

required even though the surface treatment is other than as defined by this chapter for green space. [Added 5-22-2000 by Ord. No. 05.2000.05]

**§ 235-37. Building height.**

The height of a building shall be measured from the highest point of any roof or parapet to the average finished grade of the structure. Chimneys, spires, cupolas, television antennas and other parts of buildings or structures not intended for human occupancy shall not be more than 15 feet above the district limit.

**§ 235-38. Residential and commercial uses on the same lot of record. [Amended 5-22-2000 by Ord. No. 05.2000.05]**

Where multiple uses are permitted on the same lot of record and additional uses or change of use(s) are proposed, the applicant shall document that all uses conform with regard to the density and green area requirements for each separate and distinct use in order to establish additional uses on such a lot. In no case may land area, setback requirements, green space or density be shared between separate and distinct uses. Nonconformities of setbacks, height restrictions, signs or use shall not prohibit the establishment of an additional conforming use.

ARTICLE VII  
**Supplementary Provisions**

**§ 235-39. General provisions.**

The following provisions are applicable to all uses in any district and are in addition to any other provisions throughout this chapter or any other applicable regulation:

- A. (Reserved)<sup>24</sup>
- B. Visibility at intersections. On a corner lot nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially obstruct vision between the height of 21/2 feet and eight feet above the adjoining street grade in the area bounded by the street right-of-way lines of the corner lot and a line joining the points on said street right-of-way lines 20 feet from their point of intersection.
- C. Building on unaccepted streets. The purpose of this subsection is to regulate the issuance of building permits for the erection of buildings on lots abutting unaccepted highways or streets.
  - (1) No building permit shall be issued and no building shall be erected on any lot within the City unless the street giving access to the lot shall have been accepted by the City or such street corresponds in its location and lines with a street shown on a subdivision plan approved by the Planning Board.

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24. Editor's Note: Former Subsection A, Parking and storage of unlicensed vehicles, was moved to § 235-41K 8-13-2001 by Ord. No. 05.2001.05.

- (2) The provisions of this section shall not prevent the issuance of a building permit for construction of farm or accessory buildings which are not in violation of any lawful City of Laconia regulations and ordinances.
  - (3) When existing conditions warrant or when there has been sufficient proof of substantial previous construction on the street, the Planning Board may vary this section and authorize the issuance of a building permit. The Board shall consider the desirability or feasibility of the development of a public road in view of public health, safety, convenience or welfare.
  - (4) Any person wishing to petition the City for acceptance of an existing street shall follow the procedure as prescribed in Chapter 197 of the City of Laconia Public Ordinances.
- D. Fences and walls. In residential districts, fences and walls located along the side or front of any required front yard shall not exceed four feet in height. Any fence or wall may be placed against the lot line.<sup>25</sup> [Added 10-14-1997 by Ord. No. 10.97.10]

#### § 235-40. Residential uses.

##### A. Manufactured housing units.

- (1) Installation. The installation of manufactured housing units shall comply with Title 24, United States Department of Housing and Urban Development, Part 3280, Manufactured Home Construction and Safety Standards, and all applicable City codes and ordinances.
- (2) Additions. On-site additions are permitted and may include attached garages, carports, porticos, porches, decks and living spaces, provided that the manufactured housing unit complies with the United States Department of Housing and Urban Development standards referenced in Subsection A(1). Additions to manufactured housing units which are not in compliance with these standards shall not be permitted.
- (3) Nonconforming locations. Existing manufactured housing units which are nonconforming by use may be expanded, subject to the limitations and conditions of Subsection A(1) and (2) above. Such a nonconforming unit may be replaced with another manufactured housing unit, including the replacement of a single section unit with a double-wide unit, provided that setback and green space requirements are maintained. The installation of a replacement unit shall comply with the requirements of Subsection A(1).
- (4) Temporary placement. In any zoning district, the owner-occupant of a dwelling which is damaged by fire or other disaster may place a manufactured housing unit on the lot of such residence and temporarily reside in the manufactured housing unit while the residence is being rebuilt, provided that the manufactured home is

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25. Editor's Note: Former Subsection E, Storage of recreational vehicles, travel trailers, campers and boats, which immediately followed, was moved to § 235-41L 8-13-2001 by Ord. No. 05.2001.05.

installed in compliance with City regulations relating to water supply and sewerage disposal. The period of such occupancy shall expire 12 months from the placement of the manufactured housing unit or until the issuance of a certificate of occupancy, whichever occurs first. A manufactured housing unit which is installed as a temporary dwelling under this Subsection A(4) shall not attain the status of a vested nonconforming use. (See RSA 674:32, II, Manufactured housing.)

**B. Cluster development: [Amended 10-14-1997 by Ord. No. 10.97.10; 8-13-2001 by Ord. No. 05.2001.05, 1-28-2008 by Ord. No. 01.2008.01]**

- (1) Authority and permits and fees required. Cluster development for conventional housing is an innovative land use control. Applications filed must be filed concurrently under both subdivision regulations and site plan regulations. All applications as required to be filed with the Planning Board for a cluster development shall be filed concurrently. Cluster applications are subject to a reduction in the overall Planning Department fee of 25%.
- (2) Purpose and objective. Cluster development is permitted to allow an alternative to the provisions of conventional residential subdivision practices and to encourage the environmentally sound development of land, to preserve open space, to protect natural resources and to create attractive living environments. More specifically, the objectives of cluster development are to:
  - (a) Allow flexibility and creativity in design.
  - (b) Discourage development sprawl and consumption of rural open space and/or agricultural land.
  - (c) Create residential environments which provide adequate open space and common area amenities adjacent to living areas.
  - (d) Encourage the economical, efficient and environmental provision of public services.
  - (e) Provide a more efficient use of land in harmony with its natural characteristics.
  - (f) Preserve usable contiguous open space, significant archaeological resources, agricultural land, tree cover, recreation areas, scenic vistas, undeveloped lengths of shorefront and wildlife habitats.
  - (g) Protect water quality.
- (3) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

**ACCESSORY RESIDENTIAL USES** — Any use customarily incidental, related and clearly subordinate to a principal use established on the same lot or premises.

**ACTIVE, SUSTAINABLE TIMBER MANAGEMENT** — Management of the forest must ensure that harm to ecosystems is minimized, that productivity of the

forest is maintained, that forest ecosystem health and vitality is maintained, that biodiversity is maintained by:

- (a) Appropriate assessment of impacts and planning to minimize impacts.
- (b) Protection of soil, water and biodiversity.
- (c) Management of natural processes, fires, pests and diseases, including controlled and appropriate use of chemicals and use of integrated pest management wherever possible.
- (d) Proper disposal of wastes to minimize any negative impacts.
- (e) Adequate training of all personnel, both employees and contractors.
- (f) Harvest levels that do not exceed the long-term production capacity of the forest, based on adequate inventory and growth and yield data.
- (g) Adequate protection of the forest from unauthorized activities such as illegal logging, mining and encroachment.
- (h) Implementation of safeguards to protect rare, threatened and endangered species.
- (i) The conservation/set-aside of key ecosystems or habitats in their natural state.
- (j) The protection of features and species of outstanding or exceptional value.

**BUILDABLE SQUARE FOOTAGE OF THE TRACT** — All of the area of a parcel, except any submerged land area; high-tension power line easements; the area of any proposed public or private street rights-of-way; Steep slopes, greater than 25%; streams, seasonal drainageways, or wetlands. (from Goffstown Open Space Development Regulations)

**CONSERVATION OPEN SPACE, RECREATIONAL VEHICLE ACCESS CROSSINGS** — An area where a pedestrian trail system or recreation trail network requires a crossing of a body of water, wetland or wetland buffer. Crossing is to be low impact and for the purpose of pedestrian, bicycle or motorized vehicle only and not for automobile, emergency vehicles or maintenance vehicles.

**CONTIGUOUS OPEN SPACE** — Open space that is proposed in one large block of area and not finger-like, spanning out in several corridors in order to fit around lots or other development infrastructure. The contiguous open space should encourage a development pattern that arranges the layout of buildings in a compact area of the site so as to preserve and protect a blocky portion of the site for recreational or natural open space as an integral part of the overall plan. Continuous open spaces or greenways by linking the common open spaces in adjoining subdivisions is encouraged wherever possible.

