

## **Land Use Plan Ordinance Town of Jefferson, NH**

### **Preamble**

The Town of Jefferson has a wealth of scenic beauty, scenic vistas, natural resources, and unassuming charm. In a region of New Hampshire where such attractions are almost commonplace, Jefferson's may be unique—nearby Cherry Mt. and the Dartmouth Range, Starr King, the Pliny Range and the Kilkennys, plus the Presidentials looming boldly in the distance; the tranquil Israel's River valley and the many rushing mountain streams which feed it; woodlands for hunting and brooks for fishing; the rare plant life of Cherry Pond and its wetlands; the plain but dignified older homes along with unpretentious newer ones and comfortable vacation homes, working farms, and pastures all in harmonious, uncrowded and quiet setting; and recreational opportunities galore, summer and winter. Some, or all of these, are attractions, which Jefferson's people enjoy now and have enjoyed from the beginning, and of which they are justifiably proud. Sometimes, taken for granted, however, these same attractions are increasingly bringing interest from outside, which, of course, is to Jefferson's benefit if these others have the same respect and consideration for it that the townspeople do. In light of past performance in some other communities it can be seen that growth can get out of hand, prices skyrocket and farms and pastures become a thing of the past. Still, growth is a fact of life, which must be faced; therefore it must be controlled and channeled in such a way as to reflect the wishes and desires of the people of Jefferson. These desires very strongly favor maintaining the present unique character of the town of Jefferson along with its existing property values. It is hoped that this land use plan ordinance will play a major part in doing just that, along with its underlying aims of promoting Jefferson's health, safety, and general welfare. It is aimed at new construction rather than attempting to control changes to old construction.

## **ARTICLE I**

### TITLE

This ordinance shall be known and may be cited as the Town Jefferson Land Use Plan Ordinance, hereinafter referred to as “This Ordinance”.

## **ARTICLE II**

### PURPOSE

In accordance with the provisions of NH RSA 674:16, this Ordinance is designed to guide and protect the development of Jefferson in a manner consistent with the wishes of its citizens and in accordance with the Master Plan. The purpose of this Ordinance is to promote the health, safety, economic and general welfare of the inhabitants of Jefferson; to protect the value of property; to prevent the overcrowding of lands; to conserve our natural resources; to avoid undue concentration of population; and to facilitate the adequate provisions of other public requirements. A combination of all or a number of factors, topographical, geological, climatological, historical and geographical, create an environment in the Town of Jefferson which is and can be of specific appeal to residential, agricultural, and conservation based developments. This Ordinance, therefore, is particularly designed to protect, preserve and encourage such developments.

## **ARTICLE III**

### PERMITTED USES

SECTION 1 PERMITTED USES All land uses consistent with the stated purpose of this Ordinance are permitted in the Town of Jefferson, including single-family dwellings, two-family dwellings and pre-site built or manufactured housing units, and the buildings incidental to the permitted use, swimming pools (public or private).

SECTION 2. PERMITTED USES BY SPECIAL EXCEPTION The following additional uses may be permitted by the Board of Adjustment (see Art. VII) and shall be considered as Special Exceptions:

- A. Motels, hotels, tourist accommodations and lodging units, nursery schools, clinics, hospitals, nursing homes, rest homes, public utility buildings, retail and wholesale stores, parks and recreation areas, cemeteries, greenhouses, private clubs, golf courses, riding stables, restaurants, sawmills, camps, home-based businesses, small businesses, telecommunications equipment and facilities. (Hotel, motel, tourist accommodations and lodging units shall be defined in the strictest sense and shall not be considered in the context of condominium conversion). (amended 3/1999)

B. a **Home-based Business** is defined as follows:

1. The business will be clearly secondary to the use of the property as a home
2. The business must be carried on by an occupant of the dwelling, usually the owner or a member of the owner's family.
3. Only one non-occupant may be employed in the business.
4. The business shall not substantially alter the outside appearance of the property.
5. No objectionable effects result from a Home-Based Business, such as, but not limited to, noise, traffic, dust.
6. The business does not create a commercial atmosphere.

C. a **Small Business** is defined as follows:

1. Business limited to 25 employees or fewer. (amended 1993)
2. No objectionable effects shall result from a Small Business, such as, but not limited to, noise, traffic, dust.
3. A Small Business does not create a big business atmosphere.
4. A Small Business may include but not be restricted to, a small woodworking shop, machine shop, assembly shop, office work, research and development, warehousing.

