

**Chapter 190**

**ZONING**

**[HISTORY: Adopted by the Town Meeting of the Town of Rye 3-10-1987.  
Amendments noted where applicable.]**

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ARTICLE I  
Introduction

§ 190-1.0. Title.

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

§ 190-1.1. Authority.

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

§ 190-1.2. Purpose.

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

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

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§ 190-1.3. Scope.

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

§ 190-1.4. Limited applicability within Rye Beach Precinct.

As authorized by special state statute, the Rye Beach Precinct has separate and primary

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zoning powers within its boundaries. Within the Rye Beach Precinct one must comply primarily with the Precinct's Zoning Ordinance and, where it is silent, one must also comply with the Zoning Ordinance of the Town of Rye, New Hampshire.

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§ 190-1.5

RYE CODE

§ 190-1.5

**§ 190-1.5. Origins.**

This chapter represents a simplification, reorganization, statutory update and clarification of the zoning regulations in effect in the Town of Rye as of the date of its enactment. It replaces the Zoning Ordinance adopted on March 11, 1969, which had been amended several times. The Town of Rye's first Zoning Ordinance was enacted in 1953.

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ARTICLE II  
Use Districts

§ 190-2.0. Establishment of use districts.

A. The Town of Rye is hereby divided into the following use districts:

- Single Residence District (SR)
- General Residence District (GR)
- Public Recreation District (REC)
- Business District (B)
- Commercial District (C)
- Conservation District (CON),

Deleted: Industrial District (I)

B. Each district may be referred to hereinafter by its respective abbreviation.

§ 190-2.1. Zoning Map; district boundaries.

A. Establishment.

- (1) The districts aforesaid and the boundaries of such districts shall be such as shown upon a map prepared by the Rye Planning Board titled "Zoning Map Town of Rye Rockingham County, New Hampshire 1992" and drawn by James W. Sewall Company at a scale of one inch equals 1,000 feet, together with all notations, references, and other matter and things set forth and/or attached thereto, on file in the office of the Town Clerk of the Town of Rye, New Hampshire. This same map is hereby adopted and shall be known as the "Official Zoning Map of the Town of Rye," and shall be certified by the Selectmen and the Town Clerk, and the Selectmen and the Town Clerk shall make all changes as may be effected by any amendment or changes in this chapter, such things to be made properly and promptly. **[Amended 1993; 2002; 2007; 2010]**
- (2) The Zoning Map was amended March 9, 2010, to enlarge the Commercial District by moving the boundary between the Commercial District and the Single Residence District that is located west of Lafayette Road and north of Breakfast Hill Road a distance of 800 feet further to the west so that the new boundary is 1,300 feet from Lafayette Road and to add a new Multifamily Dwelling Overlay District, per § 190-3.7 of this chapter. **[Amended 3-10-2020 by Art. 3]**

**Commented [1]:** Zoning Map (4.1.21) amended 7.13.21 sb referenced. The Map will need to be amended to include: boundaries of Historic District, Coastal Area District, Rye Beach Village District, and Multi-Family Dwelling District, and references to the following Districts: Wetlands Conservation, Flood Hazard, and Wireless Telecommunications Facilities, and one color code for Single Residence District.

B. Location. The original of said Zoning Map shall remain on file in the records of the Town Clerk and copies thereof shall be available at all times through the Selectmen and Town Clerk.

A. Final authority. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which is on

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file with the Town Clerk shall be the final authority as to the current zoning status of any area within the Town of Rye.

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- C. Boundaries of districts. Where uncertainty exists with respect to the boundaries of the various districts, as shown on the map accompanying and made a part of this chapter, the following rules shall apply:
  - (1) The district boundaries are streets unless otherwise shown, and where the districts designated on the map accompanying and made a part of this chapter are bounded approximately by streets, said street center line shall be construed to be the boundary of such district. The district boundaries along streets are generally defined by a line parallel to such street line and a designated number of feet therefrom as appears on the said map.
  - (2) Where the district boundaries are not otherwise indicated and where the property has been divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the designated districts on the map accompanying and made a part of this chapter are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such district unless said boundaries are otherwise indicated on the map.
  - (3) In subdivided property, the district boundary lines on the map accompanying and made a part of this chapter shall be determined by the use of the scale contained on such map.
  - (4) Where not otherwise provided for, or a question exists, the Planning Board shall determine the exact boundary line.

**§ 190-2.2. Applicability of use district regulations.**

- A. Use. No building shall be erected, reconstructed, or structurally altered nor shall any building or land be used for any purpose other than is permitted in the district in which such building or land is located.
- B. Height. No building shall be erected, reconstructed, or structurally altered to exceed the height herein established for the district in which such building is located.
- C. Yards. No lot area shall be so reduced or diminished ~~such~~ that the yards or other open spaces shall be smaller than prescribed by this chapter nor shall the density be increased in any manner except in conformity with the area regulations as hereinafter provided.
- D. Lots.
  - (1) In the Single Residence and General Residence Districts only, there shall be no more than one principal building on one lot. **[Amended 1992]**
  - (2) Lots with two or more ~~principal~~ dwellings. **[Added 3-14-2006]**
    - (a) A lot which has two or more ~~principal~~ dwellings is a nonconforming use. ~~Notwithstanding any provision to the contrary in Section 190-6.2 and~~

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190-6.3. on such lots with two or more principal dwelling units, the following are prohibited expansions of a nonconforming use and/or non-conforming structure:

- [1] Increasing the building footprint of a dwelling. [2]
- Enlarging the bulk of a dwelling.

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- [3] Adding decks, porches or other appurtenances to a dwelling, including roof decks.
- [4] Enlarging decks, porches or other appurtenances of a principal building.

(b) This provision applies to all lots which have two or more principal dwellings, including lots having such dwellings in the condominium form of ownership. ~~This provision shall not apply to those properties that have permitted accessory dwelling units or legal apartments.~~

E. Septic systems. Construction of septic systems shall be set back 20 feet from side and rear lot boundaries in order to preclude flowage onto abutting property. Alteration, repairs, or replacement or extensions of existing systems must comply with New Hampshire Department of Environmental Services requirements, ~~and all other applicable state laws and regulations.~~ [Amended 1995; 3-11-2014]

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F. Corner lots. On corner lots, the driveway shall exit only to the lesser traveled street. On a corner lot, frontage, depth and front yard requirements shall be met for both streets. The yard behind the principal building shall meet the rear yard requirement. The side yard shall meet the side yard requirement. On a corner lot having only three sides, the yard shall meet either the rear yard or side yard requirement depending on the orientation of the principal building. [Amended 1995; 3-12-2019 by Art. 4]

G. Prohibited uses. There shall not be permitted in any district any:

- (1) Junkyards.
- (2) Retail or wholesale sale of fireworks, storage of fireworks intended for sale, or display for sale of fireworks. [Added March 2011]

Deleted: <#>Government uses. All publicly owned lands and buildings, including playgrounds and parks under the control of the Town, school district, county, or state, also all property which by the laws of the State of New Hampshire is exempt from taxation in whole or in part, shall comply with the requirements of the zoning district(s) in which they are located.¶

~~(3) The unreasonable, noxious, or offensive use of property, which through smell, noise, glare, dust, particulates, pollution, blight, signs, or other conditions, causes or has a tendency to cause a diminution of property values, degradation of environs, or alteration of the character of the neighborhood.~~

Deleted: <#>Apartment houses.¶

Deleted: Any use or thing which is injurious

H. Conversion to legal apartments. [Added 3-10-2020 by Art. 3]

(1) Definition. For the purposes of this subsection only, an illegal apartment is a dwelling unit other than the principal dwelling unit or principal use on a property for which a permit does not exist in the records of the Building Department and for which the owner is unable to establish that the dwelling unit is either lawfully permitted or grandfathered.

(1) Certification. The owner of a property having an illegal apartment may apply to the Building Inspector for a certificate of legality for the apartment. The Building Inspector may grant a certificate of legality if he/she determines that the following requirements are met:

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(a) The illegal apartment has existed prior to the adoption of § 190-5.6, Accessory apartments, of this chapter on March 10, 1998. Tax records and records supplied by the property owner may be consulted in making **this determination.**

(b) Waste disposal.

[1] Sanitary waste disposal for the property is provided by Town sewers or by an effluent disposal system (EDS) which has been permitted by NHDES for a loading which includes the illegal apartment and all other uses of the property; or

[2] The EDS serving the property has been inspected by a licensed septic system inspector and determined to be functioning adequately and a design for a replacement system has been approved by NHDES.

(c) The illegal apartment complies with the following codes:

[1] NH RSA 48-A:14, Minimum housing standards.

[2] Smoke detectors per International Residential Code (IRC) R314 and State Building Code.

[3] Carbon monoxide detectors per IRC R351 and State Building Code.

[4] Emergency escape and rescue opening per IRC R310 and State Building Code.

[5] Street number per IRC 319 and Town ordinance.<sup>1</sup>

[6] Egress and access door per IRC R31.2.2 and State Building Code.

[7] **State Fire Code and all other applicable Life Safety Codes, as determined upon review and approval of the Fire Chief.**

[8] **Demonstrate adequate off-street parking for all uses on the property as required by § 190-5.0 of this chapter. For the purposes of this calculation, the illegal apartment shall be construed as an accessory dwelling unit.**

(2) Conditions. The Building Inspector may place such conditions on the issuance of a certificate of legality as he/she deems to be in the interest of the public health, safety and welfare.

1. Editor's Note: See Ch. 38, Building Numbers.

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**Moved down [1]:** [1] NH RSA 48-A:14, Minimum housing standards.

**Moved (insertion) [1]**

**Deleted:** [7] Fire Chief approval.

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**Deleted:** <#>Renewal. Certificates of legality shall be valid for five years or until sale of the property. Property owners granted a certificate of legality may apply for renewal of the certificate at five-year intervals or at the time of sale of the property. Certificates shall be renewed after inspection of the premises to determine continued compliance with the above requirements and any conditions placed on the original certificate. The Board of Selectmen may enact fees for the renewal inspection.¶

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- (3) Form of certificate. The Building Inspector is authorized to create a certification form which implements this provision. The form shall contain a space for describing the apartment, including the size, number of rooms and any other information the Building Inspector deems pertinent.
- (4) Effect of certification. The issuance of a certificate of legality shall establish the legality of the apartment and shall quiet all assertions to the contrary.

I. Buffers.

- (1) Buffer adjacent to residential districts. Nonresidential uses of land which abuts a boundary of a residential zoning district shall provide a fifty-foot-wide buffer between the use and the residential district zone boundary. Said buffer shall include natural or added planting of evergreens which will screen nonresidential uses from residential areas during winter months. Where the buffer area is developed, further encroachment may occur only by special exception. **[Amended 1995]**

(2) Buffer between residential and nonresidential uses. **[Amended 2005]**

- (a) In circumstances where a buffer will not be provided by § 190-2.2J(1), a fifty-foot-wide buffer, measured from the property line, shall be provided, as follows. Said buffer shall include natural or added planting of evergreens which will screen nonresidential uses from residential areas during winter months.

[1] New residential building or development shall provide such a buffer from an existing nonresidential use not permitted by right in a residential district or the boundary of an abutting nonresidential district.

[2] New nonresidential building or development of uses not permitted by right in a residential district shall provide such a buffer from an existing residential use. Within the Commercial District, such a buffer is not required around a nonconforming residential use existent as of March 9, 2005.

(b) If new residential development and new nonresidential development are part of the same land development:

[1] The buffer shall be provided between the nonresidential development in the residential districts and around the residential development in the nonresidential districts, and may be located on either side of an interior lot line (if applicable) so long as a 50-foot buffer is provided; and

[2] The buffer shall be provided around the residential and nonresidential developments that are part of that land development.

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J. Conversion of seasonal dwelling units. Conversion of existing seasonal dwelling units shall be allowed in all zoning districts, provided that: **[Added 1992]**

- (1) There shall be a minimum lot size of 7,000 square feet per dwelling unit;
- (2) There shall be a minimum of 600 square feet ground floor area per dwelling unit;
- (1) There shall be a state- and/or Town-approved septic system or Town sewer with sufficient capacity available;

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(3) ~~Demonstrate adequate off-street parking for all uses on the property as required by § 190-5.0 of this Chapter;~~

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(4) Inspection and approval shall be obtained from the Rye Fire Department for heating system ~~and from the Rye Building Inspector as to the adequacy of all other components and systems of the Town;~~

(5) Waterlines shall be located in accordance with the governing regulations of the appropriate water purveyor; ~~[Amended 1993]~~

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(6) A certificate of occupancy shall be obtained from the Town of Rye. ~~[Amended 3-10-2020 by Art. 3]~~

~~(7) The conversion of the seasonal dwelling unit shall not result in the establishment of two principal dwelling units on one lot or more than two dwelling units, inclusive of accessory dwelling units, on one lot.~~

K. Adult establishments. ~~[Added 1994; amended 2009]~~

(1) In order to mitigate their harmful effects on neighborhood children and residential neighborhoods, adult bookstores, adult video stores, adult motion-picture theaters, adult cabarets, adult arcades and establishments governed by RSA 314-A, Body Art, shall not be permitted:

- (a) On any parcel located 500 feet or less from the boundaries of the Single Residence and General Residence Districts, as measured along street frontage; or
- (b) Within 500 feet of the property line of any mobile home park.

(2) In order to prevent a concentration of adult establishments in one area, which would tend to encourage blight, devalue property and increase crime, no adult establishment shall be permitted within 1,000 feet of another adult establishment.

L. ~~Upland soils. All lots shall have at least 44,000 square feet of upland soils, of which at least 30,000 square feet shall be contiguous. [Added 3-14-2000]~~

M. Access to lots. In order to be considered suitable for development, access to a lot shall be by a driveway from frontage which meets the minimum frontage requirements of this chapter. A lot may be reached via a shared driveway by permission of the Planning Board for safety reasons; however, a lot shall not be considered suitable for development unless it is accessible by a driveway from frontage which meets the minimum frontage requirements of this chapter. ("Driveway" as defined by Chapter 202, Land Development Regulations.) ~~[Added 3-14-2000; amended 3-12-2019 by Art. 4]~~

N. Expiration of special use/conditional use permits. An approved but unused special use permit or conditional use permit shall lapse two years from the date of approval

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unless substantial construction relative to the permit has begun on the site or unless the Planning Board has approved an extension for good cause. Applications for an extension shall be subject to the hearing and notice requirements applicable to the original permit. **[Added 3-11-2014]**

O. Medical marijuana facility. **[Added 3-10-2015]**

- (1) In order to mitigate their harmful effects on neighborhood children and residential neighborhoods, any medical marijuana facilities shall not be permitted;

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- (a) On any parcel ~~within~~ 500 feet or less from the boundaries of the Single Residence and General Residence Districts, as measured along street frontage; or
  - (b) Within 500 feet of the property line of any mobile home park.
- (2) In order to prevent a concentration of medical marijuana facilities in one area, which would tend to encourage blight, devalue property and increase crime, no medical marijuana facilities shall be permitted within 1,000 feet of another medical marijuana establishment.

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**§ 190-2.3. Single Residence Districts (SR).**

A. Permitted uses. In an SR District the following uses are permitted:

- (1) Single-family detached dwelling.
- (2) Church.
- (3) Home occupations, **[Amended 2001]**

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- (a) Home occupations are characterized by customers coming to the business location such as:
  - [1] Personal services, e.g., hairdressing, food preparation, tailoring, etc.
  - [2] Professional services by members of recognized professions, e.g., doctors, engineers, architects, dentists, ~~community advisors,~~ teachers, consultants, etc.

- (b) Requirements.
  - [1] Such occupations shall be carried on by a person at the dwelling used as the person's private primary residence.
  - [2] Such occupation shall not occupy an area larger than 1/3 of the area of such residence interior.
  - [3] ~~There is sufficient off street parking in accordance with §190-5.0.~~
  - [4] There shall be no disturbance to the local environment visually or from noise, noxious fumes, nighttime lighting, excessive traffic, or any other actions beyond what is customary in the neighborhood.

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- (4) Public school education use.
- (5) Farm, including the sale of products grown on the premises only.
- (6) Aquaculture, but only within the Wetlands Conservation District.

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(8) Golf courses, provided that the golf course is an eighteen-hole course comprising at least 6,000 yards in length with a minimum of 60 acres in size, including a golf course as part of individual residential lot development, provided that said lots conform to all dimensional, area and other requirements of this chapter. **[Added 3-9-1999]**

- (c) Accessory uses customarily incidental to a golf course such as tennis, paddle tennis, swimming pool, pro shop, clubhouse, practice facilities, social and business functions, storage, maintenance, food and beverage facilities and other related accessory uses are permitted.
- (d) Any plan for ~~the establishment of~~ additional facilities or expansion of existing facilities must receive Planning Board site development approval.
- (e) Roadways within any golf course related development shall be built to Town standards, provide for public access and be maintained by the developer, by a homeowners' association or by individual homeowners. Any golf course developments shall comply with all other sections of Chapter 202, Land Development Regulations.

(9) Small wind energy systems, pursuant to the requirements of § 190-5.8 of this chapter. **[Added 2009]**

~~(10) Religious institutions.~~

(11) Accessory uses customarily incidental to the above.

B. Uses permitted by special exception. In the SR District the following uses are permitted by special exception: **[Amended 1999]**

Cemetery.

Greenhouse or horticultural enterprise.

Hospital, nursing facility, assisted living facility, or educational institution. **[Amended 2009]**

Public utility building or use necessary for the public welfare, ~~except for such uses exempt from zoning under RSA 674.5.~~

Condominium conversions in accordance with § 190-5.3.

Mobile homes in accordance with § 190-4.0.

Quarries, pits and turf farms in accordance with § 190-5.2.

Bed-and-breakfast facilities, subject to limitations for customary home occupations in § 190-2.3A(3). **[Added 3-14-2000]**

Business use of residence. A property owner may use a residential property for a business use (other than a permitted home occupation) by special exception,

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provided that the following requirements are met, in addition to the requirements of § 190-7.1A(3): **[Added 2003]**

- (a) The use is subordinate to a single-family detached dwelling.

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- (b) The proprietor of the business is the owner-occupant of the property.
- (c) Not more than three persons, in addition to the proprietor, shall be employed in the business. Not more than one of the three allowed employees may be employed on the premises.
- (d) The business use shall not occupy an area greater than 1/3 of the floor area of the interior of the residence. Some or all of the business activity may be located in an accessory building to the residence, such as a garage or barn, but, if so, the total area occupied by the business (i.e., within the residence and/or within the accessory building) shall not be greater than 1/3 of the floor area of the interior of the residence.
- (e) There shall be no more than two commercial vehicles kept at the premises. Heavy construction equipment, such as backhoes, bulldozers and dump trucks, is not allowed. Only two-axle business vehicles are allowed.
- (f) All parking associated with the business use shall be off street, including any employee parking. Such parking shall not be located within 50 feet of the street line and shall be screened from adjacent properties.
- (g) The following business uses are prohibited: retail sales; kennels; automobile or small engine repair or maintenance, welding and any other uses which involve the storage on the property of motor vehicles or the parts thereof; and uses which involve the storage of hazardous materials or substances.
- (h) Businesses which generate more than 12 trips per day (including employee trips) based upon the most recent trip generation data published by the Institute of Traffic Engineers (ITE) are prohibited.
- (i) The business use shall not detract from the residential character of the property, of the neighborhood, or of abutting properties. It shall not adversely affect the use and peaceful enjoyment of abutting residential properties.
- (j) The business use shall not:
  - [1] Generate levels of noise, vibration, glare, smoke, dust, fumes, odors, or heat that are not customary in a typical residential neighborhood of Rye.
  - [2] Generate nonresidential truck deliveries more than once a day.
  - [3] Utilize the exterior spaces of residential structures or yard spaces for storage, display or other activities associated with the business in a manner that is not customary for a typical residential use ~~and that is visible from abutting properties or adjacent right-of-way.~~

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A. Dimensional requirements

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Rear yards. There shall be behind every building a yard having a minimum depth of 1/4 of the depth of the lot or 30 feet, whichever is the less.

Side yards. There shall be on each side of every building a side yard having a minimum width of 20 feet.

Front yards. There shall be in front of every building a front yard having a minimum depth of 40 feet, provided that no front yard need be deeper than the average of the depths of front yards on the lots next thereto on either side, a vacant lot, or a lot occupied by a building with a front yard more than 40 feet deep, being considered as though occupied by a building with a front yard 40 feet deep.

Corner clearance. On a corner lot, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of 2 1/2 and 10 feet above the center-line grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines 50 feet from the point of the intersection of such street lines.

Building area. No dwelling shall occupy more than 15% of its lot. ~~Except for accessory dwellings units~~. every dwelling unit shall have a minimum ground floor area of 960 square feet, except that dwellings having living quarters on more than one floor above the basement may be reduced in ground floor area to 720 square feet, provided that a minimum living space of 960 square feet is provided therein. Open porches, garages, carports, barns, sheds, and unwallled covered areas shall not be included as ground floor area or living space. Dwellings plus open porches, decks, garages, carports, barns, sheds and other accessory buildings, plus patios, unwallled covered areas, impervious driveways, sidewalks, impervious walkways and other impervious surfaces, shall occupy no more than 15% of the lot. [Amended 3-9-1999; 3-12-2019 by Art. 4]

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~~Lot Area~~. No building shall be erected on a lot containing less than 66,000 square feet. The frontage of any lot shall be at least 200 feet and the depth of any lot shall be at least 150 feet, but in combination shall constitute the required area of 66,000 square feet. [Amended 3-9-1999]

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Height. No building or structure shall exceed 35 feet in height as measured from grade. Silos used for storage related to farming, protective netting structures at a golf course and wireless telecommunication towers are exempt from this limitation. [Amended 3-18-2017]

**§ 190-2.4. General Residence Districts (GR).**

A. Permitted uses. In a GR District the following uses are permitted:

Any use permitted in a Single Residence District.

~~Dwellings consisting of two single-family units to be used by not more than one family per dwelling unit~~ (two families total per lot), subject to the

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requirements of § 190-2.4C(6).

Accessory use customarily incident to any of the above uses.

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B. Uses permitted by special exception. In the GR District the following uses are permitted by special exception: **[Amended 1999]**

Cemetery.

Greenhouse or horticultural enterprise.

Hospital, nursing facility, assisted living facility, or educational institution. **[Amended 2009]**

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Public utility building or use necessary for the public welfare.

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Condominium conversions in accordance with § 190-5.3.

Mobile homes in accordance with § 190-4.0

Quarries, pits and turf farms in accordance with § 190-5.2.

Bed-and-breakfast facilities, subject to limitations for customary home occupations in § 190-2.3A(3) and subject also to site plan review by the Planning Board. **[Added 3-14-2000]**

C. Dimensional requirements.

Rear yards. There shall be behind every building a rear yard having a minimum depth of 1/4 of the depth of the lot or 30 feet, whichever is the less.

Side yards. There shall be on each side of every building a side yard having a minimum width of 20 feet.

Front yards. There shall be in front of every building a front yard having a minimum depth of 30 feet, provided that no front yard need be deeper than the average of the depths of front yards on the lots next thereto on either side, a vacant lot, or a lot occupied by a building with a front yard more than 30 feet deep, being considered as though occupied by a building with a front yard 30 feet deep.

Corner clearance. On a corner lot nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of 2 1/2 and 10 feet above the center-line grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said streets 50 feet from the point of the intersection of such street lines.

Building area. No dwelling shall occupy more than 30% of its lot. **Every** **the** **accessory dwelling unit.** every dwelling shall have a minimum ground floor

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area of 960 square feet except that dwellings having living space on more than one floor above the basement may be reduced in ground floor area to 700 square feet. Open porches, garages, carports, paved driveways and other impervious areas, barns, sheds, and unwall covered areas shall not be included as ground floor area or living space. Dwellings plus open porches, decks, garages, carports, barns, sheds and other accessory buildings, plus patios, unwall covered areas, impervious

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driveways, sidewalks, impervious walkways and other impervious surfaces, shall occupy no more than 30% of the lot. However, no dwelling unit shall provide less than 600 square feet of floor area. [Amended 3-9-1999; 3-12-2019 by Art. 4]

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~~in size.~~ No building shall be erected on a lot containing less than 44,000 square feet. Two-family dwellings require a minimum of 88,000 square feet of lot area. The frontage of any single-family dwelling lot shall be at least 150 feet and the depth of a lot shall be at least 150 feet. The frontage of any two-family dwelling lot shall be at least 200 feet and the depth of a lot shall be at least 200 feet.

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Height. No building or structure shall exceed 35 feet in height as measured from grade. Silos used for storage related to farming, protective netting structures at a golf course and wireless telecommunication towers are exempt from this limitation. [Amended 3-18-2017]

§ 190-2.5. (Reserved)

§ 190-2.6. (Reserved)

§ 190-2.7. (Reserved)

§ 190-2.8. Conservation District (CON). [Added 1989]

- A. Purpose. The purpose of the Conservation District is to permanently preserve unique natural resources from inappropriate development.
- B. Permitted uses. In the Conservation District only the following uses are permitted:
  - (1) Open space, forestry, and conservation areas.
  - ~~(2) Agriculture that does not involve any construction of buildings or structures.~~
  - (3) Aquaculture that does not involve any construction of buildings or structures.
  - (4) Hiking trails, nature trails, picnic areas, bicycling trails, cross-country skiing trails, and horseback riding trails, including bridges and wooden walkways appurtenant thereto.
  - (5) Nature centers and interpretative centers.
  - (6) Blinds for observing or photographing wildlife, birds and waterfowl.
  - (7) Uses accessory to any of the above permitted uses provided no buildings are constructed.
- C. Uses permitted by special exception. In the Conservation District the following uses are permitted by special exception: accessory buildings customarily incidental to a permitted use, such as trail shelters, picnic shelters, sanitary facilities, and the like.

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D. Prohibited uses. Commercial, business, industrial and residential uses and small wind energy systems are prohibited in the Conservation District. **[Amended 2009]**

A. Dimensional requirements.

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§ 190-2.8

ZONING

§ 190-2.10

- (1) Minimum rear yard: 30 feet.
- (2) Minimum side yard: 20 feet.
- (3) Minimum front yard: 40 feet.

§ 190-2.9. **RESERVED.**

**Deleted: Public Recreation Districts (REC).**

§ 190-2.10. **Business Districts (B).** [Amended 1992]

**Deleted:** All lands owned by the Town of Rye, the Rye School District and the State of New Hampshire reserved for recreational purposes are classed as Public Recreation Districts and shall be used only for recreational purposes.¶

A. Permitted uses. In a B District the following uses are permitted:

- (1) Any use permitted in any residential district, including accessory uses so authorized, and subject to all limitations there applicable.
- (2) Retail establishment for the sale of groceries, dry goods, and other items commonly related to the retail grocery business.
- (3) Drugstore, barbershop, beauty parlor, tailor shop, television service, retailing of toys and hobby crafts, bicycle shop and other similar uses.
- (4) Gift, novelty, and sports shops.
- (5) Restaurant, **bars, stationary food trucks,** tearoom, ice cream shop, or similar place serving food or beverage.
- (6) Motel, tourist camp, lodging house, and hotel, but only in accordance with the provisions of § 190-5.4 of this chapter, insofar as applicable.
- (7) Business, financial, professional or government offices. [Amended 1996]

B. Uses permitted by special exception. In a Business District the following uses are permitted by special exception:

- (1) Greenhouse or horticultural enterprises.
- (2) Hospital, nursing facility, assisted living facility, or educational institution. [Amended 2009]
- (3) Public utility building or use necessary to the public welfare.
- (4) Membership club.
- (5) Condominium conversions in accordance with § 190-5.3.
- (6) Mobile homes in accordance with § 190-4.0.
- (7) Quarries, pits and turf farms in accordance with § 190-5.2.

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**Deleted:** <#>Municipal use.¶

- (1) Any use of the same general character as any of the uses herein allowed.

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**The establishment of a stationary food truck shall constitute a change of use and shall require Site Plan Review with the Planning Board.**

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## C. Dimensional requirements.

- (1) Rear yards. There shall be behind every building a rear yard having a minimum depth of 1/4 of the depth of the lot or 30 feet, whichever is less.
- (2) Side yards. There shall be on each side of every building a side yard having a minimum width of 20 feet, except that 20 feet between cabins shall be sufficient on a tourist camp site.
- (3) Front yards. There shall be in front of every building a front yard having a minimum depth of 30 feet.
- (4) Corner clearance. On a corner lot, the same corner clearance shall be provided as required in Residence Districts.
- (5) Building area. No more than 40% of the area of any lot shall be occupied by buildings. The building requirements for dwellings in this district shall be the same as specified for dwellings in a General Residence District. No principal building other than a dwelling on a lot in this district shall have less than 1,200 square feet of ground floor area, excepting tourist camps.
- (6) Buffer adjacent to residential districts. If applicable, the buffer requirements of § 190-2.2J shall apply.
- (7) Area of lot. No single-family dwelling or any other building shall be erected on a lot containing less than 44,000 square feet, except for tourist camp sites. Tourist camp sites require a minimum of 2,200 square feet. Two-family dwellings, as permitted in the district, shall require a minimum of 88,000 square feet of lot area. The frontage of a lot shall be at least 150 feet and the depth of a lot shall be at least 150 feet.
- (8) Height. No building or structure shall exceed 35 feet in height as measured from grade. Silos used for storage related to farming, protective netting structures at a golf course and wireless telecommunication towers are exempt from this limitation. **[Amended 3-18-2017]**

- D. Prohibited uses. The sale of gasoline, diesel fuel, kerosene products and liquefied petroleum gas is prohibited in the Business District. **[Added 2001]**

**§ 190-2.11. Commercial Districts (C).**

## A. Permitted uses. In a C District the following uses are permitted:

- (1) Any use permitted in any Residence District including accessory uses so authorized and subject to all limitations there applicable except that residential uses, including single-family dwellings and two-family dwellings, are not permitted. **[Amended 3-14-2000]**
- (2) As permitted uses, any uses permitted in the Business District by

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§ 190-2.10A(2) through (6), and subject to all limitations there applicable.

- (1) New automobile salesrooms, new boat salesrooms, new trailer salesrooms, farm machinery salesrooms, lumberyard and building supplies.

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(3) Professional offices, financial institutions, general retailing of goods and services.

B. Uses permitted by special exception. In a C District the following uses are permitted by special exception:

(1) Any use of the same general character as any of the uses hereinbefore specifically permitted, ~~in section A.~~

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(2) The following uses, provided that the use shall not be detrimental or injurious to the neighborhood by reason of the emission of ~~odor, fumes, smoke, vibrations, fire hazard, air pollution, or noise or any other cause, nor will diminish surrounding property values:~~

~~(a) Establishments for the manufacture of solid materials.~~

(b) ~~Wholesale clubs or similar establishments for the retail sale of finished goods.~~

Deleted: manufactured solid materials

(c) Gasoline stations.

(d) Public garages.

(3) Cemetery.

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(4) Greenhouse or horticultural enterprise.

(5) Hospital, nursing facility, assisted living facility, or educational institution. [Amended 2009]

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(6) Public utility building or use necessary for the public welfare, ~~except for such uses exempt from zoning under RSA 674:54.~~

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(7) Membership club.

(8) Condominium conversions in accordance with § 190-5.3.

(9) Mobile homes in accordance with § 190-4.0.

(10) Quarries, pits and turf farms in accordance with § 190-5.2.

(11) Commercial recreation. [Added March 2012]

C. Dimensional requirements.

(1) Rear yards. There shall be behind every building a rear yard having a minimum depth of 24 feet.

(2) Side yards. There shall be on each side of every building a side yard having a minimum width of 20 feet.

(3) Front yards. There shall be in front of every building a front yard having a minimum depth of 30 feet, except along Lafayette Road, where the front yard

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shall have a minimum depth of 60 feet. **[Amended 1996]**

- (1) Corner clearance. On a corner lot, the same corner clearance shall be provided as required in Residence Districts.

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§ 190-2.11

RYE CODE

§ 190-2.12

- (4) Building area. No more than 75% of the area of any lot shall be occupied by buildings.
- (5) Area of lot. No building shall be erected on a lot containing less than 44,000 square feet. The frontage of any lot shall be at least 150 feet and the depth of any lot shall be at least 150 feet.
- (6) Height. No building or structure shall exceed 35 feet in height as measured from grade. Silos used for storage related to farming, protective netting structures at a golf course and wireless telecommunication towers are exempt from this limitation. [Amended 3-18-2017]

§ 190-2.12. **RESERVED**

**Deleted: Industrial Districts (I).**

Permitted uses. In an I District the following uses are permitted.