**ENERGY EFFICIENT BUILDING DESIGN** — Structures that incorporate the principals of sustainable design; design in which the impact of a building on the

environment will be minimal over the lifetime of that building. Green buildings incorporate the principals of energy and resource efficiency, practical applications of waste reduction and pollution prevention, good indoor air quality and natural light to promote occupant health and productivity, and transportation efficiency in design and construction during use and reuse (EPA).

**HIGH-VALUE CHARACTERISTICS OF THE LAND** — Natural, cultural, and scenic resources on the property proposed to be developed to include, but not limited to:

- (a) Scenic vistas.
- (b) Valuable wildlife habitat, such as bedding, breeding and nesting areas, the habitat of faunal species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory and/or by the NH Fish and Game Department's Non-Game and Endangered Wildlife Program.
- (c) Unique stands of trees, older growth stands of trees, flora species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory.
- (d) Open water, waterways, stream channels, seasonal runoff channels, floodplains, wetlands, the adjacent buffers as defined in § 235-17.
- (e) Stonewalls.
- (f) Historic sites and features (such as foundations, cemeteries, etc.), and significant archeological resources.
- (g) Steep slopes, greater than 25%.
- (h) Ridgelines.
- (i) Existing or planned trails connecting the tract to other locations including but not limited to the WOW trail and the Riverwalk.
- (j) Prime (federal designation) and Important (state designation) agricultural soils.
- (k) Ledge outcroppings, significant boulders.

**LEED DESIGN GUIDELINES** — The Leadership in Energy and Environmental Design (LEED) LEED Green Building Rating System is the national benchmark for high-performance green buildings. LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality. LEED design guidelines are provided by the Green Building Council.

**OLDER GROWTH STANDS OF TREES** — A group of not fewer than five trees, with a purity of species composition or of a rare and unusual nature or

historical significance with a minimum trunk diameter of not less than nine inches as measured at breast height.

**PEDESTRIAN TRAIL SYSTEMS, NONMOTORIZED** — A path or trail physically separated from motor vehicle traffic by open space and built to accommodate low-impact activities, such as walking or hiking; may include nonmotorized modes of recreation, such as bicycling and rollerblading, as long as such activities maintain a low potential for impact to the natural resources and nuisance to adjacent property owners.

**RECREATIONAL TRAIL NETWORKS, MOTORIZED** — A path or trail physically separated from motor vehicle traffic by open space and built to accommodate high-impact activities, such as snowmobiling, dirt bikes and ATVs.

**RIDGELINES** — A line connecting the highest points along a ridge and separating drainage basins or small-scale drainage systems from one another.

**SCENIC VISTAS** — An area in which a view of a particular scenic beauty or historically significant area is achievable.

**SIGNIFICANT OR UNIQUE STAND OF TREES IN GOOD HEALTH** — Trees that are six inches or greater in diameter at breast height, in good health, of a noninvasive species and/or present a significant visual impact on the surrounding area or landscape.

**STEEP SLOPES** — All land area with a slope equal to or greater than 25%.

(4) Permitted uses.

- (a) Residential. Residential and accessory residential uses shall be as permitted in the district located where the cluster development is located. Residential uses shall be prohibited in any open space category except as allowed in Subsection B(6)(l)[1] and [2], Nonconforming structures and uses.
- (b) Amenities. In addition to the residential uses as permitted, the following amenities may be permitted in designated common area or open space as indicated, except in the case where they are not permitted in the underlying zone, for example: horse stables in the RG Zone. The Planning Board, where it deems appropriate, may allow similar uses, provided that they meet the objectives of the specific open space category in which they are located. The Planning Board shall consider the scale of development and its market orientation in evaluating the adequacy of the amenity plan.

[1] Active use common area.

[a] Courts, indoor and outdoor.

[b] Golf course/driving range.

[c] Swimming pool.

[d] Playground/athletic fields.

- [e] Common beaches.
  - [f] Boat launch/docks.
  - [g] Community center/clubhouse.
  - [h] Horse stable and paddocks.
  - [i] Fitness center/spa.
  - [j] Day-care facility.
  - [k] Guardhouse.
  - [l] (Reserved)
  - [m] Uses permitted in limited and conservation open space.
  - [n] Community utilities.
  - [o] Directional/incidental signs.
  - [p] Accessory building/structure.
  - [q] Nonmotorized boat launch; cannot include a ramp.
  - [r] No more than 1,500 square feet of commercial space. Uses are as permitted in the underlying zones.
- [2] Limited use open space.
- [a] Agriculture, including greenhouses/community gardens.
  - [b] Active, sustainable timber management.
  - [c] Recreational trail networks.
  - [d] Picnic area.
  - [e] (Reserved)
  - [f] Uses permitted in conservation open space.
  - [g] Community utilities incidental to uses listed in Subsection B(4)(b)[2][a] through [f].
  - [h] Directional and incidental signs.
- [3] Conservation open space.
- [a] Recreational vehicle access crossings.
  - [b] Pedestrian trail systems.
  - [c] Buffer area: perimeter, wetlands waterbody, shoreline.

- (5) Application procedure. The conceptual application procedure consists of a three-step process in which the applicant presents preliminary information, through a conceptual review, to the Planning Board. As part of the application, the applicant shall follow the conceptual review process in determining the layout of the proposed subdivision.
- (a) Conceptual review. As part of the conceptual review, the applicant shall provide the following information in the following order:
- [1] Mapping the high-value characteristics of the land.
    - [a] The applicant shall identify and delineate the natural, cultural, and scenic resources on the property to include, but not be limited to:
      - [i] Scenic vistas.
      - [ii] Valuable wildlife habitat, such as bedding, breeding and nesting areas, the habitat of faunal species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory and/or by the NH Fish and Game Department's Non-Game and Endangered Wildlife Program.
      - [iii] Unique stands of trees, older growth stands of trees, flora species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory.
      - [iv] Open water, waterways, stream channels, seasonal runoff channels, floodplains, wetlands, the adjacent buffers as defined in § 235-17.
      - [v] Stone walls.
      - [vi] Historic sites and features (such as foundations, cemeteries, etc), and significant archeological resources.
      - [vii] Steep slopes, greater than 25%.
      - [viii]
      - [ix] Existing or planned trails connecting the tract to other locations including but not limited to the WOW trail and the Riverwalk.
      - [x] Prime (federal designation) and Important (state designation) agricultural soils.
      - [xi] ledge outcroppings, significant boulders.
    - [b] The applicant shall present a separate map of land characteristics to the Planning Board to establish the priority for use of land development and conservation of resources. High-value

characteristics of the land are to be protected in the proposed open space.

- [c] Identifying building sites. The applicant shall identify the approximate sites of individual buildings within the proposed development areas to include the delineation of buildings and use envelopes, private yards and shared amenities so as to reflect an integrated community.
  - [d] Aligning streets and site amenities. The applicant shall align streets and site amenities in order to protect high-value characteristics of the land, access buildings, optimize efficiency of infrastructure, and provide the potential for connectivity to external sites and amenities. For example, trails should be laid out to create internal and external connection to existing and/or potential future streets, sidewalks, and trails. Buildings, roadways and amenities shall be shown on an overlay map also presented to the Planning Board.
- (b) The applicant shall proceed to the formal submittal upon recommendation of the Planning Board. The preliminary review shall include all submissions as required by the Subdivision Regulations and the following.
- (6) Development standards.
- (a) Exemptions. Cluster developments, lots and/or building envelopes are exempt from lot size, lot dimensions, green space, buildable land area and setback requirements of the base district.
  - (b) Unit number. No minimum number of residential units is required.
  - (c) Tract size. Minimum tract size is 10 acres.
  - (d) Height restrictions shall be as allowed in the base district.
  - (e) Density. The maximum number of units within a single development tract parcel shall be determined as follows: The gross square footage of the parcel shall be divided by the minimum land area required for a residential lot in the district. A fractional remainder of 0.5 or greater shall be rounded down to the next whole number. This shall be the allowed density of the cluster development. If the development is in more than one district, each district shall be calculated separately and the totals combined.
    - [1] A density bonus of 10% may be granted by the Planning Board if the developer provides for appropriate and suitable amenities above and beyond trails.
    - [2] A density bonus of 10% may be granted by the Planning Board if the developer provides open space and common area greater than 60%.
    - [3] A density bonus of 15% may be granted by the Planning Board if the developer designs all units under the LEED design guidelines.

