



**City of Keene Minor Project Review Committee**

**AGENDA**

**Monday, August 30, 2021**

**1:00 PM**

**City Hall, 2<sup>nd</sup> Floor Council Chambers**

- I. **Call to Order** – Roll Call
- II. **Election of Chair & Vice Chair**
- III. **Rules of Procedure**
- IV. **Adoption of 2021 Meeting Schedule**
- V. **Review of Development Standards, Application Procedure & Public Hearing Process**
- VI. **Next Meeting** - Thursday, September 9, 2021, 10:00 am



**City of Keene**  
**NEW HAMPSHIRE**

**MINOR PROJECT REVIEW COMMITTEE**

**RULES OF PROCEDURE**

The Minor Project Review Committee was formed by the Planning Board and the City Council through Ordinance O-2020-10B (adopted May 20, 2021 and effective September 1, 2021), which established the City of Keene Land Development Code. Section 25.1.9 of the City of Keene Land Development Code (LDC) (effective September 1, 2021), as amended, states: “*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.”*

- 1. Meetings:** Meeting times and dates are to be determined by members of the Minor Project Review Committee (hereinafter “Committee”). All meetings shall be open to, and accessible by, the public. Meeting times and locations will be posted at least twenty-four (24) hours in advance of any such meeting in two (2) appropriate places, one of which may include the City’s website in accordance with RSA 91-A:2.
- 2. Minutes:** Minutes of such meetings shall be kept in accordance with RSA 91-A:2, and shall include the following: the name of the Committee; date, time and location of the meeting; the members present; the members absent; the time that the meeting was called to order and by whom; motions or other actions taken including who made the motion and who seconded; who voted and how; who recused and the reason for recusal, and whether the action passed or failed; the names of persons appearing before the Committee; the subject matter discussed; the time the meeting adjourned; the name of the minute taker. If there is no minute taker specifically assigned to the Committee, the Chair shall designate an appropriate individual for this purpose. Within 5 days of the close of the meeting of the Committee, the minute taker shall submit the draft minutes to the Staff Liaison for the Committee. The Chair, or Vice-Chair, shall review the draft minutes and may make such corrections as are necessary to ensure that information required to be included in the minutes of such meetings is accurate. Examples of appropriate corrections include spelling of names, grammar, citations, and technical jargon. In no case shall a correction alter what was said or discussed at the meeting, or the result of any action taken. All corrections shall be made with “track changes” or a similar feature turned on so that other Committee members are aware of any such corrections. If extensive revisions are being requested by a member, the Committee should conduct the review at the end of the

regular agenda items. Once approved, meeting minutes shall be immediately filed with the City Clerk.

3. **Quorum:** A quorum shall consist of a majority (a minimum of 50% plus 1) of the total eligible number of members that may be appointed to the Committee, either under state law or by City Code, regardless of the number of members actually appointed. Committee business shall not be conducted in the absence of a quorum. An available alternate member shall be appointed by the Chair in the absence of a regular member to form a quorum, and shall be appointed by the Chair at any time in the absence of any regular member. Unless the appointed alternate member becomes unable to continue to participate, the alternate member so appointed should continue to serve in the place of the absent regular member if a matter under consideration by the Committee extends over multiple meetings, and/or until that matter has been completed. A quorum of the Committee shall always be physically present at the location specified in the public notice, and no Committee business shall be conducted through email or other electronic communication that does not allow the public to hear, read or otherwise discern the meeting discussion. A member may participate by telephone or other electronic communication when the member's attendance is not reasonably practical, the reason for absence is stated in the minutes, and all participants, including the public, are able to hear, read and discern the meeting discussion. Email communications among the Committee or between the Committee and Staff Liaison shall be used only for the transmittal of administrative matters such as scheduling or the transmittal of information to be acted upon at the public meeting. Committee business shall not be conducted in any manner other than at a duly noticed public meeting.
4. **Elections:** At the first meeting of the new calendar year the Committee shall elect, by simple majority, a Chair and a Vice-Chair.
5. **Presiding Officer:** The Chair shall preside over the meeting and call the members to order.
6. In case of absence of the Chair, if a quorum is determined to be present, the Committee shall proceed with the Vice-Chair acting as the presiding officer. In the event that both the Chair and Vice-Chair are absent, and if a quorum is determined to be present, the Committee shall proceed to elect a Committee member, by majority vote of those present, as Temporary Chair of the meeting until the presiding officer appears.
7. **Right of Floor:** The Chair shall control the meeting. When recognized by the Chair, a member of the Committee or the public, shall respectfully address the members of the Committee and shall confine themselves to the question under debate, avoid personal comments, and refrain from impugning the motives of any other individual's argument or vote. The Chair shall act on all proper motions for which there is a second. A motion to call the question shall require two-thirds (2/3) vote and is not debatable.
8. **Order of Business:** The business of all regular meetings shall be transacted in the following order:
  - A. Call to order.
  - B. Roll call of attendance.
  - C. Acceptance of minutes of preceding meeting.
  - D. Committee business on meeting agenda.