Any use permitted in a Commercial District, other than residential uses, and subject to all limitations respectively there applicable.

Commercial processing establishment, the principal activities of which shall be the preparation of goods which are customarily delivered for consumption directly to their ultimate consumption outlet.

Production establishment, the principal activities of which are other than manufacturing. Production may include processing and assembly of goods, together with associated administration, management, research, testing, freight handling, storage, and distribution.

Trucking terminal.

Uses permitted by special exception. In an I District the following uses are permitted by special exception.

Any use of the same general character as any of the uses hereinbefore specifically permitted.

Manufacturing of all sort, provided that the use shall not be detrimental or injurious to the neighborhood by reason of the emission of odor, fumes, smoke, vibrations, or noise or any other cause.

Greenhouse or horticultural enterprises.

Hospital, nursing facility, assisted living facility, or religious or educational institution. [Amended 2009]

Municipal use.

Public utility building or use necessary to the public welfare.

Membership club.

Condominium conversions in accordance with § 190-5.3.

Mobile homes in accordance with § 190-4.0.

§ 190-2.12 ZONING § 190-2.12

¶

Quarries, gravel pits or turf farms in accordance with § 190-5.2.

Dimensional requirements.

Rear yards. There shall be behind every building a rear yard having a minimum depth of 20 feet.

Side yards. There shall be on each side of every building a side yard having a minimum width of 20 feet.

Front yards. There shall be in front of every building a front yard having a minimum depth of 40 feet.

Corner clearance. On a corner lot, the same corner clearance shall be provided as required in Residence Districts.

Building area. No more than 75% of the area of any lot shall be occupied by buildings.

Area of lot. No building shall be erected on a lot containing less than 44,000 square feet. The frontage of any lot shall be at least 150 feet and the depth of any lot shall be at least 150 feet. [Amended 1992]

Height. No building or structure shall exceed 35 feet in height as measured from grade. Silos used for storage related to farming, protective netting structures at a golf course and wireless telecommunication towers are exempt from this limitation. [Amended 3-18-2017]

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ARTICLE III  
Overlay Districts

§ 190-3.0. Establishment of overlay districts.

A. The following overlay districts are hereby established:

Wetlands Conservation District

Flood Hazard District

Historic District

Coastal Area District

Wireless Telecommunications Facilities District [Added 3-9-1999]

Aquifer and Wellhead Protection District [Added 3-11-2008; amended 3-11-2014]

Multifamily Dwelling District [Added 3-9-2010]

Rye Landfill Groundwater Management Zone [Added 3-12-2013]

B. In the areas of Rye which are included in an overlay district, the regulations of the overlay district shall apply in addition to the regulations of the applicable use district. Where regulations in a use district and an overlay district conflict, the regulation of the most restrictive district shall apply.

§ 190-3.1. Wetlands Conservation District. [Added 1977]

A. Definition of district. [Amended 1995; March 2012; 3-18-2017]

(1) The Wetlands Conservation District comprises any and all of the following areas within the Town of Rye:

(a) Tidal marshes, ~~tidal lands, ponds, 1<sup>st</sup>-3<sup>rd</sup> order streams or rivers, vernal pools, freshwater marshes,~~ and wetlands.

(b) ~~All buffer areas pursuant to § 190-3.1(d).~~

(2) The above descriptions are solely determinative of the boundaries of the areas within the Wetlands Conservation District. As a general guide, the following approximately delineate the location of the areas comprising the district: Town of Rye Hydric Soils, produced by Rockingham Planning Commission, December 20, 1994; Hydric Soils and 2010 Aerial Photo, Rye, New Hampshire, 2010. Additional mapping resources available online are:

(a) Town of Rye Axis GIS System: select map search (parcel number, owner or address), select layer (NWI Wetland Map) (<http://www.axisgis.com/RyeNH/Default.aspx?Splash=True>).

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Deleted: <#>Wetlands.¶

(b) ~~National Wetlands Inventory Wetlands Mapper (surface waters and wetlands), select find location, enter street address, city, or place name, or coordinates (decimal degrees in longitude, latitude format) [https://primary.wins.usgs.gov/wetlands/apps/wetlands\\_mapper/](https://primary.wins.usgs.gov/wetlands/apps/wetlands_mapper/).~~

**Deleted:** <#>New Hampshire Wetlands Mapper: select Town of Rye; select political boundaries (tax map parcels), wetlands and soils (Wetlands NWI, NHDES Wetlands Base Map, and Hydric Soils) and water and watersheds (lakes and ponds, rivers and streams) (<http://nhwetlandsmapper.unh.edu>).¶

B. Delineation of wetlands. [Added March 2012; amended 3-18-2017, 7-13-2021 by Art. 3]

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(1) The precise location of wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region Technical Report Y-87-1, January 1987. The hydric soils component of delineations shall be determined in accordance with the manual "Field Indicators for Identifying Hydric Soils in New England" (Version 4, April 2019), published by the New England Interstate Water Pollution Control Commission.

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(2) Vernal pools shall be delineated based on the characteristics listed in the definition of "vernal pools" found in Article XI.

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(3) Wetlands and vernal pools shall be identified by a Certified Wetlands Scientist based on field investigation conducted within 10 years of the application being reviewed.

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C. Disputes about wetlands boundaries. Disputes about the locations of wetlands boundaries may be appealed in the first instance to the Planning Board, which may retain an independent Certified Soils Scientist to report his or her findings on the boundary to the Planning Board. The expenses of such an investigation shall be paid by the party questioning the boundary. Decisions of the planning board may be appealed to the Zoning Board of Adjustment as an administrative appeal pursuant to Article VII of this ordinance. [Amended 1992; 1995; 2012; 3-10-2020 by Art. 3, 7-13-2021 by Art. 3]

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D. Purpose. In the interest of public health, convenience, safety and welfare, the regulations of this district are intended to guide the use of areas of land with extended periods of high water tables: [Amended 3-18-2017]

(1) To control the development of structures and land uses on naturally occurring wetlands that would contribute to pollution of surface water and groundwater by sewage, stormwater runoff, and other land uses.

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(2) To reduce the impact on wetlands of uses, development and redevelopment by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen by utilizing Best Management Practices – Wetlands Best Management Practice Techniques: For Avoidance and Minimization, as amended. [Amended 3-10-2020 by Art. 3]

(3) To prevent the destruction of natural wetlands and their buffers which provide flood protection, protection of water quality, protection of wildlife habitats, flood storage, recharge the groundwater supply, and provide for the augmentation of stream flow during dry periods.

- (4) To minimize the spread of invasive plant species.
- (5) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of unwise use of wetlands.
- (6) To encourage those uses that can be appropriately and safely located in wetland areas.
- ~~(7) To preserve wetlands for other ecological reasons such as those cited in RSA 482-A.~~

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- (8) To preserve and enhance those aesthetic values associated with the wetlands of this Town.
- (9) To restrict construction in wetlands to the maximum extent practicable.
- (10) To preserve, protect, and enhance potential water supplies and aquifers and aquifer recharge areas.

E. Permitted uses in **tidal marshes, tidal ponds, ponds, and freshwater marshes**. Within the areas defined by § 190-3.1A(1)(a) any use is permitted that does not result in the erection of any structure or sign larger than four square feet, or alter the surface configuration by the addition of fill or dredging, and that is otherwise permitted by this chapter and state and federal laws.

(1) Tidal marshes and ponds. There shall be no cutting of live trees with a diameter of 4 1/2 inches or more, within the one-hundred-foot border zone of the tidal marshes and the ponds identified in § 190-3.1H(1)(a). A woods road to a maximum width of 15 feet may be made and maintained. Removal of dead and dying trees is permitted; however, stumps and root systems shall remain intact in the ground. All shrubs and herbaceous layers shall remain intact. All forestry and non-forestry cutting shall follow Best Management Practices - Forestry. **[Amended 1990; 3-18-2017; 3-10-2020 by Art. 3]**

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(2) Agriculture, such as harvesting marsh hay and gathering cast-up seaweed for fertilizer according to Best Management Practices - Agriculture (Article XI) and Best Management Wetland Practices - Agriculture (2019), provided that such use does not cause increases in surface water or groundwater contamination by pesticides, fertilizers or toxic or hazardous materials, and that such use will not cause or contribute to soil erosion. **[Amended 3-18-2017]**

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- (3) Wildlife refuge.
- (4) Passive recreation. **[Amended 3-18-2017]**
- (5) Conservation areas and nature trails.

(6) Piers, wharves, docks, or boat landings may be erected by a property owner on his own land at Rye Harbor, Little Harbor, Sagamore Creek, or in other tidal creeks of this Town with the necessary state and federal approvals. There shall be no piers, wharves, jetties, or other structures erected on the ocean beaches or rocky headlands of Rye that shall project from the extreme high tide mark out from the land to or toward the ocean.

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(7) Subject to any state or federal permits that may be required, the following structures are permitted on the tidal wetlands: fences, footbridges, catwalks, and wharves provided said structures are so constructed on posts or pilings as to permit the unobstructed flow of the tide, do not obstruct navigation on the tidal creeks, and preserve the natural contour of the marshes.

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(8) All other uses not delineated in § 190-3.1E are prohibited.

F. Permitted uses in wetlands. Within the areas defined by § 190-3.1A(1)(b), permitted uses include any use that does not result in

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the erection of any structure or signs or alter the surface configuration by the addition of fill or dredging and that is otherwise permitted by this chapter and state and federal laws. Permitted uses are: **[Amended 2012; 3-18-2017]**

- (1) Forestry: tree farming according to Best Management Practices - Forestry (Article XI) subject to the restrictions set forth in §190-3.1(H)(2)(e).
- (2) Non-forestry: any cutting of trees for non-forestry purposes may be permitted after submittal and approval of a tree cut/removal permit with the Building Inspector's office. Removal of dead, diseased and dying trees is permitted without submittal and approval of a permit. Stumps and root systems shall remain intact in the ground; the stumps may be ground to the ground level. All shrubs and herbaceous layers shall remain intact. All non-forestry cutting shall be completed using Best Management Practices - Forestry (Article XI).
- (3) Agriculture, such as grazing, crop production, harvesting marsh hay and gathering cast-up seaweed for fertilizer according to Best Management Practices - Agriculture (Article XI) **and Best Management Wetland Practices, Agriculture (2019)**, provided that such use does not cause significant increases in surface water or groundwater contamination by pesticides, fertilizers or toxic or hazardous materials, and that such use will not cause or contribute to soil erosion.
- (4) Recognized conservation areas and nature trails and wildlife refuge.
- (5) Passive recreation.
- (6) Where there are existing streams and drainageways, swales, rain gardens, infiltration systems, functioning detention ponds or man-made water conveyance systems whose flow of water has become impeded by excessive vegetation of any kind or by fallen trees, logs, silt, natural detritus, or by any other means, the owner may have such vegetation or material cleared and removed and the condition corrected. **[Amended 3-10-2020 by Art. 3]**
- (7) All other uses not delineated in § 190-3.1F are prohibited.

G. Uses permitted by special exception. **[Amended 1997; 2012]**

- (1) Pipelines and transmission lines. Persons or corporations wishing to construct pipelines or transmission lines for the delivery of essential public services across any designated wetland in the Town of Rye must, in addition to complying with all other local and state regulations, apply for a special exception from the Board of Adjustment and deposit a performance bond with the Selectmen to ensure that post-construction conditions are restored as nearly as possible to the original grade and appearance along the construction route. The amount of the refundable bond shall be determined by the Selectmen sufficient to pay the full costs of site restoration should the applicant fail to comply with the intent of this subsection and terms of his permit. **[Amended 2019]**

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remediation of any release. [Amended 3-10-2020 by Art. 3]

(2) Roads. The construction of roads and driveways requires a special exception from the Board of Adjustment, which may be issued where it is shown that, due to existing conditions, no alternative route is feasible, in addition to

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meeting the existing requirements for special exceptions. [Amended 3-10-2020 by Art. 3]

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- (3) Accessory buildings not intended for human habitation and not having a septic system.
- (4) Water impoundment and removal by landowners only upon receipt of any necessary state and federal permits. This shall include impoundments such as stormwater detention ponds, berms, dams and drainage ditches. [Amended 3-18-2017]
- (5) Aquaculture, provided a license is obtained from the New Hampshire Department of Fish and Game (NH F&G) and in accordance with rules adopted by NH F&G. See New Hampshire Administrative Rules Part Fis 807. [Amended 3-18-2017]
- (6) Special exceptions may not be granted: [Amended 3-18-2017; 3-10-2020 by Art. 3]

(a) Unless it is essential to the productive use of portions of the land that are not subject to the Wetlands Conservation District.

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(b) Unless it can be shown by a certified wetlands scientist (definition Article XI) that, to the maximum extent practicable, such construction shall have the least possible detrimental impact upon the wetland compared to other alternatives.

(c) Unless it can be shown by a certified wetlands scientist (definition Article XI) that no alternative feasible route or area exists which does not cross or alter a wetland.

(7) Economic advantage alone shall not be deemed sufficient reason for the above-mentioned exceptions.

H. Wetlands buffer. [Amended 1990; 2001; 2002; 2012; 3-11-2014]

(1) Buffer description. The wetlands buffer shall include all land

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(a) Within 100 feet of the edges of all tidal ~~soils~~ marshes, bays, estuaries, rivers, and creeks and their tributaries, as defined by the highest flooding of the ocean tides;

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(b) Within 100 feet of the edges of all natural perennial streams and vernal pools; as well as the edges of Eel Pond, Burke's Pond, Brown's Pond and East Rye Pond as defined by the high-water mark;

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(c) Within 100 feet of the edges of wetlands located within the Berry's Brook watershed, as depicted on a map titled "Berry's Brook Watershed Rye, New Hampshire Wetland Soils and Tax Parcels March 2003." Copies of the map are

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on file with the Town Clerk and in the Planning Department office:

- (d) Within 100 feet of wetlands within Bailey's Brook, as defined by the high-water mark;
  - (e) Within 100 feet of the the edges of all natural perennial streams and vernal pools; ponds one acre or larger in size as defined by the high-water mark; and freshwater marshes, as defined by vegetation;
  - (f) Within 100 feet of the edges of ponds one acre or larger in size, as defined by the mean high-water mark, and freshwater marshes, as defined by vegetation; and
  - (g) Within 75 feet of the edges of all other wetlands, which include ponds (other than those defined in §190-3.1H(1)(b) and §190-3.1H(1)(f)).
- (2) Buffer restrictions. The following restrictions shall apply in the wetlands buffer. Where such restrictions conflict with other requirements of this

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§ 190-3.1 RYE CODE § 190-3.1¶  
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the Planning Department office.¶

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chapter, the more protective regulation shall apply.

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- (a) Surface alteration by the addition of fill, excavation or dredging is prohibited.
- (b) Septic systems are prohibited. Existing septic systems located in buffers may be replaced per NHDES only if no public or private sewer is available. Every effort should be made to reduce the violation distances and impacts, as determined by the Building Inspector. **[Amended 3-18-2017]**
- (c) Uses permitted by § 190-3.1E and § 190-3.1F are permitted, provided that there is no surface alteration by the addition of fill, excavation or dredging.
- (d) Signs that identify historic, conservation or wildlife areas are permitted.
- (e) Forestry and woodlot management is permitted in accordance with Best Management Practices - Forestry (Article XI), provided that no more than 50% of the basal area shall be cut. Each 200 linear feet or fraction thereof of frontage on the affected wetland or water resource from which trees are cut in excess of limits prescribed in this section shall constitute a separate offense. In other situations, thinning of existing brush and trees is permitted provided that there is no: **[Amended 3-18-2017]**
  - [1] Clear-cutting; or
  - [2] Cutting of live trees greater than 4 1/2 inches in diameter, measured at a height of 4 1/2 feet above ground level.
- (f) Uses permitted by special exception pursuant to § 190-3.1G may be permitted by special exception in the wetlands buffer, subject to the requirements of § 190-3.1G. **[Amended 3-10-2015]**
- (g) All other uses are prohibited.

#### I. Exemptions.

- (1) Utilities such as the Rye Water District, Aquarion, the Rye Sewer Commissioners, Eversource and cable television providers are exempt from the requirements of the Wetlands Conservation District for trenching and for the installation of poles, conduit, mains, cables, and overhead wires for utilities located within the rights-of-way of Town roads, state highways and private streets and for trenching and installation of poles and overhead wires for utility replacements or repairs serving buildings existent as of the effective date of this exemption, which is March 8, 2016.
- (1) Exempt work shall be accomplished in accordance with Best Management Practices (BMPs) as described in "Best Management Practices to Control Nonpoint Source

Pollution: A Guide for Citizens and Town Officials," NHDES, January 2004, as amended, and "Innovative Stormwater Treatment Technologies Best Management Practices Manual," NHDES, 2002, as amended. [Amended 3-10-2020 by Art. 3]

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**§ 190-3.2. Flood Hazard District.**

A separate ordinance exists for controlling development and building activity within the Rye floodplain. The ordinance is Chapter 60, Floodplain Management, of the Town Code. The regulations in Chapter 60, Floodplain Management, overlay and supplement the regulations in this chapter for the purposes of administration and appeals under state law. If any provision of Chapter 60, Floodplain Management, differs or appears to conflict with any provision of this chapter or other ordinance or regulation, the provision imposing the greater restriction or more ~~stringent~~ standard shall be controlling.

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**§ 190-3.3. Historic District [Added 3-14-1978; amended 1997; 1998; 3-11-2008]**

- A. Definition of district. The Rye Historic District is defined as that area from the west end of Grange Park to the intersection of Central and Washington Roads within 500 feet on either side of the center line of Washington Road. Also included in the Rye Historic District are the State of New Hampshire Isles of Shoals islands and the Brackett Road Massacre Site and the historic Cable House located at 20 Old Beach Road.
- B. Purposes. The purposes of the Historic District are to preserve for generations to come the unique collections of historically, architecturally and culturally significant buildings and structures which characterize the Town of Rye, New Hampshire, to encourage their maintenance and restoration, and to ensure that new buildings and structures and alterations to existing buildings and structures and uses of buildings and structures within the district are in visual harmony with their neighbors in order that a district is preserved which will reflect the cultural, social, economic, political, and architectural history of the Town of Rye, New Hampshire, conserve and maintain property values in such district, foster civic beauty, strengthen the local economy, and generally provide an opportunity to benefit the education, pleasure and welfare of all the citizens of the municipality.
- C. General description of district. The Rye Historic District is predominately composed of pre-Revolutionary, Federal and Victorian residential, commercial and municipal structures dating from 1724. Typically, the facades of the buildings average 40 feet wide and between 1 1/2 and 2 1/2 stories high. The average street frontage of a building lot is 75 feet; the average setback is 10 feet to 15 feet from the edge of the street right-of-way. The average percentage of openings (doors, windows, etc.) as a percentage of the facade is 25% to 40%; the usual construction material and surface treatment is wood clapboards; the usual roof shape is peaked; the usual architectural details are pre-Revolutionary, ~~Federal, or Victorian~~; and the usual landscaping/ground covers are grass, shrubs, and trees. A detailed inventory of the buildings and structures of the district is on file with the Town Clerk and Tax Collector. Copies are available at the public library and from the Historic District Commission.
- D. Certificates of approval. Any person wishing to construct, alter, repair, move, demolish, or otherwise change the exterior appearance of a structure within the district or construct a

new structure within the district or institute a new use of land or buildings within the district must obtain a certificate of approval from the Historic District Commission before any other building permits otherwise required by the Town are obtained. However, if the action is a repair where like materials are replacing like materials, only notification of the Historic District Commission is

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required. When this case applies, the Building Inspector's office will send a copy of the building permit to the Historic District Commission.

(1) Application procedures.

(a) Applications for certificates of approval are available from the Building Inspector.

(b) Applicants for a certificate of approval shall show:

[1] Ownership and description of land involved (areas and addresses). [2] Ownership and description of buildings involved.

[3] Names and addresses of abutting property owners and those directly across the street.

[4] A description of the work proposed to be done, which should include, as appropriate, a sketch of the site and the buildings located on the site drawn to scale, and photographs, sketches, architect's renderings or plans, and/or other visual aids. The description shall contain detailed dimensions when any structural features are to be altered or a new building constructed, or when otherwise requested by the Commission.

(c) Upon receipt of a completed application form, the Historic District Commission will normally within 15 days:

[1] Determine that the application is of no interest and notify the applicant in writing that he may proceed; or

[2] Determine that the application is of interest and schedule a public hearing.

(2) Public hearings.

(a) Notice of public hearings shall be advertised in a newspaper of general circulation in the Town, shall be posted in at least two public places, and shall be sent by certified mail to abutting property owners and those owning property directly across the street, at least five days in advance.

(b) Public hearings shall be open to the general public and testimony may be received from any party.

(3) Decisions by Historic District Commission.

(a) Certificates of approval or notices of disapproval shall be issued within 45 days of the filing of an application, unless the applicant agrees to a longer period of time.

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(b) Decisions of the Historic District Commission shall be made in accord with the guidelines for decisions in § 190-3.3(E).

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(c) Failure to issue the certificate within the specified period of time shall constitute approval by the Commission.

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- (d) Decisions of the Historic District Commission shall be appealable to the Board of Adjustment in accordance with RSA 675:17 and in accordance with Article VII of this chapter.
- (4) Enforcement. No building permit shall be issued until a certificate of approval has been filed with the Building Inspector, but in the case of disapproval, disapproval shall be binding upon the Building Inspector or other duly delegated authority, and no permit shall be issued. Otherwise, enforcement shall be as provided by NH RSA 674:49 and § 190-8.3 of this chapter.
- E. Guidelines for decisions on appropriateness. The following principles shall be followed in the granting of a certificate of approval within the Historic District:
- (1) If the proposed construction will not have any visible impact on the exterior of the building or structure, it shall be deemed of no interest.
  - (2) Routine repair to existing structures not involving any other exterior changes shall be deemed of no interest.
  - (3) When determining the appropriateness of all other alterations, restorations, or remodeling of existing structures or sites, the following criteria will be appropriate, in which case the applicant shall state the criteria he is using and the Commission shall decide accordingly:
    - (a) Structures or sites of importance because of a moment in history, be it the date of occupancy by a celebrated personage or the happening of an event, should be altered only so as to be more in conformity with the appearance at that moment in time.
    - (b) Structures or sites of importance because of their date of construction should be altered to restore features of their original appearance unless the structure has been altered at some later time and that alteration is in keeping with the character of the district, or is notable in its own right, in which case, as an alternative, such altered appearance shall be maintained.
    - (c) Structures or sites which are important in the history of architecture as unique or exceptionally fine examples of their style should be altered only so as to retain their original appearance.
    - (d) Structures or sites merely typical of their age and style should be altered in a fashion of that age or style, if in keeping with the character of the district.
    - (e) The Commission shall have the power to review the architectural treatment of the exterior features and finish of structures.
  - (4) New structures and buildings and those being moved into the district from outside the district must conform in general size and scale, but need not

conform in precise architectural style to the existing structures within the district.

(a) Such a structure must meet the zoning requirements of the Town in the following specifications:

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[1] Overall height and width. [2] Street frontage.¶  
[3] Setback from the street. [4] Number of stories.¶

- [1] Overall height and width.
- [2] Street frontage.
- [3] Setback from the street.
- [4] Number of stories.

(a) In addition, it shall conform to the general style of the district by being similar to neighboring structures in the District in all of the following six criteria:

- [1] Openings within the facade as a percentage of the facade, i.e., doors and windows.
- [2] Similarity of construction materials and surface texture, i.e., rough, smooth, wood, brick, etc.
- [3] Similarity of roofs, i.e., slopes and shapes.
- [4] Similarity of architectural details, i.e., cornices, lintels, arches, porches, balustrades, wrought iron work, chimneys, etc.
- [5] Similarity of landscaping and ground covering, i.e., grass, brick, granite, etc.
- [6] Similarity of colors to existing structures.

(5) Before a building or other structure is demolished or moved out of the district, the applicant shall in good faith prepare a detailed plan for the reuse of the site which the Commission determines will meet the requirements for a certificate of approval. Such certificate of approval for demolition and reuse shall only be granted upon a showing by the applicant that to deny such certificate would result in an unnecessary hardship unique to the property in question and that such unnecessary hardship is not common to neighboring properties within the district. **[Amended 3-10-2020 by Art. 3]**

(6) Signs.

(a) The goals and objectives of the Rye Historic District Commission in reviewing and approving applications for signs within the Historic District or considering requests for exceptions are:

- [1] To ensure that the visual impact of all signs is consistent with the historical and architectural characteristics of the Historic District.
- [2] To maintain the rural character of Rye.
- [3] To assure safe use of public ways by pedestrians, bicyclists and motorists.

[4] To promote the general visual attractiveness of the Historic District.

(b) **Size.** No sign in the Historic District may be larger than eight square feet.

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**Deleted:** except temporary signs announcing events which may be no larger than 16 square feet and these may be displayed not more than 14 days before an event and must be removed within one day following an event. "Service by" signs, i.e., advertising signs such as "Painting By," "Roofing By," etc., are not permitted in the Historic District.

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- (c) Number of signs/lot. Each lot in the Historic District shall have no more than one sign and one off-premises business directional sign. A maximum of two additional on-premises business directional signs are permitted per lot. In the case of multiple occupancies, the building owner is responsible for a single overall signage plan providing multiple listings within this specification.
- (d) Materials. Materials appropriate to the Historic District such as wood, brass, glass, or wrought iron will be permitted. Banners may be of cloth or soft vinyl. Signs may use two or three colors plus white and should blend in color scheme with the structure with which they are associated. Traditional styles of fonts shall be used for lettering.
- (e) Illumination. In addition to the criteria of § 190-5.1D, the source of a sign's illumination shall not be visible from any residence and shall not interfere with the vision of drivers on public streets.

(f) Trademarks and product names. These are to be discouraged on permanent signs in favor of names of proprietors, business owners, and business names.

**Deleted:** No trademarks, sales marks, product names, or other commercial advertising may appear on temporary signs announcing events. This is not to preclude temporary product or food signs displayed by vendors at their place of business during business hours.

(7) Solar collectors. [Added 3-12-2013]

- (a) The Rye Historic District Commission has jurisdiction over solar collectors as appurtenant exterior fixtures of buildings in the Rye Historic District. Solar panels require the Historic District Commission's review and approval. The Historic District Commission shall evaluate applications on a case-by-case/property-by-property basis.
- (b) The Commission takes into consideration five factors in evaluating solar panel installation, including:
  - [1] The structure's historic character and architectural importance;
  - [2] The purpose of the installation;
  - [3] Alternative means to conserve energy;
  - [4] Visibility from adjacent public streets and adjoining properties; and
  - [5] The project's design and compatibility with the structure.
- (c) The essential form and integrity of the historic property and its environment should be unimpaired.
- (d) Site-mounted. Consider solutions that respect the building's historic setting by locating arrays in an inconspicuous location, such as a rear or

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side yard, low to the ground, and sensitively screened further to limit visibility.

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(e) Roof-mounted.

[1] Solar panels should be flush with or mounted no higher than a few inches above the existing roof surface. They should not be visible above the roofline of a primary facade. On a flat roof, solar panels should be set back from the edge.

[2] Ensure that solar panels, support structures and conduits blend into the surrounding features of the historic resource. Visibility of solar panels and support structures can be substantially reduced if the color matches the historic resource and reflectivity is minimized.

[3] Solar panel installations should be reversible. The use of solar roof tiles, laminates, glazing or other technologies that require removal of intact historic fabric or that alter permanently or damage such fabric shall be avoided. Consider placing solar panels on an existing non-historic addition or on an accessory structure. In cases where new buildings or new additions to historic buildings are proposed, the placement of the solar panels should be on the new construction. Avoid disjointed and multi-roof solutions.

(8) Exceptions to the above, based on unnecessary hardship, may be considered and granted by the Commission. [Amended 3-10-2020 by Art. 3]

§ 190-3.4. Coastal Area District. [Added 1991]

A. Definition of district. Generally, the Coastal Area District includes the coastal area lying between Odiorne's Point State Park and the Rye Beach Precinct. It is bounded on the east by the Atlantic Ocean and, generally, on the west by the ecosystem of marshes that parallels the coastline west of Ocean Boulevard. It includes all of the areas known as Fairhill Manor, Wallis Sands, Concord Point, North Beach, Foss Beach, Rye Harbor, and Locke's Neck and most of the Jenness Beach area. The precise boundaries of the Coastal Area District are delineated on a map titled "Coastal Area Overlay District."

B. Purpose.

- (1) The management of land uses in Rye's coastal area requires a special regulatory approach because:
  - (a) The coastal area is virtually "built up" at a density much greater than that of the rest of Rye.
  - (b) Coastal resources are uniquely valuable to our society, and the preservation of coastal resources is a high local, state and federal

priority.

(c) Coastal land is a scarce resource, thus development and redevelopment pressures are intense, even during times of slow economic growth.

(d) Parts of the coastal area will be the only areas in Rye which have public

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- (2) The uniqueness of the coastal area is recognized in the Rye Master Plan and the revisions thereto. The regulations established herein are designed to accomplish the goals, objectives and recommendations of the Rye Master Plan in a manner that balances the public's right to the preservation of coastal resources with the property rights of private individuals.

C. Vacant nonconforming lots. ~~To build on an existing nonconforming lot located within the Coastal Area District, the Board of Adjustment may grant a special exception provided the following criteria are satisfied:~~

- ~~(1) Substantial justice will be done;~~
- ~~(2) The values of surrounding properties will not be diminished;~~
- ~~(3) Literal enforcement in the provisions of this Section would result in an unnecessary hardship;~~
- (4) For lots 7,000 square feet in area or larger, the lot shall not be materially smaller than developed lots in the surrounding area. In making this determination, the Board shall first consider developed abutting lots. If there are an insufficient number of such lots to make a determination, the Board shall then consider the size of developed lots within the same block. If there still are an insufficient number of developed lots, the Board shall consider the size of developed lots in the neighborhood.
- (5) Development of the lot shall not create drainage problems for adjacent properties and streets and shall not worsen existing drainage problems and shall comply with the provisions of 190-5.7.
- (6) The lot shall have frontage on a street.
- (7) Sufficient sewage treatment capacity shall be available for lots within the Town's sewer service area. For other lots, a state-approved on-site waste disposal system shall be required.

~~This provision shall not permit the creation of a new nonconforming lot by subdivision, nor permit the creation of a lot less than 7,000 square feet, or the development on a lot that is less 7,000 square feet. [Amended 3-14-2000]~~

D. Height. Within the Coastal Area District, no building or structure shall exceed 28 feet in height as measured from existing grade. If the building or structure is required to be elevated in accordance with Chapter 60, Floodplain Management, of the Town Code, the overall height of the building or structure shall not exceed 30 feet as measured from the existing grade. Wireless telecommunication towers are exempt from this limitation. [Amended 3-14-2000; 3-18-2017; 3-10-2020 by Art. 3]

E. Coverage. Within the Coastal Area District, no dwelling shall occupy more than 15% of its

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**Deleted:** shall apply the following criteria in order to determine whether the application is contrary to the public interest and/or observes the spirit of this chapter. This subsection shall not apply to variance applications to create a new nonconforming lot by subdivision. In Subsection C(1) and (2) below, the 7,000 square feet standard applies only to existing lots of record. It is not to be construed as a minimum lot size for subdivision purposes. [Amended 3-14-2000]

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lot. Dwellings plus open porches, decks, garages, carports, barns, sheds and other accessory buildings, plus patios, unwallled covered areas, impervious driveways, sidewalks, impervious walkways and other impervious surfaces, shall not occupy more than 30% of the lot. [Amended 3-14-2000; 3-12-2019 by Art. 4]

F. Tourist accommodation uses. [Added March 2012]

(1) Purpose.

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- (a) The purpose of § 190-3.4F is to allow land housing tourist accommodation uses which may have become economically or functionally obsolete to be redeveloped in residential use at densities compatible with the density of the surrounding area. Reference is made to the preliminary draft report titled "Coastal Land Use Issues" dated November 15, 1990.
- (b) Notwithstanding any other provisions of this chapter, in the Coastal Area Overlay District motels and tourist camps and accessory uses thereto may be razed and the land redeveloped for residential use in accordance with the provisions of § 190-3.4F.
- (2) Special use permit required. Any such redevelopment requires a special use permit from the Planning Board. The Planning Board may approve a special use permit which complies with the requirements of § 190-3.4F and the requirements of Chapter 202, Land Development Regulations, for major site developments. Applications for a special use permit shall be submitted to the Planning Board and reviewed in accordance with the Planning Board's procedural requirements for major site developments.
- (3) Types of dwellings allowed. Single-family, two-family and multifamily dwellings, including townhouses, are allowed. The condominium form of ownership is **permitted**. The approvals required by § 190-5.3 of this chapter are not required.
- (4) Density.