D. **Excavation** is defined as follows:

**RSA 155-E: 4 Prohibited Projects, Section III:** Is not permitted by zoning or other applicable ordinance, provided, however, that in municipalities which have commercial earth resources on unimproved land within their boundaries, and which do not provide for reasonable opportunities for excavation of some of those resources, or in municipalities which have zoning ordinances which do not address the subject of excavations, excavation shall be deemed to be a use allowed by special exception as provided in RSA 674:33, IV, and the zoning board of adjustment shall grant such a special exception upon a finding that:

- (1) The excavation will not cause an unreasonable diminution in area property value or unreasonable change the character of the neighborhood;
- (2) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof; and
- (3) The excavation will not create any unreasonable nuisance or create health or safety hazards.

E. Conditions may be attached by the Board of Adjustment consistent with the provisions of Article VII Section 1 C.

**SECTION 3 APPLICABILITY.** Every use now being made of land, structures or buildings in the Town of Jefferson, on the effective date of this Ordinance, may be continued and such use is not affected by the provisions of Article IV.

## SECTION 4 DEFINITIONS

- Abutter:** The owner of record of a parcel of land that is within 200 feet at any point of the parcel under consideration.
- Barn:** A building used exclusively for sheltering of livestock and/or farm equipment, storage of grain, hay, and other farm related products.
- Building:** Shall mean any combination of materials, whether portable, moveable or fixed, having a roof and enclosed with exterior walls, built to form a structure for shelter.
- Building Site:** Shall mean that portion of a lot, tract or parcel of land upon which a single building is placed or is to be placed.
- Driveway:** A private access from a public way to a lot and/or building.
- Dwelling:** Shall mean any building used for or intended to be used for living, sleeping, cooking, eating and having sanitation interior or exterior. This excludes recreation vehicles.
- Dwelling Unit:** Shall mean any room or rooms used for or intended to be used for living, sleeping, cooking, eating and having sanitation interior or exterior. This excludes recreation vehicles.
- Frontage:** That portion of a lot bordering on a highway, street, or right-of-way.
- Height:** No dwelling on any lot shall exceed 30 feet or 2.5 stories. The height of the structure is measured from the lowest natural elevation point of the building site to the highest elevation point of the structure.
- Exceptions: this restriction shall not apply to churches, non-dwelling buildings, farm buildings, chimneys and non-structural, non-functional attachments.
- Setback:** The approved distance from property lines for the construction of any structure, dwelling, dwelling unit, storage unit, tent whether permanent or temporary.
- Storage Unit:** Shall mean a non-livable unit with no septic or sewage hoop up, made of various materials, with or without wheels used for the storage of various items.
- Structure:** Anything constructed or erected, including, but not limited to, buildings, mobile homes, communication towers, wind mills, sheds and storage bins or tanks, decks, portable car ports, swimming pools, tennis courts and parking lots.
- Temporary:** Not to be permanent, lasting no more than 120 days.

## **ARTICLE IV**

### SECTION 1. LOT SIZE.

- A. Each single-family dwelling (year round residence, camp or vacation home) shall be placed on a lot of 2 acres or more in area.(amended 3/8/05)
- B. Manufactured homes shall be considered as single-family dwellings and shall conform to the same lot size.
- C. Two-family attached dwellings shall require a minimum lot size of 3.75 acres. (amended 3/8/05)
- D. Only one dwelling per lot shall be permitted.

SECTION 2 . SETBACKS. Every structure placed on a lot shall be at least 50 feet from each property line.

SECTION 3. FRONTAGE. Any lot shall have a minimum frontage of 200 feet.

SECTION 4. SEPARATION. Structures in cluster home or other projects having more than one dwelling must be separated from each other by at least 100 feet.

## **ARTICLE V**

### GENERAL REGULATIONS

SECTION 1 OFF-STREET PARKING. Adequate parking and off street loading shall be provided where necessary.

