litigation that is entered into after the conditional approval is granted and which prevents the applicant from completing conditions required for signature or from completing active and substantial development.

- b.** If the extension request is denied by the respective decision-making authority, prior to expiration of the approval, the applicant may submit an application for modification of the conditional approval to address concerns leading to the denial of the extension.

### 25.12.13 Security

**A.** The Planning Board and the Minor Project Review Committee shall have the authority to require applicants post a security deposit for the following.

- 1.** Public improvements, including but not limited to roads, sidewalks, parks, and utilities, and for performance of site improvements as specified by the respective decision-making authority at the time of approval.
- 2.** All landscaping installed on a site to ensure its survival for 1 full growing season after installation (a minimum of 1-year)
- 3.** Erosion and sedimentation control to assure that erosion control provisions are working, and required technical inspections take place.
- 4.** "As Built" plans certified by a NH licensed surveyor or engineer that include the exact location, size, and materials of sewer, water, gas, drainage and any underground utilities (e.g. phone, electric, cable) as well as catch basins, hydrants, compensatory wetlands or flood storage areas, sidewalks, drainage basins, edge of pavement, edge of buildings,

and other improvements as may be indicated by the Community Development Director, or their designee.

- a.** After a project is completed and prior to release of any security, applicants shall digitally provide the complete set of "As-Built" plans in .dwg, .dxf, .shp or geodatabase format.
  - b.** All digital plans shall be named using the following convention: "[Insert Project Name]\_As-Builts".
  - c.** All data should be provided in the NAD 1983 StatePlane New Hampshire FIPS 2800 (US Feet) coordinate system.
  - d.** All CAD data should contain all assignment files to be plotted and projected appropriately.
  - e.** Any missing or un-openable files will result in rejection of the submission.
- 5.** Other elements of the project to ensure that they function concurrent with and subsequent to construction.
- B.** The security shall be in a form acceptable to the Community Development Director, or their designee, and shall be either a certified check made out to the City of Keene or a letter of credit.
- 1.** Performance Bonds shall not be an acceptable form of security.
  - 2.** The Planning Board or the Minor Project Review Committee may require a written security agreement that specifies when various improvements will be completed. Such agreement may be required to link the completion of phases of improvement with the issuance of building permits or certificates of occupancy.

#### 25.12.14 Waivers

- A.** Unless otherwise set forth in this LDC, the Planning Board may grant a waiver from strict compliance with provisions of the Site Development Standards in **Article 20** or site plan review standards in **Section 25.12**, on a case-by-case basis on a case-by-case basis, so long as the Board finds, by majority vote, that:
1. Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or,
  2. Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.
  3. In granting a waiver, the Planning Board may require any mitigation that is reasonable and necessary to ensure that the spirit and intent of the standard being waived will be preserved, and to ensure that no increase in adverse impacts associated with granting the waiver will occur.
- B.** Any waiver request shall be in writing and shall cite the specific regulation or standard a waiver is requested from and the reason(s) it cannot be met.
- C.** Waiver requests shall be submitted following the same process and timeframe as is required for formal applications to the Planning Board.



## 25.13 ADMINISTRATIVE PLANNING REVIEW

### 25.13.1 Description

Projects that do not meet the threshold for site plan review by either the Planning Board or the Minor Project Review Committee (as noted in **Section 25.12.3** of this LDC), may require review by the Community Development Director, or their designee, to verify compliance with this LDC.

### 25.13.2 Initiation

The applicant for administrative planning review shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.13.3 Applicability

Proposed development or redevelopment, or change of use, associated with uses other than single-family and two-family dwellings that does not meet the threshold for minor or major site plan review shall be reviewed by the Community Development Director, or their designee, to verify compliance with the Site Development Standards in **Article 20** of this LDC prior to the issuance of a building permit.

### 25.13.4 Authority

The Community Development Director, or their designee, has the authority to determine, on a case-by-case basis and based on the nature of the proposal, whether proposed work requires administrative planning review.

For projects that require administrative planning review, the Community Development Director has the authority to make a determination as to whether the proposed development, redevelopment, or change of use conforms with the Site Development Standards in **Article 20** of this LDC.

### 25.13.5 Submittal Requirements

- A.** A completed application for administrative planning review shall include the following information.
1. A written narrative describing the type, scope and scale of the proposal including

the following information.

- a. Existing and proposed uses
  - b. An explanation of how the proposal complies with the Site Development Standards in Article 20.
2. A scaled plot plan or drawing clearly displaying the locations and dimensions of all structures and open spaces on the lot subject to review.
  3. Manufacturer specifications (i.e. cut-sheets) for any proposed building materials, exterior lighting fixtures, windows and doors, mechanical equipment or other site elements (e.g. benches, railings). The applicant shall specify the proposed type, color and finish, if missing from the specifications.
  4. Photographs, renderings, and/or line sketches to visually demonstrate the scale, massing, and visual appearance of proposed improvements.
  5. Other information as deemed necessary by the Community Development Director, or their designee, to complete the review of the application.
  6. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.
- B.** Submittal of items listed above may not be required depending on the nature and scope of the projects and may be omitted from an application for administrative planning review with the approval of the Community Development Director, or their designee.

### 25.13.6 Procedure

- A. Confirmation of Project Classification.**
- Upon receipt of a completed application for administrative planning review, the Community Development Director, or their designee, shall verify whether the request qualifies for administrative planning review, or whether site plan review is required by either the Planning Board or Minor Project Review Committee, or whether any review is necessary.

**B. Compliance with Zoning.**

1. Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
2. Applications shall be in compliance with the Zoning Regulations prior to the issuance of public notice for the public hearing.

**C. Notice of Decision.** Within 14-business days of receipt of a completed application for administrative review, the Community Development Director, or their designee, shall complete review of the application, in consultation with other City departments as appropriate, and will issue a written determination of whether the proposal is in compliance with the Site Development Standards in **Article 20** and other applicable regulations in this LDC.

1. If the Community Development Director, or their designee, determines that the proposal does not conform with the Site Development Standards or other regulations in this LDC, they shall work with the applicant (if willing) to modify the proposal to become conforming.
  - a. The applicant may seek a waiver from the Site Development Standards from the Planning Board if they do not choose to modify the proposal to become conforming.

**D. Appeal.** Within 20 calendar days of the written decision issued by the Community Development Director, or their designee, the applicant may appeal the decision to the Planning Board by requesting to have the application placed on the agenda for the next regularly scheduled Planning Board meeting, following the submission requirements and procedures for major plan review in **Section 25.12** of this LDC.

### 25.13.7 Approval Standards

The Community Development Director, or their designee, shall evaluate proposals for development or redevelopment or change of use that do not meet the threshold for major or minor site plan review based on an analysis of whether the proposal is in compliance with the Site Development Standards in **Article 20** and the other regulations in this LDC.

## 25.14 CONDITIONAL USE PERMITS

### 25.14.1 Description

A conditional use permit allows certain uses that have increased potential for incompatibility in a zoning district to be carefully reviewed to determine, against fixed standards, whether their establishment on any given site should be allowed.

### 25.14.2 Initiation

The applicant for a conditional use permit shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.14.3 Applicability

Uses that require a conditional use permit shall be clearly identified in the Zoning Regulations, as may be amended.

### 25.14.4 Authority

Unless otherwise specified in this LDC, the Planning Board shall have the authority to review and decide on applications for a conditional use permit.

### 25.14.5 Submittal Requirements

- A. An applicant for a conditional use permit shall submit a completed application on the appropriate form to the Community Development Department, and shall provide sufficient information to enable City staff and the Planning Board to evaluate the proposal for compliance with this LDC.
- B. A completed application for a conditional use permit shall include all of the submittal requirements for major site plan applications as outlined in this Article, unless otherwise specified.
- C. The applicant shall be responsible for reviewing the applicable conditional use permit standards of this LDC to identify if any additional application materials or information shall be required for submittal.

### 25.14.6 On-Site Posting of Public Hearing

- A. An applicant for any conditional use permit shall, not less than 10 calendar days prior to the date of the public hearing on the application, post a sign obtained from the Community Development Department providing notice of the use applied for and the date and time of the public hearing, in a location on the premises visible to the public.
- B. This sign shall be removed by the applicant no later than 10 calendar days after completion of the public hearing and returned to the Community Development Department.

### 25.14.7 Procedure

- A. Conditional use permit applications shall be subject to the same procedure for review and decision by the Planning Board as major site plan applications, unless otherwise noted in this LDC.
- B. Where conditional use permits are required in conjunction with a proposed site plan application, a completed conditional use permit application for each conditional use permit requested shall be made at the same time as the site plan application.
- C. Where a conditional use permit is required, no site plan application may be considered complete without a complete conditional use permit application. Conditional use permit applications will be considered concurrently with the site plan application.

### 25.14.8 Approval Standards

In the review of a conditional use permit application, the Planning Board shall evaluate the application for compliance with all applicable design standards and conditional use permit review criteria as provided for in this LDC as well as the Site Development Standards in **Article 20**.

### 25.14.9 Expiration

Conditional use permits granted by the Planning Board shall be valid if exercised within 2-years from the date of final approval by the Planning Board, or as further extended by the Planning Board. Within this 2-year time period, the use must be started or construction begun on the structure.

### 25.14.10 Extensions

Conditional use permit applications shall be subject to the same standards for extensions as major site plan applications.

### 25.14.11 Waivers

- A. Applicants for a conditional use permit seeking a waiver from conditional use permit standards in the Zoning Regulations of this LDC, shall apply to the Zoning Board of Adjustment for a variance.
- B. Unless otherwise set forth in this LDC, the applicant may request a waiver from the Planning Board from strict compliance with specific provisions of the Site Development Standards in **Article 20**, site plan review standards in **Section 25.12**, or conditional use permit standards in **Section 25.14**, on a case-by-case basis, following the procedure for waiver requests specified in **Section 25.12.14**.

## 25.15 HISTORIC DISTRICT CERTIFICATE OF APPROPRIATENESS

### 25.15.1 Description

Prior to changes or alterations to property within the City's Historic District, a certificate of appropriateness may be required to determine whether the proposed work is appropriate for the Historic District and is consistent with the Historic District Regulations.

### 25.15.2 Initiation

The applicant for a certificate of appropriateness shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.15.3 Applicability

Applications for a certificate of appropriate shall be required for work, which is classified as either major or minor projects, to property located within the City's Downtown Historic District.

- A. Minor Project.** Minor project review is required for any work, including alteration or modification, that meets or exceeds the threshold for minor projects in the Historic District Regulations in **Article 21.**
- B. Major Project.** Major project review is required for any work, including alteration or modification, that meets or exceeds the threshold for major projects the Historic District Regulations in **Article 21.**

### 25.15.4 Authority

- A. Minor Project.** The Community Development Director, or their designee, shall have the authority to review and decide on minor project applications for certificates of appropriateness.
- B. Major Project.** The Historic District Commission shall have the authority to review and decide on major project applications for certificates of appropriateness.

### 25.15.5 Submittal Requirements

An applicant for a certificate of appropriateness shall submit a completed application on the appropriate form to the Community Development Department, and shall provide sufficient information to enable City staff and the Historic District Commission to evaluate the proposal for compliance with this LDC. A completed application for a certificate of appropriateness shall include the following.

- A.** A written narrative describing the type, scope and scale of the proposal including the following information.
  - 1.** Existing and proposed uses
  - 2.** An explanation of how the proposal complies with the applicable standards in the Historic District Regulations in **Article 21.**
- B.** A complete plan set (3-copies on 22-in by 34-in paper; 1-copy on 11-in by 17-in sized paper; and, an electronic pdf file), which shall include the following materials.
  - 1.** An existing conditions plan (at a maximum scale of 1-in = 50-ft) showing all parcels affected by the proposal, and depicting the following information.
    - a.** Owner names and tax map parcel numbers for all direct abutters.
    - b.** Boundaries and acreage of the existing lot(s) subject to review.
    - c.** Location of any public streets, rights-of-way, and easements.
    - d.** Location of existing structures, site features (e.g. fences, walls, ground-mounted equipment, utilities, etc.), driveways, parking areas, and wooded or vegetated areas on the subject property.
  - 2.** A proposed conditions plan (at a maximum scale of 1-in = 50-ft) showing all parcels affected by the proposal, and depicting the following information.

