

**SALISBURY  
ZONING & ADJUSTMENT BOARD**

***“ZONING ORDINANCE”***

Revised: - 4/03/2007

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**ARTICLE I: PREAMBLE, PURPOSE & INTENT**

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- A. The Town of Salisbury, New Hampshire has determined that a Zoning Ordinance is an appropriate land use planning and regulatory mechanism to promote the health, safety, and welfare of the Town. The purposes of this Ordinance are to:
- retain, protect and enhance the beauty and rural atmosphere of the Town;
  - protect property values;
  - conserve natural resources;
  - facilitate appropriate use of land for the community in general; and
  - to assure that land which is developed is appropriate for the development;
  - implement the Salisbury Master Plan and any amendments thereto; and
  - generally to achieve and further the purposes of zoning enumerated in RSA 674:16 and 674:17.
  - be visually acceptable (*Amended March 13, 2001*).
- B. This Ordinance is adopted pursuant to the zoning enabling laws of the State of New Hampshire, RSA Title LXIV, Planning and Zoning.
- C. The intent of this ordinance is to:
- identify and enumerate the uses of land and property permitted in Salisbury as a matter of right or as special exceptions;
  - specify the conditions under which such uses are permitted and the regulations applicable thereto; and
  - establish the minimum requirements necessary for the development and use of property.

**ARTICLE II: INTERPRETATION AND APPLICABILITY**

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- A. The provisions of this Ordinance shall be the minimum regulation applicable to property in Salisbury. If any provision of this Ordinance conflicts with any other provision hereof, or with any Ordinance or regulation adopted by the Town, or with any applicable State or Federal law or regulation, the *most* restrictive provision or that which imposes the highest standard shall take precedence.
- B. This Ordinance shall apply to all land, uses, structures, buildings, and lots within the town.
1. Any existing use or structure legally in existence and in active use at the time of adoption of this Ordinance, or an amendment to it, which is rendered non-conforming by the Ordinance or amendment, may continue to exist subject to Article VII.
  2. A pre-existing, non-conforming lot as defined in this Ordinance may continue to exist as a separate lot, but use or development thereof shall be subject to Article VII.
- C. Unless otherwise stated, or unless otherwise required by the context, any reference to a statute, law, regulation or code in this Ordinance shall be deemed to include any future amendments made to such statute, law, regulation or code.

### **ARTICLE III: DEFINITIONS**

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In this Ordinance, the following terms shall have the following meanings:

**ACCESSORY BUILDING:** A detached, subordinate building located on the same lot as the major building, the use of which is incidental and subordinate to the main building or use of land.

**ACCESSORY USE:** A land use located on the same lot, which is incidental and subordinate to the main building or use of land.

**BUILDABLE LOT:** A lot of record which meets the frontage and acreage requirements and is capable of handling the necessary sanitation facilities for the proposed construction; or any pre-existing non-conforming lot of record for which a special exception pursuant to Article VII has been granted by the Board of Adjustment.

**BUILDING:** Any structure having a roof and intended for the shelter, housing or enclosure of persons, animals, or personal property.

**COMMERCIAL PURPOSES:** Any use of land or buildings for the primary purpose of manufacturing, repairing, or selling at retail or wholesale a product, goods or service. (Amended 4/94).

**DWELLING:** Any building, including manufactured housing and pre-site built housing, designed for use as the place of residence for one or more families. (*Amended March 11, 1986*).

1. *SINGLE FAMILY DWELLING:* A building designed for or occupied by one family exclusively.
2. *TWO FAMILY DWELLING:* A building designed for or occupied exclusively by two families living independently of one another.
3. *MULTI-FAMILY DWELLING:* A building designed for or occupied exclusively by more than two families, each family unit containing independent cooking and sleeping facilities.

**FRONTAGE:** The width of a lot measured along its common boundary with the road or highway right-of-way.

**HOME PRODUCTS OR PRODUCE:** Anything of an agricultural nature grown or produced on the property of the resident; also such articles as are manufactured or altered by members of the household.

**HOTEL OR INN:** Any building or portion thereof where lodging is offered to transient guests for compensation and in which there are more than five sleeping rooms with no cooking facilities in an individual room or apartment.

**LOT OF RECORD:** A lot or parcel or tract described by metes and bounds, the description of which as been so recorded (*Amended March 10, 1987*).