- E. New business
  - F. Adjournment.
9. **Meeting Agenda:** The meeting agenda shall be prepared by the Staff Liaison on consultation with the Chair, or in the absence of a Staff Liaison, by the Chair. Items to be placed on the meeting agenda must be received by the Staff Liaison a minimum of five (5) business days prior to the scheduled meeting. No subject matter that is not on the agenda shall be discussed at the meeting, but shall be referenced under New Business and shall be placed on the agenda for discussion at the next regular meeting.
10. **Communications:** Communications to be introduced to the Committee must be signed by the person introducing the same, either by hand or scanned and submitted electronically, must give his or her residential address or mailing address, if different, at which he or she can be notified of meetings, and telephone number, if available. Communications not containing all of the above will not be accepted by the Staff Liaison, or by the Chair, and will not be placed on the agenda of the Committee. Communications addressed to a Committee member of a personal or argumentative nature shall not be introduced in the meeting. Any email communication directly to a member of the Committee relating to a matter before the Committee must be provided to Staff Liaison, or to the Chair, for compliance with this paragraph and for inclusion in the record.
11. **Order of Business - Out of Order:** The Chair may permit any item of business to be taken out of the regular order as set by the agenda unless there is an objection by a Committee member in which case a majority of the Committee may vote to take the item out of order.
12. **Tie Vote:** In case of a tie vote on any motion or recommendation, said motion or recommendation shall be deemed defeated.
13. **Conflict of Interest:** Every member present when a question is placed before the Committee shall vote thereon, except when the member has a conflict of interest in the matter as defined by Article VI, Conflict of Interest of Chapter 2 of the City Code of Ordinances, and Section 25, Communications, of the Charter of the City of Keene. If the conflict becomes known prior to a Committee meeting, the Committee member shall inform the Staff Liaison in advance of the meeting. If the conflict becomes known to the Committee member during a meeting, the Committee member should immediately disclose the particulars of the conflict of interest. When such a conflict exists, the member having the conflict shall be recused and shall be prohibited from participating in the discussion and shall not vote on the matter. The question of whether or not a conflict exists may be decided by a majority vote of Committee members present. Any Committee member having reasonable grounds to believe that another Committee member has a conflict of interest may raise the issue on their own motion. The question will then be decided as set forth above.
14. **Non-Public Session:** City Boards and Commissions may not enter a non-public session without prior notice to, and the presence of, City Staff at the meeting. In the event of a requirement to enter into non-public session, a majority of members present at a Committee meeting may, by roll call, vote to go into non-public session in accordance with RSA 91-A:3. The motion shall state the specific statutory basis relied upon for the non-public session. All

persons who are not Committee members qualified to participate in the discussion shall leave the meeting, unless specifically requested to remain. No action or decision with respect to the matter shall be taken in non-public session. Minutes of the non-public sessions shall be taken and the minutes shall be publicly disclosed within seventy-two (72) hours unless, by recorded vote of two-thirds (2/3) of the members present, the minutes are sealed in accordance with RSA 91-A:3. The minutes of any non-public meeting shall be designated as such and shall be filed with the City Clerk no more than seventy-two (72) hours after the meeting.

**15. To Amend Rules:** These Rules may be amended or new Rules adopted by a two-thirds (2/3) vote of all members appointed to the Committee. The public meeting notice shall state that a proposal to amend the Rules is included on the meeting agenda. Proposed amendments shall be submitted in writing at a regular Committee meeting, but shall not be acted upon until the next regular meeting of the Committee. An amendment to the Rules shall become effective upon passage.

**16. Rules of Order - *Roberts Rules of Order*** shall govern points of order not covered herein.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

\_\_\_\_\_, Chair



## Minor Project Review Committee

### Meeting Schedule

**2021**

<b>Meeting Date 10:00 am, 2<sup>nd</sup> Floor Council Chambers</b>	<b>Pre-Submission Meeting Date 9:00 am, 2<sup>nd</sup> Floor Council Chambers</b>	<b>Application Submission Deadline</b>	<b>2<sup>nd</sup> Monthly Meeting Reserved for Public Hearing Continuations</b>
<b>September 9, 2021</b>	August 11, 2021	August 20, 2021	September 23, 2021
<b>October 14, 2021</b>	September 9, 2021	September 17, 2021	October 28, 2021
<b>(Wednesday) November 10, 2021</b>	October 14, 2021	October 15, 2021	November 25, 2021
<b>December 9, 2021</b>	(Wednesday) November 10, 2021	November 12, 2021	December 23, 2021
<b>January 13, 2022</b>	December 9, 2021	December 17, 2021	January 27, 2022

## MINOR PROJECT REVIEW COMMITTEE

- RSA 674:43, III allows Planning Board to delegate site plan authority for minor projects
- As of Sep. 1, minor site plans will be reviewed & acted on by Minor Project Review Committee
- Composed of City Staff with experience reviewing site plans
- Shorter timeframe for application review
- Public notice / abutter notice will be required

## MAJOR SITE PLAN

## MINOR SITE PLAN

New buildings or structures greater than 5,000 sf gross floor area	New buildings or structures between 1,000 - 5,000 sf in gross floor area
Additions greater than 15% of the gross floor area of existing building	Additions between 10-15% of the gross floor area of existing building
Increase of 100 vehicle trips per day or 50 per peak hour	
Installation of impervious surfaces exceeding 10,000 sf in area	Installation of impervious surfaces 10,000 sf or less in area (as determined by Community Development Director based on proposed impacts)
Land disturbance that impacts 1-acre or greater of land	Land disturbance that impacts less than 1-acre or greater of land (as determined by Community Development Director based on proposed impacts)
Modifications to site or building that warrant major site plan review (as determined by Community Development Director based on proposed impacts)	Modifications to site or building that warrant minor site plan review (as determined by Community Development Director based on proposed impacts)
Change of use (as determined by Community Development Director based on proposed impacts)	Change of use (as determined by Community Development Director based on proposed impacts)



# ARTICLE 20. SITE DEVELOPMENT STANDARDS

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## 20.1 GENERAL

### 20.1.1 Authority

Pursuant to the authority vested in the City of Keene Planning Board by the City Council, and in accordance with NH RSA 674, the Planning Board shall have the authority to adopt and amend the following site development standards and associated site plan review application procedures in Section 25.12 of this LDC.

