

**MOUNTAIN LAKES DISTRICT**

**ZONING ORDINANCE**

**ADOPTED MARCH 16, 1996**

**AMENDMENTS:**

**MARCH 16, 2002**

**MARCH 11, 2006**

**MARCH 10, 2007**

**MARCH 8, 2008**

**OCTOBER 5, 2011**

Showing Amendment No. 1 as Proposed by the Planning Board  
For Public Hearing January 17, 2019

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underlined

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**Completion of updates to Table of Contents, page numbers, section numbering and formatting to be completed last after adoption of amendments**

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**ARTICLE 1**            **PREAMBLE AND TITLE**

**Section 101**            **Preamble**

In pursuance of authority conferred by New Hampshire Revised Statutes Annotated, Chapter 675, and Laws of 1994, chapter 363, [as amended, including RSA 675:3, 674:16 and 674:21,](#) for the purpose of promoting health, safety and general welfare of the inhabitants of the Mountain Lakes District, now therefore the following ordinance is hereby enacted by the voters of the Village District of Mountain Lakes [District](#) in the Town of Haverhill, New Hampshire.

**Section 102**            **Title**

The ordinance shall be known and may be cited as the “Mountain Lakes [District](#) Zoning Ordinance.”

**Section 103**            **Land Use Limited to Specific Listing Uses**

No structure shall be constructed, erected, placed, or [enlarged](#)~~maintained~~ and no land use commenced or continued within the Mountain Lakes District except as specifically or by necessary implication authorized by this Ordinance.

**ARTICLE 2** **EXISTING USES**

**Section 201**

Any lawful building, or use of a building, or land, or parts thereof in existence at the time [of](#) the adoption of this Ordinance, or of any amendment thereto, may be continued although such building or use does not comply with the provisions ~~herein~~.

~~Such building or use shall be lawful if there was compliance with existing regulations in effect.~~

This Zoning Ordinance shall not apply to existing structures or the existing use of any building or land. It shall, however, apply to any alteration ~~or for~~ which is substantially different from the existing use or from the existing structure prior to alteration. Non-conforming uses and structures shall be subject to the provisions of Article 5, Non-Conforming Uses and Structures. ~~As to what constitutes the lawful use of a building or land as of the time of the adoption of this Ordinance, reference is made to Property Covenants and Easements recorded in the Grafton County Registry of Deeds which covenants and easements restrict the use of land by deed covenants.~~

~~**Property Covenants: Mountain Lakes District covers the original Town & Country Homes subdivisions which created about 1,000 lots. As part of the original scheme of development, all but a few lots were made subject to perpetual property covenants.**~~

~~**This Zoning Ordinance restricts the use of land in accord with the Property Covenants.**~~

~~The restrictions on trailers (manufactured housing) come from the Property Covenants, not the Zoning Ordinance, because to do so violates New Hampshire Law.~~

**ARTICLE 3**      **DISTRICTS AND DISTRICT REGULATIONS**

**Section 301**      **Only One Zoning District**

The entire area within the Mountain Lakes District shall be within the Mountain Lakes Zoning District.~~The Mountain Lakes District is only one zoning district as all but a few lots are restricted by property covenants to single family residential use.~~

~~**Section 302**      **Zoning Maps**~~

~~The districts as established in Section 301 are shown on the maps on file in the offices of the Mountain Lakes District which map is part of this Ordinance. There is a map entitled “Mountain Lakes District Zoning Map” which has been identified by the signatures of the members of the Planning Board and the date of adoption and any further amendments.~~

**Section 303**      **District Objectives and Land Use Control**

The following table establishes the objectives of the District established above and the provisions of the regulations that apply respectively in the District. Any use designated as a “Permitted Use” in the table may be commenced pursuant to Section 304. Any use designated as a “Special Exception” may be commenced pursuant to Section 305.

Explanation of lots, dimensional requirements, accessory uses and application of District Regulations affecting all uses are found in Sections 306-308~~9~~ inclusive.

**Table 303.1**

**MOUNTAIN LAKES ZONING DISTRICT**

**Objective**

Mountain Lakes was established as ~~an about~~ a set of subdivisions ~~1,000 lot subdivision~~, over a period of time and was intended to be a residential community with the exception of a few lots. It is the intent to allow uses of land consistent with that objective and consistent with the Property Covenants and Easements.

**Uses**

**Permitted Uses**

**Special Exception Uses**

- ~~1. Single Family Dwelling~~ ~~2. Accessory building and use~~ ~~1. Home Professional Occupation~~ ~~Accessory Use~~ ~~2. Commercial Use (this use is available on any lot in the Mountain Lakes District which has not been restricted by the property covenants to a single family dwelling.)~~
3. Accessory use Boat houses, docks, wharves, decks and similar water-dependent structures accessory to the use of lots on the lakes
4. Accessory dwelling unit

**Area and Dimensions**

Minimum lot size The greater of that required by the Town of Haverhill Subdivision Regulations or that required by NHDES for an on-site septic system. ~~Existing lot of record~~

Minimum road frontage Existing lot of record Minimum Setbacks

Side and Rear Setback 12 feet

Maximum Height 35 feet

<b>SECTION</b>	<b>FRONT SETBACK</b>	<b>SIDE &amp; REAR SETBACK</b>	<b>HEIGHT</b>
<b>1,2,3,4,5,6</b>	<b>20 FT</b>	<b>12 FT</b>	<b>2 STORIES</b>
<b>HIGHVIEW</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>
<b>GATEWAY</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>
<b>WOODSMERE</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>
<b>SKIWAY</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>
<b>CRESTFIELD</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>
<b>KINSMERE</b>	<b>50 FT</b>	<b>12 FT</b>	<b>SAME</b>

**Section 304 Permitted Uses**

Permitted uses are only those uses that are specifically listed under Permitted Uses in Table 303.1 and are allowed only providing the standards established within this Ordinance are met. Unless a Variance, a Special Exception, or action on an appeal from an administrative decision is required, the necessary permit may be issued by the Commissioners or designee (see Section 902) Zoning Officer.

**Section 305 Special Exceptions**

Certain uses of land and buildings may be allowed as a Special Exception only by approval of the Zoning Board of Adjustment, if general and specific standards contained in this Ordinance are complied with. Before allowing such Special Exception, the Zoning Board of Adjustment shall first determine that the proposed use will conform to the following general standards unless otherwise specifically exempted by other provisions, and with any applicable additional Special Exception standards contained elsewhere in this Ordinance:-

~~395.1~~ 305.1 Such proposed Special Exception use shall not adversely affect:

- A. The character of the area in which the proposed use will be placed, including consideration of such impacts as, but not limited to, increased noise, vibration, lighting, glare, volume and type of traffic, hours of operation, amount of impervious surface, odor, or building/structure size and mass.
- B. The highway and sidewalks or use thereof located in the area, e.g., through excessive traffic or increased truck traffic.
- C. District services and facilities.
- ~~C.~~ D. Surface or ground water quality, e.g., through increased stormwater runoff; the storage, handling or use of regulated substances; or blasting of bedrock.