- a. Owner names and tax map parcel numbers for all direct abutters.
  - b. Boundaries and acreage of the lot(s) subject to review.
  - c. Location of any existing structures or site features, driveways, parking area, wooded or vegetated areas, public streets, rights-of-way, and easements that are displayed on the existing conditions plan, which will not be altered or relocated.
  - d. The location of proposed structures and site features, driveways, parking areas, public streets, rights-of-way, easements, and landscaping.
- C.** Elevations at a maximum scale of ¼-in =1-ft (3 color copies on 22" x 34" sized paper and 1-color copy on 11"x17" paper and an electronic pdf file) showing the visual appearance and architectural details of all proposed structures, as well as any portions of the existing structure proposed for demolition or removal. Such drawings shall include proposed façade height and length dimensions, construction materials, finishes, and colors clearly labeled. Landscaping should not be included on elevations.
- D.** Additional color representations, simulations, or renderings of a proposed development may be required by the Community Development Director, or their designee, or the Historic District Commission during the review process.
- E.** Samples of mortar and/or brick for projects proposing new or replacement mortar and/or brick.
- F.** Manufacturer specifications (i.e. cut-sheets) for any proposed building materials, exterior lighting fixtures, windows and doors, mechanical equipment or other site elements (e.g. benches, railings). The applicant shall specify the proposed type, color and finish, if applicable, and if missing from the manufacturer specifications.
- G.** Manufacturer specifications (i.e. cut-sheets) for cleaning products, if applicable.
- H.** Photographs, renderings, and/or line sketches to visually demonstrate the scale, massing, and visual appearance of neighboring structures.
- I.** Major project applications shall include a notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property; the applicant; and holders of conservation, preservation, or agricultural preservation restrictions. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.
- J.** Major project applications shall include 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
- K.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.
- L.** Other information as deemed necessary by the Community Development Director, or their designee, or the Historic District Commission to complete the review of the application.
- 25.15.6 Submittal Requirement Exemptions**
- A.** An applicant may make a request to the Community Development Director, or their designee, to exempt their application from specific submittal requirements.
- B.** For minor project applications, the Community Development Director, or their designee, shall have the authority to approve such exemption requests, based on the nature and scope of the proposal.
- 1. If a requested exemption is not granted by the Community Development Director,

or their designee, the applicant may appeal the decision to the Historic District Commission prior to the Commission's determination of application completeness.

- C. For major project applications, any exemption granted by the Community Development Director, or their designee, shall be evaluated and approved by the Historic District Commission during its review of application completeness.
  - 1. If the Commission determines that the exempted material is necessary to complete its review, they may deny the exemption request and determine the application to be incomplete.

### 25.15.7 Major Project Application Submittal Deadline

A completed major project application shall be submitted to the Community Development Director, or their designee, no later than 18 business days prior to the Historic District Commission meeting date at which the applicant desires the application to be reviewed.

### 25.15.8 Procedure

#### A. Minor Project Procedure

1. **Confirmation of Application Classification.** Upon receipt of a minor project application for a certificate of appropriateness, the Community Development Director, or their designee, shall verify that the request qualifies for classification as a minor project in accordance with this LDC.
2. Applications that do not qualify for minor project review in accordance with the Historic District Regulations in **Article 21**, or do not have sufficient information to determine compliance with these regulations, shall be returned to the applicant.
3. **Decision on Application.** Within 45 calendar days of receipt of all information necessary to evaluate a request for minor project review, the Community Development

Department, or their designee, shall complete its review of the application, in consultation with other City departments as appropriate.

- a. If in the judgment of the Community Development Director, or their designee, the minor project application is consistent with all applicable standards and regulations, the Community Development Director, or their designee, shall approve or approve with conditions an application.
- b. If in the judgment of the Community Development Director, or their designee, the minor project application is not consistent with all applicable standards and regulations, or is of a precedent-setting nature, the Community Development Director, or their designee, shall, at the preference of the applicant, either refer the application to the Historic District Commission for review and action as a major project or disapprove the application.

#### B. Major Project Procedure

1. **Presubmission Meeting.** A presubmission meeting with the Community Development Director, or their designee, is required prior to submitting a major project application for a certificate of appropriateness.
2. **Staff Determination of Application Completeness.** Within 2-business days following the application submittal deadline, the Community Development Director, or their designee, shall complete an initial review of the application to evaluate whether the submittal requirements have been met.
  - a. If the missing application materials or information is necessary for proper documentation, but are not central to the initial departmental review, the applicant will be permitted to provide the required materials or information

by the revision deadline of 10 calendar days prior to the corresponding regularly scheduled Historic District Commission meeting date.

- 3. Revision Deadline.** Any plan revisions or additional information requested of the applicant by City staff following departmental review of the application shall be delivered to the Community Development Department no later than the revision deadline of 10 calendar days prior to the corresponding regularly scheduled Historic District Commission meeting date. The revision deadline shall not be waivable.
- 4. Site Visits.** At the discretion of the Community Development Director or Historic District Commission Chair, a formal site visit to the subject property may be scheduled prior to the Historic District Commission public hearing on the application.
- 5. Compliance with Zoning.**
  - a.** Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
  - b.** Applications shall be in compliance with the Zoning Regulations prior to the issuance of public notice for the public hearing.
- 6. Notice of Public Hearing.** The Community Development Director, or their designee, shall forward major project applications for a certificate of appropriateness to the Historic District Commission for a public hearing, and shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7.
  - a. On-Site Posting of Public Hearing.** For demolitions, applicants shall post a sign identifying the structure as proposed for demolition in a visible location on the premises at least 10-days prior to the public hearing. The sign is available from the Community Development Department and shall be returned prior

to an issuance of a Demolition Permit.

## **7. Determination of Application**

**Completeness.** The Historic District Commission shall vote to determine whether the application is complete prior to opening the public hearing.

- a.** The Historic District Commission shall consider advice from the Community Development Director, or their designee, in reaching a determination of application completeness.
- b.** If the Historic District Commission determines that an application is incomplete, the Commission will either issue a written decision of incompleteness or, with the applicant's consent, table the application until the next regular meeting of the Commission.

**8. Public Hearing.** Upon reaching a finding that an application is complete, the Historic District Commission may open the public hearing for the application.

**9. Decision.** The Historic District Commission shall finish its review of an application within 45 calendar days of the meeting at which the Commission accepted the application as being complete.

- a.** If the Commission feels that more time is needed, or if the applicant requests additional time, the timeframe provided for review can be extended by mutual agreement of the Commission and the applicant, so long as the applicant submits a request for the extension in writing.
- b.** Applicants whose application has been disapproved may make modifications to the disapproved plans and may submit a new application for consideration by the Historic District Commission, or their designee, which shall review the new submittal without prejudice.



### 25.15.9 Filing

- A. Upon approval of an application, a certificate of appropriateness shall be signed by the Historic District Commission Chair, or their designee, and issued to the applicant. A copy of the signed certificate of appropriateness shall be filed with the Community Development Department.
- B. Building permits shall not be issued, nor shall any construction or demolition commence, until an approved certificate of appropriateness has been signed by the Historic District Commission Chair, or their designee. Said signature shall signify that the certificate of appropriateness has been duly approved by the Commission and that all conditions precedent to the Chair's signature have been met as specified in the approval.
- C. Prior to signature of an approved certificate of appropriateness by the Historic District Commission Chair, or their designee, the applicant shall:
  - 1. Demonstrate to the satisfaction of the Community Development Director, or their designee, that all conditions of approval have been met; and,
  - 2. Provide complete copies of the approved plan set in a number and form as specified by the Community Development Department.

### 25.15.10 Approval Standards

All applications for a certificate of appropriateness shall be evaluated for compliance with the Historic District Regulations in **Article 21**.

### 25.15.11 Expiration

- A. A certificate of appropriateness issued pursuant to this LDC shall be valid for either the duration of an active building permit issued for construction associated with the certificate of appropriateness or, if no building permit is issued, the approval is valid for 1-year from the date of the Historic District Commission approval.

- B. If an application is conditionally approved, the applicant has 180-calendar days, beginning the day following conditional approval by the Historic District Commission or Community Development Director, whichever is the appropriate review authority in accordance with this Section, to meet any conditions required to be met prior to signature of the Historic District Commission Chair, or their designee, on the certificate of appropriateness.
- C. This Section shall not be waivable.

### 25.15.12 Extensions

- A. Extensions to the duration of a certificate of appropriateness may be granted by the Community Development Director, or their designee.
- B. No extension shall be granted for a period greater than 1-year from the current expiration date of the certificate of appropriateness.
- C. No more than 2 consecutive extensions shall be granted.
- D. The Community Development Director may refer the request for extension of the duration of a certificate of appropriateness to the Historic District Commission, if in their judgment the extension is not consistent with all applicable standards and regulations.

### 25.15.13 Waivers

- A. Unless otherwise set forth in this LDC, the Historic District Commission may grant a waiver from strict compliance with provisions of the Historic District Regulations of this LDC on a case-by-case basis, so long as the Board finds, by majority vote, that:
  - 1. Strict application of these regulations would result in a particular and exceptional difficulty or undue hardship upon the owner of the affected property; and
  - 2. An alternative design or materials meets the design objectives stated in the Historic District Regulations of this LDC equally well or better than would strict compliance with

these regulations; and

- 3.** The waiver may be granted without substantial detriment to the intent of the Historic District Regulations and the public good.
- B.** In granting a waiver, the Historic District Commission shall require any mitigation that is reasonable and necessary to ensure that the spirit and intent of the standard being waived will be preserved, and to ensure that no increase in adverse impacts associated with granting the waiver will occur.
- C.** Any waiver request shall be in writing and shall cite the specific regulation or standard a waiver is requested from and the reason(s) it cannot be met.
- D.** Waiver requests shall be submitted following the same process and timeframe as is required for formal applications.

## 25.16 STREET ACCESS PERMIT

### 25.16.1 Description

A street access permit allows for review of proposed cuts to curbing or pavement within a public right-of-way to provide access to a property.

### 25.16.2 Initiation

The applicant for a street access permit shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.16.3 Applicability

A street access permit is required prior to the construction or alteration (e.g. changes to grade, length or width) of any driveway, entrance, exit or approach within the right-of-way of any city street, including temporary driveways, except when the driveway or its alteration is approved as part of a subdivision or site plan approved by the Planning Board or Minor Project Review Committee.

### 25.16.4 Authority

- A. Administrative Review.** The City Engineer, or their designee, shall have the authority to review and decide on street access permit applications for single-family or two-family residential properties, single-family shared access, single-family or two-family residential second street access, agricultural street access, or temporary street access.
- B. Planning Board.** The Planning Board shall have the authority to review, and approve or disapprove all street access applications for multi-family, industrial, and commercial street access.

### 25.16.5 Submittal Requirements

An applicant for a street access permit shall submit a completed application on the appropriate form to the Community Development Department. A completed street access permit application shall include the following information.

- A.** A written narrative describing the location, purpose, and reason for the proposed cut(s) to

curbing or pavement within the public right-of-way.

- B.** A plot plan drawn to scale depicting the location and dimensions of the proposed cuts to curbs or pavement within the public right-of-way in relation to the lot it provides access to, as well as the adjacent roads and sidewalks, existing or proposed drainage features (e.g. catch basins), visual obstructions (e.g. telephone poles), and other similar site features.
- C.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.
- D.** Such other material and information as may be required by the City Engineer or Community Development Director, or their respective designees, to determine conformance with this LDC.

### 25.16.6 Procedure

#### A. Administrative Review

- 1. Staff Determination of Application Completeness.** Within 10 business days, the City Engineer, or their designee, shall complete an initial review of the application to evaluate whether the application is complete.
  - a.** Applications that do not have sufficient information to determine compliance with **Section 25.16** and the Street Access Standards in **Article 22** of this LDC, shall be returned to the applicant.
- 2. Compliance with Zoning.** Applications requiring the granting of a variance, special exception or other approval from the Zoning Board of Adjustment shall not be approved until such approvals have been obtained.
- 3. Notice of Decision.** Within 20 business days of receipt of a completed application for administrative review, the City Engineer, or their designee, shall complete review of the application, in consultation with other City departments as appropriate, and will approve, approve with conditions, or

disapprove the application.

- a. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial.

## B. Planning Board Review

### 1. Staff Determination of Application

**Completeness.** Upon receipt of a street access permit application, the Community Development Director, or their designee, shall complete an initial review of the application to evaluate whether the submittal requirements have been met.

- a. If the missing application materials or information are necessary for proper documentation, but are not central to the initial departmental review, the applicant will be permitted to provide the required materials or information by the revision deadline of 14 calendar days prior to the corresponding Planning Board meeting date.
2. Once the Community Development Director, or their designee, has made an initial determination that an application is complete, copies of the application and associated materials shall be sent to the City Engineer and the Planning Board for initial review at least 15 business days prior to the corresponding Planning Board meeting date at which the application will be reviewed.
3. **Site Visits.** At the discretion of the Community Development Director or the Chair of the Planning Board, a formal site visit to the subject property may be scheduled prior to the Planning Board meeting on the application.
4. **Board Determination of Application Completeness.** The Planning Board shall vote to determine whether the application is complete prior to deliberating on the application.
  - a. The Planning Board shall consider advice from the Community

Development Director, or their designee, in reaching a determination as to whether an applicant has provided sufficient information to deem the application complete.

- b. If the Planning Board determines that an application is incomplete, the Committee will either issue a written decision of incompleteness or, with the applicant's consent, table the application until the next regular meeting of the Board.

5. **Board Review of Application.** Upon reaching a finding that an application is complete, the Planning Board may review the application.

- a. The Planning Board shall evaluate the application based upon the evidence presented by the applicant and consultation with the City Engineer, pursuant to the Street Access Standards in **Article 22** of this LDC.

6. **Decision.** The Planning Board shall finish its review of an application within 65 calendar days of the meeting at which the Board accepted the application as being complete. If the Planning Board feels that more time is needed, or if the applicant requests additional time, the timeframe provided for review can be extended by mutual agreement of the Committee and the applicant, so long as the applicant submits a request for the extension in writing.

### 25.16.7 Approval Standards

All applications for a street access permit shall be evaluated for compliance with the Street Access Standards in **Article 22**.

### 25.16.8 Expiration

A street access permit shall specify the date upon which it expires. Such expiration date shall not exceed 2-years from the date of permit issuance; provided, however, that street access constructed prior to this expiration date, and in conformance with this LDC, shall no longer be subject to the expiration date.

