

Town of Boscawen, New Hampshire

Zoning Ordinance

Adopted: *March 14, 2017*

History of Amendments:

March 9, 1993
Comprehensive Revisions Adopted

March 8, 1994
Floodplain Ordinance Revised

March 14, 1995
Permitted Uses Revised

March 11, 1997
Article VI 6.01 (b) amended to allow for Special Exception

March 10, 1998
Mill Redevelopment District Adopted
Comprehensive Sign Regulations Adopted
Floodplain Ordinance Recodified
Telecommunications Ordinance Adopted
Sexually Orientated Business Ordinance Adopted

March 11, 2003
Permitted Uses Revised

March 14, 2006
Article XII – Definitions Revised

March 13, 2007
Article XX - Impact Fee Ordinance Adopted
Article IV – Use Regulations Revised
Article XII – Definitions Revised

September 11, 2007
Article XXI – Growth Management Ordinance Adopted

March 11, 2008
Article XV – Floodplain Development Ordinance Amended

March 10, 2009
Article XXII - Small Wind Energy Systems Ordinance Adopted

March 9, 2010
Article XXIII – Accessory Dwelling Unit Ordinance Adopted
Article XXIV – Outdoor Lighting Ordinance Adopted
Article IV – Use Regulations Revised
Article XXI – Growth Management Ordinance Revised to add Sunset Date

March 8, 2011
Article IV – Use Regulations Amended
Article XII – Definitions Amended

March 13, 2012
Article XII – Definitions Amended
Article XXI – Conditional Use Permit Adopted
Article XXIII – Accessory Dwelling Unit Amended

March 12, 2013
Article IV – Use Regulations Amended
Article VIII – Off Street Parking Amended
Article XII – Definitions Amended

March 11, 2014
Article IV – Use Regulations Amended
Article VI – Supplementary Regulations Amended
Article XII – Definitions Amended

March 10, 2015
Article V – Lot Dimensions/Areas Amended
Article VI – Supplementary Regulations Amended
Article XII – Definitions Amended

March 8, 2016
Article IV- Use Regulations Amended
Article XII - Definitions Amended
Article XIV – Cluster Developments Amended

March 14, 2017
Article IV Use Regulations Amended
Article XII Definitions Amended
Article XIV Cluster Developments Amended
Article XXIII ADU Ordinance Amended

Town Clerk Adoption Certification:  **Date:** **March 29, 2016**

TABLE OF CONTENTS

Section		Page
Article I	Title and Purpose	4
Article II	Zoning District	5
Article III	General Provisions	7
Article IV	Use Regulations	8
Article V	Lot Dimensions and Area	13
Article VI	Supplementary Regulations	15
Article VII	Sign Regulations	17
Article VIII	Off-Street Parking Space Requirements	23
Article IX	Nonconforming Uses, Structures and Lots	25
Article X	Administration and Enforcement	27
Article XI	Board of Adjustment	31
Article XII	Definitions	33
Article XIII	Amendment, Validity and Effective Date	52
Article XIV	Cluster Developments	53
Article XV	Floodplain Development Ordinance	58
Article XVI	Telecommunications Ordinance	67
Article XVII	Sexually Oriented Businesses	71
Article XX	Impact Fee Ordinance	74
Article XXI	Conditional Use Permit	80
Article XXII	Small Wind Energy Systems Ordinance	83
Article XXIII	Accessory Dwelling Unit Ordinance	89
Article XXIV	Outdoor Lighting Ordinance	91

ZONING ORDINANCE - TOWN OF BOSCAWEN, NEW HAMPSHIRE

BE IT ORDAINED, by Town Meeting of the Town of Boscawen, pursuant to Chapter 674:16-21 and 675:1-7 inclusive, New Hampshire Revised Statutes Annotated, 1955 and as amended, as follows:

Article I
Title and Purpose

1.01 **Short Title**

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Boscawen, New Hampshire" referred to herein as "this Ordinance."

1.02 **Purpose**

This Ordinance is designed, in accordance with a comprehensive plan, for the purpose of providing for the health, safety, and the general welfare of the community. The Ordinance is intended: to lessen congestion in the streets; to secure safety from fires, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate facilities for transportation, solid waste, water, sewage, parks, schools and day care; and to assure the proper use of natural resources and all other public requirements.

The Ordinance was made with consideration to and for the character of each area of the community and its peculiar suitability for particular uses, with a view toward conserving the value of buildings, and encouraging the most appropriate use of land.

Furthermore, and in accordance with RSA 672:1, as from time to time amended, it is also the purpose of this Ordinance to provide for energy efficient patterns of development; the perpetuation of the traditional land uses of agriculture and forestry; a balanced supply of housing, including housing affordable to persons and families of low and moderate income; and family based, home day care.

Article II
Zoning Districts

2.01 **Division into Districts**

The Town of Boscawen, New Hampshire, is hereby divided into six (6) Zoning Districts to be designated as follows:

Full Name	Short Name
Agricultural - Residential	A-R
Residential - Low Density	R-1
Residential - Medium Density	R-2
Commercial	C
Industrial	I
Mill Redevelopment District	MRD

The restrictions and regulations specifically applicable to each of the above mentioned Districts are shown in Articles IV and V of this Ordinance, which use the short names for each District. General restrictions and regulations applicable to all Districts are included throughout this Ordinance.

2.02 **Description of Districts**

a.) **Agricultural - Residential (A-R):**

A zone designed to preserve land for agriculture, forestry, and related uses, with adequate provisions for transition to unrelated uses. Land in the zone is usually unsubdivided with a minimum of roads and public services. Land in the zone may or may not be suitable for cultivation, but should be generally suitable for some agricultural or silvacultural uses, considering a broad definition of agriculture and silvaculture. The A-R zone is intended to discourage the scattered intrusion of uses not compatible with a rural environment.

b.) **Residential - Low Density (R-1):**

The purpose of the zone is to maintain primarily single family housing on large lots with provisions for further development of single family neighborhoods, related land uses, and limited land uses unrelated to single family neighborhoods.

c.) **Residential - Medium Density (R-2):**

A residential zone intended to provide a suitable environment for single and multi-family residential neighborhoods. Adequate provisions are made for home occupations and related uses, but non-residential activities are generally prohibited. Land in the zone is generally serviced or planned to be serviced by both municipal water and sewer.

d.) **Commercial (C):**

A business zone intended for both individual business establishments and for unified developments of commercial and office centers. Residential uses are not generally encouraged in the zone. The zone should provide space for business activities serving neighborhoods, the town, or the region. Land in the zone is generally located on or having good access to major arterial roads and is generally serviced or planned to be serviced by both municipal water and sewer.

e.) **Industrial (I):**

The zone is intended to accommodate a variety of business, warehouse, and light industrial uses. Residential uses are generally prohibited in the zone. Land in the zone has generally been set aside to promote economic and industrial development while avoiding conflicts with other land uses. Land in the zone should have good access over major arterial roads to the state highway network and should be serviced or be planned to have service by both municipal water and sewer.

f.) **Mill Redevelopment District (MRD):**

A zone intended to accommodate a variety of commercial and industrial uses, and to encourage redevelopment of formerly industrial properties and related land and buildings. The zone is comprised of the following Industrially-zoned properties located along Commercial Street and Crescent Street in the Town of Boscawen: the properties designated by the Boscawen Tax Collector as Map 183-C, Lots 43 and 62; and Map 183-D, Lots 134, 135, 136, 137, 138, 149, 150 and 151. The uses permitted in the Mill Redevelopment District consist of the combined uses permitted in the Industrial and Commercial zones, and include Hotels and Inns. Institutional uses including hospitals, sanatoriums and rehabilitation facilities will be allowed by Special Exception only.

2.03 **Zoning Map**

The location and boundaries of the Zoning Districts are shown on the "Zoning Map for the Town of Boscawen, New Hampshire" dated as of the effective date of this Ordinance and signed and certified by the Town Clerk. Where any uncertainty exists with respect to the boundary of any District as shown on the Zoning Map, the following rules shall apply:

1. Where a boundary is indicated as a highway, street, alley, railroad, watercourse, or Town Boundary, it shall be construed to be the centerline thereof on such boundary.

2. Where a boundary is indicated as approximately parallel to a highway, etc., it shall be construed as parallel thereto and at such distance from as shown on the Zoning Map.

3. If no dimension is given on the Zoning Map, the location of any boundary shall be determined by use of the scale shown on the Map.

4. Where a boundary line coincides within ten (10) feet or less with a lot line, the boundary shall be construed as the lot line.

Article III
General Provisions

3.01 Required Conformance with Regulations
In any District, no building, structure or land shall hereafter be originally occupied, erected, moved or altered in bulk until a Certification of Zoning Compliance has been issued in accordance with the provisions of Article X of this Ordinance, insuring that the undertaking conforms with the provisions of the Ordinance.

3.02 Non-conformance with Use or Dimensional Regulations
Any Property that does not conform to the use or dimensional regulations of this Ordinance at the effective date of this Ordinance shall be allowed to continue, but must comply with the provisions of Article IX.

3.03 Undemolished Buildings
No owner or occupant of land in any District shall permit fire or other ruin to be left, but within one year shall remove or refill the same to clear ground level; or shall repair, rebuild or replace the structure. An extension of time may be granted by Special Exception.

3.04 Land Use in all districts shall comply with Federal and/or State pollution control standards.

3.05 The list of uses in Table 1 of Article IV identifies the uses permitted within the Zoning Districts of the Town of Boscawen. Any use not indicated as a permitted use or allowed by special exception in the Table of Uses is prohibited and shall not be permitted except by variance. Any substantive change of use must be reviewed and approved by the Zoning Board.

Article IV
Use Regulations

4.01 In any District, uses of land and buildings shall be permitted as indicated in Table 1.

TABLE 1 District Regulations

The Town of Boscawen, New Hampshire, is divided into six (6) Zoning Districts that are designated as follows:

Full Name	Short Name
Agricultural – Residential	A-R
Residential - Low Density	R-1
Residential - Medium Density	R-2
Commercial	C
Industrial	I
Mill Redevelopment District	MRD

The Table of Uses specifies the uses that are permitted by right, are permitted by Special Exception, are permitted by Conditional Use Permit or are prohibited.

- Permitted or Allowed uses are designated in the Table by "A",
- Uses which require the granting of a special exception by the Zoning Board of Adjustment are designated with "SE",
- A use denoted by the letters "CU" is a use, which may be authorized by a Conditional Use Permit in that zoning district. The Planning Board may grant a Conditional Use Permit in accordance with the procedures set forth in Article XXI, Conditional Use Permit.
- Prohibited uses are designated with an X.
- General restrictions and regulations applicable to all Districts are included throughout this Ordinance.

Table of Uses – Agriculture & Forestry Uses	AR	R1	R2	C	I	MRD
Agriculture, **including** the grazing care, and keeping of livestock and poultry.	A	SE	SE	SE	SE	SE
Agriculture, Small Flock of Hens	A	A	A	A	A	A
Agriculture, but **excluding** commercial greenhouses, the grazing, care, and keeping of livestock and poultry.	A	A	A	A	A	A
Agricultural Retail Outlets, offsite farm produce, plants, vegetable stands and Farmers' Markets[2]	A	SE	SE	A	SE	A
Barns, Sheds, or other major nonresidential farm buildings.	A	SE	SE	SE	A	A
Commercial Greenhouses, Garden Center and Supply Establishment	A	SE	SE	A	A	A
Forestry, growth and harvesting of forest products, nursery, tree farms, orchards and similar uses.	A	A	A	A	A	A

Table of Uses – Agriculture & Forestry Uses - Continued	AR	R1	R2	C	I	MRD
Offsite Farm Produce, Plants or Vegetable Stands	A	SE	SE	A	SE	A
Open storage of lumber and building materials.	A	X	X	A	A	A
Non-Residential Open Space Accessory Structure	A	A	SE	A	A	SE
Sawmills, Planing Mills and lumber treatment establishments.	SE	X	X	X	SE	SE

Table of Uses-Commercial	AR	R1	R2	C	I	MRD
Airport, Heliport & Airstrips	SE	SE	X	SE	SE	SE
Animal Hospitals	SE	X	X	A	A	SE
Automobile Sales – Motorized Vehicle Sales & Service	X	X	X	A	A	A
Automotive Services - Motorized Vehicle Sales & Service	X	X	X	A	A	A
Bed & Breakfast	SE	SE	A	A	X	SE
Boarding, Rooming or Lodging House	SE	SE	A	A	X	A
Cemetery, Private	SE	SE	X	SE	SE	X
Child Day Care, (home-based)	SE	SE	SE	SE	SE	SE
Correctional Facilities/Jails, Private	X	X	X	X	X	X
Day Care Facility	SE	SE	SE	SE	SE	SE
Day Care and Kindergarten Facilities, Private (State Licensed)	SE	SE	SE	SE	SE	SE
Dormitories	SE	SE	SE	SE	SE	SE
Drive-In Establishments/Window	X	X	X	A	A	SE
Educational Facility, Private	SE	SE	SE	A	SE	SE
Flea Market[1]	SE	SE	SE	A	A	SE
Fuel Storage and Wholesale	X	X	X	SE	A	SE
Fuel Station - Including facilities for minor repairs, but not requiring outdoor storage of unregistered or inoperative vehicles.	SE	X	X	SE	SE	SE
Funeral Establishments/Mortuary/Crematory	X	X	X	A	A	SE
Golf Course and related utility buildings, including Executive Par Three Courses	SE	SE	SE	SE	SE	SE
Golf Course restaurants, Pro-Shops, and related commercial activities.	SE	SE	SE	SE	SE	SE
Health Care Facility	SE	X	X	A	A	SE
Home Business - Minor -The home business operator must reside in and continue to reside in the dwelling.	A	A	A	A	A	A
Home Business – Major	SE	SE	SE	A	A	SE
Hotels, Inns & Event Centers	SE	X	X	A	A	A
Junk Yard	X	X	X	X	SE	SE
Junk Yard, Motor Vehicle - which are in conformance with the provisions of N.H. RSA 236:111-129, as amended from time to time.	X	X	X	X	SE	SE
Kennels	SE	X	X	A	A	SE

Table of Uses-Commercial - Continued	AR	R1	R2	C	I	MRD
Landfills	X	X	X	X	X	X
Laundry, Dry-Cleaners and similar uses	X	X	X	A	A	A
Light Manufacturing – Non-Home Based	SE	SE	X	SE	A	A
Manufacturing, Research and Testing Laboratories, including assembly, fabrication, processing and reprocessing of materials, provided all resulting cinders, dust, clashing, fumes, gases, odors, smoke or electro-magnetic transmission shall be so regulated as to be not perceptible without the use of instruments at the boundary of the zone in which the use is located.	X	X	X	X	A	A
Membership Club: Indoor or Outdoor	SE	X	X	A	A	A
Motel	X	X	X	A	A	SE
Nursery School	SE	SE	SE	SE	SE	SE
Nursing Home	SE	SE	SE	A	A	SE
Office establishments - Less than 5000 sq. ft. floor area	SE	SE	SE	A	A	A
Office establishments - More than 5000 sq. ft. floor area	X	X	X	SE	SE	A
Open storage of lumber and building materials.	A	X	X	A	A	A
Outdoor Commercial Recreational Facility, such as, but not limited to campgrounds	SE	SE	X	SE	SE	SE
Outdoor Vehicle Storage Facility	X	X	X	A	A	SE
Personal Service Establishment	X	X	X	A	A	A
Recreation Facility, Indoor	SE	X	X	A	A	A
Recreational Facility, Outdoor	SE	X	X	A	A	A
Recreational Vehicle Park	SE	X	X	SE	SE	SE
Residential Care Home	SE	SE	SE	A	A	A
Restaurant	SE	SE	SE	A	A	A
Restaurant, Fast Food	SE	SE	SE	A	A	A
Retail	SE	SE	SE	A	A	A
Salt Storage Shed	X	X	X	A	A	SE
Seasonal Dwelling Unit (Rental)	SE	SE	X	X	X	X
Sewage Disposal Facility/Septage Lagoon	X	X	X	X	X	X
Sexually Oriented Business per Article XVII	X	X	X	SE	X	X
Shopping Center	X	X	X	A	A	A
Storage Units	SE	X	X	SE	A	A
Truck Terminal	X	X	X	SE	A	SE
Warehouse	SE	X	X	A	A	A
Wholesale Bakery & Food Processing	SE	X	X	A	A	A
Wholesale Establishments, Fuel Storage and Distribution Center, and other activities involving a substantial amount of trucking.	X	X	X	SE	A	A
Yard Sales – As Permitted	A	A	A	A	A	A