### 20.1.2 Purpose

The purpose of these site development standards is to:

1. Promote the safe and orderly development of the City;
2. Promote sustainable design and development that supports long-term economic vitality and ecologic integrity;
3. Encourage site design techniques that protect water quality and prevent increases in the quantity of stormwater runoff;
4. Achieve a high-quality site and building design that enhances the attractiveness of the City;
5. Protect abutters against hazards, unsightliness, and nuisances detrimental to property values;
6. Ensure that development of land is appropriate for the public and private services and facilities available;
7. Ensure that pedestrian, bicycle, and vehicular circulation can be accommodated in a safe manner;
8. Preserve and enhance the historic and cultural character of the community; and,
9. Ensure that development serves to maintain and enhance quality of life, while not imposing unreasonable costs upon the City.

### 20.1.3 Applicability

- A. Unless otherwise indicated in this LDC, all development, redevelopment, or change of use of lots in the City, for uses other than single-family and two-family dwellings, shall conform with the site development standards in this Article.
- B. Other than for site investigation, site work associated with a proposed development shall not commence until the proposal has been approved by the Planning Board or its designee in accordance with this LDC.
- C. The site development standards in this Article, in addition to the site plan review application procedures in Section 25.12, shall govern the review and approval of all applications for site plan review.
- D. For the purposes of this Article, "development" shall mean any form of land improvement or construction involving land, structures, or infrastructure including, but not limited to, the following.
  1. The introduction of new principal or accessory uses, where no such use previously existed.
  2. The expansion or modification of existing principal or accessory uses.
  3. The introduction, expansion, modification, or relocation of structures, impervious surfaces, utilities, exterior lighting, and other site improvements or amenities.
  4. Site work associated with proposed development (e.g. grading, filling and excavation, stockpiling of materials, surcharging of soils).

## 20.2 DRAINAGE & STORMWATER MANAGEMENT

### 20.2.1 Runoff Volume and Velocity

- A. The development of a site shall not result in increased volume or velocity of runoff onto adjacent properties or surface water bodies.
- B. The applicant shall provide sufficient data in the form of drainage report prepared by a NH licensed engineer to demonstrate compliance with this requirement.

### 20.2.2 Low Impact Design

- A. Site design and drainage systems constructed to comply with Section 20.2.1 shall incorporate Low Impact Development (LID). Examples include, but are not limited to, the following.
  - 1. Bio-retention.
  - 2. Porous pavement.
  - 3. Vegetated swales.
  - 4. Infiltration trenches.
  - 5. Rooftop drain disconnection.
  - 6. Cisterns.
  - 7. Green roofs.
  - 8. Vegetated filter strips.
  - 9. Reduced impervious surfaces.
  - 10. Stormwater disconnection.
  - 11. Preservation and enhancement of native vegetation.
- B. Where site conditions exist that make on-site infiltration impracticable, the Applicant shall demonstrate to the satisfaction of the Planning Board that the use of LID measures is not possible before proposing to use traditional, structural stormwater management measures including, but not limited to, stormwater retention and detention ponds and underground storage systems.

### 20.2.3 Quality of Stormwater Discharge

- A. Treatment systems (e.g. wet detention basins, constructed wetlands, or LID measures) combined with contamination prevention practices (e.g. frequent sweeping of parking lots, the use of oil/gas traps in catch basins) shall be utilized to assure that upon discharge to surface waters, floodplain compensatory storage basins, or wellfield protection areas drainage water meets Federal Clean Water Act standards.
- B. Drainage systems that divert runoff into surface waters, wellfield protection areas, or floodplain compensatory storage areas shall utilize LID measures or wet or dry sediment basins or similar devices in combination with erosion prevention and sediment control practices to avoid sediment loading of the receiving area(s).

### 20.2.4 Bike Friendly

New street or trail drainage grates shall be of a design that allows bicyclists to ride over it safely.

## 20.3 SEDIMENT & EROSION CONTROL

### 20.3.1 Pre-Construction

- A.** Each project shall be designed to prevent erosion and sedimentation during and subsequent to construction in the following ways.
  - 1.** Minimize disturbance of natural soil cover and vegetation.
  - 2.** Minimize, in area and duration, exposed soil and unstable soil conditions.
  - 3.** Protect receiving water bodies, wetlands and storm sewer inlets.
  - 4.** Minimize off-site sediment transport on vehicles and equipment.
  - 5.** Minimize work in and adjacent to water bodies and wetlands.
  - 6.** Maintain stable slopes.
  - 7.** Minimize disturbance to and protect surrounding soils, root systems and trunks of trees adjacent to site activity that are intended to be left standing.
  - 8.** Minimize the compaction of all site soils.
  - 9.** Pre-treat stormwater runoff to remove solids before discharging to infiltration areas.
  - 10.** Install LID measures as appropriate.
- B.** Design and placement of all erosion and sediment control measures shall comply with the standards and practices contained in the most recent version of the NH Department of Environmental Services NH Stormwater Manual, unless specifically approved by the City Engineer.

### 20.3.2 Post-Construction

- A.** To assure that erosion and sediment control measures work properly, and to assure that revegetation and slope stabilization takes place in a timely manner and is properly maintained, the City may require a security deposit for up to 12-months after the completion of construction.
- B.** For critical or large areas of disturbance on steep slopes or adjacent to surface waters, the City may require inspections by a qualified firm or individual.

