

Town of Hillsborough Zoning Ordinance

As Amended March 13, 2018

Planning Board Established – 1958

Zoning Ordinance Adopted February 2, 1976

CHAPTER 229 ZONING

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CHAPTER 229 ZONING

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hillsborough during codification. *Editor's Note: See § 229-3 of this chapter. Amendments noted where applicable.*]

GENERAL REFERENCES

Conservation Commission — See Ch. 24.
Historic District — See Chs. 38 and 147.
Planning Board — See Ch. 55.
Regional Planning Commission — See Ch. 63.
Building permits — See Ch. 107, Art. I.
Numbering of buildings — See Ch. 110.
Driveways — See Ch. 127.
Impact fees — See Ch. 149.
Loon Pond — See Ch. 160.
Parks — See Ch. 170.
Site plan review — See Ch. 185.
Solid waste — See Ch. 193.
Subdivision of land — See Ch. 201.

ARTICLE I. Title; Authority; Purpose; Scope

§ 229-1. Title

This chapter shall be known and shall be cited as the "Zoning Ordinance of the Town of Hillsborough, New Hampshire."

§ 229-2. Authority

This chapter is enacted pursuant to the Planning and Zoning Enabling Legislation of the State of New Hampshire, which is embodied in New Hampshire Revised Statutes Annotated, Title LXIV, Chapters 672-677, as amended.

§ 229-3. Legislative History

The Town of Hillsborough first enacted zoning on March 2, 1976, in the form of the "Town Plan of Hillsborough, New Hampshire." The zoning regulations enacted in 1976 were amended over the years, and the ordinance was re-codified in November 1988 as part of the general re-codification of Town ordinances. The re-codified zoning ordinance was enacted on March 14, 1989.

§ 229-4. Purpose

This chapter is enacted for the purpose of promoting the health, safety and general welfare of the community. The regulations herein give consideration to the character and suitability for particular uses of area in the Town of Hillsborough, the conservation of the value of buildings and the encouragement of the most appropriate use of land throughout the Town of Hillsborough. The chapter is designed to:

- A. Lessen congestion in the streets.
- B. Secure safety from fire, panic and other dangers.
- C. Promote health and the general welfare.
- D. Promote adequate light and air.
- E. Prevent the overcrowding of land.
- F. Avoid undue concentration of population.
- G. Facilitate adequate provision of transportation, solid waste, water, sewerage, school and recreation facilities.
- H. Assure proper use of natural resources and other public requirements.

§ 229-5. Scope

No land in the Town of Hillsborough shall hereafter be used for building, development or otherwise and no structure shall be erected, enlarged, materially altered or moved, except in conformance with this chapter.

ARTICLE II General Provisions

§ 229-6. Definitions and Word Usage

- A. For the purposes of this chapter, the word "shall" indicates a mandatory application, and the word "may" indicates a permissive application; the present tense includes the future; the singular includes the plural, and the plural includes the singular; the word "used" includes the words "designed," "arranged" or "intended to be used"; and the word "person" includes an individual, partnership, firm, association, corporation, proprietorship or organization.
- B. Subject to the foregoing rules of construction, the following definitions apply to this chapter:

ABUTTER -- Shall have the same meaning as defined in RSA 672:3.

ACCESSORY BUILDINGS--Additional buildings on a plot, apart from the primary dwelling or structure, for storing cars, boats, tools or other specialized purposes.

ACCESSORY USE--A subordinate use of a premises which customarily is accepted as a reasonable corollary to the principal use thereof.

AGRICULTURE--Shall be defined as in RSA 21:34-a II [Added ATM 3-15-2017 ART.1]

AGRITOURISM--Attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm, including, but not limited to weddings and similar social events [Added ATM 3-15-2017 ART.1]

ANIMAL SHELTER -- Any premises used as a refuge established for the temporary care and holding of animals.

APARTMENT--A single structure incorporating more than two dwelling units. This shall be interpreted to include condominiums, townhouses, garden apartments and the like.

ARTISTS' STUDIOS--Spaces used by artists and artisans such as photographers, painters, sculptors, woodworkers, potters, weavers, or jewelers, for the creation of their products or the teaching of their skills. Artists' studios may also contain a small area devoted to the display and sale of the products produced.

AUCTION HOUSE--Buildings principally used for the sale of new and/or used goods by means of a request or invitation for bids by a licensed Auctioneer, and related inside storage. "Goods" shall exclude livestock. Goods shall also exclude vehicles and/or machinery, except as incidental to an estate or foreclosure sale.

BAR--An establishment where the sale and consumption of alcoholic beverages are the primary activities.

BED-AND-BREAKFAST--A transient lodging facility, which is also the owner's personal residence, which contains not more than six (6) sleeping rooms for rental accommodations to visitors. In such a facility, the only scheduled meal served to guests is breakfast. Each sleeping room may contain a bathroom but shall not contain individual kitchen facilities. Sleeping rooms shall not be located in an accessory structure.

BOARDING KENNEL-- Any premises where four or more dogs which are five months old or older are kept temporarily, commercially, excluding pet grooming shops and veterinary clinics. Boarding of animals is permitted.

BOATHOUSE--A structure designed solely for the protection and storage of watercraft and accessories.

BUFFER--An area along a public road or property boundary which is left in its natural state and/or landscaped so as to limit the visibility of the development from the road or adjacent properties.

BUILDING AND SERVICE TRADE-- Shall include, but not be limited to, such building and service trades as carpenter, plumber, electrician, mason, and such similar trades where the tradesman performs his /her skill or works away from his/her home or business location and usually at the customer's site or property. No heavy equipment or outside storage of supplies, material, or equipment is to be permitted in connection of this use.

BUILDING ENVELOPE--The area in which buildings will be built, and shall include the area necessary for the installation of the septic system as well as the area required for a replacement septic system.

BUILDING--A structure built for the support, shelter, or enclosure of persons, animals, or movable property of any kind.

CAMP, RECREATIONAL--A parcel of land, including buildings and other structures, dedicated to seasonal recreation, which may include temporary overnight accommodations for those attending camp activities.

CAMPGROUND-- A parcel of land with one or more specific sites, with or without water, electricity, and sewage hookups, that has provision for the pitching of a tent or the parking of any recreational vehicle or trailer for use as sleeping quarters on a temporary and transient basis.

CEMETERY--Property used for interring the dead.

CHANGE OF USE-- A change of use occurs when the use of any land, building or structure is changed from one permitted land use classification to another, or when any of the following occurs:

- Addition or expansion of outside storage;
- Significant change in traffic volume or pattern;
- Change of permitted use category as illustrated in Table 4, or;
- Any significant Site Development activity.

[Amended 3-08-2016 ATM by Art 6]

CHAPEL--A chapel is a house of worship smaller than and subordinate to a church. **[Added 3-14-2006 ATM by Art. 5]**

CLINIC-- A building or portion thereof used by members of the medical profession for the diagnosis and outpatient treatment of human ailments. This definition includes freestanding birthing centers.

CLUBS/LODGES-- A building or use catering exclusively to club members and their guests for recreational and/or social purposes and not operated primarily for profit.

CLUSTER DEVELOPMENT-- A form of residential development that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks less than the minimum requirements, with the goal being an increased dwelling density on some portions of the parcel and other portions being preserved as open space.

COMMERCIAL STORAGE FACILITY-- A fully-enclosed commercial structure within which personal property, materials and equipment of a generally non-hazardous nature are sheltered for payment. Such a structure may include separate leased storage spaces. Retail or wholesale sales are prohibited from such a structure.

COMMERCIAL USE-- A commercial use is one which is undertaken for a business purpose, rather than hobby, recreational, educational, or other purposes. Such uses are usually attributed to a for-profit entity, rather than an individual, university or other educational institutions, or non-profit organizations (such as public libraries, charities, and other organizations created for the promotion of social welfare).

COMMON OPEN SPACE-- Undeveloped land within or adjacent to a cluster development which is designed and intended for the common use or enjoyment of the residents of the development, and in some cases the public. Roadways and driveways may cross common open space areas, but are not included in the calculation of the acreage of the common open space.

COMMUNITY CENTER-- A building used by nonprofit and public agencies for community-wide programs for which no charge or a very small charge is required. These programs are open to all members of the community.

CONVENIENCE STORE -- A small-scale retail establishment that primarily sells food, beverages, fuel, newspapers and magazines in a limited supply to customers. Convenience stores are characterized by high individual use, small number of items purchased and very short shopping time per customer. Examples: 7-Eleven, Cumberland Farms.

COVERAGE--The aggregate cross-sectional area of all buildings on the lot, including accessory buildings.

CREMATORY-- A facility containing furnaces for the reduction of dead bodies, either animal or human, to ashes by fire.

DAY CARE FACILITY, ADULT-- A structure or portion of a structure (residential home or Commercial building) used for less than 24 hours per day on a regular or continuous basis to care for elderly and/or functionally impaired adults requiring care, maintenance, and supervision by someone other than a relative or legal guardian, which has been licensed or registered by a state licensing agency. Clients shall be ambulatory or semi-ambulatory and shall not be bedridden."

DAY CARE FACILITY, CHILD OR FAMILY-- A structure or portion of a structure used for less than 24 hours per day on a regular or continuous basis, used for the protection, care and supervision of children under sixteen (16) years of age by someone other than a relative or legal guardian, which has been licensed or registered by a state licensing agency."

DAY CARE FACILITY, DOG--A controlled and monitored environment in a structure or portion of a structure used for less than 24 hours per day on a regular or continuous basis for a group of 5-10 dogs to interact and play in an enclosed building or yard.

DENSITY--The number of dwelling units or the number of individual lots for single-family homes which may be built upon a unit area of land. Density is calculated based on the zoning district in which the parcel is located, as well as the physical characteristics of the land which would preclude in total or in part the development of the parcel.

DRIVE-THROUGH FACILITY-- a structure or portion of a structure, which is designed to permit customers to receive products or services directly from a motor vehicle.

DRIVEWAY-- An area located on a lot, tract or parcel of land and built for direct access to a garage or off-street parking space, serving not more than two lots.

DWELLING UNIT--One or more rooms arranged for the use of one or more persons living together as a single housekeeping unit, and having cooking, living, sanitary and sleeping facilities, but not including hotel, motel, tourist cabin (camp), lodging house, institutional home, residential club units or other similar commercial accommodations offered for occupancy.

DWELLING--A building used for living quarters, but not including mobile homes, trailers of any kind, hotels, motels, lodging houses, institutional homes, residential clubs, tourist camps, cabins, or other commercial accommodations offered for occupancy.

EASEMENT-- A right of use over the property of another

FAMILY--One (1) or more persons living as a single housekeeping unit.

FARM -Shall be as defined in RSA 21:34-a I [Added ATM 3-15-2017 ART.1]

FARMERS' MARKET --Shall have the same meaning as defined in RSA 21:34-aV The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

FLEA MARKET-- An outdoor sale at which new or secondhand articles are sold.[Amended by the ATM 3-12-1991 by Art. 2]

FRONTAGE--That side of a lot abutting on a street and ordinarily regarded as the front of the lot. For a corner lot, half of the curve of the radius may be included in frontage.

FUNERAL HOME-- A building used for preparation of the deceased for burial, for display of the deceased and for ceremonies connected therewith before burial or cremation. A Funeral Home may contain a crematory as an accessory use only in a district in which a crematory is either a permitted use or a use permitted only by special exception.

GARDEN/FARM SUPPLY or NURSER-- A retail business or commercial activity concerned with the sale of tools, small equipment, plants (grown either on or off site) and related goods used in gardening or farming.

GRADE-- For buildings adjoining one street only, the elevation of the sidewalk at the center of that wall adjoining the street or, if no sidewalk, then the average level of the ground adjacent to that wall adjoining the street; for buildings having no wall adjoining the street, the average level of the ground adjacent to the exterior walls of the building. All walls approximately parallel to and not more than 50 feet from a street line are to be considered as adjoining the street.

HEIGHT--The vertical distance from the grade elevation to the highest point of the roof.

HOME BUSINESS-- A business operated from one's residence which is allowed by right in accordance with Table 4 Chart of Uses and subject to Change of Use and Site Plan Review by the Planning Board. **[Amended 03-08-2016 ATM Art 8]**

HOME OCCUPATION-- A business operated from one's residence that is not subject to site plan review regulations and does not require a permit from the Planning Board due to its minimal impact.

HOSPITAL-- A place for the diagnosis and treatment of human ailments that has equipment and facilities for extensive testing and provisions for extended periods of 24-hour care by a full-time certified medical staff.

HOTEL/MOTEL-- A transient lodging facility for rental accommodations to visitors. In such a facility, breakfast and other meals may be served to guests and the general public. Facilities for conferences and meetings may be included in such a facility. Each sleeping room shall contain a bathroom and may contain individual kitchen facilities. Sleeping rooms shall not be located in an accessory structure.

HOUSING FOR OLDER PERSONS also referred to as "Elderly" or "Senior" Housing,-- Shall have the same meaning as defined in RSA 354-A:15

IMPERVIOUS SURFACE Shall be as defined in New Hampshire RSA 483-B: 4. VII-b

INDUSTRY-- An activity primarily concerned with the enclosed manufacturing, processing or warehousing of goods.

INN-- A transient lodging facility which contains not more than ten (10) sleeping rooms for rental accommodations to visitors (in addition to a private residence occupied by the Innkeeper). In such a facility, breakfast and other meals may be served to guests and the general public. Each sleeping room may contain a bathroom but shall not contain individual kitchen facilities. Sleeping rooms may be located in an accessory structure.

JUNK YARD-- The use of any lot or parcel of land, or any part of a lot or parcel of land, for the open or exposed storage, keeping, sale, disposal or abandonment of food, garbage, refuse, old, used, wholly or partially dismantled, useless, broken or damaged articles, machines, machinery, automobiles, motor vehicles of any sort, clothing, furniture, or things of any sort. Such storage, keeping, placing for sale, disposal or abandonment of one or more unused, inoperative or unregistered motor vehicles on any lot or parcel of land, or portion thereof, shall constitute a junk yard. The term "junk yard" as so defined shall not be deemed to include any municipal dump or municipal refuse disposal area.