**MAJOR HOME OCCUPATION:** Major home occupations shall be contained on a residential property in an outbuilding, a detached building and/or in an open space subject to the provisions below. A major home occupation shall require a special exception from the Zoning Board of Adjustment. (Amended 3/02)

**MANUFACTURED HOUSING:** As defined by RSA 674:31, is: *“Any structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length, or when erected on site is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation, when connected to required utilities which include plumbing, heating, and electrical heating systems contained therein.”* Manufactured housing as defined in this section does not include pre-site built housing. (As defined in RSA 674:31-a.). (Amended March 11, 1986).

**MINOR HOME OCCUPATION:** A minor home occupation does not require Town approval unless it exceeds the standards listed below. However all existing and future minor home occupation shall complete a registration form. This form shall be submitted to the Town Office and maintained in the Town records. The registration form shall include the locations, name of owner, and a brief description of the general nature of the minor home occupation. (Amended 3/02)

**NON-CONFORMING USE, STRUCTURE OR LOT:** Any legal pre-existing use, structure, or lot which does not conform to the regulations of the district in which it is located, or to the general requirements of this Ordinance.

**PERMANENT SAWMILL:** Used commercially for timber harvested on and off-site and other related production 12 or more months. (Amended 4/94).

**PORTABLE SAWMILL/CHIPPING:** Machinery which can be easily transportable to locations for temporary use for on-site timber harvesting of less than 12 months. (Amended 4/94).

**PRE-SITE BUILT HOUSING:** As defined by RSA 674:31-a, is: *“Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation or assembly and installation, on the building site.”* Pre-site built housing shall not include manufactured housing. As defined in RSA 674:31 (Amended March 11, 1986).

**RIGHT-OF-WAY:** Means and includes all range roads, Town, State and Federal highways, and the land on either side of same as covered by law.

**SIGN:** Any device for visual communication that is displayed for the purpose of bringing the subject thereof to the attention of the public.

**SPECIAL EXCEPTION:** A use of a building or lot which may be permitted under this Ordinance only upon application to the Board of Adjustment and subject to the approval of that Board, and only in cases where the words “special exception” appear in this Ordinance.

**STRUCTURE:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

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

**TOURIST COURT, CABINS, MOTEL:** Any group of two or more detached or semi-detached buildings containing guests rooms or apartments provided in connection therewith automobile space, which group is designed or used primarily for the accommodation of automobile travelers, including groups designated as tourist courts, cabins and motel developments.

**VARIANCE:** Such departure from the terms of this Ordinance as the Board of Adjustment, upon appeal in specific cases; is empowered to authorize under applicable state statutes.

**ARTICLE IV: GENERAL PROVISIONS**

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- A. No building may be erected, altered, or used and no property may be used or occupied except in accordance with the provisions of this Ordinance.
- B. Development and construction of any kind are subject to any and all regulations and Ordinances as may be in effect in the Town from time to time, including but not limited to:
  - 1. Site Plan Review Regulations, regulating non-residential development and multi-family dwellings.
  - 2. Building Regulations.
  - 3. Building or occupancy permit requirements.
  - 4. Health and sanitation regulations.
  - 5. Subdivision Regulations.
  - 6. Mobile Home Park By-laws
  - 7. Regulations regarding driveways and other accesses to Town roads.
- C. No dwelling or structure shall exceed a height of 35 feet above the elevation of the finished grade adjacent to, and in the immediate vicinity of, the building or structure. Church spires, silos, belfries, television reception and amateur radio antennas, and chimneys are excluded (35 feet is the maximum). *Amended March 13, 2001.*
- D. Adequate off-street parking shall be provided to accommodate intended use.
- E. All sanitary systems shall be constructed and maintained in accordance with standards set and enforced by the New Hampshire State Department of Health, the New Hampshire Water Supply and Pollution Control Commission, and any local regulations or Ordinances that may be adopted by the Town.
- F. Manufactured housing and pre-site built housing located on buildable lots shall comply with space requirements and other reasonable controls applicable to conventional single family housing. *(Amended March 11, 1986).*
- G. No property owner shall permit ruins, open cellar holes, or excavated areas caused by catastrophe or discontinuance of construction to remain in a hazardous or unsightly condition for more than one year from the date of such occurrence or the date of settlement of resulting court litigation. Where there is clear an present danger, the Board of Selectmen may order more timely action.
- H. The excavation of clay, sand, gravel, or loam, or any other form of earth is permitted for private on-site uses in conjunction with the construction of buildings or facilities or in

landscaping. Any Town restrictions on disposal of top soil, as in the Site Plan Review Regulations, shall prevail in all instances. Permit(s) required for all commercial excavations shall be carried out under regulations adopted by the local regulatory board, pursuant to authority vested in that board by Town Meeting in accordance with the provisions of RSA 155-E. (Permits Required)