SECTION 2. CLUSTER, CONDOMINIUM AND OTHER DEVELOPMENTS. All multi-dwelling developments including trailer parks are subject to all applicable provisions under this Ordinance, including all area regulations. Their density shall be determined as follows:

- A. The maximum number of dwellings permitted in a multi family development shall be determined by dividing the net tract area of the parcel by the minimum one-family lot size of 2 acres.(amended 3/8/05)
- B. The net tract area shall be determined by subtracting from the total parcel area all non-buildable land, including all area within the mapped flood hazard areas, all areas with poorly or very poorly drained soils, all area required for roads and all areas with a slope of 20% or greater.
- C. The developer shall post a performance bond with the Town of Jefferson, upon approval of final plat by the Planning Board, to assure completion of the project and to insure that no conditions affecting the health, safety, economic or general welfare will ensue.
- D. The developer (original or subsequent) or the homeowner's association of any cluster development shall have the responsibility to repair, maintain and develop

all utilities, streets, recreational areas and amenities until and unless the Town has properly received and accepted the responsibility.

**SECTION 3 HEIGHT.** No structure erected on any lot shall exceed 30 feet or 2 ½ stories in height (measured from the horizontal grade line), whichever is less; except that this restriction shall not apply to non-dwelling type farm buildings.

**SECTION 4 SLOPE** No structure shall be erected or installed on any portion of a lot having a slope of 20% or more (20 feet in 100 feet). All roads shall be built with a slope of 8% or less.

**SECTION 5 POLLUTION** No structure or any portion thereof, including any septic system, leach field or paved area shall be located within 75 feet of a year-round stream or body of water. The 75 feet shall be measured from the near bank of such stream or body of water. In addition, any such paved area where there is the possibility of any petro-chemical or pollutant runoff, shall be provided with adequate safeguards to insure that no such runoff will enter said streams or bodies of water. Such safeguards may be, but are not limited to, holding tanks or filters approved for such use.

**SECTION 6 CONSERVATION** In the interest of public health, safety, and welfare, housing density may have to be decreased, the siting changed, or construction disapproved if:

- A. Soil conditions of floodplain, wet soil, seasonal wet soil, or of other unstable nature are not compatible with the intended use of the land.
- B. The slope of the site when cleared and graded may alter the natural drainage, or will promote flooding of neighboring land.
- C. Septic system effluent or other pollutants may leach through non-filtering soil into a known aquifer, water supply or stream.

**SECTION 7 SHORELAND PROTECTION** The Town adopts the provisions of the “Comprehensive Shoreland Protection Act”, RSA 483-B. This act applies to every permitting decision made with respect to a project within the protected shoreland. (State mandated) adopted 3/8/2005

**Section 7 has been amended to add the Floodplain Development Ordinance:**

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Jefferson Floodplain Development Ordinance and shall be considered part of the Land Use Plan Ordinance for the Town of Jefferson for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Land Use Plan Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Rate Maps (FIRM) dated April 15, 1986 which are declared to be a part of this ordinance and are hereby incorporated by reference.

## Item II. Definition of Terms

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

“Area of special flood hazard” is the land in the floodplain within the Town of Jefferson subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the Flood Hazard Boundary Map (FHBM) and is designated on the FIRM as Zone A.

“Base flood” means the flood having a one-percent possibility of being equaled or exceeded in any given year.

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

“Building” - see “Structure”

“Building Inspector” means the Selectmen or their agent.

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

“FEMA” means the Federal Emergency Management Agency.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

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

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

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

“Floodway” - see “Regulatory Floodway”

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

“Highest adjacent grade”. Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure” means any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements For individual listing on the National Register;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1) By an approved state program as determined by the Secretary of the Interior, or
  - 2) Directly by the Secretary of the Interior in states without approved programs.

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

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

“Mean sea level” means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“100-year flood” - see “base flood”.

“Regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved In order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map

“Special flood hazard area” means a area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, AO, AI-30, AE, A99, AH,

VO, VI-30, VE, V, M, or E. (See - “Area of Special Flood Hazard”)

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

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

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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

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

## **Item II.**

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

**Item III.**

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

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

**Item IV.**

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

**Item V.**

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector.

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

The building inspector shall maintain for public inspection, and shall furnish such information upon request.