- [4] At no time, will any combination of bonuses and the density bonus result in more than an increase of 25% in dwelling units. A fractional remainder of 0.5 or greater shall be rounded down to the next whole number.
- (f) Common area and open space. Fifty percent of the buildable square footage of the parcel shall be designated as common area and/or open space. Common areas and open space shall be contiguous and may include buffer area and trail corridors.
- [1] Common area and open space plan.
- [a] The applicant shall provide a plan calling out all high-value, natural, cultural or historic resources. A list of resources to consider for preservation is as follows:
- [i] Scenic vistas.
  - [ii] Valuable wildlife habitat, such as bedding, breeding and nesting areas, the habitat of faunal species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory and/or by the NH Fish and Game Department's Non-Game and Endangered Wildlife Program.
  - [iii] Unique stands of trees, older growth stands of trees, flora species listed as endangered, threatened or of special concern by the NH Natural Heritage Inventory.
  - [iv] Open water, waterways, stream channels, seasonal runoff channels, floodplains, wetlands, the adjacent buffers as defined in § 235-17.
  - [v] Stone walls.
  - [vi] Historic sites and features (such as foundations, cemeteries, etc.), and significant archeological resources.
  - [vii] Steep slopes, greater than 25%.
  - [viii]
  - [ix] Existing or planned trails connecting the tract to other locations, including but not limited to the WOW Trail and the Riverwalk.
  - [x] Prime (federal designation) and Important (state designation) agricultural soils.
  - [xi] Ledge outcroppings, significant boulders.
- [b] This plan shall be used to define the areas for all common area and open space and shall designate such areas. The Planning Board

shall consider the scale of development and its market orientation in evaluating the adequacy of the open space plan. For example, homes targeted at a family market may include amenities such as playgrounds, bus stops and/or playing fields.

[2] Common area and open space designations.

- [a] Active use/common area may be up to 25% of total open space area. Designation of active use open space shall be for the purpose of development of noncommercial amenities for the use and enjoyment of the development residents. The natural landscape may be altered with due consideration for unique features and significant trees.
- [b] Limited use open space may be up to 25% of total open space area. Designation of limited use open space shall be for passive recreational uses which, when developed, maintain the integrity of the natural landscape and provide use amenities for the residents.
- [c] Conservation open space shall be no less than 75% of the total open space area. A combination of active and limited open space can equal no more than 25%. Additionally, designation of conservation open space is required for significant or unique environmentally sensitive areas, including but not limited to wetlands, wildlife habitat, endangered flora/fauna, stream beds and water bodies, significant stands of trees, scenic vistas, archeological sites and graveyards. Land area within conservation open space shall permanently remain in its natural state except for maintenance and access to archeological sites and graveyards.

[3] Common area and open space protections.

- [a] All common areas and open spaces shall not be resubdivided. All land to be restricted shall include a notation on the recorded Mylar indicating this land is designated and restricted as open space in accordance with RSA 674:21-a and shall be enforceable by the City of Laconia.
- [b] The developer shall submit, prior to final approval, such legal instruments as the Planning Board shall require prescribing the manner of ownership, and maintenance of the parcel. Documents will be approved by the Planning Board and any amendments subsequently shall be approved by the Planning Board. The open space and common area shall be protected in one of three ways:
  - [i] A private nonprofit corporation, association or other legal entity established by the applicant for the benefit and enjoyment of the residents, such as a homeowners' or condo association.

- [ii] A public body that shall maintain the land as open space for the benefit of the general public, such as the City of Laconia.
  - [iii] A private, nonprofit organization which has as its purpose the conservation and preservation of open space through ownership and control; provided, however, that the residents of the development shall have access to the common area and open space or appropriate recreational uses.
- [4] Common area and open space maintenance.
- [a] In the event that the party established to own and maintain common open space or any successor organization shall fail to maintain the common open space/facilities in a reasonable order and condition, the Planning Department may serve written notice, return receipt, upon such organization's president as it is registered at the Attorney General's Office and shall demand that any deficiencies of maintenance be cured in 30 days of receipt of said notice, or other reasonable timeframe as designated by the Planning Board. In addition, a trustee shall be designated by the homeowners' association to insure that proper care of said common open space is continued. The trustee's responsibilities shall include, but not be limited to, passive and active recreational areas, retention ponds, drainage easements and common septic disposal systems.
  - [b] In the event that the maintenance deficiencies have not been resolved within said prescribed time limits, the cost of maintenance by another party, other than the City of Laconia, shall become a tax lien on the properties within the subdivision. Entry and maintenance of said common open space by the third party shall not exceed a period of one year.
  - [c] Before the expiration of said year, the Planning Department shall, upon its initiative or upon the request of the organization heretofore responsible for the maintenance of the common open space, call a public hearing upon 15 days' notice to such organization or the residents or owners of the development shall show cause why such maintenance by the third party shall not, at the election of the City, continue for a succeeding year.
    - [i] If the Planning Board determines that said organization is able to maintain said common open space in a reasonable condition, the City shall cease to have such space maintained at the end of the prescribed time limit.
    - [ii] If the Planning Board determines that such organization is not able to maintain said common open space in a reasonable condition, the City may continue to have such land maintained by a third party for a succeeding year, subject to

a similar hearing and determination in each year thereafter. The decision of the Planning Board in each such case shall constitute the final administrative decision subject to judicial review.

- [d] The cost of such maintenance shall be assessed proportionately against the properties within the development that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The City, at the time the third party enters upon said common open space for the purpose of maintenance, shall file a notice of such lien in the office of the City Assessor and the Registrar of Deeds for Belknap County upon the properties affected by such lien within the development, and the same shall be discharged by the City upon payment as with other liens.
- [5] Common area and open space current use limitation. The common area and open space areas in an approved subdivision are considered to be part of the residential use of the development and shall not be considered "open space land," "farmland," "wetlands," "recreation land," "floodplain," or "wildland," within the meaning of RSA 79-A, nor can any common area and open space areas be considered land available for wetlands mitigation.
- (g) Buffer area. The establishment of a buffer area along the perimeter of the development is required to separate incompatible uses from one another and to provide privacy for the development.
  - [1] Buffer area vegetation. Retention of existing vegetation is required. The Planning Board may, where existing vegetation does not provide an adequate visual buffer or where a waiver for width is granted, require additional landscaping within the buffer.
  - [2] Dimensional requirements. The Planning Board may, upon a finding that a purpose of the buffer is met and the unique characteristics of the development area warrant, grant a waiver to the minimum dimension in accordance with the following:
    - [a] RR1, RR2, RS, SFR Districts: minimum width of 75 feet with a waiver permitted to 40 feet.
    - [b] RG, DR, RA and CR Districts: minimum width of 50 feet with a waiver permitted to 25 feet.
- (h) Setback requirements. Structures are exempt from front, side and rear setbacks, notwithstanding the requirements below.
  - [1] Residential and accessory residential structures shall be set back a minimum of 10 feet from the edge of any buffer area.
    - [a] Exclusive use area. Fee simple lots or building envelopes shall be established for each building. Each dwelling unit shall have

surrounding it an exclusive use area of at least 900 square feet. The exclusive use area shall provide no less than a ten-foot setback from the structure on any side to allow any maintenance activities of the structure to occur in the exclusive use area. The exclusive use area may contain patios, deck, fences, landscaping, gardens and other outdoor facilities. The Planning Board is authorized to issue conditional use permits to reduce the exclusive use area per unit for multifamily buildings. Conditions for issuing a conditional use permit are as follows:

- [i] The applicant has shown via the submission of condo documents that an exclusive use area surrounding the unit is not needed for maintenance reasons.
- [ii] The applicant has shown that proposed amenities provide a convenient community area accessible to each homeowner.
- [iii] The applicant has shown that the proposed multi-unit exclusive use area is sufficient for the number of units and market orientation of the building.

(i) Utilities.

- [1] Water supply. Water supply must be provided by either the Laconia Water Works or by a state-approved private well or community system.
- [2] Sanitary sewer. Sanitary sewer must be provided by the municipal sewer system or by an NHDES-approved system.
- [3] Other utilities. All other utilities, including, but not limited to, electricity, cable, gas, fire alarm, cable television, telephone and fiber optics provided within the development shall be located underground.
- [4] Solid waste pickup is encouraged to include a recycling component in order to reduce the waste stream.

(j) Architectural design required.

- [1] Architectural elevations, floorplans and footprints are required and shall be submitted to the Board. Elevations shall include:
  - [a] Exterior materials and colors.
  - [b] Type and pitch of roofs.
  - [c] Size and spacing of windows, doors and other openings.
  - [d] Size, type and location of towers, chimneys, roof structures, flagpoles, antennas and other similar structures.
- [2] Architectural design shall be unique on a site-specific case, but be in conformance with the unique architecture of the neighborhood the

cluster is located in. The applicant is encouraged to investigate building design that meets LEED design guidelines.