**305.2** Such proposed Special Exception use shall comply with all other applicable specific standards in this Ordinance.

**305.3** If the Zoning Board of Adjustment approves an application for a Special Exception, it shall have the authority to impose relevant conditions as to the use of the land as it finds reasonable and appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including, but not limited to, the following:

- A. Setbacks~~Yards~~ larger in area or in any specified dimension than those required by the ordinance.
- B. Screening of all or part of the premises of the proposed use by walls, fencing, or planting.
- C. Off-street parking facilities greater than those otherwise required under this ordinance.
- D. Limitation of the number of occupants or employees upon the premises, and restrictions on~~f~~ the method and/or time or occupation and use.
- E. Limitations upon the size, location and/or lighting of signs more restrictive than otherwise imposed by this ordinance.
- F. For uses that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater, a stormwater plan consistent with Volumes 1,2 and 3 of the *New Hampshire Stormwater Manual*, current edition, published by NHDES.

G. For uses involving the storage, handling or use of regulated substances, a stormwater management plan consistent with Volumes 1,2 and 3 of the *New Hampshire Stormwater Manual*, current edition, published by NHDES and with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators*, published by the US Environmental Protection Agency, and a spill control and countermeasure plan approved by the Haverhill Fire Chief and Haverhill Emergency Management Director.

E.H. For uses involving blasting of bedrock, demonstration that the blasting activities shall be planned and conducted to prevent groundwater contamination.

**Section 306**            **Lots**

- 306.1 Frontage: Lots which abut on more than one public street shall provide the required frontage on only one street.
- 306.2 All structures, whether attached to the principal structure or not, and, whether open or enclosed, including porches, carports, balconies, or platforms above normal grade level, shall not project into any minimum front, side, or rear setback~~yard~~.
- 306.3 Lot access: The street giving access to any lot shall be as follows:
  - A. Shall have the legal status of a Class V or better highway; or
  - B. Corresponds in its location and lines with a street on a subdivision ~~plat~~ approved by the Town of Haverhill Planning Board. This includes a street which is a private road; or
  - C. A Class VI highway, provided that the requirements as contained in RSA 674.41 as it may be amended from time to time or such similar statute, are complied with.

**Section 307**                                    **Dimensional Requirements**

The following dimensional standards shall apply:

- 307.1 Minimum Road Frontage: For any use the minimum road frontage shall be as specified in Table 303.1.
- 307.2 Front Setback~~Yard~~
  - A. Any lot line contiguous to a street is deemed to be a front lot line. For the purposes of determining setbacks, a~~A~~ lot bordering on two streets shall be deemed to have two front yards and two side yards. A lot bordering on three streets shall be deemed to have three front yards and one side yard.
  - B. No structure, except signs, fences, walls, mailboxes, lampposts and the



~~like similar structures~~ may be erected in a front setback yard.

- C. Measure of Front Setback Yard. The front setback yard requirement shall be measured from the street right-of-way, if known. If not known, then 25 feet shall be added to the required front setback yard and measured from the center line of the existing traveled way of the street.

### 307.3 Side Yard and Rear Setback

- A. No structure, except fences, walls and the like ~~and similar structures~~ may be erected in a side or rear setback yard.

~~307.4 B. For those lots which front on the lake, boat houses, docks, wharves, decks and similar structures accessory to the use of the lot on the lake, are allowed by special exception.~~

### ~~307.5~~ 307.4 Height Restrictions

- A. The height of any building shall be measured from the average finished grade. In no instance shall a building be more than thirty-five feet above the average grade.
- B. Flagpoles may exceed the height restriction.
- C. Chimneys, spires, lightning rods, solar panels, or like structures not used for human occupancy may exceed the height restriction on the building of main use.
- D. Radio, TV antennae, or satellite dish antenna systems for private, non-commercial reception may extend above the height limit.

## Section 308      Accessory Uses

**308.1** Accessory uses are uses customarily incidental to the main (primary) use and shall include but not be limited to the following:

- A. Garage or parking space for occupants and visitors.
- B. The outdoor parking of ~~the personal vehicles of the occupants of the residence located on the property, including a maximum of~~ one vehicle maintained primarily for business or hire such as a taxi or light truck; provided, however, that no such vehicle whose empty weight exceeds 10,000 pounds shall be permitted, and provided, further, that the parking of any vehicle used for business or hire must meet the following criteria:
  - 1. Parking of such vehicles shall not be within the required front setback ~~area~~

as set forth in Section 307.2 and Table 303.1.

2. The parking area for such vehicles shall be adequately screened from the street, using a garage, fencing, vegetation or other means approved by the Commissioners or designee (see Section 902)~~Zoning Officer~~.
3. If such screening is to be provided by a garage or another building it must be in compliance with Section ~~406.12~~407.11 of this Ordinance, and must remain subordinate to the dwelling located on the lot.

~~4.~~ C. The storage of parking of vehicle parts or an unregistered or un-inspected vehicle shall be permitted only in an enclosed structure.

~~5.~~ D. In circumstances regarding the use of vehicles for work in progress refer to Section ~~407~~6.2.

~~C.~~E. The outdoor storage or parking of recreational equipment including travel trailers, pick-up ~~campers~~trucks, motor homes, pop-up campers, boats, and boat trailers, snowmobiles, or similar equipment is permitted provided that the criteria in subparagraphs (1) through (4) of paragraph B, above are met. The outdoor storage or parking of boats, boat trailers, snowmobiles and similar items is permitted without screening, except in the front setback ~~area~~ as set forth in Table 303.1, provided such items are registered and in good working condition.

~~D.~~F. Home recreational activities, including tennis courts, swimming pools and the like.

~~E.~~G. Fences and mailboxes.

~~F.~~H. An accessory dwelling unit~~apartment (ADU)~~ in an ~~owner-occupied~~ single-family dwelling, ~~limited to use of related family members~~ subject to the following ~~conditions~~:

1. The landowner shall obtain a zoning permit for the installation of independent cooking facilities ~~solely for the use of related family members~~.
2. The landowner shall comply with the requirements of Section 404 relating to increasing the load on a sewage disposal system.
- ~~2.~~
- ~~3. The accessory apartment shall not be used by persons other than related family members regardless of whether or not rent is charged.~~

~~Section 309~~ Lot of Record

~~309.1 Any lot record may be used for a single family dwelling on the following conditions:~~

- ~~A. The lot is a lot of record.~~
- ~~B. A numbered approval for construction of a Subsurface Disposal System is obtained from the Water Supply and Pollution Control Division.~~
- ~~C. In Skiway only: A source of water is available on the lot with a protective radius required by the New Hampshire Division of Environmental Services (NHDES) or an off-site water source suitable for a single family dwelling is available.~~

#### ARTICLE 4

#### GENERAL PROVISIONS

The following shall apply except where listed.