## 20.4 SNOW STORAGE & REMOVAL

- A.** Snow shall be stored on and/or removed from a site so as to:
  - 1.** Allow the continued safe passage of vehicles into, out of, and through all travel lanes and parking areas;
  - 2.** Prevent accumulation on adjacent properties (unless specific approval for such storage has been obtained); and
  - 3.** Prevent flooding of adjacent properties, including City streets.
- B.** Snow shall not be pushed, piled or otherwise moved directly into surface waters.
- C.** Snowmelt discharge and associated runoff shall be stored and its drainage routed so that it does not cause erosion.
- D.** Snow storage shall not be permitted within parking spaces on a site that are required to fulfill the minimum parking requirements of the Zoning Regulations.

## 20.5 LANDSCAPING

### 20.5.1 Plant Selection

- A.** No plant material shall be installed on a site that is listed by the NH Department of Agriculture, Markets and Food as an invasive species per NH RSA 430:54 and NH Administrative Rules AGR 3800.
- B.** Plant materials shall be hardy to regional climate conditions per the U.S. Department of Agriculture's Plant Hardiness Zone Map.
- C.** Landscape alternatives to turfgrass lawn (e.g. native trees, shrubs, and perennial groundcovers) shall be utilized whenever feasible.

### 20.5.2 Installation

- A.** Trees shall be planted utilizing the best available practices to develop essential root structure, to grow to their full stature, and to perform environmental services at the highest possible levels.
- B.** Plant materials shall be installed in soil of sufficient volume, composition, and nutrient balance to sustain healthy growth.
- C.** For trees plantings in areas of non-native or compacted soil, the existing soil shall be excavated to enable the placement of 300 cubic feet of native, permeable soil in an area no less than 6-ft wide and 3-ft deep.
- D.** Protective devices, such as temporary fencing, shall be installed prior to the start of site work to protect the root masses of existing vegetation and areas intended for infiltration to the satisfaction of the Community Development Director or their designee, or the City Engineer.
  - 1.** Such fencing shall be located to the outside dripline of shade and ornamental trees and/or to a diameter distance that matches the height of all shrubs and/or perennial plants.

### 20.5.3 Location

- A. All landscaping shall be located on site without impeding the visibility or safety of pedestrians, bicyclists, or motorists.
- B. Trees shall be located to avoid above-ground and below-ground utilities.

### 20.5.4 Maintenance

- A. Any plant material that is significantly damaged, missing, disease-ridden, or dead shall be abated by the property owner within 1-year or before the end of the following planting season, whichever occurs first.
- B. All plant materials shall be maintained on site in a healthy, growing condition.
- C. All landscaping approved as part of a site plan shall be considered as elements of the site in the same manner as parking, building materials and other site details.

### 20.5.5 Modifications to Approved Landscape Plans

Minor revisions to approved landscape plans approved by the Planning Board may be approved by the Community Development Director or their designee if the applicant demonstrates all of the following.

1. There will be no reduction in the approved quantity or size (at maturity and planting) of plant materials.
2. There will be no change to the approved location of plant materials.
3. The proposed plants are of the same general category (e.g. shade, ornamental, evergreen) as the approved plants.

## 20.6 SCREENING

### 20.6.1 General Standards

- A. Screening in the form of landscaping or other treatment (e.g. berms, walls, fences) shall be used to:
  1. Screen loading areas, waste storage and transfer areas, heating and cooling equipment, electrical equipment and other areas likely to generate noise, dust or other disruptive conditions;
  2. Form a buffer between non-residential and residential uses;
  3. Form a buffer between single-family and multifamily dwellings, which are different in height, form or material than the adjacent single-family dwellings; and
  4. Screen parking lots from adjacent properties.
- B. Screening shall be of a texture, material, color, and size compatible with the existing or proposed buildings or structures on the site.
- C. Chain link fencing with slats is prohibited for screening.
- D. No screening shall be so constructed or installed as to constitute a hazard to traffic or safety.

### 20.6.2 Specific Standards

#### A. Service Areas

1. Waste collection, waste compaction, recycling collection and other similar service areas shall not be located along the building frontage or along a building facade with a primary entrance and shall be screened from view from adjacent property or public rights-of-way (not including alleys).
2. Waste storage containers (e.g. dumpsters or bulk storage containers) shall be fully screened by a solid enclosure of wood, masonry, vinyl or other material deemed acceptable by the Planning Board and shall comply with the minimum standards for

property in Chapter 18 of the City Code of Ordinances.

3. Screening around waste storage containers shall be at least 6-ft in height or of a height equal to the height of the container if the height is greater than 6-ft.
4. Screening required for service areas, including waste storage containers, shall be compatible with the principal building in terms of texture, material and color.

## **B. Drive-Through Businesses**

1. Drive-through windows and lanes shall not be located along the building frontage or along a building facade with a primary entrance.
2. Where allowed, drive-through lanes shall be screened from any adjacent public rights-of-way (not including alleys), existing residential property, or residential zoning districts.
3. At a minimum, such screening shall consist of a compact, evergreen hedge not less than 3-ft in height at planting and 4-ft at maturity.
  - a. As an alternative, such screening may consist of a solid fence of wood or masonry at least 6-ft in height.

## **C. Mechanical Equipment**

Heating and cooling equipment, venting, electrical or other mechanical equipment, and associated conduit shall not be visible from adjacent buildings and public rights-of-way, whenever possible. If any portion of this equipment will be visible from adjacent buildings or public rights-of-way, the following standards shall apply.