- (k) Nonconforming structures and uses.
  - [1] Uses. Any use that does not conform to the uses permitted in this Subsection B(6) or the underlying zoning district shall not be permitted in a cluster development and must be discontinued, relocated to another parcel or subdivided from a parcel proposed for cluster development.
  - [2] Structures. Any preexisting structure on the tract that does not conform to the provisions for Subsection B(6) may be retained within a cluster development. Any use of the structure shall be as permitted by the Planning Board.
- (l) Phasing of development. If phasing is proposed, a phasing plan shall be submitted as part of an application, subject to review and approval by the Planning Board. The Board may impose conditions including the timing, number, amount of improvements that constitute substantial improvement and performance guaranty required. Phasing plans shall include:
  - [1] Amenities.
  - [2] Utilities.
  - [3] Ownership and management of open space and other commonly owned property and improvements.
  - [4] Performance guaranty proposal.
  - [5] Construction schedule.
- (m) Shoreland developments.
  - [1] Cluster developments which grant exclusive shorefront access to dwelling units shall have a minimum average of 150 feet of shoreline per dwelling unit granted exclusive access rights.
  - [2] Cluster developments which provide shared shorefront access shall meet the requirements for § 235-41H, Common beach lot.
- (n) Streets.
  - [1] Streets within a cluster development shall be required to meet the minimum standards as set forth in the Subdivision Regulations with the following exceptions, which may, upon a finding that public safety and welfare will not be diminished, be granted by the Planning Board:
    - [a] Right-of-way width may be reduced to 40 feet.
    - [b] Pavement width may be reduced to 18 feet.

- [c] Streets may be no longer than 1,000 feet measured to the farthest point of the turnaround or cul-de-sac.
- [d] Culs-de-sac may include such configurations as Y- or T-shaped turnarounds, flat loops, long loops and offset culs-de-sac. Turnarounds must be designed to accommodate fire apparatus vehicles.
- [2] Shared driveways that meet the State of New Hampshire's 911 Policy and NFPA 1 are encouraged.
- [3] Note: The granting of waivers for minimum standards for streets may prohibit street acceptance by the City Council.
- (o) Pedestrian access. Sidewalks or pathways must be provided to permit an alternative to vehicular travel and provide recreational opportunity within the development.
  - [1] Pathways and/or sidewalks shall connect to existing sidewalks or pathways on public property or those dedicated for public use and located adjacent to park boundaries.
  - [2] All pedestrian access shall be designed for year-round use.
  - [3] Pathways and/or sidewalks shall be a minimum of four feet wide.
  - [4] In cases where sidewalks do not exist along the tract frontage, sidewalks shall be constructed.
- (p) Landscaping.
  - [1] Cul-de-sac islands and parking lot islands shall not be compacted during construction, but shall be landscaped with street shade trees and shrubs that do not interfere with any stormwater infiltration capabilities the island may have. Native plants shall be used as much as possible.
  - [2] Each lot or building envelope shall be landscaped appropriately to provide privacy and aesthetic value. Native plants shall be used as much as possible. This shall be incorporated into the building permit application.
- (q) Alteration of terrain. The landscape shall be preserved in its natural state, insofar as possible, by minimizing tree and soil removal. Any grade changes shall be necessary and required and shall be in keeping with the general appearance of the neighboring areas. The orientation and design of individual building sites shall be such as to maintain maximum natural topography and cover. Buildings shall be built into the landscape as much as possible.
- (r) Lighting. All lighting and streetlighting shall be designed with the architectural features of the units in mind and be full-cutoff shielding and be downcast. Spot lights, floodlights and other bright security lighting shall be limited in such a fashion as not to direct light onto neighboring properties.

Security lighting using motion-detection switches are encouraged. This section is not intended to prohibit low-wattage, accent and/or seasonal lighting associated with residential uses.

- (s) Amenities. At a minimum the developer shall provide the amenity of a trail system throughout the site to encourage a healthy and active lifestyle.

C. (Reserved)<sup>26</sup>

D. Rural Residential Corridor District. Any development within this district with three or more lots shall be limited to one access point from the main street, and all lots shall have their driveway access off of an internal street system.

**§ 235-41. Residential accessory uses.**

A. Home occupation. Home occupations shall meet the minimum standards as specified below:

- (1) No more than one person who is not a resident shall be employed.
- (2) No advertisements shall refer to the home site as the location of the occupation. This prohibition shall not pertain to an advertisement listing a telephone number, post office box or other business address.
- (3) There shall be no externally visible indication that the structure or property is used for other than residential use. Signs permitted are limited to those permitted for residential use. Business names may not be displayed in any fashion. **[Amended 8-13-2001 by Ord. No. 05.2001.05]**
- (4) Materials or equipment shall be stored inside an enclosed structure or screened in conformance with § 235-48E(2). **[Amended 8-13-2001 by Ord. No. 05.2001.05]**
- (5) The home occupation shall create no nuisance created from noise, radiation, radio interference, vibration, sound pressure, odors, dust, fumes, vapors, gases, smoke or glare.
- (6) No more than two customers shall be served at any given time.

B. (Reserved)<sup>27</sup>

C. Roadside stand. A roadside stand shall meet the following standards:

- (1) The stand shall be set back a minimum of 25 feet from the edge of the traveled way.

26. Editor's Note: Former Subsection C, Cluster development: manufactured housing park, was repealed 1-28-2008 by Ord. No. 01.2008.01.

27. Editor's Note: Former Subsection B, Greenhouse, amended 10-14-1997 by Ord. No. 10.97.10, was moved to § 235-42I 8-13-2001 by Ord. No. 05.2001.05.

- (2) A minimum of two parking spaces shall be provided on the lot for the use of customers.
  - (3) The stand itself shall not exceed 100 square feet in area.
- D. Swimming pools. The installation and maintenance of swimming pools shall meet the following minimum standards:
- (1) The property or pool shall be surrounded with an enclosure adequate to make the pool inaccessible to small children. The minimum height, including gates, shall be four feet from the ground.
  - (2) All gates shall be installed with self-latching latches placed a minimum of four feet above the underlying ground.
  - (3) Any above-the-ground pool greater than four feet in height with a retractable staircase entrance or barrier shall be exempt from this section.
- E. Emergency shelter. The following minimum standards shall be required:
- (1) The shelter may be located within the required front and side setback areas.
  - (2) No protrusion of the shelter is permitted above the grade of the lot at the time the shelter is constructed, with the exception of ventilation devices and entrances.
  - (3) Entranceways shall not exceed 24 inches in height above existing ground.
  - (4) Projecting vents shall not exceed 30 inches above existing ground.
  - (5) Such shelter shall not be used for any purposes other than protection from chemical, biological or radiological effects and storage of emergency supplies.
- F. Stable.
- (1) Minimum of one acre of land per horse.
  - (2) A stable shall be a minimum of 25 feet from any property line.
  - (3) Waste materials shall not be closer than 100 feet from any property line.
  - (4) The area used for grazing, exercising or training of said animals shall be securely fenced to prevent the animals from straying.
- G. Kennels: keeping of non-pets.
- (1) No barn, shelter or other building used for the housing of said animals or the storage of feed or supplies shall be located closer than 60 feet from any property line. Waste materials shall not be located closer than 100 feet from any property line.
  - (2) The area used for grazing, exercising or training of said animals shall be securely fenced to prevent the animals from straying.