LANDSCAPING-- The planting of vegetation such as but not limited to grass, groundcovers, flowers, low shrubs, bushes, or trees, and includes the shaping of the ground into berms or embankments. Landscaping includes the erection of fences, decorative walls, stone walls, and other elements designed as visual enhancements and/or visual buffers to a site.

LIGHT INDUSTRY-- An activity primarily concerned with the enclosed manufacturing, processing or warehousing of goods that employs no more than 30 persons, and that causes no traffic congestion, undue noise, vibration, odor or other nuisance and poses no hazard to public health or safety.

LIVESTOCK AUCTION- The use of buildings and/or land for the selling of livestock by means of a request or invitation for bids by a licensed Livestock Dealer

LOT, CORNER--A lot situated at the intersection of two streets.

LOT--An individually designated parcel of land

MANUFACTURED HOME SALES-- The use of any building, land area or other premises for the display and sale of manufactured or mobile homes.

MOBILE HOME or MANUFACTURED HOUSING shall have the same meaning as defined in RSA 674:31

MOBILE HOME PARK OR MANUFACTURED HOUSING PARK-- A parcel of land upon which mobile homes may be placed upon rented spaces.

MOBILE HOME SUBDIVISION OR MANUFACTURED HOUSING SUBDIVISION-- A subdivision occupied exclusively by mobile homes sited on individually owned lots, each of which complies with the minimum lot area and frontage requirement of this chapter.

MODULAR BUILDING --Shall be as described in RSA 205:-C XI[Added ATM 3-15-2017 ART.2]

MOTOR VEHICLE SALES-- The use of any building, land area or other premises for the display and sale of new or used automobiles, motorcycles, trucks, vans, trailers, farm machinery or recreational vehicles, and including any warranty repair work and other repair service conducted as an accessory use.

MOTOR VEHICLE SERVICE STATION AND REPAIR GARAGE-- Land or structures used for either or both the sale of petroleum products, motor fuel, oil or other fuel for the propulsion of motor vehicles; the maintenance, servicing, repairing or painting of vehicles.

MULTIFAMILY DWELLING--Any building incorporating more than two dwelling units

MUNICIPAL FACILITY-- Any utility, street, sidewalk structure, building or other facility owned and maintained by the Town of Hillsborough.

MUSEUM-- An institution for the acquisition, preservation, study and exhibition of works of artistic, historical or scientific value, which may include the sale of museum pieces, replicas and display-related articles, and food service for visitors, as accessory uses.

NET RESIDENTIAL DENSITY-- The maximum density allowed in a residential subdivision determined from the net area of the parcel that is available for residential development after deduction of vehicular rights-of-way and land not useable because of drainage, subsurface conditions, or other impediment, including, but not limited to, wetlands, floodplains, steep slopes, or ledges.

NIGHT CLUB-- An entertainment facility for dancing, concerts or other live performances, usually consisting of a bar or lounge and perhaps a restaurant.

NURSERY SCHOOL/PRE-SCHOOL-- Early childhood (ages 6 and under) educational institution, including accessory uses, operated by a parochial or private institution.

NURSING HOME, RETIREMENT HOME or SUPERVISED GROUP HOME-- A place, other than a hospital, which maintains and operates group living facilities and may provide nursing care.

OFFICE-- A building or portion of building wherein services are performed involving predominantly administrative, professional, or clerical operations. Does not include a Home Business or a Home Occupation.

PARKING FACILITY--An off-street area either inside or outside a building, designed for the temporary storage of motor vehicles.

PARKING SPACE-- A portion of a lot for the temporary location of a licensed motor vehicle, the dimensions of which are at least 10 feet wide by 18 feet long (not including access driveway areas). A parking space must have direct access to a street, alley or approved right-of-way. ***Parking spaces dedicated specifically to residents or employees, or for compact vehicles, and measuring less than the standard parking space size may be permitted as part of the Site Plan Review process.***

PERSONAL SERVICES -- Establishments engaged to providing products or services to the general public. Examples of such uses include but are not limited to: Fitness Centers and Gyms, Barber Shops, Hairdressers, Laundromats, Drycleaners, Travel Agencies, Caterers, and Shoe Repair.

PLANNED UNIT DEVELOPMENT--Cluster development involving other than single-family dwelling units.

PLANNING BOARD or BOARD-- The Town of Hillsborough Planning Board

PRIVATE ROAD-- A road which is not serviced by the Town of Hillsborough or the State of NH and which serves more than two lots, sites, or dwelling units.

PROFESSIONAL BUILDING--A building partially or primarily used for offices in which professional services are offered or performed. Such services include, but are not limited to: doctor, dentist, lawyer, accountant, architect, therapist, realtor, photographer or other professions where service is provided to clients primarily on an individual basis. **[Added 3-14-2006 ATM by Art. 5]**

RECREATION, INDOOR-- Includes an indoor bowling alley, table tennis facility, pool hall, skating rink, gymnasium, swimming pool or similar place of indoor recreation.

RECREATION, OUTDOOR-- Includes a trap, skeet and/or archery range, golf course, hunting preserve, swimming pool, amusement park, outdoor concert area, tennis court, skiing facility or similar place of outdoor recreation.

RECREATIONAL VEHICLE--Shall be as defined in New Hampshire RSA 216-I: 1 VIII

REFUSE- Anything thrown away or rejected as worthless.

RELIGIOUS INSTITUTION-- Any building used for nonprofit purposes by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under the state property tax law, where such building is primarily intended to be used as a place of worship. The term includes, but is not limited to, church, chapel, temple, synagogue, and mosque.

REPAIR BUSINESS--An activity where the primary source of income is derived from repairs and maintenance of automobiles, machinery, snowmobiles, ATVs, small engines, etc. **[Added 3-14-2006 ATM by Art. 5]**

RESIDENTIAL USE-- Includes, single-family, two-family, or multi-unit dwellings, and any combination of those uses.

RESTAURANT-- A business establishment whose principal business is the selling of prepared food to the customer in a ready-to-consume state, in individual servings, or in non-disposable containers, and where the customer consumes these foods while seated at tables or counters located within the building, and where there is neither drive-up nor drive-through service. **[Added 3-14-2006 ATM by Art. 5].**

RESTAURANT, FAST-FOOD--Any establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the restaurant building or for carry-out, and where either:
[Added 3-14-2006 ATM by Art. 5]

(1) Foods, frozen desserts, or beverages are usually served in paper, plastic, or other disposable containers, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed; or

(2) The establishment includes a drive-up or drive-through service facility, or offers curb service.

RETAIL BUSINESS-- A shop or store for the sale of goods and/or services.

RIGHT-OF-WAY--A strip of land occupied or intended to be occupied by a street, walkway, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees or for other similar special uses. Such "rights-of-way" involving maintenance by a public agency shall be dedicated to public use by the developer. (See "easement.")

ROAD RIGHT-OF-WAY WIDTH--The distance between property lines measured at right angles to the center line of the street.

ROOMING HOUSE--A dwelling occupied by owner or agent offering rooms without housekeeping facilities for rent by the week or month.

SALE or LEASE--Any immediate or future transfer of ownership or any possessory interest in land or land and buildings or an interest in a subdivision or part thereof, whether by metes and bounds, deed, contract, plat, map, leases, devise, intestate succession or other written instrument.

SAWMILL-- A facility where, logs are temporarily stored, and sawn, split, shaved, stripped, chipped or otherwise processed to produce lumber or other wood products.

SCHOOL-- Kindergarten through high school, college and university education, including accessory uses.

SCHOOL, COMMERCIAL OR TRADE-- Commercially operated school of beauty, culture, business, dancing, driving, music or similar educational purposes.

SETBACK--The distance between a building and the nearest street line or property line.

SHOPPING CENTER-- A unified grouping of businesses which are planned and developed as an operating unit with shared parking. All businesses within such facility shall be either permitted or permitted by special exception within the district in which the Shopping Center is located.

SIGN--See § 229-35B for definition of "sign" and other definitions related to sign regulations.

SITE PLAN REVIEW--Review procedure as adopted by the Hillsborough Planning Board in its Site Plan Review Regulations. *Editor's Note: See Ch. 185, Site Plan Review.*

SPECIAL EXCEPTION--Shall have the same meaning as defined in RSA 674:33 IV

STEEP SLOPES-- Slopes in excess of 25%.

STORY-- That part of a building between a floor and the floor or roof next above; a "half-story" is a partial story under a sloping roof, two opposing wall plates of which are not more than two feet above the floor.

STREET includes Street, Avenue, -- A highway, boulevard, road, avenue, lane, alley, viaduct, highway, freeway and/or any other ways.

STRUCTURE-- Anything constructed or erected which requires location on or in the ground, or attached to something having location on or in the ground, including signs, billboards, fences greater than 7 feet in height, towers and swimming pools.

SUBDIVISION-- Shall have the same meaning as specified in RSA 672:14. ***Editor's note: see CH 201 for Subdivision Regulations***

THEATER-- A building or part of a building, or outdoor area, devoted to showing motion pictures or for dramatic dance, musical, or other live performances.

TOURIST HOME-- A dwelling occupied by the owner or agent offering rooms without housekeeping facilities for rent by the day.

TRAILER-- The same as mobile home, with the exception of "trailers" designed exclusively for camping or recreational purposes.

USE-- Any purpose for which may be granted by the Board of Adjustment in accordance with standards set forth in Article VIII.

VARIANCE-- Shall have the same meaning as specified in RSA 674:33 I (b)

VEHICLE AND MACHINERY AUCTION-- The use of buildings and/or land for the temporary interior or exterior storage and sale on premises of new and/or used vehicles and/or machinery by means of a request or invitation for bids by a licensed Auctioneer. "Temporary storage" shall mean for four weeks or less.

VETERINARY CLINIC/ANIMAL REHABILITATION-- Any premises operated for ambulatory needs of animals, such as examinations, shots, minor surgery, physical therapy, rehabilitation and tests. Boarding of animals is limited to those recuperating from veterinary care.

WORKFORCE HOUSING-- Shall have the same meaning as specified in RSA 674:58 IV

YARD SALE-- An outdoor sale of new or secondhand articles held on a residential premises by the owner(s) of the premises or by the owner and his neighbors. **[Added by the ATM 3-12-1991 by Art. 2]**

§ 229-7. Conflicts

The provisions of this chapter shall be the minimum requirements for achieving the purposes stated. Wherever the provisions of this chapter conflict with the provisions of any other legally adopted ordinance, regulation or ruling, the more restrictive or the higher standard shall apply.

§ 229-8. Building Height

Maximum height of all buildings shall not exceed fifty (50) feet above grade level. Steeples, cupolas, chimneys, antennas and other service appurtenances shall not be considered in determining height. Barns designated for livestock occupancy and silos where necessary to carrying on an agricultural operation are exempt from the height provisions of this chapter. **[Amended 3-12-2013 ATM by Art. 3]**

§ 229-9. Unsafe Buildings

Any building or structure determined to be unsafe by the Selectmen shall be repaired or demolished within 90 days of written notice of unsafe condition or such longer period as shall be set forth by the Selectmen. In the case where a building is demolished, the debris shall be removed, the cellar hole filled in and the area graded to blend with the surrounding area.

§ 229-10. Stream and Shoreline Protection [Amended TM 2015]

No building or impervious surface shall be located within 75 feet of the average mean high water level of any lake, pond or stream with a normal year-round flow. Boathouses are exempt from this provision. See Chapter 160 for the special two-hundred-foot setback from Loon Pond, and see § 229-36, Waterfront development, of this chapter, for additional regulations applicable to lots on lakes and ponds.

§ 229-11. Outdoor Sales [Added 3-12-1991 ATM by Art. 2]

- A. Flea markets, yard sales and other similar types of outdoor sales shall not be conducted for more than three consecutive days, after which all evidence of sale and merchandise shall be removed.
- B. Such sales shall not exceed a total of five days in any fourteen-day period.

§ 229-12. Modular Building- [Added ATM 3-15-2017 ART.2]

A Modular Building shall adhere to the requirements of RSA 205C. Modular Buildings may be used for Commercial, Residential or Accessory uses. Modular Buildings require a Building Permit and must meet all Town Code requirements prior to receiving a Certificate of Occupancy.

**§ 229-13. Recreational Camping Permit: Property Owners
[Added TM 2015]**

A “Recreational Vehicle” may be stored unoccupied in the Rural and Residential districts on the property of the Recreational Vehicle owner in the Town of Hillsborough for any period of time without a permit.

The Board of Selectmen, through the Building Inspector may issue a permit to any property owner to accommodate him/herself or nonpaying guests on their property to reside in a single “Recreational Vehicles” as defined in RSA 216-I:1 VIII for a period not exceeding 90 days in any one year.

Each Recreational Vehicle to be occupied shall demonstrate that proper sanitary facilities are available, as determined by the Building Inspector/Health Officer and all applicable health, life safety codes are met. No unit may be used for permanent dwelling at any time.

**§ 229-14. - Accessory Dwelling Unit (In-Law Apartments)
[Added TM 2015] [Amended ATM 3-15-2017 ART.3]**

A secondary dwelling unit which is accessory and subordinate to a permitted primary one-family dwelling unit and which consists of a kitchen/kitchenette area combined with no more than two bedroom(s), a bathroom and optional livingroom/diningarea. The ADU is located in a shared area of the primary dwelling structure that is separate from the primary kitchen and bedroom areas of the permitted one-family dwelling.

Provisions: An ADU is allowed with the following provisions:

1. An ADU is allowed only in one-family dwellings.
2. An ADU is not allowed in two- or multifamily dwellings or in any nonresidential uses.
3. An ADU is not allowed as a freestanding detached structure or as part of any structure which is detached from the principal dwelling.