#### Section 401

#### ~~Yards on Corner~~

#### Lots ~~Lots~~

Any yard adjoining a street shall be considered a front yard for the purposes of these regulations.

#### Section 402

#### Driveway Permit

All driveways that will intersect a Town highway must receive a permit from the Selectmen of the Town of Haverhill or their appointed representative, working in conjunction with the Road Agent as provided in RSA 236:13 as amended or such similar statute.

#### Section xxx Private Roads

xxx.1 All driveways that will intersect a private road ~~In instances where the Town of Haverhill will not issue a driveway permit because the road intersected by the proposed driveway is a private road, the owner shall not construct the driveway without first applying for and receiving~~ require -a special use permit from the Mountain Lakes District Planning Board prior to construction. In addition to the requirements of Section 901.2, the Planning Board shall require sufficient information to find, and may attach sufficient conditions to ensure, that the following standards are met:

- A. That the intersection location being selected, and manner proposed for installation and construction, will adequately protect the safety of the traveling public, including both road and driveway users, both presently and in the future;
- B. That grades and drainage, including any drainage structures, are sufficient to prevent erosion or other damage to either the driveway or private road; and

C. In cases where the private road involved has never been constructed to the Road Design and Construction Standards contained in the Town of Haverhill Subdivision Regulations~~minimum standards for a Class V highway~~, that the private road is, or with sufficient conditions attached will become, adequate to enable safe passage of emergency vehicles~~reasonable access to the property, in light of the proposed use and the particular circumstances pertaining to the case.~~

~~C.~~ xxx.2 Prior to the issuance of a permit for construction of a private road, an agreement must be signed and recorded with the Grafton County Registry of Deeds providing for the landowner (or group of landowners) to provide both summer and winter maintenance of the road until or unless it is accepted by the town as a Class V highway.

### **Section 403**

### **Abandonment of Structures & Excavations**

**403.1** Within six months after work on excavation for a building has begun, the excavation thus remaining shall be covered, such as with building construction or filled to normal grade by owner and piles of unused or excess excavated material are to be removed.

~~403.2~~ Within six months after a permanent or temporary building or structure has been destroyed, demolished or abandoned, all structural materials shall be removed from the site and the excavation thus remaining shall be covered over as with building construction or filled to normal grade by the owner.

~~403.3~~403.2 No structure in the process of completion or demolition and no ruins from fire or other casualty shall be abandoned in a hazardous or disorderly state. Such structure shall be considered to be abandoned when work to remedy the improper condition shall not have been initiated within 90 days of the occasion of the casualty, or if initiated work shall have been discontinued with the owner's consent for 30 or more consecutive days.

### **Section 404 Septic System Requirements**

#### **404.1 Operations and Maintenance**

Protection of the two lakes at Mountain Lakes is essential for the indirect water supply, public health, District recreation, and land value purposes. Proper operation and maintenance of the subsurface sewage disposal system (septic tank and leaching field) is mandatory. Therefore, every four years all home owners at Mountain Lakes are required to submit written proof to the District Office within 60 days that:

1. Their septic tank has been pumped and the septic system has been verified to be functioning properly.

Or

2. That the septic system is functioning properly and the septic tank has a combined thickness of sludge and surface scum less than one third of the tank depth. (Required by NH Code of Administrative Rules Part ENV- WS 1023)

#### **404.2 Increased Septic System Requirements**

The expansion of any dwelling unit to increase the number of bedrooms, ~~or~~ a change in occupancy of any dwelling unit from seasonal to a full-time basis, or the expansion or change of use of any structure which would increase the load on an existing sewage disposal system, shall comply with the following:

1. The landowner shall comply with RSA 485-A: 38 *“Approval to Increase Load on a Sewage Disposal System”*. The landowner shall submit an application for approval of the sewage disposal system to the NHDES and shall obtain approval, and
2. The landowner shall obtain a zoning permit as provided in Article 9.

#### **404.3 Administration and Enforcement**

Administration and enforcement of these septic system requirements shall be in accordance with Sections 902 and 903 of this Ordinance.

#### **Section 405 Motor Vehicle Storage**

No unregistered motor vehicle, unless garaged, will be permitted on any lot. *Comment: This is a provision of the Property Covenants and Easements. Under New Hampshire law, a maximum of one unregistered motor vehicle may be stored on any lot. RSA 236:112.*

#### **Section 406 Signs**

No visible sign or advertising device of any kind shall be permitted, nor shall any other types of signs or advertising devices be permitted, except signs posted by the District or its agents, signs under section 602.5 for Home Occupations which have been granted a Special Exception, signs under Section 702.5 for Commercial Uses which have been granted a Special Exception, or Temporary Signs as described in Paragraph F below.

A. No sign shall be erected or maintained within the street right-of-way.

B. No sign shall be placed in such a position as to endanger motor vehicle or

pedestrian traffic.

- C. Signs may be illuminated only by continuous indirect white light, that is, light reflected from the surface of the sign. Any sign illuminated from within will be considered directly lit and not permitted.
- D. No banners or flashing or animated signs with visible moving parts or intermittent lighting to create the visual effect of movement are permitted.
- E. The above regulations shall not apply to a non-illuminated sign and window poster that are displayed from within a building.
- F. A temporary sign may be placed on the owner's lot upon receipt of a temporary sign permit from the District Office. Temporary signs must comply with the requirements of Paragraphs A, B, and D above, and may be no larger than 450 square inches. Temporary signs may be displayed for no more than 14 days in any three (3) month period. Temporary signs may not be illuminated.

2) ———

#### Section 407.6 ——— Other Provisions (From the Property Covenants)

~~406.1~~ 407.1 Any residence erected on any lot shall have a minimum ground floor area of 500 square feet ~~except in Skiway, which shall have a minimum ground floor area of not less than 900 square feet.~~

~~406.2~~ 407.2 All structures shall be completed on the exterior within six (6) months from the start of construction, including paint, stain, or varnish on any exterior wood surfaces. During periods of active construction work not exceeding six (6) months, vehicles other than those permitted under section 308.1 may be parked on the property, in conjunction with such construction work.

~~406.3~~ 407.3 Exterior walls must be finished with approved siding material, or, if concrete block is to be used as an exterior surface, it must be painted with two coats of masonry paint.