- H. Common beach lot. Shorefront lots which are intended for common access by the non-shoreland property owners within a development or subdivision which owns or has control over the common land shall:
- (1) Contain a minimum of 20,000 square feet.
  - (2) Be served by municipal sewer or an NHDES approved system.
  - (3) Have a minimum shorefront dimension of 150 feet for the first 35 units and an additional five feet for each additional unit.
  - (4) Have no structures other than toilet facilities, picnic shelters and/or recreational facilities.
  - (5) Separate swimming facilities from boating area by ropes and appropriate marks, subject to the approval of the Safety Services Division of the New Hampshire Department of Safety.
  - (6) Provide for off-street parking on the basis of one space for each 10 residential units located more than 500 feet from the common beach.
  - (7) Provide for one toilet facility.
  - (8) Have a minimum of 90% of the lot area be dedicated to beach area or green space.
- I. Accessory buildings. On a lot occupied by a dwelling, a detached accessory building, not exceeding 12 feet in height, may be located within 10 feet of the rear lot line.
- J. Accessory apartment. Accessory apartments shall meet the following minimum standards: **[Added 10-14-1997 by Ord. No. 10.97.10]**
- (1) Total gross square footage shall not exceed 400 gross square feet.
  - (2) Apartments shall be located within the existing home or garage or additions thereto.
  - (3) The overall appearance of the single-family dwelling unit must be maintained.
  - (4) No more than one accessory apartment may be developed per lot of record.
- K. Parking and storage of unlicensed vehicles. Except as approved as a junkyard or vehicle wrecking and salvage yard, not more than one currently unregistered or uninspected vehicle shall be parked on any lot. Said vehicle shall be located in the rear yard and shall not be disassembled in any manner. Vehicles not requiring registration or inspection for legal use are exempted from this provision. **[Amended 8-13-2001 by Ord. No. 05.2001.05]**
- L. Storage of recreational vehicles, travel trailers, campers and boats. Recreational vehicles, travel trailers, campers or boats shall be stored in a carport, enclosed building or rear yard area and shall not be located within 10 feet of the lot line. No such equipment shall be used for living, sleeping or housekeeping purposes. **[Added 10-14-1997 by Ord. No. 10.97.10; amended 8-13-2001 by Ord. No. 05.2001.05]**

**§ 235-42. Nonresidential uses.**

This Subsection of the Zoning Ordinance Contains Sexually Explicit Language.

**A. Sexually-oriented businesses.**

- (1) Purpose and intent. The purpose of this section is to regulate the secondary effects of sexually oriented businesses in the following areas:
  - (a) Crime control.
  - (b) Protection of property values.
  - (c) Prevention of urban blight.
  - (d) Public health.
  - (e) Protection of children.
- (2) Definitions. As used in this section, the following terms shall have the meanings indicated:

**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 specified sexual activities or specified anatomical areas.

**ADULT BOOKSTORE OR ADULT VIDEO STORE** —

- (a) A commercial establishment which, as one of its principal business purposes, offers for sale or rental or any form of consideration any one or more of the following:
  - [1] Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videocassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
  - [2] Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.
- (b) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishment from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for

consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

**ADULT CABARET** — A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (a) Persons who appear in a state of nudity or seminudity;
- (b) Live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities; or
- (c) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT THEATER** — A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or seminudity or live performances which are characterized by the exposure of specified sexual anatomical areas or by specified sexual activities.

**ESTABLISHMENT** — Includes any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (c) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (d) The relocation of any sexually oriented business.

**PERMITTEE OR LICENSEE** — A person in whose name a permit or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit or license.

**NUDITY OR A STATE OF NUDITY** — The appearance of a human bare buttock, anus, male genitals, female genitals or full female breast.

**SEMINUDE** — A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

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

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Activities between two or more people when one or more of the persons is in a state of nudity or seminude.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore or adult video store, adult cabaret, adult theater or sexual encounter center.

SPECIFIED ANATOMICAL AREAS — The male genitals in a state of sexual arousal or the vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (c) Masturbation, actual or simulated; or
- (d) Excretory functions as part of or in connection with any of the activities set forth in Subsections (a) through (c) above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS — The increase in floor areas occupied by the business by more than 25% as the floor areas exist on the date of the adoption of this article.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS — Includes any of the following:

- (a) The sale, lease or sublease of the business.
  - (b) The transfer of securities which constitute a controlling interest in the business.
  - (c) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (3) Procedure. For a use to be established under the article, the applicant must demonstrate to the Director of Planning and Community Development or his or her designee that the proposed site satisfies all the site requirements of Subsection A(4), Site requirements. **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
- (4) Site requirements. A sexually oriented business' use, in addition to all other requirements of this chapter, shall demonstrate compliance with the following requirements:
- (a) No sexually oriented business use shall be located within 500 feet from any property line of the following uses:
    - [1] A public, religious or private nursery school, kindergarten school, elementary school, middle school, junior high school, high school or similar education facility.
    - [2] Licensed group day-care facility (no age restriction).

- [3] A public park, public recreational field or similar publicly owned facility.
  - [4] A religious institution or place of worship.
  - [5] Any residential district boundary.
  - [6] Any residential use of property.
- (b) The proposed site shall be screened by a stockade fence that is no less than six feet in height which is to be erected in a manner that limits pedestrian and vehicular access to adjacent properties, but which does not restrict adequate lines of sight or create unsafe site conditions. This visual barrier shall be placed no closer than three feet to any adjacent lot line and shall be maintained by the party to whom the Certificate of Occupancy has been issued.
  - (c) There shall be a minimum of 1,000 feet between any two sexually oriented businesses.
- (5) Operational requirements.
    - (a) The hours of operation shall only be between 10:00 a.m. and 11:00 p.m. Monday through Saturday and 12:00 noon to 9:00 p.m. on Sundays.
    - (b) The site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.
    - (c) Signs shall not visually depict any person in a state of nudity or seminude.

**This completes the Subsection of the Zoning Ordinance containing sexually explicit language.**

- B. Junkyards; recycling or transfer center. The following standards shall be required, in addition to RSA 236, Motor Vehicle Recycling Yards and Junkyards:
  - (1) All scrap, salvage, vehicle parts and any other materials shall be stored within a building or enclosed by a solid fence that shall be a minimum of eight feet in height.
  - (2) Fencing and screening shall not be allowed to deteriorate and the required setback areas shall be landscaped and kept free of rubbish, scrap, weeds and other unsightly materials.
  - (3) No materials shall be piled or arranged so that they extend above the fencing.
- C. Earth excavations.
  - (1) Authority. Chapter 155-E of the New Hampshire Revised Statutes Annotated stipulates that, with some exceptions, all earth excavations in the state are subject to regulation from the local municipality in which the operation occurs. Pursuant to

the authority vested in the Planning Board of Laconia by the voters of the City of Laconia and RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the City of Laconia.

- (2) Purpose and scope.
  - (a) The goals of this regulation are to:
    - [1] Provide for reasonable opportunities for excavation.
    - [2] Minimize safety hazards which can be created by open excavations.
    - [3] Ensure that the public health and welfare will be safeguarded.
    - [4] Protect natural resources and the environment.
    - [5] Maintain the aesthetic features of the City.
  - (b) For the purpose of achieving these goals, no earth materials in the City shall be removed except in conformance with these regulations.
- (3) Projects requiring a permit are as follows:
  - (a) Operations commencing after August 24, 1979, without first obtaining a permit, unless specifically exempted.
  - (b) Any excavation proposing to begin operation after the effective date of these regulations.
  - (c) Those that have lawfully operated prior to August 24, 1979, and wish to expand the excavation area beyond the limits of the town in which it is situated and the area which on August 24, 1979, and at all times subsequent thereto has been continuous to and in common ownership with the excavation site of that date and has been appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date.
  - (d) Those excavations for an area which on August 4, 1989, was continuous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and wish to expand to any noncontiguous lands.
- (4) Projects exempt from a permit. The following projects do not require a permit, but are nevertheless subject to Subsection C(8), Minimum operational standards, Subsection C(9), Site reclamation standards, and Subsection C(10), Incremental reclamation, of these regulations. In the event of a question regarding compliance, the Board may require the owner/operator to come before the Board and submit such information as may be necessary to demonstrate compliance with said standards.
  - (a) Excavations which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been

removed during the two-year period before August 24, 1979, subject to the following:

- [1] Such an excavation shall be exempt from local zoning or other ordinances regulating the location of the excavation site, provided that at the time operation began it was in compliance with any local ordinances that may have been in effect.
  - [2] The owner or operator of such an excavation area shall have filed an excavation report per RSA 155-E:2, I(d), with the Board no later than August 4, 1991. Any existing excavation that failed to file this report shall no longer be considered to be grandfathered and must obtain a permit from the Board before continuing excavation of the site.
- (b) The following projects do not require a permit, but are nevertheless subject to Subsection C(8), Minimum operational standards, Subsection C(9), Site reclamation standards, and Subsection C(10), Incremental reclamation, of these regulations. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur after the Board has been given written notice that the excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice, as per RSA 155-E:2, III(a).
- [1] Excavation from a site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and which used earth obtained from such excavation site.
  - [2] Excavations from a site which on August 4, 1989, was contiguous to contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979, and before August 4, 1989, which used earth obtained from such site. The operation and reclamation of such excavations shall continue to be regulated by such permits and any renewal or extensions thereof by the permitting authority or authorities.
- (c) An excavation performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV or V highway. A copy of the pit agreement executed between the pit owner and the governmental unit shall be filed with the Board; in addition, the provisions of Subsection C(7), Criteria for nonconforming expansion, of this regulation are to be complied with. Exemptions from local zoning or other regulations are provided for in RSA 155-E:2, IV(c).
- (d) The following projects are exempt from a permit and are not subject to regulation by the Board:
- [1] Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a

driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until any and all required state and local permits have been issued.