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(a) Notwithstanding the minimum lot size requirements of the underlying use district, the density of a redeveloped site may equal but not exceed the residential density of the coastal subarea in which the site is located, as set forth below. The Planning Board may require lower densities if necessary to make a proposed redevelopment compatible with its environs based on consideration of factors such as wetlands, **rolling hills, etc.**, **etc.** configuration of the parcel, septic capability, setbacks of abutting buildings, building massing, drainage or other characteristics of the site which affect sound land planning.

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Subarea of Coast	Maximum Allowed Density (dwelling units per acre)
Jeness Beach	5
Locke's Neck (Straws Point)	1
North Beach	3
Wallis Sands	4.5
Fairhill Manor	4

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 Subarea of Coast

(b) For the purposes of § 190-3.4F, the coastal subareas are as follows:

- [1] Jeness Beach. That part of the Coastal Area Overlay District which lies between the Rye Beach Precinct and the unnamed way which

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bisects Foss Circle and between the Rye Beach Precinct and Old Town Way, including lots accessed by Old Town Way.

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[2] Locke's Neck. That part of the Coastal Area Overlay District which lies between the Jenness Beach Subarea and Tax Map 8/Parcel 56.

[3] North Beach. That part of the Coastal Area Overlay District which lies between Tax Map 17/Parcel 78 and Parsons Creek.

[4] Wallis Sands. That part of the Coastal Area Overlay District which lies between Parsons Creek and Wallis Sands State Beach.

[5] Fairhill Manor. That part of the Coastal Area Overlay District which lies north of the Wallis Sands State Beach.

(c) Alternate determination of density. An applicant for a special use permit who believes the maximum density set forth in the table in § 190-3.4F(4)(a) does not reflect the density of the neighborhood around the site proposed for redevelopment may submit to the Planning Board a plan delineating the neighborhood around the site proposed for redevelopment and calculations of the median and mean residential lot sizes within the neighborhood. The burden shall be on the applicant to demonstrate to the Planning Board that the delineated neighborhood demonstrates density characteristics more applicable to the proposed redevelopment site than the maximum density set forth in the table in § 190-3.4F(4)(a).

[1] The Planning Board has the sole discretion to approve, disapprove or modify the neighborhood used to determine the maximum allowed density. If the neighborhood is disapproved, the maximum density set forth in the table in § 190-3.4F(4)(a) shall apply.

[2] A neighborhood shall always include the following:

[a] Lots within 500 feet of the subject parcel as measured along streets on which the subject parcel has frontage.

[b] Lots having dwellings located within 200 feet of the subject lot. [c] Lots from which one could view a dwelling sited on the subject site.

[3] Upon review of the proposed site plan, the Planning Board may require lower densities than the density of the surrounding neighborhood if necessary to make a proposed redevelopment compatible with its environs based on consideration of factors such as wetlands, configuration of the parcel, septic capability, setbacks of abutting buildings, drainage or other characteristics of the site which affect

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sound land planning.

(5) Yards; corner clearance. The yard and corner clearance requirements of the General Residence District, § 190-2.4C(1) to (4), shall apply to any redeveloped site.

- (6) Coverage. Dwellings plus open porches, decks, garages, carports, barns, sheds and other accessory buildings, plus patios, unwall covered areas, impervious driveways, sidewalks, impervious walkways and other impervious surfaces, shall not occupy more than 15% of the parcel. [Amended 3-12-2019 by Art. 4]
- (7) Building spacing. All buildings, including parking structures and accessory buildings, shall be separated by at least 25 feet.
- (8) Determinations required for special use permit approval. Prior to approving a special use permit, the Planning Board shall determine, by a vote on the record, that the proposed redevelopment meets each of the following standards:
  - (a) All requirements of § 190-3.4F have been met. (This may be a single vote on the record.)
  - (b) The granting of the special use permit will not be detrimental to adjacent property or the neighborhood.
  - (c) The granting of the special use permit will not be detrimental to the public safety, health or welfare.
  - (d) The granting of the special use permit will not be contrary to the public interest.
  - (e) The architecture of the proposed dwellings is compatible with the architecture of dwellings located within 300 feet of the site.
  - (f) The proposed redevelopment will not overburden municipal services.
- (9) Conditions. In approving a special use permit, the Planning Board may attach such conditions to its approval as it deems necessary to further the objectives of § 190-3.4F, this chapter and the public health, safety and general welfare.
- (10) Fees. The Planning Board shall charge an application fee for a special use permit in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I(g).
- (11) Conflicts. Where the provisions of § 190-3.4F conflict directly with another requirement of this chapter or a requirement of Chapter 202, Land Development Regulations, the provisions of § 190-3.4F shall govern. Otherwise, all other requirements of this chapter and Chapter 202, Land Development Regulations, shall apply, including § 190-5.9, Demolition review.
- (12) Authority. Section 190-3.4F is adopted as an innovative land use control, pursuant to RSA 674:21.
- (1) Appeal. Pursuant to RSA 676:5, III, appeals of any Planning Board decisions made 190:52

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review.¶

pursuant to § 190-3.4F shall be taken to the Superior Court or the Housing Appeals Board, not to the Board of Adjustment.

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**§ 190-3.5. Wireless Telecommunications Facilities District. [Added 3-9-1999]**

See § 190-5.5 for the description of the Wireless Telecommunications Facilities District and the regulations which apply to wireless telecommunications facilities.

**§ 190-3.6. Aquifer and Wellhead Protection District. [Added 3-11-2008; amended March 2011; 3-11-2014; 3-10-2015; 3-13-2018]**

A. Authority. The Aquifer and Wellhead Protection District is an innovative land use control adopted pursuant to RSA 674:16 and RSA 674:21, I(j).

B. Purpose. The purpose of the Aquifer and Wellhead Protection District is to preserve, maintain, and protect from contamination existing and potential groundwater resources and groundwater recharge areas and to protect surface waters that are fed by groundwater in the Town of Rye. The objectives are:

- (1) To protect the public health and general welfare of the citizens of Rye.
- (2) To prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers and wells identified as being needed for present and/or future water supply.
- (3) To assure the availability of public and private water supplies for future growth of the Town in accordance with the Master Plan.
- (4) To encourage land uses that can appropriately and safely be located in the aquifer recharge areas.
- (5) To assure that streams, wetlands, and ponds that are fed by groundwater discharge remain healthy.

C. Definitions. The definitions applicable to this section are as follows:

**AQUIFER** — A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

**GASOLINE STATION** — That portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.

**GROUNDWATER** — Subsurface water that occurs beneath the water table in soils and geologic formations.

**IMPERVIOUS** — Not readily permitting the infiltration of water.

**IMPERVIOUS SURFACE** — A surface through which regulated contaminants cannot pass when spilled. For purposes of this section, the term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces that could react with or dissolve when in contact with the substances stored on them.

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**Deleted:** HAZARDOUS WASTE — A waste with properties that make it dangerous or capable of having a harmful effect on human health or environment.¶  
§ 190-3.6 RYE CODE § 190-3.6¶



**OUTDOOR STORAGE** — Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

**Deleted:** JUNKYARD — An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard. The term "junkyard" does not include motor vehicle dealers registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:126.¶

**PUBLIC WATER SYSTEM** — A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

**SANITARY PROTECTIVE RADIUS** — The area around a public water supply well which must be maintained in its natural state as required by New Hampshire Administrative Rules Part Env-Dw 301 or 302 (for community water systems) and Sections Env-Dw 405.14 and 406.12 (for other public water systems).

**SEASONAL HIGH WATER TABLE** — The depth from the mineral soil surface to the uppermost soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed hydrogeologist, soils scientist, wetland scientist, engineer or other qualified professional approved by the Planning Board.

**SECONDARY CONTAINMENT** — A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest **toxic and hazardous materials** container that will be stored there.

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**SNOW DUMP** — For the purposes of this section, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

**STRATIFIED-DRIFT AQUIFER** — A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

**SURFACE WATER** — Streams, **3333**, lakes, ponds and tidal waters, including marshes, watercourses and other bodies of water, natural or artificial.

**WELLHEAD PROTECTION AREA** — The surface and subsurface area surrounding a water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

D. Boundaries of district.

(1) Location. The Aquifer and Wellhead Protection District is an overlay district which includes within its boundaries:

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- (a) All of the area portrayed as stratified-drift aquifers on a map titled "Stratified-Drift Aquifer Map Rye, NH" dated June 2003; and
- (b) All wellhead protection areas for public water supply wells defined by § 190-3.6C. The district is shown on NHDES map titled "Stratified-Drift Aquifer Map, Rye, NH and Wellhead Protection Areas (Rye Water District and Aquarion)" as updated or modified by NHDES.

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- (2) Appeal. Where the boundaries of the Aquifer and Wellhead Protection District are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of a written appeal, the Planning Board (or Building Inspector) shall suspend further action on any pending application related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the Aquifer and Wellhead Protection District relative to the property in question.
- (3) Lots split by district boundary. If 50% or more of the area of a lot is within the Aquifer and Wellhead Protection District, the requirements of § 190-3.6E(1) shall apply to the entire lot. If feasible, on-site waste disposal systems on any lot partially within the Aquifer and Wellhead Protection District shall be located on the portion of the lot outside of the district. **Unless less than 50% of the area of the lot is within the Aquifer and Wellhead Protection District, only such portions that are in the Aquifer and Wellhead Protection District shall be subject to the provisions of that district.**

E. Use regulations.

- (1) Prohibited uses. The following uses are prohibited in the Aquifer and Wellhead Protection District:
  - (a) Disposal of solid waste.
  - (b) Storage or disposal of **toxic or hazardous material.**
  - (c) Subsurface storage of heating oil, gasoline or other refined petroleum products, except for heating oil stored in a tank in the basement of a building.
  - (d) Gasoline stations or sale of gasoline or petroleum products.
  - (e) Industrial use which discharges contact-type process wastewater on site. Non-contact cooling water is permitted.
  - (f) Outdoor storage of road salt or other de-icing materials.
  - (g) Snow dump/dumping of snow from off site.
  - (h) Animal feed lot.
  - (i) Automotive service, auto repair shop, or car wash.
  - (j) Junkyard or salvage yard.
  - (k) Dry-cleaning establishment or laundry.
  - (l) Earth excavation or mining.
  - (m) All on-site handling, disposal, storage, processing or recycling of

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hazardous or toxic materials except for materials used for normal residential, agricultural or silvicultural activities or those related to the production and testing of drinking water.

(n) Injection well that disposes of ~~toxic and hazardous material~~.

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(o) The commercial storage of fertilizers, animal manure and compost ~~unless such use and storage is on site and only when such storage and use is~~

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in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, New Hampshire Department of Agriculture, Markets and Food, July 2017, and subsequent revisions, and for an agricultural use already in existence at the time of adoption of this section. **[Amended 3-10-2020 by Art. 3]**

- (p) Deposit, discharge or release of leachable wastes.
  - (q) ~~Development or expansion of a wastewater or septic lagoon.~~
  - (r) Petroleum bulk plants or terminals.
- (2) Uses requiring a conditional use permit.
- (a) In the Aquifer and Wellhead Protection District, the following uses require a conditional use permit from the Planning Board. The Planning Board may establish procedures for the review and approval of conditional use permits, including requirements for information to be submitted with an application for a conditional use permit.
    - [1] Retirement community development (RCD).
    - [2] Golf course.
    - [3] ~~Greenhouse or horticultural enterprise.~~
    - [4] Hospital, nursing facility or home for the elderly.
    - [5] Mobile home park or mobile home subdivision.
    - [6] Any use with septage loading of 2,500 gallons per day or greater.
    - [7] Automobile sales, boat sales, or farm machinery sales.
    - [8] ~~Lumberyard or building supply sales.~~
    - [9] Any commercial or industrial use ~~except those uses identified in Prohibited Uses~~ located over a stratified-drift aquifer having a transmissivity of greater than 2,000 square feet per day, as portrayed on a map titled "Stratified-Drift Aquifer Map Rye, NH."
    - [10] Any use requiring a hydrogeologic study per § 190-3.6F(1).
    - [11] Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater.
    - [12] Any activities that involve blasting of bedrock.
    - [13] Storage, handling, and use of toxic or hazardous materials in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with § 190-3.6E(3)(g),

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is approved by the Fire Department.

(b) Applicants for conditional use permits shall develop, and submit for

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review and approval by the Planning Board, stormwater management and pollution prevention plans. The plans shall demonstrate that the use will:

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[1] Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management (DES, 2008), as amended.

[2] ~~Prevent to the greatest extent possible, and if not minimize~~ through a source control plan that identifies pollution prevention measures, the release of ~~toxic or hazardous materials~~, into stormwater.

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[3] Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I ~~Investigation~~ Assessment in conformance with ASTM E 1527-05, also referred to as ~~"All Appropriate Inquiry (AAI)."~~

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[4] Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.

(3) Requirements for a conditional use permit. The Planning Board may grant a conditional use permit for those uses listed above only after a public hearing and written findings of fact are made that all of the following conditions are met:

(a) The proposed use will not detrimentally affect the quality of groundwater by directly contributing to pollution or by increasing the long-term susceptibility of groundwater to potential pollutants.

(b) Adequate safeguards will be in place to prevent accidental spillage of substances or materials which may be harmful to groundwater from reaching the aquifer.

(c) The proposed use will discharge no wastewater on site other than that typically discharged by domestic wastewater disposal systems and will not involve on-site storage or disposal of toxic or hazardous ~~materials~~.

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(d) The proposed use will not cause a significant reduction in the long-term ~~volume of water contained in the aquifer or in the storage capacity of the~~ aquifer.

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(e) The proposed use complies with all other applicable subsections of this section.

(f) The Planning Board may require that the applicant provide data or reports prepared by a qualified hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board

may engage such professional assistance as it requires to adequately evaluate such reports and to evaluate the proposed use.

- (g) Conditional uses using toxic or hazardous materials have submitted a spill prevention, control and countermeasure (SPCC) plan approved by the Fire Chief, with a determination that the plan will adequately prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, equipment failure, floods, or fires that may cause large releases of toxic and hazardous materials. The SPCC plan shall include:

- [1] A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas and the locations of all areas where toxic and hazardous materials will be stored and used.

- [2] Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies which must be contacted in case of a release to the environment.

- [3] A list of all toxic or hazardous materials in use and locations of use and storage.

- [4] A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.

- [5] A description of containment and/or diversionary structures or equipment to prevent toxic or hazardous materials from infiltrating into the ground, including the identification of said systems and structures location.

F. Special requirements. Within the Aquifer and Wellhead Protection District:

(1) Hydrogeologic study.

(a) A hydrogeologic study shall be required for:

- [1] Uses whose septic system (or septic systems) is designed for a septage loading of 2,500 gallons per day or greater.

- [2] Any use altering more than 50,000 square feet of natural terrain.

- [3] Subdivisions of five lots or more, unless all lots are greater than two acres.

- (b) A qualified hydrogeologist shall perform the hydrogeologic study. Studies shall be sufficiently detailed to evaluate impacts to the aquifer beneath and surrounding the proposed development site. All hydrogeologic studies

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should include the following components, at a minimum:

- [1] Install permanent monitoring wells with locking well casings.
  - [a] For any site that meets the criteria for a hydrogeological study, a minimum of four wells should be installed, one up-gradient of the area of expected groundwater impact (septic systems,  | 

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stormwater discharge, etc.) and three within down-gradient of the expected source areas. Wells should be installed to adequately characterize the groundwater flow direction and water quality in the aquifer.

[b] On projects of 10 acres or more, one well should be installed ~~over three acres~~, depending on site topography and expected groundwater flow direction.

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[2] Take split spoon samples of the overburden material to verify subsurface material characteristics.

[3] Determine representative hydraulic conductivity of aquifer/overburden materials using in-situ permeability tests, grain size analysis or both.

[4] Complete one or more borings to the bedrock surface.

[5] Water levels at wells, once equilibrated, should be measured at least two times.

[6] Water quality results at wells and on-site surface water features to determine background water quality for field parameters: pH, temperature, ~~the presence of toxic or hazardous materials~~, and specific conductance, as well as for ammonia- nitrogen, nitrate-nitrogen, and chloride at each well and at representative surface water locations.

[7] An assessment of geologic characteristics, groundwater flow direction, groundwater flow velocity and ambient water quality.

[8] A nitrogen loading analysis at site buildout with subsurface treatment units simulated and located so that nitrate concentrations will not exceed the current state standard limit.

[9] Summary of background information on any off-site source areas that may impact site water quality.

[10] All laboratory data, field data, and calculations used in the study shall be included as report appendices.

[11] The Planning Board may require additional components to be included as part of the hydrogeological study.

[12] All monitoring wells will be maintained as per RSA 482-B:15. Those that will not be retained for long-term monitoring will be properly abandoned as per NHDES guidance contained in Environmental Fact Sheet WD-DWGB-22-16. An abandonment report will be submitted to the

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Building Inspector when complete.

- (2) Coverage. The impervious coverage of a lot shall not exceed 25% of the total lot area. However, impervious coverage may be increased to that allowed by the underlying use district if the applicant submits a [REDACTED] stormwater management plan to the Planning Board for review and approval. As part of its review, the

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Planning Board shall determine, among other things, whether the plan provides for adequate ~~recharge of stormwater~~ and recharge on the property to be developed and whether the plan is consistent with New Hampshire Stormwater Manual Volumes 1 to 3, December 2008, New Hampshire Department of Environmental Services, as amended.

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- (3) Drainage. To the extent possible, excluding areas where ~~toxic and hazardous materials~~, may contact precipitation, all runoff from impervious surfaces shall be recharged on site and diverted away from public and private water supply or private wells, toward areas covered with vegetation for surface infiltration. Dry wells may be used only where other methods are not feasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All discharges shall comply with state underground injection control requirements under New Hampshire Administrative Rules Chapter Env-Wq 400. [See § 190-3.6G(2) regarding ~~toxic and hazardous materials~~.]

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- (4) Salt; de-icing. Streets, roads, driveways and parking areas shall be constructed so that the need for direct application of road salt and de-icing substances is eliminated or minimized to the greatest extent possible. Runoff from such surfaces shall be channelized to avoid, or minimize to the greatest extent possible, groundwater contamination, consistent with Best Management Practices for Urban Stormwater Runoff, NHDES, January 1996, or revisions thereto.

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- (5) Safeguards. For all nonresidential uses, provision shall be made to protect against toxic or hazardous materials, discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as spill control provisions in the vicinity of chemical or fuel delivery points, ~~assemblies~~, ~~containers~~, secured storage areas for toxic or hazardous materials, and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.

- (6) Fertilizers. Fertilizers shall not be applied within the Aquifer and Wellhead Protection District between October 1 and April 1.

- (7) Manure. Animal manure storage and management will be carried out using best management practices as referenced in Manual of Best Management Practices for Agriculture in New Hampshire, June 2017, or current version, ~~but at a minimum, shall be stored in a manner to prevent contact with precipitation or stormwater runoff.~~

G. Performance standards. Within the Aquifer and Wellhead Protection District the performance standards set forth in this section shall apply to all existing and

proposed uses, except as exempted by Subsection G(6).

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- (1) Storage and containment of ~~toxic and hazardous materials~~.
  - (a) All ~~toxic and hazardous materials~~ stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains.
  - (b) Facilities where ~~toxic and hazardous materials~~ are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner.
  - (c) Outdoor storage areas for ~~toxic and hazardous materials~~, associated material or waste must be protected from exposure to precipitation and must be located at least ~~100 feet from tidal marshes, bays, estuaries, rivers, river tributaries, creeks, and surface water or storm drains, 75 feet of wetlands one contiguous acre or larger in size, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems.~~
  - (d) Secondary containment must be provided for outdoor storage of ~~toxic and hazardous materials~~ in accordance with New Hampshire Administrative Rules Part Env-Wq 401, Required Best Management Practices for Groundwater Protection, unless otherwise exempted. The containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s). **[Amended 3-10-2020 by Art. 3]**
  - (e) Containers in which ~~toxic and hazardous materials~~ are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.
- (2) Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with Water Well Board rules at Part We 604 of the New Hampshire Administrative Rules.
- (3) All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.
- (4) Blasting activities shall be planned and conducted in accordance with best management practices set forth in NHDES rules at Part Env-Wq 1510 of the New Hampshire Administrative Rules to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology ~~and drinking water wells and communities~~ and the dewatering of nearby drinking water ~~supply wells~~. Explosives containing perchlorates are prohibited.

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Blasting shall conform to Chapter 28, Blasting, of the Town Code. The Planning Board may require a blasting management plan when reviewing proposed land developments.

(5) Exemptions. The following are exempt from the performance standards of this section:

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- (a) Private residences are exempt from all performance standards.
  - (b) Any use where ~~toxic and hazardous materials~~ are stored in containers with a capacity of less than five gallons is exempt from performance standards in Subsection G(2)(b) through (e).
  - (c) Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from performance standards in Subsection G(2)(b) through (e).
  - (d) Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from performance standards in Subsection G(2)(b) through (e).
  - (e) Storage and use of office supplies is exempt from performance standards in Subsection G(2)(b) through (e).
  - (f) Temporary storage of construction materials on a site where they are to be used ~~consistent to an issued and valid building permit~~ (if required) is exempt from performance standards in Subsection G(2)(b) through (e).
  - (g) Household hazardous waste collection projects regulated under New Hampshire Administrative Rules Sections Env-Hw 401.03(b)(1) and Env-Hw 501.01(b) are exempt from performance standards in Subsection G(2)(b) through (e). **[Amended 3-10-2020 by Art. 3]**
  - (h) The sale, transportation, and use of pesticides as defined in RSA 430:29, XXVI, are exempt from all provisions of this section.
  - (i) Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under § 190-3.6G(7) of this chapter.
- (6) Inspections.
- (a) Inspections may be required to verify compliance with these performance standards. Such inspections shall be performed by the Building Inspector or such other person(s) designated by the ~~Select Board~~. Inspection shall be performed at reasonable times with prior notice to the owner. ~~The refusal to provide access to the Building Inspector and/or such other designated individual for an inspection shall constitute a violation of any permits or approvals for the use and structures on the property. The Town shall further be permitted to pursue an administrative inspection warrant pursuant to RSA 593-B to perform any necessary inspections.~~
  - (b) All properties within the Aquifer and Wellhead Protection District known

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to be using or storing toxic and hazardous materials in containers with a capacity of five gallons or more, except exempt uses, shall be subject to inspections.

(c) The Select Board may establish a reasonable fee for such inspections to be paid by the property owner, as allowed by RSA 41:9-a.

(d) For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with performance standards shall be recorded so as to run with

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the land on which such structures are located, at the Registry of Deeds for Rockingham County. The description so prepared shall comply with the requirements of RSA 478:4-a.

- H. Nonconforming uses. Existing uses not conforming to the requirements of the Aquifer and Wellhead Protection District may continue in the district in the form in which they exist at the time of the adoption of this section (but may not be expanded) unless they pose a direct hazard to the aquifer or are actually introducing toxic and hazardous materials into the aquifer. In the latter case, the Selectmen shall issue an immediate cease and desist order to stop the offending activity or process from continuing in the district. Existing uses must be in compliance with all applicable state and federal requirements, including New Hampshire Administrative Regulations Part Env-Wq 401, Required Best Management Practices for Groundwater Protection. The Town Public Works Facility/Recycling Center is exempt from the provisions of the Aquifer Protection Overlay District.
- I. Interpretations; appeals. The Aquifer and Wellhead Protection District is an innovative zoning control adopted pursuant to RSA 674:21. In accordance with RSA 676:5, III, decisions interpreting and applying the requirements of the district may be appealed first to the Planning Board and then to the Superior Court or the Housing Appeals Board (but not to the Board of Adjustment). **[Amended 3-10-2020 by Art. 3]**
- J. Wellhead protection area. The Zoning Map of the Town of Rye depicts a wellhead protection area (WHPA) around the Rye Water District's (RWD's) three wells. The NHDES Stratified-Drift Aquifer Map, Rye, NH and Wellhead Protection Areas (Rye Water District and Aquarion) depicts wellhead protection areas (WHPAs) for public water supply wells. The WHPAs consist of a four-thousand-foot radius around the Bailey Brook and Cedar Run wells. Around the Garland Road well the NHPA is determined based on hydrological information. Within the WHPA, new septic systems must be high performance, de-nitrifying septic systems and all uses must comply with the best management practices set forth in New Hampshire Administrative Regulations Part Env-Wq 401.
- K. Sanitary protective radius. A sanitary protective radius of 400 feet exists around each of the RWD's three wells and the Aquarion Well 5A. As required by New Hampshire Administrative Regulations Part Env-Dw 302, the area within the sanitary protective radius shall be maintained in a natural state at all times. Only such activities or uses that are approved in advance by the RWD, Aquarion and NHDES may occur within the sanitary protective radius.
- L. Recertification. Every two years, or on or before any transfer of title, after issuance of a conditional use permit, the property owner or occupant or homeowners' association, as applicable, shall file an affidavit with the Building Inspector certifying that the property remains in compliance with all conditions of the conditional use permit, all

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applicable special requirements of § 190-3.6F, and all applicable performance standards of § 190-3.6G. Failure to file such an affidavit shall be deemed a rebuttal presumption that the property is not in compliance.

M. Enforcement procedures and penalties. Any violation of the requirements of this section shall be subject to the enforcement procedures and penalties detailed in

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RSA 676 or RSA 485-C.

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§ 190-3.7. Multifamily Dwelling District. [Added 3-9-2010]

- A. Purpose. The purpose of the Multifamily Dwelling Overlay District is to provide for multifamily **residential and/or development** in appropriate locations in Rye in order to comply with the requirements of RSA 674:59.
- B. Description of district. The Multifamily Dwelling Overlay District is comprised of the Route 1/Lafayette Road Commercial District (except land owned by the Rye Conservation Commission) and all land in Rye within 800 feet westerly of the Route 1/Lafayette Road Commercial District. More specifically, the overlay district covers the following parcels as depicted on Town Tax Maps:
  - (1) All of the following parcels on Tax Map 10: Parcel Nos. 1, 2, 3, 4, 4.1, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15-3, 15-4, 16, 17, 18, 19, 20, 66, 67, 68, 69, 70, 82, 83, 84 and 85.
  - (2) All of the following parcels on Tax Map 14: Parcel Nos. 4, 5, 6, 7, 9, 10, 12, 17 and 18.
  - (3) The portions of the following parcels located within 1,300 feet of Lafayette Road: Tax Map 14, Parcel Nos. 8 and 11.
  - (4) The portions of the following parcels located within 500 feet of Lafayette Road: Tax Map 14, Parcel Nos. 13 and 16; Tax Map 10, Parcel No. 13.
- C. Special use permit. Within the Multifamily Dwelling Overlay District multifamily dwellings and multifamily developments require a special use permit from the Planning Board pursuant to § 190-4.2 of this chapter.

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§ 190-3.8. Rye Landfill Groundwater Management Zone (RL-GMZ). [Added 3-12-2013]

- A. Purpose. The purpose of the RL-GMZ is to protect public health by restricting groundwater use down-gradient of the former Rye Town landfill. The groundwater quality is being monitored under a groundwater management permit issued by the New Hampshire Department of Environmental Services (NHDES).
- B. Extent of RL-GMZ. The extent of the RL-GMZ shall be as referenced by NHDES permit as the Rye Landfill Groundwater Management Zone (GMZ), specifically including Tax Map 10, Lot 5, and Tax Map 10, Lot 82. The area contains monitoring wells that survey groundwater quality.
- A. Regulations. Within the RL-GMZ the pumping of groundwater from any well or other structure for residential, commercial or industrial drinking water purposes is prohibited.

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ARTICLE IV  
Planned Developments

§ 190-4.0. Mobile home parks and subdivisions.

- A. General. The use, rental or maintenance of mobile homes or house trailers shall be permitted within the Town of Rye only in approved developed park sites and mobile home subdivisions or under temporary permits as per § 190-4.0H. [Amended 2018]
- B. Special exception required for mobile home parks. Mobile home parks are permitted only as a special exception authorized by the Board of Adjustment. [Amended 3-10-2020 by Art. 3]
- C. Criteria for special exceptions. The Board of Adjustment shall not grant a special exception for a mobile home park unless all of the following criteria are met, in addition to those criteria set forth in § 190-7.1(A)(3): [Amended 3-10-2020 by Art. 3]
  - (1) Tract size. No mobile home park shall be located on a tract of less than 10 acres.
  - (2) Location. No mobile home park shall be located on a tract that is:
    - (a) ~~Inaccessible from streets that are in sufficient layout and condition as to provide access to the mobile home park or, after construction, may adversely impact the quality or condition of the road.~~
    - (b) Close to wetland swamps or other potential breeding places for insects and rodents.
    - (c) On poorly drained land.
    - (d) On land subject to flooding, erosion, fire, safety or traffic hazards.
    - (e) On land which is exposed to chronic nuisances such as noise, smoke, fumes and odors.
  - (3) Interior access.
    - (a) No park site shall be developed unless adequate access for trailers and attached vehicles, fire-fighting equipment, fuel delivery, refuse collection and other service vehicles is provided. Where the park site or individual trailer parking spaces do not abut directly on a street, paved access roads, located within not less than thirty-two-foot right-of-way, shall be provided.
    - (b) The area of every park site shall be large enough to provide for the designated number of individual trailer spaces, necessary access roads and service streets, adequate parking for motor vehicles, and essential service,

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play, maintenance, and office facilities.

(a) Every access road and service street within a park site shall have a

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pavement width of not less than 20 feet, shall have a well-drained stabilized or paved surface, maintained in good repair, and at night well-lighted; provided, however, that where parking is permitted on one side of the street only, the total width of such ~~paved surface~~ shall be not less than 26 feet, and that where parking is permitted on both sides of the street, the total width of such ~~paved surface~~ shall not be less than 32 feet.

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(4) Spatial requirements.

- (a) Area. No individual mobile home or trailer space shall contain less than the greater of 15,000 square feet or the area required by New Hampshire Administrative Rules Chapter Env-Wq 1000. The bounds of each space shall be clearly marked.
- (b) Yards. No mobile home and trailer shall be parked less than 10 feet from the side of any individual trailer space, and there shall be not less than 20 feet between any two trailers. No trailer, vehicle, or building in any trailer park shall be located less than 100 feet from any residential building located on any adjacent lot or from the center line of any street.
- (c) Parking area. Not less than 150 square feet of motor vehicle parking space shall be provided in every park site for each individual trailer or mobile home space in addition to minimum trailer space requirement, and all such spaces shall have a well-drained, stabilized, or paved surface, maintained in good repair.
- (d) Laundry area. Not less than 150 square feet of laundry drying space shall be provided in every park site for each four individual mobile home or trailer spaces, and all such space shall have a well-drained stabilized or paved surface, maintained in good repair.
- (e) Play area. Not less than 100 square feet of play space for each individual mobile home or trailer space shall be provided and restricted in every park site exclusively to playground use. ~~Such~~ spaces shall be protected from streets and parking areas, shall have a well-drained, stabilized or paved surface, maintained in good repair, ~~and shall be located in a manner that is accessible to the other mobile homes and trailer spaces.~~

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(5) Utility and sanitation requirement. No mobile home or trailer shall be without adequate hygiene and sanitation facilities. Water supply service, plumbing, sewage disposal and treatment, electric power service, bottled gas service, heating equipment and fuels, refuse and garbage storage and disposal, and insect and rodent control shall be provided in full conformity with the applicable provisions of the Building Code<sup>2</sup> and all pertinent state and local water pollution, building and health regulations, ordinances and statutes.

(6) Drainage. Each space shall be well-surfaced or seeded to provide adequate

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drainage beneath and adjacent to any trailer parked thereon.