### 25.16.9 Exceptions to Street Access Standards

**A.** Requests for exceptions to the Street Access Standards in **Article 22**, shall be made in writing to the appropriate decision-making authority. The process for review and approval of an exception request shall be as follows.

- 1.** An applicant seeking an exception request to the Street Access Standards in **Article 22**, shall follow the same submittal requirements for a street access permit, and shall submit:
  - a.** A notarized list of abutters, which shall include all owners of property that directly abuts and/or is across the street or stream from the subject parcel and all owners of property located within 200-ft of the subject property. This notarized list shall include the name and mailing address of the property owner, the property street address, and the tax map parcel number for each affected property.
  - b.** 2 sets of mailing labels for each abutter, including the owner of the subject property and their authorized agent.
  - c.** Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances, including the costs for published and mailed notice, which shall be Certified Mail.

**B.** In determining whether to approve or disapprove an exception request, the appropriate decision-making authority shall evaluate the exception request using the following criteria.

- 1.** Issuance of the exception will not adversely affect the safety of pedestrians, bicyclists and vehicles using adjacent streets and intersections.
- 2.** Issuance of the exception does not adversely affect the efficiency and capacity of the street or intersection.
- 3.** There are unique characteristics of the land or property that present a physical hardship

to the requestor.

- 4.** In no case shall financial hardship be used to justify the granting of the exception.
- C.** Within 10 business days of the receipt of a written request for an exception as provided above, the appropriate decision-making authority shall mail notice to abutting property owners of the requested exception. Such notice shall include the address of the request and the standard(s) to which an exception is requested. The notice shall instruct potentially affected property owners to submit comments in writing to the issuing authority.
- D.** The appropriate decision-making authority shall wait a minimum of 10-business days following the issuance of abutter notification before making a final determination on the requested exception.
- E.** If, after reviewing all submitted comments, the appropriate decision-making authority finds that the applicant has met all exception criteria the requested exception shall be granted. Otherwise, the requested exception shall be denied.

# 25.17 FLOODPLAIN DEVELOPMENT PERMIT

## 25.17.1 Description

Floodplain development permit review is a process to ensure that any activities occurring within high hazard flood areas and the 100-year floodplain will not adversely impact the full function and capacity of this essential resource system.

## 25.17.2 Initiation

The applicant for a floodplain permit shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

## 25.17.3 Applicability

A floodplain permit is required for any proposed construction or substantial improvement within the floodway or Special Flood Hazard Area in the City in accordance with the Floodplain Regulations in **Article 23.**

## 25.17.4 Authority

The Floodplain Administrator, or their designee, shall have the authority to review and decide on applications for a floodplain development permit.

## 25.17.5 Submittal Requirements

An applicant for a floodplain development permit shall submit a completed application on the appropriate form to the Community Development Department and shall provide sufficient information to enable City staff to evaluate the proposal for compliance with this LDC. A completed floodplain development permit application shall including the following.

- A.** A location map of the property subject to review that is sufficient to accurately locate the proposed work in relation to existing roads and waterbodies.
- B.** A written narrative describing the type, scope and scale of the proposal, including the following information.
  - 1.** A description of the proposed development and the use or occupancy for which the proposed development is intended.
- 2.** Calculations and diagrams prepared by a NH licensed engineer that demonstrate compliance with compensatory storage requirements of the Floodplain Regulations in **Article 23** of this LDC.
- 3.** The height of seasonal high ground water.
- 4.** If the proposal involves work on an existing structure, a description of the total costs of the proposed work including all materials and labor.
- C.** A proposed condition plan (3 copies on 22-in by 34-in sized paper) certified by a NH licensed surveyor that identify the proposed construction, the property boundaries, the boundaries of special flood hazard areas, the base flood elevation, and existing and proposed contours at 1-ft intervals.
- D.** Submission of either a high intensity soil survey completed by a NH certified soil scientist, or wetland delineation completed by a NH certified wetland scientist demonstrating that there are no wetlands within any proposed fill area.
- E.** Certification by a NH licensed engineer that any proposed fill is free of hazardous or toxic substances.
- F.** If the proposal requires floodproofing, a certification by a NH licensed engineer or architect, that the design and methods of construction are in accordance with accepted standards for meeting the provisions of the Floodplain Regulations in **Article 23** of this LDC and the National Flood Insurance Program.
- G.** If the application proposes encroachment into a regulatory floodway, a Flood Study shall be completed and certified by a NH licensed engineer.
- H.** In Zone A, proposed developments either greater than 50-lots or greater than 5-acres, shall establish the base flood elevation(s) for the area subject to review, and shall include any data

(e.g. hydraulic and hydrologic analyses) used to determine the elevation(s).

- I. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.
- J. Other material and information as may be required by the Floodplain Administrator to determine conformance with this LDC.

### 25.17.6 Submittal Requirement Exemptions

An applicant may make a request to the Floodplain Administrator, or their designee, to exempt their application from specific submittal requirements. The Floodplain Administrator, or their designee, shall have the authority to approve such exemption requests, based on the nature and scope of the proposal.

### 25.17.7 Procedure

#### A. Determination of Application Completeness

- 1. The Floodplain Administrator shall review all floodplain development permit applications for completeness, and coordinate with the applicant for corrections or further documentation, as needed.
- 2. The Floodplain Administrator may require technical review of the application by a third-party at the applicant's expense.

#### B. Departmental Review

The Community Development Director, or their designee, and the City Engineer shall be notified in writing of each floodplain development permit application and shall be given an opportunity to share comment on the application with the Floodplain Administrator within 5 business days following receipt of the application.

#### C. Notice of Decision

- 1. Within 30 calendar days of receipt of a completed application, the Floodplain Administrator, or their designee, shall complete review of the application, in consultation with other City departments as

appropriate, and will approve, approve with conditions, or disapprove the application.

- 2. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial.
- 3. The Floodplain Administrator, or their designee, shall also provide the Community Development Department and the Public Works Department with written notification of the final decision regarding each floodplain development application.
- 4. For conditional approvals, the Floodplain Administrator, or their designee, may establish dates by which conditions of approval shall be met.

### 25.17.8 Filing

- A. Building permits for any construction or substantial improvement within a special flood hazard area shall not be issued unless a floodplain development permit has been issued.
- B. If the floodplain development permit requires compensatory storage, the applicant shall provide written certification from a NH licensed engineer at the completion of the project that the required compensatory storage has been provided so as to ensure no net loss of flood storage.
- C. Following completion of new construction of a structure or an existing structure that was substantially improved or replaced, or that incurred substantial damage, or the placement or substantial improvement of a manufactured home, the applicant shall submit the following to the Floodplain Administrator for review and approval.
  - 1. A completed and certified copy of an Elevation Certificate that includes the as-built elevation of the lowest floor of the structure and whether or not the structure has a basement.
  - 2. If a non-residential structure includes dry floodproofing, a completed and certified

copy of the Floodproofing Certificate for Non-Residential Structures that includes the as-built elevation to which the structure was dry floodproofed and certification of floodproofing.

### 25.17.9 Approval Standards

All applications for a floodplain development permit shall be evaluated for compliance with the Floodplain Regulations in **Article 23.**

### 25.17.10 Security

The Floodplain Administrator may require security be submitted as part of the issuance of any floodplain development permit to ensure the submittal of an “As-Built” plan of the pre- and post-construction contours of the site, and the location, dimensions and contours of any compensatory flood storage areas, as well as to secure any other improvements or performance standards (e.g. sediment and erosion control).

### 25.17.11 Expirations

- A.** A floodplain development permit shall become invalid 1-year from the day it is granted, unless all required permits have been obtained, conditions of approval have been met, and at least 10% of the proposed fill has been placed on the site, or by some other objective measure, which in the judgment of the Floodplain Administrator, demonstrates that substantial construction has begun.
- B.** The applicant shall submit evidence that all necessary state, federal, or local permits have been obtained to the Floodplain Administrator, or their designee, prior to the expiration date of the floodplain development permit.
- C.** Expiration of a building permit or site plan approval shall result in the automatic expiration of the floodplain development permit.



## 25.18 SIGN PERMIT

### 25.18.1 Description

A sign permit allows for signs to be erected, installed, reconstructed, altered or relocated in conformance with this LDC and all other applicable regulations.

### 25.18.2 Initiation

The applicant for a sign permit shall either own the fee simple interest in the property(s) that are the subject of the review or have written permission of the fee simple owner.

### 25.18.3 Authority

The Zoning Administrator, or their designee, shall have the authority to review and decide on applications for a sign permit.

### 25.18.4 Submittal Requirements

An applicant for a sign permit shall submit a completed application on the appropriate form to the Community Development Department. A completed sign permit application shall include the following.

- A.** The name and contact information of the sign contractor, if applicable.
- B.** The location and street address of the building, structure or lot to which, or upon which, the sign or sign structure is to be constructed, erected, replaced, altered, or attached.
- C.** A written narrative describing the type, scale, and placement location of the proposed sign or sign structure, including the following information.
  - 1.** The lineal footage of the building frontage to which, or upon which, the sign is proposed to be attached or altered; or the total linear feet of site frontage upon which any freestanding sign is proposed to be constructed, erected, replaced, or altered.
  - 2.** A description of the materials and colors proposed to be used for the proposed sign and sign structure.
  - 3.** A description or depiction of the size and font of the proposed sign copy.
- D.** A scaled drawing of the sign, sign structure, and building as they would appear in relation to each other, and other signage on the property, including a depiction or description of the number and total area of all existing signs on the property, and a photograph of existing building elevations with signage, preferably as an electronic file.
- E.** For signs equal to or less than 4-sf, a photograph or reasonable facsimile of the sign proposed to be installed.
- F.** For signs greater than 4-sf, a plan drawn to scale depicting the sign or sign structure as well as technical specifications pertaining to the method of construction and method of attachment or erection of the sign or sign structure.
- G.** For any sign or sign structure greater than 100-sf, certification by a NH licensed engineer of proper design.
- H.** Calculations demonstrating that the sign structure is designed to carry all loads in compliance with the state building code and any other applicable regulations.
- I.** A description or depiction of the method of illumination (if applicable), including but not limited to a description of the electrical wiring for the illuminated sign.
- J.** A depiction of all above-ground utilities that will be within 8-ft of any portion of the sign or sign structure.
- K.** Written documentation demonstrating that the owner or authorized representative has provided notice of any excavation related to the construction, erection, replacement, alteration, or attachment of a sign or sign structure to all applicable public utilities in accordance with state law.

- L. Electrical or other technical specifications or diagrams as may be reasonably required by the Zoning Administrator or their designee.
- M. Application fee as set forth in the LDC Schedule of Fees in Appendix B of the City Code of Ordinances.
- N. Such other material and information as may be required by the Zoning Administrator, or their designee to verify compliance with this LDC.

permit fee.

### 25.18.7 Expiration

The work authorized under a sign permit shall commence within 6-months after the date of issuance, or the permit shall become null and void.

### 25.18.5 Submittal Requirement Exemptions

An applicant may make a request to the Zoning Administrator, or their designee, to exempt their application from specific submittal requirements, in accordance with **Section 25.2.2.D** of this LDC. The Zoning Administrator, or their designee, shall have the authority to approve such exemption requests, based on the nature and scope of the proposal.

### 25.18.6 Procedure

#### A. Determination of Application Completeness

The Zoning Administrator, or their designee, shall review all sign permit applications for completeness, and coordinate with the applicant for corrections or further documentation, as needed.

#### B. Notice of Decision

Within 21 business days of receipt of a completed application, the Zoning Administrator, or their designee, shall complete review of the application, in consultation with other City departments as appropriate, and will either approve, approve with conditions, or disapprove the application.

1. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial.
2. For conditional approvals, the Zoning Administrator, or their designee, may establish dates by which conditions of approval shall be met.
3. If a sign permit application is approved, a sign permit shall be issued and forwarded to the applicant upon payment of the

## 25.19 EARTH EXCAVATION PERMIT

### 25.19.1 Description

An earth excavation permit allows a process to facilitate safe and reasonable opportunities for the excavation of earth materials from land within the City in conformance with the Earth Excavation Regulations in **Article 24** of this LDC and the requirements of NH RSA 155-E.

### 25.19.2 Initiation

The applicant for an earth excavation permit shall either own the fee simple interest in the property(s) that is the subject of the review or have written permission of the fee simple owner.

### 25.19.3 Authority

The Planning Board shall have the authority to review and decide on applications for an earth excavation permit.

### 25.19.4 Submittal Requirements

An applicant for an earth excavation permit shall submit a completed application on the appropriate form to the Community Development Department. A completed application for an earth excavation permit shall include all of the following information.

- A.** The name and contact information of the person or entity that will be performing the excavation.
- B.** A written narrative describing the type, scale, and nature of the proposed excavation site, including the following information:
  - 1.** The location, boundaries and zoning district(s) of the proposed excavation parcel(s) and site, including the municipalities and counties in which the project lies.
  - 2.** The type(s) of earth material to be excavated and the methods to be employed to excavate, process, and transport the earth materials.
  - 3.** The expected duration of the entire excavation project, and whether the excavation project will include more than

one non-contiguous excavation area, each of which would constitute an excavation phase.