- [2] Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment. In the event of questions, the Board shall determine what is incidental.
  - [3] Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E, Mining and Reclamation.
  - [4] A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification to the Board.
- (5) Abandoned excavations. The following provisions do not apply to excavations connected with stationary manufacturing and processing plants:
- (a) Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be considered abandoned if:
    - [1] No earth material of sufficient weight or volume to be commercially useful has been removed from the site during any two-year period either before, on or after August 4, 1989. The owner or operator may extend this time period if, prior to the end of the time period the Board approved a reclamation timetable, and a bond or other surety is posted in a form and amount prescribed by the Board sufficient to cover the costs of reclaiming the entire site.
    - [2] The excavation is in use, but either has not, as of August 4, 1992, been brought into compliance with the incremental reclamation standards of the regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Board.
  - (b) In the event that the Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above or to complete reclamation within a reasonable period of time. Should reclamation not be completed, the Board may request the City to authorize reclamation at the City's expense. The City's costs shall constitute an assessment against the owner and shall create a lien against the property. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

- (c) The provisions of Subsection C(5)(b) above also apply to any excavation which ceased commercially useful operation prior to August 24, 1979, if the Board determines, in writing, that a danger to public health or safety exists.
- (6) Prohibited projects. The Board shall not grant a permit for the following projects:
- (a) For excavations within 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval is requested by said abutter.
  - (b) Where existing visual barriers would be removed, except to provide access to the excavation.
  - (c) Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes or danger from operations.
  - (d) Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
  - (e) When the excavation cannot receive necessary land use permits for state or federal agencies.
  - (f) Where the excavation is not permitted by zoning or other applicable ordinances; provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E:4, III.
  - (g) Where the project cannot comply with the requirements of Subsection C(8), Minimum operational standards, Subsection C(9), Site reclamation standards, and Subsection C(10), Incremental reclamation, of these regulations.
- (7) Criteria for nonconforming expansion. Expansion of existing excavation located in an area in which excavations are no longer permitted by local zoning in effect on August 4, 1989, may be restricted or modified with conditions by the Board if, after notice to the owner and a public hearing, the Board finds that the expansion will have a substantially different and adverse impact on the neighborhood. Any potential impacts will be determined by the Board during a duly noticed public hearing. Impacts will vary depending upon the particular neighborhood, nevertheless, the following criteria will be taken into consideration:
- (a) The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
  - (b) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.
  - (c) The excavation will not create any nuisance or create health or safety hazards.
- (8) Minimum operational standards. For excavations not requiring a permit, the following express standards apply. For those excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are

consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.

- (a) No excavation shall be permitted closer than 150 feet to an existing dwelling or to a site for which a building permit has been issued at the time the excavation permit is granted.
  - (b) No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
  - (c) Vegetation shall be maintained or provided within the peripheral areas of Subsection C(8)(a) and (b) of this section.
  - (d) No fuels, lubricants or other toxic or polluting chemicals shall be stored on site unless in compliance with state laws or rules pertaining to the storage of such materials.
  - (e) Where temporary slopes will exceed a one to one (1:1) grade, a fence or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
  - (f) Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged period. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.
  - (g) There shall be no excavation or clearing within 250 feet of a great pond or fourth order stream.
  - (h) There shall be no excavation or clearing within 150 feet of a perennial stream.
  - (i) There shall be no excavation or clearing within 75 feet of a wetland.
  - (j) Startup for all machinery shall be no earlier than 7:00 a.m. or later than 8:00 p.m.; no operations on Sunday and holidays.
  - (k) No excavation shall exceed a depth of four feet above average annual water table.
- (9) Site reclamation standards. Within 12 months after the expiration date of a permit issued under this chapter or of the completion of any excavation, whether subject to permit or not, whichever occurs first, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum conditions. The Board or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed.
- (a) No slope in soil material shall be left steeper than 3:1 (three horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. In

- no case shall a soil material slope be left steeper than 2:1. Changes in slope shall not be abrupt, but shall blend with the surrounding terrain.
- (b) All debris, stumps, boulders, etc., shall be lawfully disposed of in a manner acceptable to the Board or its designee.
  - (c) Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.
  - (d) Stockpiled topsoil shall be spread over the disturbed area to a minimum depth of four inches to allow establishment and maintenance of vegetation. The disturbed area(s) shall be limed, fertilized and seeded with a grass or grass-legume mixture or per PM-NH-24, Vegetating New Hampshire Sand and Gravel Pits.
  - (e) The responsible party shall not be released from its performance commitment (reclamation bond) until the Board certifies compliance with all terms of the excavation plan and the reclamation plan.
  - (f) Any excavated area of five contiguous acres or more, which is either fully excavated per the approved plan (excluding bedrock) or from which no earth materials have been removed for a two-year period, shall be reclaimed in accordance with this section within one year following such full excavation, regardless of whether other excavation is occurring on adjacent land in continuous ownership.
  - (g) Upon completion of the reclamation operations, the topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportion of flow. For excavation projects which require a permit from the Division of Water Supply and Pollution Control pursuant to RSA 485-A:17, the provisions for that statute and rules adopted under it shall supersede this subsection as to areas of excavation sites covered thereby. The excavator shall file a copy of permits issued under RSA 485-A:17 with the Board.
  - (h) Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- (10) Incremental reclamation. Except for excavation sites of operating stationary manufacturing plants, any excavated area of five contiguous acres or more which is depleted of commercial earth materials, excluding bedrock or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a two-year period, shall be reclaimed in accordance with these regulations within 12 months following such depletion or nonuse, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas within the reclamation site, shall be submitted to the Board for approval.

- (11) Performance guaranty. Prior to the granting of any permit, or to the removal of topsoil or other overburden material from a new area within an existing excavation site, the applicant shall submit to the municipality a bond with sufficient surety, as determined by the Board, to guarantee reclamation of the area, off-site improvements for potential damage of City roads or facilities caused by the transportation of earth materials and compliance with the permit.
- (12) Exceptions. Due to the diverse nature of excavation operations which vary in scale and scope and due to the varying conditions of the land to be excavated, the Board may, upon application and following a duly noticed hearing, grant any exception in writing to the standards contained in Subsection C(8), Minimum operational standards, Subsection C(9), Site reclamation standards, Subsection C(10), Incremental reclamation, and Subsection C(11), Performance guaranty, for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.
- (13) Application for excavation. Except as provided in Subsection C(5), Abandoned excavations, any owner or owner's designee subject to this chapter shall, prior to excavation or continuance or expansion of excavation of any land, apply to the Board for a permit for excavation and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall contain at least the following information. The Board may waive items listed under this section.
  - (a) Excavation plan.
    - [1] The name and address of the owner of the land to be excavated the person who will actually do the excavating and all abutters to the premises on which the excavations proposed.
    - [2] An excavation plan at a scale of no less than one inch equals 100 feet and showing the area to be excavated, appropriate buffers, and any dwelling units, septic systems, and wells within 150 feet of the area to be excavated. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. A minimum of seven copies of plans shall be filed with the Board as part of the application. The excavation plan shall include:
      - [a] The seal and signature of an engineer registered in the State of New Hampshire.
      - [b] The existing topography at maximum contour intervals of five feet, based on a permanent assumed benchmark.
      - [c] The proposed topography at maximum contour intervals of five feet at the completion of excavation and restoration.
      - [d] The excavation site acreage, the breadth, depth and slope of the proposed excavation, (and existing excavation where applicable), volume of material to be removed and a description of project duration and phasing.