- (7) Bond. Prior to approval of a plan for a mobile home park, the developer must post an adequate bond with the Town assuring that the park and its sites and

1. Editor's Note: See Ch. 35, Building Code.

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~~Roads, utility infrastructure, and required landscaping~~ are constructed in conformance with such plans, specifications and requirements. The Town Counsel shall review said bond prior to its acceptance, and the mobile home park approval shall not be issued prior to approval of the bond by Counsel. ~~The Planning Board may impose additional bonding requirements per the Town's Land Development Regulations~~

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- D. Foundation and additions prohibited. No permanent additions, skirting, foundations, lean-tos, sheds, or rooms shall be permitted; provided, however, that open porches with awnings may be installed. Trailer wheels shall not be removed, although stands and/or stabilizers may be added. In the event that wheels are removed, permanent skirting installed, or the trailer attached permanently to the ground, the trailer shall immediately become subject to all the provisions of the Town Building Code.<sup>3</sup> ~~Such~~ materials shall not be stored under a trailer.
- E. Commercial purposes prohibited. No unoccupied mobile home or trailer shall be stored or exhibited for sale for commercial purposes within a park site or in any Residence District.
- F. Mobile home subdivisions. Such subdivision shall have a minimum of 10 lots and shall comply in all other respects with Chapter 202, Land Development Regulations, and shall be restricted to mobile homes.
- G. Mobile home standards. All mobile homes located in mobile home parks and subdivisions shall meet the standards for manufactured housing of NH RSA 674:31.
- H. Temporary permits. The Board of Adjustment may, after public hearing, grant a temporary permit not to exceed 90 days for a single mobile home or house trailer to be placed upon a lot in any district and used by the owner or owner's immediate family. No such permit shall be renewable without further public hearing. The storage of no more than one mobile home, motor home, or camping trailer shall be permitted on any lot.

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**§ 190-4.1. Retirement community developments (RCDs). [Added 2006; amended 3-14-2006; 2008; 3-11-2014]**

- A. Authority. This section is adopted as an innovative land use control pursuant to RSA 674:21.
- B. Purpose. The purpose of this section is to provide flexibility of zoning regulations in order to encourage the construction of small residential neighborhoods spread throughout Rye which provide affordable housing designed and constructed to meet the unique needs of people 62 years of age and over, while ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health, safety and general welfare of the inhabitants of Rye. **[Amended 3-18-2017]**

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C. Special use permit required. Retirement community developments (RCDs) require a special use permit from the Planning Board. The Planning Board may approve a special use permit for an RCD which complies with the requirements of this section and the requirements of Chapter 202, Land Development Regulations, for major site developments. Applications for a special use permit shall be submitted to the

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Planning Board and reviewed in accordance with the Planning Board's procedural requirements for major site developments. The Planning Board may amend Chapter 202, Land Development Regulations, to include special requirements for the review and approval of RCDs.

D. Requirements for RCDs.

- (1) Location. An RCD may be located in any zoning district in Rye, except within the Rye Beach Precinct. An RCD shall not be located within 1/2 mile of another RCD, as measured ~~by the shortest distance between~~ boundaries of the RCD parcels, along existing street lines.
- (2) Parcel size. The minimum parcel size for an RCD shall be 10 acres, which may include wetlands.
- (3) Frontage. An RCD shall have a minimum continuous frontage on a Class V road or better of 150 feet. Each dwelling within an RCD shall face upon either an existing Class V road or better or on a private way constructed within the RCD. **[Amended 3-12-2019 by Art. 4]**
- (4) Number of dwelling units. An RCD shall have a minimum of eight dwelling units, but not more than 16 dwelling units. **[Amended 3-18-2017]**
- (5) Density. The density of an RCD shall not be greater than eight dwelling units per contiguous ~~acre of upland soils. In determining the potential density, the Planning Board may consider such other limitations on development that may exist on the property, including, but not limited to, wetland protection areas, easements and rights-of-way, steep slopes, ledge exposures and shallow, and soil types.~~ No single contiguous area of uplands on a parcel shall have a density greater than eight dwelling units per acre. The density is the maximum allowed, and it may be reduced by the Planning Board if the characteristics of the site, or the configuration of the site plan, or the relationship of the RCD to its environs so warrants. **[Amended 3-18-2017]**
- (6) Affordable Housing. At least 50% of the dwelling units in an RCD must be affordable. To be considered as an affordable housing unit, a dwelling shall meet the following requirements: **[Amended 3-18-2017]**
  - (a) Occupancy by a person who would meet the income and assets limitations established by the Town for the elderly property tax exemption program. In addition, if owned, the principal, interest, taxes and condominium association fees shall not be more than 40% of the income of the occupants.
  - (b) The Planning Board may enact such regulations as are necessary to administer the affordable housing bonus provision and the continuing compliance with it.

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(7) Types of dwellings. Dwelling types shall be of an architectural type and style deemed by the Planning Board to be compatible with the neighborhood and may include single-family detached dwellings, duplexes and multifamily dwellings. There shall be no more than four dwelling units in a single building. An RCD may have more than one type of dwelling. Site development review (i.e., site plan review) shall be required for all RCDs, including RCDs composed of single- and two-family dwellings.

(1) Homeowners' association. All RCDs shall have a homeowners' association.

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The condominium declaration and bylaws shall be approved by the Planning Board in accordance with Chapter 202, Land Development Regulations.

- (8) Bonus for excellence in design. The Planning Board may award a bonus of one or two dwelling units, total, beyond the 16 dwelling units allowed by § 190-4.1D(4), for excellence in design. In awarding the bonus the Planning Board may consider factors including but not limited to preservation of rural character, provisions for walking trails from the site to community facilities, innovative use of open space, and architecture. The Planning Board may enact amendments to Chapter 202, Land Development Regulations, relative to the process and criteria by which the bonus may be awarded.
- (9) Building spacing/setbacks.
- (a) Building spacing. All buildings in an RCD, including parking structures and accessory buildings, shall be separated by at least 25 feet.
- (b) Setbacks. No principal or accessory building or structure shall be located closer than 75 feet to the interior property line, building projects line, or street line. However, the Planning Board may reduce this requirement to 50 feet upon a determination that the scale and location of a building will not be incompatible with or detrimental to the use and enjoyment of the adjacent parcel.
- (10) Buffer. The perimeter of all RCDs shall be a landscaped buffer zone at least 25 feet in width, which may consist in whole or in part of existing natural tree growth.
- (11) Occupancy. The occupancy of an RCD shall be restricted solely to persons age 62 or older.
- (12) Bedroom/floor space. There shall be no more than two bedrooms per dwelling unit. The minimum square footage of living space per unit shall be 800 square feet and the maximum square footage of living space per unit shall be 1,500 square feet. **[Amended 3-18-2017]**
- (13) Parking. Each dwelling unit shall be provided with a one-car garage attached or in close proximity to the unit and one other parking space. Additionally, a plan for an RCD shall include adequate parking for visitors, as determined by the Planning Board. The Planning Board may waive the garage requirement for some or all of the dwelling units if necessary to meet the affordability requirements of § 190-4.1D(6). **[Amended 3-18-2017]**
- (14) Town-wide limitations. RCDs are exempt from the growth management limitations of Article IX. A special use permit shall not be approved for any RCD which would result in the total number of dwelling units in RCDs in the Town of Rye exceeding 62. **[Amended 3-18-2017]**

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(15) Bonus for cluster layout.

- (a) The Planning Board, at its discretion, may approve an RCD of up to 20 dwelling units if the proposal is for a cluster layout of streets and dwellings and if at least 50% of the parcel is preserved as common open space. Recreation and community facilities with impervious surfaces, any

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community buildings and all permanent structures will not be considered as part of the open space calculation for cluster layout. The area computation of the open space for the bonus for cluster layout shall not include road rights-of-way, public or private.

- (a) The open space shall be permanently protected using a conservation easement as open space or common land for the purposes of recreation, conservation, park, trails or public easement forestry or agriculture. The Planning Board at its discretion may require that the open space or some portion be publicly accessible via easements.
- (b) The open space of an RCD shall be visible from a Town or state road wherever possible. The clustered buildings should not be seen from a Town or state road or from a Town street. ~~Applicants should maximize existing open space adjacent to other open spaces on abutting parcels. It allows for connection of open space areas and to wildlife corridors.~~
- (c) The Planning Board may enact amendments to Chapter 202, Land Development Regulations, relative to the process and criteria by which the bonus may be awarded.

(16) Recreation and community facilities.

- (a) An RCD may include recreation and community facilities intended for the use and enjoyment of residents and their guests, such as tennis courts, swimming pools, picnic/cookout areas and facilities; outdoor sitting areas; gardens; gazebos; and community buildings. The total surface area of community buildings within an RCD, footprint and any stories above, shall not exceed ~~the aggregate of~~ 100 square feet per bedroom.
  - (b) Based on the scope of the facilities, additional considerations may need to be evaluated; for example, if the number of guests could be substantial, parking calculations and septic loading must be considered with the anticipated use.
- E. Determinations required for special use permit approval. Prior to approving a special use permit for an RCD, the Planning Board shall determine, by a vote on the record, that the RCD meets each of the following standards:
- (1) All requirements of § 190-4.1D have been met. (This may be a single vote on the record.)
  - (2) The granting of the special use permit will not be detrimental to adjacent property or the neighborhood.
  - (3) The granting of the special use permit will not be detrimental to the public safety, health or welfare.

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(1) The granting of the special use permit will not be contrary to the public interest.

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Unless otherwise prohibited by state or federal law, the applicant will make reasonable provisions to assure that residents of Rye will have an opportunity to reside in the RCD.¶

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- F. Conditions. In approving a special use permit, the Planning Board may attach such conditions to its approval as it deems necessary to further the objectives of this section, this chapter and the public health, safety and general welfare.
- G. Variances. Approval of an RCD is a privilege, not a right. The requirements of § 190-4.1D(1), (4), (5) and (15), which regulate the location, size, and density of RCDs, and of § 190-4.1D(15), which regulate the total number of RCD units in Town, are fundamental to the intent of this innovative zoning provision.
- H. Waivers. An applicant may apply for waivers to the requirements of § 190-4.1D(2), (3), (7), (10), (11), (12), (13) and (14) provided such waiver does not deviate from the requirement by more than 20% and provided that 2/3 of the Planning Board members present and voting determine that:
  - (1) A unique and identifiable specific circumstance of the land warrants granting of a waiver.
  - (2) The granting of the waiver will not be detrimental to adjacent property or the neighborhood.
  - (3) The granting of the special use permit will not be detrimental to the public safety, health or welfare.
  - (4) The granting of the special use permit will not be contrary to the public interest.
- I. Fees. The Planning Board shall charge an application fee for a special use permit for an RCD, in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I(g).
- J. Conflicts. Where the provisions of this section conflict directly with a requirement of this chapter or a requirement of Chapter 202, Land Development Regulations, the provisions of this section shall govern. Otherwise, all other requirements of this chapter and Chapter 202, Land Development Regulations, shall apply to an RCD.
- K. Appeal. Pursuant to RSA 676:5, III, appeals of any Planning Board decisions made pursuant to this section shall be taken to the Superior Court or the Housing Appeals Board, not to the Board of Adjustment.

**Deleted:** Any variance from the provisions thereof is hereby deemed to be inconsistent with the spirit and intent of this chapter and contrary to the public interest.

**§ 190-4.2. Multifamily dwellings and multifamily developments. [Added 3-9-2010]**

- A. Authority. This section is adopted as an innovative land use control pursuant to RSA 674:21.
- A. Special use permit required. Within the Multifamily Dwelling Overlay District multifamily dwellings and multifamily developments require a special use permit from the Planning Board. The Planning Board may approve a special use permit which complies with the

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requirements of this section and the requirements of

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Chapter 202, Land Development Regulations, for major site developments. Applications for a special use permit shall be submitted to the Planning Board and reviewed in accordance with the Planning Board's procedural requirements for major site developments. The Planning Board may amend Chapter 202, Land Development Regulations, to include special requirements for the review and approval of multifamily dwellings.

B. Requirements for multifamily dwellings and developments.

- (1) Location. Multifamily dwellings may be located in the Multifamily Dwelling Overlay District.
- (2) Parcel size. The minimum parcel size shall be two acres, which may include wetlands.
- (3) Frontage. A multifamily dwelling or a multifamily development shall have a minimum continuous frontage on a Town or state road or street of 150 feet. The Planning Board may allow the frontage requirement to be met on a private street provided the requirements of § 190-4.2C(6) are met and further provided that the Planning Board determines: **[Amended 3-8-2016; 3-12-2019 by Art. 4]**
  - (a) The private street is a street depicted on a subdivision plat approved by the Planning Board;
  - (b) Adequate provisions exist for maintenance and repair of the private street;
  - (c) Frontage on a private street will not result in an adverse impact on community facilities or community services;
  - (d) Frontage on a private street will not be contrary to the public health, safety or welfare; and
  - ~~(e) The provisions of RSA 674:31 are satisfied.~~
- (4) Number of dwelling units. A multifamily dwelling shall not have more than five dwelling units. A multifamily development shall not have more than 40 dwelling units. The subdivision of land shall not be used to circumvent the forty-unit limitation; ~~therefore adjacent lands owned by the same individual or by affiliated entities shall be considered the same lot for the purposes of this provision.~~
- (5) Density. The density of a multifamily development shall not be greater than six dwelling units per contiguous ~~acre of upland soil~~. ~~In determining the potential density, the Planning Board may consider such other limitations on development that may exist on the property, including, but not limited to, wetland protection areas, easements and rights-of-way, steep slopes, ledge (exposed and shallow), and soil type.~~ No single contiguous area of uplands on

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a parcel shall have a density greater than six dwelling units per acre. The density is the maximum allowed, and it may be reduced by the Planning Board if the characteristics of the site, or the configuration of the site plan, or the relationship of the development proposal to its environs so warrants.

(6) Workforce housing. **[Amended March 2011]**

- (a) At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multifamily development shall be workforce housing units ("WF units"). The WF units shall be allocated as nearly as possible to individual dwellings based on the same ratio as exists for the multifamily development **to ensure equal distribution of workforce units throughout the structures containing dwelling units**. Where the allocation does not

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work out evenly, the Planning Board shall have the authority to approve the allocation among dwellings, but the overall limitation of 51% on the development shall be controlling.

[1] Example: An applicant proposed a multifamily development of 24 dwelling units in four dwellings, six dwelling units per dwelling. The twenty-four-unit development must have at least five WF units (20% of 24 = 4.8) but not more than 13 (51% of 24 = 12.2). If the applicant proposes 10 WF units, the overall ratio of the development is 41.7% (10/24). This works out to be 2.5 WF units per dwelling ~~structure~~ for the four dwellings. The Planning Board would have the authority to approve an allocation of three WF units to each of two dwellings and two WF units to each of the other two dwellings.

[2] Another example: An applicant proposed a multifamily development of 40 dwelling units in five dwellings ~~structures~~, eight dwelling units per dwelling. The forty-unit development must have at least eight WF units (20% of 40 = 8) but not more than 21 (51% of 40 = 20.4). If the applicant proposes the maximum of 21 WF units, the overall ratio of the development is 52.5% (21/40). Each dwelling would be allocated four WF units, with the extra unit allocated to one of the five dwellings ~~structures~~.

- (a) At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multifamily dwelling on a single lot (i.e., a multifamily dwelling that is not part of a multifamily development) shall be workforce housing units.
- (b) The Planning Board shall impose conditions on the approval of multifamily dwellings and multifamily developments which shall assure that the approved number of workforce housing units remain permanently available for workforce housing. Such conditions may include requirements for restrictive covenants and/or liens. **[Amended 3-10-2020 by Art. 3]**
- (7) Density bonus. At its discretion, the Planning Board may approve a density not to exceed eight dwelling units per contiguous uplands acre, provided that at least 30% of the total dwelling units are workforce housing as defined by RSA 674:58. If the bonus is awarded, no single contiguous area of uplands on a parcel shall have a density greater than eight dwelling units per acre.
- (8) Building spacing. ~~All dwellings shall be separated by at least 25 feet.~~
- (9) Parking. Each dwelling unit shall be provided with a one-car garage attached or in close proximity to the unit and one other parking space. Site plans shall include adequate parking for visitors, as determined by the Planning Board.

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A. Determinations required for special use permit approval. Prior to approving a special use permit, the Planning Board shall determine, by a vote on the record, that the multifamily dwelling or multifamily development meets each of the following standards:

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- (10) All requirements of § 190-4.2C have been met. (This may be a single vote on the record.)
  - (11) The granting of the special use permit will not be detrimental to adjacent property or the neighborhood.
  - (12) The granting of the special use permit will not be detrimental to the public safety, health or welfare.
  - (13) The granting of the special use permit will not be contrary to the public interest.
- C. Growth management. The following provisions apply to multifamily dwellings which receive a special use permit pursuant to this section: **[Amended 3-8-2016]**
- (1) For multifamily dwellings and multifamily developments which may be affected by the limitations of Article IX, Growth Management, the Planning Board may require a phasing plan. Any such phasing plan shall assure proportional buildout of workforce housing units.
  - (2) Multifamily dwellings and multifamily developments shall be exempt from the equitable distribution requirements of § 190-9.1B(3).
  - (3) If the limitations of Article IX would allow building permits for at least 50% of the dwelling units in a multifamily dwelling or a multifamily development but not all of the units, building permits may be issued for all of the units (i.e., for the entire dwelling). However, the certificates of occupancy for the remaining units above the limitation shall not be issued until building permits ~~become available~~ become available under Article IX. In such circumstances, the subsequent Town-wide building permit limitations shall be reduced accordingly. **[Amended 3-10-2020 by Art. 3]**
  - (4) Waiver. The Planning Board may waive the requirements of § 190-4.2E(3) and/or § 190-9.1B(2), provided that after a duly noticed public hearing it determines on the record that each of the following criteria is met:
    - (a) Applicability of the requirement(s) will make financing of the multifamily dwelling or multifamily development infeasible;
    - (b) The waiver will not result in an adverse impact on community facilities or community services; and
    - (c) The waiver will not be contrary to the public health, safety or welfare.
- D. Conditions. In approving a special use permit, the Planning Board may attach such conditions to its approval as it deems necessary to further the objectives of this section, this chapter and the public health, safety and general welfare.
- A. Fees. The Planning Board shall charge an application fee for a special use permit for a multifamily dwelling or multifamily development, in addition to its fee for site plan

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approval and any fees for investigation and review allowed by RSA 676:4, I(g). Any special fees established by the Planning Board shall be reduced proportionally for applications which propose workforce housing (i.e., the fee for a

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proposal having 20% workforce housing shall be reduced 20%).

- E. Conflicts. Where the provisions of this section conflict directly with another requirement of this chapter or a requirement of Chapter 202, Land Development Regulations, the provisions of this section shall govern. Otherwise, all other requirements of this chapter and Chapter 202, Land Development Regulations, shall apply to multifamily dwellings and multifamily developments.
- F. Appeal. Pursuant to RSA 676:5, III, appeals of any Planning Board decisions made pursuant to this section shall be taken to the Superior Court or the Housing Appeals Board, not to the Board of Adjustment.

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**§ 190-4.3. Conservation land developments (CLDs). [Added 3-9-2010]**

- A. Authority. This section is adopted as an innovative land use control pursuant to RSA 674:21.
- B. Purposes. The purposes of this section are:
  - (1) To preserve Rye's rural character by allowing natural land features and/or open spaces to be conserved while providing greater flexibility for the residential development of larger parcels of land;
  - (2) To encourage environmentally sound land planning and create attractive living environments through creative placement of housing; and
  - (3) To encourage the building of well-planned housing developments which will blend units of workforce housing into neighborhoods available to all prospective residents of Rye.
- C. Special use permit required. Conservation land developments (CLDs) require a special use permit from the Planning Board. The Planning Board may approve a special use permit for a CLD which complies with the requirements of this section and the requirements of Chapter 202, Land Development Regulations. Applications for a special use permit shall be submitted to the Planning Board and reviewed in accordance with Chapter 202, Land Development Regulations. The Planning Board may amend Chapter 202, Land Development Regulations, to include special requirements for the review and approval of CLDs.
- D. Requirements for conservation land developments (CLDs).
  - (1) Location. CLDs may be located in the Single Residence and Commercial Districts.
  - (2) Parcel size. The minimum parcel size for a CLD shall be 20 acres of land located in Rye.
  - (3) Frontage. A CLD shall have a minimum continuous frontage on a Town or state road or street of 150 feet. Each dwelling within a CLD shall face upon

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either an existing Town or state road or street or on a private way constructed within the CLD. [Amended 3-12-2019 by Art. 4]

- (1) Number of dwelling units.

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- (a) A CLD shall have a minimum of 10 dwelling units, but not more than 35 dwelling units.
- (b) Yield plan. The number of dwelling units in a CLD shall be determined by a yield plan submitted by the applicant to the Planning Board for review and approval.
  - [1] The yield plan shall portray a buildout of the subject parcel which complies with existing zoning and subdivision regulations, ~~after giving due consideration to such other limitations on development including, but not limited to, steep slopes, shallow beds, deep impediments to development, rights-of-way, easement restrictions, restrictive covenants, etc.~~ The yield plan may include wetlands crossings which in the judgment of the Planning Board might reasonably be expected to be approved by NHDES and the Rye Board of Adjustment.
  - [2] The number of dwelling units in a CLD shall not exceed 130% of the number of dwelling units portrayed by the approved yield plan.
  - [3] A yield plan shall not be approved by the Planning Board without a hearing and notice to abutters pursuant to RSA 676:4.
  - [4] The Planning Board shall not accept jurisdiction over a special permit application for a CLD until the yield plan has been approved.
  - [5] The approval of a yield plan is part of the process for submitting and application for approval of a CLD. Approval of the yield plan may be appealed only after a final decision approving the CLD special permit application.
  - [6] The Planning Board may enact regulations governing the content of yield plans and the procedures for review and approval of yield plans.
- (4) Density. No single contiguous area of uplands on a parcel shall have a density greater than four dwelling units per acre. The density is the maximum allowed, and it may be reduced by the Planning Board if the characteristics of the site, or the configuration of the site plan, or the relationship of the CLD to its environs so warrants.
- (5) Workforce housing. At least 20% but not more than 40% of the dwelling units in a CLD shall be workforce housing. Workforce housing units may be rental units or ownership units. Workforce housing units shall be located throughout the CLD and not all grouped together, in an integrated pattern acceptable to the Planning Board. ~~Effort shall be made for the uniform distribution of workforce housing units throughout the CLD.~~ The architectural style of workforce housing dwellings shall be compatible with the architectural style of other

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dwellings in the CLD. The Planning Board shall impose conditions on the approval of a CLD which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58. Such conditions may include requirements for restrictive covenants and/or liens. **[Amended March 2011]**

- (1) Types of dwellings. Dwelling types shall be of an architectural type and style deemed by the Planning Board to be compatible with the neighborhood and may include single-family detached dwellings, duplexes and townhouse-style.

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multifamily dwellings. There shall be no more than five dwelling units in a single dwelling. A CLD may have more than one type of dwelling. Site development review (i.e., site plan review) shall be required for all CLDs, including CLDs composed of single- and two-family dwellings.

(6) Homeowners' association. All CLDs shall have a homeowners' association, unless the CLD is composed entirely of rental housing. The ~~restrictive covenants, homeowner's association bylaws,~~ condominium declaration and bylaws, ~~or similar documents~~ shall be approved by the Planning Board in accordance with Chapter 202, Land Development Regulations.

(7) Bonus for excellence in design. The Planning Board may award a bonus of ~~up to five~~ dwelling units, total, beyond the number of units allowed by § 190-4.3D(4), for excellence in design. In awarding the bonus the Planning Board may consider factors including but not limited to preservation of rural character, provisions for walking trails from the site to community facilities, ~~fitness center, pool, playground, etc.~~ innovative use of open space, architecture, and "green building"/energy- efficient measures. The Planning Board may enact amendments to Chapter 202, Land Development Regulations, relative to the process and criteria by which the bonus may be awarded.

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(8) Building spacing. All buildings in a CLD, including parking structures and accessory buildings, shall be separated by at least 25 feet.

(9) Buffer. The perimeter of all CLDs shall be a landscaped buffer zone at least 50 feet in width, which may consist in whole or in part of existing natural tree growth.

(10) Flexible planning provisions.

(a) Lot size; frontage. In a CLD the Planning Board may approve lot sizes and frontages less than the minimum requirements of this chapter, ~~provided the density and building spacing set forth in this § 190-4.3 are satisfied.~~ Zero lot line developments may be approved.

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(b) Setbacks. The Planning Board may approve building setbacks less than the minimum yard size requirements of this chapter provided the building spacing requirement of § 190-4.3D(10) is met and provided that no dwelling shall be closer than 10 feet to a street or parking area.

(11) Parking. Each dwelling unit shall be provided with a garage attached or in close proximity to the unit and one other parking space. A plan for a CLD shall include adequate parking for visitors, as determined by the Planning Board.

E. Open space requirements. At least 50% of the land area of a CLD shall be preserved in perpetuity by deed restriction or conservation easement as common open space accessible to the residents of the CLD ~~or the Town~~. The open space shall be

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integrally related to the development of the parcel. Driveways, access roads and parking shall not be located within the open space. Recreational and community facilities such as playgrounds, tennis courts, pathways, ball fields, trails, etc., may be located within the open space.

- (1) Wetlands. Not more than 25% of the area preserved as open space may be comprised of wetlands as defined by this chapter.

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- (1) Contiguous open space. At least 40% of the area preserved as common open space must be contiguous. All pieces of preserved common open space shall have a minimum contiguous area of three acres.
- (2) Buffer. The buffer required by § 190-4.3D(11) may be part of the preserved common open space ~~subject to (2) above.~~
- (3) Common leachfield. A common leachfield may be part of the common open space if adequately screened, as determined by the Planning Board, but it may not occupy the buffer required by § 190-4.3D(11).
- (4) Ownership of common open space. The common open space may be owned by a homeowners' association, the Rye Conservation Commission or some other conservation entity ~~qualified to administer the open space covenants and restrictions~~ and acceptable to the Rye Planning Board.
  - (a) The common open space shall be subject to deed restrictions ~~or conservation easement or other restrictive covenant~~ requiring its permanent preservation as open space. Such restrictions shall run with the land.
  - (b) The common open space shall ~~be a minimum~~ be accessible to all residents of the CLD.
  - (c) ~~The~~ fee deed or easement deed for the common open space shall be reviewed and approved by Town Counsel.
- (5) Reduction of 50% requirement. The requirement that the minimum preserved common open space be 50% of the CLD parcel size may be reduced to 40% by the Planning Board in the following circumstances:
  - (a) Ten contiguous acres or more of non-wetlands are preserved as common open space;
  - (b) ~~The~~ open space abuts other open space owned by the Town of Rye, Rye Conservation Commission (including conservation easements), the State of New Hampshire, the Rye School District, or the Rye Water District;
  - (c) ~~The~~ Rye Conservation Commission recommends the reduction;
  - (d) Seventy-five percent of the non-wetland areas being preserved are soils where the depth to ledge is greater than two feet but less than four feet;
  - (e) ~~Accessible to all residents of the Town of Rye.~~
  - (f) The open space contributes to the establishment of connected corridor(s) of open space, accessible to the public, throughout the Town; or
  - (g) The open space is arranged so that the dwellings of the CLD are not visible

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from an existing Town or state road or street.

- A. Determinations required for special use permit approval. Prior to approving a special use permit for a CLD, the Planning Board shall determine, by a vote on the record, that the CLD meets each of the following standards:

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- (6) All requirements of § 190-4.3D have been met. (This may be a single vote on the record.)
  - (7) The granting of the special use permit will not be detrimental to the public safety, health or welfare.
  - (8) There will be no greater diminution of surrounding property values than would be created under any other use or development ~~permitted as a matter of right~~ in the underlying zone.
  - (9) The character of the area will not be adversely affected. In evaluating this requirement the Planning Board shall consider the following factors:
    - (a) Compatibility of architecture.
    - (b) The capacity of nearby intersections and transportation corridors.
    - (c) The protection of environmentally sensitive areas.
    - (d) The maintenance of viewsheds.
    - (e) The protection of cultural resources.
  - (10) The granting of the permit will not result in undue municipal expense.
- F. Growth management. The following provisions apply to CLD:
- (1) For CLDs which may be affected by the limitations of Article IX, Growth Management, the Planning Board may require a phasing plan. Any such phasing plan shall assure proportional buildout of workforce housing units.
  - (2) CLDs shall be exempt from the equitable distribution requirements of § 190-9.1B(3).
  - (3) If the limitations of Article IX would allow building permits for at least 50% of the dwelling units in a multifamily dwelling but not all of the units, building permits may be issued for all of the units (i.e., for the entire dwelling). However, the certificates of occupancy for the remaining units above the limitation shall not be issued until building permits would otherwise become available under Article IX. In such circumstances, the subsequent Town-wide building permit limitations shall be reduced accordingly. **[Amended 3-10-2020 by Art. 3]**
- G. Conditions. In approving a special use permit, the Planning Board may attach such conditions to its approval as it deems necessary to further the objectives of this section, this chapter and the public health, safety and general welfare.
- H. Fees. The Planning Board shall charge an application fee for a special use permit for a CLD, in addition to its fee for site plan or subdivision approval and any fees for investigation and review allowed by RSA 676:4, I(g).

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A. Conflicts. Where the provisions of this section conflict directly with a requirement of this chapter or a requirement of Chapter 202, Land Development Regulations, the provisions of this section shall govern. Otherwise, all other requirements of this chapter and Chapter 202, Land Development Regulations, shall apply to a CLD.

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§ 190-4.3

RYE CODE

§ 190-4.3

- A. Appeal. Pursuant to RSA 676:5, III, appeals of any Planning Board decisions made pursuant to this section shall be taken to the Superior Court or the Housing Appeals Board, not to the Board of Adjustment.

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ARTICLE V  
Special Regulations

§ 190-5.0. Off-street parking and loading. [Amended 1992, 7-13-21 Art. 3]

- A. Size of parking spaces. All parking spaces required herein shall have a minimum size of 9 feet in width by 18 feet in length.
- B. Minimum number of parking spaces. The number of parking spaces required by the Table of Minimum Off-Street Parking Requirements shall be provided for: any new building, structure or land use; any existing dwelling enlarged by more than 25%; any existing dwelling or other building in which new dwelling units are built; any conversion of seasonal dwelling units to year-round occupancy; condominium conversions; and any expansion or change of use of a nonresidential or multifamily building, structure, site, or use.
  - (1) All required parking shall be provided on the same lot or on abutting lots under common ownership. Parking spaces shall have adequate and safe driveways and means of circulation and shall have access/egress to the street on which the lot has frontage without crossing other lots.
  - (2) Parking requirements for uses not listed in the Table of Minimum Off-Street Parking Requirements shall be based upon the requirements for the most similar listed use in the table.
  - (3) For mixed uses the parking requirement shall be determined by the sum of the requirements for component uses. Examples: shopping centers, office parks with general and medical offices, auto sales and service establishments, etc.
  - (4) The Planning Board may require additional parking during site plan review if it determines that application of the Table of Minimum Off-Street Parking Requirements will not provide adequate off-street parking. However, the Planning Board shall not allow fewer parking spaces than required by the table.

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Table of Minimum Off-Street Parking Requirements	
Type of Use	Minimum Number of Required Parking Spaces
<b>Residential</b>	
Single-family dwelling	2
Other dwellings	2 per dwelling unit
Dwelling units in mixed-use structure	1.5 per dwelling unit
Accessory Dwelling Unit	1 per Accessory Dwelling Unit

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Elderly housing	0.5 per dwelling unit
Group residence	0.33 per resident
Mobile home	2 <u>per unit</u>
Home occupation	1 per 100 square feet business use but no fewer than 1, plus 1 per every employee

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Table of Minimum Off-Street Parking Requirements	
Type of Use	Minimum Number of Required Parking Spaces
<b>Institutional</b>	
Hospital, nursing home, sanitarium	1 per 2 beds
Church, places of public assembly, theater, auditorium	1 per every 5 seats or 1 per each 100 square feet (if no seats)
Libraries, museums, community centers	1 per every 400 square feet gross floor area
Membership club	1 per every 200 square feet gross floor area
<b>Schools</b>	
Elementary, junior high	4 per classroom
Senior high	2 per classroom plus 1 per 5 students
Day care, pre-school	1 per employee plus 1 per 6 children in maximum session
<b>Commercial</b>	
Motel, hotel	1 per rental unit plus 1 per employee on maximum shift plus restaurant component (if applicable)
Lodging house, tourist home, bed-and-breakfast, tourist camp	2 plus 1 per rental unit
Restaurant (excluding fast-food establishments)	1 per 3 seats plus 1 per employee on maximum shift plus 1 per 2 bar stools
Restaurant (fast-food), including pizza restaurants, <del>and</del> <del>various food trucks</del>	1 per 2 seats plus 1 per each employee on maximum shift; or 1 per 50 square feet of gross floor area, whichever is greater
Office (medical or dental)	1 per 100 square feet gross floor area or 5 per doctor, whichever is greater
Office (all other) and Personal Service	1 per 250 square feet or 1.5 per employee or staff member, whichever is greater

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<sup>2</sup> For the purposes of determining the number of seats, a picnic table shall constitute 4 seats.