Table of Uses - Excavation & Filling	AR	R1	R2	C	I	MRD
Commercial removal of Gravel, Stone, Loam, Clay, Sand or other types of soil. Must comply with the provisions of RSA 155-E as may be amended from time to time.	SE	SE	SE	SE	SE	SE
Filling of land with clean organic or inorganic fill, (50 cubic yards or more), as a means of preparing the land for eventual use by a conforming and permitted use, but not part of the normal activities incidental to actual construction. The project must comply with the provisions of RSA 155-E as may be amended from time to time and may not impact wetland areas.	SE	SE	SE	SE	SE	SE

Table of Uses – Events	AR	R1	R2	C	I	MRD
Temporary Events	CU	CU	CU	CU	CU	CU

Table of Uses - Miscellaneous	AR	R1	R2	C	I	MRD
Non-Conforming Use - One time expansion, up to 25%	SE	SE	SE	SE	SE	SE

Table of Uses - Public & Institutional	AR	R1	R2	C	I	MRD
Any Publicly Owned and Operated Facility or Use	A	A	A	A	A	A
Cemetery, Public	A	A	A	A	A	A
Place of Worship	CU	CU	CU	CU	CU	CU
Public Correctional Facilities/Jails	X	X	X	X	CU	X
Public Educational Facility	A	A	A	A	A	A
Public Utility (Essential Services)	CU	CU	CU	CU	CU	CU
Telecommunication Facility (Essential Services)	CU	CU	CU	CU	CU	CU
Utility Substation (Essential Services)	CU	CU	CU	CU	CU	CU
Water Supply Works (Essential Services)	CU	CU	CU	CU	CU	CU

Table of Uses - Residential	AR	R1	R2	C	I	MRD
Accessory Building, Non-Residential	A	A	A	A	A	A
Single-Family Dwelling Unit	A	A	A	A	CU	CU
Two-Family Dwelling Units	CU	CU	CU	A	X	CU
Three to Twelve Family Dwelling Units	X	X	CU	CU	X	CU
Three to Twelve Family Dwelling Units, Elderly (Age 62 +)	X	X	CU	CU	X	CU
Thirteen to Sixteen Family Dwelling Units	X	X	CU	CU	X	CU
Accessory Dwelling Unit – Article XXIII.	CU	CU	CU	CU	CU	CU
Accessory Dwelling Unit designed for and occupied by a person employed on the same premises	CU	CU	CU	CU	CU	CU
Cluster Developments as defined by Article XIV	CU	CU	CU	X	X	X

Table of Uses – Residential - Continued	AR	R1	R2	C	I	MRD
Dwelling Units, Age Specific, (Elderly)	CU	CU	A	A	X	CU
Manufactured Home Parks and Subdivisions in accordance with existing Regulations. (See Article XII, Definitions)	X	X	CU	CU	A	X
Manufactured Housing (mobile homes) on individual lots not within a Manufactured Home Park or Subdivision except pre-site built as per RSA 674:31-a.	X	X	X	X	X	X
Planned Unit Development	CU	CU	CU	X	X	X
Pre-site Built Housing as per RSA 674:31-a.	A	A	A	A	X	A
Seasonal Dwelling Unit (Owner occupied)	CU	CU	X	X	X	X

Table of Uses - Signs	AR	R1	R2	C	I	MRD
Signs identifying or advertising an occupant or activity other than the occupant or activity of the lot on which the sign is located.	SE	SE	SE	SE	SE	SE
Signs, which are not addressed in Article VII, which identify or advertise an occupant or activity of the lot on which the sign is located.	SE	SE	SE	SE	SE	SE

[1]Flea Market. The following parcels are allowed to host Flea Markets by right but remain subject to Site Plan Review by the Planning Board or its Technical Review Committee. The parcels are: The Sovereign Grace Fellowship (Tax Map 47, Lot 31, Sublots B & BA), Boscawen Congregational Church Park, (Tax Map 81D, Lot 78), Jamie Welch Park, (Tax Map 81, Lot 1), Boscawen Elementary School, (Tax Map 81B, Lot 46, Town Hall, (Tax Map 81D, Lot 21), Boscawen Fire Department, Tax Map 81D, Lot 71), and the Municipal Office Complex, (Tax Map 183D, Lot 74).

[2]Farmers Market. The following parcels are allowed to host Farmers Markets by right but remain subject to Site Plan Review by the Planning Board or its Technical Review Committee. The parcels are: The Sovereign Grace Fellowship (Tax Map 47, Lot 31, Sublots B & BA), Boscawen Congregational Church Park, (Tax Map 81D, Lot 78), Jamie Welch Park, (Tax Map 81, Lot 1), Boscawen Elementary School, (Tax Map 81B, Lot 46, Town Hall, (Tax Map 81D, Lot 21), Boscawen Fire Department, Tax Map 81D, Lot 71) and the Municipal Office Complex, (Tax Map 183D, Lot 74).

Article V
Lot Dimensions and Area

5.01 **Minimum Area, Yard, Height, Frontage and Coverage Standards.** Subject to other provisions within this Ordinance, the following table presents the minimum area, yard, height, the frontage, and coverage requirements.

TABLE 2 Minimum Dimensional and Area Requirements

(a) (b) (c) see footnotes following tables.

		Zoning Districts					
		AR	**R1**	**R2**	**C**	**I**	**MRD**
Lot Area/Dwelling Unit (in Thousands of Square Feet)							
	One Unit	120	80	40	40	-	*
	With either water or sewer (a)	80	40	20	30	-	*
	With both water and sewer (a)	40	40	10	20	-	*
	Two Units	120	80	40	40	-	*
	With either water or sewer (a)	80	60	30	30	-	*
	With both water and sewer (a)	60	40	20	20	-	*
	Three Units	160	120	60	60	-	*
	With either water or sewer (a)	120	80	40	40	-	*
	With both water and sewer (a)	80	60	30	30	-	*
	Four Units	180	140	80	80	-	*
	With either water or sewer (a)	140	100	60	60	-	*
	With both water and sewer (a)	100	80	40	40	-	*
	Each Additional Unit	20	20	20	20	-	*
	With either water or sewer (a)	20	20	15	15	-	*
	With both water and sewer (a)	20	20	10	10	-	*
	Commercial and Industrial Uses	120	-	-	80	80	*
Yard (Setback) - Requirements (in feet) (b)							
	Front	50	40	30	50	50	*
	Side	25	20	10	10	10	*
	Rear	50	40	10	20	20	*
Height Limits (in feet) (c)		35	35	35	50	50	*
Frontage Requirements (in feet)		200	150	100	100	200	*
	With either water or sewer (a)	160	125	80	100	200	*
	With both water and sewer (a)	120	125	80	100	200	*
Coverage limits (percentage of lot covered with Buildings or structures)		20	25	30	40	40	*

a.) As used here, water and sewer mean municipal water and/or sewer service or an approved community water and/or sewer service system.

b.) Where more than one principle structure is located on a single lot, each structure shall meet the yard requirements as if it were on a single lot.

c.) Height limits do not apply to spires, belfries, cupolas, clerestories, antennas, satellite dishes, water towers or tanks, chimneys or smokestacks, solar collectors, power transmission lines, cooling or elevator towers, or similar and necessary appurtenances not used for human occupancy.

Churches, schools, hospitals, nursing or retirement homes, or publicly owned buildings may exceed the height limits if the yard (setback) requirements are exceeded by one (1) foot for each one (1) foot by which the structure exceeds the height limit.

* Per the adoption at the March, 1998 Town Meeting, the required "Lot Area/Dwelling Unit" for all lots with water and sewer in the "Mill Redevelopment District" (MRD) that have preexisting buildings is a minimum of 10,000 square feet of lot area with 100 foot frontage, allowable by Special Exception only. Furthermore, "grandfathering" of side and rear setbacks to accommodate the subdivision of pre-existing buildings along their natural architectural divisions is allowed.

Article VI
Supplementary Regulations

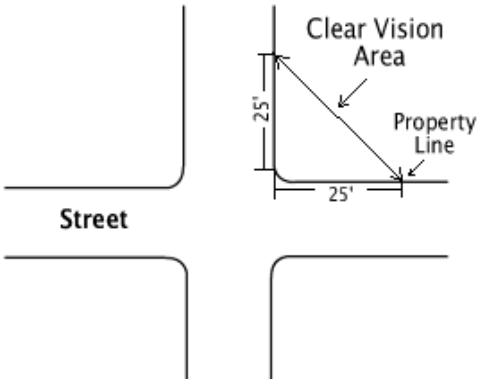
6.01 Supplementary Commercial/Industrial Development Standards Prior to using any parcel of land or any buildings for commercial or industrial purposes, the following requirements must be met:

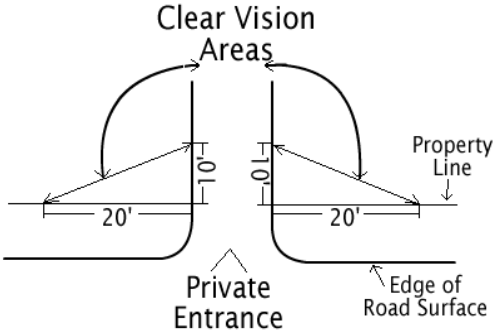
a.) A minimum of ten percent (10%) of the area of the parcel shall be landscaped. The location and treatment of the landscaped area shall be subject to the approval of the Planning Board.

b.) Where a commercial or industrial use abuts a parcel of land zoned A-R, R-1, or R-2, no commercially or industrially used building shall be located within fifty (50) feet of the abutting land zoned A-R, R-1, or R-2 except when granted by special exception. In addition, an opaque screen a minimum of six (6) feet in height shall be placed between any parking or loading area and the abutting land zoned A-R, R-1, or R-2. The opaque screen may consist of walls, fences, dense hedges, or other treatments as approved by the Planning Board.

6.02 Supplementary Development Standards for all uses. Prior to using any parcel of land or any buildings for any purposes, the following requirements must be met.

a.) No fence, planting, structure or other feature shall substantially obstruct clear vision at street intersections or at private entrances to streets.
The vertical dimension of the clear vision area shall be between two and one half (2.5) and eight (8) feet above the centerline grade of the adjacent street or street intersection. The horizontal dimensions shall be as depicted below:





b.) A minimum of fifteen (15) feet shall be maintained between any two

unattached buildings on the same parcel. This provision shall not be considered applicable to manufactured home parks.

c.) In any case in which a house is to be situated between two other houses fronting on the same street as the proposed house, each of which is not more than two hundred (200) feet distant, and both of which have less than the required front yard setback, then the required front yard setback for the proposed house may be reduced to the average setback of the two adjoining homes.

d.) Subject to other provisions contained within this Ordinance, not more than one permanent structure containing residences shall be permitted on a single lot. This provision shall not be considered applicable to manufactured home parks.

6.03 Manufactured Housing as defined in RSA 674:31

a.) Only new, unused manufactured housing units shall be allowed to be installed in any new manufactured home park or subdivision or any expanded portion of an existing manufactured home park or subdivision.

b.) Only manufactured housing units built after May 30, 2006 shall be allowed as a replacement unit in any existing manufactured home park, subject to the provisions of Article IX 9.02 a.)

c.) Only manufactured housing units built after May 30, 2006 shall be allowed as replacement units on any individual lot, subject to the provisions of Article IX 9.02 a.)

d.) The manufactured housing unit installer shall make the manufactured home serial number stamped on the chassis of the home accessible, so it can be cross-referenced to the HUD data plate prior to the Town of Boscawen issuing a Certificate of Occupancy.

e.) The provisions of this section shall not apply to manufactured homes being used as captioned in RSA 205-D:4 (b) as temporary housing while rebuilding from a fire or other disaster or for construction site offices.

Article VII
Sign Regulations

Purpose:

The purpose of these sign regulations are to enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth, and to minimize the possible adverse effect of signs on nearby private and public property.

A sign is any structure, device or inscription that is arranged, intended, designed or used as an advertisement, announcement, directions or to communicate information of any kind to the public, excluding flags or banners but not including those structures, devices, or inscriptions erected and maintained by a public agency in exercising its duties. All signs, except seasonal and temporary signs, shall be constructed of permanent materials and permanently attached to the wall of a building or to the ground.

All sign applications, including temporary and seasonal, must be completed and submitted to the Code Enforcement Officer of the Town of Boscawen. The application shall include the location of the sign(s), the size of each sign, the method of illumination if applicable, and any other information requested on the application.

The Code Enforcement Officer shall review the sign application and act to approve or deny it within thirty (30) days after the filing of the application. The Code Enforcement Officer's action, or lack of action, may be appealed to the Zoning Board of Adjustment.

7.01 Signs advertising or identifying the occupant or activity of a lot on which they are located shall be permitted in any district subject to the regulations contained in this Article. Signs not advertising or identifying the occupant or activity of the lot on which they are located shall be allowed only as provided in Article IV, Table 1 of this Ordinance, but if existing on the effective date of this Ordinance may continue as legal non-conforming signs subject to Section 7:07 of this Article.

7.02 a.) A sign not exceeding twenty (20) square feet in area, advertising the sale of, or construction on the premises on which it is located, shall be permitted in any District. The sign shall not be illuminated. It may be displayed in any zone for the duration of the work being performed or until the sale or lease of the property.

b.) Temporary signs shall not exceed twenty (20) square feet and shall be allowed for not more than 60 days.

c.) A seasonal sign shall not exceed thirty-two (32) square feet and is allowed in any zone subject to all other sections of Article VII. Sign face must be covered when the business is not operational. Businesses which have successive seasonal operations may have a continuing series of seasonal signs, one sign at a time.

d.) In addition to any allowed signage, one flag, banner or balloon not to exceed twelve (12) square feet shall be allowed in any zone during business hours.

7.03 No flashing or animated signs shall be allowed in any District.

7.04 a.) In any zone, one sign shall be allowed not exceeding two (2) square feet in area for each residence.

b.) A sign of not more than eight (8) square feet shall be allowed for each home-based office, home-based occupation; home-based industry or home-based shop. A limit of one sign per residence shall apply. A second sign for the same residence will require a special exception and, if allowed, must be used to advertise a different use and must be affixed to the same base as the existing sign.

c.) For public or institutional permitted uses, signs shall not exceed forty (40) square feet.

7.05 In Commercial or Industrial Districts, signs shall be permitted totaling not more than forty (40) square feet in area, including air space between sign slats, per business, (of greater area only by Special Exception). Such signs may have continuous, non-flashing illumination provided that no such light is visible on the boundary of any residence located in any District after 11:00 PM.

7.06 Any sign advertising and located on the same premises with a legal non-conforming use may be maintained and replaced.

7.07 Any sign not in compliance with these sign regulations and legally erected prior to the adoption of these regulations, shall be considered Non-Conforming and may be continued and maintained. No Non-Conforming Sign shall be altered in area or shape. Any Non-Conforming Sign which has been removed or destroyed by any means to an extent of more than fifty (50) percent of the replacement value at the time of destruction, shall not be replaced, repaired or rebuilt except in conformity with these sign regulations.

7.08 In addition to the above regulations, the following restrictions shall apply to businesses in Commercial and Industrial Districts:

a.) Not more than one sign advertising one or more businesses up to forty (40) square feet shall be permitted on each lot or parcel with each separate business premise allowed to have one additional sign of not more than twenty (20) square feet, which must be attached to the building.

b.) Signs which are not attached to a building (free-standing signs) shall be set back not less than ten feet from any property line.

Signs which are attached to a building and extend more than one (1) foot from a building wall, shall meet the building setback requirements for the zone in which the sign is located. A sign may be attached flat against a building wall, not exceeding more than one (1) foot from the building wall even in circumstances where the building does not meet setback requirements.

c.) Signs shall not be located in or extend over a public right of way or right of way easement.