**Item VI.**

The building inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water

Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

### **Item VII.**

1. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the building inspector, in addition to the copies required by the RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the building inspector, including notice of all scheduled hearings before the Wetlands Board.
2. The applicant shall submit to the building inspector, certification provided by a professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The building inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

### **Item VIII.**

1. In unnumbered A zones the building inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).
2. The building inspector’s 100 year flood elevation determination will be used as criteria for requiring in zone A that:
  - A. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;
  - B. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
    - (i) be floodproofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (iii) be certified by a registered professional engineer or architect that the design and method of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

- C. all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the Lowest floor of the manufactured home is at or above the 100 year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
- D. for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area L5 unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

### **Item IX Variances and Appeals:**

1. Any order, requirement, decision or determination of building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, 1(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - (a) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - (b) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - (c) that the variance is necessary, considering the flood hazard, to afford relief;
3. The Zoning Board of Adjustment shall notify the applicant in writing that: (a) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
4. The community shall (a) maintain a record of all variance actions, including their justification for their issuance, and (b) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

**SECTION 8 BUILDING CODES:** The Town adopts the provisions of the New Hampshire Energy Code (RSA 155-D) mandating that when building new homes with any provision at all for fossil or electric heat, planning to spend more than 50% of the current value of a structure altering that structure, construct a commercial structure under 4000 square feet, winterizing a seasonal home or part of an existing structure, constructing an addition with more than 150 square feet of floor space must meet the International Energy Code (IECC 2000). Certificate of Compliance from NH Public Utilities Commission must accompany a building permit. Web site: [www.puc.state.nh.us](http://www.puc.state.nh.us) adopted 3/8/2005

The critical soils above are defined and described in “SOILS AND THEIR INTERPRETATIONS FOR VARIOUS LAND USES, TOWN OF JEFFERSON” compiled by the US Department of Agriculture, Soil Conservation Service, March 1981 and indicated on maps.

## **ARTICLE VI** **ADMINISTRATION AND ENFORCEMENT**

### **SECTION 1. APPROVALS.**

- A. New construction: To assure compliance with the regulations of Article IV of this ordinance, it is required that a site plan with contours and elevations be submitted and an approval in writing be secured from the Board of Selectmen plus an approval review fee of \$1.00 (one dollar) be paid before any construction is commenced.
- B. Existing construction: Because it was sited prior to the date of this ordinance, a building may already exceed the limitations of Article IV. To assure that these limitations are not further infringed, it is required that any proposed change which would affect setback or height limitations or any change in usage be approved as in A. above before construction is begun.
- C. No approval shall be required for any refurbishing, repairing, renovation or rebuilding of any existing structure which does not, and will not, infringe on the limitations of setback or height as noted in this Ordinance.
- D. Variance: Any application for a building permit, not meeting the provisions of Article IV must, apply for a variance from the Board of Adjustments before submitting the application to the Board of Selectmen for approval.

**SECTION 2. ENFORCEMENT:** This Ordinance shall be administered and enforced by the Board of Selectmen or their designee.

- A. The Board of Selectmen or their designee shall administer this Ordinance literally and shall not have the power to permit any use of land or buildings which is not in conformance with this ordinance. The Board of Adjustment as noted in ARTICLE VII must approve special exceptions and any variances from the terms of this Land Use Ordinance.
- B. If any violation of this ordinance occurs, the Selectmen shall institute in the name of the Town of Jefferson, any appropriate action, or injunction or other

proceeding to prevent, restrain, correct or abate such violation.

**SECTION 3 PENALTIES:** Any person who violates any provision of this Ordinance shall be subject to a fine of not more than \$100.00 for each day such violation may exist.

## **ARTICLE VII**

### **BOARD OF ADJUSTMENT**

**SECTION 1 BOARD OF ADJUSTMENT.** A five-person Board of Adjustment will be appointed by the Selectmen as provided by NH RSA 673:3 and 674:29, who may upon application:

- A. Hear and decide appeals if it is alleged there is error in any order, requirement decision, or determination made by an administrative official in the enforcement thereof or any ordinance adopted pursuant thereto; and
- B. Authorize upon appeal in specific cases such variance from the terms of the land use ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.
- C. May make a special exception, subject to appropriate conditions and safeguards as determined by it in NH 674:33. In acting on an application for a special exception, the Board shall take into consideration:
  - (1) The proposed use shall be one permitted by this Ordinance as a special exception.
  - (2) The specific site is an appropriate location and of adequate size for such use.
  - (3) This use will not adversely affect the adjacent area.(amended , March, 2011)
  - (4) The proposed use will be in keeping with the stated purpose of this Ordinance.

## **ARTICLE VIII**

### **AMENDMENTS, SAVING CLAUSE & EFFECTIVE DATE**

1. This Ordinance may be amended with the provisions of NH RSA 674 as it is or may be amended.
2. The invalidity of any provision of this ordinance shall not affect the validity of any other provision.
3. This ordinance shall become effective immediately upon its passage.