- I. The removal of timber may take place in any district in the Town, provided required permits are obtained from the Selectmen and/or appropriate state agencies.
- J. Signs shall be permitted only as designated in Article VIII. Official Town, State, or Federal signs shall be exempt from these regulations.
- K. No solid waste disposal facility (landfill or other type), unless dictated by State law, shall be operated within the bounds of the Town unless it is to serve as the Town's facility and is operated by the Town on land owned by it or leased for that purpose or is operated by a private party under contract with the Town. Any allowed facility shall be for the use of Town residents, property owners, and businesses only unless Town Meeting action provided otherwise.
- L. No toxic wastes or other form of hazardous wastes, so-called and so-defined by State and Federal law or agencies, shall be stored in or disposed of in any solid waste disposal area or in any part of the Town. A business or industry in Town legitimately using or creating toxic or other hazardous materials may store wastes from such materials or processes for a limited period and under strict controls, as shall be set forth by the Selectmen. In granting permits for storage, the Board shall adhere to any and all applicable State and Federal regulations and statutes, and may adopt appropriate local regulations.
- M. Use of Biosolids must be in compliance with local, state, and federal regulations and/or laws.
- N. Any junk yard or place for the storage of discarded machinery, vehicles, or other scrap materials shall be maintained in accordance with the standards set and enforced by RSA 236: 111-129.

**ARTICLE V: LOT SIZE AND LOCATION OF BUILDINGS**

- A. The minimum size of a buildable lot shall be two acres (*Amended March 14, 2000*).
- B. A buildable lot shall have a minimum frontage of 200 feet. Frontage shall be on a Class I through V highway or on an established road in a subdivision approved by the Planning Board. Lots on Class VI roads may be buildable subject to the provisions of RSA 674:41, I(c). (*Amended March 14, 2000*)
  - 1. The Planning Board may, according to its adopted subdivision regulations, allow a subdivider to reduce the required minimum frontage TO encourage open space development as set forth by the Master Plan. (*Amended 4/94*).
- C. Residential and Commercial Lots
  - 1. Residential - Only one principal residential structure shall be located on a buildable lot. (*Amended 4/94*).
  - 2. Commercial - One residential structure and necessary commercial buildings. (*Amended 4/94*).

- D. A pre-existing non-conforming lot of record may be considered a buildable lot under this Article subject to the provisions of Article VII.
- E. All structures shall be set back at least 75 feet from the center line of Town, subdivision, or private roads and at least 100 feet from the center line of State or Federal highways. (Amended on 3/10/87, 3/10/98).
- F. Residential and agricultural structures shall be set back at least 35 feet from side or rear property lines. Commercial structures shall be set back at least 50 feet from side or rear property lines. (Amended 3/10/98).
- G. Wells and Septic Systems: All wells and septic systems shall be subject to state regulations and approval. (Amended 3/10/98).

**ARTICLE VI: DISTRICTS AND PERMITTED USES**

For the purposes of this Ordinance, the Town of Salisbury is divided into the following districts, as shown on the official Zoning Map to be filed with the Town Clerk upon the adoption of this Ordinance.

A. Residential Districts

- 1. The areas so indicated on the official Zoning Map to a depth of 300 feet from the center line of the State or Town roads on which they abut, as follows:

**U.S. 4 (OLD TURNPIKE ROAD):** North from Whittemore road to a point 1000 feet north of the junction with College Road, both sides.

**ROUTE 127:** From the Salisbury/Webster Town line to the junction of the Mutton/U.S. 4 intersection, both sides; on North side from the intersection of 127 and Old Coach Road. On the south side from a point 300 feet East of the junction of Route 127 and Old Coach Road; and from the point to the Salisbury/Franklin line, both sides, except for an area on the southeast side included in the State Experimental forest.