7.09 Obsolete signs (signs advertising a business which has not operated within the previous thirty (30) days), shall be removed within thirty (30) days. This section does not apply to a seasonal business sign as per 7.02c.

7.10 The height of any sign shall not project above the roof line of the tallest building on the lot where the sign is located. The height of any sign shall be measured from the surface of the natural ground at the base of the sign to the highest point of the sign, whether free standing, attached to a structure or painted on a structure. In Commercial and Industrial zones, signs up to 50 feet in height may be permitted by special exception.

7.11 An agricultural enterprise in any zone shall be allowed one permanent sign not to exceed 32 square feet, one seasonal sign and one temporary sign.

7.12 Applications for sign uses and sizes not otherwise covered shall be considered only by special exception and shall be subject to any conditions imposed by the Board.

7.13 All signs must comply with Article 6.02.

7.14 All signs mandated by state law are allowed in any zone.

7.15 Illumination fixtures shall be arranged to direct the light away from streets and away from adjoining structures.

7.16 All signs, including their supporting structures, shall be maintained in proper repair at all times and in compliance with all applicable building and electric codes.

7.17 No sign shall be placed where it might obstruct a clear view of traffic on a State or Town road, an official road name sign, or a traffic signal or traffic sign (see Article 6.02). No illuminated sign shall shine onto residential properties, nor be illuminated between the hours of 11 P.M. to 6 A.M. unless the business is open during that time. No sign shall be placed nor project into the setback area.

In addition to all other restrictions and requirements of signs contained in this Article, each of the following types of signs shall be subject to the following restrictions:

7.18 **Types of signs:**

Area of - the area of any sign, except for a Canopy Sign shall be the entire area having a single, continuous perimeter enclosing the outermost borders of the actual sign surface, including air space between sign slats. For a Canopy Sign, the area shall be the entire area having a single, continuous perimeter enclosing the outermost borders of the actual lettering. The supporting framework or bracing that is incidental to a sign shall not be included. A two (2) sided sign shall be treated as a one (1) sided sign for the purpose of calculating sign area.

a.) Canopy Sign - a sign that is a part of, or attached to a canopy, awning or other fabric, plastic or structural protective cover over a door, window or outdoor service area. One (1) Canopy Sign may be permitted on a lot in the zone where a permitted business is conducted. The maximum area of the sign shall not exceed twelve (12) square feet.

b.) Free Standing Sign - a self-supporting sign whose supports are placed on or anchored in the ground and are independent from any building. One (1) Free Standing Signs shall be permitted on a lot in the zone where a permitted business is located. The sign may have one (1) or two (2) sides with a maximum area not to exceed forty (40) square feet.

c.) Marquee Sign - an Advertising or Free Standing Sign including but not limited to movie or theater type marquee, with manually or electronically changeable lettering. One (1) Marquee Sign may be permitted on a lot in a zone where a permitted business is conducted. The maximum area of the sign shall not exceed 32 square feet.

d.) On-Site Directory Sign - a type of Free Standing Sign whose purpose is to indicate the name and direction of multiple businesses located on the same lot. An On-Site Directory Sign shall be permitted on a lot in the zone where multiple businesses are located on the lot. The maximum area of the sign shall not exceed a total of forty (40) square feet. An On-Site Directory sign for a business park comprised of separate, individually owned lots may be allowed by Special Exception.

e.) Portable Sign - a sign not permanently attached to a building, the ground or a vehicle. Portable signs are signs designed to be transportable and include, but are not limited to, the following: signs designed to be transported by means of wheels, balloons used as signs, signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business. One (1) Portable Sign shall be permitted in any zone twice a year for periods not to exceed thirty (30) days. The maximum area of the sign shall not exceed thirty-two (32) square feet.

f.) Seasonal Sign - see 7.02 c) a sign which advertises a business or operation that is open to the public less than 6 months per year.

g.) Temporary Sign - a sign that is used only temporarily and is not permanently mounted. One (1) Temporary Sign shall be permitted for advertising the opening of a business; a product; change of ownership of a business; and includes, but is not limited to, signs used for one-time events. The maximum area of the sign shall not exceed twenty (20) square feet. The sign shall not be illuminated.

h.) Other Signs - shall include, but not be limited to, Building Markers and Historic Marker Signs. The maximum area of these signs shall not exceed eight (8) square feet.

i.) Pennant or Streamer - any lightweight plastic, fabric or similar material, regardless if used as a sign or not, suspended from a rope, wire or other material, usually in a series, designed to move in the wind, are considered temporary signs.

j.) Flag or banner - a piece of fabric or other material designed to announce business hours of any establishment, displayed only during business hours and must be attached to a building or permitted sign.

The following signs and any other type of sign not expressly permitted by this Article shall not be permitted in any district.

Prohibited Signs shall include, but not be limited to, the following:

1) Billboard - sign on any vacant lot, exceeding 32 square feet.

2) Roof Sign - sign erected over or attached to, wholly or in part, the roof of a building.

Quick Reference Sign Chart

Sign	Maximum Size	Reference	Permitted Use
Agriculture	32 sq. ft.	7.11	Allowed in all districts
Business, Public	40sq.ft	7.08	Allowed in C & I districts
Institutional	20 sq. ft.	7.08	Allowed for permitted uses
Canopy	12 sq. ft.	7.18	Allowed for permitted use
Flag, Banner, Balloon	12 sq. ft	7.02 d)	Allowed in any district during business hours only
Free Standing	40 sq. ft.	7.18 b)	Allowed for permitted uses
Home Business	8 sq. ft.	7.04 b)	Allowed for permitted home-based business
Marquee	32 sq. ft.	7.18 c)	Allowed for permitted uses
On-Site Directory	40 sq. ft.	7.18 d)	Allowed for permitted multiple businesses
Portable	32 sq. ft.	7.18	Allowed in any district 30 days; twice a year
Residential	2 sq. ft.	7.04 a)	Allowed in any district
Sale/Construction	20 sq. ft.	7.02 a)	Allowed in any district
Seasonal	32 sq. ft.	7.02 c)	Allowed for permitted uses
Temporary	20 sq. ft.	7.02 b)	Allowed for permitted uses for not more than 60 days
Billboard		7.18	Not allowed in any district
Flashing/Animated		7.03	Not allowed in any district
Roof Sign		7.18	Not allowed in any district
Other Signs	8 sq. ft.	7.18 h)	Allowed in any district

Article VIII
Off-Street Parking Space Requirements

8.01 In any district, off-street parking spaces shall be provided according to the minimum standards of Table 3 below.

Table 3 Minimum Off Street Parking Standards

Use	Spaces Required
Residential Uses	2 per dwelling unit
Boarding and rooming houses	1 per lodging unit plus motels, and hotels. Required spaces for other facilities (bars, restaurants, etc.)
Hospitals, institutions, convalescent Homes, and nursing homes.	1.5 spaces per 1000 sq. ft. of gross floor area.
Housing projects for senior citizens	1.5 spaces per dwelling up to 10 units. 1 space per each additional unit
Churches, auditoriums, arenas or Other places of assembly	1 per 3 seats, 1 per 75 inches of pew, or 1 per 65 sq. ft. of gross area used for assembly, including separate meeting rooms or classrooms.
School for grades K through 9.	1.5 per classroom with minimum assembly requirements.
School for grades 10 through adult.	1.5 per classroom plus 1 Per 4 students with minimum assembly requirement.
Libraries and museums	1 per 500 sq. ft. of gross floor area.
Commercial recreation	Adequate parking shall be facilities provided based on 1 space per employee on maximum shift plus 1 space per three participants or spectators with consideration given to persons preparing for and recuperating from participation.
Eating and drinking establishments.	1 per 100 sq. ft. of gross floor area up to 4000 sq. ft. with 1 per 300 sq. ft. of gross floor area in excess of 4000 sq. ft.
Theaters	1 per three seats.
Banks, businesses and professional offices with no retail sales.	1 per 300 sq. ft. of gross floor area.
Medical and dental offices and clinics.	1 per 200 sq. ft. of gross floor area.
Bowling Alley	6 per alley.
Retail Sales	1 per 200 sq. ft. of gross floor area.
Wholesale business.	5 spaces plus 1 space per 1000sq. ft. of gross floor area.
The sale and servicing of motor vehicles, machinery, manufactured homes, plumbing, the heating, ventilating and building materials.	1 per 1000 sq. ft. of floor area of showrooms, storage, and display plus required parking for other areas (offices, service bays, retail parts, store, etc).

Use	Spaces Required
Drive-in/outdoor eating establishments	1 space per 80 square feet with 10 spaces minimum
Warehouses and freight terminals.	10 spaces for the first 20,000 sq. ft. of gross floor area plus 1 space for each additional 10,000 sq. ft.
Manufacturing, processing, assembly, all other industries.	1 per 800 sq. ft.
Motor vehicle, machinery, and large equipment service.	1.5 per service bay or work station.

Note: Parking requirements for uses not specified above shall be determined by the Planning Board.

The above standards are minimum parking requirements and must be provided with continuous access and adequate maneuvering areas. The required parking spaces may not be used for storage, display, signage, or for maneuvering areas for loading docks or bays.

8.02 Off-street parking spaces required for new construction by this Ordinance shall not be located within the following setbacks:

	Front	Side	Rear
R-1	40	10	10
R-2	30	10	10
A-R, C, I	10	10	10

8.03 In any District, new Commercial and Industrial activities shall provide ample parking spaces on the premises to accommodate vehicles of customers and employees, and such spaces shall not be located closer than ten (10) feet from any lot line unless as a continuation of a parking area on a continuous lot, and shall be so designed as to require no backing or maneuvering from or into a public street.

8.04 Trailers, boats or other automotive accessory equipment not designed, intended or used for human occupancy except on weekend or vacation trips may be parked but not occupied in any District in any space in which an automobile may be parked, provided that it does not interfere with parking required on the premises.

8.05 One travel trailer or self-contained recreational vehicle may be parked on the property of, and occupied by the guests of, the resident of a single family home for not more than 24 weeks in one calendar year. Such travel trailer or self-contained recreational vehicle shall be parked on the same lot or parcel as the single-family home and water and sewer services shall be inspected by the town's health officer annually.

Article IX
Nonconforming Uses, Structures and Lots

9.01 **Nonconformity by Initial Enactment or Amendment.**
The provisions of this Section apply to nonconforming uses, structures and lots as created by the initial enactment of this Ordinance or by any subsequent amendment.

9.02 **Expansion and Alteration.**

a.) Any nonconforming use, except primarily for agriculture, of any open space on a lot outside a structure or a lot not occupied by a structure shall not be expanded by more than 25% and shall require a special exception.

b.) Any nonconforming principal or accessory use of a structure shall not be expanded by more than 25% and shall require a special exception.

c.) Any non-conforming structure may be altered and the use extended throughout the altered portion provided that any resultant alteration shall not exceed its original size.

9.03 **Use of Nonconforming Lots.** A nonconforming lot may be built upon, for any allowed use, if, at the time of the enactment of this Ordinance (or any subsequent amendment thereto if it is such amendment that it renders a lot nonconforming), (a) the lot conformed to the then existing dimensional requirements and (b) it has frontage on an approved Town road or the applicant complies with the provisions of RSA 674:41 (I) (c).

9.04 **Reduction or Increase.**

a.) Any non-conforming lot or open space on the lot, (including setbacks) if already smaller than that required, shall not be further reduced so as to be in greater nonconformity.

b.) Any off-street parking or loading spaces not in conformance with the Ordinance shall not be further reduced in number.

9.05 **Change.**

a.) Any nonconforming use of a structure may be changed to another nonconforming use, provided: (a) the changed use is not a substantially different use, (except as provided in Paragraph 2 below) and (b) approval for the change is granted as a special exception by the Board of Adjustment. For the purposes of this section, a substantially different

use shall mean a use which would increase the density of a residential use or the intensity of any other use and shall include use which by reason of its normal operation, would cause readily observable differences in patronage, service, sight, noise, employment or similar characteristics, when compared to the existing nonconforming use or any permitted use in the district under question.

b.) Any nonconforming use which has been once changed to a permitted use or another nonconforming use, which is not a substantially different use, shall not again be changed to another nonconforming use.

c.) Any nonconforming lot which has come into conformity shall not again be changed to a nonconforming lot.

9.06 **Restoration.** Any nonconforming structure, totally destroyed by fire or other cause, may be rebuilt if restored within two years. Restoration shall not place the structure in greater nonconformity. The time limit for restoration may be extended in one (1) year increments by special exception.

9.07 **Abandonment.** Any nonconforming use of a structure or lot which has been abandoned or not used for a continuous period of one year or more shall not be used again except for a conforming use. For agricultural, horticultural, or floricultural uses the abandonment period shall be for a five-year period of non-use. For agricultural, horticultural and floricultural uses the abandonment period may be extended in one (1) year increments by special exception.

9.08 **Moving.** Any nonconforming structure shall not be removed to any other location on the lot, or any other lot, unless every portion of such structure, the use thereof, and the lot shall be conforming.

9.09 **Unsafe Structure.** Any structure determined to be unsafe may be restored to a safe condition. Such work on any non-conforming structure shall not place it in greater non-conformity.

Article X
Administration and Enforcement

10.01 **Code Enforcement Officer:** The Board of Selectmen shall appoint, and can replace if necessary, a Code Enforcement Officer whose duty it shall be to administer the provisions of this Ordinance.

10.02 **Procedure: Certificate of Zoning Compliance.**
Any person, firm, or corporation desirous of undertaking any activity permitted by this Ordinance shall, prior to that undertaking, submit to the Code Enforcement Officer:

a.) A completed application for a Certificate of Zoning Compliance, prior to commencement of any work.

b.) A sketch or drawing of the land in question on which a plan of the proposed activity is shown indicating location and extent of the intended use of the land.

c.) Such other information as the Code Enforcement Officer may require to afford him/her an adequate basis for granting or denying the application.

d.) The Code Enforcement Officer shall then grant or deny the application within a twenty (20) day period. If granted, the Code Enforcement Officer shall give the applicant a Preliminary Certificate of Zoning Compliance which the applicant shall post in a conspicuous place on the work site. Such certificate will become null and void if the proposed undertaking is not commenced within (90) days.

The Code Enforcement Officer shall inspect the undertaking from time to time to insure that the provisions of this Ordinance are met. If at any point during the undertaking the Code Enforcement Officer finds that the work does not meet the provisions of this Ordinance, he shall so inform the applicant and may withdraw the Preliminary Certificate of Zoning Compliance and order the work to be stopped. Upon satisfactory completion of the undertaking, the Code Enforcement Officer shall award the applicant with a final Certificate of Zoning Compliance. There shall be no fee for either the Preliminary or Final Certificate of Zoning Compliance.

10.03 **Required Issuance of Certificate** if intended work complies The Code Enforcement Officer shall issue any and all Certificates of Zoning Compliance requested when the intended work complies with the provisions of this Ordinance or when legally authorized by the Zoning Board of Adjustment, and then only.

10.04 **Procedure: Special Exceptions shall be subject to the following provisions:**
a.) The property owner must submit an application to the Board of Adjustment for a use

designated in this Ordinance as a Special Exception. The Special Exception may be permitted based upon consideration of the following:

1. The use must be listed as a special exception in Article IV Use Regulations in the district for which application is made.

2. The requested use does not impair the integrity or character of the zoning district nor be detrimental to the public health, morals, or general welfare.

3. The specific site is an appropriate location for the proposed use and the character of adjoining uses will not be adversely affected.

4. No demonstrable diminution in value to surrounding property will result.

5. No undue traffic, nuisance or unreasonable hazard will result.

6. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.