- a.** A separate excavation permit application shall be required for each non-contiguous excavation area.
- 4.** The number of acres of the excavation area and the excavation perimeter under consideration for the earth excavation permit (hereinafter “current permit phase”).
- 5.** The volume of earth material to be removed per year from the excavation area during the current permit phase and the proposed time schedule for the current permit phase, including a timeframe for completing incremental reclamation.
- 6.** A description of the maximum breadth, depth, and slope of the excavation area for the current permit phase.
- 7.** The location of the access driveway for the current permit phase and a description of any existing visual barriers between the excavation perimeter and the public highway to be utilized to access the site.
- 8.** The elevation of the estimated highest annual average groundwater table within or adjacent to the proposed excavation area and an indication of whether the excavation will occur at depths below this level.
  - a.** If the applicant proposes to excavate bedrock, they shall provide the elevation of the estimated highest annual average groundwater table for both the overburden and the bedrock.
- 9.** Proposed methods of disposal of boulders, stumps, vegetation and other debris.
- 10.** Proposed methods for controlling storm water, drainage, erosion, and sedimentation during the excavation project.
- 11.** The means by which the applicant shall avoid and/or mitigate adverse impacts caused by dust, noise, and traffic at the site.
- 12.** Precautions to be taken by the applicant to protect the safety and welfare of persons on

the site.

- 13.** The proposed method for handling, transporting, and disposing of fuel and/or chemicals on the site.
  - 14.** The means by which earth materials are proposed to be transported from the excavation site, and the proposed load limits and maximum number of vehicle trips per day.
  - 15.** A general description of the extent to which blasting will be used to excavate earth materials and the name and classification of any explosive substances that may be used at the excavation site over the course of the excavation project.
  - 16.** Any other descriptive information that the Planning Board may reasonably deem necessary to determine compliance with NH RSA 155-E, the Earth Excavation Regulations in **Article 24**, and this LDC.
- C.** Photographs of the excavation site showing at least the following vantage points, each of which shall be indicated on the site plan map.
- 1.** The proposed excavation area(s).
  - 2.** Areas within the proposed excavation perimeter where processing and stockpiling of earth material will occur.
  - 3.** The area where the proposed access driveway will be located, including the point where the access driveway meets the public right-of-way.
  - 4.** At least 2 vantage points along public rights-of-way abutting the excavation parcel(s), to show the existing visual barriers, vegetation and screening of the excavation site.
- D.** Plan sets which shall contain at least the following information.
- 1.** A locus map depicting the location of the proposed excavation site within the boundaries of the City and all state numbered highways in the City.
  - 2.** A phasing plan at a scale of 1-in = 500-ft or other scale as the Community Development Director may reasonably deem necessary, showing an outline of the location of each excavation area and corresponding excavation perimeter for each phase of the excavation project.
    - a.** Notes shall be placed on the plan labeling the excavation area and corresponding excavation perimeter for each phase of the excavation project, indicating the approximate dates and duration of each phase, and the number of acres comprising the excavation area and the excavation perimeter for each phase, and the estimated volume of earth material to be excavated in each phase.
  - 3.** A context map of the excavation site, at a scale of 1-in = 500-ft or other scale as the Community Development Director may reasonably deem necessary, showing the proposed excavation area and excavation perimeter that will be used during the current permit phase, and depicting all of the following information within a 1-mile radius of the excavation perimeter, unless otherwise specified.
    - a.** Contours at 25-ft intervals, surface water resources, city streets (labeled), state highways, property lines (with parcels labeled to indicate primary land use), and all structures and buildings.
    - b.** Zoning district boundaries with each district clearly labeled.
    - c.** The location of any public water supplies, primary and secondary wellhead protection areas for municipal wells, groundwater aquifers, and potential future municipal wells and surface water resource areas identified in the City of Keene Water Resources Plan, and any updated water resource or aquifer information as shown on the City of Keene GIS system.

- d. The boundaries of View Area 1 and View Area 2 of the City's View Preservation Overlay as defined in **Article 13**.
  - e. The boundary lines of the excavation parcel(s) with the excavation perimeter highlighted.
  - f. Approximate location of all private wells within 1-mile of the excavation area.
  - g. Lot lines, abutter names and tax map parcel numbers of all properties abutting the excavation site.
  - h. Any other information that the Planning Board may reasonably deem necessary to determine compliance with NH RSA 155-E, the Earth Excavation Regulations in **Article 24**, and this LDC.
4. A detailed existing conditions map at a scale of 1-in = 50-ft or other scale as the Community Development Director may reasonably deem necessary, showing the proposed excavation area and excavation perimeter for the current permit phase, and depicting all of the following information within the excavation perimeter and within a 500-ft radius beyond the excavation perimeter.
- a. Contours of at most 2-ft intervals showing existing topography and drainage patterns.
  - b. Surface waters, rock outcroppings, and important habitat.
    - i. All wetland areas located within a 300-ft radius surrounding the excavation perimeter shall be delineated by a wetlands scientist certified by the State of New Hampshire.
  - c. Public streets and rights-of-way, lot lines, abutter names, and tax map parcel number(s) of all abutting properties within the 300-ft radius surrounding the excavation perimeter.
- d. Location of existing wooded and vegetated areas.
    - i. Areas that have been logged within 10-years prior to the application date shall be identified as such on the plan, with a notation indicating the month and year of the cut.
  - e. Location of buildings, structures, power lines and other utilities, wells, septic systems, private roads or driveways, stonewalls, cellar holes, cemeteries, easements, and rights-of-way.
    - i. Septic systems, stonewalls, cellar holes, cemeteries, easements and rights of way located outside of the excavation parcels do not need to be shown on the map.
  - f. An outline of the proposed excavation area, excavation perimeter, and access driveway.
5. A detailed excavation site map drawn at a scale of 1-in = 50-ft or other scale as the Community Development Director may reasonably deem necessary, focusing on the area within the proposed excavation perimeter to be used during the current permit phase and showing the following information.
- a. Contours of at most 2-ft intervals showing existing topography and drainage patterns.
  - b. Surface waters.
  - c. The location of and proposed number of acres within the excavation perimeter and the excavation area, and the volume of earth material to be removed per year from the excavation area during the permit period.
  - d. The location, breadth, depth, and slope of all sidewalls within the proposed excavation area.
  - e. Locations of proposed buildings, structures, accessory facilities/activities,

- safety fencing, processing areas, and material stockpiling areas within the excavation perimeter, including designated fuel storage, refueling, and equipment maintenance areas.
- f.** Proposed locations of and provisions for vehicular traffic, parking areas, access and service driveways, including design and materials to be used for constructing said areas and driveways, truck flow on site, and any proposed traffic controls for site entrance and exit.
  - g.** The location of proposed topsoil stockpiling areas, with a note describing methods for stabilizing these soils and preventing erosion and sedimentation of runoff.
  - h.** Location and types of proposed water storage areas for water to be used to support excavation operations, and drainage and storm water management structures and devices.
  - i.** Location, height, type and materials of existing and proposed visual and sound barriers on the excavation site.
  - j.** Location and nature of proposed dust control structures, devices and processes.
  - k.** Any additional information that the Planning Board may reasonably deem necessary to determine compliance with NH RSA 155-E, the Earth Excavation Regulations in **Article 24** and this LDC.
- 6.** A detailed erosion control, sedimentation and drainage management plan that will be implemented to control runoff volume, velocity and water quality during the current permit phase. This plan shall be drawn at a scale of 1-in = 50-ft or other scale as the Community Development Director may reasonably deem necessary, showing the following information within the proposed excavation perimeter to be used during the current permit phase.
- a.** Contours of at most 2-ft intervals showing existing topography and drainage patterns.
  - b.** Surface waters.
  - c.** The location of the excavation area, the excavation perimeter, and the access driveway.
  - d.** The location and type of all earth stockpiles areas.
  - e.** The proposed grading and drainage pattern within the excavation perimeter.
  - f.** The location(s) and design details for all proposed erosion control, sediment control, and water and drainage management structures, devices, and processes including but not limited to:
    - i.** Water detention ponds;
    - ii.** Sediment settlement areas;
    - iii.** Silt fences and other erosion control devices;
    - iv.** Flow dissipation measures;
    - v.** Soil stabilization measures;
    - vi.** Water storage ponds to be used to support operations; and,
    - vii.** Any other measures necessary to minimize erosion and sedimentation, and promote soil stabilization.
  - g.** A note describing the procedures and timing for inspecting, maintaining, and repairing erosion control, sedimentation control, and water and drainage management structures, devices and processes.
  - h.** A note indicating the requirement for documenting in a log all inspection and maintenance activities, all adverse impacts identified during inspections, and actions taken to remediate the

adverse impacts.

7. A detailed impact control and monitoring plan for avoiding, identifying, and responding to adverse impacts associated with the excavation operations. This plan shall propose structures, devices, and processes for avoiding potential adverse impacts. The plan shall also provide protocols to be used for documenting baseline conditions, conducting monitoring for adverse impacts, responding to and/or correcting adverse impacts when they are identified, and for documenting monitoring activities, adverse impacts that occur, and how the adverse impacts were corrected. Potential impacts to be addressed in this plan shall include noise, dust, reduction of groundwater quantity and quality, spills of toxic or hazardous materials, blasting and pollution of surface and ground water.
  - a. A noise impact control and monitoring plan, which shall include at least the following.
    - i. The location and design of structures, devices, and processes to be installed on the site to avoid, control, and minimize adverse noise levels from leaving the excavation site.
    - ii. A protocol for conducting monitoring of sound levels and complying with the earth excavation regulations in **Article 24** of this LDC. Said protocol shall include at least: proposed locations for measuring background ambient sound levels and for monitoring sound levels once the excavation operation has commenced; proposed dates for measuring ambient sound levels; proposed annual time periods when sound monitoring will be conducted; and, specifications for sound measurement equipment to be used.
    - iii. A protocol for responding to noise complaints, complying with the earth excavation regulations in **Article 24** of this LDC.
  - b. A dust control and monitoring plan, which shall include at least the following.
    - i. The location and design of structures, devices and processes to be installed, maintained and/or implemented to control air borne dust, and/or transportation of dirt and mud by vehicles exiting the site.
    - ii. A protocol for inspecting structures, devices, and processes to determine if maintenance of same is necessary and/or to determine if and when control and abatement processes should be implemented.
  - c. A groundwater level monitoring plan, which shall include at least the following.
    - i. The location and depth of all ground water monitoring wells and the seasonal high groundwater depth at each well.
    - ii. A protocol for monitoring the effect of the excavation operations on ground water levels to prevent dewatering of surface waters, wetlands, public and private wells or water supplies, and groundwater aquifers, including bedrock aquifers. Such a plan is only required for those projects proposing to excavate below the overburden seasonal high groundwater level.
    - iii. A response plan for providing an immediate replacement water supply for any public or private water supplies that are disrupted as a result of the excavation operations.

- d. A hazardous and toxic spill response plan, which shall include at least the following.
  - i. A list of all hazardous and toxic substances to be used or stored on the site.
  - ii. A protocol for containing and abating spills when they occur and for remediating and restoring areas impacted by spills.
- e. A plan for monitoring and remediating adverse impacts to surface or ground water quality caused by the excavation operation
- 8. A reclamation plan providing an overview of the long-term reclamation objectives for the excavation project and a detailed reclamation plan for the current excavation phase. Said plans shall contain the following information.
  - a. A description, if known or anticipated, of proposed future land use on the excavation site after completion of the excavation project. In this description, the applicant shall demonstrate that the proposed future land use is consistent with the Zoning Regulations (**Articles 2 through 18** of this LDC) and City's Comprehensive Master Plan. If no future land use is known or anticipated at the time of application, the reclamation plan shall reflect a return to natural vegetated condition similar to the pre-excavation condition.
  - b. A detailed narrative description of the process and schedule for reclamation, including specifications of proposed soil conditioning, seeding and mulching methods, and the quantities, sizes, and types of plant materials to be used in reclaiming the site.
  - c. A detailed description of the means by which the applicant intends to remediate the adverse impacts to soils, drainage systems, surface water, ground water, vegetation, overburden, topography, and fill materials.
- d. A map of the excavation perimeter drawn at a scale of 1-in = 50-ft, or other scale as the Community Development Director may reasonably deem necessary, depicting the following information.
  - i. Boundaries of the area to be reclaimed.
  - ii. Final topography of the reclaimed area showing at most 2-ft contour intervals.
  - iii. Final surface drainage pattern including the location and physical characteristics of all existing, modified and/or constructed drainage structures.
  - iv. Locations of buildings, structures, and/or fences, proposed to remain on the site after reclamation.
  - v. Locations, types and sizes of all proposed landscaping to be planted as part of the reclamation plan.
- 9. A written estimate of the all reclamation costs associated with the current permit phase.
- E. Supporting analysis, as set forth below, unless otherwise indicated.
  - 1. **Soils Analysis.** This analysis shall focus on land within the excavation perimeter, and shall include at least the following.
    - a. An analysis of soils maps as shown in the Cheshire County Soil Survey, identifying the location of hydrologic soils grouped in class A or B and identifying the location of any soils or topographic conditions that are susceptible to erosion.
    - b. The location and logs for all soil test pits and/or borings made on the site in preparing the earth excavation permit



application.

**2. Hydrologic/Geologic Analysis.** This analysis shall be required for all excavation projects that propose depths below the seasonal high ground water table in either the overburden or the bedrock. This analysis shall include at least the following.