**RABBITT ROAD:** From the Salisbury/Boscawen Town line to U.S. 4 both sides.

**MUTTON ROAD:** From the Salisbury/Boscawen Town line to its junction with Route 127 and U.S. 4, both sides.

**WARNER ROAD:** From Route 127 westward to the edge of the Blackwater Flood Control Basin, both sides.

**WHITTEMORE ROAD:** Both sides.

**CENTER ROAD:** East from U.S. 4 to a point about 1800 feet east of the junction with Whittemore Road, both sides.

**HENSMITH ROAD:** Both sides.

**OAK HILL ROAD:** From U.S. 4 to a point opposite the northwest corner of Oak Hill Cemetery, both sides.

**LOVERIN HILL ROAD:** Both sides.

**WEST SALISBURY ROAD:** Both sides.

**DUNLAP ROAD:** Both sides.

**BAY ROAD:** From the Salisbury/Andover Town line to West Salisbury Road, both sides.

**SANBORN'S CLEARING:** Subdivision on both sides of Raccoon Hill Road, all lots.

2. Permitted Uses:
  - a. Dwellings. (*Amended March 11, 1986*)
  - b. Farms, excluding fur ranching and the raising of more than ten swine.
  - c. Roadside stands for the sale of farm products grown on site.
  - d. Stables for private use only.
  - e. Plant nurseries and greenhouses.
  - f. Churches.
  - g. Recreational areas, including day camps without overnight accommodations, but excluding facilities for mechanized vehicles.
  - h. Home occupations and professional offices accessory to residences.
  - i. Accessory uses and buildings.
  - j. Minor Home Occupation – See Appendix A, Section 1. (*Amended 3/12/02*)
3. Special Exceptions, in accordance with Article VII.
  - a. Any home/cottage occupations in a residential district must obtain a permit to ensure town services can be adequately provided.
  - b. Retail shops for crafts or antiques in dwellings or accessory buildings. (*Amended March 11, 1986*).
  - c. Other reasonable uses. (*Amended April, 1994*).
  - d. Major Home Occupation – See Appendix A, Section 2. (*Amended 3/12/02*)

**B. RETAIL VILLAGE DISTRICT** (*Amended 4/94*).

1. The areas so indicated on the official Zoning Map to a depth of 300 feet from the center line of the State or Town roads on which they abut, as follows:

**U.S. 4 (Old Turnpike Road):** From the Rabbit Road to the Junction with Route 127, both sides continuing to the junction of Whittemore Road both sides.

**OLD COACH ROAD:** From U.S. 4 to its junction with Route 127, both sides.

**ROUTE 127:** From U.S. 4 Eastward to the junction with Old Coach Road, both sides.

**RABBITT ROAD:** From U.S. 4 to Old Coach Road, both sides.

2. Permitted Uses:

- a. Any use permitted in the Residential Districts under the same provisions as apply to uses in said districts.
  - b. Lodging houses, hotels, inns, motels, tourist courts, cabins, including such retail businesses within these permitted buildings as are conducted for the convenience of the residents or guests.
  - c. Shops, restaurants and other retail establishments.
  - d. Garages, parking lots and filling stations.
  - e. Business Offices.
  - f. Minor Home Occupation – See Appendix A, Section 1. (Amended 3/12/02)
3. Special Exceptions, in accordance with Article VII.
- a. Major Home Occupation – See Appendix A, Section 2. (Amended 3/12/02)

C. AGRICULTURAL DISTRICTS

- 1. All areas of the Town not included in a Residential District or the Village Retail as described above, or as may be added to or subtracted from those districts at a later date.
- 2. Permitted Uses:
  - a. Any use permitted in the Residential Districts, under the same provisions as apply to uses in said areas.
  - b. General farming, including horticultural enterprises or uses, and the raising of animals for other purposes.
  - c. Minor Home Occupations – See Appendix A, Section 1. (Amended 3/12/02)
- 3. Special Exceptions, in accordance with Article VII.
  - a. Major Home Occupation – See Appendix A, Section 2. (Amended 3/12/02)

**ARTICLE VII: NON-CONFORMING USES, STRUCTURES AND LOTS SPECIAL EXCEPTIONS**

A. Non-Conforming Use (Amended 4/94)

- 1. Except as provided in this Article, a non-conforming use, structure or lot may continue so long as the continuation does not present a danger to health, safety, and welfare of persons or property.