~~406.4~~ 407.4 Dwellings must be built on a continuous foundation wall. No posts, piers or combination of these where the outside of the building is exposed to light and air will be permitted except that this standard shall not apply to open porches and decks. ~~attachments to a dwelling that is not built for year round use.~~

~~406.5~~ 407.5 ~~No visible sign or advertising device of any kind offering a lot or building/s for sale, rent or lease shall be permitted, nor shall any other types of signs or advertising devices be~~

~~permitted, except signs posted by the District or its agents, signs under section 602.5 for home professional occupations which have been granted a special exception, or signs under Section 702.5 for commercial uses which have been granted a special exception.~~

~~(Amended 3/10/07)~~

- 406.6** Alteration of shorelines, including the placement of a seasonal dock, is governed by ~~s~~State Law, ~~which requires Dredge and Fill permits from the Wetlands Board.~~ Permits ~~for the construction of docks~~ must be obtained from the N.H. Department of Environmental Services. All permits and plans must be reviewed by the Commissioners or their designee (see Section 902) ~~District Planning Board~~ to ensure that such plans comply with provisions of the Zoning Ordinance before construction or alteration of land may begin.
- 406.7** 407.6 Owners of occupied or unoccupied lots shall at all times keep and maintain their property in an orderly manner. Accumulations of rubbish or debris are prohibited. Outdoor storage or accumulation of new, used or scrap construction materials, items of equipment, appliances, or parts are prohibited, except for as may be reasonably necessary for a limited period in conjunction with active construction on the property.
- 406.8** 407.7 ~~“No tent shall be set on nor will any trailer be permitted on any lot except~~ a lot owner may obtain a permit from the Commissioners or designee (see Section 902) ~~Board of Adjustment~~ to live in a ~~tent or~~ trailer or motorhome on the owner’s lot for a period of six months during the active construction of a dwelling house. The Zoning Board of Adjustment may grant a Special Exception for up to six additional months. Documentation of disposal of waste in compliance with NHDES regulations must be provided to the District Office each month. ~~” (This restriction is incorporated into the Zoning Ordinance from the Property Covenants for information only and not as a legal restriction.)~~
- 406.9** 407.8 No business, trade or enterprise of any kind or nature whatsoever shall be conducted or carried on upon any residential lot, except as permitted by these regulations. ~~lawyers, Doctors, Architects, Engineers and Accountants may practice in a residential building as a home professional occupation.~~
- 406.10** 407.9 No person shall keep any animals, birds, fowls or poultry, except common household pets.
- 406.11** 407.10 There shall be no habitation in structures other than single family dwelling units or accessory dwelling units (ADUs). ~~dwelling houses.~~
- 406.12** 407.11 Any garage or accessory structure ~~out building~~ shall conform in appearance to the residential structure on the lot it serves.
- 406.13** 407.12 Buildings on any lot shall be connected to the Mountain Lakes District

Water System where available, upon such terms and conditions as set forth in the Mountain Lakes District Water Department Tariff.

~~406.14~~ **407.13** No person shall use or operate any power boat, snowmobile, all terrain vehicle, car or truck or any gasoline, diesel or electric powered conveyance on the waters or ice of the lakes in Mountain Lakes District or any wetlands in the Mountain Lakes District, nor on the Mountain Lakes District lands except as authorized by the Mountain Lakes District Commissioners. District residents may operate snowmobiles on routes designated in writing by the Commissioners for the purpose of accessing approved snowmobile corridors outside the District.

## **ARTICLE 5**            **NON-CONFORMING USES AND STRUCTURES**

### **Section 501**            **Definition**

Any lawful structure or use of a building in existence at the time of the adoption of this Ordinance, or of any amendment hereto, may be continued although such structure or use does not comply with the provisions of this Ordinance. Such structures shall be known as “Non-Conforming Structures” and such uses as “Non-Conforming Uses.” ~~A structure or use of a building or lot contrary to the applicable Property Covenants and Easements pertaining to that lot recorded in the Grafton County Registry of Deeds shall not be considered a lawful structure or use of a building or lot.~~

### **Section xxx**    **Nonconforming Lots**

The Zoning Board of Adjustment may grant a Special Exception for the construction of one single family dwelling on a legally existing nonconforming lot with the following conditions:

- A. The lot was a lot of record prior to the adoption of the ordinance or amendment.
- B. A permit for a state-approved septic system has been obtained.
- C. A source of water is available on the lot with a protective radius required by the New Hampshire Department of Environmental Services (NHDES) or an off-site water source suitable for a single family dwelling is available.
- D. All setbacks will be met to the fullest extent practicable.

### **Section 502**            **Change or Expansion of Non-Conforming Use**

No non-conforming use shall be changed to another non-conforming use. The Zoning Board of Adjustment may grant a Special Exception for the ~~and no such non-conforming use shall be enlargementd or extensionded of a nonconforming use not~~ in excess of twenty percent (20%) of the gross floor area of the main building existing at the time the non-conformance commenced. The expanded 20% use shall comply with all other provisions of this Ordinance, including but not limited to dimensional requirements, sign regulations, and off-street parking



requirements.

### **Section 503**                      **Abandonment of Non-Conforming Use**

If a non-conforming use is changed to a conforming use and continued for a period of ~~three~~four (3)

**4.** months or more, such change shall constitute the abandonment of the prior non-conforming use. A non-conforming use shall be presumed to be abandoned if the use has been discontinued for a period of eighteen (18) months or more. A determination shall in the first instance be made by the Commissioners or designee (see Section 902)~~Zoning Officer~~, and any person aggrieved may appeal that decision to the Zoning Board of Adjustment.

### **Section 504**                      **Damage to a Non-Conforming Structure**

If a non-conforming structure is damaged by fire, explosion or other catastrophe, the Commissioners or designee (see Section 902)~~Planning Board~~ may issue a zoning permit for the rebuilding and restoration of such building which may not be greater in size or floor space and in the original location of the original structure except as provided in Section 506. Application for a building permit to restore the structure must occur within two years of the date of damage. Otherwise the non-conforming use shall be presumed to have been abandoned, except as to rights vested by law.

### **Section 505**                      **Damage to Non-Conforming Use**

If a building housing a non-conforming use is damaged by fire, explosion or other catastrophe, the Commissioners or their designee (see Section 902)~~Planning Board~~ may issue a zoning permit for the resumption of such use in the rebuilt or restored structure limited to the original size and floor space utilized by the non-conforming use. Application for a zoning permit to restore the structure must occur within two years of the date of damage. Otherwise, the non-conforming use shall be presumed to have been abandoned.