7. The substance of the testimony of abutters and the public at the public hearing.

8. The proposed use has an adequate water supply and sewage system and meets all applicable requirements of the State of New Hampshire.

b.) The applicant shall submit to the Board of Adjustment a suitable number, as determined by the Board, of copies of a site plan drawn to scale showing the following elements where applicable:

1. Location of existing and proposed buildings;

2. Proposed layout of outside facilities;

3. Proposed layout of parking areas and loading bays;

4. Proposed type and location of screening, of recreation and play areas, and of areas for outside storage of materials;

5. Location of access, egress, and interior roadways;

6. Location and adequacy of utilities, drainage, and provisions for public safety.

c.) The Board of Adjustment may require other information which it determines to be necessary for the adequate review of the application.

d.) In granting any Special Exception the Board may prescribe any conditions and safeguards deemed necessary to prevent nuisance and promote harmony within the neighborhood. Such conditions and safeguards may address but are not limited to the

following:

1. Lot area;

2. Front, side or rear yards;

3. Height limitations;

4. Screening, buffers or planting strips, fences or walls;

5. Modifications of the exterior appearance of the structure;

6. Limitations upon the size, number of occupants, methods and time of operation, or extent of facilities;

7. Consideration of number and location of driveways, access ways, or other traffic features;

8. Off-street parking, lighting and loading requirements.

e.) The disregard of any condition or safeguard when made part of the terms under which a Special Exception is granted shall be deemed a violation of this Ordinance.

f.) A special exception authorized under the terms of this section shall expire if not undertaken within one year of the authorization. Upon receipt of a written request, the Board may grant a one year extension provided that the Board determines that its findings as outlined in section 10.04 a. still hold.

g.) A special exception authorized under the terms of this section shall lapse if it has ceased operations for a period of two (2) years. Upon receipt of a written request, the Board may grant a one-year extension beyond the two-year time period where the Board determines that its findings as outlined in section 10.04 a. still hold.

10.05 Procedure: Variances shall be subject to the following provisions:

a.) The owner shall submit an application to the Board of Adjustment containing a suitable number, as determined by the Board, of copies of the site plan drawn to scale and other written statements, records, and photographs documenting the following for the record of the petition. Items include but may not be limited to the following:

1. Justification for a variance from the terms of the zoning ordinance that will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary

hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done;

2. the location of existing and proposed buildings or additions, parking areas, loading areas, vehicular maneuvering areas;
3. existing and proposed screening; and
4. other information determined to be necessary by the Board of Adjustment.

b.) Prior to authorizing a variance, the Board may require such additional information as it deems necessary and impose conditions or safeguards such as contained in section 10.04d.

c.) A variance authorized under the terms of this section shall expire if not undertaken within one year of authorization. Upon receipt of a written request, the Board may, however, grant a one-year extension of such time period where the Board finds that its findings regarding the original application still hold.

10.06 **Constant Surveillance.** It shall be the duty of the Code Enforcement Officer to maintain constant surveillance of the entire community to insure that the provisions of this Ordinance are not being violated.

10.07 **Violation and Procedure.** In any case in which the Code Enforcement Officer finds that an under-taking subject to the provisions of this Ordinance has been commenced in violation of the provisions of this Ordinance, he shall issue a stop work order to the owner of the land. If compliance with the provisions of this Ordinance is not gained within thirty (30) days, the Code Enforcement Officer shall so notify the Board of Selectmen whose duty it will be to take immediate steps to enforce the provisions of this Ordinance by seeking an injunction in Superior Court, or by any other legal action.

As alternative methods to enforce the provisions of the Zoning Ordinance, the Board of Selectmen or its designee may implement the authority conferred upon the town by Chapters 328 and 374, laws of 1991, RSA 676:17-a and 676:17-b, which are hereby adopted by reference as from time to time amended. The authority includes the powers to issue cease and desist orders and local land use citations.

10.08 **Penalty.** As authorized under RSA 676:17 any person, persons firm or corporation violating any of the provisions of this Ordinance may be fined not more than two hundred seventy-five dollars and any legal costs for each day such violation continues to exist from the time the stop work order is issued until the time that work is undertaken to comply with the provisions of this Ordinance but excluding any time during which the person, persons, firm or corporation is actively seeking relief through appeal or court action. All fines and costs assessed shall revert to the town.

Article XI
Board of Adjustment

11.01 **Appointment of Board of Adjustment.** The Board of Selectmen shall appoint a Board of Adjustment to hear appeals from the provisions or administration of this Ordinance in accordance with the provisions of RSA 673:3,5, and 6 as from time to time amended.

11.02 **Special Exceptions.** The Board of Adjustment may grant an appeal for a Special Exception in cases authorized in this Ordinance in accordance with the provisions of Section 10.04 and 11.06.

11.03 **Variances.** The Board of Adjustment may upon appeal in specific cases authorize such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

11.04 **Appeals.** The Board of Adjustment may hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance. In exercising its powers under paragraph 1, the Zoning Board of Adjustment 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.

11.05 **Time Limit.** The Board of Adjustment shall rule on all appeals and notify the Appellant of its ruling in writing within sixty (60) days from the date of the application. The time limit may be extended by thirty (30) days for any appeals referred to the Planning Board.

11.06 **Fee.** The Board of Adjustment shall adopt and may from time to time amend a fee which is adequate to cover the cost of required notices and average necessary administrative expenses, which is to be submitted at the time the appeal application is filed.

11.07 **Application and Appeal Procedure.** Upon application or appeal for a Special Exception Variance, the Board shall adhere to the following procedure:

a.) Upon receipt of a complete application for a Special Exception or Variance, or complete application for an appeal from an Administrative decision, the Board shall fix a time and place for a public hearing thereon. Not less than five (5) days before the date of the public hearing the Chairman shall give notice by certified mail of the location of the property and the nature of the request to the Applicant or Appellant

and to all owners of property abutting the property involved using for this purpose the last known owner of the property as recorded in the records of the Assessor's Office.

b.) Applications and appeals to the Board shall be taken according to the rules set by State Statutes.

c.) The Board may, before acting on any matter, refer it to the Planning Board for review and recommendation.

d.) Within five (5) days of action upon an application, the Board shall notify the applicant and/or appellant and the Code Enforcement Officer of its action.

e.) Reasonable fees, in addition to fees for notice and administrative costs under paragraph 11.05, may be imposed by the Board to cover its costs for special investigative studies.

Article XII
Definitions

Word Usage: 1. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; the singular includes the plural, and the plural includes the singular, The word "used" shall include the terms arranged, designed, rented, leased, intended to be used, and occupied. The word "shall" is mandatory and the word "may" is permissive.

2. A person shall include natural persons as well as a corporation, a partnership, and/or an incorporated association of persons such as a club.

3. Words not specifically defined within shall have their common meaning, or as may be defined in other Codes or Ordinances of the Town, or by RSA, as amended.

Definitions

Abandon: The visible or otherwise apparent intention of an owner to discontinue a nonconforming use of a building or premise; or the removal of the characteristics, equipment, or furnishing used in the performance of the nonconforming use without its replacement by similar equipment or furnishings, or the replacement of the nonconforming use or building by a conforming use or building.

Abutter: As defined in RSA 672:3, as amended. In summary, an abutter is a person whose property adjoins or is directly across the street or stream from the land under consideration by a local land use board. Refer to the RSA for additional provisions defining abutter for public hearing notification purposes.

Accessory Building, Non-residential: An accessory building, customarily incidental and subordinate to the principle use or building on the same lot. The Accessory Building may be used for non-residential uses allowed by right as noted in Article IV, Use Regulations, subject to the "Work Exempt from Permit" document, as amended.

Accessory Dwelling Unit (ADU): A residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Accessory Use or Accessory Structure: Any use customarily incidental, and of a nature incidental and subordinate to the principle use of structure on the same lot. The accessory structure is not to exceed 144 square feet in size. The subordinate building or portions of the principle building, is customarily incidental to the main building on the same lot or premises and is used primarily by the occupants of the main building.

Acre: An area of land equally 43,560 square feet or 0.4045 hectares in area.

Agriculture (Farming) and Horticultural Operations: As defined by RSA 21:34-a as amended. In summary, farm, agriculture or farming means land, buildings or structures where agriculture and farming operations are carried out and shall include the residences of owners, managers, interns, students or employees located and working the agricultural enterprise. Refer to RSA for additional clarification of the definition of agriculture and

farming operations. Should the farming enterprise cease, is leased or contracted to others who do not live on the property, the owner occupied primary residence may apply for an Accessory Dwelling Unit. Any other housing created for on-site occupancy shall be discontinued.

Agricultural Retail Outlets: Cut or pick your own farm, farm stand, or farmer's market.

Agriculture, Small Flock of Hens: The owner may keep no more than 12 hens, (*Gallus gallus domesticus)*, and no roosters. The flock owner must follow the Manual of Best Management Practices for Agriculture in New Hampshire as published by the New Hampshire Department of Agriculture, Markets and Foods.

Airport/Heliport/Airstrip: An area of land, whether constructed or not, which has been approved by the appropriate state and or federal licensing authorities for the landing and taking off of aircraft. A place where airplanes, helicopters, or other aircraft can land and take off, and may include hangars, facilities for refueling and repair, fueling, emergency service facilities, accommodations for passengers and pilots and other aviation dependent uses. Aircraft means any engine powered contrivance for air transportation.

Alteration: Any construction, reconstruction or other action resulting in a change in the structural parts or heights, number of stories or exits, size, use or location of a building or other structure.

Animal Hospital: A building used by a licensed veterinarian solely for the practice of veterinary medicine, not as a kennel.

Antenna: A device used to transmit and or receive electromagnetic waves between terrestrially and/or orbital-based structures.

Appliance Repair Service: An establishment contained wholly within an enclosed building, primarily engaged in the repair and servicing of household appliances. This includes sales, parts, accessories and refurbished equipment. Auto repair, small engine repair of lawnmowers, snowmobiles or other outdoor recreational equipment shall not be included in this definition.

Approved Plan: A plan that has received final approval from the appropriate approving authority and supersedes all prior plans of record.

Aquifer: A geologic feature that is capable of yielding groundwater for municipal or private water supply as may be defined by other technical definitions, such as is defined by professional publication, state and federal agencies and geologic publications.

Automobile Sales and Service Facility: An establishment for the indoor or outdoor display, sale and repair of new and used motor vehicles, trailers, motorcycles, manufactured housing, boats, recreational campers and other travel trailers. This does not include the retail sale of gasoline.

Automotive Services: This includes major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, or smoke.

Back Lot: A lot that has been laid out with less than the required frontage that currently does not meet the provisions of this ordinance, and cannot be built upon.

Basement: An area of a building that partly or wholly has its floor below ground level. A basement shall be considered a story if used for dwelling or business purposes.

Bed & Breakfast: An owner-occupied dwelling unit that provides overnight accommodations, and associated food service (meals) to such guests for compensation. Guests are prohibited from staying at such establishments for more than thirty days in any twelve-month period.

Berm: A mound of soil, either natural or man-made, used to obstruct views.

Best Management Practices: The combination of conservation measures, structural or nonstructural management practices, activities, procedures, programs or other measures that serve to reduce or minimize potential adverse impacts of development. These practices that are recognized as acceptable by professionals in the respective discipline involved, and may be used singularly or in combination with other techniques.

Boarding, Rooming or Lodging House: A dwelling unit, where lodging and/or meals are provided for compensation and personal services such as laundry may be offered for those residents.

Buffer: The physical space that separates, screens and affords protection to adjoining properties by use of such elements including but not limited to, plants, berms, fences, walls, and other appropriate screening mechanisms to visually shield or block noise, lights or other nuisances. The buffer shall be maintained and enhance the attractiveness of the immediate area.

Building: Any structure having a roof supported by columns or walls and intended for the shelter or housing of any individual, animal, process, equipment, goods or materials of any kind. Antenna, awnings, canvas & metal covered carports, (without sidewalls), driveways, exterior lighting features, fire hydrants, and fences, walks and similar minor structures shall not be considered buildings.

Building Codes: The text of each national, state or local code relating to or regulating buildings, uses, occupancy and the like that has been legally adopted by the Town of Boscawen.

Building Coverage: The area of a lot covered by the aggregate of the maximum horizontal cross sections of all buildings on said lot, including covered porches and accessory structures, and shall be measured from the exterior of all walls, foundations, piers or other means of support.

Building Inspector: The agent for the Town of Boscawen, duly appointed by the Board of Selectmen. The Building Inspector shall serve to administer, interpret and enforce the provisions of the Town of Boscawen Building Codes and other applicable life safety codes currently adopted by the Town of Boscawen.

Campground: A parcel of land where two or more campsites are located, established or maintained for occupancy by tents, recreational vehicles or recreational trailers for temporary living quarters for a defined and limited period of time intended for recreational, educational or vacation purposes.

Cemetery: Property used for the interring of the deceased, human and animals.

Certificate of Occupancy: A statement signed by the Building Inspector setting forth that a building or any portion thereof complies with the zoning ordinance and locally adopted building and safety codes and ordinances, and that the building or parcel may lawfully be used for such intended use.

Change of Use: The replacement of an existing use by a new use, or a change in the nature of an existing use, but not including a change of ownership, tenancy, or management where the previous nature of the use, line of business, or other function is substantially unchanged.

Child Care (home-based): A child care provider giving home-based care for any part of the day to children as regulated by the State of New Hampshire. The maximum number of children permitted shall be by State regulations or other applicable regulatory agencies.

Code Enforcement Officer/Code Enforcement Officer: The individual designated by the Selectmen to administer and enforce the Zoning Ordinance, as adopted by the Town.

Commercial Greenhouses/Garden Center and Supply Establishment: Land and buildings, including greenhouse structures, used primarily for the growth, display and retail sale of trees, plants and shrubs, including sale of products and equipment used for improvement, maintenance and enjoyment of gardens, lawns, and grounds.

Commercial Use: Any activity involving the sale or trade of goods or services.

Commercial Vehicle: A motor vehicle or trailer, not including a resident's personal vehicle that is modified to accommodate a disability, a recreational vehicle or recreational equipment, or a vehicle used exclusively for agriculture or farming when located on and accessory to a permitted agricultural use, that exhibits one or more of the following characteristics:

1. Has more than two axles;
2. Has a weight greater than 26 thousand and one pound gross vehicle weight rating (GVWR);

Common Land: Land jointly owned by a group of individuals and is duly recorded with the Merrimack County Registry of Deeds on a plan or recorded via a legal conveyance document.

Community Center: A building and any associated accessory buildings owned and operated by a government or chartered non-profit organization for the provisions of recreational, cultural and social programs, but does not include fraternal, sports, or similar membership organizations.

Community Wastewater Systems: A non-municipal wastewater supply system that serves an average of at least 25 individuals daily year-round or that has at least 12 service connections.

Community Water Supply: A non-municipal water supply system that serves an average of at least 25 individuals daily year-round, or that has at least 12 service connections. A shared well servicing twenty-five or less individuals daily year-round, or that has at least five (5) but not greater than eleven (11) service connections.

Conditional Use Permit: A permit issued by the Planning Board for a use as set forth in this ordinance.

Condominium Conversion: An existing use or structure that is converted from a non-condominium form of ownership to the condominium form of ownership.

Condominium: As defined in RSA 356-B, as amended. In summary, condominium means real property,

and any interest therein, lawfully submitted by the recordation of condominium instruments pursuant to the provisions of RSA 356-B.

Conforming Structure: A structure, and all parts of such structure, that are in compliance with the provisions of the Zoning Ordinance, including building height, setback requirements, area, density, parking, and all other provisions of this Ordinance.

Contiguous: Land that can be circumscribed without interruption, except by road or other easements, in common ownership.

Convenience Store: A one-story, retail establishment usually open between 15-24 hours per day containing less than 2,000 square feet of gross floor area that is designed and stocked to sell a relatively few items to customers. It depends on large volume of stop and go traffic.

Correctional Facilities/Jails: A private or public facility used for the temporary or long term detention of persons due to legal or penal related activities and may be defined as a place of incarceration, detention camp, jail, reformatory or other commonly used terms.

Day Care Facility (home-based and non-home-based): A state-licensed facility operated as a business for the purpose of providing care, protection and guidance to adults or children. This does not include school facilities as defined by the State or other regulatory agency, and does not regularly include overnight stay.

Demolition: The destruction of a structure, or portion thereof, or commencement of work with the purpose of completing the same except in conjunction with the construction of a permitted addition or alteration.

Density: The number of dwelling units per area of land as established by Article V of this Ordinance.

Development: Any man-made change to a parcel of land, buildings and any accessory structures to improved or unimproved real estate including construction, reconstruction, conversion, structural alterations, relocation, land disturbance, or any use or extension of use on the land, such as mining, dredging, filling, grading, paving, excavation or drilling operations.