4. The owner shall not separately lease both the primary dwelling unit and the "Accessory Dwelling Unit" at the same time.
5. The front face of the principal dwelling structure is to appear as a one-family dwelling after any alterations to the structure are made to accommodate an ADU. Any additional separate entrances must be located so as to preserve the appearance of a one-family dwelling.
6. At least one common interior access between the principal dwelling unit and an ADU must exist. A second means of egress from an ADU must exist and be located at the side or rear of the structure, and must remain accessible.
7. Separate utility service connections and/or meters for the principal dwelling unit and an ADU shall not exist. (This does not preclude using a type of zoned heating/cooling system for an ADU different from the type for the primary dwelling unit.)
8. Off-street parking shall be provided to serve the combined needs of the principal dwelling unit and an ADU. There shall not be a separate driveway for the ADU.
9. The gross living area (GLA) of an ADU shall not be less than 350 square feet and shall not exceed 50% of the principal structure or 1,000 square feet, whichever is less. The above-grade GLA of the principal dwelling shall not be reduced to less than 850 square feet in order to accommodate the creation of an ADU.
10. A building permit for an ADU must be approved and issued prior to the construction of an ADU.
11. The house number for the ADU shall be the same as that of the primary dwelling, and there shall not be a separate mailbox for the ADU.
12. Multiple ADUs are not permitted on any property.

13. An ADU shall not be considered to be an additional dwelling unit for the purposes of determining minimum dimensional requirements of a principal dwelling lot. An ADU shall be allowed to exist in a principal dwelling on a legal nonconforming lot so long as all provisions of this article can be satisfied.

§ 229-15. [Added 3-08-2016 ATM Art 2]

Technical Corrections: The Planning Board may, by majority vote, correct technical, typographical and non substantive errors and may reorder, renumber and correct cross reference information, where needed throughout this Ordinance.

ARTICLE III Use Districts

§ 229-16. Establishment of Districts

[Amended 3-11-2003 ATM by Art. 5; 3-14-2006 ATM by Art. 5]

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

Rural District

Residential District

Commercial District

Central Business District

Emerald Lake Village Residential District

Village Residential District

Lower Village Residential District

§ 229-17. Zoning Map; Boundaries

- A. The location and boundaries of the districts are shown on the Town of Hillsborough Zoning Map, which is on file in the office of the Town Clerk. This map is hereby adopted and shall be known as the "Official Zoning Map of the Town of Hillsborough" and shall be certified by the Selectmen and the Town Clerk. The Selectmen and Town Clerk shall promptly and properly make all changes to the Official Zoning Map as may be affected by any amendment to this chapter.
- B. Boundaries.

1. Where a boundary follows a right-of-way or a watercourse, it shall be construed to be the centerline thereof.
2. Where a boundary parallels the centerline of right-of-way or watercourse or a Town boundary, it shall be considered parallel to these features and at a distance indicated on the map.
3. Where a boundary line follows within 10 feet of an existing line, it shall be considered to coincide with that lot line.
4. Where a boundary line intersects an existing recorded lot, the nonconforming use may be extended not more than 100 feet into the adjoining district.

§ 229-18. Rural District

- A. Permitted Uses. In the Rural District, permitted uses are indicated in Table 4 – Chart of Uses.
- B. Uses permitted only by special exception. In the Rural District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.

§ 229-19. Residential District

- A. Permitted uses: In the Residential District, permitted uses are indicated in Table 4 – Chart of Uses.
- B. Uses permitted only by special exception. In the Residential District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.

§ 229-19.1. Village Residential District

- A. Purpose. The purpose of this district is to preserve the historic residential character of Upper Village and Bridge Village and to protect property values while encouraging new infill development.
- B. Permitted uses: In the Village Residential District, permitted uses are indicated in Table 4 – Chart of Uses.
- C. Uses permitted only by special exception. In the Village Residential District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.

§ 229-19.2. Lower Village Residential District.

- A. Permitted uses: In the Lower Village Residential District, permitted uses are indicated in Table 4 – Chart of Uses.
- B. Uses permitted only by special exception. In the Lower Village Residential District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.

§229-19.3. Emerald Lake Village Residential District [Added TM 2015]

- A. Permitted uses: In the Emerald Lake Village Residential District, permitted uses are indicated in Table 4-Chart of Uses.
- B. Uses permitted only by special exception. In the Emerald Lake Residential District, uses, permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4-Chart of Uses.

§ 229-20. Commercial District

- A. Permitted uses: In the Commercial District, permitted uses are indicated in Table 4 – Chart of Uses.
- B. Uses permitted only by special exception. In the Commercial District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.

§ 229-20.1. Central Business District

- A. Permitted uses: In the Central Business District, permitted uses are indicated in Table 4 – Chart of Uses.
- B. Uses permitted only by special exception. In the Central Business District, uses permitted by special exception granted by the Board of Adjustment pursuant to § 229-51 are indicated in Table 4 – Chart of Uses.
- C. .Provisions: Refuse storage. Refuse must be stored in enclosed containers which shall be located to the rear of the building and shall be completely screened from public view in order to prevent blight and to protect against noxious odors.

- D. .Parking: All applications for a change of use must demonstrate to the Planning Board that there is adequate parking for the proposed use; this can be demonstrated with on-site or nearby off-site parking, through reasonable shared parking arrangements, through available on-street parking, or a combination thereof.

§ 229-21. Dimensional Standards. [Amended 3-11-2003 ATM by Art. 5; 3-8-2005 ATM by Art. 4; 3-14-2006 ATM by Art. 5]

Tables 1, 2 and 3 shall govern lot area, frontage, setbacks, coverage and building height in the Town of Hillsborough. Setbacks shall be measured from the edge of the public or private right-of-way. In the Rural District, Village Residential District, Emerald Lake Village Residential. District, Lower Village Residential District, and in the Residential District, lots in existence prior to March 8, 1977, are exempt from the provisions of Tables 1 and 2.

§ 229-22. Use Standards

- A. Table 4, titled "Chart of Uses", shall govern whether uses are permitted, permitted by special exception, or permitted by conditional use. Any use not specifically enumerated herein, which is substantially similar to a described use, and which is not inconsistent with the purpose statement of the zoning district in which it is proposed to be located, may be approved for an existing classification by Planning.
- B. Any use that is not listed in Table 4 as either permitted, permitted by special exception, or permitted by conditional use, or that is not a lawful nonconforming use, is considered to be a prohibited use and may not be permitted to locate anywhere in Hillsborough unless specifically authorized under applicable State or Federal statutes.

§ 229-23. (Reserved)

§ 229-24. (Reserved)

§ 229-25. (Reserved)

ARTICLE IV Overlay Districts

§ 229-26. (Reserved)

§ 229-27. (Reserved)

§ 229-28. (Reserved)

§ 229-29. (Reserved)

ARTICLE V. Planned Developments

§229-30. Mobile Home Parks and Subdivisions

A. Standards for mobile home parks.

- (1) General. Mobile home parks may be permitted only as a special exception in districts specified in Table 4, but shall not be located in the Historic District or within the one-hundred-year-floodplain. Mobile home parks shall provide individual mobile home spaces, access driveways, parking and recreational open space in accordance with the following standards.

B Standards for mobile home subdivisions

- (1) Zoning district regulations. All lots in mobile home subdivisions shall comply with all dimensional requirements of the applicable zoning district.
- (2) Parking. Two off-street parking spaces shall be provided for each lot.

§ 229-31. (Reserved)

§ 229-32. (Reserved)

§ 229-33. (Reserved)

ARTICLE VI Special Regulations

§229-34. (Reserved)

Editor's Note: Former § 229-34, Parking, as amended 3-14-1989 ATM by Art. 2, was repealed 3-14-2006 ATM by Art. 4. Was [

§229-35. Signs [Repealed and Replaced ATM Art 5 3-15-2017]

A. Purpose and Intent

- 1) This Article is adopted for the regulation of signs within the Town of Hillsborough (the “Town”) and is based on the compelling governmental interests of preventing hazards to vehicular and pedestrian traffic safety by controlling the number, location and placement of signs; providing easy recognition and legibility of permitted signs and uses and promoting visual order and clarity on the streets; facilitating efficient communication by implementing design criteria that produces signs which can be easily read, recognized, and without distracting elements; complementing the historic and scenic character of the Town; and supporting business and community vitality by informing the public of available goods, services and activities. Accordingly, this Article regulates the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation.
- 2) Signs perform important functions that are essential for public safety and general welfare, including communicating messages, providing information about goods and services, orienting and directing people, and are a form of protected free speech under both the United States and New Hampshire Constitutions. It is the intent of this ordinance to provide a content-neutral regulatory scheme for the placement of signs consistent with the purpose of this ordinance to further public safety and general welfare.
- 3) This Article does not regulate every form and instance of visual communication that may be displayed anywhere within the Town. Rather, this Article is intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.
- 4) This Article is not intended to and does not apply to signs erected, maintained, or otherwise posted, owned or leased by the State of New Hampshire (the “State”), the federal government or the Town. The inclusion of “government” in describing some signs does not intend to subject the government to regulation, but instead, helps illuminate the type of sign that falls within the immunities of the government from any regulations.

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

ANIMATED SIGN: The presentation of pictorials and graphics on signs displayed in a progression of frames which give the illusion of motion, including but not limited to the illusion of moving objects, moving patterns or bands of light, or expanding or contracting shapes.

AREA and HEIGHT: The area of the smallest rectangle or circle within which the entire sign can fit; excluding structural supports which do not contribute through shape,

color, or otherwise to the sign's message; but including any separate surface, board, frame or shape on or within which the sign is displayed.

The height of a sign shall be measured to the highest point of the sign, including any structural or ornamental projections above the sign proper, from the average ground level above which the sign is located. For signs the components of which are painted or engraved on, or otherwise applied directly to a building or other structure, the sign area shall include any background of a different color, material or appearance from the remainder of the wall or structure, and shall in any event enclose all letters, figures, or representations related to the sign. The dimensions of a sign shall be the length and width of such a rectangle or the diameter of such a circle.

BUILDING FRONTAGE: The length of the exterior building wall or walls that is visible from a public street and runs parallel to said street. Further building frontage shall mean that side of the commercial building which runs along the primary public street access. In no instance shall this calculation be inclusive of more than one side of a commercial building.

CHANGEABLE COPY SIGN: A sign designed to allow the changing of copy through manual, mechanical, or electrical means. A CHANGEABLE COPY SIGN shall not be animated.

DILAPIDATED SIGN: A sign where elements of the display area or panel are visibly cracked, broken or discolored, where the support structure or frame members are visibly corroded, bent, broken, torn, or dented or where the message can no longer be read under normal viewing conditions.

FEATHER OR TEARDROP SIGN: A free standing flag not attached to any building in a shape similar to that of a feather or a teardrop.

GOVERNMENT SIGN: Shall mean a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

GROUND SIGN: A sign erected on a freestanding frame, mast or pole and not attached to any building.

GRANDFATHERED SIGN: Shall mean any nonconforming sign in any zone legally in existence prior to the enactment of this Article.

ILLUMINATION: The directing of light onto a sign, whether the light fixture is located on the ground or attached to the sign structure, or lighting of a sign from a light source internal to the sign itself

NAMEPLATE: A nonelectric sign, affixed to the facade of a building, identifying only the name and occupation or profession of the occupant of the premises on which the sign is

located. If any premises includes more than one occupant, "nameplate" means all names and occupations or professions as well as the name of the building and directional information.

OFF-PREMISES SIGN: Any sign visible from a public right- not located on the premises where the sign is installed and maintained.

ON-PREMISES SIGN: Any sign visible from a public right-of-way if located on the premises where the sign is installed and maintained.

PORTABLE SIGN: A sign that is not permanently affixed to a structure or the ground not to exceed fifteen (15) square feet in sign area per face may be located on any property for a maximum of 90 calendar days Portable signs shall include but are not limited to signs mounted upon a trailer, bench, wheeled carrier or other non motorized mobile structure with or without wheels.

PREMISES: A lot or parcel and all of the buildings located thereon.

PROJECTING SIGN: A sign other than a wall sign which is attached to and projecting more than 18 inches from a building face or wall.

ROOF SIGN: A sign erected upon, against or directly above a roof or on the top or above the parapet of a building.

ROTATING SIGN: Any sign or portion of a sign which moves in any manner

SIGN: Shall mean a name, identification, description, display or illustration, which is affixed to, painted or represented directly or indirectly upon a building, or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business. Signs located completely within an enclosed building, and not exposed to view from a street, is not considered a sign.

SIGN STRUCTURE: Any structure which supports or is capable of supporting a sign, including decorative cover. A sign structure may be a single pole and may or may not be an integral part of a building or structure.

TEMPORARY SIGN: Any banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended or is determined by the Code Enforcement Officer to be displayed for a limited period of time. If the sign display area is permanent but the message displayed is subject to periodic manual changes, that sign shall not be regarded as a temporary sign.

WALL SIGN: Any sign attached to, painted on or erected against any wall of a building or

structure so that the exposed face of the sign is on a plane parallel to the plane of the wall.

WINDOW SIGN: A sign located on a window, which is visible from the exterior.

C. General Provisions

1) Prohibited Signs--Signs are prohibited in all zoning districts unless:

- a) Constructed pursuant to a valid permit when required by this Article;
- b) Authorized under this Article; or
- c) Specifically exempted under this Article

2) Signs Authorized without a Permit

a. Grandfathered signs shall be replaced within one (1) year of their discontinuance with a sign which does not exceed in size that which it replaces. A sign larger or less conforming in any other aspect shall require a variance from the Zoning Board of Adjustment. A nonconforming sign shall be allowed to continue in a nonconforming status until its use has been discontinued for a period of one year. At that time, it shall be removed promptly by the property owner. When replacing several signs, the total square footage of the new sign(s) shall not exceed the aggregate square footage of the sign(s) to be replaced. The number of replacement signs shall not exceed that of the grandfathered status and shall not be less conforming in any way.

b. This Article does not apply to signs erected, maintained or posted by the State, federal or Town government, government signs which form the expression of the government when erected and maintained in accordance with applicable law are allowed in every zoning district.