### **Section~~SECTION~~ 506**                      **Expansion of Non-Conforming Structure**

The Zoning Board of Adjustment may grant a Special Exception for the enlargement or extension of ~~A a~~ structure that is non-conforming as to one or more dimensional requirements (setbacks and/or height limit) ~~may be enlarged or extended up to twenty percent (20%) of the gross floor area existing at the time the non-conformance commenced.~~ provided such expansion does not further increase the level of noncompliance. For example, the portion of a building within the required setback may not be expanded. The portion of the structure in violation of a height limit may not be increased in height or expanded within the setback. The Zoning Board of Adjustment may grant a Special Exception to increase the footprint of a structure that is in excess of the height limit by 20% with approval of the Fire Chief. ~~For example a house which is too close to the road~~

~~and does not comply with the front yard requirement may be extended parallel to the road in an amount equal to 20% of the gross floor area of the house. The extension, however, cannot violate a side yard or rear yard requirement.~~

## **ARTICLE 6**

## **HOME ~~PROFESSIONAL~~ OCCUPATIONS**

~~*(From the Property Covenants)*~~

### **Section 601**

#### **Intent**

A home occupation accessory to a dwelling unit~~home professional occupation as described in Section 406.9~~ may be allowed as a Special Exception by the Zoning Board of Adjustment upon a finding that the proposed use will be in compliance with each of the Standards in Section 602 below~~to carry out the objectives and intent for the establishment for the Mountain Lakes Subdivision.~~

### **Section 602**

#### **Additional Special Exception Standards**

The following standards define the acceptable home ~~professional~~ occupations, and are intended to ensure compatibility with other uses, and to make clear that the home ~~professional~~ occupation is to be an accessory use, clearly incidental and secondary to, the primarily residential use of the main building.

- 602.1** There shall be no exterior evidence of the conduct of a home-~~professional~~ occupation, including exterior storage of material used in the home occupation, except where other sections allow. The principal character of residential use shall not be changed by the home- occupation.
- 602.2** A home ~~professional~~ occupation shall, except for gardening, be conducted only within the enclosed area of the dwelling unit or within an accessory structure, limited in area by the following:
- A. The home ~~professional~~ occupation located in a dwelling unit shall not occupy more than 25% of the total floor area of the dwelling- unit.
  - B. The home ~~professional~~ occupation located within an accessory structure shall occupy an area not to exceed 50% of the total combined floor spaces of the main dwelling unit and accessory building.
  - C. The percent of floor area occupied may be increased by the Zoning Board of Adjustment for accessory structures which exist on the effective date of this Ordinance.

D. Total floor area is defined as follows: The sum of the horizontal area of all floors of a building, measured from the interior surfaces of the walls, and not including cellars, attics, porches, or areas of a similar nature ~~etc.~~

~~602.3~~ Home ~~professional~~ occupations shall be carried on by persons who live in the home-~~full time.~~ In addition, no more than two ~~One~~ on-site non-resident employees (2 FTEs) shall be ~~is~~ permitted.

~~602.4~~ Adequate off-street parking must be provided for the employees, clients and residents. Parking shall not be allowed in the street.

602.5 One rectangular shaped sign, conforming to the requirements of the regulations contained in this Ordinance, not to exceed 450 square inches (each side), shall be allowed for the home ~~professional~~ occupation. Letters shall be black on a white - background.

602.6 Incidental retail sales may be made in connection with the home occupation; however, the business of selling merchandise, supplies, or products shall not be conducted on the premises.

602.7 There shall be no offensive noise, vibration, smoke, dust, odor, heat, or glare noticeable at or beyond the property line as a result of the home occupation.

~~602.5~~602.8 For purposes of this section, provided all requirements contained herein are met, the following by way of example shall be considered home occupations: professional offices, art studios, tutoring, home day care, assembly of product for offsite sales, businesses conducted solely by telephone, computer or other personal communications device.

## **ARTICLE 7**      **COMMERCIAL USES**

### **Section 701**      **Intent**

The following standards define allowable commercial uses and are intended to minimize the potential conflict with residential uses in the area for the purpose of preserving the residential character of the District.

702.1 The number of employees shall not exceed four (4) unless specifically approved by the ~~, subject to the right to request an increase by application to the~~ Zoning Board of Adjustment as part of the Special Exception application or amendment thereto.  
~~702.1~~

702.2 The building shall comply with the front, side and rear setback -requirements.

~~702.2~~

702.3 The lot shall front on a Town-maintained highway or a road which has been granted a Special Use Permit.

~~702.3~~

702.4 There shall be adequate off-street parking for customers and employees.

~~702.4~~

702.5 There shall be only one rectangular shaped on-premise sign, not to exceed 450 square inches (each side). Letters shall be black on a white background.

~~702.5~~

~~(1) No sign shall be erected or maintained within the street right-of-way.~~

~~(2) No sign shall be placed in such a position as to endanger motor vehicle or pedestrian traffic.~~

~~(3) Signs shall refer only to a use or activity on the lot upon which the sign is situated.~~

~~(4) Signs may be illuminated only by continuous indirect white light, that is, light reflected from the surface of the sign. Any sign illuminated from within will be considered directly lit and not permitted.~~

~~(5) No flashing or animated signs with visible moving parts or intermittent lighting to create the visual effect of movement are permitted.~~

~~(6) The above regulations shall not apply to a non-illuminated sign and window poster that are displayed from within a building.~~

702.6 ~~Th~~ For businesses with activity or equipment storage on-site, there shall be an adequate buffer consisting of natural vegetation and trees and/or additional planted vegetation and trees so as to provide reasonable screening from adjoining abutting lots.

~~702.6~~

702.7 All exterior lighting shall be installed so as not to spill over onto any abutting lot.

~~702.7~~

702.8 The building shall be residential in appearance.

**702.8**

**702.9** The side and rear ~~yard~~-setbacks may be increased by the Zoning Board of Adjustment for the purpose of providing an additional separation between structures and the lot lines for the purpose of minimizing the impact on adjoining residential - lots.

ARTICLE 8                      DEFINITIONS

**Section 801**                      **Word Definitions**

The word person includes a firm, association, organization, partnership, trust company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word shall or will is mandatory, the word may is permissive.

The words used or occupied include the words intended, or arranged, or arranged to be used or occupied.

If a word is not defined herein, it shall be given its usual dictionary meaning.

**Section 802**                      **Terms & Use Definitions**

1. Accessory Building or Use: A building or use subordinate and customarily incidental to the main building or use on the same lot.

~~1.~~ #. Accessory Dwelling Unit (ADU) : A dwelling unit that is within or attached to a one family dwelling or attached garage, and that provides independent living facilities for one family, including provisions for sleeping, eating, cooking, and sanitation, on the same parcel of land as the principal dwelling unit it accompanies; and contains an interior door between the principal dwelling unit and the accessory dwelling unit.

2. Building: A constructed unit forming a shelter for persons, animals, or property and having a roof and being permanently located on the land. Where the context allows, the word “*building*” shall be construed as though followed by the words “*or part thereof*.”

~~3. Building Height: Vertical distance measured from the average elevation of the proposed finished grade to the highest point of the roof.~~

~~3.~~

4. Commercial Use: An operation of a commercial nature limited to business and professional offices and/or personal services which include barber, hairdresser, beauty parlor, shoe repair, photographic studio and other similar businesses that primarily provide services not goods to customers.