## **ARTICLE IX**

### **CLUSTER HOUSING DEVELOPMENT PLAN**

**PREAMBLE** The cluster concept of land use development is one whereby a group of dwellings on individual lots has a common open space available to and jointly owned by the individual home owners of that group, or community. Concurrently, though individual lots may vary in size and be less than that called for in the Ordinance (Article IV, Section 1), the required density for the whole area is retained by adding the common open area to the total of the lot areas. Example: A 15-lot cluster requiring 30 acres (2 acres per lot) might have 22.5 acres for house lots (1.5 acres per house) and 7.5 acres jointly held. This jointly held area would be set aside permanently for recreation purposes: for preserving a scenic vista, a wetlands or a wooded area; for safer pedestrian/motor traffic circulation; for creating a buffer from noise or unwanted view; or other purpose of benefit to the group or the town.

The old New England Village, fondly remembered, was a cluster arrangement of homes, a town hall, a church, and some shops with a common open space, the village square or common.

At the present time the New Hampshire Office of State Planning is actively encouraging and promoting the use of cluster development statewide for towns to better preserve their rural character, to make more effective use of given land, and to permanently preserve open space, wetlands, farm soils, etc. In support of the state's planning body, the legislature has enacted a statute (RSA 672:1, II I-e, effective 6/26/90), which states that cluster housing and multi-family housing "should not be discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers".

**SECTION 1. PURPOSE** The purpose of this amendment to the Jefferson Land Use Plan Ordinance is to allow the Town of Jefferson an option in land use control whereby the Town has some flexibility in dwelling unit layout which will permit it to permanently set aside open space not presently authorized under existing regulations, such open space being of benefit both to the Town and the developer. Open space thus created or preserved might be: to set aside land for recreation purposes; to preserve scenic vistas, wetland areas, wooded areas; to better site houses by taking advantage of natural terrain; to protect water frontage; to create safer pedestrian/motor traffic circulation; to provide more efficient use of utilities and roads; to effect a buffer from noise or unwanted view; or any land use which would implement some phase of the Master Plan.

**SECTION 2. DEFINITIONS** The following definitions apply specifically to Article IX of the Land Use Plan Ordinance.

**Cluster Subdivision:** A form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks reduced from those specified in Article IV, provided the density of the tract as a whole shall not be greater than the density allowed by Article IV and the remaining land area shall be devoted to common open space.

Buffer: An area of land used to separate visibly one land use from another.

Common Open Space: Land within a cluster residential development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development or of the public. A condition of the cluster residential development approval shall be that common open space may not be further subdivided.

Developable Land: The developable land area is that portion of the tract remaining after deducting the undevelopable land area in accordance with Article V, Section 2A,B.

Homeowners Association: A private nonprofit association which is organized by the developer of a cluster residential development:  
Individual owners share common interests in open space and/or facilities and are in charge of preserving, managing and maintaining the common property, subject to any covenants and /or restrictions.

Tract: An area, parcel, site, piece of land, or property, which is the subject of a development proposal and application.

SECTION 3. APPLICATION This amendment to the Jefferson Land Use Ordinance, to be known as the Cluster Residential Development Plan, applies to housing subdivisions wherein open space is created or preserved through reducing lot size from that prescribed in Article IV, Section 1, the resulting difference between given lot areas and prescribed lot areas making up permanent open space under common ownership of the individual lot owners. As a subdivision procedure, land development under provision of this Article is to be administered by the Planning Board.

SECTION 4. LIMITATIONS Only single-family and two-family dwelling units or combinations thereof, may be included in a cluster residential development plan. Generally, a minimum area of 10 acres, or a five-unit project, could be effectively developed as a cluster. The intended use of the open space and the character of the tract terrain will be the principal factors in determining the number of dwelling units in a cluster.

SECTION 5. FRONTAGE AND SETBACKS. Frontage and setbacks of individual lots on roads within the tract shall be subject to approval by Planning Board. Frontage of the tract on the road serving it shall be no less than 200’.

SECTION 6. ROADS. Roads within a tract shall follow the guidelines of Section 5 of the Subdivision Procedures and Regulations except that service roads not subject to daily homeowner traffic may have a lesser right-of-way.

SECTION 7. BUFFER A buffer area having a minimum depth of seventy-five (75) feet shall be provided between any proposed structure within the cluster development and the perimeter of the tract. Whenever possible the natural vegetation shall be retained, or

if required, vegetation shall be planted of sufficient size to shield the development from abutting properties.