Each property owner must mark their property using numerals that identify the address of the property so that public safety departments can easily identify the address from the public street. Unless otherwise required under this Zoning Ordinance or other law, the identification must be curbside and may be on the principal building on the property. The size and location of the identifying numerals and letters must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of a public street, the identifier must be located on the mailbox or other suitable device such that it is visible from the street.

c. Where a federal, State or local law requires a property owner to post a sign on the owner's property to warn of a danger or to prohibit access to the property either

generally or specifically, the owner must comply with the federal, State or local law to exercise that authority by posting a sign on the property.

d. The signs described in Section C (2)(a) – (d) of this Article are an important component of measures necessary to protect the public safety and serve the compelling government interest of protecting traffic safety, serving the requirements of emergency response and protecting property rights or the rights of persons on property.

e. **Temporary Signs:** All Temporary Signs shall be securely constructed and properly secured, and shall be placed in such a location as to not endanger vehicular or pedestrian traffic by obscuring a clear view or by creating confusion with official street signs or signals.

1. All Temporary Signs shall be securely constructed and properly secured, and shall be placed in such a location as to not endanger vehicular or pedestrian traffic by obscuring a clear view or by creating confusion with official street signs or signals.
2. Temporary signs shall not be illuminated

3) **Permit Application Process**

A. No permanent sign shall be placed, erected, constructed or altered within the Town without a permit for such sign unless otherwise exempted.

B. Application for a Sign Permit shall be made on blanks provided by the Office of the Selectmen and shall contain the following information:

1. Name address and telephone number of the applicant as well as the name, address and telephone number of the land and/or building owner, if applicable
2. Location of the property where the sign is to be erected
3. Scaled drawing showing the position of the sign in relation to the streets, rights-of-way, buildings, etc
4. Scaled drawing of the sign, including all alpha numeric text and images stating the colors to be used
5. Name address and telephone number of the firm or person erecting the sign
6. Written consent of the owner of the property if different than the applicant

C. It shall be the duty of the Selectmen or their designee to examine the Sign Permit application and corresponding plans and specifications for a proposed sign, and, if necessary inspect the location for the sign within 15 days. If it shall appear that the proposed sign is in full compliance with all pertinent regulations, a permit shall be

issued by the Selectmen. Upon reaching a decision, the applicant will be notified by the Selectmen. The permit shall expire within one year if the sign is not erected.

4) Regulations Applicable to All Signs

- a) No sign shall be placed in a manner that will endanger traffic by obscuring the view, by confusion with official signs, by glare or by flashing light, or by any other means.
- b) No sign shall use animated, moving, flashing images or text.
- c) No sign shall emit audible sound, noise, or visible matter.
- d) Every permanent sign shall conform to the setback provisions of the zoning district within which the sign is located.
- e) Portable signs are permitted provided that they comply with the location, size and use restrictions in this ordinance.
- f) The copy on any commercial sign may be substituted with noncommercial copy.
- g) Flags shall be exempt from this ordinance.
- h) Signs shall not be mounted on utility poles.
- i) Externally lighted signs shall be illuminated from the top only, and the lighting fixtures shall be fully shielded.
- j) Signs that are dilapidated or that advertise a business no longer conducted or a product or service no longer available shall be removed within one year.

5) Directional Signs

- a) In order to maintain public safety, temporary off-premise ground mounted commercial directional signs, relating to businesses within the Town of Hillsborough, are permitted in all zoning districts. Such signs shall have a maximum area of 6 sq. ft.. Commercial directional signs for any one business shall not exceed one (1) every one-quarter (1/4) mile length of road.
- b) Non-commercial ground mounted directional signs are also permitted within all zoning districts. Such signs will conform to the general signage requirements as to

location and size as found in this Article.

D. SPECIFIC SIGN REGULATIONS BY DISTRICT

1) Commercial District

- a) These regulations shall relate to commercial signage within the Commercial Zoning District.
- b) Permanent Signs:
 - 1. The maximum allowable total area for all permanent signs shall not exceed two square feet of sign area for every one lineal foot of building frontage. The term “building frontage” in this context shall mean that side of the commercial building which runs along the primary street access. In no instance shall this calculation be inclusive of more than one side of a commercial structure.
 - 2. Ground Signs: One ground sign is allowed per property. A property on a corner facing two or more streets may have two ground signs. The maximum height for a ground sign is 20 feet and the maximum area is 150 square feet **[Amended 3-12-2013 ATM by Art. 2]**
 - 3. Wall Signs: Wall signs are permitted. The maximum size height for a wall sign is 40% of the width of the wall on which it is placed. A wall sign shall not protrude above the wall on which it is located.
 - 4. Projecting Signs: Projecting Signs are permitted. This type of sign shall not project more than five feet from the supporting building façade. A minimum clearance of eight feet must be maintained between the sign and the finished grade. The maximum height for a projecting sign shall not exceed the height of the wall on which it is located.
 - 5. Temporary Signs: Temporary signs are permitted subject to the requirements of Section C(2) (e) of this article.

2) Central Business District

- a) These regulations shall relate to commercial signage within the Central Business District.

b) Permanent Signs:

1. The maximum allowable total area for all permanent signs shall not exceed one square foot of sign area for every one lineal foot of building frontage. The term “building frontage” in this context shall mean that side of the commercial building which runs along the primary street access. In no instance shall this calculation be inclusive of more than one side of a commercial structure.
2. Ground Signs: One ground sign is allowed per property. A property on a corner facing two or more streets may have two ground signs. The maximum height for a ground sign is 18 feet and the maximum area is 50 square feet **[Amended 3-12-2013 ATM by Art. 2]**
3. Wall Signs: Wall signs are permitted. The maximum size for a wall sign is 40% of the width of the wall on which it is placed. A wall sign shall not protrude above the wall on which it is located.
4. Projecting Signs: Projecting Signs are permitted. This type of sign shall not project more than five feet from the supporting building façade. A minimum clearance of eight feet must be maintained between the sign and the finished grade. The maximum height for a projecting sign shall not exceed the height of the wall on which it is located.

3) Residential Districts

- a) Home Businesses: Persons conducting an approved Home Business may further erect a single permanent sign not exceeding six (6) square feet in area.
- b) Non-commercial temporary signs are permitted in residential districts per C(2)(e) of this Article.

E. SEVERABILITY

The invalidity of any provision of this Ordinance shall not affect validity of any of the provisions. If any section, clause, provision, or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding will not affect or impair any other section, clause, provision or portion of this ordinance.

F. ENFORCEMENT

The enforcement of this Sign Ordinance shall be the duty of the Selectmen or its duly authorized agent.

§ 229-36. Waterfront Development

A. Purpose. The purpose of this section is to provide guidelines for the development of lakefront and backland with access to lakes and ponds so as to prevent overcrowding, to protect the shoreline and water quality and to control the granting of easements by waterfront lot owners for the purpose of access to water frontage.

B. Standards for waterfront development. Rights to gain access to a water body through or by means of any waterfront land in the Town of Hillsborough shall not be created or attached to any real estate, except in accordance with the standards set forth below and subject to Planning Board approval. Any owner granting rights for waterfront use and access shall comply with the following standards:

(1) There shall be a minimum frontage on the water of 50 feet per dwelling unit or per lot, whichever is more stringent.

(2) There shall be provided 400 square feet of beach area per dwelling unit or per lot, whichever is more stringent.

(3) Parking area in addition to the beach area shall be provided on the basis of 200 square feet for each dwelling unit planned.

(4) Docks may be permitted on the basis of one slip per 15 feet of shoreline.

C. Setbacks from shoreline. As required by § 229-10, no building shall be located within 75 feet of the shoreline, i.e., average mean high water level.

D. Loon Pond. Development on Loon Pond shall comply with the special two-hundred-foot protective setback established by Chapter 160 of the Code of the Town of Hillsborough.

§ 229-37.

Sand- and gravel pits and loam removal areas shall be permitted, provided that they meet RSA 155:E and the additional provisions stated below:

A. The cleared and stripped area shall be limited to the working area, which in no case shall exceed four acres.

B. The owner shall agree to burn, bury or otherwise dispose of all stumps and brush and

to grade the pit in such a manner as not only to eliminate vertical or overhanging banks but also to leave the banks in such shape that they will be kept to a minimum. Without special permission, slopes shall not be left steeper than 1 1/2 to one.

C. Pits shall not be left in such a condition that erosion of the pit after completion of the work may result in water pollution by silt or other deleterious substances. Pits shall be left in such shape and condition that material will not wash to block or obstruct drainage ways.

D. Unless the pit is intended to serve and is appropriate to serve as a pond for recreation or other purposes, the area shall be left as free-draining as practicable. Within six months of the final operation, unless otherwise permitted:

(1) All disturbed area shall be spread; four inches compacted, with the original topsoil or strippings or with some other approved material capable of supporting vegetation. Generally, where the owner clears trees from pit areas, he may be expected to replant such areas with seedlings. Where seedlings are not required, the owner shall seed the entire area, except where ledge rock is exposed, with a grass mixture approved by the State Highway Department.

(2) Where trees and brush exist between a roadway and a pit, if the owner removes this screening vegetation, he shall replant or set out acceptable growth in a zone along the edge of the pit that will provide a screen.

(3) Unless permission is given by the Selectmen to preserve access roads to pits, such roads shall be obliterated.

ARTICLE VIA. Floodplain Development

[Added 3-9-1999 ATM by Art. 3; amended 3-13-2002 ATM by Art. 2, Question #2; 3-13-2007 ATM by Art. 5]

§ 229-38. Title; Purpose; Construal of Provisions

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

§ 229-39. Applicability; Maps

[Amended 8-11-2009]

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

§ 229-40. Definitions

The following definitions shall apply only to this article, and shall not be affected by the provisions of any other ordinance of the Town of Hillsborough:

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain within the Town of Hillsborough subject to a one-percent or greater chance of flooding in any given year The area is designated as Zone A or AE on the Flood Insurance Rate Map.

BASE FLOOD

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

BASEMENT

Any area of a building having its floor sub grade on all sides

BUILDING

See "structure."

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FEMA The Federal Emergency Management Agency

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards

FLOOD INSURANCE RATE MAP (FIRM)

An official map incorporated with this article, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Hillsborough.

FLOOD INSURANCE STUDY

See "flood elevation study."

FLOODPLAIN or FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING

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

FLOODWAY

See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE

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

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure

HISTORIC STRUCTURE

Any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district

preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior; or

(2) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR

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

MANUFACTURED HOME

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

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale

MEAN SEA LEVEL

The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION

For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements

to such structures. For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

ONE-HUNDRED-YEAR FLOOD

See "base flood."

RECREATIONAL VEHICLE

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY

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

SPECIAL FLOOD HAZARD AREA

An area having flood, mudslide and/or flood-related erosion hazards, and shown on the FIRM as Zones A or A1-30. (See "area of special flood hazard.")

START OF CONSTRUCTION

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

STRUCTURE

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

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

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

VIOLATION

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

WATER SURFACE ELEVATION

The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

§ 229-41. Building permit required.

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

§ 229-42. Review of building permit applications; construction requirements

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

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

§ 229-42.1. Water, sewer and on-site waste disposal systems

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

§ 229-42.2. As-Built Elevation Information; Certification of Flood Proofing

A. For all new or substantially improved structures located in Zone A or AE, the applicant shall furnish the following information to the Code Enforcement Officer:

- (1) The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- (2) If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
- (3) Any certification of flood proofing.

B. the Code Enforcement Officer shall maintain for public inspection and shall furnish such information upon request.

§ 229-42.3. Approval by other Governmental Agencies

The Code Enforcement Officer shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

§ 229-42.4. Alteration or relocation of watercourses

A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Code Enforcement Officer, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer, including notice of all scheduled hearings before the Wetlands Board.

B. The applicant shall submit to the Code Enforcement Officer certification provided by a registered professional engineer, assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.

C. Along watercourses with a designated regulatory floodway no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway unless it has been demonstrated through hydrologic or hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

D. Until a regulatory floodway is designated along watercourses, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from federal, state, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement: "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

§ 229-42.5. Determination of and Development in Special Flood Hazard Areas

A. In special flood hazard areas, the Code Enforcement Officer shall determine the one-hundred-year flood elevation in the following order of precedence according to the data

available:

(1) In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

(2) In unnumbered A Zones, the Code Enforcement Officer shall obtain, review and reasonably utilize any one-hundred-year flood elevation data available from any federal, state or other source, including data submitted for development proposals submitted to the community (i.e., subdivisions, site approvals).

B. The Code Enforcement Officer's one-hundred-year flood elevation determination will be used as criteria for requiring in Zones A and AE that:

(1) All new construction or substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the one-hundred-year-flood elevation.

(2) All new construction or substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the one-hundred-year flood level; or, together with attendant utility and sanitary facilities, shall:

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

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

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

(3) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(4) All recreational vehicles placed on sites within Zones AE and A shall either:

(a) Be on the site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use; or

(c) Meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph (c) (6) of Section 60.3.

(5) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that they meet the following requirements: the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; the area is not a basement; the area shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

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

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

§ 229-42.6. Appeals; Variances; Notification of Applicant

A. Any order, requirement, decision or determination of the Code Enforcement Officer made under this article may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing, in addition to the usual variance standards under state law:

(1) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

(2) That, if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

(3) That the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. The Zoning Board of Adjustment shall notify the applicant in writing that the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

D. The community shall maintain a record of all variance actions, including the justification for their issuance, and shall report such variances issued in its annual or biennial report to FEMA's Federal Insurance Administrator.

ARTICLE VII Nonconforming Uses

§ 229-43. Continuation

A legal use, existing at the time of the adoption of this chapter, may continue as a nonconforming use, provided that:

- A. Such use cannot be resumed after a discontinuance of one year.
- B. A building used for a nonconforming use may be maintained or renovated but may not be structurally increased beyond original dimensions, except for the following: residential usage in the commercial zone where the footprint may be increased, provided that no additional dwelling units are created and the physical specifications are being met. It is also recognized that a rate of 50% of commercial space to residential would not apply.
- C. When partially or completely destroyed by fire or act of God, a building employed for nonconforming use may be rebuilt for the same use and of the same equivalent size if completed in one year.