#. Commissioners or designee: Board of Commissioners of Mountain Lakes District or designee for the purposes of administering this Zoning Ordinance. The designee may be an employee of the District such as a Zoning Officer and/or the Planning Board.

#. Conditional Use Permit: A permit which must be obtained by the Planning Board pursuant to RSA 674:21 for a specific category of use as identified in this Ordinance, in addition to any Special Exception requirements, prior to receiving a zoning permit.

~~5. Coverage: That percentage of the lot area covered by the building. Coverage of a lot shall be limited by front, side and rear yard requirements.~~

6. Dwelling, Single Family: A detached residential dwelling unit ~~other than manufactured housing (based on deed restrictions)~~, designed for and occupied by one family only. Does not include manufactured home or recreational vehicle.

7. Dwelling Unit: A room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms which may be in the same structure, and containing independent cooking, sanitary and sleeping facilities.

~~6. #Family, Related: Any number of persons related by blood or marriage.~~

Family: ~~Unrelated: Any number of persons related by blood, marriage or adoption, or a group~~ Any number of persons not related by blood, ~~or marriage or adoption~~ living together as a single ~~non-profit~~ housekeeping unit, ~~t. The number of which unrelated family members shall be~~ shall be limited by the number of bedrooms contained in the dwelling unit. For a group of unrelated individuals living together as a single housekeeping unit, -t. There shall be no more than two people per bedroom one bedroom for the first two persons and one bedroom for each additional person. There shall be two parking spaces for the first two persons and one space for each additional person thereafter. Where there are more than four persons living together as an unrelated family, there must be established to the satisfaction of the Zoning Officer that the septic system and water system is capable of handling more than four persons.

10. Frontage: The width of a lot measured along its common boundary with the street line.

11. Lot: A parcel of land occupied or to be occupied by a main building and accessory buildings or uses customarily incidental to it. A lot shall be of sufficient size to meet minimum zoning requirements for use, ~~coverage~~, area and to provide such ~~setbacks~~yards and other open spaces as are herein required. All lots shown on a subdivision plan which have received final plot approval from the Town of Haverhill Planning Board shall be separate lots regardless of whether there is separate ownership or common ownership of contiguous lots.
12. Lot Area: The horizontal area of the lot lying within the lot lines, exclusive of any area in a street.
13. Lot of Record: A lot which is part of a subdivision recorded in the Office of the Grafton County Registry of Deeds, or a lot or parcel described as a separate lot or tract or parcel in a deed, recorded in the Registry of Deeds, prior to the adoption of this Ordinance.

14. NHDES: New Hampshire Department of Environmental Services

# Non-Conforming Lot: A lot of record at the time this Ordinance or amendment becomes effective, but which does not conform with these regulations.

~~7.~~

~~14.~~

15. Non-Conforming Structure: A structure, which was lawfully existing prior to adoption of this Ordinance, which does not now conform to the dimensional regulations for the District in which it was located.
16. Non-Conforming Use: A use, which was legal prior to the adoption of this Ordinance which does not now conform to the use regulations for the District in which it is located.
17. Non-Residential Use: All uses of buildings, structures, and land except single-family dwellings and accessory uses and structures thereto ~~multi-family dwellings~~.

# Overlay District: An area where additional regulations apply. Where regulations in an overlay district conflict with the underlying District-wide regulations, or where two overlay districts overlap, the more restrictive regulation shall apply.

# Perennial Stream: A stream that normally flows year-round because it is sustained by groundwater discharge as well as by surface water. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

~~17.~~18. Power Boats: Vessel that can move across water as a result of action by an internal combustion or electric motor.

# Regulated Substance: Petroleum, petroleum products, regulated contaminants for which an ambient groundwater quality standard has been established under RSA 485-C:6, and substances listed under 40 CFR 302, as amended, excluding substances used in the treatment of drinking water at NHDES-approved facilities.

~~18.~~19. Roads: See Streets.

~~8.~~20. RSA: New Hampshire Revised Statutes Annotated

~~9.—~~22. ~~Numbered Section: (See Sections Numbered) Numbered shall mean Subdivisions of the original Mountain Lakes Area described in the Subdivision plans on record in the Grafton County Registry of Deeds and indicated as Section 1, Section 2, Section 3, and etcetera.~~

Plat: A map or plan. ~~(move to alphabetize)~~

# Setback: The distance required between the property line, or center line of the existing traveled way of the street, and any structures other than those provided for within this Ordinance.

23. Special Exception: A use of a building or lot or other requirement allowed under this Ordinance only by the issuance of a Special Exception by the Zoning Board of Adjustment. The landowner has the burden of establishing that the proposed requested Special Exception meets the requirements of general and/or specific standards for the issuance of that Special Exception as contained in this Ordinance.

24. Special Use Permit: A permit which must be obtained by the Planning Board pursuant to RSA 674:21 for a specific category of use as identified in this Ordinance, in addition to any Special Exception requirements, prior to receiving a zoning permit.

~~23.~~

~~24.~~25. Street: Shall mean a Class V or better highway, a private road on a subdivision ~~pl~~at approved by the Town of Haverhill Planning Board; or a Class VI highway provided that the requirements of RSA 674:41,I are met.

~~25.~~26. Structure: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the -ground.

~~26.~~27. Variance: Such departure from the terms of this Ordinance as the Zoning Board of Adjustment, upon appeal in specific cases, is empowered to authorize under the terms



of Section 905~~4~~ and applicable statutes of the State of New Hampshire.

# Zoning Board of Adjustment: Zoning Board of Adjustment of the Mountain Lakes District.

~~10.—~~

## **ARTICLE 9 PERMITS, ADMINISTRATION AND ENFORCEMENT**

### **Section 901 Zoning Permit**

**901.1** Written application for a zoning permit must be filed with the District for any of the following, and, except as provided in applicable statutes of the State of New Hampshire, until a permit has been ~~approved~~reviewed in writing by the ~~Commissioners or designee (see Section 902)~~Zoning Officer and approved by the Planning Board to assure conformity with the terms of this Ordinance (or, if the permit is denied, until the Zoning Board of Adjustment has directed that a permit be issued), none of the following shall be commenced:

- A. The erection or use of any new building, exterior sign, or other structure.
- B. The alteration, restoration, moving, or demolition of any building, or part thereof.
- C. Any change in the use of the premises which would constitute a departure from the terms of this Ordinance, including, but without limiting the generality of the foregoing, a change in the nature of the use of any building or premises to a non-conforming use except as provided in Section 506 including addition of a home occupation or accessory dwelling unit, or any change in lot size or shape which would result in a violation of area or dimensional regulations.