No dwelling, accessory structure, collector or service roads or parking areas shall be permitted within the designated buffer area. However, primary roads are permitted to cross the buffer.

## SECTION 8, OPEN SPACE OWNERSHIP AND MANAGEMENT.

A. Open Space Ownership: The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer, or subdivider, subject to the approval of the planning board. Type of ownership may include, but is not necessarily limited to, the following:

- (1) The municipality, subject to acceptance by the governing body of the municipality;
- (2) Other public jurisdictions or agencies, subject to their acceptance;
- (3) Quasi-public organizations, subject to their acceptance;
- (4) Homeowner or cooperative associations or organizations;
- (5) Shared, undivided interest by all property owners in the subdivision.

B. Homeowners Association: All common open space, any common areas or common facilities within the cluster residential development shall be permanently protected by covenants and restrictions running with the land and shall be conveyed by the property owner(s) to a homeowner's association or other legal entity under the laws of the State of New Hampshire, or may be deeded to the municipality with a trust clause insuring that it be maintained as open space, or to a private nonprofit organization, the principal purpose of which is the conservation of open space.

If common open space is not dedicated to the general public use, it shall be protected by legal arrangements, approved by the planning board after legal review by town counsel, sufficient to assure its preservation, maintenance and management. Such approval shall take place prior to approval of the development. The cost of legal review shall be borne by the applicant or developer. Any proposed change in such articles of association or incorporation shall require the prior written approval of the Planning Board.

Covenants or other legal arrangements shall specify ownership of the common open space; responsibility for maintenance; compulsory homeowner's association membership and tax assessment provisions; guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the planning board.

All lands and improvements shall be described and identified as to location, size, use and control in the restrictive covenant. These restrictive covenants shall be written so as to run with the land and become a part of the deed of each lot or dwelling unit within the

development.

C. Maintenance of Open Space: The person(s) or entity identified in “A” above as having the right to ownership or control over open space shall be responsible for its continuing upkeep and proper maintenance.

D. Current Use Limitation: The common land areas, open space areas and natural areas in an approved development are considered to be part of the residential use of such development and shall not be considered to be “open space land”; “farmland”; “forest land”; “wet lands”; “recreation land”; “floodplain”; or “wild land” within the meaning of RSA 79-A except where such consists of actively operated farmland.

SECTION 10. SAVING CLAUSE Except as changed by this Article, other provisions of the Land Use Plan Ordinance and the Subdivision Procedures and Regulations remain in effect. The intent of this Article is to provide flexibility in land use development. Therefore variations in the provisions of this Article may be found to be of mutual benefit to both the landowner and the Town. Any variations from the provisions of this Amendment, however, must be considered by the Board of Adjustment as variances.

## **ARTICLE X**

### **TELECOMMUNICATIONS EQUIPMENT AND FACILITY ORDINANCE**

Adopted by written ballot at Town Meeting, March 9, 1999

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Jefferson Telecommunication Equipment and Facility Ordinance and shall be considered part of the Land Use Plan Ordinance for the Town of Jefferson for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Land Use Plan Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

**SECTION 1 FINDINGS** The Town of Jefferson finds that regulation of the placement, spacing, installation, location and number of both wireless and conventional telecommunications facilities, consistent with federal and state policies and law, is in the public interest (a) in order to reduce the potential adverse impacts of such facilities upon the unique natural assets of the Town, including its scenic mountain views, its recreational trail network accessing the White Mountain National Forest and its wilderness environment; (b) in order to minimize the number and height of towers, avoid congestion in their location and lessen their intrusive effect; (c) in order to conserve and enhance property values; and (d) in order to ensure the optimum location of such facilities.

### **SECTION 2 INTENT**

- A. In compliance with Section 253 of the Telecommunications Act, the Town hereby states that it does not intend to create barriers to the ability of any entity to provide interstate or intrastate telecommunications services.
- B. The Town hereby states its intent not to discriminate against or favor providers of telecommunications facilities and services.