District or Zone: A geographical section or sections of the Town where the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein and where certain uses of land may be permitted, permitted by special exception or prohibited.

Disturbed Area: An area of land subjected to erosion due to the removal of vegetative cover and or earthmoving activities including dredging, filling and other alterations to the land surface.

Dormitories: A building that is owned and/or operated by an educational institution whose primary purpose is to provide living accommodations for individuals associated, teaching or attending the institution.

Drainage: The outflow of water or other fluid from a site, whether by natural or artificial means.

Drive-In Establishment/Window: An establishment, or part thereof, that by design, physical facilities, or service, serves customers by individual access to a window or remote station, to receive services or obtain goods while remaining in a motor vehicle.

Driveway: The point of access to and from a lot providing access for vehicles from a parking space, garage, or other structure on a lot, to a public or private street.

Driveway Approach: An area of the public right-of-way located between the roadway and the property adjacent to the public right-of-way that is intended to provide access for vehicles from the roadway to the adjacent property.

Driveway, Common or Shared: A private roadway or point of access to and from a lot, which is shared with the adjoining lot or other lots via an easement arrangement. A common driveway shall not serve more than three lots and shall not be used in calculating the frontage requirement for any of the lots.

Dwelling Unit: One or more rooms, designed, occupied or intended for human occupancy as a separate living quarter, which includes cooking, sleeping, and sanitary facilities. It shall meet all applicable life safety codes and other codes adopted by the Town. It shall also have an approved and functioning septic system or be connected to sewer facilities. Recreational vehicles shall not be considered a dwelling unit.

Dwelling Unit, Age Specific (Elderly): A building and site designed specifically for a particular age group or segment thereof, such as 55+, 62+ or other specific age categories, where the dwelling units are arranged as single family detached units, attached units or multi-dwelling units. Condominium arrangements or conversions to condominium units shall be treated as multi-family units.

Dwelling Unit, Attached: A building containing two or more dwelling units, each having direct access to the ground outside and arranged such that units are separated on one or more sides by vertical common walls, and such that no unit is separated from any other dwelling used for dwelling purposes.

Dwelling Unit, Detached: A building, other than a manufactured home, designed or intended as a residence exclusively for one family or household unit, and separated from any other dwelling used for dwelling purposes.

Dwelling Multi-unit: A building located on a single lot of record containing three or more units, including units that may be located one over the other; the units may be located on more than one floor and each unit functions as a separate and independent dwelling unit.

Dwelling, Two-unit: A building containing two separate and distinct dwelling units for the purpose of providing independent living arrangement for both units. Each unit shall have separate entrances and associated housekeeping facilities such as separate sanitary facilities.

Earth, Earth Products: The term "earth" shall include topsoil (loam), sand, gravel, and clay taken from the land.

Easement: The right of the public, a corporation, another person or entity to use public or private land owned by another for a specific purpose including, but not limited to, sewer easements, water easements, drainage easements, access easements, right-of-way easements, trail easements, conservation easements, slope easements and similar arrangements.

Eating and/or Drinking Establishments (Restaurants): Retail establishments selling food or drink for consumption on the premises, the primary purpose is to serve food and beverages including sit-down restaurants, cafes, places offering outdoor seating. Fast food restaurants with drive-up facilities shall be considered as drive-up restaurant as defined by this Ordinance. Lounges, bars and places of entertainment

that serve food & drink and also provide entertainment shall not be considered under this definition.

Environmentally sensitive areas: Shall include all lands with unique or ecological value, or other valued asset carefully evaluated for development; including but not limited to wetlands, areas of steep slopes, floodplain areas, scenic vistas, natural bodies of water, areas of poor drainage, and areas necessary to protect water quality.

Essential Services: The services provided by public utility or governmental agencies through erection, construction or maintenance of underground or overhead gas, electrical, steam or water transmission and distribution systems, and collection, communication, supply or disposal system. These are facilities necessary for the provision of essential services including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, unoccupied utility structures and other similar equipment and accessories in connection therewith.

Event Center: A building and any associated accessory buildings utilized for meetings, conferences, exhibition space, seminars, overnight accommodations, and may include provisions for recreational, cultural, and social programs including entertainment activities.

Excavation: A land area, which is used, or has been used, for the commercial taking of earth.

Exotic Animal: Shall be defined by state and federal regulations, and shall include such animals as elephants, tigers, bears, lions, alligators, large cats, and other animals that originate and ordinarily grow and live naturally in another country, part of the United States, or in wild areas.

Expansion/Alteration: Applies to a building or portions thereof where a change or rearrangement in the structural parts or in the means of egress, enlargement by extending the sides or height, or moving from one location on the site to another location on the site.

Family: A group of individuals, whether or not related, living together in a dwelling unit in a structured relationship constituting an organized housekeeping unit.

Farmer's Market: A building or site either enclosed or open, used or designed for the purpose of the sale of agricultural and horticultural products by independent vendors using designated booths or sites.

Farm Stand: A structure, whether enclosed or not, utilized for the purpose of selling products that are locally grown or produced. A majority of the products are grown or produced either on site or on other land of the farm stand proprietor.

Feedlot: Any tract of land or structure, pen, or corral wherein livestock are maintained in close quarters for the purpose of feeding such **livestock**, or for the purposes of fattening such **livestock** prior to slaughter.

Financial Institution: A business whose primary purpose is lending or investment and may act as a depository for currency. These may include banks, savings and loans, credit unions, investment brokers, and security and commodity exchanges.

Flea Market: Several different people selling items on a commercial level not considered a yard sale.

Forestry: The scientific management and cultivation of wooded tracts, tree farms, forest nurseries, the

harvesting of forest products, and performing forest services.

Frontage: The length of the lot bordering on a town or state maintained highway or a subdivision road approved by the Planning Board, and by which the lot gains access, but not including a Class VI highway, a limited access highway, or private road. Frontage shall be contiguous along a single street and not be split by another lot or street.

Fuel Storage and Wholesale: The storage of petroleum products for subsequent resale.

Funeral Establishment, Mortuary and Crematory: A building and associated land used for the preparation of the deceased for burial, human or animal, and the display of the deceased and rituals connected therewith before burial or cremation. The disposal of related materials shall not be part of this definition.

Gasoline Station: Building and premises where gasoline, oil, grease, batteries, tires, automobile accessories and incidentals are sold at retail and where minor servicing and repairs take place. Outdoor storage of unregistered or inoperative vehicles is not considered part of a gasoline station.

Golf Course: The term shall include standard courses and executive par three courses. The term does not include miniature golf. The land may include typical areas associated with golf including tees, greens, fairways and hazards, and may include a clubhouse or shelter.

Governing Body: The Boscawen Board of Selectmen.

Grade: With reference to a building or structure, the average elevation of the ground adjoining the building or structure on all sides.

Greenhouse: A structure, usually heated, utilizing a translucent cover that is used primarily to grow crops according to the most current *Best Management Practices for Agriculture in New Hampshire as published by the NH Department of Agriculture, Markets & Food.*

Green Space/Area: Land not built upon, and not covered by gravel or impervious cover that is planted with vegetation such as grass, flowers, shrubs, plants, or trees.

Health Care Facility: A facility, office, clinic, center or institution, whether public or private, engaged in the provision of outpatient services with stays less than twenty-four hours for health maintenance and the treatment of dental, mental or physical conditions.

Height, Building: The vertical distance between the mean elevation within 5 feet of the building at the finished grade surrounding the structure to the highest point of the roof of the building.

High Tunnel, Hoop house: A temporary, unheated structure, utilizing a translucent flexible cover that is used primarily to cover crops to extend the growing season according to the most current *Best Management Practices for Agriculture in New Hampshire as published by the NH Department of Agriculture, Markets & Food.*

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

Home Business: Any activity carried out for gain by a resident and conducted within the resident's

dwelling unit or on resident's property. See Article IV for regulations of minor and major home businesses.

Home Business, Major: A major home business is a home based business, which may involve limited external evidence of business use, but shall not be permitted if it is determined that it may have a significant adverse impact on the surrounding neighborhood. It may involve light shipping and delivery of manufactured, assembled or repaired products.

1. The use is subordinate to a single-family detached dwelling, and is primarily a non-retail use, except as noted in condition #5,
2. Not more than 25% of the habitable floor area of the dwelling unit, plus not more than 500 square feet of floor area within an accessory building, may be devoted to the home business,
3. The proprietor of the home business is the owner-occupant of the property,
4. Not more than four persons may be employed in the home business, and
5. Retail sales shall be limited to the incidental sale of goods, which are manufactured, assembled or grown on site, or products, which are directly related to the goods or services rendered by the major home business.
6. Specifically prohibited uses are: long-term storage of commercial vehicles, (180 days or more in one calendar year), warehousing and distribution, automobile repair, or the visible storage on the property of automobiles or parts.

Home Business, Minor: Minor home businesses include small-scale uses of a dwelling unit or accessory structures on the resident's property, which are subordinate to the principal residential uses of the property and that are indistinguishable in appearance and level of traffic from other properties in a neighborhood. No minor home business shall be permitted, which would be incompatible with traditional residential uses in the surrounding neighborhood.

1. No products of the business may be visible from outside the dwelling unit, or the accessory structure(s),
2. The business shall employ no more than one person not a resident of the dwelling unit,
3. Uses relating to the teaching and instruction of pupils shall be limited to those that accommodate not more than five pupils at a time,
4. Not more than 25% of the habitable area of the dwelling unit may be utilized by the home business, and
5. The total number of vehicle trips to and from the property shall not exceed 12 in a 24-hour day.

Homeowners Association: A private nonprofit corporation, association, or other nonprofit legal entity under the laws of the State of New Hampshire established by the developer to provide for the ownership, care, and maintenance of common open space lands and site improvements.

Hotel: A facility offering transient lodging accommodations to the general public and usually accessed through a central lobby. Hotels may provide additional services such as a restaurant, meeting rooms and

recreational facilities used primarily for the lodging guest.

Impervious Surface: Material placed on a lot, which does not absorb water or which substantially prevents water from penetrating into the soil, consisting of all buildings and overhangs, parking areas, driveways, roads, sidewalks and any area paved with concrete, brick, asphalt or other similar material.

Industrial Use: Any activity that entails manufacturing, processing, assembling, warehousing storage, distribution, shipping and other related uses as typically defined as an industrial use. For the purpose of this ordinance, agricultural uses and home businesses shall not be considered or included as an industrial use.

Inn: A facility offering transient lodging accommodations to the general public. It is distinguished from a hotel or motel by its smaller scale, often located in former residences, has a more personal atmosphere and where a proprietor may reside on the premises.

Institutional Residential: Housing of any physical configuration that includes an institutional component, e.g. shelter, group home or halfway house, and that includes some degree of on-site non-parental supervision, counseling or training.

Junk: Waste or discarded material, which may be treated or prepared to be used again in another form.

Junk Yard: A lot, land or structure, or part thereof, used primarily for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material.

Junk Yard, Motor Vehicle: Any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two or more unregistered motor vehicles that are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material, which has been a part, or intended to be part of any motor vehicle the sum of which parts, or material shall be equal in bulk to two or more motor vehicles. Motor vehicle junkyard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for a scrap where it is intended to burn material, which are parts of a motor vehicle or cut up the parts thereof.

Kennel: An establishment where dogs or puppies, cats or kittens are housed, groomed, bred, boarded, trained or sold for a fee or compensation. The kennel may occupy all or part of the premises as part of a business. A dog run, an enclosed area intended for the exercising and/or containment of such animals as described above shall be considered part of a kennel operation.

Landfill: A state approved facility for the disposal of solid waste, refuse and other products and may include a resource recovery/recycling/collection operation for the collection of household waste materials.

Landscape Plan: A drawing specifying precise landscaping and planning details including but not limited to utility fixtures, ground covering, site or street furniture, and a schedule of plantings, showing location, type and size of all new and existing plantings, and descriptions.

Legislative Body: The Boscawen Town Meeting.

Light Manufacturing, Non-Home Based: The processing, fabrication, assembly, treatment, packaging,

incidental storage, sales, and distribution of products, predominantly from previously prepared materials as opposed to raw materials. Except for deliveries and transportation, such operations shall be conducted within a building or buildings, and shall not create noise, cinders, dust, fumes, gases, odors, smoke, or electromagnetic transmission perceptible outside of the buildings.

Livestock: Generally accepted outdoor farm animals (i.e. cows, goats, horses, pig, barnyard fowl, etc.) kept by humans for utility and profit from the sale of such animals or from their labor, breeding, performance, or display; or from the production of food, fiber, or other products or by-products. Livestock includes but is not limited to equine, bovine, ovine, caprine, porcine, fowl and camelids as well as domesticated strains of the following: emus, ostriches, yaks, elk (Cervus canadensis) fallow deer (Dama dama), red deer, (Cervus elaphus), reindeer (Rangifer tarandus), and fur-bearing animals, but excluding bees.

Living Space: A room or enclosed space designed for human occupancy where individuals live, sleep, cook and dine; equipped with means of egress, light, heat, functional sanitary facilities and ventilation facilities. This excludes such places as garages, unfinished areas, decks, barns, sheds and other accessory buildings.

Loading Space: An off-street space or berth for the temporary parking of commercial vehicles for loading or unloading of merchandise or materials.

Lot: An area of land, with ascertainable boundaries in single or joint ownership, undivided by a street, described by a separate description in an established deed(s) of record recorded at Merrimack County Registry of Deeds or an approved subdivision plan duly recorded pursuant to the Town of Boscawen Subdivision Regulations and the provisions of RSA 674:35 through 674:42. In no case shall the division of a lot or a parcel be created that does not meet the requirements of these regulations.

Lot Area: The total area within the lot lines of a lot excluding any street right-of-ways and exclusive of land below the high waterline of any body of water contained therein.

Lot, Corner: Any lot situated at the intersection of two or more streets, which are Class 3, 4, or 5 roads. For the purposes of determining frontage and setback, minimum front yard setbacks shall be maintained along both frontage roads.

Lot Coverage: The ratio of the ground floor area of all structures located on the site together with the area of other impervious surfaces, to the total area of the lot, expressed as a percentage. See Article V of this Ordinance.

Lot Depth: The distance from the front lot line to the rear lot line as measured in a straight line.

Lot Line Front: The line separating any lot from the street.

Lot Line Rear: A lot line that is opposite and most distant from the front lot line; in the case of a triangular or irregular lot, a line of ten (10) feet long within the plot, parallel to and farthest from the front lot line.

Lot Line Side: Any lot line not a front or rear lot line.

Lot of Record: Land designated as a separate and distinct parcel in a legally recorded deed and plan filed in the records of Merrimack County Registry of Deeds.

Lot Width: The horizontal distance parallel to the front lot line measured between the side lot lines at the front building line.

Lumber Yard: A place where wood products are stored or marketed for the construction industry.

Manufactured Housing: As defined in RSA 674:31, as amended. Manufactured housing as defined in this section shall not include pre-site built housing as defined in RSA 674:31-a.

Manufactured Housing Park: A parcel of land providing sites, with required improvements and utilities that are leased for the long-term placement of manufactured housing, and includes services and facilities for the residents. Only one manufactured housing unit shall be placed and located on each site as shown on the park plan approved by the Town for this site. The density shall be that required for a conventional subdivision in the underlying zoning district. Refer to Article VI for additional requirements.

Manufactured Housing Subdivision: A subdivision of land created solely for the placement of manufactured housing on lots owned by the individual unit owners and purchased as real estate. The density shall be that required for a conventional subdivision in the underlying zoning district. Refer to Article VI for additional requirements.

Master Plan: The plan adopted by the Planning Board, pursuant to RSA 674:2 to 674:4 as amended, to guide in the long range development of the Town of Boscawen.

Maximum Seating Capacity: The actual seating capacity of an area based upon the number of individual fixed seats, or based on one seat per eighteen (18) inches of bench or pew length. For other areas where seats are not fixed, the seating capacity shall be determined in accordance with the current edition of the International Building Code, (IBC) as adopted by the State of New Hampshire.

Membership Club: A social, sports, or fraternal association or organization used exclusively by members and their guests and not conducted as a gainful business.