**901.2** Application for a zoning permit shall be upon the appropriate form to be prescribed by the District and shall be accompanied by such of the following as the ~~Commissioners or designee (see Section 902)~~Zoning Officer or Planning Board may require:

#### **901.2**

- A. Building plans, drawn to scale, showing the actual shape, dimensions, and location of the lot to be used, of existing building upon it, or alterations proposed for existing buildings, and of proposed new buildings.
  - 1. Name of project, names and addresses of owners of record, tax map and lot number.
  - 2. North arrow, date of the plat, scale appropriate to the scope of the building(s), name and address of person preparing the plat.

3. Vicinity sketch at an appropriate scale showing the location of the building(s) in relation to the existing public streets.
4. The shape, size, height, location and use of existing and proposed structures located on the site and those existing within 50 feet of the site.
5. A copy of an approved driveway permit from the Town of Haverhill, or, where the proposed driveway is to intersect a private road, an application for a Special Use Permit as set forth in Section ~~xxx~~402 of this Ordinance, in which case the following provisions shall apply:
  - ~~(#)~~-a. Plans and specifications shall be presented detailing any upgrades or changes to the private road which may be required by the Planning Board as part of its Special Use

Permit review. The Board may also require a performance bond to secure such work.

~~(b)~~b. The applicant shall sign a statement, to be recorded, acknowledging that neither the Town of Haverhill, nor the Mountain Lakes District, has any liability for maintenance of the private road, nor for any injury or damages that may occur due to the condition of the private road, and that neither the Town nor District is under any obligation to assume the maintenance of the road in the future.

~~(c)~~c. No private road will be approved by the Planning Board unless adequate provision is made for all utilities serving the site. The plan submitted must show the location and size of necessary utility easements; and if private lines are to be connected to public lines, a public "turn off" must be installed and maintained by the applicant at the end of an in use utility.

6. Copy of the septic system design including detailed sketches and NHDES approvals.

7. Location of any existing or proposed easements, deed restrictions or covenants.

~~8.~~ Such other information as deemed necessary ~~by the Board~~ in order to apply the regulations contained herein. ~~Should the Board determine that any additional plans or information are to be required, the applicant will be notified in writing within ten (10) days of the meeting at which the determination was made.~~

8.

B. Information as to the existing and intended use of each building, lot, or a part thereof.

C. Any other information with respect to the lot and the applicant's use thereof, as well as relative to other lots in the neighborhood which, in the judgment of the Commissioners or designee (see Section 902)~~Zoning Officer or Planning Board~~, is necessary to determine whether the action or use for which a permit is sought is a conforming action or use under the terms of this Ordinance.

**901.3** The Commissioners or designee (see Section 902)~~Zoning Officer~~ shall review an application for a permit to determine its compliance with ~~a Permitted Use or action as defined by~~ this Ordinance. The Commissioners or designee~~Zoning Officer will then submit his/her recommendation to the Planning Board within 30 days after the application has been filed. The Planning Board will~~ approve, conditionally approve or deny the application within 30 days~~at its next regularly scheduled Planning Board meeting.~~

**901.4** Issuance of a Zoning Permit pursuant to this Ordinance constitutes approval by the District of the proposed use only under the terms of this Zoning Ordinance.

**901.5** The issuance of a Zoning Permit for any use for which it is required shall precede or be in conjunction with the issuance of a Building Permit from the Town of Haverhill.

**901.6** A Zoning Permit shall become void if a building permit is not issued and construction is not begun hereunder within twelve (12) months from the date of issue of the Zoning Permit, or, if no building permit is required, a Zoning Permit shall become void if the rights conferred thereby are not exercised with twelve (12) months from the date of issue of the Zoning Permit. Zoning Permits may be extended for no more than an additional twelve (12) months by the [Commissioners or their designee \(see Section 902\)](#) ~~Planning Board~~ on receipt of a written request for extension at least thirty ~~((30))~~ days prior to the expiration of the original permit.

~~**901.7** No cutting or clearing of trees which, within any 5-year period, results in the removal of all existing trees from any contiguous area 2500 square feet in size, or which results in the removal of more than 30% of the basal area of all existing trees from any existing building lot, may be commenced without a Special Exception from the Mountain Lakes Zoning Board of Adjustment. In lieu of the other special exception standards found in this Ordinance a special exception under this section shall be subject to the following standards:~~

~~**A.**—For purposes of this section, a “tree” means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground. “Basal area” is as defined in RSA 227-G:2.~~

~~**B.**—The applicant for such a special exception shall have the burden of demonstrating to the Zoning board of Adjustment, through the testimony of appropriately qualified and competent persons: (1) That the project will not result in the violation of any applicable state law, including the Comprehensive Shoreland Protection Act, RSA 483-B; (2) That all of the buffer areas required by RSA 227-J:9 will be complied with, and that slash will be handled as required under RSA 227-J:10; and (3) That over the lot as a whole, a minimum of 30% of the basal area of trees, and a minimum of 30% of the number saplings, shall remain in place and healthy, distributed in such a manner as to minimize any harmful runoff to lakes or streams, and to maintain buffer areas from streets and abutting properties.~~

~~**C.** **901.7** ~~If the clearing is~~ for purposes of enabling the erection of a building or structure, or change of use which requires a permit under Section 901.1 of this Ordinance, ~~then no cutting~~ shall begin until the zoning permit for the building, structure or conversion of use has been obtained. In addition, building construction must begin no later than 6 months after tree clearing begins, unless an [extension has been received from the Mountain Lakes District Commissioners or their designee \(see Section 902\)](#) ~~variance is obtained from the Mountain Lakes District Zoning Board of Adjustment.~~~~

~~**D.** If the clearing is not for purposes of enabling a building, structure or change of use requiring a zoning permit under Section 901.1, then in addition to the requirements of paragraph B above, the applicant shall have the burden of demonstrating to the satisfaction~~

~~of the Zoning Board of Adjustment: (1) That the cutting is to be in accord with a specific forest stewardship plan, prepared by a NH licensed forester, providing for long-term sustained yield, and requiring compliance with Best Management Practices for Erosion Control on Timber Harvesting Operations, as published by the NH Department of Resources and Economic Development, and (2) That the cutting will have no undue~~

~~adverse impact upon other properties in the area or upon the view of the area from roads, streets and water bodies.~~

~~E. The Zoning Board of Adjustment shall attach, to the special exception, such conditions as it deems necessary to assure that cutting remains in compliance with the provisions of this section at all times during the cutting or clearing operation. The requirements of this section are in addition to any requirements of State Law, and are in addition to the building permit and driveway permit requirements of the Town of Haverhill.~~

~~901.8 On approval by the Zoning Board of Adjustment of a Variance or Special Exception, the Planning Board may issue a Zoning Permit.~~

## **Section 902**            **Administration and Enforcement**

The administration and enforcement of this Ordinance shall be by the Mountain Lakes District Board of Commissioners and/or their duly appointed representatives, which may include a ~~the~~ Zoning Officer and or the Planning Board.