<sup>3</sup> Personal Services, as used in this section shall include, but shall not be limited to, Hair Salons, Barbershops, Massages, Spas, etc.

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Retail	1 per 200 square feet of gross sales area plus 1 per 600 square feet of storage area plus restaurant component if applicable
Furniture store, appliance store, carpet sales	1 per 600 square feet gross floor area

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Table of Minimum Off-Street Parking Requirements	
Type of Use	Minimum Number of Required Parking Spaces
Bank	1 per 300 square feet gross floor area
Automobile sales	1 per 300 square feet gross floor area
Automobile service	4 per service bay
Bowling alley	4 per lane
Health club, fitness center, racquet club	1 per 3 persons' capacity or 1 per 400 square feet gross floor area, whichever is greater, plus restaurant <b>or service</b> component, if applicable
Outdoor display area or outdoor storage	1 per 1,000 square feet gross area
Funeral home	1 per 100 square feet of assembly areas and viewing rooms but no fewer than 10
Warehouse, truck terminal	1 per employee on maximum shift or 1 per 1,000 square feet gross floor area, whichever is greater
Manufacturing	1 per employee on maximum shift or 1 per 600 square feet of gross floor area, whichever is greater
<b>Recreation</b>	
Bowling alley	4 per lane
Golf driving range	1 per tee plus 1 per employee
Miniature golf	1.5 per hole
Golf course	4 per hole and 50% of accessory use component if applicable
Swimming pools	1 per 75 square feet water area
Skating rink	1 per 300 square feet rink area
Marina	1.5 per berth (slip); at least 10% of spaces large enough to accommodate cars and trailers
Racquet courts	4 per court
Community center, recreation center, amusement center	1 per 250 square feet gross floor area or 1 per 4 patrons at maximum capacity (whichever is greater)

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Table of Minimum Off-Street Parking Requirements	
Type of Use	Minimum Number of Required Parking Spaces
Other outdoor, recreational, or amusement facilities	1 per 4 patrons at capacity

- C. Location of parking spaces. No off-street parking shall be located within the required front yard area nor within 10 feet of any lot line in any district.
- D. Off-street loading. In addition to the required off-street parking spaces, uses shall be provided with adequate off-street loading spaces.

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**§ 190-5.1. Signs and outdoor advertising.**

- A. Permitted size of signs. There shall be permitted in the following zones no sign larger than:
  - (1) In any Residence District, no signs larger than four square feet.
  - (2) In any Business District, no signs larger than 16 square feet.
  - (3) In any Commercial District, no signs larger than 25 square feet.
  - (4) In any Public Recreation District, no signs at all other than municipal or state signs no larger than 16 square feet.

- B. Special exception to size limitations. The Board of Adjustment may allow in any zone, as a special exception, a non illuminated temporary sign of a size not to exceed 32 square feet in area for a period not to exceed one year. In Commercial Districts, the Board may allow as a special exception a sign of a size not to exceed 64 square feet in area.

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- C. Number of signs per lot. No more than one sign shall be permitted upon any lot or tract of land in single ownership, except as a special exception; provided, nevertheless, that in Commercial or Industrial Districts up to three signs upon such a lot or tract of land in single ownership may be permitted, and any larger number only as a special exception.

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Deleted: promoting a business or activity carried on upon the same lot or tract of land

- D. Illumination criteria. Moving, fluttering, blinking or flashing lights or signs are prohibited. Lighting shall not glare on abutting properties or on public streets. No sign shall be illuminated by other than light-emitting diode (LED), incandescent or fluorescent light. No illuminated sign shall outline any part of a building such as a gable, roof, sidewalk or corner. Wherever sign area is referred to in this chapter, it shall mean the area of one side of a not more than two-sided sign, or 1/2 of the total area of a sign of not more than two sides. Temporary (nonpermanent) holiday lighting is excluded from the above restrictions. **[Amended 3-10-2015]**

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A. Construction requirements. Every sign shall be constructed of a durable material and shall be maintained in good condition and repair at all times.

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E. Off-premises signs. [Added 1993]

(1) In all zoning districts, only the following off-premises signs shall be permitted:

(a) ~~Such signs as may be allowed by the Select Board within the the Town's right-of-way or such signs as may be permitted by the State within any State-owned rights-of-way. See RSA 236:84; RSA 664:14; RSA 664:17-a.~~

(2) All other off-premises signs, including billboards, are prohibited.

F. Historic District. See § 190-3.3E(6) for additional signage requirements applicable to the Historic District. [Amended 1997; 2008]

G. Temporary signs. [Added 2012]

(1) Temporary signs are permitted in the Business and Commercial Districts for not longer than 60 days, subject to the following limitations:

- (a) No more than two temporary signs per lot.
- (b) The Building Inspector shall approve the location of a temporary sign.
- (c) Off-premises temporary signs are prohibited.
- (d) Total signage on the lot, including temporary signs, shall comply with the size limitations of § 190-5.1A.

(1) Temporary signs are all signs not permanently affixed to the ground, to a structure or to another sign.

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Temporary directional signs for real estate sales, provided that such signs shall not exceed four square feet in area, that such signs shall remain in place no longer than 60 days, and that no more than two such signs shall be permitted per advertised property. Political signs that are in full compliance with

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**§ 190-5.2. Earth Movements and Excavations.**

A. Earth excavation shall not be a permitted use in any zone in the Town, except as expressly permitted herein.

B. The following types of earth excavations are permitted:

(1) Excavation that is exclusively incidental to the construction or alteration of a building or structure or the construction or alteration of a parking lot or way including a driveway on a portion of the premises where the removal occurs; provided, however, that no such excavation shall be commenced without a permit under this chapter unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued.

(2) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment.

C. If earth excavation is anticipated as part of the construction or alteration of a building, structure, parking lot, or way pursuant to § 190-5.2 (C)(1), the Building Inspector, (or the Public Works Director with regard to Driveway Permit), reserves the right to require the applicant to:

(1) submit forms and plans in accordance with § 35-5 of the Rye Building Code;

(2) submit a bond with the application in an amount to be determined by the Selectmen as adequate for assuring the removal of any temporary building related to the earth excavation or use.

D. Any such determination by the Building Inspector, may be appealed to the Board of Adjustment in accordance with §190-7.2.

E. All earth excavations permitted under this § 190-5.2 shall, in addition to all other applicable provisions of this Chapter, § 35, or § 202, or any other applicable provision of the Town Code, be subject to the Minimum and Express Operational Standards set forth in RSA 155-E:4-a, all Minimum and Express Reclamation Standards set forth in RSA 155-E:5.

F. Turf farms. No land shall be stripped of its turf or topsoil or made into a water trap of any sort except pursuant to a special exception and with such bond from the applicant as the Selectmen shall deem sufficient to assure that the applicant refills, replants or adequately regrades or landscapes such land to conform with the lands surrounding the same.

**§ 190-5.3. Condominium conversions of existing dwelling units. [Amended 1982; 3-14-2006; 2007]**

A. Permitted by special exception. In any district, conversion of existing dwelling units

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to condominium ownership shall be permitted as a special exception granted by the Board of Adjustment, only if all the provisions herein are met. Such conversion may further be subject to the approval of the Planning Board in accordance with Chapter 202, Land Development Regulations

B. Plan requirements. A complete set of site plans and floor plans, as well as a complete set of all condominium documents, must be filed with the Board of Adjustment upon application for the special exception.

(1) The plans shall show the location of all utilities on the site and shall indicate the location of all water connections and locations where the shutoff valve will be located for each particular unit in the case of a condominium project containing more than one unit. The plans shall indicate whether or not additional meters other than those existing or additional lines from the street will be required as a result of the condominium conversion.

(2) In the case of seasonal properties, the condominium declaration and other documents which are recorded in the Registry of Deeds shall indicate on their face that the property may only be used for seasonal purposes and the months when the property may be used shall be indicated in the documents.

C. Criteria for special exceptions.

(1) The dwelling units which are subject to the request for condominium

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conversion must, at the time of the request for condominium conversion, exist as legal dwelling units pursuant to the ordinances of the Town of Rye. The burden shall be on the petitioner to demonstrate that the units sought to be converted have legal status.

- (1) Each dwelling unit of the condominium shall contain a minimum of 600 square feet of ~~gross living area.~~
- (2) The off-street parking requirements of the Town of Rye existing as of the date of the request for condominium conversion must be met.
- (3) The proposed conversion of the existing dwelling unit to condominium ownership shall not adversely affect the values of surrounding properties.
- (4) The proposed conversion to condominium ownership must not be injurious or detrimental to the neighborhood or Town.
- (5) The septic system and/or private sewer system standards of the New Hampshire Department of Environmental Services and the Town of Rye existing as of the date of the request for condominium conversion must be met or exceeded by all systems used by the dwelling units associated with the condominium conversion, and a certificate to that effect must be filed with the Board of Adjustment, based on review of Town records by the Building Inspector or an on-site inspection of systems and soil conditions by a professional engineer. **[Amended 3-11-2014]**
- (6) For condominium conversions involving detached dwellings, if the amount of land designated as common area is less than 90% of the area of the parcel not designated for buildings, ~~driveways, parking areas,~~ and individual unit owners' vehicles, each limited common area assigned to a detached dwelling shall meet the minimum lot area and frontage requirements of this chapter.

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D. Tourist accommodation units. It is hereby determined that tourist accommodation and transient units such as tourist cabins, hotel and motel units and lodging houses (i.e., "tourist units") are different land uses than dwelling units and have different impacts on the land ~~and neighborhood~~ than dwelling units, whether such dwelling units are seasonal or year round.

- (1) Tourist units are sporadically occupied during all but the peak 10 weeks of the summer season. Even during that ten-week period, occupancy typically depends on favorable weather. Due to the lower occupancy levels, tourist units have less impact than dwelling units on:
  - (a) Water consumption and overall septic loading of the land.
  - (b) Automobile usage, ~~and the~~ traffic congestion, air pollution and consumption of fuel ~~resulting therefrom.~~

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(c) Solid waste generation, and the impacts on waste disposal facilities and services.

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- (2) Tourist units require fewer parking spaces than dwelling units. Therefore, the impact on the land from erosion and pollution due to surface water runoff is less.
- (3) Tourist units have less impact than dwelling units on municipal facilities such as the library, ~~schools~~, recreation facilities and permitted beach parking areas.
- (4) Tourist accommodation enterprises have always had a greater allowed density under this chapter than dwelling units. This chapter has always recognized that more land is required to support a dwelling unit than a tourist unit.
- (5) In this chapter, tourist units have always been identified as specific business uses permitted only in the Business and Commercial Districts. Tourist units are not permitted in the Single and General Residence Districts.
- (6) Tourist units have always been specially permitted business uses under § 190-5.4 of this chapter.
- (7) Tourist units are regulated as "Trade and Commerce" under Title XXXI, RSA 353, Hotels, Tourist Cabins, Etc.

Therefore, requests to convert tourist accommodations to permanent occupancy shall not be permitted under this § 190-5.3.

- E. Accessory apartments. An accessory apartment approved as a ~~conditional use permit~~ pursuant to § 190-5.6 of this chapter is required by § 190-5.6 to be a subordinate rental unit. Thus, an approved accessory apartment may not be converted to an ownership unit under the provisions of this section.
- F. "Grandfathered" in-law apartments.
  - (1) In 1998 the enactment of § 190-5.6, providing for accessory apartments, revoked and replaced Section 202.7 of the Zoning Ordinance, which had ~~previously~~ allowed a property owner to make interior changes to existing buildings or to construct additions for residential use by members of the owner's family (i.e., so-called "mother-in-law apartments").

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**§ 190-5.3.1. Condominium conversion of existing commercial spaces. [Added 2007]**

- A. Permitted by conditional use permit. In any district, conversion of existing commercial spaces within commercial buildings shall be permitted as a conditional use permit granted by the Planning Board, only if all of the provisions herein are met.
- A. Plan requirements. A complete set of the site plans required by Chapter 202, Land Development Regulations, and a complete set of all condominium documents and floor plans shall be filed with the Planning Board. The plans and documents shall meet the

**Deleted:** <#>The conversion to condominium ownership of any lawfully existing apartment created prior to March 10, 1998, under Section 202.7 shall include lawfully binding restrictions in the deed and in the condominium documents which permanently restrict ownership, occupancy and use of the apartment to members of the family of the owner of the principal dwelling unit located on the property.¶

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requirements of § 190-5.3B of this chapter.

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B. Public hearing. The Planning Board shall hold a public hearing on all applications for conditional use permits with notice as required by Chapter 202, Land Development Regulations. The hearing may be combined with any hearing required for site plan and/or subdivision approval.

C. Criteria for conditional use permit. All applications for a conditional use permit shall comply with the following requirements. The applicant for a conditional use permit has the burden of establishing that each of the criteria are met. Prior to approving an application for a conditional use permit, the Planning Board shall make findings on the record that each of the criteria below is met:

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- (1) The building which is the subject of the request for condominium conversion must, as of the date of the application for condominium conversion, exist as a legal commercial building pursuant to the ordinances of the Town of Rye.
- (2) Each unit of the condominium shall contain a minimum of 600 square feet of floor area. Adjacent existing commercial spaces within a building may be combined and renovated to meet this requirement.
- (3) The off-street parking requirements of this chapter as of the date of the application for condominium conversion must be met.
- (4) The proposed conversion to condominium ownership shall not adversely affect the values of surrounding properties.
- (5) The proposed conversion to condominium ownership shall not be injurious or detrimental to the neighborhood or Town.
- (6) The septic system and/or private sewer system standards of the Town and of the New Hampshire Department of Environmental Services existing as of the date of the application for condominium conversions shall be met or exceeded by all units and buildings associated with the condominium conversion. A certificate to that effect must be filed with the Planning Board based on a review of Town and state records by the Building Inspector or an on-site inspection of systems and soil conditions by a professional engineer.
- (7) For condominium conversions involving detached buildings, if the amount of land designated as common area is less than 90% of the area of the parcel not designated for buildings, minimum parking area, and individual unit owners' vehicles, each limited common area assigned to a detached building shall meet the minimum lot area and frontage requirements of this chapter.
- (8) The proposed conversion to condominium ownership shall not be injurious or detrimental to the health, safety or general welfare of the owners or occupants of the units, buildings or sites which are part of the proposal.

(9) Appeal. This is an innovative zoning provision adopted pursuant to RSA

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190-5.4.21 Appeals of decisions on applications for a conditional use permit may be filed with the Rockingham County Superior Court or the Housing Appeals Board within 30 days of the date of decision.

**§ 190-5.4. Tourist camps, motels, hotels and lodging houses.**

- A. General. No unit, motel or cabin shall be permitted on any site within a Single Residence District or General Residence District and no site for use by tents or recreational trailers shall be permitted in any district except as provided in § 190-4.0H.

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- B. Lot area for tourist camps. No tourist camp shall be established on any premises of less than 44,000 square feet and there shall be no more than 10 units per 44,000 square feet of land.
- C. Land area per unit for tourist camps. No tourist camp unit shall contain less than 2,200 square feet of land. No tourist camp unit shall be permitted to accommodate more than one overnight cabin or housekeeping cabin.
- D. Permits. It shall be unlawful for any person to establish, or maintain, or to permit to be established or maintained upon any property owned or controlled by him, a tourist camp, motel, hotel or lodging house in the Town of Rye, New Hampshire, unless there exists a valid permit therefor granted by the Selectmen and existing in compliance with the provisions of this chapter. The application for such a permit shall be accompanied by plans of the proposed or existing tourist camp, motel, hotel or lodging house, showing the location of all buildings, driveways, toilet facilities, baths, laundry facilities, slop sinks, and other improvements and such permit may be granted to anyone meeting the requirements as outlined. A minimum annual permit fee of \$10 per unit of each tourist camp, motel, hotel or lodging house shall be paid before such permit shall be issued. Such permit is in addition to, and shall in no event be deemed a substitute for, the requirements for a building permit ~~and fire plan review~~, and construction of any such tourist camp, motel, hotel or lodging house must in all such aspects comply with the provisions of this chapter applicable.
- E. Plumbing and sanitary requirements. All tourist camp, hotel or motel units shall be provided with a minimum of one lavatory, one toilet, and one bathtub or shower for each such unit. In addition, there shall be provided a minimum of 500 gallons in septic tank capacity, with a suitable septic drainage field, for each such unit. There shall also be provided suitable laundry facilities suitably screened from public view for each 10 units, or any fraction thereof. All plumbing and sanitary facilities must conform to both Town ordinances and state laws. **[Amended 3-10-2020 by Art. 3]**
- F. Garbage. The management shall provide not less than one tightly covered can of not less than 20 gallons' capacity for each and every tourist camp and motel unit. ~~In the alternative, hotels and motels may provide a trash receptacle smaller than 20 gallons' capacity provided the hotel and/or motel offers and provides for the daily pick-up and disposal of garbage from individual units as part of regular "turn down" service.~~ Garbage and refuse so collected shall be deposited not less than twice weekly by the management in such garbage disposal area as the Town shall designate for this purpose.
- G. Lighting. Every tourist camp, motel, hotel or lodging house shall have adequate exterior and interior lighting to assure safe access to and from, and use of, the premises by clientele as well as by Town police and firemen, as the circumstances may require, all of which lighting is to be provided by and at the expense of the owner or management, or both.

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- H. Accommodations. No accommodation at any tourist camp, motel, hotel or lodging house shall be occupied by more persons than are permitted by sound public health practices. Occupancy limits shall be established by the Planning Board in consultation with the Fire Chief. In no event shall any such temporary dwelling unit provide less than 60 square feet per adult person and 50 square feet per child.
- A. Limitation of residence. No unit shall be occupied in any month other than from May 15 through October 15, excepting the owner or proprietor thereof and bona fide employees, unless approved for year-round occupancy by the Building Inspector, who shall ascertain that:

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- (1) There is sufficient parking under winter conditions;
- (2) There is sufficient leach field capacity;
- (3) There is an adequate and safe heating system; and
- (4) No occupant other than owner, his immediate family, or bona fide employees shall occupy a unit more than five months in any one year and no more than ninety consecutive days.

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- I. Record of guests. The manager of every tourist camp, motel, hotel or lodging house shall require all persons using the same to register his or her name, home address, and car license number. **[Amended 3-8-2016]**
- J. Enforcement. The Selectmen of the Town of Rye, New Hampshire, shall have the power to promulgate any additional rules and regulations they deem necessary for the enforcement of the provisions of this section.

**§ 190-5.5. Wireless telecommunications facilities. [Added March 1999; amended 2003; 2004; 2009; March 2011; 3-11-2014; 3-12-2019 by Art. 3; 3-10-2020 by Art. 3]**

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

ANTENNA — Apparatus designed to emit and/or receive radio frequency energy.  
 BASE STATION — A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower.

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- (1) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as
- (2) well as unlicensed and unregulated wireless services and fixed wireless services such as microwave backhaul.
- (3) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, equipment cabinets, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including
- (4) distributed antenna systems and small-cell

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networks).

The term includes any structure other than a tower that, at the time the application is filed, already supports or houses equipment described above that has been reviewed and approved under the applicable zoning process, even if the structure was not built for the sole or primary purpose of providing such support. (Note: This part of a base station is referred to as a base station structure in this section.)

The term does not include any structure that, at the time the application is filed, does not support or house equipment described in Subsections (1) and (2) of this definition. (FCC 14-153, 47 CFR 1.40001)

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COLLOCATION —

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- (1) The placement or installation of new PWSFs on existing towers, structures, or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. "Collocation" does not include a substantial modification. (RSA 12-K:2, X)
- (2)

In the context of an eligible facilities request (for modification), the following FCC 14-153 definition shall supersede the above:  
 Collocation: The mounting or installation of transmission equipment on an eligible facility for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. (FCC 14-153, 47 CFR 1.40001)

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COLLOCATION APPLICATION — A request submitted by an applicant to the Building Inspector for collocation on a tower or mount. (RSA 12-K:2, XI)

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DISTRIBUTED ANTENNA SYSTEMS (DAS) — Also called "small-cell networks," wireless base station systems that typically mount low-profile antennas and related equipment on utility poles, lampposts and other surfaces relatively close to the ground to provide coverage to relatively small areas. The FCC collectively calls these "small wireless facilities."

ELIGIBLE FACILITIES REQUEST — Any request for modification of an existing tower or base station that is not a substantial modification to such tower or base station and involves:

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- (1) Collocation of
- (2) new
- (3) transmission equipment;
- Removal of transmission equipment; or

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Replacement of transmission equipment. (FCC 14-153, 47 CFR 1.40001)

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**ELIGIBLE FACILITY** — Any tower or base station, provided that it is existing at the time the application is filed. (FCC 14-153, 47 CFR 1.40001)

**EQUIPMENT COMPOUND** — An area surrounding or near the base of a tower or mount supporting a WTCF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the WTCF.

**EXISTING (WITH RESPECT TO TOWERS AND MOUNTS)** — A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition. (FCC 14-153, 47 CFR 1.40001)

**FAA** — The Federal Aviation Administration.

**FCC** — The Federal Communications Commission.

**HEIGHT** — The height above ground level from the natural grade of a site to the highest point of a **tower**. (RSA 12-K:2, XVII)

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**HEIGHT, OVERALL** — The height above ground level from the natural grade,

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of a site to the highest point above a structure, including any attachments or appurtenances thereon.

**MODIFICATION** — The replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification. (RSA 12-K:2, XVIII)

**MODIFICATION APPLICATION** — A request submitted by an applicant to an authority for modification of a PWSF. (RSA 12-K:2, XIX) (Certain limitations apply, see definitions of "collocation" and "substantial modification," which preclude substantial modifications from collocation and from modification.)

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**MOUNT** — The structure or surface upon which antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding utility poles. (RSA 12-K:2, XX)

**PERSONAL WIRELESS SERVICE FACILITY (PWSF)** — Any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services. (RSA 12-K:2, XXII)

**SITE SHARING** — The use of a tower or base station structure by more than one PWSF.

**SUBSTANTIAL MODIFICATION** —

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- (1) A substantial change as defined by the FCC: Modification to an eligible facility that substantially changes the physical dimensions of an eligible facility, if it meets any of the following criteria:

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(a)

(b)

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For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible facilities, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater. Changes in height should be measured from the original tower height in cases where deployments are or will be separated horizontally, such as on building rooftops;

in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;<sup>4</sup>

For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the

1. Editor's Note: See 47 CFR 1.40001.

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tower structure at the level of the appurtenance, whichever is greater; for other eligible facilities, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(c)

For any eligible facility, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(d)

(e)

(f)

It entails any excavation or deployment outside the current site;

It would defeat the concealment elements of the eligible facility; or

It does not comply with conditions associated with the siting approval of the construction or modification of the eligible facility or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above. (FCC 14-153, 47 CFR 1.40001).

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(2) To the extent a proposed collocation/modification is controlled by the New Hampshire definition, the New Hampshire definition under RSA 12-K shall apply as follows: "Substantial modification" means the mounting of a proposed PWSF on a tower or mount which, as a result of

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single or successive modification applications;

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- (a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10% or the height of
- (b) one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

- (c) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than
- (d) the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or

Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or

Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

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TRANSMISSION EQUIPMENT — Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services, including, but not limited to, private, broadcast, and

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public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. (FCC 14-153, 47 CFR 1.40001)

**TOWER** — Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. (FCC 14-153, 47 CFR 1.40001)

**UTILITY POLE** — A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

**WIRELESS TELECOMMUNICATIONS FACILITY (WTFCF)** — Any installation that includes an antenna and related equipment for the transmission or reception of radio frequency communications, including but not limited to PWSFs. See "tower."

B. Purpose. These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

- (1) Preserve the authority of the Town of Rye to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to furnish such services to the community quickly, effectively, and efficiently.
- (2) Balance the Town's responsibility to provide reasonable opportunities for wireless telecommunications facilities with the other objectives of this chapter and with the goals and objectives of the Rye Master Plan.
- (3) Reduce adverse impacts such facilities may create, including, but not limited to, impacts on aesthetics, quality of experience, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
- (4) Encourage minimal impact siting options, including, when applicable, collocation and site sharing, through an assessment of technology, electronic compatibility, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- (5) Permit the construction of new towers only when 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

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of the towers and antennas.

- (1) Require cooperation and site sharing, to the highest extent possible, especially with respect to the use of towers, between competitors in order to reduce cumulative negative impacts upon Rye.

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- (6) Provide for the compatible use and safe operation of such facilities.
- (7) Provide for the removal of abandoned or inactive facilities to eliminate unnecessary visual blight and remove potential unsecured safety hazards.

C. Wireless Telecommunications Facilities District and map. The Wireless Telecommunications Facilities District (WTFCF District) shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows:

<u>Map-Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled By</u>
007-093-000	0 Grove Road		Town of Rye
<del>007-093-00A</del>	<del>96 Grove Road</del>		
007-096-000-PR4	Off Grove Road	Town	Town of Rye
<del>007-096-000-PR3</del>			
007-108-000	Garland	Water wells and District	Rye Water
007-109-000		running (see Note	
007-112-000			
<del>010-004-001</del>	Lafayette Road/ Breakfast Hill  271	Water	Independent Wireless One
012-052-000	Lafayette Road	See Note	Rye Congregational Church
018-034-000	580 Washington Road	School Soccer	
023-001-000	555	Vacant	Town of Rye

Note 1. Towers and other telecommunication facilities are prohibited within the four-hundred-foot sanitary radius exclusion zone of the Rye Water District water wells.

Note 2. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including Bethany Church, provided that such facilities do not exceed 20 feet height above the existing structure.

A. Permitted uses. In addition to uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a special use permit as provided for in § 190-5.5H. All such uses must comply with other applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

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**Deleted:** Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with § 190-3.3.

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D. Clarifications.

- (1) Principal or secondary use. WTCFs may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of WTCFs as a secondary use, provided all other provisions of this section are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a WTCF base station or tower on such lot. For purposes of determining whether the installation of a WTCF complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WTCF may be located on leased parcels within such lots. WTCFs that are constructed and operated in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.
- (2) Height requirements. These requirements and limitations shall preempt all other height limitations as required by the Town of Rye Zoning Ordinance and shall apply only to WTCFs. A requested tower height must be substantiated by the applicant and must be approved by the Planning Board. No tower approved after the adoption of this section shall exceed 150 feet overall height.
- (3) Amateur radio and receive-only antennas. ~~Amateur radio and receive-only antennas are permitted in all zones, subject to this paragraph.~~ This section 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 over-the-air reception devices as regulated by the FCC. This application adopts the provisions and limitations as referenced in RSA 674:16, IV, pertaining to FCC requirements that local regulation of amateur antenna structures "must constitute the minimum practicable regulation to accomplish the local authority's legitimate purpose." (47 CFR 97.15). Amateur antenna structures greater than 70 feet are subject to site plan review.
- (4) Essential services and public utilities. ~~WTCFs~~ shall not be considered infrastructure, essential services, public utilities, or public utilities buildings, as defined or used elsewhere in the Town's ordinances and regulations. Siting for WTCFs is a use of land, and is addressed by this section.

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E. Design performance requirements. The Planning Board may take into account the facts of each application to adjust or waive the requirements of this section by making specific written findings in support of such adjustments or waivers.

- (1) Tower design.
  - (a) Towers shall be designed and built to accommodate site sharing to the extent required by the Planning Board as a condition of a special use

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permit. The minimum number of additional ~~antennas~~ that a ~~WTCA~~ can accommodate will be determined by the Planning Board in consideration of the height, visual impact and other characteristics of the proposed tower in the context of its proposed location.

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- (a) Applicants for special use permits to construct, modify or site share on a tower shall show designs that are of the realistic dimensions required to

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satisfy structural codes for such construction. Full structural code compliance analysis need not be provided with an application, as any approved project is subject to code review by the Building Inspector.

- (b) Towers greater than 70 feet height shall be of monopole construction, unless waived by the Planning Board based on a finding that the visual impact of the tower design is not more objectionable in the context of the proposed tower site.
  - (c) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. It is preferred that towers not be of such heights as to require FAA lighting, due to the residential nature of the community. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views, ~~including, subject to the approval of the FAA, color activated lighting.~~
  - (d) Towers shall be a color to reduce visual obtrusiveness or otherwise appear harmonious with the context of its location. Two-tone towers are discouraged.
- (2) Visual aesthetics, finishes and workmanship.
- (a) Towers, exposed antennas and related apparatus and antenna concealments shall be finished with durable materials that will not deteriorate and cause visual or safety impacts over time. Elements of towers, antennas, base stations and transmission equipment visible to the public shall be maintained in a neat and workmanlike condition and appearance, subject to terms of the special use permit and enforcement by the Building Inspector.
  - (b) At all WTCF sites, the design of the equipment shelters, compounds and related structures shall, to the extent possible, use architecture, materials, colors, textures, screening, and landscaping that will blend with or be architecturally compatible with the natural setting and/or built environment around the site.
  - (c) If antennas and other apparatus are installed on a structure other than a tower, it is preferred that they be enclosed within architecturally compatible concealments, unless they are not obtrusive to the public view by nature of their surroundings (e.g., on an industrial rooftop, or out of sight from public views).
  - (d) WTCFs shall not display any signs, advertising, writing, symbols, or any graphic representation of any kind visible to the public, other than reasonable notification and safety signage.

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- (a) Base stations and towers shall be landscaped with a buffer of plant materials that effectively screens the view of the WTCF from adjacent residential property year round. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In

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some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

- (e) To the extent practicable, towers, mounts and equipment shall be placed on the property in such a way as to minimize the visual impact on neighbors and viewsheds. The Planning Board may consider a setback waiver if it enables the proposed installation to be more harmonious with its surroundings.

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

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(1) Setbacks and separation.

(a) Towers must be set back a distance equal to 120% of the height of the tower from the edge of the ~~rear, side and front property lines~~ the lot on which the WTCF is located ~~and from occupied residential structures.~~

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(b) Towers, guys, anchor structures, base stations and accessory facilities must satisfy the minimum zoning district setback requirements.

(c) Towers must be set back a minimum of 120 feet from any structures (except structures that are part of the facility) and recreational fields. This shall be considered a "fall zone."

(2) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing means.

(3) Noise. Equipment noise must not be audible to residential neighbors, except emergency generators, which may be audible up to a maximum of 50 dBA at the property line. Generator exercising (testing) shall be conducted during normal weekday business hours.

G. Special use permits.

(1) General. All WTCFs shall require a special use permit from the Planning Board, subject to the criteria of this § 190-5.5 and all other relevant requirements of the Rye Zoning Ordinance. All applications under this section are also subject to the Planning Board site plan review, in accordance with the requirements and procedures in Chapter 202, Land Development Regulations. In addition, applications under this section shall also be required to submit the information provided for in Subsection H(2) and (3) below.

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(2) Plan requirements. Each applicant requesting a special use permit under this section shall submit a scaled plan in accordance with Chapter 202, Land

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Development Regulations, and further information including:

- (a) Plans and elevation drawings employing the various scales and details necessary to show:

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- [1] The general locus of the proposal, including abutting properties and structures.
- [2] The details of the proposed antenna mounting structure (e.g., tower, rooftop) and accompanying base station and transmission equipment, and utility interfaces.
- [3] The fencing, landscape buffering, screening and/or concealment elements.
- [4] Accessway, utility lines and parking.
- [5] Tree and vegetation clearing, slopes, wetlands and other surface characteristics or changes thereto.

(a) Photosimulation of the ~~proposed WTCA, inclusive of the maximum number of antennas to be located thereon, from the vantage point of abutting properties, or the public right-of-way, adjacent, distant, important community resources (parks, conservation areas, schools, etc.) and from other publicly accessible views.~~ Applicants are encouraged to discuss potential photographic locations with the Town Planner during the preliminary processes outlined in Chapter 202, Land Development Regulations. The Town Planner, in consultation with the Planning Board Chair, may defer the photosimulation requirement if:

- [1] It may not be necessary considering the nature of the application, subject to a Planning Board decision during the hearing; or
- [2] It may be prudent to set a public announcement for a balloon/crane test of a proposed tower during the hearing, from which the applicant can prepare a photosimulation report in consultation with the Planning Board.