- a. The seasonal high ground water table elevations in the proposed excavation area as determined by digging test pits and/or installing monitoring wells.
- b. The location of public and private wells within one-half (1/2) mile of the proposed excavation area.
- c. The location of all surface water bodies and wetlands within 300-ft of the excavation perimeter.
- d. A baseline water depth or elevation for all wells, and surface water bodies identified above.
- e. The results of a 72-hour constant discharge pump test.

**3. Traffic Analysis.** This analysis shall identify the impacts on road safety and capacity as a result of the excavation operation. This analysis shall include at least the following information.

- a. A description of the proposed truck travel route along any City streets to be used between a State Numbered Highway and the excavation access driveway.
- b. The estimated annual, weekly, daily and peak hour vehicle trips to and from the excavation site for all trucks used for transporting earth materials and for all vehicles including, but not limited to, personal vehicles of employees, agents, representatives, and customers.
- c. The proposed maximum number of vehicle trips per day for all vehicles accessing the site, and the proposed maximum number of trips per day for

all trucks used for transporting earth materials and equipment.

**d.** In the event the estimated number of vehicle trips per day for all vehicles exceeds 100 vehicle trips, the applicant shall provide a complete traffic study, which shall include at least the following.

- i. Daily and peak hour traffic counts for all streets included along the proposed travel route.
- ii. An estimate of the volume distribution for vehicles entering and leaving the excavation site.
- iii. A level of service analysis for all intersections that may be impacted by the excavation operation.
- iv. An accident analysis for all road segments and intersections that may be impacted by the excavation operation.

**4. View Preservation Analysis.** All applicants for an earth excavation permit who propose to locate the excavation site within View Area 1 or View Area 2 of the View Preservation Overlay as defined in the **Article 13** of this LDC, shall submit a visual analysis demonstrating the extent to which the excavation operation will be visible from any public right-of-way, abutting property, or prominent overlook not located on the excavation site. This analysis may include a combination of photographs, elevations, and cross sections to demonstrate the extent of the visual impact.

**5. Analysis of Important Habitat.** All applicants for an earth excavation permit shall provide an environmental review of the excavation site obtained from the NH Natural Heritage Bureau, to determine if any lands within the excavation site are listed in the NH Natural Heritage Database as containing rare, endangered or threatened species, species of special concern, or exemplary natural communities.

- a.** If lands within the analysis area are included in the NH Natural Heritage Database, a natural resource inventory for both vegetation and wildlife shall be completed by a forest ecologist, wildlife biologist, or other qualified professional, to verify the presence and/or significance of the important habitat and to determine whether the excavation will cause an adverse impact, degradation, or fragmentation of said important habitat.

**6. Miscellaneous Information.** Applicants for an earth excavation permit shall provide to the Planning Board any and all additional information that the Board may reasonably deem necessary in order to complete a site-specific review of the excavation site and to determine whether the proposed excavation complies with NH RSA 155-E, the Earth Excavation Regulations in **Article 24** of this LDC.

### 25.19.5 Submittal Requirement Exemptions

An applicant for an Earth Excavation permit may request the Community Development Director, or their designee, to exempt their application from any of the submission requirements referenced in **Section 25.19**.

- A.** Requests for exemption shall be made to the Community Development Director in writing prior to the submission of a completed application and shall include an explanation of why the specified information is not relevant to the Planning Board's determination whether the applicant complies with NH RSA 155-E, the

Earth Excavation Regulations in **Article 24** of this LDC.

- 7.** The Community Development Director, or their designee, may grant an exemption of the submittal requirements if they find that the information is not relevant to the Planning Board's determination of whether the applicant complies with NH RSA 155-E and the Earth Excavation Regulations in **Article 24** of this LDC. Factors to consider in determining whether to grant an exemption include consideration of the size, scale, scope, and nature of the proposed excavation project.
- 8.** Any exemption granted by the Community Development Director, or their designee, must be confirmed by the Planning Board during its completeness review of the application. The Board may consult City staff and/or a consultant retained by the Board in accordance with **Section 25.19.7**, prior to confirmation. If the Planning Board deems the information relevant to its decision on the merits of the application, then the applicant shall provide said information prior to the Planning Board making a finding that the application is complete.

### 25.19.6 Application Submittal Deadline

A completed earth excavation permit application shall be submitted to the Community Development Director, or their designee, no later than 26 business days prior to the Planning Board meeting date at which the applicant desires the application to be reviewed.

### 25.19.7 Procedure

In addition to the common application and review procedures of this Article, the following review and approval procedures shall apply to applications for Earth Excavation Permits.

- A. Presubmission Meeting.** Applicants for earth excavation permits shall attend a presubmission meeting at least 2-weeks prior to the Planning Board submittal deadline.

- A. Hiring of Consultant.** Upon receipt of a completed Earth Excavation Permit application, the Planning Board shall retain a consultant, at the expense of the applicant, for the purpose of reviewing the application for completeness and compliance with NH RSA 155-E and the Earth Excavation Regulations in **Article 24** of this LDC. This consultant shall review all aspects of the submittal.
- B. Joint Meeting.** A joint meeting may be held with the applicant, the consultant, and City staff to review and discuss the proposed excavation project and application materials. The applicant shall submit any revisions to the proposed excavation project that result from this meeting to the consultant for review.
- C. Consultant Recommendation.** Upon completion of its review, the consultant shall provide recommendations to the Planning Board including, but not limited to, the following.
1. The extent to which the submitted information enables the Planning Board to find that the application is complete.
  2. A list of any additional information that the Planning Board should request from the applicant before finding the application complete.
  3. A list of any previously exempted information that the consultant deems necessary to determine compliance with NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.
  4. Whether the proposed project is a prohibited project as defined in the Earth Excavation Regulations in **Article 24** of this LDC.
  5. The extent to which the proposed project complies with the operational standards and reclamation standards set forth in the Earth Excavation Regulations.
  6. The extent to which the proposed project complies with the permit standards set forth in **Section 25.19** of this LDC.
  7. The extent to which any requested waivers or exceptions, and proposed alternative standards, meet the Planning Board's criteria for granting waivers and exceptions.
- 8.** A list of possible conditions of approval or modifications to the excavation project that would bring the project into compliance with NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.
- D. Compliance with Zoning.** Applications requiring approval from the Zoning Board of Adjustment shall not be noticed for public hearing until such approvals have been obtained.
- E. Board Determination of Application Completeness.** Upon receipt of the consultant's recommendations and upon receipt of any additional information or modifications made by the applicant, the Community Development Director, or their designee, shall forward an application for an earth excavation permit to the Planning Board for a determination of completeness, and shall provide published and mailed notice of this agenda item pursuant to NH RSA 675:7(I).
- F. Conservation Commission Review.** Upon finding a determination of completeness, the application and any associated materials shall be forwarded to the City of Keene Conservation Commission for review and comment. The Conservation Commission may provide written comment to the Planning Board prior to the closing of the public hearing on the application.
- G. Public Hearing.** Within 30 calendar days of a determination of completeness, the Planning Board shall hold a public hearing in accordance with NH RSA 155-E-7.
- H. Decision.** Within 20 calendar days following the closing of the public hearing, the Planning Board shall approve, approve with conditions, or disapprove of the application. Notice of the decision shall be provided to the applicant in writing.

### 25.19.8 Filing

- A. Earth excavation permits shall not be issued until approved plans have been signed by the Chair or Vice Chair of the Planning Board and all applicable fees have been paid by the applicant.
- B. Prior to the signature of the Chair or Vice Chair of the Planning Board on the approved plan, the applicant shall:
  - 1. Demonstrate to the satisfaction of the Community Development Director, or their designee, that all conditions of approval have been met as specified by the Planning Board; and,
  - 2. Provide complete copies of the approved plan set in a number and form as specified by the Community Development Department.

### 25.19.9 Modifications to an Issued Permit

- A. **Major Amendment to an Issued Permit.** When the scope of a permitted excavation project is proposed to be altered so as to affect the size or location of the excavation, the rate of removal or the plan for reclamation, the applicant shall submit an application for amendment of the excavation permit. Such application shall be subject to approval by the Planning Board in the same manner as provided for with an excavation permit.
- B. **Minor Amendment to an Issued Permit.** When an applicant proposes to modify a permitted excavation project and the modification does not affect the size or location of the excavation, the rate of removal, or the plan for reclamation, the applicant shall submit a request for a minor amendment to the Community Development Director, who shall review the request to determine whether the amendment may be approved administratively or whether it should be referred to the Planning Board for its consideration.
  - 1. If the proposed amendment is consistent with any and all conditions of the previously approved permit and the modification will not increase any adverse impacts, then the

minor amendment may be approved by the Community Development Director if they find that the modification complies with NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.

- 2. If the Community Development Director finds that the modification is inconsistent with conditions of the previously approved permit and/or finds that the excavation may increase adverse impacts, then the minor amendment shall be placed on the Planning Board agenda for its consideration and determination.

### 25.19.10 Approval Standards

All applications for an earth excavation permit shall be evaluated for compliance with NH RSA 155-E and the Earth Excavation Regulations in **Article 24** of this LDC.

### 25.19.11 Expirations

- A. Any failure to meet the deadlines in this Section shall result in automatic expiration of Planning Board approval. This Section shall not be waivable.
- B. **Conditional Approvals.** If an application is conditionally approved, the applicant has 180 calendar days (starting the day following the decision of the Planning Board on the application) to meet any conditions that shall be met prior to signature of the Chair or Vice Chair of the Planning Board on the plan, unless an extension of time is requested in writing by the applicant prior to the end of the 180-day period, and said request is granted by the Planning Board.
- C. In the event that substantial construction of the excavation operation has not commenced within 1-year of the issuance of the excavation permit, the excavation permit shall expire, unless an extension of time is requested in writing by the applicant prior to the end of the 1-year period, and said request is granted by the Planning Board.

### 25.19.12 Permit Renewal

If the applicant wishes to continue their excavation project after expiration of the approved permit period, and the applicant does not propose modifications to the size or location of the excavation, the rate of removal, or the plan for reclamation, then the applicant shall submit an application for permit renewal in accordance with the following procedures.

**A.** Renewal applications shall be submitted to the Community Development Department, on forms provided by the Department, at least 6-months prior to the expiration of the approved permit period.

**B.** An application for permit renewal may include proposed amendments, which shall be reviewed in accordance with **Section 25.19.9.**

**1.** When the approved permit period is set to expire and the applicant intends to continue the excavation use beyond the expiration date with a proposed modification to the size or location of the excavation, rate of removal or plan for reclamation, the permit holder shall submit an application to amend an issued permit as specified in **Section 25.19.9.**

**a.** In addition to submittal requirements for the amended permit, the permit holder shall submit a statement of compliance with the application and shall be subject to a site inspection as outlined in **Section 25.19.12.D.**

**C.** A renewal application shall include at least the following information.

**1.** 3-copies of the previously approved plans with a description and diagram of the extent of the area that has been excavated, the volume of earth material removed, and the reclamation that has been completed, if any.

**2.** 7-copies of an updated plan set highlighting the following information.

**a.** The area expected to be excavated during the permit renewal period, the total volume of earth material to be

removed, and the rate of removal.

**b.** Any areas to be reclaimed during the permit renewal period.

**c.** Any proposed changes to the site design or the manner in which operating standards, permit standards, and/or permit conditions will be met during the subsequent permit period.

**3.** 4-copies of a Statement of Compliance summarizing the extent to which the excavation operation complies with NH RSA 155-E, the Earth Excavation Regulations in **Article 24** of this LDC and any conditions of approval associated with current permit period.

**a.** This narrative shall include a discussion of any problems or violations that occurred on the excavation site during the current permit period, an indication of how the applicant remedied the problems or violations, and what actions the applicant proposes to take to avoid or mitigate these problems or violations during the renewal permit period.

**4.** All information relative to any proposed minor amendments included in the renewal application, to evaluate compliance with NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.

**5.** Any other information reasonably deemed necessary by the Community Development Director to determine continued compliance with NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.

**D.** Prior to the approval of a renewal application, the Building and Health Official, or their designee, shall conduct an inspection of the excavation site to determine whether any violations of NH RSA 155-E, the Earth Excavation Regulations in **Article 24** of this LDC, and/or the permit conditions exist.

**E.** When an excavation operation does not have

any existing unresolved permit violations, as determined during the inspection, the renewal application may be approved in accordance with these regulations, by the Community Development Director without a public hearing.

1. If the inspection identifies unresolved permit violations, the renewal application shall be reviewed by the Planning Board at a duly noticed public hearing.

### 25.19.13 Waivers and Exceptions

A. The Planning Board recognizes that the granting of waivers and exceptions may be appropriate and necessary for granting approval of an earth excavation permit application. The Planning Board shall consider the advice of its consultant and City staff in determining whether a requested waiver meets the intent of NH RSA 155-E, and the Earth Excavation Regulations in Article 24 of this LDC.

1. The Planning Board shall have the sole authority to grant a waiver of any specific requirement or standard in Article 24 and Section 25.19 of this LDC. The Planning Board shall also have the sole authority to grant an exception in writing to the standards contained in NH RSA 155-E:4-a (Minimum and Express Operational Standards), NH RSA 155-E:5 (Minimum and Express Reclamation Standards), and NH 155-E:5-a (Incremental Reclamation).