Mixed Use Development: The use of a building and/or land containing a combination of different uses on the site or within a building, generally a combination of residential and commercial components.

Modular Home: A detached residential dwelling unit that meets all town codes, designed to be transported to the site after fabrication and set on a permanent foundation.

Motel: A facility providing sleeping accommodations with a majority of rooms having direct access to the outside without the necessity of passing through the main lobby of the building. This includes tourist courts, motor lodges, and cabins.

Motor Home: A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle on wheels.

Municipal Utility System: A water and/or sewerage system owned and operated by the Town of Boscawen or state-chartered water precinct.

Non-conforming Lot: A lot, the area dimensions, or location of which was lawful prior to the adoption, revision, or amendment to a zoning ordinance, but that fails by reason of such adoption, revision, or

amendment, to conform to the present requirements of the zoning district.

Non-conforming Structure or Building: A structure/building the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to a zoning ordinance, but that fails by reason of such adoption, revision, or amendment, to conform to the present requirements of the zoning district.
Non-conforming Use: A use or activity that was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but that fails, by reason of such adoption, revision, or amendment, to conform to the present requirements of the zoning district.

Non-Residential open space accessory structure: Any structure less than 1,800 square feet in cross-sectional area, the purpose of which is fundamental and accessory to the agricultural, forestry or non-commercial recreational management of undeveloped farm or forestland. The Boscawen Fire Department may require a release from liability if the building is not accessible for fire-fighting purposes. Subject to building permit and compliance with current use statute on land enrolled in current use.

Nursery: Land used for the raising and growing of trees, shrubs, flowers and other plants that are intended to be transplanted or moved to other locations.

Nursery School: A building used principally, or as an accessory use to a dwelling for pre-elementary, non-public education, where there exists a curriculum and a teacher to provide an educational program for children.

Nursing Home: Any dwelling in which three or more aged, chronically ill, or incurable persons are housed and furnished with meals and nursing care for compensation.

Office: A portion of building wherein services are performed involving predominantly administrative, professional, or clerical operations.

Off-Street Parking: Accommodations for the parking of motor vehicles off the street, whether operated for gain or whether privately or cooperatively or publicly established.

Open Space: Land area, not including water surfaces or areas under water that are free of structures, parking, driveways, and other uses that preclude attractive landscaping in such areas and are essentially unimproved and set aside.

Outdoor Storage: The keeping in unenclosed and screened areas, of any goods, junk, material, merchandise or unregistered motor vehicles in the same place (meaning anywhere on said site) for more than twenty-four hours.

Outdoor Vehicle Storage Facility: A facility that provides outdoor storage of vehicles and equipment and is not generally accessible on a regular basis by the general public.

Owner: All owners of a parcel of land or buildings that are duly noted in a deed or other legal conveyance.

Parking Space: A rectangular area not less than 9 by 19 feet forming a parking stall with or without a structure, not located in any public right-of-way, including adequate room for opening doors on both sides and sufficient maneuvering room.

Person: Any individual, firm, co-partnership, corporation, company, association, joint stock association

or body politic, trustee, receiver, assignee, or other similar representative thereof.

Personal Service Establishment: A commercial establishment, the primary concern of which is the rendering of a service to persons or individuals, rather than the sale of products. Such establishments include but are not limited to: barber and beauty shops, shoe repair, dry cleaning and laundry services (pick up and delivery only), and tailoring or dressmaking.

Pet: Any animal that has been bred or raised to live in or about the habitation of humans and is dependent on people for food and shelter.

Keeping of **Livestock** as pets may only be kept as an accessory use to, and on the premises of a single–family residence with the following regulation:

1. Keeping of **Livestock** *as Pets requires an enclosure or structure.* All **Livestock** shall be kept within an enclosure or structure and not be permitted to roam free. Enclosures or structures for **livestock,** and the manure storage areas shall follow current Best Management Practices.

Keeping of Livestock as pets is permitted by Special Exception.

Place of Worship: A church, synagogue, temple, mosque or other facility that is used for prayer by persons of similar beliefs or a special purposed building that is architecturally designed or particularly adapted for the primary use of conducting on a regular basis formal religious services by a religious congregation.

Planned Unit Development (PUD): A parcel of land planned and developed as a single unit, not an aggregation of individual lots, under single ownership or control with design flexibility from traditional siting regulations. The greater flexibility in locating buildings makes it possible to achieve certain economics in construction while preserving open space. Planned Unit Developments may utilize the design criteria of the Cluster Development Ordinance found in Article XIV in this ordinance.

Planning Board: The Town of Boscawen Planning Board.

Pre-site Built Housing: As defined in RSA 674:31-a, as may be amended. For the purposes of this subdivision, pre-site built housing shall not include manufactured housing, as defined in RSA 674:31.

Principle Building: The building occupied by the chief or principle use on the premises. A garage substantially attached to the principle building, as by a roof or common wall, shall be considered as a part of the principal building in computing yard requirements.

Principle Use: The primary or predominant use of any lot or parcel.

Private Educational Facility: Any school, which is not a public educational facility and is not a nursery school.

Productive Farm: Any establishment from which $1,500.00 (gross sales) or more of agricultural products were sold during the year.

Public Educational Facility: A building used principally to educate any child of the Merrimack Valley School District, where attendance at such school at the public expense is a right of that child.

Public Hearing: A publicly advertised meeting of an official body conducting Town business during which the public is permitted to give testimony concerning issues under consideration.

Public Utility: A public or private company or governmental agency under the regulation of the N. H. Public Utilities Commission, involved in supplying utility services through erection, construction, alteration or maintenance of gas, electrical, communication, steam, or water transmission or distribution systems.

Recreation Facility, Indoor: A building used principally for indoor commercial recreation such as gymnasium, roller rink, ice skating area, dance floor, swimming pool, tennis courts, function room, soccer fields, bowling alley, arcades, and other recreation activities conducted inside a building.

Recreation Facility, Outdoor: A parcel of land with or without a structure used principally for outdoor recreation, such as batting cages, athletic fields, pitch and putt golf, miniature golf, driving range, fish and game club, tennis courts, swimming pools, go-cart track, outdoor movie theater, snowmobile trails, and boat access/ramp.

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

Recreational Vehicle Park: A parcel of land intended for occupancy by recreational vehicles and recreational trailers.

Reference Line: For natural fresh-water bodies without artificial impoundments, the ordinary high-water mark; for artificially impounded water bodies, the waterline at full pond as determined by the elevation of the top of the impoundment structure. For rivers, as defined by RSA 483-B.

Residential Care Home: A facility wherein personal and social services are available to individuals with a minimum of supervision and health care services, and that can be provided in a home or home-like setting in accordance with RSA 151:9, VII, (a), (1), and (2).

Restaurant: An establishment that serves food and beverage primarily to persons seated within the building.

Restaurant, Fast Food: An establishment that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared, fried, griddled or grilled quickly, or heated in a device such as a microwave oven. Orders are not generally taken at the customer's table, and food is generally served in disposable wrapping or containers.

Retail: The sale of goods, merchandise, and products to the end consumer for direct consumption and not for resale.

Right-of-way: A strip of land that is generally used for the location of a street, walkway, utility line, or other access way, that is separate and distinct from the lots and parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels.

Rooming House: Any owner-occupied dwelling unit (other than a hotel or motel) where living

accommodations without kitchen facilities are rented to non-transient roomers.

Sawmill: A facility where logs are sawn, split, shaved, stripped, chipped or otherwise processed to produce wood products. This does not include the processing of timber for use on the same lot by the owner or resident of that lot.

Salt Storage Shed: A partially or fully enclosed structure utilized for the storage of road salt or other materials containing salt for commercial uses.

Screening: The practice or method to visually shield or obscure land or buildings from that of an abutting or neighboring site by incorporating attractive visual elements such as fencing, walls, berms, or densely planted vegetation.

Seasonal Dwelling Unit: A dwelling used for recreational purposes only and not as a primary dwelling unit. Is used on an intermittent basis such as that of a short term vacation destination, summer cottage, or hunting and fishing camp, and is not occupied for more 120 continuous days in any single calendar year.

Service Area: The area adjacent to a building, usually in the rear, where users receive supplies and waste materials, and where other products are removed.

Setback: Open area of a parcel where a building may not be situated. An area that is unoccupied and unobstructed from the ground upward. The line that is the required distance from any lot line and that establishes the area where a building must be placed.

Setback, Front: Extends the full width of the lot, between the front lot line and the nearest line of the building or portion thereof. See frontage.

Setback, Rear: Extends the full width of the lot, between the rear lot line and the nearest line of the building or portion thereof.

Setback, Side: Extends the full width of the lot from the side lot line and the nearest line of the structure or portion thereof.

Sewage Disposal Facility/Septage Lagoon: A site used for the storage and disposal of septic and sewer waste.

Sexually Oriented Business: A use as defined in Article XVII of this ordinance.

Shopping Center: A group of commercial establishments planned and developed primarily for principal retail uses, and maintained and managed as a business unit.

Sign: Any device, fixture, placard, landscaping or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of or identify the purpose of a person or entity or to communicate to the public. Signs are further defined in Article VII of this ordinance.

Site Plan: A plan, drawn to scale, showing the location of all buildings, parking areas, abutters, traffic access and circulation drives, open spaces, landscaping and any other pertinent information that the Boscawen Planning Board deems necessary in exercising its review of non-residential, clustered residential development and multi-family dwelling site plans in accordance with RSA 674:43 and 674:44.

Slope: See the Boscawen Planning Board Site Plan/Subdivision Regulations.

Soil Scientist: A person who, by reason of special knowledge acquired by professional education and practical experience, as specified by RSA 310-A: 84, is qualified to practice soil science and who has been duly certified by the State Board of Natural Scientists of the State of New Hampshire.

Special Exception: A use that may be approved by the Zoning Board of Adjustment in districts where the use is specifically authorized by this Ordinance and conforms to other provisions regarding granting such use.

Start of Construction: includes substantial improvement, and means the date the building permit was issued, provided that 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, 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 not part of the main structure.

Storage. The term "Storage" for the purpose of this article, means disuse for 30 days or more. It does not mean the daily use of a vehicle in one's occupation, or which is furnished by an employer as a condition of employment.

Storage Units: A site and building designed to hold storage items in individual units accessed through a main entrance, with an outdoor access point to each unit, intended for household storage and not a warehouse facility.

Story: That portion of a building included between the surface of any floor and the surface of the floor or roof next above. A basement shall be considered as a story for height measurement where more than one-half of its height is above the average level of the surrounding ground.

Street Center Line: A line equidistant from each street line; if no street line is evident, the centerline of the traveled way.

Street: A public thoroughfare, which affords the principal means of access to abutting property.

Structure: Anything constructed or erected, which requires a location on the ground or attachment to something having a location on the ground; including, but not limited to, free standing signs, billboards, manufactured homes and buildings, but exclusive of customary fences or boundary or retaining walls and landscaping and screening required by the Site Plan Regulations.

Subdivision: The division of the lot, tract or parcel of land into two or more lots, plats, sites, or other divisions of land for the purposes, whether immediate or future, sale, rent, lease, condominium conveyance or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision.

Supported Residential Health Care Home: In accordance with RSA 151:9, VII, (a), (1) and (2), a facility wherein social and health services are available to individuals, as needed, from appropriately trained or licensed individuals, who need not be employees of the facility. The residents of such a facility shall not require nursing services complex enough to require twenty-four (24) hour nursing supervision. Such facilities may also include short-term medical care for residents of the facility who may be convalescing from an illness and these residents shall be capable of self-evacuation.

Telecommunication Facility: As defined within Article XVI of this Ordinance.

Temporary Event: An event or activity lasting for seven days or less, which is held for monetary gain by any person, business, club, association or religious organization and can reasonably be expected to have two hundred and fifty or more attendees during a 24-hour period as long as the following minimum requirements are met: Sufficient sanitary facilities for the number of attendees as determined by the Health Officer and enough off-street parking for the number of cars as determined by the Technical Review Committee.

Toxic or Hazardous Materials: Any substance or mixture of physical, chemical or infectious characteristics that pose a significant, actual or potential threat to water supplies or other hazard to human health, if such substance or mixture were discharged to land or waters of the Town of Boscawen. Toxic or hazardous materials includes, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and products such as pesticides, herbicides, solvents and thinners.

Tract: An area, parcel, site, piece of land or property.

Truck Terminal: A facility for storage of trucks and the related transfer of merchandise, repair, maintenance, and servicing of such vehicles.

Use: The purpose for which a lot, building or structure thereon is designed, occupied, maintained, or intended to be used.

Use, Accessory: A use of land, building, or portion thereof, normally incidental to the permitted principle use of the premises.

Use, Substantially Different: A use, which by reason of its normal operation would cause readily observable differences in patronage, service, appearance, noise, employment or similar characteristics.

Utility Substation: A building and/or structure, owned and/or operated by a public or private utility, which is principally used for sheltering, maintaining and/or supporting utility equipment, machinery or the like, including electrical relay or generating, telephone switching, sewage pumping station or the like, but not including gas, electrical, telephone, etc., transmission lines alone.

Variance: A departure from the terms of this Zoning Ordinance, which, upon appeal to the Zoning Board of Adjustment, meets all the criteria for granting such variance as defined by this ordinance and applicable State Statutes.

Warehouse: A building used primarily for the storage of goods or materials and operated by or for the benefit of a specific business or group of businesses or made available to the general public for a fee.

Watercourse: Any natural or man-made channel through which water may flow, including intermittent stream (seasonal streams).

Water Supply Works: Any building and/or other structure used by a public or private utility principally for the supply of water to the public including a filtration plant, pumping station or the like, but not including water transmission lines alone.

Water Surface Elevation: Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods or various magnitudes and frequencies in the floodplain.

Wetlands: As defined by RSA 482:A:2, X, wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands Scientist: A person, who by reason of special knowledge acquired by professional education and practical experience, as specified by RSA 310-A: 84, is qualified to delineate wetland boundaries and prepare wetland maps and who has been duly certified by the State Board of Natural Scientists of the State of New Hampshire.

Yard Sale: Including barn, garage, moving, and all similar sales that are intended for the sale of unwanted, used household type items, which are the homeowner's personal property.

Article XIII
Amendment, Validity and Effective Date

13.01 **Amendments or Repeals**

In accordance with RSA 675:3 and 4, as from time to time amended, this Ordinance may be amended or repealed in whole or in part, or Zoning Map changed, as provided for in the aforementioned Chapter.

13.02 **Validity.**

The invalidity of any provision of this Ordinance, or boundary shown on the Zoning Map, shall not affect the validity of any other provision or boundary of this Ordinance.

13.03 **Effective Date.**

This Ordinance shall become effective upon its passage.

Article XIV
Cluster Developments

14.01 **Purpose**.

The purpose of this article is to provide a flexible alternative to conventional development which will be consistent with the character of the Town of Boscawen and which will promote the health, safety, and general welfare of Boscawen residents. Specifically these cluster development regulations are designed to:

a.) Encourage imaginative and economical approaches to land development in harmony with natural features;

b.) Encourage a diversity of residential developments;

c.) Encourage land development which minimizes the burden on the Town for maintenance or service requirements;

d.) Encourage the efficient use of land;

e.) Reduce the overall cost of housing;

f.) Preserve open space;

g.) Protect scenic, historic, forested, fragile, or other sensitive land, and wetlands, wildlife, habitat, and agricultural lands.

14.02 **Conditional Use Permit Required.**

Prior to commencing the cluster development of any parcel of land, the owner of said parcel shall obtain approval of a Conditional Use Permit (CUP) from the Planning Board in accordance with RSA 674:21, as amended. As part of the CUP approval process, the Planning Board has the authority to provide relief to the Boscawen Zoning Ordinance standards as described in this Article Only. The CUP can be processed in concurrently with the Subdivision and, as applicable, Site Plan application(s), submitted in conjunction with the cluster application. The Planning Board shall review the CUP application based upon the following:

a.) Submittal Requirements:

1. A complete Subdivision Application package, as described in the Subdivision Regulations, including appropriate fees.

2. A Conditional Use Permit Application.

3. If applicable, a letter from the Board of Selectmen indicating the desirability of the Town to accept the open space as town-owned property.