- [e] The existing vegetation.
  - [f] All surface drainage patterns including wetlands and standing water, lakes, streams and the like.
  - [g] The locations of all easements, on or below the ground.
  - [h] The names, location and width of all public roads and rights-of-way.
  - [i] A log of borings or test pits that extend to either the average annual water table, ledge or a minimum of six feet below the maximum proposed excavation depth, including location and soils data.
  - [j] The location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, significant natural and man-made features, and the like.
  - [k] A locus map, at a scale of one inch equals 1,000 feet, showing the proposed operation in relation to existing roads.
  - [l] Any existing and all proposed excavation areas.
  - [m] Any existing and all accessory facilities/activities.
  - [n] Existing and proposed access roads, including width and surface materials.
  - [o] Existing and proposed fencing, buffers or visual barriers, including height and materials.
  - [p] Storage areas for topsoil to be used in reclamation.
  - [q] All measures to control erosion, sedimentation, water pollution, air pollution and hazards to human safety.
  - [r] The location of existing buildings, structures, septic systems and wells on abutting properties within 150 feet of the excavated area.
  - [s] The location of all driveways and road intersections within 200 feet of the proposed access to the excavation site.
  - [t] Aquifer locations and limits as identified by the United States Geological Survey and other acceptable sources.
  - [u] Zoning districts.
- (b) Reclamation plan. A reclamation plan at the same scale as the excavation plan, and covering the same areas. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. A minimum of seven copies of the final plans shall be filed with the Board as part of the application. The reclamation plan shall include:

- [1] The seal and signature of an engineer registered in the State of New Hampshire.
  - [2] All boundaries of the area proposed for reclamation.
  - [3] The final topography of the area proposed for reclamation.
  - [4] The final surface drainage pattern, including the location and physical characteristics of all drainage facilities.
  - [5] A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime and application rates.
  - [6] Soil conditioning specifications, i.e., liming and fertilizing required based on NRCS or other equivalent soils analysis organizations.
  - [7] The plant materials to be used in the restoration, and their qualities and sizes.
  - [8] The subsequent use of the site, if known.
  - [9] An erosion and sedimentation control plan on an excavation area of any size.
  - [10] Copies of related permit approvals and other documents pertinent to the excavation proposal, such as WSPCD (RSA 485-A:17, 148:5-1), the Wetland Board (RSA 483-A), stump disposal, State Highway Department (access permit, RSA 249:13-18) any other permits required by state or federal regulations and such other information as the Board may reasonably require.
- (c) Hauling information, including routes to be utilized, the type and weight of motor vehicles involved and the frequency and schedule of operations of such vehicles, which shall be provided to the Board prior to the issuance of an excavation permit. The Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and addressed in the hauling plan.
- (d) Application fees.
- (14) Other information. The Board reserves the right, per RSA 155-E:3, VII, to request any other information it deems necessary to make an informed decision or to have plans reviewed by an outside agency. According to the authority vested in the Board by RSA 676:4, I(g), any reasonable expenses incurred for such information or reviews shall be charges to the applicant. Failure to pay such costs constitutes valid grounds for the Board to deny the application.

D. Marinas and yacht clubs.

- (1) Authority and permits required. A marina or yacht club is an innovative land use control and it therefore requires a conditional use permit. The Planning Board is authorized to administer and grant a conditional use permit consistent with the standards set forth in Article XII, Conditional Use Permits, and with the standards, purposes and objectives of this subsection. All applications required to be filed with the Planning Board shall be filed concurrently.
- (2) Minimum shoreline frontage.
  - (a) The minimum contiguous shoreline frontage for commercial marinas and yacht clubs shall be 25 feet per slip, with a minimum frontage requirement of 300 feet.
  - (b) The minimum contiguous shoreline frontage for residential marinas shall be 75 feet for the first two-slip structure, plus 75 feet per additional slip.
- (3) Facilities required. All commercial marinas, yacht clubs and residential marinas having the sum of 12 or more slips and moorings shall be served by the municipal sewer system and shall provide and maintain the following facilities:
  - (a) Pump-out stations for septage.
  - (b) Gray water disposal facilities.
  - (c) On-shore trash receptacles.
  - (d) Boat/trailer wash-down areas.
  - (e) Adequate shower and rest room facilities for patrons.
- (4) Design and performance standards. The Planning Board shall not grant a conditional use permit for a marina or yacht club, unless it finds that the applicant has provided adequate evidence that the development, if completed as proposed, will comply with the design and performance standards of this section. These standards include the following requirements:
  - (a) Environmental quality. Evidence shall be submitted to show that:
    - [1] Environmental impacts to water quality, wildlife habitat, shoreline stability and public drinking water supply will be minimized and mitigated using best management practices as may be published and amended by the NHDES and the Natural Resources Conservation Service.
    - [2] The design of facilities and buffers shall provide protection to adjacent and abutting properties from excessive noise and glare.
    - [3] Buffer areas of natural vegetation will be retained or created between the parking area and the shoreline.

- [4] The parking and wash-down areas shall be constructed and arranged to minimize direct runoff to surface waters and to allow for the interception and filtration of wash water on the site.
  - [5] The applicant has prepared a water quality mitigation plan which conforms to Best Management Practices for New Hampshire Marinas: Controlling the Impact of Boating Pollution, New Hampshire Department of Environmental Services, 1995, as amended, including emergency fuel containment procedures, where construction of improvements or delivery of on-site services will involve gasoline pumps and dispensing of fuels; wash-down areas; pump-out stations; boat refinishing/hull and engine repair; dredging; or launching facilities that require alteration of the shorefront.
- (b) Public safety, parking and access. Evidence shall be submitted by the applicant to demonstrate compliance with the following access and safety requirements:
- [1] The development will not cause an adverse impact on public safety from increased traffic congestion, both marine and land based, and will not constitute a hazard to navigation.
  - [2] The development will not interfere with or prevent the safe use or enjoyment of adjacent shoreland property, nor impede its access to and from the water.
- (5) Expansion of existing marinas and yacht clubs. The expansion of land-based development of existing marinas and yacht clubs may be permitted, provided that coverage requirements are maintained and all other provisions of this section are met. The nonconforming elements of existing marinas and yacht clubs must be brought into conformance with all provisions of this chapter in order to expand on the site.
- (6) Relationship to state permits. The City of Laconia cannot authorize a greater number of slips or moorings than the maximum permitted by the New Hampshire Wetlands Board and/or the New Hampshire Department of Safety for a development. All permit applications to either agency for approval of a marina or yacht club shall be submitted concurrently to the Laconia Planning Department.
- E. The purpose of this section is to define minimum landscaping standards for nonresidential and multifamily residential uses and street tree planting requirements for any residential or nonresidential development or redevelopment. **[Amended 10-14-1997 by Ord. No. 10.97.10]**
- (1) Landscaping plans. A landscaping plan shall be submitted to the Planning Board as part of any nonresidential or multifamily development application and shall include provisions for street trees. The plan shall be drawn to the same scale as the site plan and shall show existing and proposed vegetation. The location, size and name of vegetation shall be included. Provisions for street trees shall be shown on

subdivision plans submitted to the Planning Board for residential and nonresidential development.

- (2) Standards for approval.
  - (a) Landscaping shall provide privacy and screening for adjacent land uses, with visual noise, energy conservation and air quality factors considered.
  - (b) Landscaping shall be designed as an integral part of the development.
  - (c) Vegetation shall be compatible with soil conditions on the development site and the regional climate.
  - (d) Existing natural features and vegetation shall be preserved and incorporated in the landscape area wherever possible.
  - (e) The landscaping plan should reflect unique characteristics of the property, including topography, sun orientation, existing vegetation and abutting uses, and should be creative with a mix of trees, shrubbery, flower beds and lawn area.
  - (f) Artificial plantings or vegetation shall not be permitted.
  - (g) The use of woodchips, mulch or other non-green ground cover is discouraged and should only be utilized in defined planting areas or beds. Grasses, which may include wildflower mixes, should constitute the bulk of the landscaping area not devoted to trees, flowers and shrubs.
- (3) Downtown Riverfront District, special standards. Landscaping plans submitted for property in the DR District shall respect the riverfront and the view of the property from and across the river, as well as the view from the street. All existing vegetation, especially mature trees, shall be maintained on the property during the development review process. Tree cutting restrictions under § 235-19, Shoreland Protection Overlay District, apply in the DR District.<sup>28</sup> **[Added 5-22-2000 by Ord. No. 05.2000.05]**
- (4) Tree planting requirements.
  - (a) Landscaping trees. Trees proposed in any landscaping plan, other than street trees, shall meet the following minimum standards: Deciduous trees shall be a minimum caliper, measured six inches from the ground, of two to 2 1/2 inches. Coniferous trees shall be a minimum planted height of eight feet.
  - (b) Property lines. All trees shall be planted a minimum of five feet from any adjacent property line unless there is written consent of the abutting property owner.
  - (c) Street trees. A deciduous tree, a minimum of two-and-one-half to three-inch caliper measured six inches from the ground, shall be installed for every 50

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28. Editor's Note: Former Subsection E(3) and (4) were redesignated as Subsection E(4) and (5), respectively, to accommodate the addition of this Subsection E(3).

feet, or portion thereof over 25 feet, of all boundaries that abut a street of a development or redevelopment. Trees should be evenly spaced and the specific location of street trees shall be as approved by the Planning Board. Tree species and variety shall be proposed by the applicant and be suitable for the specific conditions of the site.