### **1. Roof-Mounted Equipment**

- a. Roof-mounted equipment shall be set back from the edge of the roof at least 10-ft, and screened from ground level view from adjacent properties or adjacent public rights-of-way (not including alleys).
- b. New buildings shall provide a parapet

wall or other architectural element that screens roof-mounted equipment from view.

- c. For existing buildings with no or low parapet walls, roof-mounted equipment shall be screened on all sides by an opaque screen compatible with the principle building in terms of texture, material, and color.

## **2. Wall-Mounted Equipment**

- a. Wall-mounted equipment that is located on any surface visible from a public right-of-way (not including an alley) shall be fully screened by landscaping or an opaque screen or covering, which is compatible with the principle building in terms of texture, material, and color.
- b. New mechanical supply lines, pipes and ductwork shall be placed in inconspicuous locations or concealed with architectural elements (e.g. downspouts), or painted to blend in with the wall surface to which they are mounted.

## **3. Ground-Mounted Equipment.**

- a. Ground-mounted equipment visible from a public right-of-way or adjacent property shall be fully screened.
- b. Screening shall consist of landscaping or an opaque screen compatible with the principle building in terms of texture, material, and color, and shall be as high as the highest point of the equipment being screened.

## **D. Solar Energy Systems**

1. Roof-mounted, small-scale, and accessory solar energy systems shall be sited in a manner to reasonably minimize the view of the system from surrounding properties and public rights of way.
2. In order to minimize visual impacts, colors of roof-mounted solar energy system equipment and assemblies shall either be

muted or shall match nearby materials and colors.

3. Roof mounted solar energy systems on pitched roofs shall be on the same plane as the roof.
4. All solar energy system supplementary equipment and supply lines shall be placed in inconspicuous locations and/or concealed from view with architectural elements (e.g. downspouts) or other screening.

#### **E. Parking Lots**

Parking lots shall be designed and screened in accordance with Article 9 of this LDC.

## **20.7 LIGHTING**

### **20.7.1 Applicability**

- A. This standard shall only apply to outdoor lighting fixtures.
- B. When 50% or more of the light fixtures or poles of an existing outdoor lighting installation are being modified, extended, expanded, or added to, the entire outdoor lighting installation shall be subject to the requirements of this Development Standard.
- C. This standard does not apply to sign illumination, which is addressed in Article 10.

### **20.7.2 Prohibited**

- A. Floodlighting is prohibited, unless:
  1. The Community Development Director, or their designee, determines that there will be no negative impact upon motorists and neighboring properties; and
  2. The lights are directed toward the rear of a lot away from the road and neighboring properties, and are placed on heat or motion sensors.
- B. Uplighting is prohibited.

### **20.7.3 General Standards**

#### **A. Shielding**

All outdoor lights, including freestanding and wall mounted, shall be fully-shielded and/or dark skies compliant (International Dark Sky Association Seal of Approval or equivalent) fixtures with no portion of the bulb visible.

#### **B. Glare**

Lighting shall be installed and directed in such a manner as to prevent glare at any location, on or off the property.



### C. Light Trespass

The maximum light level of any light fixture cannot exceed 0.1-footcandles measured at the property line and cannot exceed 1-footcandle measured at the right-of-way line of a street.

### D. Illumination

All illumination shall be of a white light and shall have a color rendering index (CRI) greater than 70. The color-temperature or correlated color temperature (CCT) of lighting shall not exceed 3,500 Kelvins.

### E. Height

The mounting height of fixtures, as measured from the finished grade to the top of the fixture or pole (inclusive of fixture) shall not exceed the maximum height listed in Table 20-1.

**Table 20-1: Maximum Light Pole Height**

Zoning District	Max Height
All residential zoning districts Agriculture District Conservation District	15 ft
Downtown Core Downtown Growth Downtown Institutional Campus Downtown Limited Downtown Transition Neighborhood Business Office	20 ft
Business Growth & Reuse Commerce Commerce Limited Corporate Park Downtown Edge Health Care Industrial Industrial Park	30 ft

### F. Hours of Operation

1. Outdoor lighting shall not be illuminated between the hours of 10:00 pm and 6:00 am with the following exceptions:
  - a. Security lighting, provided the average illumination on the ground or on any vertical surface does not exceed 1-footcandle.
  - b. If the use is being operated, normal

illumination shall be allowed during the activity and for not more than 1-hour before or after the activity occurs.

- c. For 24-hour businesses, lighting levels shall be reduced by a minimum of 50% between the hours of 10:00 pm and 6:00 am.
2. The Planning Board may stipulate a specific time when lighting other than that used for security purposes should be turned off and this determination shall be noted on the final lighting plan submitted for signature.

### G. Wiring

Wiring for outdoor lighting shall be placed underground.

#### 20.7.4 Use Specific Standards

In addition to the General Standards in Section 20.7.3, the following standards shall apply to the categories of uses listed below.

#### A. Parking Lots

Outdoor lighting of parking lots and related circulation areas as well as the unenclosed areas of parking structures shall comply with the following standards.

1. Average illumination levels of parking lot lighting shall not exceed 3.5-footcandles.
2. The ratio of the average to the minimum illumination level (also known as the uniformity ratio) shall not exceed 5:1 in footcandles.

#### B. Canopies and Vehicle Fueling Station Islands

Canopy lighting, including lighting on vehicle fueling station and/or convenience store aprons, shall comply with the following standards.

1. Areas around pump islands and under canopies shall be illuminated so that the average illuminance at grade level does not exceed 12.5-footcandles.