B. Requests for waivers to the regulations and exceptions to statutory standards shall be made in writing and shall be subject to a public hearing. Such waiver or exception requests shall:

1. State specifically which requirements or standards are requested to be waived/excepted;
2. Explain why there is a need for the waiver(s) and/or exceptions(s); and,
3. Propose alternative requirements or standards and shall demonstrate how the alternative requirements or standards cause the proposed excavation operation to comply with the criteria for waivers/

exceptions in this Section and how said alternative requirements and standards meet the intents and purposes of the City of Keene Earth Excavation Master Plan, NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.

C. In no case shall a waiver or exception be granted such that it would cause the permit to be in violation of NH RSA 155-E, and the Earth Excavation Regulations in **Article 24** of this LDC.

D. The Planning Board shall grant said requests for waivers or exceptions upon reaching a finding that the applicant has demonstrated the following, in addition to any additional criteria set forth below.

1. The granting of a waiver/exception will not increase the potential for adverse impacts.
2. The requested waiver/exception is consistent with the purpose and intent of the City of Keene Earth Excavation Master Plan, and the Earth Excavation Regulations in **Article 24** of this LDC.
3. The granting of the requested waiver/exception will not be unduly injurious to public or environmental welfare.
4. The scale; volume; area; design features; siting of earth excavation operations; the nature of the proposed operation; the unique site characteristics including, but not limited, to topography, density of vegetation and/or surrounding land uses; and, the alternative conditions or standards, taken as a whole, will adequately avoid or mitigate the potential for adverse impacts.

E. For waivers and exceptions of setbacks to property boundaries and public rights-of-way, the following criteria shall apply in addition to any other applicable criteria listed in **Section 25.19.13**.

1. Waivers and exceptions of setbacks to property boundaries and public rights of way shall not be granted for operations that include blasting or crushing activities.
2. The Planning Board shall consider the

extent to which property owners abutting the affected setback have provided written consent to the proposed alternative setback.

- F.** For waivers and exceptions to surface water resource setbacks, the applicant shall demonstrate the following in addition to any other applicable criteria listed in **Section 25.19.13.**
- 1.** The proposed activity cannot be located in a manner that avoids an encroachment in the setback.
  - 2.** If the proposed activity cannot be located in a manner to avoid an encroachment in the setback, then all practicable measures have been taken to minimize the encroachment in the setback.
  - 3.** The area of encroachment does not adversely impact the functions and values associated with the setback or the surface water resource. Such demonstration shall include an evaluation of at least the following.
    - a.** The size, character and quality of the affected surface water resource.
    - b.** The nature of the functions and values served by the surface water resource.
    - c.** The nature of the topography, slopes, soils and vegetation in the area that encompasses the surface water resource and the setback.
    - d.** The location and connectivity of the surface water resource in relation to other surface water resources in the surrounding watershed.
    - e.** The use of the setback as wildlife habitat and/or as a wildlife travel corridor.
    - f.** The role of the setback in mitigating soil erosion, sediment and nutrient transport, groundwater recharge, flood storage and flow dispersion.
    - g.** The rate, timing and volume of

stormwater runoff and its potential to influence water quality associated with the affected surface water resource or any associated downstream surface water resources.

- h.** The sensitivity of the surface water resource and the setback to disruption from changes in the grading or vegetation structure in the setback.
- 4.** In cases where the Planning Board grants a waiver of setbacks to surface water resources, the applicant shall be required to document the preexisting character and quality of the water resource prior to initiating site development activities. Such documentation shall serve as baseline information to be used to assess the effectiveness of the approved alternative setback standard.
- G.** Decisions to grant waivers and/or exceptions shall be made in writing stating specifically what standards are to be waived/excepted and what alternative conditions or standards will be required of the applicant. Said decisions may be attached to or incorporated into the Planning Board decision on the earth excavation permit application.
- H.** Prior to ruling on a request for a waiver or exception, the Planning Board shall hold a public hearing in accordance with NH RSA 155-E:7 and the Earth Excavation Regulations in **Article 24** of this LDC.
- I.** The Planning Board's decision on any request for such waiver or exception may be appealed in accordance with NH RSA 155-E:9.

#### **25.19.14 Security**

Prior to the issuance of any earth excavation permit or to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the applicant shall submit security in a form and amount acceptable to the the City Engineer and the Community Development Director to be sufficient to guarantee compliance with the permit.

### 25.19.15 Inspections

- A.** Inspections shall be made for all excavation operations at a frequency not less than annually, including an inspection to be performed in conjunction with evaluating an application for a permit renewal.
  - 1.** Such inspections shall determine if the excavation operation complies with NH RSA 155-E, the Earth Excavation Regulations in **Article 24** of this LDC, the approved plan, and any permit conditions.
- B.** The Building and Health Official, or their designee, may, at their discretion and at the expense of the applicant, contract with a third party agent to conduct inspections of permitted excavation operations.
  - 1.** The inspection shall include a review of all required monitoring logs.
- C.** The Building and Health Official, or its duly authorized agent, shall prepare a report detailing the results of the inspection and any problems or violations identified. Copies of this report shall be provided to the applicant and the Community Development Director, or their designee.



# ARTICLE 28. DEFINED TERMS

**Abandoned/Nonapplicable Sign** - Any sign which advertises or publicizes an activity or business no longer conducted on the premises upon which such sign is maintained or which has been abandoned under circumstances indicative of an intention to abandon the use and any vested right.

**Abutter** - Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in NH RSA 356-B:3,XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in NH RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

**Accessory Structure** - A structure that is subordinate and customarily incidental to a principal structure that is located on the same lot.

**Accessory Use** - Any use subordinate in both purpose and size to, and is incidental to and customarily associated with, any principal use that is located on the same lot.

**Activation** - The articulation of a façade to contribute to a pedestrian-friendly public realm.

**Addition (to an existing structure)** - Any construction that increases the size of a structure in terms of site coverage, height, or gross floor area.

**Alley** - A narrow passageway located between or behind buildings providing access to service areas, waste storage, parking, ancillary structures, and usually containing utility easements.

**Alteration (as applied to a structure)** - Any construction or renovation to an existing structure other than repair or addition. Applied to a building this means a change or rearrangement in the structural parts, and may include flood proofing or other modifications.

**Animated Sign** - A sign displaying motion, the patterned illusion of motion, action or flashing, or other light and color changes which is activated by environmental, mechanical, electrical, or other non-natural means. This term includes wind-activated elements such as flags, pennants, or banner signs. This term does not include changeable copy signs.

**Architectural Feature** - Accessory and decorative elements of the exterior of a building or structure, if altered or removed would affect the character of the external appearance of the building or structure but are not necessary to make the structure habitable. Examples include but are not limited to: cornices, eaves, brackets and other roofline embellishments; lintels, sills, keystones, arches and other door and window embellishments; minor wall projections, etc.

**Architectural Projection** - Any structure that is not intended for occupancy, which extends beyond the face of an exterior wall of a building.

**Architectural Trim** - Exterior elements on a building or structure, including but not limited to cornices, brackets, window lintels and sills, oriels or bay windows, balconies, grilles, grates, lamp brackets, scrapers and handrails.

**Arterial Roadway or Arterial Street** - A road whose primary purpose is rapid travel and high volume with limited accessibility to neighboring roads. In the City of Keene, arterial roadways include NH Routes 9, 10, 12 and 101.

**Attic** - The space between the ceiling beams of the top story and the roof rafters.

**Average Tree Crown Height** - An average height found by inventorying the crown height at above-ground level of all trees over 20-ft in height for a defined area.

**Awning Sign (also known as Canopy Sign)** - A sign painted or attached to a roof-like covering affixed to a building and extending over a walkway or sidewalk. This covering may consist of vinyl, canvas, or similar material. This sign type may also be attached to a freestanding multi-sided structure supported by columns.

**Background Area of Sign** - The area of a sign excluding the sign face or any copy.

**Balloon Sign** - Any sign displayed on, or suspended from, a balloon that is greater than 24-in in diameter.

**Bank of a Stream** - The transitional slope beginning at the edge of a surface water body, the upper limit of which is defined by a break in slope as defined in Wt. 101.06, N.H. Code of Administrative Rules, as may be amended or updated.

**Banner** - A sign composed of cloth, canvas, fabric, or other lightweight material, not permanently enclosed in a rigid frame or attached to a substrate, and which is capable of displaying motion caused by movement of the atmosphere. See also Flag.

**Base Flood Elevation** - The elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The Base Flood Elevation (BFE) is shown on the Flood Insurance Rate Map (FIRM).

**Basement** - The portion of a building which is partly or completely below grade. For the purposes of the Floodplain Regulations in Article 23, a basement

shall mean any area of the building, including any sunken room or sunken portion of a room, having its floor area below ground level (subgrade) on all sides.

**Building** - Any structure used or intended for sheltering any use or occupancy.

**Building Frontage** - The measurement in linear feet of the portion of a building that is parallel with an existing right-of-way or street. For the purposes of calculating a building's sign allowance as specified in Article 10 - "Sign Regulations," there are four types of building frontage, which are defined separately in this LDC: primary frontage, secondary frontage, parking lot building frontage, and tenancy frontage.

**Building Line** - A line parallel to the street, establishing the closest point to the street at which a structure can be constructed and be in compliance with the setback and lot width requirements of the Zoning Regulations.

**Bulletin Boards** - A sign used for the posting of bulletins, notices, announcements, or other messages.

**Changeable Copy Signs** - A sign whereon provision is made for letters, characters, or other copy to be placed in or upon the surface area to provide a message that is capable of being changed. Such signs may be either manually activated, whereby the letters, characters, or other sign copy are changed manually on the display surface or electronically activated, whereby the letters, characters, or sign copy are changed electronically, including time/temperature.

**Channel Letter Sign** - A sign with internal illumination of a translucent sign face.

**Character Defining Feature** - The form, material and detail of those architectural features that are important in defining the character of a building or structure and whose retention will preserve that character. Character-defining features may include, but are not limited to: facades, roofs, porches, windows, doors, trim, massing, shape, orientation and landscape features, such as fences, walls, posts and walkways.

**City** - The term City shall mean the City of Keene, New Hampshire; both the geographical boundaries and the duly constituted governing organization which is a municipal corporation.

**Collector Roadway** - A road whose primary purpose is to connect local roadways to arterial roadways, industrial and commercial centers or the Downtown of Keene.

**Collocation** - For the purposes of Article 13 "Telecommunications Overlay District," collocation shall mean mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). Collocation does not include a "substantial modification."

**Color Rendering Index (CRI)** - A quantitative measure of the ability of a light source to reproduce the colors of various objects faithfully in comparison with an ideal or natural light source, as determined by the International Commission on Illumination (CIE). The best possible rendition of colors is specified by a CRI of 100, while the poorest rendition is specified by a CRI of 0.

**Compatible** - Possessing characteristics that allow for a harmonious relationship. Compatibility does not require copying or matching of attributes, and may involve the juxtaposition of dissimilar things that nevertheless create an agreeable effect.

**Compensatory Flood Storage** - The replacement for any loss of existing flood storage caused by development within the floodplain.

#### **Conservation Residential Development**

**Subdivision** - A type of subdivision that is intended to encourage the beneficial consolidation of land development and the preservation of open space by applying less restrictive lot dimensional requirements than the underlying zoning district in exchange for placing an undeveloped portion of land into permanent open space.

**Construction Sign** - A sign advertising the architect, engineer or contractors, donors or financial institution for a building or project, when such sign is placed upon the site under construction.

**Contiguous** - An area of land or building elevation, whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements within the City.

**Contributing Resource** - Any building, structure, or site within the City's Historic District that contributes to the overall historic and architectural significance of the Historic District and was present during the period of historic significance but which possesses some diminishment of significance due to alterations, disturbances, or other changes to the building, structure, or site. Said diminishment of significance to the Historic District is not so substantial as to prevent the building, structure or site from possessing historic and architectural integrity reflecting the character of that time or being capable of yielding important information about the historically significant period. Qualities of the building, structure, or site which contribute to the overall historic and architectural significance of the Historic District include but are not limited to setback, massing, height, materials, architectural features, and/or fenestration.

**Corner Lot** - A lot situated at the intersection of an abutting two or more streets, which have an angle of intersection of not more than 135-degrees measured at the intersection of the street lines.

**Corporation Stop** - A water shut-off valve that is located at the water main and is used to isolate the water service from the main.

**County** - The term County shall mean the County of Cheshire, New Hampshire

**Covenant** - A condition or conditions established by deed that bind subsequent purchasers in their use of land or property.

**Curb Stop** - A water shut off valve located on a water main and is used to shut off water to the service.

**dBA** - A unit of measure of sound intensity as measured on the A-scale, such scale being that which is audible to the human ear.

**Demolition** - The razing, destruction, removal, or relocation, entirely (or in significant part ) of a building, structure or other resource.

**Development** - Unless otherwise specified in this LDC, development shall mean the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any excavation or land disturbance; change in use; or alteration or extension of the use of land.

**Development Sign** - A free-standing sign located at the entrance to a site or parcel approved by the Planning Board that is planned, developed, operated, and maintained, according to the site or subdivision plan as a single entity, under a single project name, and containing 1 or more structures with appurtenant common areas.

**Dimension Stone** - Rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes, and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which selections of dimension stone are to be produced, but does not include "earth" as defined below.