§ 229-44. (Reserved)

Editor's Note: Former § 229-44, Lots of record, was repealed 3-8-2005 by Art. 4.

§ 229-45. (Reserved)

§ 229-46. (Reserved)

§ 229-47. (Reserved)

§ 229-48. (Reserved)

ARTICLE VIII Board of Adjustment

§ 229-49. Continuation

The Board of Adjustment, as established, is hereby continued as such. The word "Board" when used in this article shall be construed to mean the Board of Adjustment.

A. Membership. The Board shall consist of five members appointed by the Selectmen, each to be appointed for three years. The terms shall be arranged so that no more than two appointments occur annually.

B. Alternate membership. The Selectmen shall appoint not more than five alternate members to the Board.

C. Meetings. Regular and special meetings of the Board shall be held at the call of the Chairman or of a majority of the members of the Board at such time as the Chairman or a majority of the members of the Board may determine. The presence of three members shall be necessary for a quorum.

D. Organization.

(1) Rules of procedure. As required by New Hampshire RSA 676:1, the Board shall adopt rules of procedure.

(2) Minutes. The Secretary shall keep minutes of the proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating the fact.

(3) Annual election of officers. The Board shall annually elect a Chairman, Vice-Chairman and Secretary.

§ 229-50. Powers and Duties

[Amended 3-08-2016 ATM Art 10]

The powers and duties of the Board shall be as prescribed by New Hampshire RSA 674:33, as amended. The powers and duties are:

A. Administrative Appeals. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by any administrative official in the enforcement of this chapter. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. An appeal stays all legal and/or administrative proceedings under the action appealed from unless the officer from whom the appeal is taken certifies to the Board, after notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the officer from whom the appeal is taken and for cause shown.

B. Variances. To authorize upon appeal in specific cases variances from the terms of

this chapter. No variance shall be granted unless each of the provisions of RSA 674:33 I (b) are met. The expiration of variances shall be as stated in 674:33 I (a).

C. Special Exceptions. To hear and decide Special Exceptions to the terms of this chapter upon which such Board is required to pass under this chapter.

1. The ZBA shall hear and decide requests for Special Exceptions that are specifically authorized in Table 4 Chart of Uses.
 2. The ZBA shall grant a request for a Special Exception only where a majority of the Board votes that each of the following has been found.
 - a. The use requested is specifically authorized by Special Exception in the Ordinance;
 - b. The requested use will not create undue traffic congestion or unduly impair pedestrian safety;
 - c. The requested use will not overload any public or private water, drainage, or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets;
 - d. The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services;
 - e. Any requirements and standards for the specific use as set forth in the Zoning Ordinance are fulfilled;
 - f. The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to or out of character with the adjacent neighborhood;
 - g. The requested use is consistent with the spirit and intent of this Ordinance and the Master Plan.
 3. The applicant bears the burden of presenting evidence sufficient to allow the ZBA to make findings required to support the granting of a Special Exception.
 4. Expiration of Special Exceptions shall be as stated in RSA 674:33 IV.
- C.

§ 229-51. Applications

A. Forms. Applications to the Board for an administrative appeal, variance or special exception shall be made on forms provided by the Board in compliance with procedures established by the Board.

B. Fees. The application shall be accompanied by whatever fees are required by the Board to defray its costs.

C. Plans and information. The application shall be accompanied by whatever plans and other information are required by the Board.

D. Posting of procedures. The Board shall post its application procedures, fees and informational submittal requirements in a public place and file the same with the Town Clerk.

§ 229-52. Hearings and Notice

A. Public hearing. The Board shall hold a public hearing on each application.

B. Abutters notice. The applicant and all abutters shall be notified of the public hearing by certified mail. Such notice shall be given not less than five days nor more than 30 days before the date of the hearing.

C. Public notice. A public notice of the hearing shall be posted in at least two public places and shall be published in a newspaper of general circulation in the Town of Hillsborough not less than five nor more than 30 days before the date of the hearing.

§ 229-53. Hearing Procedure.

A. Conduct. All hearings shall be conducted in accordance with the rules of procedure adopted by the Board.

B. Witnesses. The Chairman shall have the power to administer oaths and compel the attendance of witnesses.

C. Testimony. The Board shall hear all abutters who desire to testify and all non-abutters who can demonstrate that they are affected directly by the application under consideration. The Board may hear such others as it deems appropriate.

D. Burden of persuasion. The applicant bears the burden of introducing sufficient evidence, through testimony or otherwise, to persuade the Board that the application should be granted.

E. Conflicts of interest. No member of the Board shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties. If a member is disqualified or unable to act in any particular case pending before the Board, the Chairman shall designate an alternate to act in his place.

F. Joint hearings with Planning Board. In accordance with NH RSA 676:2, as amended, the Board of Adjustment and the Planning Board may hold joint meetings and hearings when the subject matter of an application is within the responsibilities of both Boards. Each Board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.

§ 229-54. Decisions

A. Powers of Board. In exercising its powers, the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

B. Majority vote. The concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

C. Special conditions. In granting any appeals, variances or special exceptions, the Board may attach whatever conditions it deems necessary to the approval decision in order to assure compliance with the purposes of this chapter.

D. Issuance of decision.

(1) Written decisions. The Board shall issue a final written decision which either approves or disapproves an application. If the application is not approved, the Board shall provide the applicant with written reasons for the disapproval.

(2) Filing of decisions. Whenever the Board issues a decision, it shall be placed on file with the Town Clerk and made available for public inspection within 72 hours after the decision is made.

§ 229-55. Rehearing's; Appeals.

A. As provided by New Hampshire RSA 677:2, as amended, within 30 days after any order or decision of the Board, any party to the action or proceeding or any person directly affected by it may apply for a rehearing.

B. the Board shall either grant or deny a rehearing within 10 days of receiving the request or may suspend the order or decision complained of pending further consideration. Appeals to the New Hampshire Supreme Court may be taken pursuant to New Hampshire RSA 677:4, as amended, within 30 days after the action complained of has been recorded.

§ 229-56. (Reserved)

§ 229-57. (Reserved)

ARTICLE IX Administration and Enforcement

§ 229-58. Administering Agency

It shall be the duty of the Selectmen of the Town of Hillsborough to administer and enforce this chapter. They may, in their discretion, appoint a Building Inspector to administer and enforce this chapter.

§ 229-59. Building Permits

[Amended 3-12-1991 ATM by Art. 2; 3-8-2005 ATM by Art. 5; ATM 3-15-2017 ART. 4]

A. Building permits required. Upon passage of this chapter, no person may commence excavation or construction for a new building or addition to an existing building until a building permit is issued by the Selectmen or their agent. This permit must certify that the proposed construction complies with the provisions of this chapter. For residential construction, an application for permit must be issued or denied within 30 days. For nonresidential construction, an application must be acted on within 60 days.

B. Building permit fees. The Board of Selectmen is hereby authorized to establish reasonable building permit fees and to revise and amend those fees as necessary, provided that no fees may be established, amended or revised without a public hearing with 10 days' published and posted notice. Said notice shall contain a listing of all proposed fees. The Selectmen shall establish fees to sufficiently offset the administration and enforcement of the Building Code.

- C. Building permit applications. No application for a building permit shall be accepted or approved unless it is filed in writing on a form prescribed by the Selectmen, accompanied by the required permit fee and accompanied by whatever information, including drawings, the Selectmen may reasonably establish as necessary for the review of such applications.
- D. Stakes and markers. No applications for a building permit shall be approved until stakes or markers shall be fixed on the lot to indicate the location of lot lines and all corners of building(s), structure(s) and alterations proposed.
- E. Building Permit conditions. The Selectmen or duly authorized Building Inspector may attach conditions which they deem necessary to the enforcement of this chapter to the issuance of a building permit.
- F. Revocation of building permit. The Selectmen or duly authorized Building Inspector may suspend or revoke any building permit upon determining that the work or project in process is not in conformity with the permit as granted or is otherwise in violation of the terms of this chapter. In event of such suspension or revocation of a building permit, the work or project concerned shall immediately cease or legal action to enforce such cessation shall forthwith be taken by the Selectmen or duly authorized Building Inspector.
- G. The Zoning Board of Adjustment shall serve as the Building Code Board of Appeals
- H. A building permit for a building, structure, alteration or proposed land use or otherwise shall become void if the work is not substantially started and completed with all reasonable due diligence within 2 years. For new buildings, the commencement of work shall be considered to be the completion of the foundation.
- I. Renewal of building permit. A building permit under which work has commenced may be renewed for an additional year for a renewal fee to be established by the Selectmen as per Subsection **B** above.

§ 229-60. Enforcement

- A. Enforcing authorities. It shall be the duty of the Selectmen of the Town of

Hillsborough to enforce this chapter. The Selectmen may delegate enforcement authority to the Building Inspector. Where necessary, the Selectmen or the Building Inspector may retain legal counsel to assist with enforcement proceedings.

B. Cease and desist orders. The Selectmen or the duly authorized Building Inspector may issue violation and cease and desist orders personally. The Selectmen may take all actions deemed necessary by them to enforce this chapter or to prevent violations thereof.

C. Penalties. Penalties for violation of these regulations shall be as provided by New Hampshire RSA 676:17, as amended. Any person who violates any of these regulations:

(1) Shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

(2) Shall be subject to a civil penalty not to exceed \$100 for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that he is in violation, whichever is earlier.

D. Injunctive relief. In addition to other remedies provided by law, the Selectmen, Building Inspector or legal counsel may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate or remove erections, construction, alterations or reconstructions that are in violation of this chapter.

E. Recovery of legal costs. As permitted by New Hampshire RSA 676:17, the Selectmen shall seek to recover all costs and reasonable attorney's fees in any legal action necessary to enforce this chapter.

§ 229-61. (Reserved)

§ 229-62. (Reserved)

ARTICLE X. Miscellaneous Provisions

§ 229-63. Amendments

Amendment to this chapter whether by Selectmen or Planning Board or by petition of the people shall be acted upon in accordance with New Hampshire RSA 675:1 through 675:9, as amended.

§ 229-64. Mandatory review

It shall be the duty of the Planning Board and the Board of Adjustment, acting jointly, within two years of the passage of this chapter and every two years thereafter, to thoroughly examine and review this chapter and, where in their judgment it is necessary or desirable, to submit to the people such deletions, amendments or additions as may improve the equity or effectiveness of this chapter.

§ 229-65. Severability

Should any provision of this chapter be declared invalid by the courts, such decision shall not affect the validity of this chapter as a whole, nor any other section or provision thereof.

§ 229-66. When Effective

This chapter shall become effective upon passage.

ARTICLE XI Sexually Oriented Businesses

[Added by the ATM 3-14-2000 by Art. 2]

§ 229-67. Authority

This article was adopted by the Town of Hillsborough on March 14, 2000, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II. It was Article 2 of the 2000 Warrant.

§ 229-68. Purpose and Goals

This article is enacted in order to regulate the adverse secondary effects of sexually oriented businesses in the interest of public health, safety and welfare. The provisions of this article have neither the purpose nor the effect of imposing limitations or restrictions on the content of any communicative material, including sexually oriented material; and it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is

it the intent nor effect of this article to condone or legitimize the distribution of obscene material. The intent of this article includes, but is not limited to:

- A. Establishment of reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Hillsborough.
- B. Prevention of crime, blight, deterioration and property devaluation in the Town of Hillsborough that is associated with the concentration of sexually oriented businesses and that is intensified when sexually oriented businesses are located in close proximity to establishments selling or serving alcoholic beverages.
- C. Separation of incompatible uses, such as residences, churches, schools, parks, and day care facilities, from sexually oriented businesses.

§ 229-69. Definitions

As used in this article, the following terms shall have the meanings indicated:

SEXUALLY ORIENTED BUSINESS

Any place of business at which any of the following activities is conducted:

A. ADULT BOOKSTORE OR ADULT VIDEO STORE:

(1) A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area utilized for the display and sale of the following:

(a) Books, magazines, periodicals, films, motion pictures, videocassettes, slides, tapes, records, CD-ROM or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or

(b) Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1.

(2) An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principle stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals.

B. ADULT MOTION PICTURE THEATER — An establishment with the capacity of five or more persons where, for any form or consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are shown and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct"

as set forth in RSA 571-B:1, for observation by patrons. For Subsections B, C, D, E, F and G, a substantial portion shall mean the presentation of films or shows described above for viewing on more than seven days within any thirty-consecutive-day period.

C. ADULT MOTION PICTURE ARCADE — Any place to which the public is permitted or invited wherein coin- or slug- or electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

D. ADULT DRIVE-IN THEATER — An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films and theatrical productions, for any form or consideration, to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

E. ADULT CABARET — A nightclub, bar, restaurant or similar establishment which, during a substantial portion of the total presentation time features live performances which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, and/or feature films, motion pictures, videocassettes, slides or other photographic reproductions, which a substantial portion of the total presentation time of which is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

F. ADULT MOTEL — A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is distinguished or characterized by an emphasis on the depiction or description of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

G. ADULT THEATER — A theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form or consideration, regularly features presentation time which is distinguished or characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

H. NUDE MODEL STUDIO — A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more

intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

I. SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its primary business purposes, offers for any form or consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in the state of nudity; or
- (3) Where the activities in Subsection I(1) or (2) is characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

§ 229-70. Siting standards

A. General. Sexually oriented businesses, as defined above, are only permitted within the Commercial District as a special exception which must be reviewed by the Zoning Board of Adjustment and must comply with § 229-50C of the Town Code. All other applicable regulations, including site plan review, must be satisfied prior to approval. In addition to applicable regulations found elsewhere, the following standards also apply to all sexually oriented businesses as defined above:

- (1) No sexually oriented business shall be permitted within 1,000 feet from any residence, apartment or manufactured home.
- (2) No sexually oriented business shall be permitted within 1,000 feet from any church, place of worship, parish house or convent, public, parochial or private school, kindergarten, day-care center or public sports/recreation parks.
- (3) No sexually oriented business shall be located within 1,000 feet of the boundaries of the Town.
- (4) No sexually oriented business shall be located within 1,000 feet of a municipally owned property.
- (5) No sexually oriented business shall be permitted within 1,000 feet of another existing or proposed sexually oriented business; and no sexually oriented business

shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined above.