2. For canopies located in or directly adjacent to residential zoning districts and/or where they are associated with a pre-existing non-conforming use, the average illumination at grade level shall not exceed 5.5-footcandles.
3. Light fixtures mounted under a canopy shall be recessed so that the lens cover is recessed into or flush with the underside of the canopy.
4. No light fixtures shall be attached to the sides or top of the canopy, nor shall the sides or top of the canopy be illuminated.
5. Areas away from fueling pump islands, as defined by the extent of the canopy, shall be subject to parking lot lighting standards in Section 20.7.4.

### C. Walkways

Lighting of outdoor walkways, alleys, and pedestrian paths shall comply with the following standards.

1. The average illumination level on a walkway or pathway surface shall not be less than 0.5-footcandles.
  - a. The area over which the average illumination level is computed shall only include the walkway surface plus an area on each side not more than 5-ft in width.
2. Maximum lighting levels shall not exceed 5-footcandles.
3. Lighting fixtures other than full cut-off fixtures may be used but shall be designed to minimize glare, direct illumination downward, and shall have an initial output of no more than 1,200 initial lumens.

## 20.8 SEWER & WATER

- A. All sewer and water utilities shall comply with the City's Utility Standards in Chapter 98 of the City Code of Ordinances.
- B. The City may require technical studies, at the applicant's expense to assure that existing sewer and water services will not be adversely affected by the proposed development and that there in fact is adequate sewer and water capacity for the proposed development.
- C. All new development shall comply with the City's industrial pre-treatment program

## 20.9 TRAFFIC & ACCESS MANAGEMENT

### 20.9.1 Traffic

- A.** Any commercial, office or industrial project involving 100 or more vehicle trips per day, or residential projects involving 10 or more units, as determined by the most recent published version of the ITE Trip Generation Manual, shall demonstrate that the project will not diminish the capacity or safety of existing city streets, bridges or intersections, prior to the issuance of a building permit.
- B.** If improvements to roadways, bridges, signals, or intersections are required for a proposed development to avoid diminishing the existing capacity or safety of these public systems, those improvements shall be made as part of the development, at the developer's expense.
- C.** The Planning Board may require that any development along West St from School St to the Bypass, and along Winchester St from Island St to the Bypass, be reviewed by the NH Department of Transportation for traffic impact.

### 20.9.2 Driveways & Curb Cuts

- A.** Entrances and exits onto public streets shall be designed to provide safe and convenient vehicular passage into and out of the site.
- B.** Wherever possible, the number of curbcuts or driveways on public streets shall be limited to one per lot.
- C.** The use of common driveways and service roads is encouraged, and in some instances may be required.
- D.** All driveways shall comply with the standards in Section 9.3 of this LDC.
- E.** A State driveway permit is required for any new driveway on a state road outside of the Urban Compact.

### 20.9.3 Access Management

- A.** Interior circulation and parking shall be designed to assure safe passage of all vehicles and pedestrians into, out of, and throughout the site.
- B.** On-site queuing areas shall be provided to prevent congestion on City streets.
- C.** New development shall provide safe and efficient access from roads and streets to all users, regardless of their mode of transportation.
- D.** Where appropriate, connections shall be made for the continuation of sidewalks, walkways and bicycle lanes within the property, between adjoining properties, and site amenities shall be installed such as bicycle racks, benches, shade trees, and bus stop shelters. These connections shall apply:
  - 1.** Grade changes, textures, colors or other methods of distinguishing sidewalks, walkways and crosswalks from vehicular travel; and,
  - 2.** Appropriate lighting, signage, crosswalks, and other safety devices.
- E.** For development other than single-family and two-family dwellings, bicycle parking shall be provided in racks or other similar facility.
- F.** Bicycle parking shall not be located within parking areas for motorized vehicles.
- G.** Building facades that abut parking areas and contain a public entrance shall include pedestrian walkways.

### 20.9.4 Accessibility

- A.** Pedestrian facilities shall be designed to accommodate persons with disabilities in accordance with the access standards required by the State Building Code.
- B.** Sidewalks, shared use paths, street crossings and other infrastructure shall be constructed so that all pedestrians, including persons with disabilities, can travel independently.

## 20.10 FILLING & EXCAVATION

- A. All development involving the commercial taking of earth shall comply with the Earth Excavation Regulations in Article 24.
- B. Any project, which involves the placement of fill within the floodplain, shall comply with the Floodplain Regulations in Article 23.
- C. If the placement of fill or excavation impacts wetlands, the applicant shall comply with federal and state wetlands regulations and procedures.
- D. Any project, which will result in 50 or more trucks of earth or gravel entering or leaving a site, shall submit a plan to the Community Development Department as to the proposed truck route(s). The Community Development Department shall consult with the Police Department and City Engineer, and as appropriate, the State Highway Department in reviewing the proposed haul routes.

## 20.11 SURFACE WATERS & WETLANDS

All development shall comply with all federal and state wetland and surface water regulations, Article 11 of this LDC, as well as any other applicable City regulations.

## 20.12 HAZARDOUS OR TOXIC MATERIALS

- A. Any proposed work that involves the receiving, handling, storing or processing of any hazardous or toxic substances (as defined by NH RSA 339-A:2), or involves property that has been contaminated by hazardous or toxic substances, shall disclose such information as part of a site plan review application.
- B. Copies of all appropriate state or federal permits and plans as required by the NH Department of Environmental Services (DES) for a proposed use or development shall be submitted to the City's Building and Health Official and the Fire Department for review.
- C. If, as a result of the content and review of the application, the Planning Board, or their designee, finds that a potential health risk or an environmental threat exists from a previous or existing use of the site, then it may require that an initial site characterization (see NH Code of Administrative Rules Env-Ws 412) be completed and submitted to DES. When a site characterization is required, the results shall be submitted to and reviewed by the Building and Health Official prior to the issuance of a building permit.