**Double-Sided Sign** - A sign with two faces, commonly back to back, where the sign faces are separated by an angle of 30-degrees or less. In calculating the square footage of double-faced signs, only one face shall be counted.

**Downtown Roadway** - A road located within the City's pedestrian-oriented downtown. These streets are characterized by higher volumes of all transportation modes. Downtown Roadways serve a dual purpose of providing access to businesses, activities and amenities as well as establishing public space for social interaction and community events.

**Drive-Through Sign** - A sign constructed along drive-through lanes for drive-through facilities. A drive-through sign does not include parking lot, parking structure, and site circulation point signs

**Driveway** - The travel surface for vehicles that connects an off-street parking space(s), or a parking area of a parking lot to the street access.

**Dwelling** - A structure, or portion thereof, designed or used exclusively for human habitation, including single-family dwellings, two-family dwellings, and multi-family dwellings. Dwellings may be either attached or detached.

**Dwelling Unit** - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**Earth** - Sand, gravel, rock, soil, or construction aggregate produced by quarrying, crushing, or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

**Earth-Disturbing Activity / Earth-Disturbing Events** - Actions taken to alter the existing vegetation and/or underlying soil of a site, such as timber harvesting, clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

**Economic Hardship** - Quantifiable or verifiable expenditures or fiscal loss that is unreasonable for the property owner to bear under the circumstances. Demonstration of economic hardship shall not be based on or include any of the following circumstances: willful or negligent acts by the owner; purchase of the property for substantially more than market value; failure to perform normal maintenance and repairs; failure to diligently solicit and retain tenants; or failure to provide normal tenant improvements.

**Elevation (Building)** - (1) A wall of a building; (2) An architectural drawing showing vertical elements, generally exterior, of a building.

**Equipment Shelter** - For the purposes of Article 13 "Telecommunications Overlay District", equipment shelter shall mean an enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for telecommunication facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as "base transceiver structures."

**Erect** - To construct, reconstruct, excavate, fill, drain or conduct physical operations of any kind in preparation for or in pursuance of construction or reconstruction, or to move a building or structure upon a lot.

**Excavation Activity/Excavation Operations/Processing Activities** - For the purposes of Article 24 - "Earth Excavation Regulations," excavation activity/excavation operations/processing activities shall mean the act of moving or removing earth, including but not limited to, all activities associated with the commercial taking of earth, production and processing of construction aggregate, transportation of earth and site restoration. Associated excavation and processing activities also include, but are not limited to: digging, drilling, blasting, bulldozing, crushing, washing, screening, sorting, scaling, weighing, stockpiling, loading, and transporting earth.

**Excavation Area** - For the purposes of Article 24 - "Earth Excavation Regulations," excavation area shall mean the surface area within an excavation site where excavation has occurred or is eligible to occur under the provisions of this LDC, and NH RSA 155-E. This area may be also referred to as the "pit surface area."

**Excavation Perimeter** - For the purposes of Article 24 - "Earth Excavation Regulations," excavation perimeter shall mean the land within an excavation site, which includes the excavation area, areas where excavation operations and processing activities are performed, stockpiling areas, and any areas where earth materials are or will be loaded or unloaded for purposes of transport.

**Excavation Project** - For the purposes of Article 24 - "Earth Excavation Regulations," excavation project shall mean a timeframe that includes all excavation activities to be conducted on an excavation site, including all excavation phases.

**Excavation Site** - For the purposes of Article 24 - "Earth Excavation Regulations," excavation site shall mean any area of contiguous land in common ownership upon which excavation takes place.

**Façade** - The front of a building or structure or any of its sides that faces a public right-of-way.

**Fall Zone** - The area within which there is a potential hazard from falling debris, such as ice, which encompasses a circle with a diameter equal to twice the height of a telecommunication facility as measured on the ground from the base of the facility.

**Family** - Family shall mean one of the following:  
1) two or more natural persons related by blood, marriage, civil union, adoption, or foster care, living together as a single housekeeping unit with or without customary household helpers in a dwelling unit; or 2) a group of four or fewer natural persons, who are not related by blood, marriage, civil union, adoption, or foster care, living together as a single housekeeping unit in a dwelling unit. This term shall not preclude one natural person from being the sole occupant of any dwelling unit.

**Fenestration** - The arrangement of windows, exterior doors and other exterior openings on a building.

**Fire Line** - Any pipe, including appurtenant valves or fittings, conveying water from a water main to private fire apparatus, and conveying water at no time for other purposes except as provided under Section 98-511(e) of the City of Keene Code of Ordinances pertaining to permission for unmetered water supply or Section 98-169 of the City Code of Ordinances pertaining to taps in fire lines.

**Flag** - A sign made of fabric or other similar non-rigid material supported or anchored along only one edge or supported or anchored at only two corners. If any dimension of the flag is more than three times

as long as any other dimension, it shall be classified and regulated as a banner regardless of how it is anchored or supported. See also banner.

**Flood and Flooding** - A general and temporary condition of partial or complete inundation of normally dry land areas caused by the overflow of inland waters or unusual and rapid accumulation of runoff from any source.

**Flood Insurance Rate Map (FIRM)** - An official map of the City, incorporated by reference as part of this LDC, upon which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City.

**Flood Insurance 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.

**Floodplain** - Any land area susceptible to being inundated by water from any source (see definition of Flooding ). This LDC shall only apply to those portions of the floodplain designated as special flood hazard areas in the 1983 Flood Insurance Study as amended from time to time and on the official Federal Emergency Management Agency flood insurance rate maps.

**Floodproofing** - Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to land, structures or utilities.

**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.

**Fluorescent Sign** - A sign whose color reflects not only its own color, but also converts the shorter wavelengths into radiant energy causing them to appear three to four times as bright as ordinary color. These colors do not reflect light toward its

source in the intense manner that reflectorized materials do, but rather in an amount similar to white painted surfaces.

**Freestanding Sign** - A sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground.

**Frontage** - The continuous portion of a lot fronting on a public way laid out by the City under the provisions of NH RSA 231 or its predecessor statutes, and still maintained by the City as a public way.

**Glazing** - A component of a window or wall made of glass.

**Government Building** - A building or structure that is owned, leased, or otherwise under the control of a governmental entity.

**Government Sign** - Any temporary or permanent sign erected or maintained by any federal, state, county, city, or school district, or by the university system or community college system of New Hampshire, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature. Examples of government signs include speed limit signs, city limit signs, street name signs, traffic signs, and railroad crossing signs.

**Grade Plane** - A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than 6-ft from the building, between the building and a point 6-ft from the building

**Gross Floor Area** - The sum of the total areas of the several floors of the structure, measured in horizontal dimensions, excluding areas used for accessory garage purposes and uses accessory to the operation of the building. All horizontal dimensions shall be taken from the exterior faces of walls,

including walls, or other enclosures of enclosed porches, patios and breezeways. Habitable attics and basements shall be included in gross floor area.

**Guyed Tower** - For the purposes of Article 13 - "Telecommunications Overlay District," guyed tower shall mean a monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**Handheld Sign** - A sign held by a person or persons that is not attached to, hung from, or resting upon any structure, tree or other public property and is not affixed to the ground or snow on public property.

**Historic Structure or Historic Building** - Any structure that is one or more of the following: (1) Listed or certified as eligible for listing in the NH State Register of Historic Places by the NH Division of Historical Resources or which has been listed or certified as eligible for listing in the National Register of Historic Places by the Keeper of the Register; (2) Designated as historic under an applicable state or local law; (3) Certified as a contributing resource within a National Register or state designated historic district or a district preliminary determined by the Secretary of the Interior to qualify as a registered historic district; (4) Located in a locally designated historic district and is within the period of significance.

**Hydraulic Reach** - For the purposes of Article 23 - "Floodplain Regulations," hydraulic reach shall mean a distance upstream or downstream from a proposed floodplain fill site which is in the same hydraulic section as the proposed fill. For purposes of compensatory storage, the boundaries of a hydraulic reach shall be determined on a case-by-case basis by City staff.

**Illuminated Sign** - A sign that is internally illuminated or externally illuminated.

**Impervious Surface** - Surfaces and/or development features that are non-porous and which substantially prevent rain or storm water from absorbing or percolating into the ground beneath them. Impervious surfaces include, but are not limited to: roof areas, structures, patios, sidewalks,

driveways, parking areas, swimming pools and other development features surfaced with non-porous materials.

**Incompatible Resource** - A building, structure or site within the Historic District that has no historic or architectural integrity and whose setback, massing, scale, height, materials and/or fenestration detract from the character of the district.

**Informational / Directional Sign** - A sign displaying information for the direction, safety, or convenience of pedestrians, motorists, or patrons of business establishments, developments, and/or shopping plazas, which does not identify or advertise any particular business establishment, development, or goods or services. This type of sign may identify the location of restrooms, telephone booths, parking area entrances or exits, parking requirements, freight entrances, and other similar information.

**Interior Merchandise Display** - Goods sold in a business set out for viewing by the public within said business.

**Lattice Tower** - For the purposes of Article 13 - "Telecommunications Overlay District," lattice tower shall mean a type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.

**LDC** - LDC shall stand for the Land Development Code for the City of Keene, New Hampshire

**Local Roadway** - A road whose primary purpose is to provide access from collector roads to individual parcels. This is the most common type of road and is typically designed for low volume.

**LOMA and LOMR** - A final letter of map amendment (LOMA) or final letter of map revision (LOMR) from FEMA, which verifies that a project has been completed in compliance with the conditions of an applicable CLOMA or CLOMR, and the City's Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) have been revised accordingly.

**Looped** - A water main is constructed in such a way that every part of said main can be supplied with water from at least two different directions.

**Lot** - The whole area of a single parcel of land with ascertainable boundaries in single or joint ownership, undivided by a street, approved and established by deed(s) or record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved and recorded.

**Lot Line** - The boundary that legally and geometrically demarcates a lot.

**Main** - A component of a distribution or collection network supplying water to or receiving sewage from two or more services.

**Mansard Façade** - A roof-like facade comparable to an exterior building wall.

**Mansard Roof** - A sloping roof having a horizontal pitch of more than 60 degrees.

**Marquee Sign** - A sign attached to or made part of a permanent roof-like structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall.

**Masonry** - Work constructed by a mason using stone, brick, concrete block, cast stone, tile, or similar materials.

**Mast** - For the purposes of Article 13 - "Telecommunications Overlay District," mast is a thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

**Mean Sea Level** - The National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the City's Flood Insurance Rate map are referenced.

**Memorial Sign / Plaque** - Memorial signs or tablets denoting the names of buildings and the date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials mounted on the face of a building.

**Mixed-Use** - A combination of different permitted uses located on a lot or within a building.

**Monopole** - For the purposes of Article 13 - "Telecommunications Overlay District," monopole is a thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

**Mount** - The structure or surface upon which telecommunications antennas are mounted, including the following four types of mounts: (1) Roof-mounted - Mounted on the roof of a building. (2) Side-mounted - Mounted on the side of a building. (3) Ground-mounted - Mounted on the ground. (4) Structure-mounted - Mounted on a structure other than a building.

**Muntin** - A thin bar, usually wood, used to hold panes of glass in place.

**Natural Person** - A human being as distinguished from a person (as a corporation) created by operation of law.

**Nonconforming structure** - Any structure existing at the time of the enactment of the LDC or any amendments thereto, which does not conform in whole or in part to this LDC or its amendments.

**Nonconforming Use** - The use of any building, structure or land existing at the time of the enactment of the LDC, or any amendments thereto, which does not conform in whole or in part to this LDC or its amendments.

**Noncontributing Resource** - A building, structure or site within the Historic District that is either less than fifty (50) years old and thus was not constructed within the Period of Significance; or is fifty (50) or more years old and has lost its architectural, historical or cultural integrity due to major alterations or other changes and thus has lost the ability to contribute to the character of the historic district. A Non-Contributing resource may become a Primary or Contributing resource when it becomes 50 years old. It may also become a Primary or Contributing resource if its integrity is restored.

**Noxious Gases** - Fumes which are in sufficient quantity to be harmful to health.



**Obscene Sign** - Any sign that meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

**Off-Premises Sign** - A sign that directs attention to a development, business establishment, commodity, service, or entertainment that is conducted, sold or offered at a location other than the premises upon which the sign is located.

**Open Space** - Unless otherwise defined in this LDC, that portion of land, either landscaped or left unimproved, which is not intensively developed, and may be used to meet passive recreation or spatial needs, and/or to protect water, air, or plant resources.

**Ordinary High Water Mark** - The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas as defined in NH RSA 483-B:4,XI-e, as may be amended or updated.

**Owner** - Any person, group of persons, or other legal entity having title to, or sufficient proprietary interest in, the use, structure, lot in question.

**Parallel Sign** - A sign attached, painted, or otherwise mounted or affixed parallel to a building wall or other vertical building surface.

**Parapet Wall** - A low wall or protective barrier that extends vertically above the roof surface of a building or other structure.

**Parcel** - See "lot."

**Parking Lot** - Unless otherwise defined in this LDC, parking lot shall mean an open area, other than the street, intended and used for the parking of motor vehicles.

**Parking Lot Building Frontage** - Frontage along a building wall facing a parking lot that conforms to an approved site plan and the Zoning Regulations of

this LDC, with said building wall having an entry to the building that conforms to all applicable building and fire codes.

**Parking Space** - An area designated and used for the parking of a single motor vehicle, but not used for traffic circulation.