## **Section 903**            **Enforcement and Penalty**

**903.1** This Ordinance shall be enforced by the Mountain Lakes Board of Commissioners or their duly appointed representatives. If any building or use of land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance, the Commissioners shall institute, in the name of the District, any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate such construction or use or to prevent in or about the premises any act, conduct, business, or use constituting a violation.

**903.2** A notice of violation shall be sent by mail to any person determined to have violated this Ordinance and such notice shall describe the acts constituting the violation and the section of this Ordinance. No enforcement action shall be initiated unless the alleged offender has had at least ten (10) calendar days from the date of the violation letter to correct the violation. Any person who violates this Ordinance shall be subject to a civil penalty not to exceed \$275 for each day for the first offence and \$550 for each day for subsequent offences that such violation is found to continue after the date on which the violator received written notice from the District of the violation. In any legal action brought by the District to enforce this Ordinance, the District may recover its costs and reasonable attorneys' Fees. *See RSA 676:17.*

## **Section 904**            **Zoning Board of Adjustment**

There shall be a Zoning Board of Adjustment as provided by New Hampshire statutes and its members shall be appointed by the Board of Commissioners.

**904.1** The Zoning Board of Adjustment shall have the following powers as conferred by law:

**A.** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Commissioners, Zoning Officer, ~~and/or the~~ Planning Board or other designee in the administration of this Ordinance.

**B.** To hear and decide Special Exceptions to the terms of this Ordinance upon which the Zoning Board of Adjustment is required to pass as provided herein.

~~B.~~

~~C.~~ To authorize upon appeal in specific cases ~~such~~ Variances from the terms of this Ordinance as provided in Section 905. ~~will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will be observed and substantial justice done. In so doing, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and the community.~~

~~C.D.~~ To grant Equitable Waivers of Dimensional Requirements pursuant to RSA 674:16.

**904.2** In exercising the above-mentioned powers, the Zoning Board of Adjustment may reverse or affirm wholly or in part or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the Commissioners, Zoning Officer, ~~and/or~~ Planning Board, or other designee from whom the appeal is taken.

~~D.~~

~~E.~~ **904.3** The concurring vote of a simple majority of the membership of the Zoning Board of Adjustment shall be necessary to reverse any action of the Commissioners, Zoning Officer, ~~and/or~~ Planning Board, or other designee, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance or to affect any variation in this Ordinance.

**904.2** **904.4** The following rules shall apply in all proceedings before the Board of ~~-~~Adjustment:

**A.** All appeals and applications to the Zoning Board of Adjustment shall be in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall set forth the interpretation, the Special Exception, or Variance for which application is made.

**B.** Whenever a notice of appeal is filed for a Variance or an application made for a Special Exception, the Zoning Board of Adjustment shall hold a public ~~hearing~~meeting and notice shall be given as required by law.

**C.** The Board of Commissioners shall establish such appropriate fees as will

compensate the District for the cost of processing and reviewing all appeals and applications submitted to the Zoning Board of Adjustment. The applicant shall pay the established fee upon submission of the appeal or application.

- D. The provisions contained herein are intended to comply with applicable provisions of New Hampshire Revised Statutes Annotated, Title LXIV, as amended. Any such amendment shall constitute a similar amendment herein without further action.

## **Section 905      Variance**

**905.1** The Zoning Board of Adjustment may, on an appeal, grant a Variance from the Provisions of this Ordinance, if the Board determines that the following five standards as required by State Law, are met, namely:

- ~~A. No diminution in value of surrounding properties would be suffered;~~
- ~~B. Granting the permit would be of benefit to the public interest;~~
- ~~C. Denial of the permit would result in unnecessary hardship for the owners seeking it;~~
- ~~D. By granting the permit, substantial justice will be done;~~
- ~~E. The use must not be contrary to the spirit of this Ordinance.~~

~~In determining whether or not these standards are met, the Zoning Board of Adjustment shall find the following facts and so specify in its **decision**:~~

- ~~1. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot, size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.~~
- ~~2. That because of such physical circumstances or conditions the property cannot be used in strict conformity with the provisions of this Ordinance and that the authorization of a Variance is therefore necessary to enable the reasonable use of the property.~~
- ~~3. That the Variance if authorized will not diminish the value of surrounding properties.~~
- ~~4. That the Variance if authorized will represent the minimum Variance that will afford~~



~~reasonable relief.~~

- A. The variance will not be contrary to the public interest;
- B. The spirit of the ordinance is observed;
- C. Substantial justice is done;
- D. The values of surrounding properties are not diminished; and
- E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- 1. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
  - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
  - b. The proposed use is a reasonable one.
- 2. If the criteria in subparagraph 1. are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph E. shall apply whether the provision of the Ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the Ordinance.

**905.2** In authorizing a Variance, the Zoning Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and community, as to the use of the land.

### **Section XXX Equitable Waivers of Dimensional Requirements**

#### **905.2**

A. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- 1. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- 2. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- 3. That the physical or dimensional violation does not constitute a public or private nuisance, nor

diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

B. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

C. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

D. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

## **Section 906**      **Occupancy**

No building may be occupied or used unless the ~~Commissioners or designee~~~~Zoning Officer~~ (see Section 902) ~~have~~s issued a successfully completed Zoning Compliance Checklist (ZCC). The ~~Commissioners or designee~~ (see Section 902)~~Zoning Officer~~ shall not issue -a Zoning Compliance Checklist until the Zoning Ordinance and Water Tariff regulations have been met.

## **Section 907**      **Fees**

The fee for any permit or appeal required under this Ordinance shall be established by the Board of Commissioners. Such fees shall be paid by the applicant in advance and shall accompany each application for permit.

## **ARTICLE 10**      **MISCELLANEOUS PROVISIONS**

### **Section 1001**      **Severability Clause**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

### **Section 1002**      **Effective Date**

This Ordinance and any amendments thereto shall take effect ~~immediately upon its~~ adoption.

**Section 1003**     **Amendments**

The Ordinance may be amended in accordance with the provisions of the applicable statutes of the State of New Hampshire.

**Section 1004**     **Conflicts** ~~**Validity**~~

Whenever the provisions of this Ordinance or rulings made under the authority hereof differ from those of other ordinances or regulations of the District or of the Town of Haverhill, that provision or ruling which imposes greater restriction or higher standard shall govern.

## **TOWN OF HAVERHILL HEALTH REGULATIONS**

Reg. 101 Refuse Containers. Refuse stored outside of an enclosed structure shall be placed securely in covered containers of permanent construction. For the purpose of this Regulation, plastic bags or materials such as cardboard or paper shall not constitute “Permanent Construction”. This regulation shall apply only to the Mountain Lakes District.