## 20.13 NOISE

- A. Proposed uses or development shall comply with the City's Noise Ordinance in the City Code of Ordinances and the Noise Limits in Article 17, and shall be sited or designed to minimize sound or noise impacts with consideration for surrounding land uses.
  - 1. If there is a question as to whether a proposed use or development will comply with these standards, the Planning Board may request sufficient evidence be provided by the applicant to demonstrate that the proposed use or work will not exceed the applicable sound level limits in Table 17-1 of this LDC. Compliance with the sound level limits is to be maintained at the boundary of the property.
- B. Once a proposed use or development begins routine operation, the Planning Board, or their designee, may require a demonstration that the use or development meets the applicable sound level limits.
  - 1. Such demonstration shall require a sound testing report by a qualified professional be provided to the Community Development Department that includes a description of measurement procedures, identification of sound level instrumentation and calibration, descriptions of measurement locations, sound level measurements and field observations, measurements and analysis of short duration repetitive sounds, and weather conditions.
  - 2. Sound level measurements taken as part of this demonstration shall include representative daytime and nighttime periods for a duration adequate to quantify the loudest modes of routine operation.

## 20.14 ARCHITECTURE & VISUAL APPEARANCE

The following standards shall govern the visual and architectural character of development in the City to ensure that new and redeveloped buildings and structures blend aesthetically with the City's historic character, are consistent with the prevailing scale, orientation, and design of the City, and do not detract from viewsheds and view corridors.

### 20.14.1 Massing/Scale

- A. The height or placement of any proposed new structure, modifications to an existing structure, or site improvement shall not overwhelm the prevailing architectural scale of the City, detract from valued architectural resources, or impede upon any view corridor or viewshed identified in the Viewshed Overlay District set forth in the Telecommunications Overlay District (Article 13).
- B. For buildings of 150-ft in length of more, facades shall be divided into multiple "modules," expressed through significant architectural changes such as a change in materials, a change in pattern elements (e.g. fenestration, columns, pilasters, etc.), or a change in building setback through recesses or projections. Such modules shall be no wider than 50-ft.



- C. Commercial storefronts shall include traditional pedestrian-oriented elements (e.g. display windows, bulkheads, transoms, pilasters, cornices, etc.).

- D. Additions to existing structures shall be compatible in size and scale with the principal building.

### 20.14.2 Visual Interest

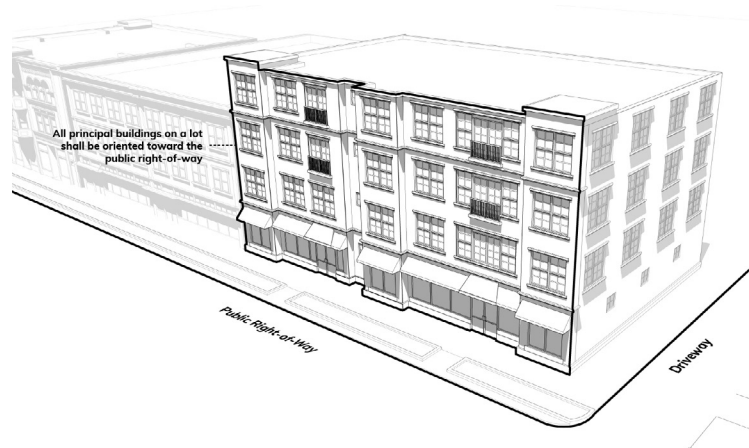
- A. Front facades and exterior walls shall be articulated to express an architectural identity to avoid a uniform appearance, and architectural details shall give the impression of being integral to and compatible with the overall design.
- B. Structures shall have architectural features (e.g. dominant gable ends, cornices, granite sills, arched openings, large windows framed with architecturally consistent trim, etc.) and patterns that provide visual interest at the pedestrian scale, reduce massive aesthetic effects, and harmonize with the City's distinctive architectural identity, unique character, and prevailing scale.
- C. Architectural features shall not serve primarily as an advertisement, commercial display, or identifying characteristics corresponding to corporate identity.
- D. Architectural features shall conform to accepted architectural principles of design and construction.
- E. Facades shall express a traditional visual distinction between the ground floor and upper stories through architectural features or detailing, change in materials, or a change in pattern elements such as fenestration.



- F.** Buildings shall be designed with consistent building materials and treatments that wrap around all facades visible from a public right-of-way. Where material or color treatments change, there shall be a significant change in surface plane of a minimum of 6-in in difference. Differing materials are encouraged to terminate at inside corners.
- G.** Exterior materials, textures, and colors shall minimize visual aggressiveness and shall harmonize with the City's distinctive architectural identity and unique character. Surfaces with glossy finishes, reflective glass or dark tinted exteriors, or untreated aluminum, stainless steel, or metal exterior finishes shall be discouraged.
- H.** Modifications and additions to existing structures shall be harmonious with the character of the existing structure.
- I.** Where parapet walls are used, they shall feature three-dimensional cornice treatments or other shadow creating details along their tops.
- B.** Orientation of structures on a site shall conform to a parallel or orthogonal pattern in relation to the City street pattern.
- C.** Off-street parking and traffic flow shall not interfere with the flow of pedestrian travel or otherwise detract from the aesthetic character of a development or redevelopment.
- D.** All required off-street parking shall be to the side or rear of buildings on the proposed site, and such parking shall be screened or aligned in accordance with Section 9.4.
- E.** A cohesive visual character shall be maintained within a development through the use of coordinated hardscape (e.g. paving materials, lighting, outdoor furniture, etc.) and landscape treatments.
- F.** The presence of any existing development in the surrounding area that does not conform to these standards for aesthetic character shall not exempt the applicant from complying with this Standard.