(b) Such evidence of coverage as is necessary to demonstrate the need for the proposed tower height, usually in the form of coverage maps of the participating wireless services.

(c) If the applicant asserts any federal or state preemption is applicable, such as the non-prohibition of the provision of personal wireless services clause under the 1996 Telecommunications Act, or any other relevant federal or state rulings or laws, such evidence as is necessary to demonstrate how the preemption applies to the application. Such evidence might include an analysis of alternatives pursued, additional coverage or capacity analysis, demonstration of dimensions comporting with such preemption, etc. It is the applicant's responsibility to make the case for such consideration. Upon reviewing the facts, the Planning Board may require the applicant to submit supplemental information.

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- (d) If the applicant asserts it is entitled to consideration under a regulatory shot clock, documentation demonstrating why and how the shot clock is applicable.
- (e) Analysis of the noise the facility will generate.
- (a) Analysis of the facility's radio frequency energy emissions demonstrating the design will be in compliance with applicable FCC regulations.

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regarding human exposure to radio frequency energy.

- (f) Approvals from, or copies of submitted applications to, all necessary state and local boards and agencies regarding crossing of wetlands, or work in wetland buffers, if required.
  - (g) Documentation of the applicant's environmental review, further referenced in applicable FCC rules, satisfying the requirements of the National Environmental Policy Act (NEPA), as well as its historic review and tribal notifications under the National Historic Preservation Act (NHPA) and other laws. If subject to a categorical exclusion, documentation demonstrating applicability.
  - (h) An inventory of the applicant's existing facilities within the jurisdiction of the Town and those outside the border and closest to it, including specific information about the location, height, design of each facility.
  - (i) The applicant for a new tower shall provide an assessment of existing towers and structures on which applicant ~~may~~ could collocate one or more facilities to materially reduce the coverage or capacity issues that the proposed facility is intended to address. The Planning Board may consider combinations of one or more collocations and/or reduction or relocation of the proposed new facility to ~~close an existing gap in wireless telecommunication service~~ in a way that may be materially less objectionable to the community.
  - (j) The applicant for a new tower shall submit an alternatives analysis containing written evidence demonstrating that no existing structure(s), or no existing structures in combination with less impactful new facility site(s), and no alternative new site(s) can be combined to ~~close an existing gap in wireless telecommunication service~~ in a manner more consistent with this section.
- (3) Issuance of special use permits. In granting the special use permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed WTCF on the purpose and intent of this section.
- (a) Decisions. Possible decisions rendered by the Planning Board include approval, conditional approval, or non-approval of the special use permit. All decisions shall be rendered in writing, in accordance with RSA 676:3. Notice of decision shall be filed within 72 hours and in the event of denial shall include written reasons for the same. In accordance with the National Wireless Telecommunications Siting Policy Section 332(C) [47 U.S.C. § 332(C)], any non-approval (in the form of a vote to deny or a vote not to approve) shall be based upon substantial evidence contained

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in the written record.

(b) Factors to be considered in reviewing applications:

[1] Height of the proposed WTCF does not exceed that which is essential for its intended use and public safety within the limits of

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§ 190-5.5E(2).

- [2] Impact of WTCF (including tower, when applicable) on the community, including such factors as:
- [a] Noise.
  - [b] Vehicular traffic.
  - [c] Visual impacts to neighbors.
  - [d] Visual impacts to the community.
  - [e] Proximity of WTCF to residential development or zones.
  - [f] Compatibility with uses on adjacent and nearby properties.
  - [g] Surrounding topography.
  - [h] Surrounding tree coverage and foliage.
  - [i] Design characteristics of the WTCF (and tower, when applicable) that reduce or eliminate visual obtrusiveness.
- ~~iii. Adverse impacts to the property values of adjoining properties.~~
- [3] Availability of less objectionable alternatives more consistent with the purpose and intent of this section.
- [4] Consistency of proposed WTCF with this and other sections of the Rye Zoning Ordinance.
- [5] Adequacy of proposed ingress and egress to the site.
- [6] Availability of suitable existing towers and other structures as discussed in § 190-5.5H(2)(k).
- [7] Visual, traffic, noise and other impacts to neighboring residential uses and overall compatibility with surrounding land uses.
- [8] Visual impacts on viewsheds, ridgelines, and other impacts caused by tower location, tree and foliage clearing and placement of incidental structures.
- [9] Impact on view from any public park, public beach, natural scenic vista, historic building or site or major view corridor.
- [10] That the proposed facility is not constructed in such a manner as to result in needless height, mass, visual clutter and bulk.
- [11] That if exposed (unconcealed) antennas and related apparatus are proposed, the visual impact of such a design would not be materially improved by concealment or that such concealment is impracticable.

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[12] That if a proposed tower is not a monopole, the reasoning for not using a monopole is consistent with the intent of this section in the context of the proposed site and visibility.

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~~[13] The existence and extent of any special coverage for telecommunications services.~~

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[14] Consistency with the goals and objectives of the Rye Master Plan.

[15] The proposed WTCF is in harmony with the various requirements of this section, NEPA, NHPA and other applicable regulations.

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~~(c) The Planning Board may require the applicant for a special use permit to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the time of construction to cover costs of the removal in the event the Town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal prepared by a qualified engineer. The amount shall include a mechanism to accommodate the rate of inflation over 25 years.~~

H. Removal of abandoned antennas and towers.

- (1) Owners of property on which one or more WTCFs are being deactivated or abandoned shall promptly notify the Rye Building Inspector and the Planning Board in writing, within 60 days of becoming aware of such plan to deactivate or abandon. Any WTCF or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the lessee or owner of said tower provides proof of quarterly inspections. The property owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the lessee or owner of such abandonment.
- (2) A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned WTCF or tower is not removed within 90 days, the Town may have the WTCF or tower removed. This provision may apply to individual WTCFs provided it shall not apply to a tower until all WTCFs cease using the tower.

I. Consultant fees. The Board may retain the services of a consultant qualified in WTCF siting and design review to review the application and all associated information. The Board may further require, pursuant to RSA 676:4, I(g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full. This provision shall not limit or restrict in any way the Board's ability to require other investigative studies under its permitting and site plan review authority.

J. Waivers. Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may

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approve waivers to ~~the provisions set forth in §190-5.5(D), (G) and (H)~~, provided the Planning Board makes specific written findings for each such waiver based on the record. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations and/ or to obtain an outcome that is most consistent with the purpose and intent of this section ~~and compliance with the Telecommunications Act~~.

Deleted: these regulations,

- (1) Requirements for waivers. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:
  - (a) The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
  - (a) The waiver is to provisions within this § 190-5.5 and will not, in any manner, vary the other provisions of the Rye Zoning Ordinance, Rye.

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## Master Plan or Official Map.

- (b) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
- (c) A particular and identifiable hardship exists or a specific circumstance warrants the granting of each waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - [1] Information requested is not relevant to or not necessary for making a decision.
  - [2] A requirement in this § 190-5.5 does not reduce the impact of the proposal in the context of its design and location compared to the result proposed with waivers.
  - [3] The effort required to comply with this § 190-5.5 regarding application content, design criteria, performance criteria or other criteria is unreasonably disproportionate to the intensity and scale of the proposal or the resources of the applicant.
- ~~(e) The grant of the waiver is necessary to avoid the effective prohibition of wireless telecommunications services, as that term has been interpreted by the FCC and all other sources of law.~~
- (2) Conditions. In approving waivers, the Planning Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- (3) Procedures. A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. The Planning Board will not consider a waiver request unless it has been submitted in writing.

## K. Compliance with RSA 12-K:7.

- (1) Upon receipt of an application to construct a new PWSF tower or to complete a substantial modification to an existing PWSF tower or mount which will be visible from any other New Hampshire municipality within a twenty-mile radius, the Town shall:
  - (a) Provide written notification of such application to such other municipality, per RSA 12-K:7, I(b); and
  - (b) Publish a notice in a newspaper customarily used for legal notices by the Town, as required by RSA 12-K:7, I(b). Such notice shall be published

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not less than seven days nor more than 21 days prior to the date of any public hearing which may be required.

(2) For applications to the Board of Adjustment relative to a proposed wireless telecommunications facility, the Building Inspector shall provide the above notifications required by RSA 12-K:7.

A. Collocations/modifications. Pursuant to RSA 12-K:10, PWSF collocations on towers and mounts with existing antennas, and modifications to existing PWSFs,

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that are not substantial modifications, are exempt from the requirements of § 190-5.5D to K. Applicants for collocation or modification shall apply to the Building Inspector for a building permit. The Building Inspector's review and decision shall comply with RSA 12-K:10, II. Nevertheless, such collocations on existing towers and mounts and such modifications shall comply with the criteria of the underlying site approval and the performance criteria under this section to the extent they are not preempted by federal rule.

L. Administration. WTCF application reviews are subject to certain federally imposed time constraints known as "shot clocks" and other restrictions.

(1) Shot clocks.

- (a) In the case of applications for new towers or substantial modifications regulated herein, or for determinations of eligible facilities requests, the Planning Board has 30 days from receipt of application to decide whether the application is complete. ~~It communicates whether that application is complete to the applicant, and, if not, communicates in writing the documents or information necessary for the application to be deemed complete.~~ Shot clocks may be tolled until the ~~applicant supplies all missing information necessary for the~~ application ~~to be~~ deemed complete, subject to procedures outlined by the FCC. To facilitate efficient application completeness review, the Planning Board may delegate the responsibility of making such reviews to the Town Planner or other Town employee, who shall act in consultation with the Planning Board Chair, including the decision whether to engage the services of a WTCF siting consultant to assist with the review at the applicant's expense. This administrative activity shall be brought to the Planning Board for consideration when the Planning Board opens the hearing for the application.
- (b) It is presumed that an application for collocation can be heard and decided within 90 days, while the presumption for new tower applications is 150 days. Applications for determination of eligible facility request must be decided upon within 60 days (plus any legitimate tolling or mutual extensions) at which time the FCC asserts the application is deemed granted. The Planning Board shall make reasonable effort to meet these schedules and shall document any exigencies that contribute to the time required to fully hear and act on the application. The Planning Board shall obtain written agreement of tolling of the shot clock or extension of deadline from the applicant when practicable.

(2) Eligible facilities requests.

- (a) The Planning Board is responsible for entertaining all determination of eligible facilities request applications.

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(b) The applicant may file an application for a determination of eligible facility request with the Planning Board, which application shall conform to the criteria below and any regulations adopted by the Planning Board.

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(a) Upon receipt of such an application, the Planning Board must make a determination of completeness within 30 days of receipt, according to the procedures above.

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- (c) Within 60 days of receipt of a determination of eligible facility request, plus any legitimate tolling or mutual extensions, the Planning Board shall determine in writing whether the proposed project is a valid eligible facilities request or is subject to site plan review or special use permit criteria. If the application is determined to be an eligible facilities request, the written determination may also include any reasonable conditions consistent with prior approvals and considering the nature of the proposed modifications. The conditions may not further limit those characteristics that determine the proposed modification is not a substantial modification. The Planning Board may not deny and shall approve a valid eligible facilities request.
- (d) Applications for a determination of eligible facilities request shall be accompanied by such evidence as necessary to demonstrate the scope of the project is clearly within the bounds of an eligible facilities request, including, without limitation:
- [1] Documentation showing how the project involves:
    - [a] Collocation of new transmission equipment;
    - [b] Removal of transmission equipment; or
    - [c] Replacement of transmission equipment.
  - [2] Documentation showing the project involves an eligible facility;
  - and [3] Documentation showing how the project is not a substantial modification.
- (e) The Planning Board's review of a determination of eligible facilities request may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. It may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

**§ 190-5.6. Accessory apartments. [Added 3-10-1998; amended 2002; 3-18-2017]**

- A. Purpose. The Town of Rye recognizes the public need for the provision of a variety of housing types, including efficient and affordable housing for singles, couples, single parents, elderly and new households. Throughout the Town opportunities exist within under-utilized and/or large single-family dwellings to create small accessory dwelling units to meet these needs, as well as to provide a source of income and other assistance for property owners. To accomplish this purpose and to protect the health, safety and welfare of the existing neighborhoods, accessory units may be permitted subject to the following requirements.

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A. Conditional use permit. The Planning Board may grant a conditional use permit to allow the construction of, addition to, renovation of and use and occupancy of a single-family dwelling in the Single Residence District, the General Residence

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District or the Business District, in order to create one subordinate accessory dwelling unit as an integrated part of said single-family dwelling, in accordance with the following performance standards.

- B. Performance standards. The Planning Board shall determine that an accessory dwelling unit complies with the following standards:
- (1) Each accessory dwelling unit shall have a minimum floor area of 600 square feet and a maximum floor area of 1,200 square feet and shall contain, at a minimum, a separate cooking area with a kitchen sink, one full bathroom, and not more than two bedrooms.
  - (2) Each accessory dwelling shall be limited to a maximum occupancy of three persons. A one-bedroom accessory dwelling unit shall not have more than two occupants.
  - (3) ~~The~~ additional off-street parking ~~space~~ shall be provided for the accessory dwelling unit.
  - (4) The accessory dwelling shall be constructed and maintained in such a manner as to retain the appearance and character of the structure and site as a single-family dwelling.
  - (5) ~~After construction of the ADA,~~ the principal dwelling unit on the premises shall comply with the floor area requirements of § 190-2.3C(5) of this chapter.
  - (6) The property owner shall reside on the premises.
  - (7) An approval shall be obtained from NHDES relative to the adequacy of the on-site waste disposal system. As required by RSA 674:72, V, prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current DES rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced. **[Amended 3-13-2018]**
  - (8) An approval shall be obtained from the applicable supplier of public water or certification of a well of adequate capacity shall be provided.
  - (9) Approval of the Rye Sewer Commissioners shall be required for an accessory dwelling unit served by Town sewer.
  - (10) There shall be no more than one accessory dwelling unit allowed in a single-family dwelling.
  - (11) There shall be no more than one accessory dwelling unit allowed on a lot.
  - (12) If a dwelling unit is rented, it shall be for a term greater than three months.

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(13) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.

(1) An accessory dwelling unit shall not be permitted in a detached accessory.

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building.

(14) An accessory dwelling unit shall not be permitted in single-family dwellings attached to each other, such as townhouses. **[Added 3-13-2018]**

(15) An accessory dwelling unit shall not be permitted with manufactured housing. **[Added 3-13-2018]**

C. Applications. All applications for conditional use permits shall include the following information:

- (1) A property layout, including existing or proposed septic system.
- (2) A parking plan.
- (3) A floor plan of all rooms on the premises and the uses thereof.
- (4) Plans for access and egress.
- (5) Approval of the Fire Chief.

~~(6) All other necessary approvals required in this § 190-5.6, including, but not limited to, permits and approvals for the provision of water and sewerage/septic.~~

(7) Elevation views of buildings whenever exterior changes are proposed.

~~D. Except as expressly set forth in this § 190-5.6, nothing in this section shall be deemed to modify or alter any of the other requirements under this Chapter.~~

E. Condominium conveyance. Notwithstanding the provision of the Condominium Act,<sup>5</sup> condominium conveyance of an accessory dwelling unit separate from that of the principal dwelling unit is prohibited. **[Added 3-13-2018]**

F. Recertification. Every two years after approval and when the dwelling is sold, the owner of the dwelling and all adult occupants of the accessory dwelling unit shall file an affidavit with the Building Inspector certifying that the owner lives on the premises and that the occupancy of the accessory dwelling unit complies with § 190-5.6C(2).

G. Appeal. This is an innovative zoning provision adopted pursuant to RSA 674:21. Appeals of decisions on applications for a conditional use permit may be filed with the Rockingham County Superior Court or the Housing Appeals Board within 30 days of the date of decision.

**§ 190-5.7. Stormwater management.**

A. Purpose. It is the intent of this section to protect, maintain and enhance the public health, safety and environment by regulating building and land development so that surface water drainage from building and land development does not adversely affect adjacent properties, watercourses or the Town's storm drainage system. **[Amended 3-18-2017]**

**Deleted:** <#>All other zoning requirements shall be met.¶

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B. Drainage onto adjacent properties. No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading **or excavation** of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage flowing onto an adjacent property unless a drainage easement allowing such flowage in

1. Editor's Note: See RSA 356-B:1 et seq.

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perpetuity is recorded.

- C. Drainage into watercourses/Town drainage system. No use of land; no construction, reconstruction, alterations, replacement, or expansion of buildings, structures and impervious surfaces; no grading **or excavation** of the land; and no destruction or alteration of natural vegetation or ground cover shall increase the surface water drainage or flowage into existing watercourses or into the Town's storm drainage system unless the Public Works Director determines that the watercourse or drainage system will have the capacity to accommodate the additional flow, both now and in the future.
- D. Drainage and grading plan. The Building Inspector may require submission of a detailed stormwater management and erosion control plan which includes a drainage and grading plan at his/her sole discretion and at the expense of the property owner whenever there is construction of a new building/structure, expansion of a building/structure, reconstruction, or changes to the impervious surface or whenever there is question regarding compliance with this section. **[Amended 2002; 3-18-2017]**

**§ 190-5.7. [RESERVED]**

**§ 190-5.8. Small wind energy systems. [Added 2009]**

- A. Authority. This section is adopted in accordance with RSA 672:1, as amended by Chapter 357 of the New Hampshire Session Laws of 2008, and RSA 674:62 et seq., which is effective July 11, 2009. **[Amended 3-10-2020 by Art. 3]**
- B. Purpose. The purpose of this section is to provide for distributed generator/small wind energy systems intended primarily to reduce on-site consumption of utility power in appropriate locations, while minimizing any adverse visual, safety and environmental impacts of a system. Small wind energy systems increase local energy independence, reduce pressure on the local electricity grid and reduce pollutants from traditional forms of energy.
- C. Definitions. The following definitions shall apply to this section:

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**Deleted:** 1. Illicit discharge detection and elimination (IDDE). **[Added 3-10-2020 by Art. 4]**

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**Deleted:** <#>Purpose and intent. The purpose of the Illicit Discharge Detection and Elimination (IDDE) Ordinance is to provide for the health, safety, and general welfare of the citizens of Rye through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. The IDDE Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this section are to:¶  
 Regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.¶  
 Prohibit illicit connections and discharges to the MS4.¶  
 Establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this section.¶  
 Definitions. For the purposes of this section, the following terms shall mean:¶  
 AUTHORIZED ENFORCEMENT AGENCY — Employees or designees of the Board of Selectmen designated to enforce this section.

**Deleted:** <#>PRACTICES (BMPS) — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.¶

§ 190-5.7.1 RYE CODE § 190-5.7.1¶

ILLEGAL DISCHARGE — Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in Subsection E of this section.¶

ILLICIT CONNECTION — Either of the following:¶

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Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.¶

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§ 190-5.8 RYE CODE § 190-5.8¶  
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**FALL ZONE** — The potential fall area for the small wind energy system. It is measured by using 120% of the total system height as the radius around the center point of the base of the tower, e.g., if the total system height is 60 feet, the fall zone would be defined by a circle with a radius of 120% of 60 feet = 72 feet around the tower (as measured from the center of the base of the tower).

**FLICKER** — The moving shadow created by the sun shining on the rotating blades of the wind turbine.

**METEOROLOGICAL TOWER (MET TOWER)** — A temporary tower which 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. Met towers are only those towers whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**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 which 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** — The outline created on the surrounding area by the sun shining on the small wind energy system.

**SMALL WIND ENERGY SYSTEM** — A wind energy conversion system consisting of:

- (1) A vertical or horizontal wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 60 kilowatts or less and will be used primarily for on-site consumption; or
- (2)

A horizontal or vertical turbine mounted on a building and associated control or conversion electronics, which has a capacity of 60 kilowatts or less and will be used primarily for on-site consumption.

**TOTAL SYSTEM HEIGHT** — The vertical distance from grade to the tip of the wind turbine blade when it is at its highest point.

**TOWER** — The monopole or guyed monopole structure that supports a wind

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turbine.

**TOWER HEIGHT** — The height above grade of the fixed portion of the tower, excluding the wind turbine.

**WIND TURBINE** — 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.

D. Permits. The installation or modification of a small wind energy system shall

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require a building permit from the Building Inspector and a conditional use permit (CUP) from the Planning Board. The permits shall be applied for simultaneously. The Planning Board shall prepare a single permit application for this purpose.

- (1) Required information. The information required by § 190-5.8F shall be submitted with the application.
- (2) Abutter notice. The Building Inspector shall comply with the notice requirement of RSA 674:66, which provides abutters with a thirty-day comment period prior to issuance of a building permit. The Building Inspector's notice may be mailed concurrently with the Planning Board's notice of its hearing on the CUP application.

E. Conditional use permit.

- (1) Review process. Conditional use permit applications shall be processed in accordance with the Rye Planning Board's procedures for major site developments (i.e., major site plans). Upon the request of the applicant, the Planning Board shall grant waivers of its requirements for soils plans, surface water drainage plans and erosion control plans where no purpose would be served by reviewing such plans.
- (2) Approval of CUP. Prior to approving an application for a CUP, the Planning Board shall determine that all of the **criteria** of § 190-5.8G are met.
- (3) Appeal. In accordance with RSA 674:21 and RSA 676:5, III, appeals of Planning Board decisions on applications for a conditional use permit may be taken to the Superior Court or the Housing Appeals Board as provided by statute.

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F. Required information. Applications for a building permit/CUP shall include the following information:

- (1) A site plan stamped by a professional engineer or land surveyor licensed by the State of New Hampshire showing:
  - (a) Property lines and physical dimensions of the applicant's property.
  - (b) Location, dimensions, and types of existing major structures on the property.
  - (c) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment, including equipment associated with hybrid systems.
  - (d) Setback requirements **per all zone tables**.
  - (e) The right-of-way of any public road that is contiguous with the property.
  - (f) Any overhead utility lines.

(g) Any wetland, marsh, stream, pond, ocean or other water body within the fall zone.

(a) Tree and vegetation cutting at the site.

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The Planning Board may require the applicant to submit a computer- enhanced viewshed analysis.¶

(i) The Planning Board may require the applicant to submit photostimulation of the proposed small wind energy facility from the vantage point of abutting properties (or the public right-of-way adjacent thereto), important community resources (parks, conservation areas, schools, etc.) and from other publicly accessible views. Applicants are encouraged to discuss potential photographic locations with the Town Planner during the preliminary processes outlined in Chapter 202, Land Development Regulation.

- (2) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed), and nameplate generation capacity.
  - (3) If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
  - (4) Tower foundation blueprints or drawings.
  - (5) Tower blueprint or drawings.
  - (6) Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
  - (7) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - (8) Evidence of compliance with or nonapplicability of Federal Aviation Administration requirements.
  - (9) List of abutters.
- G. Criteria. All small wind energy systems shall comply with the following requirements. The applicant has the burden of providing sufficient information to establish that the criteria are met.
- (1) Setbacks.
    - (a) A small wind energy system mounted on a tower shall be set back a distance equal to 120% of the total system height from:
      - [1] Any public road right-of-way, unless written permission is granted by the governmental entity with jurisdiction over the road.
      - [2] Any overhead utility lines.
      - [3] All property lines, unless the affected landowner provides written permission through a recorded easement allowing the small wind energy system's fall zone to overlap with the abutting property.

[4] Any travel way, including but not limited to driveways, parking lots, nature trails or sidewalks.

[5] Wetlands, marshes, streams, ponds, the ocean (measured from the highest observable tide line) and water bodies.

**6] Occupied residential structures.**

(b) Small wind energy systems shall meet all yard setbacks for the zoning district in which the system is located.

(c) The setback shall be measured to the center of the tower's base.

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- (d) Guy wires used to support the tower are exempt from all setback requirements but shall be located on the same lot as the tower.
- (2) Tower.
- (a) Lattice towers are prohibited.
- (b) Tower height shall not exceed 140 feet.
- (c) The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the wind turbine for the proposed location.
- (d) In reviewing the proposed height in an application for a CUP, the Planning Board may consider the prevailing industry standard that the bottom of rotor blades should be at least 30 feet above any obstruction within 300 feet. The Planning Board may also consider that increased tower height may yield high returns on power production.
- (3) Building-mounted systems. Building-mounted small wind energy systems may be located only on those parts of a building which comply with yard setback requirements.
- (a) The application for a CUP/building permit shall include the certification of a structural engineer licensed by the State of New Hampshire that the building will safely support the small energy wind system.
- (b) In no case shall the total height exceed twice the height of the building.
- (4) Sound level. The small wind energy system shall not exceed limits specified by rules of the State Site Evaluation Committee, except during short-term events such as severe wind storms and utility outages. **[Amended 3-10-2020 by Art. 3]** For the purpose of determining compliance with the Site Evaluation Committee Rules, the interval period for the measurement of sound generated by a small wind energy system shall be measured at 1x interval rate of 1 minute. Therefore, sound collected shall be averaged over a period of one minute to determine whether an exceedance of the applicable noise standards set forth in Rule Sec. 301.10(2) have been exceeded.
- (5) Shadowing/flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. The applicant has the burden of proving that there will not be significant shadow flicker impacts. Significant shadow flicker is more than 30 hours per year on an occupied building. Potential shadow flicker shall be addressed either through siting or mitigation measures.
- (6) Signs. All signs, both temporary and permanent, are prohibited on the small wind energy system, except as follows:

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- (a) Manufacturer's or installer's identification on the wind turbine; and
- (b) Appropriate warning signs.

~~(7) Code compliance. The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code and the Rye Building Code.<sup>6</sup>~~

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~~2. Editor's Note: See Ch. 35, Building Code.~~

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- (8) Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration requirements, including but not limited to 14 CFR Part 77, Subpart B, regarding installations close to airports, and the New Hampshire aviation regulations, including but not limited to RSA 422-B and RSA 424. Evidence of compliance or nonapplicability shall be submitted with the application. **[Amended 3-10-2020 by Art. 3]**
- (9) Visual impacts. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access the wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the wind resources.
- (a) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors, ~~lands of public importance,~~ and the community. This may include but not be limited to information regarding site selection, turbine design or appearance, buffering, and screening of ground-mounted electrical and control equipment.
- (b) The color of the small wind energy system shall either be a neutral stock color from the manufacturer or painted with a nonreflective, unobtrusive color that blends in with the surrounding environment, as approved by the Planning Board. The owner shall be responsible for maintaining the color of the small wind energy system over time.
- (c) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system, ~~and shall consider mitigation for said lighting, including radar returns lighting.~~
- (d) All electrical conduits shall be underground. All electrical conduits and control wiring shall be underground or wireless.
- (e) Towers will be landscaped with a buffer of plant material that effectively screens the view of the tower compound from adjacent residential properties.
- (10) Utility connections. 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.
- (11) Access. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground. All ground-

6. Editor's Note: See Ch. 35, Building Code.

mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

(12) Approved wind turbines. The manufacturer and model of the wind turbine to be used in the proposed small wind energy system must be approved by the California Energy Commission or the New York State Energy Research and

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prevent unauthorized access.¶  
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Development Authority or, when approval lists become available, by the Small Wind Certification Council or the State of New Hampshire.

- (13) 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.

H. 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, removal of the wind turbine and tower and related above-grade structures and 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 the after- conditions.
- (3) In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out of service for a continuous twelve-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. The Building Inspector shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
- (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 turbine and tower at the owner's sole expense within three months of receipt of the notice of abandonment. If the owner fails to physically remove the small wind energy system, the Town shall have the authority to remove it pursuant to the process set forth in RSA 676:17-a.
- (5) The Planning Board may require the applicant for a CUP to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the time of construction to cover costs of the removal in the event the Town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. ~~The~~

6. Editor's Note: See Ch. 35, Building Code.

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amount shall include a mechanism to accommodate the rate of inflation over 25 years. The Planning Board shall retain jurisdiction to require additional surety if, during the life of the small wind energy system, the amount of surety is deemed insufficient to cover the costs of removal.

I. Meteorological (met) towers. The construction of a met tower for the purpose of collecting data to develop a small wind energy system shall abide by the following

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amount shall include a mechanism to accommodate the rate of inflation over 15 years.¶

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requirements:

- (1) The construction, installation or modification of a met tower shall require a building permit and shall conform to all applicable sections of the New Hampshire State Building Code and the Rye Building Code.<sup>7</sup>The information required by § 190-5.8F shall be submitted with the application for a building permit.
- (2) Met towers shall be permitted on a temporary basis not to exceed 18 months.
- (3) Met towers shall comply with all requirements of § 190-5.8G.
- (4) A conditional use permit is not required to construct, install or modify a met tower.

**§ 190-5.9. Demolition review. [Added 2009; amended 3-12-2013]**

- A. Purpose. The purpose of this section is to encourage the preservation of buildings and places of historic, architectural and community value.
- B. Demolition. For the purposes of this section, the word "demolition" means the act of pulling down, destroying, dismantling, removing or razing a building or part of a building. This shall include a monument, statue, memorial, or accessory building. It does not include interior demolition which does not alter the appearance of the exterior of the building. **[Amended 3-10-2020 by Art. 3]**
- C. Demolition subject to review. Any demolition within the Town of Rye, excluding the Historic District, shall be subject to the requirements of this section where: **[Amended 3-10-2020 by Art. 3]**

- (1) The demolition is:
  - (a) A building or part of a building greater than 500 square feet of gross floor area; or
  - (b) A monument, statue, or memorial; or
  - (c) An accessory building less than 500 square feet of historical or architectural interest; and
- (2) The building or part of a building, monument, statue, memorial, or accessory building was constructed more than 50 years before the date of application for a demolition permit.

D. Demolition Review Committee. A Demolition Review Committee is hereby established consisting of three persons and three alternates. **[Amended 3-10-2020 by Art. 3]**

(1) ~~The Demolition Review Committee members shall be appointed by the Select~~

7. Editor's Note: Board to 36 months terms, with the initial terms staggered as one-, two- and

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three-year terms, respectively. The initial terms of alternates shall be staggered as two- and three-year terms, respectively.

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3. Editor's Note: See Ch. 35, Building Code.

**Moved (insertion) [23]**

- (2) One member of the Demolition Review Committee shall be a member of the Historic District Commission, one member shall be a member of the Planning Board, and one member shall be a representative of the Rye Historical Society.
- (3) If the Town establishes a Heritage Commission pursuant to RSA 673:1 and RSA 673:4-a, the Demolition Review Committee shall be comprised of three members of the Heritage Commission and two alternates appointed by the Chair of the Heritage Commission. If the Demolition Review Committee already exists pursuant to Subsection D(2) above, such appointments shall be made as replacements for the existing Demolition Review Committee members as the terms of the existing members expire.

E. Demolition review procedure.

- (1) When an application for a demolition permit, or a building permit involving demolition, or a site plan review involving demolition, is made, or a formal written application is submitted to the Building Inspector for a determination under this section, the Building Inspector will determine if the building, or section of the building, meets the criteria of § 190-5.9C. If it does, the Building Inspector shall:
  - (a) Notify the applicant in writing within five business days of the filing that the demolition must be reviewed before proceeding and that the delay will not exceed 49 days.
  - (b) Within five business days forward the application to each member of the Demolition Review Committee.
- (2) The Demolition Review Committee shall meet within 10 business days after receipt of the application and make one of the following two determinations: **[Amended 3-10-2020 by Art. 3]**
  - (a) If the Demolition Review Committee determines that the building is not potentially significant ~~and its loss will not be detrimental to the neighborhood~~, it shall, within three business days of making that determination, notify the Building Inspector of the determination. In such case, a demolition permit may be issued by the Building Inspector provided all other requirements applicable to the demolition have been met.
  - (b) If the Demolition Review Committee determines that the building is potentially significant ~~and its loss will be detrimental to the neighborhood~~, it shall schedule a public hearing within 12 business days of making that determination, and within three days of making that determination notify the Building Inspector of ~~that determination~~. Notice of the public hearing shall be posted in two public places and published at least five days prior to the hearing, not including the day of the hearing or the day of posting.

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7. Editor's Note: See Ch. 35, Building Code.



Notice to abutters shall be made by certificate of mailing to all abutters not less than five calendar days before the date of the hearing.

(3) Within five business days of the Demolition Review Committee's decision to hold a public hearing, the Building Inspector shall notify the applicant that a sign identifying the building as proposed for demolition and the date, time, and place of the public hearing on the proposed demolition is ready for posting in a visible location on the building or site. Posting of the sign within five

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§ 190-5.9 RYE CODE § 190-5.9¶  
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the hearing. [Amended 7-13-2021 by Art. 3]¶

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business days of receiving notification from the Building Inspector shall be the responsibility of the applicant.