**SECTION 3 PURPOSES AND GUIDANCE STANDARDS** The purposes of this article, which shall serve as standards for guiding its administration is as follows:

- A. To preserve the authority of the Town to regulate the siting of telecommunications facilities and to determine the optimum location for such facilities in order to provide telecommunications services to the community quickly, effectively and efficiently;

- B. To enable the Town to take such steps as may be needed to reduce any adverse impacts such facilities may create, including, but not limited to, impacts upon aesthetics, environmentally sensitive areas, recreational uses of wild lands, health, safety and property values.
- C. To encourage the use of innovative siting and configuration options, including siting possibilities beyond the political jurisdiction of the Town; to require cooperation and co-location between competitors and the exhaustion of all other reasonable alternatives before the construction of new towers is permitted; and
- D. To ensure that there is an adequate assumption of responsibility for maintenance, repair and safety inspections of operational facilities and for the removal and upgrade of facilities that are technologically outdated.

#### **SECTION 4 REGULATION OF TELECOMMUNICATION FACILITIES**

- A. In accordance with RSA 674:16(II) and 674:21, authorizing the adoption of innovative land use controls, the location, siting, establishment, erection, installation or operation of a telecommunications facility within the Town of Jefferson is hereby declared to be a use, either primary or accessory use, which is allowed only when authorized by the Board of Adjustment according to Article III, Section 2, Permitted Uses By Special Exception.
- B. Responsibility for issuance of a Permitted Use By Special Exception shall be vested in the Jefferson Board of Adjustment, in accordance with Article VII, Section 1 C.
- C. Except to the extent of any inconsistency with federal or state law and subject to the standards contained in ITEM 3 of this ordinance, the Jefferson Board of Adjustment must approve of this special exception using the guidelines set aside in Article VII of the Land Use Plan Ordinance.
- D. In addition, the Board of Adjustment must insure the following rules specific to telecommunications facilities:
  1. Towers, antenna or other telecommunications facilities shall be located and designed so as to preserve the ability of the public to enjoy the mountain scenery surrounding the Town and protect it's magnificent viewsheds.
  2. The use of alternative technologies and of co-location shall be thoroughly studied and determined to be infeasible before construction of new towers are approved.
  3. No telecommunications tower shall exceed 180' in height.
  4. Telecommunications towers, antennas and other electrical and mechanical equipment shall be made with a neutral finish or color or otherwise treated so as to reduce their visual impact.
  5. Towers shall only be artificially lighted if required by some applicable authority, and such lighting shall be designed so as to cause the least impact upon surrounding properties or the community.
  6. Towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind, except as may be allowed or required by the Board of Adjustment in the interests of public

- safety.
7. Towers shall be set back a distance of 125% of the height of the tower from the nearest lot line or any offsite structure.
  8. Towers, guys, accessory structures and other telecommunications facilities and equipment shall comply with setback requirement applicable to business uses.
  9. Towers 70 feet or more in height shall not be located within three miles of any other tower that is 70 feet or more in height.
  10. Towers shall be enclosed by security fencing at least 6 feet in height and shall be equipped with appropriate anti-climbing devices.
  11. Access for motor vehicles to sites where telecommunications facilities are located shall conform to state requirements relating to driveways or Town regulations relating to rights of way, and shall be serpentine in nature so as to reduce the visual impact to the site.
  12. Towers shall not be placed any closer than 1500 feet from residences and schools.
- E. Telecommunications Companies applying for permission by special exception to erect a telecommunications equipment facility and/or tower must provide the Board of Adjustment with a site plan and architectural rendering depicting the design of the site to insure that the specifications of items D1 through D12 will be met.
- F. For purposes of determining whether the installation or a tower or antenna complies with Town regulations, including but not limited to set-back, lot coverage and other requirements, the boundaries and dimensions of the entire lot shall control, even though the tower or antenna may be located on a leased parcel within the lot.
- G. The installation or operation of telecommunications equipment or facilities shall not be considered, or permitted, as an expansion of a non-conforming use.

#### **SECTION 5 APPLICABILITY**

- A. Antennas or towers located on property owned, leased or otherwise controlled by the Town shall be permitted as of right and shall not be required to receive a special use permit; providing that a license or lease authorizing such antennas or towers shall have been issued by the Board of Selectmen.
- B. Telecommunications facilities shall not be considered infrastructure, essential services or public utilities and the siting of such facilities shall constitute a use of land to be regulated by this ordinance and Town regulations.