(6) No sexually oriented business shall be permitted within 1,000 feet of an establishment that sells or serves alcoholic beverages.

(7) The hours of operation shall only be between 10:00 am and 11:00 p.m., Monday through Saturday, and 12:00 noon to 9:00 p.m. on Sundays.

(8) Parking shall be one space per patron based on the occupancy load as established by local and state fire, building or health codes, whichever is greater, plus one space per employee on the largest shift.

(9) The site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.

(10) Sexually oriented businesses shall be limited to one sign not to exceed 24 square feet in size. Signs shall not include nudity or include references or images depicting activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

(11) All visual and audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1 shall not be visible and/or audible in any fashion whatsoever from the exterior of the building within which the sexually oriented business is located.

B. Measure of distance. The required distances of sexually oriented businesses from various locations, as defined in this section, shall be measured in a straight line between the closest structural walls, without regard to intervening structures.

§ 229-71. Enforcement

Enforcement of this article shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the Hillsborough Zoning Ordinance. Any person in violation of this article of this chapter shall be subject to punishment in accordance with referenced provisions.

ARTICLE XII Telecommunications

[Added 3-14-2000 ATM by Art. 3; amended 3-13-2002 ATM by Art. 2, Question #3]

§ 229-72. Authority

This article was adopted by the Town of Hillsborough on March 14, 2000, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II. It was Article 3 of the 2000 Warrant.

§ 229-73. Purpose and Goals

This article is enacted in order to establish general guidelines for the siting of telecommunications facilities and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Hillsborough to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.
- B. Reduce adverse impacts such facilities may create, including but not limited to impacts on aesthetics, quality of life, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injury to person and property and prosperity through protection of property values.
- C. Minimize the impact of all facilities singularly or in aggregate through an assessment of technology, current locational options, future available locations, innovative siting techniques, including collocation, and siting possibilities beyond the political jurisdiction of the Town.
- D. Permit the construction of new towers only where all other reasonable opportunities have been exhausted and to encourage the users of telecommunications facilities to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- E. Require cooperation, including collocation when appropriate, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town.
- F. Provide for and verify proper maintenance and safety management for any and all facilities.

G. Provide for the removal of abandoned facilities that no longer comply with safety standards and the Town Code and provide a mechanism for the Town of Hillsborough to remove these abandoned towers to protect the citizens from imminent harm and danger.

H. Provide for the removal or upgrade of facilities that are technologically outdated.

§ 229-74. Definitions

As used in this article, the following terms shall have the meanings indicated:

ANTENNA

Any apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network or any other communications through the sending and/or receiving of radio frequency electromagnetic waves.

AVERAGE TREE CANOPY HEIGHT

The average height above ground level of all trees over a specified height within a fifty-foot radius of the center of the mount of a telecommunications facility, such average to be determined by inventorying the trees to remain after the construction of the telecommunications facility

CAMOUFLAGE

A camouflaged telecommunications facility is one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed building or structure.

CAMOUFLAGE DESIGN

Any design employed for a telecommunications facility that disguises the facility as a structure which may be commonly found in the surrounding area such as, but not limited to, flagpoles, farm silos, ranger or forest fire watch towers, or artificial trees.

FAA

An acronym that shall mean the Federal Aviation Administration

FCC

An acronym that shall mean the Federal Communications Commission

HEIGHT

When referring to a tower or other structure, the distance measured from ground level of the natural grade to the highest point on the tower or other structure, including all appurtenances, such as antennas, beacons, or lightning rods.

MOUNT

The structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types

PLANNING BOARD or BOARD

The Town of Hillsborough Planning Board and the regulator of this article

PREEXISTING FACILITIES

Any telecommunications facility lawfully constructed or permitted prior to the adoption of this article and any telecommunications facility lawfully constructed in accordance with this article.

TELECOMMUNICATIONS FACILITIES

A facility consisting of antennas, telecommunications equipment, interconnecting cables and other related components, such as towers, mounts, shelters, equipment cabinets, or utility interfaces that provide communications for a licensed service provider.

TELECOMMUNICATIONS SERVICES

Any wireless telecommunications services, and commercial mobile services, including cellular telephone services, personal communication services, and mobile and radio paging services as defined in the Federal Telecommunications Act of 1996, 47 U.S.C. Section 332 (c)(7)(C)(i).

TOWER

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, or alternative structures not designed to look like a tower, and the like.

§ 229-75. Siting Standards

A. General. The uses listed in this section are deemed to be permitted uses that may require further review under this article in accordance with § 229-78, Conditional use permits. However, all such uses must comply with other applicable ordinances and regulations of the Town of Hillsborough (including site plan review). Editor's Note: See Ch. 185, Site Plan Review. The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in the Town.

(1) Principal or secondary use. Subject to this article, an applicant who successfully obtains permission to site under this article as a second and permitted use may construct telecommunications facilities in addition to the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations,

including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on an easement or leased parcels within such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure, nor shall such facilities be deemed to be an accessory use.

B. Use districts.

[Amended 3-11-2003 ATM by Art. 5; 3-14-2006 ATM by Art. 5]

District	New Tower Construction¹	Installation on Preexisting Tower²	Installation on Existing Structure³
Central Business	X	PCU	PCU
Commercial	PCU	PCU	PCU
Historic	X	X	X
Residential	X	PCU	PCU
Rural	PCU	PCU	PCU
Village Residential	X	PCU	PCU
Lower Village Residential	X	PCU	PCU
Emerald Lake Village Residential. District,	X	PCU	PCU

NOTES:

PCU = Permitted use with conditional use permit

X = Prohibited

District	New Tower Construction¹	Installation on Preexisting Tower²		Installation on Existing Structure³

¹An antenna may be located on a tower, newly constructed, under this article.

²An antenna may be located on a preexisting tower, constructed prior to the adoption of this article.

³An antenna may be located on other existing structures under this article.

C. Height limitation.

(1) General. Subject to any stricter standards as set forth below, a tower shall not exceed 90 feet in height, measured as the vertical distance from the average finished grade surrounding the facility, to its highest point, including all attachments.

(2) Telecommunications facilities in wooded areas. A telecommunications tower located in a wooded area shall not project higher than 20 feet above the average tree canopy height of the proposed site. Further, a telecommunications facility located in a wooded area must be camouflaged to blend in with the natural character of such area and must have a camouflage design in order to make the facility less obtrusive to surrounding properties and the community. Appropriate examples of camouflage design for wooded areas include: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.

(3) Telecommunications facilities in fields or agricultural areas. A telecommunications facility located in a field or other open area without a tree canopy shall have a camouflage design. Appropriate camouflage designs for fields or open areas include agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size typically found in the State of New Hampshire.

(4) Telecommunications facilities in or on existing structures. A telecommunications facility may be located on or within an existing building or structure, provided that such facilities shall have a camouflage design and shall be architecturally compatible with the host structure or building.

(5) Telecommunications facilities in other new structures. A telecommunications facility may be located on a new building or structure, provided that:

(a) Such building or structure does not exceed the maximum building height in the zoning district where the facility is proposed; and

(b) Such building or structure shall be architecturally compatible with the uses and buildings in the immediately surrounding area.

§ 229-76. Applicability

A. Public property. Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this article, except that uses are only permitted in the zones and areas as delineated in § 229-75B. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects, subject to state law and local ordinance, to seek the partial exemption from this article.

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

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

§ 229-77. Construction Performance Requirements

A. Aesthetics and lighting. Traditional lattice, guyed, and monopole towers are prohibited. All new telecommunications facilities must have an appropriate camouflage design that is visually compatible and in scale with the rural character of the Town and its villages and shall satisfy the following additional requirements:

(1) The design of the tower, buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other zoning and site plan review regulation requirements.

(2) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(3) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the

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

(4) Towers shall not contain any permanent or temporary signs, writing, symbols or any graphic representation of any kind.

(5) An applicant constructing a telecommunications facility in a wooded area shall utilize appropriate construction techniques to minimize damage to trees and other vegetation within the telecommunications facility site and surrounding area.

Moreover, all trees used to determine the average tree canopy height for the site shall not be damaged or removed during construction, maintenance, repair, and operation of the telecommunications facility.

B. State and federal requirements. All telecommunications facilities must meet or exceed current standards and regulations of the FAA, FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the telecommunications facilities governed by this article shall bring such facilities into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring telecommunications facilities into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with § 229-81, of the telecommunications facility, as abandoned, at the owner's expense through the execution of the posted security.

C. Building codes; safety standards. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with § 229-81, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

D. Additional requirements for telecommunications facilities. These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

(1) Setbacks and separation. All telecommunications facilities, including equipment compounds, utility buildings, structures, towers, and antennas, must meet the minimum setback requirements of the zoning ordinance, except equipment installed in or on an existing building that may be nonconforming. Further, freestanding

facilities must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower height; provided, however, that this requirement shall not apply to telecommunications facilities and appurtenant facilities located on or within existing buildings or structures that are camouflaged as otherwise required by this article.

(2) Easements or leased areas. If a telecommunications facility is to be located on an easement or leased area, said easement or leased area shall have a minimum area equal to an area having a radius of 125% of the tower's height plus additional area for accessory structures and access, if required.

(3) Landscaping.

(a) Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

(b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.

(c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer. The Board may require a protective covenant to ensure that the existing buffer on the site is maintained for the life of the telecommunications facility.

(4) Viewshed analysis. As part of the review process, the applicant shall conduct a Viewshed analysis to include, at a minimum, a mapped Viewshed delineation; and a test balloon or crane extension moored at the site to indicate the visibility of the proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the telecommunications facility site and other vantage points as determined by the Planning Board.

§ 229-78. Conditional Use Permits

A. General. All applications under this article shall apply to the Planning Board for site plan review, in accordance with the requirements as provided for in the Town's site plan review regulations. In addition, applications under this article shall also be required to submit the information provided for in this section.

B. Issuance of conditional use permits. In granting the conditional use permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties and preserve the intent of this article.

(1) Procedure on application. The Planning Board shall act upon the application in accordance with the procedural requirements of the site plan review regulations and RSA 676:4. In addition, applicants proposing a facility that will be visible from any other New Hampshire municipality within a twenty-mile radius shall submit a list of all such municipalities, with mailing addresses for each as required by RSA 12-K:7. Applicants shall also pay all fees required to notify each community.

(2) Decisions. Possible decisions rendered by the Planning Board include approval, approval with conditions or denial. All decisions shall be rendered in writing, and a denial shall be in writing and based upon substantial evidence contained in the written record.

(3) Factors considered in granting decisions:

(a) Height of proposed tower or other structure.

(b) Proximity of tower telecommunications facility to residential development or zones.

(c) Nature of uses on adjacent and nearby properties.

(d) Surrounding topography.

(e) Surrounding tree coverage and foliage.

(f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

(g) Proposed ingress and egress to the site.

(h) Availability of suitable existing towers and other structures as discussed in Subsection C(4).

(i) Visual impacts on developed areas, viewsheds, ridgelines and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.

(j) Availability of alternative tower structures and alternative siting locations.

C. Information required. Each applicant requesting a conditional use permit under this

article shall submit a scaled plan in accordance with the site plan review regulations and further information, including: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 220 feet away), documentation demonstrating the need for the proposed facility, and any other information deemed necessary by the Planning Board to assess compliance with this article. Furthermore, the applicant shall submit the following prior to any approval by the Board:

(1) The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

(2) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an environmental assessment (EA) or an environmental impact statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal thirty-day comment period, and the Town process, shall become part of the application requirements.

(3) The applicant shall submit written proof that it has complied with the requirements of Section 106 of the National Historic Preservation Act.

(4) Each applicant for a telecommunications facility shall provide to the Planning Board an inventory of existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height and design of each tower, as well as economic and technological feasibility for collocation on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this article or other organizations seeking to locate antennas within the jurisdiction of the governing authority; provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of:

(a) Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, in whole or in part, provided that a description of the geographic area required is also submitted.

(b) Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements and why.

(c) Substantial evidence that the existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related

equipment.

(d) Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(e) Substantial evidence that the fees, costs or contractual provisions required by the owner in order to share the existing tower or structure are not reasonable.

(f) Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

(5) The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of collocation upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Hillsborough and grounds for a denial.

(6) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with 676:4,I(g).

§ 229-79. Waivers

A. General. Where the Board finds that extraordinary hardships, practical difficulties or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purpose of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

(1) The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.

(2) The waiver will not, in any manner, vary other provisions of the Town of Hillsborough Zoning Ordinance, Town of Hillsborough Master Plan or official maps.

(3) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.

(4) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

(a) Topography and other site features.

(b) Availability of alternative site locations with substantially less impact.

(c) Geographic location of property.

(d) Size/magnitude of project being evaluated and availability of collocation.

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

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

§ 229-80. Bonding and Security; Insurance

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with § 229-81; all security shall be maintained for the life of the tower. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. ***Editor's Note: See Ch. 201, Subdivision of Land.*** Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

§ 229-81. Removal of Abandoned Antennas and Towers

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed

within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

§ 229-81.1. Requirement to Maintain Camouflage Design

Where a camouflage design has been employed to reduce the aesthetic impact of the telecommunications facility, said design must be maintained in perpetuity for the life of the telecommunications facility. Failure to maintain said design shall be considered abandonment and grounds for removal of said facility in accordance with § 229-81.

§ 229-82. Enforcement

Enforcement of this article shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the Hillsborough Zoning Ordinance. Any person in violation of this article of this chapter shall be subject to punishment in accordance with referenced provisions.