- (4) The Demolition Review Committee shall hear all public testimony regarding demolition of the building. The owner or his representative shall be invited to attend the hearing.
- (5) ~~During~~ the hearing, the Demolition Review Committee shall discuss alternatives to demolition.
- (6) The demolition review process shall not delay the issuance of a demolition permit by more than the 49 days provided by § 190-5.9E(1)(a), except in the following circumstances:
  - (a) An owner's (or his/her representative's) unwillingness or inability to meet with the Demolition Review Committee shall extend the period until such a meeting is held and for 20 days following the date of the meeting.
  - (b) An owner's delay in posting the sign required by § 190-5.9E(3) shall extend the period by the number of days of delay in posting the sign.

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 Notify the Building Inspector in writing within three business days of the decision if the building is found to be not significant, in which case demolition may proceed, provided all other requirements applicable to the demolition have been met.¶  
 Hold a meeting between the Demolition Review Committee and the owner (or owner's representative) within 10 business days of the public hearing to

**Deleted:** if the Demolition Review Committee determines the building is significant and its loss potentially detrimental to the community

F. Demolition.

- (1) If no alternatives to demolition have been identified and agreed to by the applicant, after the meeting provided for in § 190-5.9E(5)(b), the applicant is free to proceed with demolition, provided all other requirements for demolition are met. Prior to demolition, and if the applicant is in agreement, the Demolition Review Committee shall photographically document the building. The Demolition Review Committee shall also encourage the applicant to salvage significant architectural features.
- (2) Nothing in this section shall be construed to prevent immediate demolition where public safety is at stake and the building has been determined by the Building Inspector to be a public hazard and demolition is the only viable recourse.
- (3) A demolition permit shall be conditioned upon receipt of all local, state, and federal permits required for the demolition activity. [Added 3-10-2020 by Art. 3]

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G. Criteria. In determining if a building is "potentially significant" or "significant" the Demolition Review Committee shall consider whether:

- (1) The building is of such interest or quality that it would meet national, state or local criteria for designation as a historic, cultural or architectural landmark.
- (2) The building is of such unusual or uncommon design, texture or materials that it could not be reproduced or could be reproduced only with great difficulty and expense.
- (3) The building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.
- (4) Retention of the building would help preserve and protect a historic place or area of historic interest.

**§ 190-5.10. Fences and Walls. [Added 3-14-2017; amended 3-10-2020 by Art. 3]**

All fences, walls, and similar enclosures, except trees, shrubs and natural vegetation, are subject to the restrictions of this section. ~~For the purposes of this section, retaining walls and similar walls intended to hold earth shall not be considered fences, walls, or similar enclosures. Instead such retaining walls shall be considered structures and shall be subject to all setback requirements related to structures.~~

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- A. Permits. No fence or wall shall be erected or replaced prior to obtaining a permit from the Building Inspector, except wire or rail fencing for agricultural use, which is exempt from the permit requirement.
- B. Common boundary line fences and wall permits. Common boundary line fences and walls are those placed along the common boundary line of properties. A common boundary line fence or wall permit application shall be signed by all property owners of the land involved. The permit shall hold the Town harmless from any disputes which may arise concerning such structures ~~or the location of the boundary line.~~
- C. Height. Fences and walls, other than retaining walls, shall not exceed six feet in height.
- D. Setback. All fences and walls, except common boundary line fences and walls, shall be located at least one foot from the property line. The applicant is responsible for establishing the boundary with a survey by a licensed New Hampshire surveyor.
- E. Finished side. Any fence within 10 feet of a lot line shall have the finished side face the abutting properties, and the side of a fence containing the posts and other bracing appurtenances shall face inward to the property on which the fence is located. For common boundary line fences, the finished side(s) shall be as designated by the property owners in the application.
- F. Sight distance. All fences and walls shall comply with the corner clearance requirements of Article II of this chapter.
- G. Town rights-of-way. Erection of fences within Town ~~or State~~ rights-of-way is

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prohibited. Fences abutting a right-of-way shall be set back at least one foot from the right-of-way line.

A. Applicability. This section shall apply to all fences erected or replaced after January 2, 2001.

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prohibited. Fences and walls abutting a right-of-way shall be set back at least one foot from the right-of-way line.¶

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## ARTICLE VI

**Nonconforming Lots, Nonconforming Uses and Nonconforming Buildings and Structures****§ 190-6.0. General.**

~~Even as otherwise expressed, stated in this chapter.~~ at the time this chapter takes effect, all lawful lots, buildings, structures and uses, which would not be otherwise allowed in the district where the same is located by the terms of this chapter, are declared to be nonconforming and shall be subject to the regulations set forth herein. All nonconforming lots, buildings, structures and uses when this chapter takes effect may continue indefinitely in their present or any similar use. Nothing in this chapter shall be deemed to restrict the sale or lease of any such nonconformity by the new owner or lessee.

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**§ 190-6.1. Nonconforming lots.**

- A. In any district in which single-family or two-family dwellings are permitted, a dwelling and customary accessory buildings may be erected, as a variance obtained pursuant to Article VII, on any lot which was a lot of record on the effective date of this chapter, earlier variations thereof, or future amendments thereto, even though such lot fails to meet the district requirements for area or frontage or depth.
- B. The following lots are considered buildable lots which are exempt from the variance requirements of this section, provided all other requirements are met: **[Added 1999; amended 3-10-2020 by Art. 3]**
- (1) Lots of record which met the requirements of this chapter for area, frontage and depth which were in effect on November 20, 1998; and
  - (2) Lots which were delineated on a plan which was accepted for subdivision review by the Planning Board prior to November 20, 1998, and subsequently approved and which met the requirements for area, frontage and depth which were in effect on November 20, 1998.<sup>8</sup>
- C. Yard dimensions. The applicable district requirements for yard dimensions and other requirements not involving area, frontage or depth shall still apply to nonconforming lots of record.
- D. Septic system requirements. No structure or building shall be erected on a nonconforming lot of record unless the septic system requirements of both the State of New Hampshire and the Town of Rye are complied with. Approval of septic system design by the New Hampshire Department of Environmental Services shall not necessarily be considered proof of satisfaction of this requirement. **[Amended 3-11-2014]**

**§ 190-6.2. Nonconforming uses.**

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Lawful uses of land, structures or buildings existent at the effective date of this chapter may be continued as nonconforming uses so long as they remain lawful, provided that:

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1. Editor's Note: Original § 601.1, Merger Rule, which immediately followed this subsection was repealed 3-13-2012.

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- A. Expansion. No such nonconforming use shall be enlarged, increased or extended. In the SR and GR Districts, a lot which has more than one dwelling is a nonconforming use, and expansions of such dwellings are prohibited. See § 190-2.2D(1). [Amended 3-14-2006]
- B. Change to another nonconforming use. If no structural alterations are made, any nonconforming use of a building, structure or land may be changed to another nonconforming use upon ~~the grant of a special exception~~ by the Board of Adjustment, after duly held public hearing, provided that the Board of Adjustment makes, ~~in addition to such other findings necessary for the grant of a special exception (see § 190-7.1)~~ a specific finding that the proposed nonconforming use is equally or more appropriate to the district than the existent nonconforming use. In granting approval, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this chapter.
- C. Replacement with permitted use. Any building, structure, or land in or on which a nonconforming use is replaced by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- D. Abandonment, discontinuance or destruction. Any and all nonconforming uses of land, buildings or structures which are abandoned, discontinued or vacated or which are partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm, tides, or other acts of God, may be resumed or restored and operated in their former nonconformity if the same is done within three years thereafter. ~~For the purposes of this paragraph, "obsolescence" can include the remodeling or renovation of a structure on the lot.~~ The replacement uses (or buildings and structures, if applicable) must be in the same location and of the same dimensions as before the damage, unless change of location or dimensions would make the replacement more conforming. ~~as determined by the volume (bulk) of the structure that is non-conforming.~~
- E. Multiple nonconforming uses. Only the principal use of the premises concerned may be continued if it is nonconforming. A subsidiary, secondary or subordinate use of the premises may not be continued.

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**§ 190-6.3. Nonconforming buildings and structures.**

Where lawful buildings or structures exist at the effective date of this chapter which could not be built under the terms of this chapter by reason of restrictions on floor area, lot coverage, height, yard, location on the lot or other requirements concerning the building or structure, such buildings or structures may be continued as nonconforming buildings or nonconforming structures, so long as they remain lawful, provided that:

- A. Expansion. Expansion of nonconforming parts of buildings or structures is not allowed. Those parts of any building or structure which are conforming may be

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expanded provided the expansion is conforming and the use is not changed. For example, if a nonconforming building encroaches into a yard area established by this chapter, the bulk of the building within the **portion of the** yard area **with the encroachment** shall not be expanded at all, either vertically or horizontally, within such yard area, **but may be expanded into such portions where no non-conforming exists so long as no new violation arises.**

- A. Abandonment, discontinuance or destruction. Any nonconforming building or nonconforming structure which is abandoned or vacated or which is partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire,

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explosion, storm, tides, or other acts of God, may be resumed or restored and operated in its former (nonconformity) if the same is done within three years thereafter. ~~For the purposes of this paragraph, "obsolescence" can include the dismantling or renovation of the structure.~~ If possible, the replacement of the building or structure shall conform to the requirements of this chapter with which it previously did not conform, as well as to all other requirements with which it did conform. Otherwise, the replacement of all nonconforming parts of the structure shall be in the same location and of the same dimensions, height and bulk as before the damage occurred unless changes would make the replacement less nonconforming, ~~as determined by the volume (bulk) of the structure that is non-conforming.~~

**§ 190-6.4. Special exception uses. [Amended 1997]**

A lawful use which existed at the effective date of this chapter (or at the effective date of an applicable amendment) and which is permitted by special exception by this chapter (or applicable amendment) is a legal "grandfathered" special exception. No approval from the Board of Adjustment is required for the continuance of such use as it existed on the effective date of this chapter (or applicable amendment), but no such use shall be expanded without approval by the Board of Adjustment pursuant to § 190-7.1A(3). No use which has been granted a special exception by the Board of Adjustment subsequent to the effective date of this chapter shall be expanded from the use approved by the Board of Adjustment without Board of Adjustment approval of the expansion pursuant to § 190-7.1A(3).

**§ 190-6.5. Prior unlawful uses.**

Nothing in this chapter or article shall validate any use which was declared unlawful or was prohibited by any prior zoning ordinance of the Town of Rye, whether or not such unlawful or prohibited use had been prosecuted prior to or at the time this chapter became effective, and no such unlawful or prohibited use shall be deemed conforming under the terms of this chapter.

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ARTICLE VII  
Board of Adjustment

§ 190-7.0. Establishment of Board of Adjustment. [Amended 2001; 2003; 2013; 3-10-2020 by Art. 3]

The Board of Adjustment, as established, is hereby continued as such. The word "Board" when used in this section shall be construed to mean the Board of Adjustment. The Board shall consist of five members elected by Town voters, each to be elected for three years as the terms of appointed members expire. The Board of Adjustment shall appoint not more than five alternate members to the Board.

- A. Meetings. Regular and special meetings of the Board shall be held at the call of the Chair or of a majority of the members of the Board at such time or times as the Chair or majority of the members of the Board may determine. The presence of three members shall be necessary for a quorum.
- B. Organization. The Secretary shall keep minutes of the proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating the fact. The Board may adopt, from time to time, such rules and regulations as may be deemed necessary to carry into effect the provisions of this chapter. The Board shall elect from the membership a Chair and Vice Chair each year whose term shall run for the following calendar year and until his successor is elected.

§ 190-7.1. Powers and duties.

The powers and duties of the Board shall be in all respects as prescribed by NH RSA 674:33, with any amendments thereto.

- A. The Board's powers and duties are:
  - (1) Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the ~~interpretation, application, and construction~~ of this chapter. Pursuant to RSA 676:5, III, a decision or determination of the Planning Board during subdivision or site plan review which is based upon the terms of this chapter, or upon any construction, interpretation or application of this chapter, may be appealed under this section. [Amended 1997; 3-10-2020 by Art. 3]
  - (2) Variances. ~~To authorize upon appeal in specific cases such variances from the terms of this chapter provided each of the criteria set forth in RSA 674:33 (a)(2) are satisfied.~~
  - (3) Special exceptions. To hear and decide special exceptions to the terms of this chapter upon which such Board is required to pass under this chapter. ~~To grant a special exception, the Board shall determine that the grant of a special exception satisfies:~~

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**Deleted:** as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done

**Deleted:** In passing upon any application for a special exception, the Board shall deny any proposed use which it finds to be injurious or detrimental to the neighborhood. All special exceptions shall be in harmony with the general purpose and intent of this chapter and shall be in accordance with the general or specific rules contained therein. Special exceptions shall be heard as appeals under this

(a) the specific criteria established under the provisions governing the grant of the special exception;

(b) in the absence of such specific criteria or where the provision identifies that the general criteria set forth herein shall apply, upon any application for a special exception, the following criteria:

[1] the grant of the special exception will not be injurious or detrimental to the neighborhood;

[2] the special exceptions will be in harmony with the general purpose and intent of this chapter; and

[3] the special exception is in accordance with the general or specific rules contained therein.

Special exceptions shall be heard as appeals under this chapter, and all procedural requirements for appeals hereunder shall apply thereto, in addition to any special provisions prescribed hereunder.

(4) Equitable waivers. To hear and decide applications for equitable waivers of dimensional requirements in accordance with the requirements of RSA 674:33-a. **[Amended 1997]**

B. Extension of district boundaries. The Board may permit the extension of a district by not more than 50 feet where the boundary line of a district divides a lot in a single ownership at the time of the passage of this chapter.

C. Exercise of powers. In exercising the above-mentioned powers, such Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

D. Special conditions. In granting any special exception or variance to the above requirements, the Board of Adjustment may establish conditions or requirements which are considered necessary to carry out the spirit and intent of this chapter. **[Amended 1994; 3-9-1999; 3-11-2014; 3-18-2017]**

E. Expiration of variances and special exceptions. An approved special exception or variance shall expire two years from the date of approval unless substantial construction relative to the special exception or variance has begun on the site or unless the Board of Adjustment has approved an extension for good cause, provided that no such special exception or variance shall expire within six months after the resolution of a Planning Board application filed in reliance upon the variance. **[Added 3-18-2017]**

(1) For the purposes of this provision the following are examples of "substantial construction":

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**Deleted:** <#>Other matters. The Board shall also hear and decide all matters referred to it or upon which it is required to pass under any other ordinance of the Town of Rye or under state statute. **[Amended 1997]¶**

- (a) For a building, completion of a weathertight structure.
  - (b) For a septic system, completion to the point of being ready for DES's inspection for operational approval.
  - (c) For a road or driveway, completion of the base course and ditches to final grade and installation of all drainage facilities.
- (2) A variance to dimensional or other requirements for a lot shall expire two years from the date of approval unless a subdivision plan depicting the lot has been recorded.

**§ 190-7.2. Appeal procedures.**

- A. Filing of appeals. An appeal shall be taken within such time as shall be prescribed by the Board, by general rule, by filing with the officer from whom the appeal is,

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taken, and with the Board, a notice of appeal, specifying the grounds thereof, together with a notice and filing fee. Such notice of appeal shall specify the names of all abutting owners to the premises concerned, to all of whom the Board shall give notice by mail of such appeal, insofar as practicable. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. [Amended 1992; 1996; 3-10-2020 by Art. 3]

- (1) Deadline for filing administrative appeals. Applications for administrative appeals pursuant to § 190-7.1A(1) shall be filed not later than 30 days from the date of decision in the following two circumstances:
  - (a) Any final decision of the Planning Board on a subdivision, site plan review or lot line adjustment application.
  - (b) Any decision of the Building Inspector which denies a permit.
- (2) Other administrative appeals shall be filed within a reasonable period of time of the decision being appealed.

B. Effect of appeal to Board. The effect of an appeal to the Board shall be to maintain the status quo. An appeal of the issuance of any permit or certificate shall be deemed to suspend such permit or certificate, and no construction, alteration, or change of use which is contingent upon it shall be commenced. An appeal of any order or other enforcement action shall stay all proceedings under the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal shall have been filed with such officer, that, by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life, health, safety, property, or the environment. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by the Superior Court on notice to the officer from whom the appeal is taken and cause shown. See RSA 676:6. [Amended 1997]

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C. Hearings and notice. The Board shall fix a reasonable time for the hearing of appeal and give due notice thereof to the parties and decide the same within 90 days of the date of receipt of the appeal, provided the applicant may waive this requirement and consent to such extension as may be mutually agreed. Notice of hearing shall be published at least once in a newspaper of general circulation in the Town of Rye and mailed, by registered or certified mail, to the parties and all abutters not less than seven days prior to such hearing. Failure of the party filing such appeal to disclose in his notice of appeal the names of all abutting owners to the premises concerned shall be cause for continuation for new hearing on proper notice to all concerned. Willful failure of the party filing such appeal to disclose in his notice of appeal the names of all abutting owners to the premises concerned may be cause for the denial of the appeal at the option of the Board. Upon the hearing, any party may appear in person or by agent or by attorney. The Board shall hear all abutters

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desiring to submit testimony and all non- abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate. If the Board determines that it lacks sufficient information to make a final decision on application, and the applicant does not consent to an extension, the Board may, in its discretion, deny the application without prejudice. [Amended 3-10-2020 by Art. 3]

D. Decisions of Board.

- (1) The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as in its opinion ought to be made, and to that end shall have

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all the power of the officer from whom the appeal is taken. **[Amended 3-10-2020 by Art. 3]**

- (1) The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which the Board is required to **provide** under this chapter, or to effect any variation in this chapter.
- (2) The Board shall issue a final written decision which either approves or disapproves an application. If the application is not approved, the Board shall provide the applicant with written reasons for the disapproval.
- (3) Board decisions and minutes shall be placed on file with the Town Clerk and made available for public inspection within five business days after the decision is made. **[Amended 2001; March 2011]**

**Deleted:** Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter, the Board shall have the power of passing upon appeals to vary or modify any of its rules, regulations, or provisions relating to the construction, structural changes in equipment, or alterations of buildings or structures, so that the spirit of this chapter shall be observed, public safety secured, and substantial justice done.

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**§ 190-7.3. Rehearing and appeal. [Amended 2001; March 2011]**

Every decision of such Board shall be subject to review upon motion for rehearing filed with the Board of Adjustment within 30 days after any order or decision of the Board, and to appeal to the Superior Court or the Housing Appeals Board in accordance with the terms of the statute. Such motion or appeal may be taken by any person aggrieved or by an officer, department or board of the Town. This thirty-day time period shall be counted beginning with the first day following the date upon which the Board voted to approve or disapprove the application and may be amended if minutes and notice of decision are not filed within the five-business-day requirement of § 190-7.2D(4), per RSA 677:2.

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**§ 190-7.4. Joint meetings.**

The Board of Adjustment may conduct joint meetings or hearings on applications requiring permits from both the Board of Adjustment and Planning Board, as provided by NH RSA 676:2.

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ARTICLE VIII  
Administration and Enforcement

§ 190-8.0. Building Inspector. [Amended 1999]

This chapter shall be administered by the Building Inspector, who shall be appointed by the Select Board and/or by any other Town official or Town employee who has been duly assigned responsibilities for administering this chapter by the Select Board. The Select Board may also appoint a Deputy Building Inspector, who shall act in the absence, disability, or unavailability of the Building Inspector, with all of the same powers, duties, and authorities relative to this chapter. Whenever the words "Building Inspector" appear in this chapter, the same may be read as "Deputy Building Inspector" or any other Town officer or Town employee to whom the Selectmen have assigned responsibilities for administering this chapter.

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§ 190-8.1. Building permits. [Amended 1990; 1992; 2009; 2012]

A. Building permits required. ~~Unless otherwise exempt from the requirement for a building permit under the State Building Code or the Town of Rye Building Code,~~ no land shall hereafter be used for building or development, and no building, structure, or subsurface waste disposal system hereafter erected, enlarged or moved in whole or in part for any purpose, until a building permit shall have been issued by the Building Inspector showing that the use and development of the land, building, structure or subsurface waste disposal system complies with the provisions of this chapter. ~~Except as exempted by the State Building Code or the Town of Rye Building Code,~~ no building, structure or subsurface waste disposal facility shall be altered without a building permit showing that the alteration complies with this chapter.

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B. Building permit applications.

- (1) No application for a building permit shall be accepted or approved unless it is:
  - (a) Filed in writing on a form prescribed by the Selectmen;
  - (b) Accompanied by the required permit fee; and
  - (c) Accompanied by a drawing or plat, in duplicate, showing the lot plan, the location of the building or use on the lot, accurate dimensions of the lot and building or use, and, where for human habitation or use, showing location and specifications of means of waste and sewage disposal, means of access to such lot or use, and such other information as the Building Inspector may deem necessary to provide for the observance of the provisions of this chapter.
- (2) A building permit application for a new dwelling on a lot or for a new building on a nonresidential lot shall include a driveway permit issued by the Public Works Director in accordance with the provisions of Chapter 202, Land

Development Regulations.

- A. Stakes and markers. No applications for a building permit shall be approved until stakes or markers shall be fixed on the lot to indicate the location of lot lines and all corners of building(s), structure(s), and alterations proposed and, where the

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Building Inspector deems it necessary or desirable, of the means of access thereto. Where the application is for land use not involving excavations, grading, or other development or use of the ground or landscape concerned, stakes or markers shall be fixed on the lot to indicate the location of lot lines and bounds of all such excavations, grading, or land development(s) proposed. No building permit for any work or project estimated to cost more than \$10,000 shall be issued until the Building Inspector has inspected the premises and has satisfied himself that all lot, building, structure, and land use stakes or markers are in place and comply with the provisions of this chapter.

C. Issuance of building permits.

- (1) A building permit may be issued upon such conditions as the Building Inspector or, when applicable, as the Board of Adjustment may deem necessary to assure the observance of the provisions of this chapter. Any building permit issued shall authorize only such work or project as the application and the permit, taken together, reasonably allow.
- (2) A building permit for a new dwelling on a lot or for a new building on a nonresidential lot shall not be issued until such a driveway permit is obtained.

D. Revocation of building permit. The Building Inspector or the Selectmen may suspend or revoke any building permit upon determining that the work or project in process is not in conformity with the permit as ~~shown~~ or is otherwise in violation of the terms of this chapter ~~in any approvals issued hereunder~~. In the event of such suspension or revocation of a building permit, the work or project concerned shall immediately cease, or legal action to enforce such cessation shall forthwith be taken by the Selectmen.

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E. Grading and excavation prohibited. Grading and excavation for foundations, on-site waste disposal systems and on-site utilities shall not begin prior to the issuance of a building permit.

F. Expiration of building permit. A building permit, whether for a building, structure, material alteration or proposed land use or otherwise, under the authority of which no work has been commenced within one year after issuance shall expire and become void upon such anniversary. A permit may be renewed only once, upon receipt of the required administrative fee, for an additional 12 months.

**§ 190-8.2. Certificates of occupancy.**

No new building or structure or major reconstruction or addition shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Inspector and, except for dwellings, posted on the premises stating the purpose for which the building may be used in its several parts, the maximum permissible live loads, ~~as the term is defined by the State Building Code~~, on the several floors, the number of occupants that may be accommodated in the several stories, in case such number is

limited by a provision of law or by permit, and all special stipulations of the permit, if any.

A. Certificates of change of occupancy.

- (1) No change of occupancy shall be made in a building or structure that is not consistent with the last issued certificate of occupancy for such building or

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structure, unless a new certificate of occupancy is secured.

(1) The occupancy of a building or structure shall not be deemed to have changed because of a temporary vacancy or change of ownership or tenancy. The reestablishment in a building or structure, after a change of occupancy has been made, of a prior use that is not permitted in a new building or structure of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

B. Inspections. Inspections required under the provisions of this chapter shall be made by the Building Inspector or his duly appointed assistant. The Building Inspector may accept reports of inspectors of recognized inspection services, after investigation of their qualifications and reliability. No certificate called for by any provision of this chapter shall be issued on such reports unless the same are in writing and certified to by a responsible officer of such service.

**§ 190-8.3. Enforcement; violations and penalties.**

A. Enforcing authorities. This chapter shall be enforced by the Building Inspector or the Selectmen. For this purpose, the **Select Board** shall have concurrent jurisdiction with the Building Inspector for enforcement of this chapter.

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B. Cease-and-desist orders. The Building Inspector may issue violation and cease-and-desist orders, including cease-and-desist orders permitted by RSA **676:17** and/or **676:17-a**, as amended, personally, or by Town Counsel on his request, and further either the Building Inspector or the Selectmen in his stead, as to enforcement hereof only, shall make such orders and decisions and take any and all actions as may be deemed by him, or them, to be reasonably necessary to prevent violation of this chapter, as well as to secure the intent of this chapter. **[Amended 1992]**

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C. **Investigation of Complaints.** **Upon the receipt of any well-founded information or upon the complaint of the Building Inspector, the Select Board shall investigate any reported violation of any provision of this chapter or permit or approval issued in accordance with this chapter, whether or not such violation is present or only reasonably anticipated. Upon the determination of any such violation, the Select Board, or its designees, shall have the discretion to take any such appropriate action, including, but not limited to, the institution of legal proceedings to prevent, abate, or remediate any such violation.**

**Deleted:** to take any appropriate action or institute any legal proceedings necessary or desirable to prevent any unlawful use or development of any land, building, structure, or premises in

**Deleted:** For this purpose, the Selectmen shall take immediate steps to enforce

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D. Penalties. Penalties for violation of these regulations shall be as provided by NH RSA 676:17 and/or RSA 676:17-a, as amended. **[Amended March 2011]**

**Deleted:** without exception, seeking conviction of any violator of its terms under the penalty clause of this chapter. **...**

E. Injunctive relief. In addition to other remedies provided by law, the Building Inspector, **Select Board**, or Town legal counsel may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate **any** violation of this chapter **or the permits and approvals issued hereunder.**

**Deleted:** or remove erections, construction, alterations or reconstructions that are in

A. Recovery of legal costs. As permitted by NH RSA 676:17, as amended, the Selectmen and/or the Building Inspector shall seek to recover all costs and

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attorney's fees in any legal action necessary to enforce these regulations.  
[Amended 1990]

**§ 190-8.3. Administrative Decisions.**

- A. In addition to the foregoing, this Chapter may be administered, applied and enforced by the Planning and Zoning Administrator, or such other individual that may be designated by the Select Board. The Planning and Zoning Administrator shall, in addition to such other officials of the Town authorized to enforce this Chapter, be considered an administrative officer pursuant to RSA 676:5, II(a).
- B. As an administrative officer, the Planning and Zoning Administrator is authorized, upon the request from prospective applicants for variance relief, special exceptions, conditional use permits, or such other permits and approvals authorized by this Chapter, to issue administrative decisions interpreting, constructing or applying the terms of this Chapter. The Planning and Zoning Administrator may require prospective applicants to submit sufficient information as the Planning and Zoning Administrator may, in their reasonable discretion, deem necessary for issuance of such a decision. Any such decision so issued will be in writing.
- C. Nothing in this § 190-8.3 shall require the Planning and Zoning Administrator to issue an administrative decision when a prospective applicant has not supplied sufficient information for the Planning and Zoning Administrator to issue an administrative decision or when the issuance of an administrative decision would require specialized knowledge, training, or information. In such instance, the prospective applicant shall be deemed to require variance relief from the ZBA and may proceed to seek a variance and/or appeal that administrative decision.
- D. Any decision issued in accordance with this § 190-8.3 shall constitute a decision of an administrative official as that term is defined in RSA 676:5, II(b) which may be appealed to the Zoning Board of Adjustment in accordance with RSA 676:5, I and § 190-7.0.
- E. Any such decision, so issued, will not be binding upon the Planning Board, who may independently apply, interpret, or construct this Chapter, and determine that further relief from the provisions of this Chapter are necessary.
- F. In the event of any conflict between a decision of the Building Inspector and an administrative decision of the Planning and Zoning Administrator pursuant to this § 190-8.3 regarding the interpretation, application, or construction of this Chapter, the decision of the Planning and Zoning Administrator shall control.

ARTICLE IX  
Growth Management  
[Added 1987]

§ 190-9.0. Authority and purpose.

This article is enacted pursuant to authority granted by NH RSA 674:22. It is intended to regulate and control the timing of development in accordance with the objectives of both the Master Plan and the Capital Improvements Program adopted by the Rye Planning Board. These two documents assess and balance the community development needs of the Town of Rye and consider regional development needs.

§ 190-9.1. Building permit limitations.

- A. Annual limitation. The number of building permits for new dwelling units (hereinafter referred to as "building permits") that are issued in a calendar year by the Town of Rye shall be limited to an amount that is 1.75% of the total dwelling units existent in Rye as of December 31 of the prior year. For the purposes of this article the December 31 base of dwelling units shall be determined from the 1990 United States Census, updated with building permit data reported annually to the New Hampshire Office of State Planning. For the year 2009, the December 31, 2008, base of dwelling units is 2,403 and the annual 1.75% limitation is 42. **[Amended 1995; 2000; 2009]**
- B. Issuance of building permits. The Building Inspector shall issue building permits on a first come, first served basis, subject to the limitations set forth herein, which are designed to promote fairness in distributing permits throughout the year.
  - (1) Application. A person may apply for a building permit at any time. If the Building Inspector is unable to issue a permit because of the limitations of this article, the person making application shall be placed on a waiting list.
  - (2) Issuance schedule. Throughout the year, the Building Inspector shall issue building permits in a manner that complies with the following schedule:

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Date	Maximum Allowable Building Permits (Aggregate)
By February 28 (29)	No more than 15% of annual limitation
By April 30	No more than 35% of annual limitation
By June 30	No more than 60% of annual limitation
By August 31	No more than 80% of annual limitation

- (1) Equitable distribution. In order to assure equitable distribution of available permits, no single individual, partnership, corporation or other entity shall be issued more than four building permits during a calendar year. However, after December 1,

surplus permits may be issued to such individuals, partnerships, corporations or other entities if there is no other applicant remaining on the waiting list.

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C. Carry forward of surplus. If on December 31 of any year the number of building permits issued was less than the number allocated for that year, the surplus shall be added to the annual limitation of the following year only, provided that the number of building permits for new dwelling units issued in any calendar year does not exceed 47. Table 1 below illustrates how the carry forward operates.

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**Table 1**  
**Example of Carry Forward Calculation**

Year	Base D/U	1.75% of Base	Annual Limitation	Actual Permits Issued	Surplus Carried Forward
1	2,006	35	35	30	5
2	2,036	36	36+5 = 41	33	3*
3	2,069	36	36+3 = 39	39	0
4	2,108	37	37	37	0

\* The important thing here is to recognize that the surplus carried forward is 36-33 = 3 not 41-33 = 8.

D. Unused permits. Permits that are issued but not utilized shall not be added back into the annual limitation.

E. Administrative procedures. The Building Inspector is hereby authorized to establish administrative procedures necessary to implement this article. All such procedures shall be posted. The Building Inspector shall annually post, no later than January 10 of each year, the annual limitation and a numerical schedule of aggregate issuances.

**§ 190-9.2. Conflicts.**

In matters governed by this article, this article shall supersede conflicting local ordinances and regulations.

**§ 190-9.3. Severability.**

Should any part of this chapter be held invalid or unconstitutional by a court or the Housing Appeals Board, such holding shall not affect, impair or invalidate any other part of this article, and, to such end, all sections and provisions of this article are declared to be severable.

Deleted: [Amended 3-8-2022 by Art. 3]

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**§ 190-9.4. When effective.**

This article shall take effect upon passage and shall supersede the present Growth Management Ordinance, which is Section XVIII of the Zoning Ordinance for the Town of Rye, New Hampshire. Said existing ordinance is hereby repealed.

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ARTICLE X

Amendment, Conflicts, Severability and Effective Date

§ 190-10.0. Amendment.

- A. This chapter may be amended from time to time as prescribed in NH RSA 675 or as prescribed by any statute amending, revising or replacing Chapter 675.
- B. Where a previously adopted amendment has resulted in an incorrect reference in another section of this chapter or incorrect indexing of sections or when typographical errors are discovered, the Planning Board may make the corrections in this chapter after a public hearing pursuant to RSA 675:3, without putting the corrections on the Town warrant and ballot for approval. [Added 3-12-2019 by Art. 4]

§ 190-10.1. Conflicts.