- (5) Planting and maintenance. All landscaping shall follow industry standards for placement of material, including planting, staking and guying, wrapping, pruning, mulching, watering, planting time and conditions, soil and fertilizing. Materials shall be first quality nursery stock or equivalent. Landscaping shall be maintained according to the approved plan and any diseased or dead materials shall be promptly replaced.
- F. Indoor storage. Buildings containing indoor storage units shall be climate and access-controlled, shall have a municipally approved sprinkler system and be limited to a net storage area of 25,000 square feet. Hazardous materials and outside storage are not permitted. Individual storage units may range in size from 16 to 200 square feet.
- G. Exemption for government uses and facilities of the City of Laconia. Government uses and facilities of the City of Laconia shall be exempt from the provisions of this chapter, provided that the Planning Board shall have first granted a conditional use permit in accordance with the provisions of Article XII of Chapter 235 (excepting those provisions requiring compliance with the zoning and planning requirements of Chapter 235). This shall constitute the only planning and zoning approval required for governmental uses and facilities of the City of Laconia. All related required applications for site plan or subdivision approval shall be filed with and considered by the Planning Board concurrently with any application for a conditional use permit. **[Added 12-8-1997 by Ord. No. 12.97.12]**
- H. Downtown Riverfront District, special restrictions. These restrictions refer to uses as marked with an asterisk in Table I, Table of Permitted Uses.<sup>29</sup> **[Added 5-22-2000 by Ord. No. 05.2000.05]**
- (1) Uses.
- (a) Educational/cultural.
- [1] School, trade/vocational. Trade/vocational schools shall be limited to facilities where all operation, storage, and classes are located wholly within a structure and not visible to the public.
- (b) Business.
- [1] Flea/farmer's market. Flea/farmer's markets are limited to indoor use only.
- (c) Recreation/sports/entertainment uses.

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29. Editor's Note: The Table of Permitted Uses is included at the end of Art. V of this chapter.

- [1] Movie theater. Movie theaters are restricted to indoor facilities only, no drive-ins.
- [2] Amusement arcade: limited to a totally enclosed area only.
- (d) (Reserved)<sup>30</sup>
- (e) Transportation.
  - [1] Commercial parking garage or lot: permitted on nonwaterfront lots only.
  - [2] Marine vehicle sales and service: restricted from all waterfront lots between Lake Opechee and Fair Street bridge.
  - [3] Watercraft launch/rental: commercial launching or rental of motorized boats restricted from all waterfront lots between Lake Opechee and Fair Street bridge.
- (f) Governmental and public services.
  - [1] Power generation facility: limited to hydropower only.
- (2) Design review. During the review of redevelopment, change or expansion of uses and new development, the Planning Board shall make a determination that the following standards have been met.
  - (a) Redevelopment or new construction of structures shall be compatible with building mass and shape in adjacent areas and for similar uses within the district.
  - (b) Architectural styles for structures, including exterior lighting, should be matched with typical styles from historical New England designs based on the use proposed. Redevelopment and additions of structures should strive to restore the structure in such a way that it respects the original architecture of the structure, including building materials, roof style, window placement and sizing, entry locations.
  - (c) See § 235-54 for standards for signage.
- I. Commercial greenhouse. Greenhouses shall meet the following standards: **[Amended 10-14-1997 by Ord. No. 10.97.10; 8-13-2001 by Ord. No. 05.2001.05]**
  - (1) Land area must equal the minimum lot size for the district plus two acres.
  - (2) Not more than two persons other than the owner's family may be employed in connection with the use.
  - (3) Setbacks from the greenhouse shall be as required in the district for primary residential structures.

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30. Editor's Note: Former Subsection H(1)(d), Commercial and industrial, was repealed 8-13-2001 by Ord. No. 05.2001.05.

- (4) Side and rear setbacks shall be adequately screened so as to obscure the use from abutting properties.
  - (5) Total lot coverage shall not exceed that required for the district.
  - (6) All equipment shall be stored inside or be screened from the abutting properties.
- J. Research and development. Any research and development establishment located in P, DR, C, BC or BCI is prohibited from engaging in any form of animal testing or research, chemical processing or processes creating chemical wastes. **[Added 8-13-2001 by Ord. No. 05.2001.05]**

**§ 235-43. Nonresidential accessory uses.**

- A. Outdoor storage. Outdoor storage shall be clearly necessary to the operation and conduct of a permitted principal use and shall be completely screened by means of a solid, natural screen, fence or wall, which is maintained in good repair.
- B. Accessory docks.
- (1) The principal use of the lot is not defined as a commercial marina or yacht club.
  - (2) The number of slips proposed is no greater than the maximum number permitted by the New Hampshire Wetlands Board.
  - (3) The docks are clearly incidental and subordinate to the principal use of the lot and are for the exclusive use of the principal use.
  - (4) No sale, rental or lease of docks or parking spaces on the property is permitted.
  - (5) No additional demand for off-street parking beyond that required for the principal use of the lot is created.
- C. Parking and storage of unlicensed vehicles. Except as approved as a junkyard or vehicle wrecking and salvage yard, not more than one currently unregistered or uninspected vehicle shall be parked on any lot. Said vehicle shall be located in the rear yard and shall not be disassembled in any manner. Vehicles not requiring registration or inspection for legal use are exempted from this provision. **[Added 8-13-2001 by Ord. No. 05.2001.05]**
- D. Storage of recreational vehicles, travel trailers, campers and boats. Recreational vehicles, travel trailers, campers or boats shall be stored in a carport, enclosed building or rear yard area and shall not be located within 10 feet of the lot line. No such equipment shall be used for living, sleeping or housekeeping purposes. **[Added 8-13-2001 by Ord. No. 05.2001.05]**
- E. Storage containers. **[Added 8-13-2001 by Ord. No. 05.2001.05]**
- (1) In the CR and C District, storage containers shall be limited to those a maximum of eight feet in height and shall be obstructed from view, both from the street and adjacent properties and from water views by the provisions of a year-round screen.

The screen may consist of enclosures, fences, earth or landscaping or any combination thereof that provides a year-round screen.

- (2) In the IP, I and AI Districts, storage containers shall meet the minimum requirements as set forth above for CR and C Districts when such containers are visible from nonindustrial districts.
- F. Storage trailers. IP, I and AI Districts storage trailers shall be fully enclosed when located within view of nonindustrial districts. **[Added 8-13-2001 by Ord. No. 05.2001.05]**

#### **§ 235-44. Erosion and sediment control.**

All construction and development which takes place shall be in accordance with the Stormwater Management and Erosion and Sedimentation Control Handbook for Urban and Developing Areas in New Hampshire, August 1992, New Hampshire Department of Environmental Services, et al, as may be amended. (A reference copy is available for review at the Planning and Community Development Department.)

- A. Subdivisions of land, nonresidential and multifamily residential development shall require the approval by the Planning Board of a Type 3 pre- and post-construction erosion and sediment control plan. Minor site plans under the jurisdiction of the Technical Review Committee and subdivisions which do not require the construction of drainage improvements, utilities or streets are exempt from this provision.
- B. For single-family and two-family dwellings, the Director of Planning and Community Development or his or her designee shall, as part of the building application process, determine the type of pre- and post-construction erosion and sediment control plan required. **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
- C. Pre- and post-construction erosion and sediment control plan. The following descriptions are intended to provide a guideline for the applicant, Planning Board and the Director of Planning and Community Development or his or her designee for the determination of the type and scope of a plan as required. Plans may include but are not limited to: **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
  - (1) Type 1: a written description of existing site characteristics, proposed development activities including earth disturbing activities and proposed best management practices to control erosion and sedimentation.
  - (2) Type 2: a plot plan or similar sketch to scale showing the location of existing site characteristics, proposed development activities including proposed limits of clearing and proposed limits or disturbing activities and the location or proposed best management practices to control erosion and sedimentation.
  - (3) Type 3: a designed plan, prepared and stamped by a New Hampshire licensed professional engineer.