ARTICLE XIII Home Businesses and Occupations

Editor's Note: See also §§ 229-18B(7) and 229-19B(7).

§ 229-83. Authority

This article was adopted by the Town of Hillsborough on March 13, 2001, in accordance with the authority as granted in the New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II.

§ 229-84. Purpose

This article is enacted in order to provide opportunities for residents to work from their homes while protecting the rural and residential character of neighborhoods.

§ 229-85. Reserved

§ 229-86. Standards

A. General. All home businesses and home occupations must comply with the following provisions:

(1) Not more than one commercial vehicle that will be used for the home business or occupation shall be stored on the premises.

(2) There shall be no outdoor storage of any material related to the home business or

occupation except for one commercial vehicle in accordance with this article.

(3) No more than 40% of the existing net floor area of the primary residence shall be devoted to such use, except for permitted rooming houses or tourist homes.

(4) Before commencing any home business or occupation that will be served by a septic system and will generate large wastewater volumes, such as day-care facilities, hair salons and catering services, a report prepared by a licensed New Hampshire Septic Designer shall be submitted to the Planning Board that verifies adequate design and capacity of the existing septic system for the proposed use.

(5) The building and premises used for the home business or occupation shall not be rendered objectionable or detrimental to the residential character of the neighborhood because of exterior appearance, traffic, emissions of odor, smoke, dust, noise, electrical disturbance, on-site storage of hazardous materials as determined by the Hillsborough Fire Department or in any other way. Examples of home businesses and occupations that would be objectionable or detrimental to the residential character of the neighborhood are automotive repair garages, sawmills and slaughter houses.

B. Home occupations.

(1) The home occupation shall be located only in the existing primary residence.

(2) There shall be no nonresident employees.

(3) The home occupation shall not advertise with a sign on the premises.

[Amended ATM 03-08-2016 by Art 7]

C. Home businesses.

(1) Home businesses shall require a permit from the Planning Board. The application shall be submitted on a form designated by the Planning Board and shall contain all information necessary to determine compliance with this article. The application procedure shall follow § 201-3 of the Town Code.

(2) The home business may be located in the primary residence and/or accessory structures, provided that the home business is clearly accessory and subordinate to the residential use.

(3) There shall be no more than two nonresident employees.

(4) One sign advertising the home business shall be permitted. The maximum size of the sign shall be eight square feet.

§ 229-87. Enforcement

Enforcement of this article shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the Hillsborough Zoning Ordinance. Any person in violation of this article of this chapter shall be subject to punishment in accordance with referenced provisions.

ARTICLE XIV Cluster Development

§ 229-88. Purpose and Goals

A. The purpose of cluster development is to permit greater flexibility in the design of housing projects; discourage development sprawl; facilitate the economical and efficient provision of public services; provide for a more efficient use of land in harmony with its natural characteristics; preserve more useable open space, agricultural land, tree cover, recreation areas, and scenic vistas; protect hillside areas and views of them; and to expand the opportunity for the development of lower cost housing.

B. It is the intent of this section to authorize the Planning Board, in granting a conditional use permit, to allow cluster development in those districts that permit them as a conditional use, and to modify the district requirements for lot size, frontage, and setbacks for cluster developments. In reviewing such applications, the Planning Board shall ensure that the following criteria are met:

(1) That the purpose and intent of the Zoning Code will be upheld;

(2) That the proposed development will be consistent with the goals, policies, and recommendations of the Hillsborough Master Plan;

(3) That the proposed development will not have an unreasonable adverse impact upon adjacent property, the character of the neighborhood, traffic conditions, or utility facilities;

(4) That the proposed development will not create public health or safety hazards;

(5) That the proposed development will not cause an unreasonable diminution in area property values;

(6) That the proposed development complies with all provisions of the Subdivision Regulations. *Editor's Note: See Ch. 201, Subdivision of Land.*

§ 229-89. Reserved

§ 229-90. General Requirements

A. Permitted uses. The permitted uses in a cluster development are the same as in the underlying zone district.

B. Location. Cluster developments are allowed as a conditional use in the Residential, Rural, and Village Residential, Emerald Lake Village Residential District and Lower Village Residential Districts. **[Amended 3-14-2006 ATM by Art. 5]**

C. Permitted density. The maximum number of dwelling units permitted in a cluster development may not exceed the maximum allowable net residential density for the zoning district in which the development is located, except when a request is approved by the Planning Board for a density bonus under § 229-92, Incentive zoning.

D. Tract size. All cluster development subdivisions shall have the minimum tract size as follows:

[Amended 3-14-2006 ATM by Art. 5]

District	Minimum Tract Size (acres)
Village Residential	5
Lower Village Residential	5
Emerald Lake Village Residential	5
Residential	10
Rural	20

E. Lot sizes. In the interest of flexibility and creative site design, there is no minimum lot size for lots within cluster developments.

F. Road frontage. The minimum road frontage for a tract on which a cluster development is proposed shall be the same as the frontage required for an individual lot in the zone district in which the tract is located. There shall be no minimum frontage requirement for individual lots within a cluster development. Individual lots in a cluster development will not have individual access to existing public roads.

G. Setbacks. In the interest of flexibility and creative housing designs, there shall be no minimum setback for individual house lots within a cluster development. Separate building envelopes shall be shown on the plan delineating where structures and septic systems, if applicable, will be placed on the tract of land. There shall be a minimum setback of 50 feet along all property boundaries of the parcel being developed.

H. Buffer. A landscaped buffer no less than 50 feet deep shall be provided where appropriate to screen the development from public roadways and adjacent properties. The natural vegetation shall be retained whenever possible. If the natural vegetation is not sufficient to serve as an effective visual screen, landscaping shall be required to provide such a screen. Such landscaping may include berms and/or decorative fencing of an appropriate height. The buffer area may be counted towards the percentage of common open space required by § 229-90I.

I. Common open space. There shall be a minimum of 50% of the total land area of the parcel dedicated as common open space, which shall be restricted as follows:

- a) (1) The purpose of the common open space shall be to preserve large trees, tree groves, woods, ponds, streams, wetlands, glens, rocky outcrops, native plant life, wildlife cover, agricultural fields or orchards, and other natural or unique features on the site.

(2) There shall be no further subdivision of or development of the common open space areas, which shall be preserved in perpetuity as open spaces used only for any approved recreation or agricultural uses. Legal instruments which preserve the common open space in perpetuity, including the language of deed restrictions if applicable, shall be submitted to the Planning Board for approval. The Planning Board may refer these instruments or restrictions to Town Counsel for review.

(3) The common open space shall be deeded either to the homeowners' association or may be deeded to the Town or a conservation organization, or if applicable, private arrangements may be made to continue the agricultural use of appropriate portions of the open space. In such cases where agricultural pursuits will take place on the open space, a maximum of 75% of the total open space in the development may be used for agricultural pursuits, and the remainder shall be reserved for the use and enjoyment of the residents, and shall include some form of recreational facilities.

(4) The open space shall be useable for recreational or other outdoor living purposes and shall include recreational facilities that are consistent with the size and type of the development. This may include but not be limited to paths, benches, and picnic tables for passive recreation, and/or swimming facilities, tennis courts, a ball field, or a children's playground for active recreation. All common open space areas and recreational facilities shall be reasonably accessible to all residents of the development. Developers are encouraged to include such facilities that will enhance the natural features in the open space areas.

(5) The use of any open space may be further limited or controlled at the time of final approval when necessary to protect adjacent properties or uses.

§ 229-91. Conditional Use Permit

A. All cluster subdivisions shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other documents submitted that are part of the approved development. Everything shown or otherwise indicated on a plan or other submitted documents that are listed on the conditional use permit shall be considered conditions of approval.

B. Applications for conditional use permits for cluster subdivisions shall be made in accordance with the procedures set forth in the Subdivision Regulations of the Planning Board. applications shall comply with all requirements of the Subdivision Regulations.

Editor's Note: See Ch. 201, Subdivision of Land.

C. When reviewing a conditional use permit application for a cluster development, the Planning Board shall take into consideration the following:

- (1) The location, character and natural features of the parcel.
- (2) Fencing and screening.
- (3) The landscaping, topography and natural drainage.
- (4) Vehicular access, circulation and parking.
- (5) Pedestrian circulation.
- (6) Signs and lighting.
- (7) All potential nuisances.

D. Phasing of development. The Planning Board may establish a reasonable time table for phasing the development of an approved cluster subdivision in order to mitigate the impact of a development on community facilities, services or utilities.

E. Condominium proposals. Any cluster subdivision that includes proposals for condominium ownership shall comply with all applicable state statutes regulating the condominium form of ownership.

F. Approval of applications. A conditional use permit shall be issued only if a cluster development complies with all of the requirements of this section. The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section or of the Hillsborough Master Plan, including a reduction in allowed density to accomplish these objectives.

§ 229-92. Incentive Zoning

A. For exemplary cluster development proposals, the Planning Board may award a net density bonus not to exceed 20%, upon written request.

B. Eligibility. In order to qualify for incentive zoning, an application must meet the following criteria:

- (1) The tract must be a minimum of 15 acres in size.
- (2) A minimum of 75% of the total land area of the tract must be preserved as open space, of which no more than half may be wetlands or floodplains.
- (3) The development must be buffered from the public roads.
- (4) The proposal must be harmony with the natural features of the site.

C. Bonus calculation.

(1) The following point system shall be used by the Planning Board as a guideline to determine the maximum density bonus an application may receive. The following maximum number of points may be awarded if the proposal:

- (a) Has at least 85% open space which preserves an environmentally sensitive area: 10 points.
- (b) Has between 75% and 85% open space which preserves an environmentally sensitive area: five points.
- (c) Has at least 85% open space which preserves non-environmentally-sensitive areas: five points.
- (d) Preserves at least 10 acres of contiguous open field of prime agricultural importance: 10 points.
- (e) Provides trails for public use which connect to existing trails: five points.
- (f) Has buffers at least 200 feet deep which are at least 70% opaque along all property boundaries: 10 points.
- (g) Has buffers between 100 and 200 feet deep which are at least 50% opaque along all property boundaries: five points.
- (h) Allows public use for all dedicated open space: 10 points.

(2) Density bonus awards. A cluster development proposal may receive the following density bonus for the corresponding point total:

Point Total	Maximum Density Bonus
0 (meets eligibility requirements)	5%
5 to 10	10%
15 to 20	15%
20 or more	20%

D. Requirements. Each request for a density bonus must meet the following requirements:

(1) The granting of the density bonus shall be in the best interest of the Town in keeping with the intent of this section.

(2) The density of the proposed development shall not exceed by 20% the net residential density for the applicable zoning district.

(3) The location and layout of the open space shall take into account, preserve and, where appropriate, promote such features of the tract as rivers, streams, ponds, marshes, wetlands, unique geological or botanical areas or features and existing or potential trails, paths and open space links.

(4) The project shall not, during preconstruction, construction or thereafter, have any adverse environmental impact on the neighborhood or on any river, stream, lake, pond, marsh or wetland.

(5) The size, shape and location of any buildings to be constructed shall not be detrimental to the neighborhood, shall be in harmony with the natural features of the site and shall not adversely affect the visual character of the neighborhood or of the Town.

(6) The plan shall provide for safe and efficient vehicular and pedestrian movement on the site and for the adequate location of driveways and entrances in relation to the public roads.

(7) The Planning Board may impose other restrictions upon the development as a condition to granting the density bonus as the Board shall deem appropriate to accomplish the purpose of this section.

ARTICLE XV (Reserved)

Editor's Note: Former Article XV, Growth Management, added 3-8-2005 ATM by Art. 3, expired at the Annual Town Meeting in 2009.

§ 229-93. Through § 229-103 (Reserved)

ARTICLE XVI (Reserved)

Editor's Note: Former Article XVI Interim Growth Management for Emerald Lake Village District added 3-11-2008 ATM by Art. 2 expired at 12:00 midnight on March 12, 2012 and was Reserved ATM 03-08-2016 by Art 4

§ 229-104.-§ 229-108 Reserved

ARTICLE XVII Small Wind Energy Systems

[Added 3-9-2010 ATM by Art. 3]

§ 229-109. Authority.

This article has been adopted by the Town of Hillsborough in accordance with the authority as granted in the New Hampshire Revised Statutes Annotated 674:62 through 66 and procedurally under the guidance of RSA 675:1, II.

§ 229-110. Purpose.

This article is enacted in accordance with the purposes outlined in RSA 672:1, III-a. The purpose of this article is to provide for small wind energy systems in appropriate locations, while balancing the desirability of alternate energy sources and consideration of all impacts.

§ 229-111. Definitions.

As used in this article, the following terms shall have the meanings indicated:

METEOROLOGICAL TOWER (MET TOWER)

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

energy system.

MODIFICATION

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

NET METERING

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

POWER GRID

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

SHADOW FLICKER

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

SMALL WIND ENERGY SYSTEM

A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 25 kilowatts or less and will be used primarily for on-site consumption.

SYSTEM HEIGHT

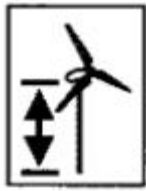
The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

**TOWER**

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

TOWER HEIGHT

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



WIND GENERATOR

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

§ 229-112. Permits Required.

A. Permits. Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector and a conditional use permit from the Planning Board. The permits shall be applied for simultaneously on a single application form prepared by the Planning Board. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed three years from the date the building permit was issued.

B. Application. Applications for a building permit and conditional use permit shall contain a site plan with the following information:

- (1) Property lines and physical dimensions of the applicant's property.
- (2) Location, dimensions, and types of existing major structures on the property.
- (3) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
- (4) Tower foundation blueprints or drawings.
- (5) Tower blueprints or drawings.
- (6) Setback requirements as outlined in this article.
- (7) The right-of-way of any public road that is contiguous with the property.
- (8) Any overhead utility lines.
- (9) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- (10) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
- (11) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
- (12) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to any building codes adopted by the Town.
- (13) Evidence of compliance or non-applicability with Federal Aviation

Administration requirements.