### 20.14.3 Site Design and Relationship to Surrounding Community

- A.** All principal buildings located on lot shall be oriented toward a public right-of-way. If, due to site constraints, it is determined that the primary facade of new buildings cannot face the street, then the secondary elevation facing the street shall be designed with form, composition, and details consistent with and appropriate to the primary facade.



# ARTICLE 25. APPLICATION PROCEDURES

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## 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 and decide on applications for variances from the Zoning Regulations; special exceptions from the Zoning Regulations; and, applications to expand or enlarge a nonconforming use applications for an equitable waiver of dimensional requirements from the Zoning Regulations.
- B.** To hear and decide on appeals of an administrative decision of the Zoning Administrator and of decisions of the Historic District Commission in granting or denying certificates of appropriateness.
- C.** To hear and decide on requests for extensions to approvals for variances, special exceptions, or expansions or enlargements 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, Subdivision Regulations, and Earth Excavation Regulations of this LDC.
- C. To hear and decide on applications for major site plan review; subdivisions (including boundary line adjustments and conservation residential development subdivisions); conditional use permits; street access permits for commercial, industrial, and multifamily sites; and, earth excavation permit applications.
- D. To hear or decide on voluntary merger applications, or appoint a designee to hear or decide on such applications.
- E. To hear and grant waivers from the Site Development Standards, Subdivision Regulations and Earth Excavation Regulations, and associated application procedures in this LDC.
- F. To hear and decide on appeals of an administrative decision on street access permits, Minor Project Review Committee decision on minor site plans, or administrative planning review decision.
- G. To hear and decide on requests for extensions to major site plan, subdivision, conditional use permit, and earth excavation 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 initiate, hear, and decide on proposed amendments to the Historic District Regulations in this LDC.
- B. To hear and decide on major project applications for a certificate of appropriateness.
- C. To hear and grant waivers from the Historic District Regulations.
- D. 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.
- E. 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 requests 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							
	Article 21				D	D / PH						
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										
	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 Services		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 incompleteness 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 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, from the Planning Board with respect to Articles 19, 20 and Sections 25.10 through 25.14 of Article 25, and from the Historic District Commission with respect to amendments to Article 21 and Section 25.15 of Article 25, 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 and Review by 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. Such ordinance shall be referred to the Planning, Licenses, and Development Committee for a recommendation to City Council. Upon receipt of such recommendation, the City Council shall vote to approve or disapprove the ordinance.

### 3. 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 and Review by 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. Such ordinance shall be referred to the Planning, Licenses, and Development Committee for a recommendation to City Council. Upon receipt of such recommendation, the City Council shall vote to approve or disapprove the ordinance.
- 3. 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.

### 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map

parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D.** 2 sets of mailing labels for each abutter and others requiring notice, 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 the Zoning Regulations.
- 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 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 is 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map

parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D.** 2 sets of mailing labels for each abutter and others requiring notice, 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 is 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the

street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

- D.** 2 sets of mailing labels for each abutter and others requiring notice, 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 is 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- D.** 2 sets of mailing labels for each abutter and others requiring notice, 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.
- D.** The Zoning Administrator shall publish their written interpretation on the City website within 5 calendar days from the date of issuance.

### 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 signed and stamped by a NH licensed surveyor (7-copies on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located

within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.

6. 2 sets of mailing labels for each abutter and others requiring notice, 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 or larger size; 1-copy on 11-in by 17-in 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 or larger size; 1-copy on 11-in by 17-in 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 or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) providing the following information:
  - a. The location 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 and other persons requiring notice 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(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 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.

- b. 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 signed and stamped 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 on 22-in by 34-in paper or larger size and as an electronic file 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 paper or larger size, 1-copy on 11-in by 17-in paper, and an electronic pdf file.

### 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, and 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 is 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 signed and stamped by a NH licensed engineer or architect (7-copies on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in 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 or larger size, 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- H. 2 sets of mailing labels for each abutter and others requiring notice, 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 calendar 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.

## 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.

b. 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 signed and stamped 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 on 22-in by 34-in paper or larger size and as an electronic file 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 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, 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.

**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 or larger size; 1-copy on 11-in by 17-in 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" or larger paper, 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/ or is directly across the street or stream from the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- J.** Major project applications shall include 2 sets of mailing labels for each abutter and others requiring notice, 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 calendar 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 by 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 list of abutters and others requiring notification. This list shall include the name, mailing address, street address, and tax map parcel number for: all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel; all owners of property located within 200-ft of the subject parcel; and, any holders of conservation, preservation or agricultural preservation restrictions. The list shall also include the name and mailing address of the applicant.
- b.** 2 sets of mailing labels for each abutter and others requiring notice, 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 include 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 or larger size paper and an electronic pdf file) signed and stamped 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, signed, and stamped 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 copy of an Elevation Certificate signed and stamped by a qualified professional 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 copy of

the Floodproofing Certificate for Non-Residential Structures signed and stamped by a qualified professional 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 is 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.** A complete plan set signed and stamped by a NH licensed engineer or architect (7-copies on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file), which shall include the following materials.
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 signed and stamped by a NH licensed soil scientist 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 (½) 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 be conducted by a NH licensed transportation engineer and 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(l).
- 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.