#### **SECTION 6 PERFORMANCE STANDARDS AND ABANDONMENT**

- A. All towers, antennas and other telecommunications facilities and equipment shall meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal or state governments having controlling regulatory authority. If such standards or regulations are changed, the owners or operators of such facilities or equipment shall ensure that it complies with the revised

- standards or regulations within 6 months of the effective date of the revision, unless a more stringent compliance schedule is mandated by the controlling authority. Failure to comply in accordance with the applicable schedule shall constitute abandonment and shall be grounds for the removal of the facilities or equipment at the owner's expense through execution of the posted security.
- B. The owner of a tower or other telecommunications facilities and equipment shall be responsible for ensuring that such facilities and equipment conform to Town regulations and meet the applicable standards published by the Electronic Industries Association, as such standards may be amended from time to time. If, upon inspection, the Selectmen determine that such regulations or standards are not being met, or that the facilities or equipment pose a danger to persons, property, or the community, they shall notify the owner or operator of the defects in writing. If the owner shall not, within 30 days, remedy such defects, his failure to do so shall constitute abandonment and shall be grounds for removal of the facilities and equipment at the owner's expense through execution of the posted security.
- C. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner provides proof of quarterly inspections, and such antenna or tower shall be removed in accordance with the following procedure:
1. The Planning Board shall hold a public hearing after due notice to abutters and to the last known owner/operator of the antenna or tower.
  2. If, at such hearing, the Planning Board determines that the antenna or tower is, in fact, abandoned, it shall issue a declaration of abandonment to the owner/operator
  3. Within 90 days after the issuance of such declaration, the owner shall remove the abandoned structure and, if he shall not, the Town may execute the security and have the structure removed at the owner's expense.

***If there are two or more users of a single tower, the provisions of this subsection shall not become effective until all users cease using such tower.***

**SECTION 7 WAIVERS** In accordance with Section 253 of the Telecommunications Act, and with RSA 674:21 II, if any entity believes that the procedures or standards contained in this ordinance have created a barrier to its ability to provide interstate or intrastate telecommunications services, it may apply to the Board of Adjustment for Administrative relief from this ordinance. The Board of Adjustment may grant a variance as specified in Article VII, Section 1 B, if it determines that:

- A. Strict adherence with such regulations is not required to effectuate the purposes of this ordinance;
- B. Strict compliance would create practical difficulty and unnecessary hardship; or
- C. Strict Compliance would potentially cause a conflict with the Telecommunications Act.

**SECTION 8 SECURITY BONDS**

- A. Before, and as a condition of, the approval of the Special Exception application filed for a telecommunications facility, The Board of Adjustment will require the developer or installer to file with the Town a bond in the amount adequate to cover to costs of removing the facility, together with any structures or equipment appurtenant thereto, and of returning the site to its condition prior to such installation.
- B. A bond required by this section shall remain on file with the Town, and shall not be released unless the installation has been decommissioned, dismantled and removed.
- C. The Planning Board shall require the owner/operator of any antenna or tower to provide, annually, proof that it is maintaining adequate liability insurance covering accident or damage.

**AMENDMENTS  
TO THE  
LAND USE ORDINANCE**  
Since its adoption in 1987

TOWN OF JEFFERSON, NEW HAMPSHIRE

- Amendment #1 Article V amended by adding Section 7, Floodplain Development Ordinance  
Adopted 1990
- Amendment #2 Article III, Sections 1 and 2 amended, Uses and Permitted Uses by Special Exceptions  
Adopted 1991
- Amendment #3 Article IX added, Cluster Housing Development Plan  
Adopted 1991
- Amendment #4 Article III, Sections 1 and 2 amended, Uses and Special Exceptions  
Adopted 1993
- Amendment #4a Article III, Section 2B(1) amended, maximum employees for a small business changed to 25  
Adopted 1993 special town meeting
- Amendment #5 Article V, Section 7 amended, Floodplain Development Ordinance  
Adopted 1994
- Amendment #6 Article III, Section 2 amended, Permitted Uses by Special Exception  
Adopted 1999
- Amendment #7 Article X added, Telecommunications Equipment and Facility Ordinance  
Adopted 1999
- Amendment #8 Article IV, Section 1, Lot size and Article V, Section 2, Cluster, Condomium and Other Developments amended  
Article V, Sections 7 and 8 added  
Article VI, Section D added  
Adopted 2005
- Amendment #9 Interim Growth Management Ordinance adopted March 14, 2006, which was in force until 11:59 p.m., March 13, 2007.
- Amendment #10 Article III, Section 4 added, Definitions  
Adopted 2007
- Amendment #11 Article VII, Section 1 C(3) amended  
Adopted 2011