(14) List of abutters to the applicant's property.

C. Abutter and regional notification. In accordance with RSA 674:66, the Building Inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the Building Inspector prior to the issuance of the building permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.

§ 229-113. Conditional Use Permit

A. Review process. Conditional use permit applications shall be processed in accordance with the Planning Board's site plan review procedures. Upon the request of the applicant, the Planning Board may grant waivers of some of its site plan review requirements where no purpose would be served by reviewing such plan elements.

B. Approval of conditional use permit. Prior to approving an application for a conditional use permit, the Planning Board shall determine that all of the requirements of § 229-114 are met.

C. Appeal. In accordance with RSA 674:21 and RSA 676:5, III, appeals of Planning Board decisions on applications for a conditional use permit may be taken to the superior court as provided by RSA 677:15.

§ 229-114. Design Standards.

A. All small wind energy systems shall comply with the following criteria and standards. The applicant has the burden of providing sufficient information to establish that the criteria are met.

(1) Setbacks. The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements

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

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

(a) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

(b) Guy wires used to support the tower are exempt from the small wind energy system setback requirements, but shall be located on the same lot as the tower.

(2) Tower. The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

(3) Sound level. The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

(4) Shadow flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. "Significant shadow flicker" is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

(5) Signs. All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

(6) Code compliance. The small wind energy system shall comply with any building codes adopted by the Town.

(7) Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 CFR Part 77, Subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-B and RSA 424.

(8) Visual impacts. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access

to the optimal wind resources on the property.

(a) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground-mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

(b) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment.

(c) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

(9) Utility connection. If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

(10) Access. The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

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

§ 229-115. Abandonment

A. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

B. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to:

(1) Removal of the wind generator and tower and related above-grade structures.

(2) Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

C. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous twelve-month period. After the 12 months of inoperability, the Building Inspector may issue a notice of abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from notice receipt date. After review of the information provided by the owner, the Building Inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the Building Inspector shall withdraw the notice of abandonment and notify the owner of the withdrawal.

D. If the owner fails to respond to the notice of abandonment or if, after review by the Building Inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within three months of receipt of the notice of abandonment. If the owner fails to physically remove the small wind energy system after the notice of abandonment procedure, the Building Inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

§ 229-116. Compliance Required; Exception.

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

§ 229-117. Violations and Penalties

Any person who fails to comply with any provision of this article, a conditional use permit or a building permit issued pursuant to this article shall be subject to enforcement and penalties as allowed by New Hampshire Revised Statutes Annotated 676:17.

ZONING

229 Attachment 1

Table 1
Lot Area and Frontage Requirements
Rural District
Town of Hillsborough

Type of Use (for each building)	Minimum Frontage (feet)	Minimum Lot Size (acres)
Single-dwelling units	200	2
Two-dwelling units	200	2
Three-dwelling units	200	3
Four-dwelling units	200	3
All other uses	200	2
Lake Lots ¹		
Single-dwelling units	100	1
Two-dwelling units	100	1
Three-dwelling units	150	2
Four-dwelling units	200	3

NOTES:

¹ For lake lots, the front of the lot is towards the lake, and the front setback is measured from the average mean high water level.

ZONING

229 Attachment 2

Table 2
Lot Area and Frontage Requirements
Residential, Village Residential, Lower Village Residential, Emerald Lake Village Residential
Commercial and Central Business Districts
Town of Hillsborough

		With Municipal Water <u>and</u> Sewer		With Municipal Water <u>or</u> Sewer		With <u>no</u> Municipal Water or Sewer	
		Minimum Frontage (feet)	Minimum Lot Size (square feet)	Minimum Frontage (feet)	Minimum Lot Size (square feet)	Minimum Frontage (feet)	Minimum Lot Size (square feet)
Residential, Village Residential, Emerald Lake Village Residential ,Lower Village Residential and Commercial Districts							
	Single-dwelling units	100	10,000	100	20,000	125	40,000
	Two-dwelling units	100	20,000	100	40,000	125	80,000
	Three-dwelling units	125	28,500	150	52,000	150	120,000
	Four-dwelling units	150	37,500	150	64,000	150	160,000
	Commercial uses (each building)	200	40,000	200	40,000	200	40,000
	All other uses	200	40,000	200	60,000	200	80,000
<u>Central Business District</u>							
	<u>All Uses</u>	<u>50</u>	<u>5,000</u>	<u>50</u>	<u>5,000</u>	<u>50</u>	<u>5,000</u>

NOTES:

229 Attachment 2:1

ZONING

229 Attachment 3

Table 3
Setback, Coverage and Building Height Requirements
Town of Hillsborough

District and Type of Use		Minimum Setbacks			Maximum Front Setback (feet)	Maximum Coverage (percent)		Maximum Building Height (feet)
		Front (feet)	Side (feet)	Rear (feet)				
		Residential, , Emerald Lake Village Residential, Village Residential, Lower Village Residential and Commercial Districts						
	Dwellings	30	15	20	<u>N/A</u>	25		50
	Commercial Uses	50	20	25	<u>N/A</u>	30		50
	Other Uses ¹	50	20	25	<u>N/A</u>	30		50
		Rural District						
	Dwellings	30	25	50	<u>N/A</u>	25		50
	Commercial Uses	50	25	50	<u>N/A</u>	30		50
	Other Uses ¹	50	25	50	<u>N/A</u>	30		50
	Lake lots ²	75	25	25	<u>N/A</u>	20		50
		Central Business District						
	<u>All Uses</u>	<u>0</u>	<u>0</u> ³	<u>10</u>	<u>25</u> ⁴	<u>75</u>		50

NOTES:

- ¹ Other uses include rooming house with owner or agent in residence, residential use with house sales or professional office, church, school, etc.
- ² For lake lots, the front of the lot is toward the lake and the front setback is measured from the average mean high water level.
- ³ If adequate fire protection can be provided.
- ⁴ For primary building.

ZONING

Table 4
Chart of Uses
Town of Hillsborough

P = Permitted use. S = Permitted by Special Exception.
C = Permitted as a Conditional Use. (#) = See Notes

<u>Uses</u>	<u>ZONING DISTRICTS</u>						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commercial</u>	<u>Central Business</u>
	<u>RESIDENTIAL USES</u>						
<u>Bed-and Breakfast</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>		<u>P</u>
<u>Cluster Development</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		
<u>Dwelling, single-family</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S (1)</u>	<u>P (2)</u>
<u>Dwelling, two-family</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S (1)</u>	<u>P (2)</u>
<u>Dwelling, three- and four- family</u>	<u>S</u>	<u>P</u>	<u>P</u>	<u>S</u>	<u>S</u>	<u>S (1)</u>	<u>P (2)</u>
<u>Dwelling, more than four- family</u>	<u>S</u>	<u>S</u>	<u>S</u>			<u>S (1)</u>	<u>P (2)</u>
<u>Home Occupation</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Mobile Home/Manufactured Housing</u>	<u>P</u>	<u>P</u>					
<u>Mobile Home Park</u>	<u>S</u>	<u>S</u>					
<u>Mobile Home Subdivision</u>	<u>P</u>	<u>P</u>					
	<u>RESIDENTIAL USES NOTES</u>						
	<u>(1) Uses permitted by Special Exception only when such is a secondary use in conjunction with a commercial use and when such use comprises less than 50% of the square footage of the structure.</u>						
	<u>(2) Dwellings at street-level dwelling require a Special Exception. Minimum floor area for any dwelling unit shall be 600 square feet.</u>						

Attachment 4:1

ZONING

Table 4
Chart of Uses
Town of Hillsborough

P = Permitted use, S = Permitted by Special Exception,
C = Permitted as a Conditional Use, (#) = See Notes

<u>Uses</u>	<u>ZONING DISTRICTS</u>						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commercial</u>	<u>Central Business</u>
<u>COMMERCIAL USES</u>							
<u>Auction House</u>	<u>S</u>					<u>P</u>	<u>S</u>
<u>Bar</u>						<u>P</u>	<u>P</u>
<u>Camp, Recreational</u>	<u>S</u>						
<u>Campground</u>	<u>S</u>	<u>S</u>					
<u>Commercial Storage Facility</u>						<u>P</u>	<u>S</u>
<u>Convenience Store</u>						<u>P</u>	<u>S</u>
<u>Crematory</u>	<u>S</u>					<u>S</u>	
<u>Drive-Through Facility</u>						<u>P</u>	<u>S</u>
<u>Farmers' Market</u>	<u>S</u>					<u>P</u>	<u>P</u>
<u>Flea Market</u>	<u>S</u>					<u>P</u>	<u>S</u>
<u>Funeral Home</u>						<u>P</u>	<u>P</u>
<u>Garden/Farm Supply or Nursery</u>	<u>S</u>					<u>P</u>	
<u>Home Business</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>(1)</u>	<u>(1)</u>
<u>Hotel/Motel</u>						<u>P</u>	<u>P</u>
<u>Inn</u>	<u>S</u>					<u>P</u>	<u>P</u>
<u>Livestock Auction</u>	<u>S</u>					<u>S</u>	

Attachment 4:2

ZONING

Table 4
Chart of Uses
Town of Hillsborough

P = Permitted use, S = Permitted by Special Exception,
C = Permitted as a Conditional Use, (#) = See Notes

<u>Uses</u>	ZONING DISTRICTS						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commercial</u>	<u>Central Business</u>
	<u>COMMERCIAL USES (continued)</u>						
<u>Manufactured Home Sales</u>						P	
<u>Motor Vehicle Sales</u>						P	
<u>Motor Vehicle Service Station and Repair Garage</u>						P	
<u>Night Club</u>						P	P
<u>Office</u>	S	S	S			P	P
<u>Personal Services</u>		S	S			P	P
<u>Recreation, Indoor</u>						P	P
<u>Recreation, Outdoor</u>	S					S	
<u>Repair Business</u>		S				P	P
<u>Restaurant</u>	S	S	S			P	P
<u>Retail Business</u>		S	S			P	P
<u>School, Commercial or Trade</u>						P	P
<u>Shopping Center</u>						P	P
<u>Theater</u>	S					P	P
<u>Vehicle and Machinery Auction</u>						S	
	<u>COMMERCIAL USES NOTES</u>						
	<u>(1) Home Businesses are not regulated in the Commercial and Central Business Districts, but changes of use may be subject to Site Plan Review.</u>						

Attachment 4:3

ZONING

Table 4

Chart of Uses
Town of Hillsborough

P = Permitted use, S = Permitted by Special Exception,
C = Permitted as a Conditional Use, (#) = See Notes

<u>Uses</u>	<u>ZONING DISTRICTS</u>						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commer cial</u>	<u>Central Business</u>
	<u>INSTITUTIONAL USES</u>						
<u>Clinic</u>	<u>S</u>		<u>S</u>			<u>P</u>	<u>P</u>
<u>Clubs/Lodges, with seating for less than 250 people.</u>	<u>S</u>	<u>S</u>	<u>S</u>			<u>P</u>	<u>P</u>
<u>Clubs/Lodges, with seating for 250 or more people.</u>	<u>S</u>					<u>P</u>	<u>S</u>
<u>Community Center</u>	<u>S</u>		<u>S</u>			<u>P</u>	<u>P</u>
<u>Day Care Facility, Adult</u>	<u>S</u>	<u>S</u>	<u>S</u>			<u>P</u>	<u>P</u>
<u>Day Care Facility, Child or Family</u>	<u>S</u>	<u>S</u>	<u>S</u>			<u>P</u>	<u>P</u>
<u>Hospital</u>	<u>S</u>					<u>P</u>	<u>P</u>
<u>Municipal Facility</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Museum</u>	<u>S</u>	<u>S</u>	<u>P</u>	<u>S</u>	<u>S</u>	<u>P</u>	<u>P</u>
<u>Nursing Home, Retirement Home or Supervised Group Home</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Nursery School/Pre-School</u>	<u>S</u>	<u>S</u>	<u>S</u>			<u>P</u>	<u>P</u>
<u>Religious institutions, with seating for less than 250 people</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S</u>	<u>S</u>	<u>P</u>	<u>P</u>
<u>Religious institutions, with seating for 250 or more people</u>	<u>S</u>					<u>P</u>	<u>S</u>
<u>School</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>P</u>
	<u>INSTITUTIONAL USES NOTES</u>						

ZONING
Table 4

Attachment 4:4 f Uses

Town of Hillsborough

P = Permitted use, S = Permitted by Special Exception,
C = Permitted as a Conditional Use, (#) = See Notes

<u>Uses</u>	<u>ZONING DISTRICTS</u>						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commercial</u>	<u>Central Business</u>
	<u>INDUSTRIAL USES</u>						
<u>Building and Service Trade</u>	P	P	P	P	P	P	P
<u>Industry</u>				S	S	P	
<u>Junk Yard</u>							
<u>Light Industry</u>	S					P	S
<u>Sawmill</u>	S					S	
	<u>INDUSTRIAL USES NOTES</u>						
<u>Uses</u>	<u>ZONING DISTRICTS</u>						
	<u>Rural</u>	<u>Residential</u>	<u>Village Residential</u>	<u>Emerald Lake Village Residential</u>	<u>Lower Village Residential</u>	<u>Commercial</u>	<u>Central Business</u>
	<u>MISCELLANEOUS USES</u>						
<u>Agriculture</u>	P						
<u>Agritourism</u>	P(1)					S	
<u>Animal Shelter</u>	S					P	P
<u>Artists' Studios</u>	P	S	S	S	S	P	P
<u>Cemetery</u>	P	P	P	P	P		
<u>Daycare Facility Dog</u>	S	S	S	S	S	P	P
<u>Boarding Kennel</u>	S					S	
<u>Farm</u>	P					S	
<u>Veterinary Clinic/Animal Rehabilitation</u>	P					P	P
	<u>MISCELLANEOUS USES NOTES</u>						
	A. Subject to Change of Use and Site Plan Review						

Table 4

Attachment 4:5