**Passive Recreation** - Nonmotorized recreational activities that typically occur in a natural setting and that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting. Examples shall include, but not be limited to, walking, hiking, picnicking, nature observation, and cross-country skiing.

**Pedestrian Scale** - Development designed so a person can comfortably walk from one location to another, which encourages strolling, window-shopping, and other pedestrian activities; provides a mix of commercial and civic; and provides visually interesting and useful details.

**Perennial Stream** - A stream that flows year-round in a defined channel.

**Period of Significance** - The span of time during which the Historic District attained its significance. For the Downtown Keene Historic District, the period of significance starts in 1785, the year the oldest extant building was constructed, and ends 50-years from present time, as events and buildings within the district continue to achieve importance. The 50-year benchmark coincides with that recognized by the National Park Service in its preservation programs.

**Person** - An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization. See also, "natural person."

**Personal Care Services** - means non-medical services provided to assist natural persons with activities of daily living such as bathing, dressing, medication management, meal preparation and transportation.

**Pervious** - Being permeable; having the quality of allowing the infiltration of surface water into the soil.

**Political Sign** - A temporary sign intended to advance a political statement, cause, party, or candidate for office.

**Pond** - Any year round standing body of water 1-acre or more in area, as measured from the mean annual high water mark.

**Portable Sign** - Any sign not permanently attached to the ground or to a building or building surface (e.g. sandwich board or vertical sign).

**Preexisting Towers and Antennas** - For the purposes of Article 13 - "Telecommunications Overlay District," this term means any tower or antenna lawfully constructed or permitted prior to the adoption of the ordinance from which the Telecommunications Overlay District derives; also means any tower or antenna lawfully constructed in accordance with this LDC that predates an application currently before the Planning Board.

**Premises** - A lot or parcel of land including any building or accessory structure thereon, also "property."

**Primary Elevation** - The front and/or street-facing walls or a building.

**Primary Frontage** - Frontage along the building wall that faces a street or right-of-way that is determined to be of primary importance to the business establishment occupying the premises.

**Primary Resource** - A building, structure or site within the Historic District that was present during the Period of Significance and that contributes to the District's sense of time and place and historical development in a particularly distinctive manner

**Principal Building or Principal Structure** - A structure that is central to the fundamental uses of the property and is not accessory to the use of another structure on the same premises.

**Principal Use** - The main or primary use conducted on a lot or located within a building or structure, as distinguished from an accessory use.

**Projecting Sign** - A sign other than a wall sign that is attached to or projects more than 18-in from a building face, wall, or structure whose primary purpose is other than the support of said sign.

**Public Infrastructure** - Any infrastructure that has been formally accepted by the City Council for the use and benefit of the public at large. Infrastructure includes all stationary physical improvements used to provide services to the community, including roads, bridges, sidewalks, pipes, valves, fittings, conduits, structures facilities, pumps, motors and other appurtenant items.

**Public Main** - A main installed or maintained in or under any publicly-accepted city streets or highways, and includes any pipe crossing privately-owned land through a right-of-way owned or controlled by the city or by easement.

**Public Nuisance** - A condition or behavior that unreasonably interferes with the health, safety, peace, comfort or convenience of the general community.

**Public Right-Of-Way** - Land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.

**Radio Frequency Radiation (RFR)** - The emissions from telecommunication facilities.

**Reclamation** - For the purposes of Article 24 - "Earth Excavation Regulations" this term shall mean restoration of an excavation site to standards at least equal to those outlined in Article 24 and 25 of this LDC, and in accordance with NH RSA 155-E.

**Recreational Vehicle** - A vehicle which is: built on a single chassis; 400-sf or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**Reference Line** - (1) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department of Environmental Services; (2) For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights; (3) For water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest; (4) For rivers, the ordinary high water mark as defined in NH RSA 483-B:4,XVII, as may be amended or updated.

**Reflectorized Sign** - A sign containing material that reflects light back toward its source in an intensity greater than would be reflected by a white painted surface. These materials include reflective sheeting, glass beads, or plastic reflectors.

**Rehabilitation** - The process of returning a property to a state of utility, through repair or alteration.

**Relocation** - The act of removing a building, structure, sign or other resource from its existing foundation or location to another foundation or location, including on the same site.

**Removal** - The act of destroying or relocating a building, structure, sign or other resource.

**Renovation** - Alterations and improvements by repair which enhances or modernizes the building with the basic character of the building preserved.

**Repointing** - Repairing mortar by raking and refilling the outer face of mortar joins.

**Restoration** - The act or process of accurately recovering the form, features and character of a building, structure, or sign and its setting as it appeared at a particular period of time.

**Restrictive Sign** - Signs authorized by NH RSA 635:4 for the purpose of prohibiting criminal trespass or other physical activities on said land. Examples of restrictive signs include, but are not limited to, "No Hunting" signs; "No Trespassing" signs; "No Solicitation" signs; and "No Loitering" signs.

**Reverse Channel Letter Sign** - A sign with box letter sign copy that has lighting behind an opaque sign face.

**Roof Sign** - A sign mounted on the main roof portion of a building or on the highest edge of a parapet wall of the building, said sign being wholly or partially supported by such building. Signs mounted on mansard facades, eaves, and architectural projections such as canopies or marquees, shall not be considered to be roof signs.

**RSA** - The abbreviation "RSA" shall mean the latest edition or supplement of the New Hampshire Revised Statutes Annotated.

**Sandwich Board Sign** - A sign with two sign faces hinged together to form a triangle when the sign is erected and placed on the ground.

**Seasonal Stream** - A stream that flows for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year or during long-term periods of drought as defined in Wt. 101.47, N.H. Code of Administrative Rules, as may be amended or updated. May also be referred to as intermittent stream.

**Secondary Façade** - Any building façade that is not designated as a principal façade.

**Secondary frontage** - Frontage along the building wall that is determined to be of secondary importance to the business establishment occupying the premises.

**Security Barrier** - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

**Service Connection** - An assembly of pipes, conduits, valves, junctions and other appurtenant equipment whose purpose is to provide an individual customer access to a public utility.

**Setback** - The distance between any property line and the nearest point to which any building or structure can be erected. Measurement shall be to the outermost vertical plane nearest the property line.

**Sewer Service** - That portion of any pipe from the sewer main through which sewage may be conveyed to the public system from any building, together with all valves, fittings and access boxes thereon.

**Shade Tree** - A tree, usually deciduous, planted primarily for overhead canopy.

**Shared Parking** - On-site or off-site parking lots that can be used to meet the minimum parking requirements of two or more defined land uses at separate times of day.

**Shut-off Valve** - See "Curb Stop"

**Sign** - Any identification, description, illustration, or device illuminated or not illuminated which is visible to the general public and directs attention to a product, service, place, activity, institution, business or solicitation, including any permanently installed or situated merchandise; or any emblem, painting, flag, banner, balloon, pennant, or placard designed to advertise, identify or convey information.

**Sign Cabinet** - A cabinet constructed to accept a slide-in sign face.

**Sign Copy** - Any character, letter, logo, symbol, or any other combination thereof, that creates a message of any sort.

**Sign Face** - The surface of a sign upon, against, or through which the sign copy or message is displayed or illustrated.

**Slough** - Wetland channels or a series of shallow lakes. Water in a slough is stagnant or may flow slowly on a seasonal basis.

**Snipe Sign** - Any sign, generally of temporary nature, made of any material, when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, fences, or other objects not erected, owned, and maintained by the owner of the sign.

**Solar Energy System** - An energy system that consists of one or more devices and/or structural design features, and other associated infrastructure, which provides for the collection of solar energy for electricity generation, consumption, storage, or transmission, or for thermal applications.

**Solar Footprint** - The footprint of a ground-mounted solar energy system is calculated by drawing a perimeter around the outermost panels of the system

and any equipment necessary for the functioning of the solar energy system, such as transformers and inverters. The footprint does not include any visual buffer or perimeter fencing. Transmission lines (or portions thereof) required to connect the system to a utility or consumer outside the system's perimeter shall not be included in calculating the footprint.

**Solar Land Coverage** - The land area that encompasses all components of the solar energy system including but not limited to mounting equipment, panels and ancillary components of the system. This definition does not include access aisles/roads or fencing and is not to be interpreted as a measurement of impervious surface as it may be defined in this ordinance

**Special Flood Hazard Area** - The land in the floodplain within the City subject to a 1% or greater chance of flooding in any given year. The area is designated as zone A and AE on the flood insurance rate map.

**State** - The terms "the state" and "this state" shall be construed to mean the State of New Hampshire.

**Story** - That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Attics, habitable attics, and basements are not counted as stories.

**Story Above Grade** - Any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is: (1) More than 6-ft above grade plane; (2) More than 6-ft above the finished ground level for more than 50% of the total building perimeter; or (3) More than 12-ft above the finished ground level at any point.

**Street Access** - That portion of a parcel designated for access to the public way and lying between the edge of the traveled way and the parcel boundary.

**Structure** - Anything constructed or erected which requires location on or in the ground, or attached to something having location on or in the ground, including signs, billboards, fences and swimming pools.

**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 50% of the assessed value of the structure before the damage occurred.

**Substantial Improvement** - For the purposes of Article 23 - "Floodplain Regulations," substantial improvement shall mean any combination of repairs, reconstruction, alteration, or improvements to a structure in the Special Flood Hazard Area taking place over a 5-year period, in which the cumulative cost equals or exceeds 50% of the market value of the structure before the improvement or repair started. 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 ensure 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."

**Surface Waters** - Shall include surface waters of the state pursuant to NH RSA 485-A:2,XIV including perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial; and all wetlands as defined in NH RSA 482-A:2,X and NH Code of Administrative Rules Env-wt 100-900 including bogs, ephemeral stream, intermittent streams, marshes, surface water bodies, swamp, wetlands, and wet meadows; and all vernal pools, fens, sloughs, and wetlands complexes.

**Temporary Event Sign** - A sign erected, constructed, relocated, or maintained on private property by a nonprofit business establishment for the purpose of announcing events of benefit to the organization and the community.

**Temporary Sign** - A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Temporary signs include portable signs or any other signs that are not permanently imbedded in the ground or affixed to a building or other structure permanently embedded in the ground.

**Temporary Street Access** - A street access created for a discrete event or activity and will be in place for a period exceeding seven days but less than 6-months.

**Tenancy Frontage** - A line parallel or facing the parking lot building frontage, primary frontage, or secondary frontage, and defined by an extension of the tenant separation walls.

**Tenant or Occupant** - Any person holding a written or oral lease or who occupies the whole or a part of such building or land, either alone or with others.

**Tower** - For the purposes of Article 13 "Telecommunications Overlay District" tower is any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and alternative tower structures.

**Tract** - A lot, parcel, site, piece of land, or property, which is the subject of a development proposal and application.

**Traffic Control Devices** - All signs, signals, markings and systems placed on or adjacent to public roadway by authority of a public body or official having jurisdiction to regulate, warn or guide traffic.

**Traffic Sign** - A sign installed by the city or state government for the purpose of naming streets, providing traffic information, and other similar governmental purposes.

**Use** - The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

**Vehicle Trip** - Vehicle trip means a single or one-way vehicle movement to or from a property or study area. "Vehicle Trips" may be added together to calculate the total number of vehicles expected to enter and leave a specific land use or site over a designated period of time.

**Vernal Pool** - A seasonal or intermittent pool of water providing essential breeding habitat for certain amphibians and invertebrates and does not support fish. Vernal pool status can be confirmed by but not limited to evidence of breeding by at least one vernal pool indicator species such as wood frogs, spotted salamanders, blue spotted/Jefferson salamanders, and/or the presence of fairy shrimp. Evidence of breeding includes calling wood frogs, salamander spermatophores, egg masses, and/or larvae of wood frogs or salamanders. (Identification and Documentation of Vernal Pools in New Hampshire, NH Fish & Game Department, 2004) as may be amended or updated.

**Vertical Sign** - A sign vertically positioned.

**Visible Light Transmittance (VSL)** - The percent of total visible light that is transmitted through a glazing system. The lower the number, the less visible light transmitted.

**Wall-Mounted Sign or Wall Sign** - A sign attached or affixed to an exterior wall of a building or structure that projects 18-in or less from the exterior wall. Such sign may also be attached or affixed to architectural projections, provided that the copy area of such sign remains on a parallel plane to the face of the building facade or to the face(s) of the architectural projection.

**Waste storage container** - Any container or can including a bulk container that is used as a central collection point for the temporary storage of waste.

**Water Service** - Any pipe or hose from the water main or corporation stop to a point 18-in beyond the meter, the measurement taken along the pipe, or, if there is no meter, to include each and every orifice and valve and all connecting pipe through which water may be discharged. Fire lines and fire hydrants are expressly excluded from this definition.

**Water Surface Elevation** - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, of floods of various magnitudes and frequencies in the floodplains.

**Wellhead Protection Area** - Is as defined in NH RSA 485-C:2.

**Wetland Complex** - A series of small wetland areas that are hydrologically connected by a common water table.

**Window Sash** - The framework into which window panes are set. For windows that open, this is the moveable portion.

**Window Sign** - A parallel sign that is affixed to or applied upon a window, advertising a business establishment, product, or service.

**Written or In-Writing** - The terms "written" and "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

**Year** - The term year shall mean calendar year, except where otherwise provided.