In interpreting and applying the provisions of this chapter, they shall be held to be minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants, or other agreement between parties; provided, however, that where this chapter imposes a greater restriction or higher standard upon the use of a building or premises or upon heights of buildings, or requires larger streets or open spaces than are imposed or required by other ordinances, regulations or statutes, or by easements, covenants, or agreements, the provisions of this chapter shall govern.

§ 190-10.2. Severability.

Should any part of this chapter be held to be invalid or unconstitutional by any court or authority of competent jurisdiction, such holding shall not affect, impair or invalidate any other section or provision of this chapter, and to such end all sections and provisions of this chapter are declared to be severable.

§ 190-10.3. When effective.

This chapter shall take effect upon its passage and shall thereupon supersede all prior zoning ordinances of the Town of Rye.

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ARTICLE XI  
Definitions

§ 190-11.1. Word usage and definitions.

A. Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meaning indicated in this section. The present tense includes the future; the singular number includes the plural, and the plural the singular; the word "used" or "occupied" includes the words "designed, arranged, or intended to be used or occupied"; the word "person" includes an individual, partnership, firm, association, corporation, or organization; and the word "building" includes the word "structure." Subject to the foregoing rules of construction, the following definitions apply. **[Amended 3-10-2020 by Art. 3]**

B. For the purpose of this chapter, as well as for the Building Code of Rye, New Hampshire, so called,<sup>9</sup>certain terms and words are herein defined as follows:

ACCESSORY BUILDING — A subordinate building on the same lot, whether attached or unattached to the principal dwelling or principal building thereon.**[Amended 3-12-2019 by Art. 4]**

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

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still- or motion-picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.**[Added 2009]**

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section devoted to the sale or display of such material.**[Added 1994]**

ADULT CABARET — A nightclub, bar, restaurant, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity; or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.**[Added 2009]**

ADULT ESTABLISHMENT — An adult bookstore, adult motion-picture theater,

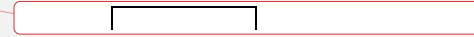
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adult cabaret, adult arcade, adult video store, or establishment governed by RSA 314-A, Body Art.[**Added 1994; amended 2009**]

ADULT MOTION-PICTURE THEATER — An enclosed building used for

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4. Editor's Note: See Ch. 35, Building Code.





presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.[Added 1994]

**ADULT VIDEO STORE** — An establishment having as a substantial or significant portion of its trade the sale or rental of films, recordings or videotapes, whether for on-premises or off-premises use, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.[Added 1994]

**AGRICULTURE** — All activities identified and defined as "agriculture" in RSA 151:24.

**ANIMAL FEEDLOT** — A commercial agricultural establishment where a concentration of animals is confined and fed simultaneously.[Added 3-11-2008]

**APARTMENT HOUSE; APARTMENT** — An apartment house is a building containing three or more separate dwelling units designed for, or used for, more or less permanent living quarters for persons or families on a commercial (rental) basis. An apartment is any separate dwelling unit so offered or furnished for more or less permanent occupancy within an apartment house, motel, hotel or other building. **A**

**building shall still be construed as an apartment house even though the owner or principal of the owner resides in a dwelling unit in the apartment house.**

**AQUACULTURE** — The propagation and rearing of aquatic species and marine species and includes the planting, promotion of growth, harvesting and transporting of these species in, on, or from the waters of this state, or the operation of a fishing preserve, as defined by RSA 211:62-e, as amended.<sup>10</sup>[Amended 3-18-2017]

**ASSISTED LIVING FACILITY** — A state-licensed facility which combines apartment living (including studio apartments) with a variety of support services, including meals, assistance with personal care, housekeeping, laundry, social and recreational programs, oversight of residents' medication, twenty-four-hour security, and on-site staff to respond to emergencies. Some assisted living facilities also offer specialized care for persons with dementia or Alzheimer's disease. See RSA 151-E:2, I.[Added 2009]

**BASEMENT** — A story **of a building** wholly or partially underground and having more than 1/2 of its height below grade. A basement shall be counted as a story in a building if the vertical distance from the grade to the basement ceiling is over five feet.

**BEST MANAGEMENT PRACTICES (BMP) – AGRICULTURE** — Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed periodically by the New Hampshire Department of Agriculture, Markets and Food, revised June 2011, as amended (<http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>).[Added 3-18-2017]

Moved up [23]: <#>Editor's Note: See Ch. 35, Building Code.¶

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BEST MANAGEMENT WETLAND PRACTICES (BMP) – AGRICULTURE – Manual of Best Management Wetland Practices (BMWP) for Agriculture in New Hampshire, distributed periodically by the New Hampshire Department of Agriculture, Markets and Food, revised , as amended <https://www.agriculture.nh.gov/publications-forms/documents/wetlands-bmp-manual.pdf>.

BEST MANAGEMENT PRACTICES (BMP) – FORESTRY — [Added 3-18-2017]

- (1) New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations 2016 as amended
- (2) ([https://extension.unh.edu/resources/files/Resource000247\\_Rep266.pdf](https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf)).  
[Amended 3-10-2020 by Art. 3]

Best Management Practices for Forestry: Protecting New Hampshire's Water Quality 2005 as amended (<https://extension.unh.edu/resources/files/>

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1. Editor's Note: The definition of "aquifer," added 3-11-2008, which immediately followed this definition, was repealed 3-10-2015.

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resource000248\_rep267.pdf).

- (3) Good Forestry in the Granite State (DRED) as amended

(<https://extension.unh.edu/goodforestry/assets/docs/goodforestry2010finalreducedsizesecure.pdf>).

**BEST MANAGEMENT PRACTICES (BMP) – WETLANDS — Best Management Practice Techniques: For Avoidance and Minimization, as amended** (<https://neiwppc.org/wp-content/uploads/2019/05/Wetlands-BMP-Manual-2019.pdf>). **[Added 3-10-2020 by Art. 3]**

**BEST MANAGEMENT PRACTICES (BMP) – WETLANDS CONSERVATION DISTRICT — [Added 3-18-2017]**

- (1) Best Management Practice for Urban Stormwater Runoff, NHDES, 1996, as amended

- (2) ([http://des.nh.gov/organization/divisions/water/wmb/tmdl/documents/stormwater\\_toc.pdf](http://des.nh.gov/organization/divisions/water/wmb/tmdl/documents/stormwater_toc.pdf)).

- (3) Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials, NHDES, January 2004, as amended (<http://des.nh.gov/organization/Commissioner/pip/publications/wd/documents/wd-03-42.pdf>).

Innovative Stormwater Treatment Technologies Best Management Practices Manual, NHDES, 2002, as amended (<http://scholars.unh.edu/cgi/viewcontent.cgi?article=1314&context=prep>).

**BUILDING** — Any structure, either temporary or permanent, having a roof or other covering and designed or used for the shelter or enclosure of any person, animal, or property of any kind.

**BUILDING, ATTACHED** — A building connected to another building by a common wall.

**BUILDING, DETACHED** — A building which is not connected to another building by a common wall. For example, a garage connected to a dwelling by a breezeway is a detached building.

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**BUILDING HEIGHT** — The height of a building is the vertical distance from the grade elevation to the highest point of the roof. See definition of "grade."

**BUSINESS** — Trade or activity carried on for **pecuniary** gain, including goods, services, and facilities offered or furnished to others for monetary or similar consideration.

**CARPOR** — A roofed, wall-less or semi-walled shed, projecting from the side of a building or entirely separated therefrom, that is used primarily as a shelter for vehicles.

**CELLAR** — Synonymous with basement; see definition of "basement."

**CERTIFIED WETLANDS SCIENTIST** — A person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands.

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functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the State Board of Natural Scientists.**[Added 3-18-2017; amended 3-10-2020 by Art. 3]**

**CHURCH** — Buildings used or intended for use as places of worship, or for other religious uses such as meetings, training, instruction and communal dwelling places for religious personnel, including parish houses, convents, monasteries, rectories and parsonages.

**COMMERCIAL** — Having to do with or pertaining to business, such as the business use of property being called commercial. See definition of "business."

**COMMERCIAL RECREATION** — A privately owned use providing indoor or outdoor nonmotorized recreational activities, or a combination of both, with or without seating for spectators, including basketball, football, baseball, softball, ice hockey, wrestling, soccer, tennis, racquetball, handball, squash, volleyball, rope courses, zip lines, miniature golf, golf driving range, skateboarding, cycling, bowling, swimming, weightlifting, gymnastics, and health and fitness, but not including firearms shooting ranges. A commercial recreation use may include accessory uses such as snack bars, restaurants (but no sales or service of alcoholic beverages) and retail sales of related recreational, sports or health and fitness items. Special events must comply with all Town permitting requirements.**[Added March 2012]**

**CONDITIONAL USE PERMIT** — In this chapter, the term "conditional use permit" is synonymous with the term "special use permit," as used in the New Hampshire Revised Statutes Annotated.**[Added 2007]**

**CONDOMINIUM OWNERSHIP** — Ownership of common real property vested in unit owners pursuant to New Hampshire's Condominium Act, NH RSA 356-B, as amended.

**DEVELOPMENT** — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, ~~clearing, site preparation,~~ mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTRICT** — A district includes all the land, water, buildings, and uses within certain designated boundaries and constitutes a use classification within such boundaries as herein defined and as shown on the Zoning Map which is incorporated as part of this chapter and the amendments thereto.

**DRIVEWAY** — A private way for vehicles which provides entrance, exit, access or approach to or from land in Rye to/from a public street. Driveways are regulated by the Rye ~~PLanning~~ Board Land Development Regulations. ~~a~~ permit is required. Driveways may not be constructed within 10 feet of an abutting property line.

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[Added 3-12-2019 by Art. 4]

DWELLING — A building designed for or used primarily by one or more families for living quarters, but not including mobile homes, trailers of any kind, hotels, motels, lodging houses, institutional homes, residential clubs, tourist camps, cabins, or other commercial accommodations offered for occupancy.[1991]

DWELLING, SINGLE-FAMILY — A detached building designed for or occupied exclusively by one family.

Deleted: 4; amended 3-8-2022 by Art. 3

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DWELLING, TWO-FAMILY — A detached building designed for or occupied by two families exclusively, living independently and separately of each other therein.

DWELLING UNIT — One or more rooms arranged for the use of one or more persons living together as a single housekeeping unit, and having cooking, living, sanitary and sleeping facilities, but not including a hotel, motel, tourist cabin (camp), lodging house, institutional home, residential club units or other similar commercial accommodations offered for ~~transient~~ occupancy.[Amended 1991]

DWELLING UNIT, ACCESSORY — 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.[Added 3-18-2017]

DWELLING UNIT, SEASONAL — A dwelling unit not suitable for year-round occupancy due to the presence of any one of the following conditions: water supply and/or waste disposal pipes, ~~sewerage~~ pumps or other facilities susceptible to freezing; no central year-round heating system; or NHDES restriction of septic system to seasonal use. If uncertainty exists, the Building Inspector shall determine the seasonal or year-round status of a dwelling unit.[Added 2007]

**EARTH EXCAVATION** — The ~~removal, extraction, mining, taking, storage, or stockpiling~~ of earth, as that term is defined in RSA 155-E:1, I. [Added 3-11-2008]

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FAMILY — A family is an individual; group of two or more persons related by blood, marriage, or adoption; or not more than three other persons not so related, provided that in each of the foregoing, all three persons constituting any such group are normally living together and sharing the same living quarters.

FARM — Any parcel of land used primarily for agricultural purposes.

FENCE — A barrier, railing or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, control access, or prevent escape.

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FIREWORKS — Fireworks as defined in 27 CFR 555.11.[Added March 2011]

FLOOR — The more or less horizontal platform or portion of a building used to support the occupants and their furnishings and uses, generally laid perpendicular to and between the walls thereof.

FLOOR, GROUND — The floor of a building immediately above, and generally attached to, the foundation.

FORESTRY — Includes the growing, stocking, cutting, or sale of forest trees of any size for habitat management, for producing timber, or for other forest products, and pre-commercial silvicultural activities, including but not limited to timber stand improvement.[Added 3-18-2017]

FOUNDATION — For the purposes of this chapter, a foundation of a building or

structure used for human habitation shall mean a continuous wall of masonry, masonry units, concrete, or similar materials supporting or intended to support such building or structure, the base of which is not less than three feet below ground level at the building line.

**FRONTAGE** — All that continuous side of a lot or tract of land abutting on one side of a street, or proposed street, measured along the street line.**[Amended 3-18-2017]**

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at the building line.¶



GARAGE — An accessory building, joined or attached or entirely separate from the dwelling or principal building it serves, and having a garage-style door(s), the primary use of which is the storage or parking of not more than three motor vehicles. If the garage is used in conjunction with a multi-unit dwelling, the number of bays shall not exceed the number of units.**[Amended 3-11-2008; 3-12-2019 by Art. 4]**

GARAGE, PUBLIC — A building designed or primarily used for the storage, maintenance, and repair of motor vehicles.

GRADE — The elevation of the ground before any construction or alteration begins shall be referred to as the grade.**[Amended 3-10-1999; 3-18-2017]**

- (1) Measurement from grade for buildings is determined by one of the following methods:
  - (a) For lots with front yard depth of 100 feet or less, grade shall be the elevation of the existing ground at the center of the exterior wall on the street side.
  - (b)

- (c) For building lots with frontage on more than one street, grade shall be the elevation of the existing ground at the center of the exterior wall on the nearer or nearest street side.

For lots with all yard depth to streets of more than 100 feet, grade shall be the average elevation of the ground **at each of the corners of the building**

- (2) For structures that are not buildings, grade shall be measured from the lowest point of the ground occupied by the structure.

GROUNDWATER — Subsurface water that occurs beneath the water table in soil and geological formations.**[Added 3-11-2008; amended 3-12-2013]**

GROUNDWATER MANAGEMENT ZONE (GMZ) — An area designated by the state through permit process as a component of the remediation of contaminated groundwater. The state issues permits or other similar controls for such zones that establish a time period and process for the monitoring and/or remediation of the groundwater.**[Added 3-12-2013]**

GROUNDWATER RECHARGE — The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface water, including lakes, streams and wetlands.

HABITABLE FLOOR — Any floor usable for living purposes, which includes

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working, sleeping, eating, cooking, or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

**HEIGHT** — See definition of "building height."

**HOME** — A person's place of abode or residence; essentially synonymous with one's dwelling. See definition of "dwelling."

**HOME OCCUPATION** — A business customarily carried on from the home, which is an accessory use only of, or to, the dwelling concerned, and which employs not more than one person outside the immediate family, and which is operated by a member of the family occupying the dwelling.

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**HOTEL** — A building designed for or used commercially as more or less temporary/transient living quarters for persons who are lodged with or without meals in which are 10 or more sleeping rooms usually occupied singularly or by families of transients.

**HOUSEKEEPING CABIN** — A building designed, or used, for temporary living quarters for one person or a single family occupying it exclusively on a commercial (rental) basis and having a kitchen or cooking facilities therein.

**HOUSE TRAILER** — See definition of "mobile home."

**HYDRIC SOIL** — A soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part. See New Hampshire Administrative Rules Section Env-Wq 1002.32.**[Added 3-14-2000; amended 3-10-2020 by Art. 3]**

**HYDROGEOLOGIST** — A person who by education and experience is able to quantitatively analyze and interpret hydrology and is a licensed geologist, specializing in hydrology, in the State of New Hampshire.**[Added 3-11-2008; amended 3-10-2020 by Art. 3]**

**IMPERVIOUS COVERAGE** or **IMPERVIOUS** — Any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs and, unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways, storage areas, compacted gravel, including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers and wood. (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)**[Amended 3-10-2015]**

**JUNKYARD** — The use of any lot or parcel of land, or any part of a lot or parcel of land, for the open or exposed storage, keeping, sale, disposal or abandonment of food, garbage, refuse, old, used, wholly or partially dismantled, useless, broken or damaged articles, machines, machinery, automobiles, motor vehicles of any sort, clothing, furniture, building materials, building debris or things of any sort. Such storage, keeping, or placing for sale, disposal or abandonment of ~~two~~ or more unused, inoperative or unregistered motor vehicles on any lot or parcel of land, or portion thereof, shall constitute a junkyard. The term "junkyard" as so defined shall not be deemed to include any municipal dump or municipal refuse disposal area.**[Amended March 2012]**

**LEACHABLE WASTES** — Waste materials, including but not limited to solid wastes, sludge and agricultural wastes, that are capable of releasing contaminants to the surrounding environment, but not including leachate from on-site waste disposal systems.**[Added 3-11-2008]**

**LIVING QUARTERS** — Any structure, or any portion of a structure, designed for or used primarily for living and sleeping accommodations by a person or family, and generally

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including cooking and sanitary facilities.

**LIVING SPACE** — All rooms or portions of a dwelling or structure designed for, or used primarily for, living, cooking, eating, sanitary, recreational, or sleeping accommodations by a person, or family, as distinguished from storage or other such dead space. A screened porch/deck is not living space. A porch/deck which,

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is enclosed part or all of the year with glass or other material is living space, whether or not heated. Where possible living space shall be calculated based on the exterior wall to wall dimensions of a dwelling unit for each floor having living space. For attached dwelling units and where storage ~~rooms that do not constitute living space~~

adjacent to living space, measurements shall be from the mid-point of wall studs. Where upper floors do not extend the full width of the exterior walls (such as a cathedral ceiling and partial second floor), the calculation of living space shall be adjusted accordingly. **[Amended 3-8-2016]**

**LOT** — The whole area of a single parcel of land, whether buildable or not, with any amount of square footage and ascertainable boundaries, undivided by a street.

**LOT AREA** — The extent in square feet of the surface of a lot. The lot area shall not include any part of the street upon which the lot fronts or abuts.

**LOT, CORNER** — A lot situated at the junction of two or more streets.

**LOT DEPTH** — The average distance between the front or street line of the lot and the rear property line(s) measured perpendicular (or radial) to the street line. **[Amended 1996]**

**LOT LINES** — The lines bounding a lot and dividing the lot from other lots, street, land, or water.

**LOT OF RECORD** — A lot described in a deed which has been lawfully recorded in the Registry of Deeds for the County of Rockingham or which, if not so deeded, is a lot which is part of a subdivision, the plan of which has been lawfully recorded in such Registry of Deeds.

**LOT WIDTH** — The mean distance between the lot side lines measured on a line which is the mean direction to the front and rear lot lines.

**LOW-IMPACT DEVELOPMENT TECHNIQUES** — Low-impact development is a site planning and design strategy intended to improve, maintain or replicate predevelopment hydrology through the use of site planning, source control, and small-scale practices integrated throughout the site to prevent, infiltrate and manage runoff as close to its source as possible. **[Added 3-18-2017]**

**MANUFACTURED HOUSING** — Any structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein.

**MARINA** — A public, private or commercial facility for docking and servicing of two or more boats, which for the purposes of this chapter will be so limited as to number of slips, docks, moorings, gasoline pumps, storage facilities, and servicing facilities as not to be detrimental or injurious to the neighborhood.

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MAY — Is permissive. **[Added March 2012]**

MEMBERSHIP CLUB — An organized group sponsoring community, social or recreational activity.

MINING OF LAND — The removal of geological materials such as topsoil, sand,

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and gravel, metallic ores, or bedrock. **[§ 190-11.1 (a) (2) (i) EXCAVATION.] [Added 3-11-2008]**

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**MOBILE HOME** — Any vehicle, trailer, manufactured housing or assembled structure or portion of a structure designed for, or with accommodations for, occupancy as living quarters, which is readily moveable from place to place upon its own accessory wheels or trucks. Any such unit shall constitute a mobile home whether or not it constitutes such living quarters in a single structural unit or in two or more such units readily assembled as such living quarters upon a site. No mobile home or trailer of any sort shall be deemed a dwelling by reason of its being placed upon, or having installed around or under it, a foundation of any sort.

**MOTEL** — A building or group of buildings containing rooms or living quarters in separate units, designed for or used principally for providing temporary living accommodations for automobile travelers on a commercial (rental) basis, and generally providing nearby automobile parking space serving such rooms or units.

**MOTEL UNIT** — A single overnight or living quarters unit of a motel.

**MULTIFAMILY DWELLING** — A building containing three or more dwelling units. **[Added 3-9-2010]**

**MULTIFAMILY DWELLING DEVELOPMENT** — A land development consisting of two or more multifamily dwellings located on the same parcel. **[Added 3-9-2010]**

**NEIGHBORHOOD** — An area of land local to the use concerned, generally **[§ 190-11.1 (a) (2) (i) EXCAVATION.]** lying within a radius of 1,000 feet of such use for the purpose of this chapter, but including all areas farther away from such use whenever the use creates a condition which by reason of **[noise]** noise, smoke, vibration, lighting, or other cause creates a detriment, hazard, or injury to an area more extensive in size.

**NONCONFORMING LOT** — Any lot which does not conform to the area, frontage or depth requirements of the district in which it is located.

**NONCONFORMING STRUCTURE** — Any building or structure, in whole or part, which does not conform to the regulations of the district in which the building or structure is located.

**NONCONFORMING USE** — Any use of land and/or a structure that does not conform to the provisions of the district in which it is located.

**NURSING FACILITY** — A state-licensed facility which is primarily engaged in providing twenty-four-hour care for residents needing: **[Added 2009]**

- (1) Skilled nursing care, medical monitoring, and related services;
- (2) Rehabilitation services for the rehabilitation of injured, chronically disabled or sick;
- (3) Medication administration or instruction and supervision; or

- (4) On a regular basis, health-related care and services (above the level of room and board) which can be made available to them only through facilities which provide twenty-four-hour care. See RSA 151-E:2, V.

OFFICIALLY APPROVED ~~— Conforming to Town standards for similar~~  
construction or development and approved as so conforming by the Board of ~~✓~~

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OPEN SPACE — An unoccupied area of land not covered in any manner and open to the skies.

OVERNIGHT CABIN — A building designed or used for temporary living quarters for one person or a single family occupying it exclusively on a commercial (rental) basis, but having no kitchen or cooking facilities therein.

PASSIVE RECREATION — Nonmotorized recreational activities that typically occur in a natural setting, that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting and do not require structures. Such passive recreation uses include, but are not limited to, walking, hiking, picnicking, nature observation, and cross-country skiing.[Added 3-18-2017]

PERMANENT USE or PERMANENT STRUCTURE — Any use or structure designed for, intended to be used, or used for a lengthy or extended duration of time, and generally intended for use, or used, for more than six months in any one year.

PERVIOUS COVERAGE OR PERVIOUS — Any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those pavements specifically designed and maintained to effectively absorb and infiltrate water. (From NH RSA 483-B:3, Shoreland Water Quality Protection Act.)

PRINCIPAL BUILDING — A building in which is conducted the principal use of the site on which it is situated.[Added 3-12-2019 by Art. 4]

RECHARGE AREA — The land surface areas from which groundwater recharge occurs. In this chapter, the recharge areas are considered to be co-terminus with the boundaries of the Aquifer and Wellhead Protection District.[Added 3-11-2008]

RETAINING WALL — A structure for holding in place a mass of earth or the like, as the edge of a terrace or excavation. A retaining wall is designed and constructed to resist the lateral pressure of soil or other material, when there is a desired change in ground elevation.

SHALL — Is always mandatory and not directive.[Added March 2012]

SHED — Is a structure. See definition of "structure." [Added March 2012]

SHOULD — Directory, as in a requirement that is expected but is not mandatory but is subject to the discretion of a reviewing board or administrative official.[Added March 2012]

SIGN — Any permanent or temporary advertisement, direction or communication, other than an identification sign, produced in whole or in part by the construction, erection, affixing or placing of the structure, device, letter, banner, pennant, streamer or placard on or over any land or on any structure, or produced by affixing or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface or suspended between any buildings or structures or which is designed to be

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seen from outside a building; provided, however, that signs placed or erected by the Town or state for the purposes of showing street names or traffic directions or regulations or for other municipal or governmental purposes shall not ~~comply with the signs~~ herein.**[Amended 1993; 1997]**

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**SIGN, BUSINESS DIRECTIONAL** — A sign that provides directional information only to any privately owned business. Such sign shall contain only the name of the business, a directional arrow, distance and symbols (if applicable) arranged in accordance with Figures 1, 3, and 5 of the New Hampshire Department of Transportation Specifications for Business Directional Signs, Section 660. Such signs shall have a blue background over the entire sign face, and all copy shall be white. Where the New Hampshire Department of Transportation Specifications conflict with the size limitations of § 190-5.1F(1) of this chapter, this chapter shall govern.**[Added 1993; amended 1996]**

**SIGN, IDENTIFICATION** — An outdoor sign displaying the name or address of the occupant or identifying a permitted use or an accessory use.**[Added 1993]**

**SIGN, OFF-PREMISES** — Any sign identifying, advertising or giving directions to a business, person, activity, property or service not located on the premises where the sign is located.**[Added 1993]**

**SLUDGE** — Residual materials produced by the sewage treatment process.**[Added 3-11-2008]**

**SOLID WASTE** — Any discarded or abandoned material, including refuse, or sludge, as defined by New Hampshire Administrative Rules Chapter Env-Hw 100 and Chapters Env-Sw 400 to 2000. Solid waste includes solid, liquid, semisolid, or contained gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations and from community activities.**[Added 3-11-2008; amended 3-10-2020 by Art. 3]**

**SPECIAL EXCEPTION** — Exceptions to the terms of this chapter which may be permitted in a particular district ~~upon satisfaction of designated criteria~~. Such exceptions are specifically listed by the terms of a particular district.

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**SPECIFIED ANATOMICAL AREAS** — Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.**[Added 1994]**

**SPECIFIED SEXUAL ACTIVITIES** — Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; and fondling or other erotic touching of human genitals, pubic region, buttock or female breast.**[Added 1994]**

**STONE WALL:** A structure built of rough stones, which may or may not be listed together with mortar.

**STORMWATER** — As defined by RSA 149-I:6-a, II, as may be amended.**[Added 3-12-2013; amended 3-10-2020 by Art. 3]**

**STORY** — That part of a building or structure comprised between a floor and the floor or roof next above it.

**Deleted:** STONE WALL — A structure built of rough stones, which may or may not be filled together with mortar.**[Added 3-8-2022 by Art. 3]**  
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**STORY, HALF** — A story in a sloping roof, the area of which at a height of four feet above the floor does not exceed 2/3 of the floor area of the story immediately below it. A half story may also consist of a story of a building built at a different floor level than the story or stories of the same building to which it is attached and has access, so that at least 1/2 of its floor to ceiling height is below grade of the building.

**STREET** — A public roadway which has been accepted by the Town, or such a roadway otherwise established by law as a Town or state highway, or an officially approved private road if not less than 40 feet in width, which affords means of access

to abutting property.

**STRUCTURAL ALTERATION** — Any change or addition to the basic structure of a building, including changes in supporting members of a building, such as bearing walls, columns, beams or girders, or any change in the interior or exterior walls, or any floor, roof or ceiling, or the addition of a room.<sup>11</sup>

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<sup>5.</sup> Editor's Note: The definition of "substantial improvement" which immediately followed this definition was repealed 3-18-2017.

STRUCTURE — Any temporary or permanently constructed, erected or placed material or combination of materials in or upon the ground, including but not limited to buildings, mobile homes, radio towers, retaining walls, sheds and storage bins, storage tanks, portable carports, swimming pools, tennis courts and parking lots. The following are structures but are exempt from the dimensional requirements unless covered in other parts of the ordinance and codes:**[Amended 2001; 3-12-2013]**

- (1) Subsurface waste disposal facilities (see § 190-2.2E and Building Code,
- (2) § 35-15B);
- (3) Fences and stone walls (see § 190-5.10);
- (4) Driveways **(But see see Chapter 202, Land Development Regulations, Appendix E: Driveway Regulations. Driveways may not be constructed within 10 ft. of an abutting property line);**
- (5) Fuel storage tanks (see NFPA requirements); and**
- (6) Retaining Walls less than 3 feet in height.**

TEMPORARY USE or TEMPORARY STRUCTURE — Any use or structure designed for, intended to be used, or used only for a brief or short duration of time, and in no case intended for use, or used, for more than six months in any one year.

TOURIST CAMP — Any parcel of land where two or more overnight or housekeeping cabins are located or to be located.

TOURIST CAMP UNIT — A section of ground in any tourist camp used, or designed for use, as a location for a single overnight or housekeeping cabin.

TOXIC OR HAZARDOUS MATERIALS — Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic chemicals, petroleum, petroleum products and additives such as MtBE, heavy metals, medical wastes, and radioactive materials as defined in New Hampshire Administrative Rules Chapter Env-Or 700, Groundwater Release Detection Permits, substances for which ambient groundwater quality

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standards have been established in accordance with RSA 485-C:6, and substances listed under 40 CFR 302, as amended. Wastes generated by, but not limited to, the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such activity can demonstrate the contrary to the satisfaction of the Planning Board:[Added 3-11-2008; amended 3-10-2020 by Art. 3],

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- (5) Airplane, boat and motor vehicle service and repair.
- (6) Chemical and bacteriological laboratory operation.
- (7) Dry cleaning.
- (8) Electronic circuit manufacturing. Junk and salvage lots.
- (9) Metal plating, finishing and polishing.
- (10) Motor and machinery service and assembly.
- (11) On-site handling, disposal, discharge, storage, processing or recycling of toxic or hazardous materials, including bulk storage of toxic materials for resale or distribution (except for routine delivery of heating oils).
- (12) Paint production and painting, paint stripping, wood preserving and furniture.
- (13) Pesticide and herbicide production.
- (14) Photographic processing.
- (15) Printing.

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**TRANSMISSIVITY** — A measure of the rate at which water will move through an aquifer. Transmissivity incorporates the hydraulic conductivity of the aquifer, aquifer thickness, water temperature and fluid properties to describe water movement.[Added 3-11-2008]

**UNIT** — For the purposes of this chapter, as applicable, the word "unit" shall mean generally a distinct part of a whole structure or thing.

**UNNECESSARY HARDSHIP** — Owing to special conditions of the property that distinguish it from other properties in the area:[Added 3-10-2020 by Art. 3],

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- (1) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- (2) and

The proposed use is a reasonable one. [NH RSA 674:33, l(b)(1)],

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**UPLAND SOILS** — Soils other than non-wetland soils, and slopes less than 20% (as calculated by the feet of elevation change over a distance of 20 feet). Such soils may be any soil other than poorly drained or very poorly drained

soils, as delineated by high-intensity soils (HIS) mapping done by a certified soils scientist, or any non-hydric soil, as mapped by a certified soils scientist.[Added 3-14-2000]

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**VARIANCE** — A variation from the

requirements of this chapter, pursuant to RSA 674:33, I(a)(2).

**WORKFORCE HOUSING**  
Housing as defined by RSA 674:33 is amended.

**VERNAL POOL** — A surface water or wetland which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which typically has the following characteristics: cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year; forms in a shallow depression or basin; has no permanently flowing outlet; holds water for at least two continuous months following spring ice-out; lacks a viable fish population; and supports one or more primary vernal pool indicators, or three or more secondary vernal pool indicators as described in Identification and Documentation of Vernal Pools in New Hampshire, Third Edition, 2016, published by the New Hampshire Fish and Game Department. [Added 2012]

**WETLANDS** — An areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. [Added 2012]

- (1) **YARD** — An open unoccupied space surrounding or adjoining a building on a lot, and in particular shall mean as follows: [Amended 3-12-2019 by Art. 4] **FRONT YARD** — The required open space extending across the whole width of the front, or street side, of the lot between the side lines of the same lot, and running from the front (or street) line of the lot to the front line of the building, except for a corner lot as to which the front yard shall extend across both sides of the principal building nearest the streets.
- (2) **REAR YARD** — The required open space extending across the whole width of the lot in the rear of the principal building.
- (3) **SIDE YARD** — The required open space extending along the side lot lines from the front line extended of the principal building to the rear line extended of the same building.

**YIELD PLAN** — A plan or plan set that shows the maximum number of conforming building lots that is reasonably achievable under a conventional subdivision that conforms to the requirements of this chapter and Chapter 202, Land Development

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Regulations.**[Added 3-9-2010]**

ZERO LOT LINE DEVELOPMENT — A land development in which there are not lot lines. Dwellings (including single-family detached dwellings and two-family dwellings) may be owned as condominiums, with all land areas placed in either common ownerships or limited common ownerships.**[Added 3-9-2010]**