4. If applicable to the type of development proposal, a complete Site Plan Application, as described in the Site Plan Regulations, including appropriate fees.

b.) Conditional Use Permit Criteria:
The Applicant shall demonstrate compliance with all of the following to the Planning Board in order for the CUP to be approved:

1. The property is located within the AR, R1, or R2 Zones.

2. The parcel is at least 10 acres in size.

3. The development has adequate water supply and sewage system.

4. That the density does not exceed what would be permissible under a conventional subdivision.

5. That at least forty percent (40%) of the parent tract is devoted to open space.

6. That at least thirty three percent (33%) of the required open space is "buildable."

7. That the open space is permanently protected and cannot be built upon.

8. There shall be a 25' setback from the jurisdictional wetlands. Buildings will not be allowed in the wetland setback..

9. That a one hundred foot (100') non-build/green space buffer is maintained around the perimeter of the parent tract but may be reduced to seventy five feet (75') for single family units.

The Conditional Use Permit criteria are not subject to waiver by the Planning Board.

c.) Waiver Requests:
The Planning Board is authorized to provide waivers for items submitted in accordance with the Subdivision Regulations, and, as applicable, Site Plan Regulations.

14.03 **Additional Requirements.**
The following requirements shall apply to cluster developments:

a.) Density shall be determined by dividing the total acreage of the parent tract (less delineated

wetlands, steep slopes, and area within the 100 year floodplain) by the minimum lot size for the zone in which it is located. The total number of residential units shall not exceed the number of units otherwise permitted in the applicable zoning district based on the standards for single-family dwellings (see Table 2, Section 5.01);

b.) Proposed single family buildings shall be a minimum of fifty (50') feet and multi-family units shall be seventy-five (75) feet from any existing public street or abutting property;

c.) No more than four units shall be located in any one structure;

d.) Where, in the opinion of the Planning Board, it is practical and advisable, cluster developments shall be served by municipal or approved community water and sewer systems. Where approved community systems are used, provisions must be made for future hookup to municipal water and sewer systems. Where municipal or community water and/or sewer services are available, the development must be designed for, and necessary arrangements provided to facilitate, future hookup to municipal water and sewer systems;

e.) Provisions for the perpetual maintenance of all common facilities through a mandatory homeowners association shall be made (see section 14.06 c. and d.);

f.) A minimum of fifteen feet (15') shall be maintained between any two unattached buildings on the same parcel.

14.04 **Flexible Standards.**

Cluster developments are not subject to the following requirements of Article V Lot Dimensions and Area:

a.) Frontage requirements as applied to individual lots or units;

b.) Coverage limits as applied to individual lots or units.

c.) There shall be no minimum lot size for individual home lots within the cluster on municipal sewer and water. Lots to be served by on-site septic systems or private wells shall be no smaller than 30,000 square feet.

Cluster developments are also exempt from the provisions of Section 6.02 d) regarding more than one structure containing residences on a single lot.

Nothing in this section shall be construed such that the Planning Board through subdivision review are prevented from making reasonable provisions to further the intent and spirit of the Zoning Ordinance.

14.05 **Other Ordinances and Regulations.**

Cluster developments are subject to the provisions of the site plan regulations, subdivision regulations, and all other regulations, ordinances, or statutes as appropriate.

14.06 **Open Space.**

The intent of cluster development is to reduce the actual amount of land used for structures thereby increasing the amount of usable open space. In addition, safeguards must be in place to protect the public interest and the interests of future residents of the cluster development. All open space shall remain undeveloped in perpetuity. For these and other reasonable purposes the following requirements are set out:

a.) The plan shall identify the location, use, and treatment of all open space as well as the proposed provisions for ownership, maintenance, and control of the open space. The Planning Board shall not grant final approval of the plan until provisions for such ownership; maintenance and control are in place.

b.) Open space shall be held, managed, and maintained by the developer until it is owned in one or more of the following ways:

1. By a Homeowners' or Condominium Association or similar form of common ownership set up by the developer and made a part of the deed or agreement for each lot or dwelling unit. This form of ownership may only be used where all land within the development is held in common. The open space shall not be in a parcel or parcels separated from the dwelling units.

2. The land may be held separately by each of the individual lot owners, where each unit/lot owner owns an approximately equivalent portion of the open space. The open space shall not be in a parcel separated from the dwelling unit. It is recognized that this will result in unusually shaped lots. Copies of each deed depicting this arrangement shall be submitted to the Planning Board as a condition of approval of the Conditional Use Permit, and, one hundred percent (100%) of the open space must be accounted for in the deeds. All deeds shall specify that no further development of the open space is permissible in perpetuity.

c.) All agreements, deed restrictions, articles of incorporation, by-laws, and organizational provisions for any of the above forms of ownership, management and maintenance of the open space land shall be subject to the review and approval of the Planning Board during subdivision review and/or site plan review.

d.) In cases where the proposed cluster development results in areas or project features of common ownership, there shall be established procedures and responsibilities for perpetual maintenance of open space, private streets and utilities by the inclusion of covenants running with the land in the deeds or other instruments of conveyance delineating such areas in accordance with RSA 479: A as from time to time amended; and

1. Obligating purchasers to participate in a Homeowners' Association, Condominium Association or similar form of common ownership (which participation shall be automatic upon conveyance of title or lease to individual dwelling units), and to support maintenance of the open areas by paying to the association assessments sufficient for such maintenance and subjecting their properties to a lien for enforcement of payment of the respective assessments;

2. Obligating such an association to maintain the open areas and private streets and utilities;

3. Empowering the Town, as well as other purchasers in the development, to enforce the covenants in the event of failure of compliance;

4. Providing for agreements that, if the Town is required to perform any maintenance work pursuant to Item 3 above, said purchasers would pay the cost thereof and that the same shall be a lien upon their properties until said cost has been paid; provided that the developer -- or if the developer is not the owner of the development, then such owner -- shall be a member of the Homeowners' Association until all of the lots of record are sold. Other equivalent provisions to assure adequate perpetual maintenance may be permitted if approved by the Planning Board;

5. Providing for unrestricted access by all residents of the development to the open space land.

e.) All conceptual provisions for the location, treatment, ownership, control, distribution, use, and maintenance of open space shall be subject to approval by the Planning Board.

f.) At a minimum, forty percent (40%) of the gross area of the cluster development shall be open space. Not more than fifty percent (50%) of the required open space shall be wetlands.

g.) The usable open space within a cluster development need not be located within a single, continuous area. Each area to be counted toward the minimum required open space, shall contain one acre minimum and have a minimum width of one hundred (100) feet.

Article XV
Floodplain Development Ordinance

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Merrimack, N.H." dated April 19, 2010, or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference.

Certain areas of the Town of Boscawen, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the town of Boscawen, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P. L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

Pursuant to RSA 674:57, by resolution of the Board of Selectmen, all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Merrimack County, NH" dated April 19, 2010, together with the associated Flood Insurance Rate Maps dated April 19, 2010, are declared to be part of the Town of Boscawen Zoning Ordinance and are hereby incorporated by reference.

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

Item I.

Definition of Terms: The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Boscawen.

"Area of Special Flood Hazard" is the land in the floodplain within the Town of Boscawen subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as zones A or AE.

"Base Flood" means the flood having a one percent possibility of being equaled or exceeded in any given year.

"Basement" means any area of a building having its floor subgrade on all sides.

"Building" - see "structure".

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

"FEMA" means the Federal Emergency Management Agency.

"Flood or Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Boscawen.

"Flood Insurance Study" – (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related hazards.

"Floodplain or Flood prone Area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Flood Proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

"Floodway" - see "Regulatory Floodway".

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

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means 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:

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

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

"**Manufactured Home Park or Subdivision**" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

"**New Construction**" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"l00-Year Flood" - see "base flood"

"Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

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

"Special Flood Hazard Area" means an area having flood, mud slide, and/or flood related erosion hazards, and shown on an FHBM or FIRM as zone A or Al-30. (See "Area of Special Flood Hazard")

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

"Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of 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.

"Substantial Damage" means 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 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Item IV, Item VII (b.) (2), or section VI (c) (d) of this ordinance is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation" means 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.

Item II.

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

Item III.

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 floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

b.) be constructed with materials resistant to flood damage,

c.) be constructed by methods and practices that minimize flood damages,

d.) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item IV.

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 flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

Item V.

For all new or substantially improved structures located in Zones A or A1-30, the applicant shall furnish the following information to the Code Enforcement Officer:

a.) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

b.) if the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.

c.) any certification of flood proofing.

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

Item VI.

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.

Item VII.

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 the 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 Bureau.

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 and 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. Code Enforcement Officer

d.) Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones 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.

e.) 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 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."

Item VIII.

a.) In special flood hazard areas the Code Enforcement Officer shall determine the 100 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 or FHBM.

2. In Zone A the Code Enforcement Officer shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site plan approvals).

b.) The Code Enforcement Officer's 100 year flood elevation determination will be used as criteria for requiring in zones A and AE that:

1. all new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;

2. that all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:

(i) be floodproofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(iii) 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 floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

4. Recreational vehicles placed on sites within zones A and AE shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Item II and Item VII b.) (3) of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section IX (2) (c) of this ordinance.5. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Item IX.

Variances and Appeals:

a.) Any order, requirement, decision or determination of the Code Enforcement Officer made under this ordinance 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: (1) 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 (2) 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.

Article XVI
Telecommunications Ordinance

16.00 **Telecommunications Facilities**

In recognition of the Federal Telecommunications Act of 1996, this ordinance is designed and intended to balance the interests of the residents of the Town of Boscawen, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town of Boscawen so as to ensure coordinated development of communications infrastructure while preserving the health, safety and welfare of the Town and its residents. This ordinance establishes general guidelines for the siting of telecommunications facilities and antennas to enhance and fulfill the following goals:

a.) Preserve the authority of the Town of Boscawen 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, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values;

c.) Provide for co-location and minimal impact siting options through assessment of technology, current location options, future available locations, innovative siting techniques and siting possibilities beyond the 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 towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;

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

f.) Provide for the removal of abandoned facilities that are no longer inspected for safety concerns. Provide a mechanism for the Town to remove these abandoned structures to protect the citizens from imminent harm and danger; and

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

16.01 **Definitions**

Alternative Tower Structure - Innovative siting techniques such as artificial trees, clock towers, bell towers, steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

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

Co-Location - The use of an existing tower or an existing telecommunications facility, for multiple purposes or users.

Guy Wires - A cable used to secure and steady a tower.

Height - The distance measured from ground level to the highest point on the tower or other structure, including antennas.

Monopole - Any tower consisting of a single pole, constructed without guy wires or ground anchors.

Preexisting Towers and Antennas - Any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Also, any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Town.

Secondary Use - A use of land or of a building or portion thereof which is unrelated to the principal use of the land or building.

Telecommunications Facilities - Any structure, antenna, tower, or other device that provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communication (SMR), and personal communications services (PCS), and common carrier wireless exchange access services.

Tower - A structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

16.02 **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 section, except that the uses are only permitted in the area delineated in section 16.04. This partial exemption shall be available if a license or lease authorizing the 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 of this ordinance.

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

c.) Essential Services and Public Utilities: Telecommunications facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications facilities is a use of land, and is subject to the Town's zoning ordinance and all other applicable ordinances and regulations.

16.03 **Siting Standards**

General provisions: The uses listed in this section are deemed to be permitted uses in the designated area in accordance with all other applicable ordinances and regulations of the Town including Site Plan Review and approval by the Boscawen Planning Board.

a.) 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.

b.) For purposes of determining whether the installation of a tower or antenna complies with district development standards, the dimensions of the entire lot shall control, even though the antennas and towers may be located on leased parcels within such lots.

c.) Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance on a nonconforming lot or in conjunction with a nonconforming use shall not be deemed to constitute the expansion of a nonconforming use or structure.

16.04 **Areas Permitted**

New tower construction and co-location of telecommunications facilities shall be permitted by Special Exception. Such construction shall be subject to all applicable local, state and federal regulations and Site Plan Review and approval by the Planning Board.

16.05 **Bonding Security and Insurance**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and

the tower owner is incapable and/or unwilling to remove the tower in accordance with section 16.06. Bonding and surety shall be consistent with the provisions in the Subdivision Regulations. Furthermore, the Planning Board shall require submission of proof of adequate insurance covering accident or damage.

16.06 **Removal of Abandoned Antennas and Towers**

Any antenna or tower that is not operated for a continuous period of twelve (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 ninety (90) days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed according to RSA 676:4, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

Article XVII
Sexually Oriented Businesses

17.01 **Purpose and Intent:**

It is the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Boscawen and to promote the health, safety and general welfare of the citizens of the Town of Boscawen; that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses. The provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials. 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. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

17.02 **Definitions of Sexually Oriented Businesses:** A sexually oriented business is any place of business at which any of the following activities is conducted:

a.) **Adult Bookstore or Adult Video Store** - 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:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other forms of visual or audio representations which meet the definition of "harmful to minor" and/or "sexual conduct" as set forth in RSA 571-B:1; or

2. Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B: 1, other than birth control devices.

b.) **Adult Motion Picture Theater** - An establishment, indoor or outdoor in nature, with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, 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. A "substantial portion of the total presentation time" shall mean the presentation of films or shows described above for viewing on more than seven days within any 30 consecutive day period.

c.) **Adult Motion Picture Arcade** - Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion pictures, 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 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, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to 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 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, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

f.) **Adult Theater** - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are 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.

g.) **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 meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

h.) **Sexual Encounter Center** - A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration: physical contact and/or activities between male and female persons and/or persons of the same sex when one or more persons is in a state of semi-nudity; or where such physical contact or activities is characterized by an emphasis on contact or activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

17.03. **Allowed Locations and Restrictions**

For a use to be established under this Article, the applicant must demonstrate that the proposed site satisfies all the site requirements of Site Plan Review from the Planning Board and must secure a Special Exception from the Zoning Board of Adjustment subject to the requirements and procedures contained herein.

A sexually oriented business use, in addition to all other requirements of this Article shall, prior to a request for a Special Exception, demonstrate compliance with the following requirements:

a.) Must be located within a commercial district.

b.) No sexually oriented business shall be permitted within 300 feet of any church, place of worship, parish house, public or private school, kindergarten, day care center or public sports/recreation parks and no sexually oriented business shall be permitted within 300 feet of the town boundaries.

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

d.) Exterior signs shall not visually depict any person in a "state of nudity", or "semi-nude" or which is not in compliance with RSA 571-B:1.

17.04. **Severability:** The invalidity of any section or provision of this Article shall not invalidate any other section or provision thereof.

Article XVIII
Reserved

Article XIIII
Reserved

Article XX
Impact Fee Ordinance

Objective:

Provide general authority to the Planning Board to adopt methods for the calculation of impact fee assessments and related impact fee schedules for application to new development. Impact fee schedules and their supporting basis, or changes to these documents, would be adopted by the Board for application to new development only after a public hearing.

20- 01. Authority.

These regulations are authorized by New Hampshire RSA 674:21, V, and other pertinent state law, as an innovative land use control. Under this authority, new development in the Town of Boscawen may be assessed impact fees in proportion to its demand on the public capital facilities of the Town and School District.

20- 02. Purpose.

The following regulations shall govern the assessment of impact fees for public capital facilities to accommodate the demands of new development on these facilities. These provisions are intended to:

A. Assist in the implementation of the Master Plan and Capital Improvements Program;

B. Provide for the public capital facilities necessitated by new development;

C. Assess an equitable share of the cost of public capital facilities to new development in proportion to the facility demands of new development.

20- 03. Definitions.

A. Fee payer means the applicant for a subdivision or site plan approval, or a building permit that would create new development as defined in this Article.

B. Impact fee means a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including public open space.

C. New development means an activity that results in:

(1) The creation of a new dwelling unit or units or in the habitable portion of a residential building; or

(2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units; or

(3) Construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building; or

(4) The conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment; however,

(5) New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

D. Off-site improvements means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the Planning Board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development.

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

F. Public recreation facilities means the land and facilities owned or operated by the Town of Boscawen, other than public open space, which are designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which include equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs.

G. School District means the Merrimack Valley Cooperative School District, of which the Town of Boscawen is a member municipality.

20- 04. Authority to Assess Impact Fees.

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance and to delegate the administrative functions of impact fee assessment, collection and disbursement.

20- 05. Standards and Basis of Assessment.

A. The amount of any impact fee shall be a proportional share of public facility improvement costs which are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

B. The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules therefore.

C. No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.

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

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

20- 06. Review and Change in Assessment Schedules.

The impact fee assessment schedules shall be reviewed annually by the Planning Board, along with the foundation documents that provide the basis for the assessment schedules. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as they affect the variables in the fee calculations. Changes in the impact fee assessment schedules shall be effective only where the change in the basis of assessment or the fee schedule is adopted following a public hearing on the proposed change.

20- 07. Assessment and Collection of Impact Fees.

A. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.

B. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit.

C. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use.

D. The Planning Board and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees. If an alternate schedule of payment is established, the Planning Board may require the applicant to post security, in the form of a cash bond, letter of credit, or performance bond so as to guaranty future payment of assessed impact fees.

20- 08. Waivers.

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

A. A fee payer may request a full or partial waiver of public school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments on restricted-occupancy units where it finds that the dwelling unit will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years.

B. A person may request, from the Planning Board, a full or partial waiver of impact fee assessments imposed by this ordinance on the basis of other contributions toward public capital facilities. The amount of such a waiver shall not exceed the value of land, facilities construction, or other contributions for public capital facilities. The value of on-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver under this Ordinance. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. All costs incurred by the Town for the review of a proposed waiver, including consultant and counsel fees, shall be paid by the applicant.

20- 9. Appeals Under This Article.

A. A party aggrieved by a decision made by the Code Enforcement Officer relating to administrative decisions in the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board.

B. A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Merrimack County Superior Court as provided by RSA 677:15, as amended.

20- 10. Administration of Impact Fees.

A. All funds collected shall be properly identified and promptly transferred for deposit into

an individual public capital facilities impact fee account for each of the categories under which impact fees are assessed, and shall be used solely for the purposes specified in this Ordinance. Impact fee accounts shall be special revenue fund accounts and under no circumstances shall such revenues accrue to the general fund.

B. Impact fees shall be paid out or applied to the provision of public capital facilities only upon specific authorization by the Board of Selectmen.

C. The Board of Selectmen shall record all fees paid, by date of payment, name of the person making payment, and the parcel, lot or building for which the fee has been paid. The Town shall maintain an updated record of the current ownership, tax map and lot reference number of each property for which an impact fee has been paid and the amount of that fee for a period of at least six (6) years.

D. Funds withdrawn from the public capital facilities impact fee accounts shall be used solely for the purpose of acquiring, constructing, expanding or equipping public capital facilities or improvements made within the individual categories established by the fee schedules and basis of assessment adopted by the Planning Board.

F. In the event that bonds or similar debt instruments have been issued for public capital facilities which were constructed in anticipation of new development, or are issued for advanced provision of capital facilities identified in this Ordinance, impact fees may be used to pay debt service on such bonds or similar debt instruments.

20- 11. Refund of Fees Paid.

A. The owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

(1) The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the final payment of the fee; or

(2) The Town, or in the case of school impact fees the School District has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.

B. The Town Administrator shall provide all owners of record who are due a refund, written notice of the amount due, including accrued interest.

20- 12. Other Authority Retained.

This ordinance shall not be deemed to affect other authority of the Planning Board over subdivisions and site plans, including, but not limited to:

A. The authority of the Planning Board to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); or

B. The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j); or

C. Other authority of the Town of Boscawen to assess other under the authority of other statutes, ordinances of the Town of Boscawen or the Boscawen Planning Board Site Plan Review and Subdivision Regulations.

Article XXI
Conditional Use Permits

21.01 Administration

Wherever a Conditional Use Permit is authorized by this Ordinance, the authority to administer or grant Conditional Use Permits shall be vested in the Planning Board and authorized pursuant to RSA 674:21, Innovative Land Use Controls.

21.02 Application Review and Procedure

An application for a Conditional Use Permit shall be initiated by filing an application for conditional use with the Planning Board. The following procedures shall apply to the processing of such an application:

1. When Subdivision or Site Plan approval is required, the application and review procedure for a Conditional Use Permit shall be made concurrently and in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development.
2. When Subdivision or Site Plan Approval is not required, the application and procedural requirements of the Site Plan Regulations shall be applied to the application and processing of Conditional Use Permits with respect to content of applications, requirements for public notice, hearings and timing of decisions by the Planning Board.

21.03 Burden of Persuasion

The applicant bears the burden of persuasion, through the introduction of sufficient evidence through testimony or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the Ordinance.

21.04 Standards of Review

In reviewing an application for a Conditional Use Permit, the Planning Board shall consider the following information in its deliberation, as applicable to the case:

1. Specific authorization for the conditional use as established by this Ordinance;
2. The compliance of the development plan with the specific standards for such use contained in this Ordinance;
3. The results of any special investigative or scientific studies prepared in association with the proposed development;
4. Special reports or analyses of the project or its impacts prepared by the Town’s departments, its consultants, boards or commissions;
5. The findings, goals and objectives of the Master Plan;

6. Testimony and evidence introduced at the public hearing on the application.

21.05 Waivers

Where the Planning Board is authorized to administer the provisions of an Innovative Land Use Control under 674:21, it may waive any standard within the section after making the following determinations:

1. Granting of a waiver shall not be detrimental to the public safety, health, or welfare or cause injury or damage to other property, or fail to promote the public interest;
2. The waiver is consistent with the purpose of the provisions of the Zoning Ordinance and Master Plan;
3. The waiver will result in a better design for the Town of Boscawen;
4. A particular hardship or circumstance exists that warrants granting a waiver. Such circumstances may include topography, soil constraints, wetlands, geographic location of the property, size and scale of the project.

21.06 Hearing and Decision

Following a public hearing on the proposed use, the Planning Board shall issue a Conditional Use Permit if it finds, based on information and testimony submitted with respect to the application that:

1. The use is specifically authorized by this Ordinance as a conditional use;
2. If completed as proposed by the applicant, the development in its proposed location will comply with all requirements of this Article, and with the specific conditions or standards established in this Ordinance for the particular use;
3. The use will not materially endanger the public health or safety;
4. The use will be compatible with the neighborhood and with adjoining or abutting uses in the area where it is to be located;
5. The use will not have a substantial adverse impact on highway or pedestrian safety; and
6. The use will not have a substantial adverse impact on the natural resources of the town.

21.07 Conditions of Approval

In granting a Conditional Use Permit, the Planning Board may attach reasonable conditions to its approval, including, but not limited to, performance guarantees and the phasing of a development, where such conditions are shown to be necessary to further the objectives of this Article. Representations made at a public hearing or in material submitted to the Planning Board by an applicant to obtain a Conditional Use Permit shall be deemed conditions of the issuance of the permit. All other conditions of approval shall be stated in writing in the permit. The Planning Board may require that such conditions be annotated on a site plan or subdivision plan, or otherwise recorded at the Merrimack County Registry of Deeds.

21.08 Appeals

Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court as provided in the manner prescribed in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (see RSA 676:5, III).

Article XXII
Small Wind Energy Systems Ordinance

A. Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

B. Definitions:

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

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

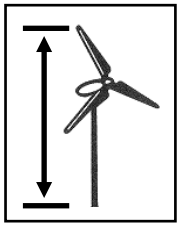
Net metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

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

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

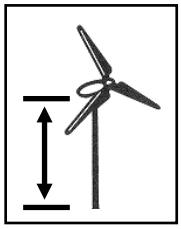
Small wind energy system. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

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.

C. Procedure for Review:

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:

   i) Property lines and physical dimensions of the applicant's property.

   ii) Location, dimensions, and types of existing major structures on the property.

   iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.

   iv) Tower foundation blueprints or drawings.

   v) Tower blueprints or drawings.

   vi) Setback requirements as outlined in this ordinance.

   vii) The right-of-way of any public road that is contiguous with the property.

   viii) Any overhead utility lines.

ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.

x) 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.

xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.

xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.

xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.

xiv) List of abutters to the applicant's property.

3. 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.

D. Standards:

1. The building inspector shall evaluate the application for compliance with the following standards;

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

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

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

ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

b. Tower: The maximum tower height shall be restricted to 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.

c. 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.

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

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

f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to 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.

ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.

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

i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

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

k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

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

E. Abandonment:

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

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

a. Removal of the wind generator and tower and related above-grade structures.
b. Restoration of the location of the small wind energy system to its natural condition,

except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-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.

4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

F. Violation:

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

G. Penalties:

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

Article XXIII
Accessory Dwelling Units

Purpose.

The purpose of this article is to provide expanded affordable independent housing opportunities to a permitted, owner-occupied, single-family dwelling, while maintaining the aesthetics and residential use compatible with homes in the neighborhood.

Provisions.

An ADU shall be permitted only by Conditional Use Permit in allowed zoning districts and only in accordance with the following provisions:

A. An ADU is allowed only in one-family dwellings. An ADU is not allowed in two family or multifamily dwellings or in any nonresidential buildings.
B. An ADU is not allowed as a freestanding detached structure or as part of any structure which is detached from the primary dwelling unit. Mobile homes or trailers may not be erected or added to the principal dwelling to serve as an ADU.
C. An ADU is not allowed in any dwelling in which the owner of record of said dwelling does not personally reside , and the owner shall demonstrate that one of the units is his or her principal place of residence. The owner may reside in either unit
D. The front face of the primary dwelling structure is to continue to appear as a one-family dwelling after any alterations to the structure are made to accommodate the ADU. Any additional entrances to the ADU must be located so as to preserve the appearance of a one-family dwelling.
E. At least one common interior access between the primary dwelling unit and an ADU must exist. A second means of egress from both units must exist, but must not face the street address side of the structure.
F. Off-street parking shall be provided to serve the combined parking needs of the principal dwelling unit and the ADU. There shall not be a separate driveway for the ADU.
G. The gross living area of an ADU shall not be less than 350 square feet and shall not exceed 50% of the primary structure or 750 square feet.
H. A building permit for an ADU must be approved and issued prior to the construction of an ADU. The house number for the ADU shall comply with current 911 regulations.
I. Multiple ADUs are not permitted on any individual lot.
J. The original single-family dwelling shall not be a unit of manufactured housing.
K. An ADU shall not be permitted with divided interest ownership.
L. Separate utility entrances and meters are allowed if required by the utility.

Procedural requirements.

Applications for Conditional Use Permit approval under the regulation of this Article shall include the following items:

A. All plans submitted with any application for an ADU building permit shall denote, describe and/or identify the intended ADU area as such.

B. Prior to granting a Conditional Use Permit by the Planning Board, the applicant shall provide, as part of the building permit application, the following:

1. The applicant for a permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38,
2. Both units shall have a fire alarm system which is compliant with the NH Fire Marshall's requirements.

Article XXIV
Outdoor Lighting Ordinance

LIGHTING REQUIREMENTS

All public and private outdoor lighting installed in the Town of Boscawen shall comply with the requirements specified below.

I. PURPOSE

The intent of this ordinance is to maintain the rural character of Boscawen, in part by preserving the visibility of night-time skies, and to minimize the impact of artificial lighting on nocturnal wildlife. This ordinance recognizes the importance of lighting for safety and security while encouraging energy efficiency, and promotes good neighborly relations by preventing glare from outdoor lights from intruding on nearby properties or posing a hazard to pedestrians or drivers.

II. DEFINITIONS

Direct Light: Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

Lamp: The component of a luminaire that produces the actual light.

Luminaire: A complete lighting assembly that includes the fixture and its lamp or lamps.

Flood or Spotlight: Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

Glare: Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see and, in extreme cases, causing momentary blindness.

Height of Luminaire: The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

IESNA: Illuminating Engineering Society of North America.

Indirect Light: Direct light that has been reflected or has scattered off of other surfaces.

Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lumen: A unit of luminous flux. One foot candle is one lumen per square foot. For the purposes of this ordinance, the lumen-output values shall be the initial lumen output rating of a lamp.

Outdoor Lighting: The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Temporary Outdoor Lighting: The specific illumination of an outside area or object by any manmade device located outdoors that produces light by any means for a period of less than seven days with at least 180 days passing before being used again.

III. OUTDOOR LIGHTING DESIGN

A. Any luminaire emitting *more than* 1800 lumens (with 1,700 lumens being the typical output of a 100-watt incandescent bulb) shall be fully shielded so as to produce no light above a horizontal plane through the lowest direct light-emitting part of the luminaire. (Such fixtures usually are labeled Dark Sky Certified or Compliant.)

B. Any luminaire with a lamp or lamps rated at a total of *more than* 1800 lumens, and all flood or spot lights with a lamp or lamps rated at a total of *more than* 900 lumens, shall be mounted at a height equal to or less than the value 3 + (D/3) where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire shall not exceed 20 feet.

C. Any luminaire with a lamp or lamps rated at 1800 lumens *or less*, and all flood or spot lights with a lamp or lamps rated at 900 lumens *or less*, may be used without restriction to light distribution or mounting height, except that, to prevent light trespass, if any flood or spot light is aimed, directed or focused so as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduced or shielded, as necessary to eliminate such conditions.

D. Any luminaire used to illuminate a public area such as a street or walkway shall utilize an energy efficient lamp such as a low pressure sodium lamp, high pressure sodium lamp or metal halide lamp. Mercury vapor lamps shall not be used due to their inefficiency and high operating costs and toxic mercury New or replacement installation of mercury vapor lighting shall not be permitted after the effective date of this ordinance, and the public shall be encouraged to remove and safely dispose of existing mercury vapor bulbs as soon as practicable.

E. Luminaires used in public areas such as roadway lighting, parking lots and for exterior building illumination shall be designed to provide the minimum illumination recommended by the IESNA in the most current edition of the IESNA Lighting Handbook.

F. To protect light-sensitive wildlife habitats such as Pine Barrens, artificial lighting in or on the periphery of areas identified as such by the NH Fish and Game Department shall be minimized and fully shielded to prevent any emission above a horizontal plane through the lowest light-emitting part of a luminaire.

G. Whenever practicable, outdoor lighting installations shall include timers, dimmers, and/or motion-sensors to reduce overall energy consumption and eliminate unneeded lighting, particularly after 11 p.m.

H. Moving, fluttering, blinking, or flashing, neon or tubular lights or signs shall not be permitted, except as temporary seasonal holiday decorations. Signs may be illuminated only by continuous direct white light with illumination confined to the area of the sign and directed downward.

I. Luminaires mounted on a gas station canopy shall be recessed in the ceiling of the canopy so that the lens cover is recessed or mounted flush with the ceiling of the canopy and fully shielded. Luminaires shall not be mounted on the sides or top of the canopy, and the sides or fascia of the canopy shall not be illuminated.

IV. EXEMPTIONS

A. Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.

B. All temporary emergency lighting needed by the police, fire or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this ordinance.

C. All hazard warning luminaires required by federal regulatory agencies are exempt from the requirements of this article, except that all such luminaires used must be red and must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.

D. Luminaires used primarily for signal illumination may be mounted at any height required to ensure roadway safety, regardless of lumen rating.

E. Seasonal holiday lighting and illumination of the American and state flags shall be exempt from the requirements of this ordinance, providing that such lighting does not produce glare on roadways and create light trespass on neighboring residential properties.

F. Installations existing prior to the enactment of this ordinance are exempt from its requirements. However, any changes to an existing lighting system, fixture replacements, or any grandfathered lighting system that is moved, must meet these standards.

V. TEMPORARY LIGHTING

A. Any temporary outdoor lighting for construction or other purposes that conforms to the requirements of this article shall be allowed. Non-conforming temporary outdoor lighting may be permitted by the planning board after considering:

1. The public and/or private benefits that will result from the temporary lighting.

2. Any annoyance or safety problems that may result from the use of the temporary lighting.

3. The duration of the temporary non-conforming lighting.

VI. PUBLIC AREA AND ROADWAY LIGHTING

Installation of any new public area or roadway lighting fixtures other than for traffic control shall be permitted only by decision of the Planning Board, following a duly noticed public hearing.