2. A non-conformance may not be changed except to conform to the general requirements of the district in which it is located and to the general provisions of this Ordinance, unless a special exception is granted by the Board of Adjustment in accordance with this Article.
3. A non-conformance may not be expanded beyond its pre-existing size and status unless a special exception is granted by the Board of Adjustment in accordance with this Article. A pre-existing residential use or structure in non-conformance, solely with respect to the dimensional requirements of this Ordinance, may be expanded without a special exception, so long as they expansion does not increase the non-conformity. (*Amended March 12, 1985*).
4. A non-conformance may not be continued if it is abandoned or if it is discontinued for a period of one year or for a total of 12 months in any 24-month period.
5. A non-conforming lot of record, which at the time it was created, was a legal lot shall be a buildable lot upon the issuance of a special exception therefor by the Board of Adjustment. In determining if a special exception is appropriate, the Board shall consider:
  - a. The demonstrable sanitary capability of the lot.
  - b. Whether other contiguously held lots could be combined to conform to the lot size and frontage requirements or to at least lessen the non-conformity.
  - c. Whether ownership of contiguous lots is actually held by different persons or entities.
  - d. Whether the building can meet reasonable setback requirements in accordance with the criteria listed under Section B.

B. Special Exceptions (*Amended 4/94*)

1. In determining whether to grant a special exception as allowed under this Ordinance, the Board of Adjustment shall consider, and when it grants a special exception, shall make findings on the following criteria:
  - a. Whether this area proposed for the use is appropriate and capable of supporting the use.
  - b. Whether the proposed use will adversely affect abutters and others in the vicinity by virtue of; effects on property values, creation of noise and waste, duration of the use, proximity to other uses.
  - c. The degree of similarity with other existing in the district and the immediate vicinity.
  - d. Provision of on-site facilities that may be required such as parking and buffering and screening.
  - e. Effects on pedestrian and vehicular traffic.
  - f. Whether the proposal will constitute a change in the use or in the nature and purpose of the use. If such a finding is made, a special exception may be granted only if the overall non-conformity will be decreased and if the change will benefit the public interest.

2. Required Plan: A plan drawn approximately to scale for the proposed site of a special exception shall be submitted with the application. The plan shall show the location, distances and measurements of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, the location of the site within the town and any other pertinent information that the board may deem necessary to determine if the proposed use meets the requirements of this Ordinance. (Amended 3/10/98).
3. Prohibited Uses. No business, commercial or industrial venture or use shall be permitted which could cause any undue hazard to health safety or property values or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, smoke, unsightliness, or similar reason. (Amended 3/10/98).
4. In order for a special exception to be granted, the proposed use shall not adversely affect:
  - a. The capacity of existing or planned community facilities.
  - b. The character of the area affected.
  - c. Traffic on roads and highways in the immediate vicinity.

**ARTICLE VIII: SIGNS**

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- A. Directional signs relating to each business operated in the Town of Salisbury shall be allowed in all Districts. No sign shall exceed 6 square feet in area. No more than one sign is permitted in any two-mile length of road, not including those which indicate a change of direction. (Amended 3/93).
- B. Residential and Agricultural Districts
  1. No more than two signs relating to permitted uses or to special exceptions, as listed in Article VI, Sections A-2 and A-3, are allowed on the grounds or attached to a building. (Amended March 11, 1986).
  2. No one sign shall exceed 6 square feet in area.
  3. Signs may be illuminated only by continuous lighting, indirect and white, with light sources placed so that they will not constitute a hazard to street or highway driving by glare, and shall be directed or screened from nearby structures.
- C. Retail Village District
  1. No more than two signs relating to permitted uses, as listed in Article VI, Section B-2 and C-2, including goods or services sold on the premises are allowed.
  2. No one sign shall exceed 32 square feet in area nor 20 feet in height including supports.
  3. Signs may be illuminated only by continuous, indirect lighting, with light sources placed so that they will not constitute a hazard to street or highway driving by glare, and shall be directed or screened from nearby structures.

**ARTICLE IX: DRIVEWAYS AND OTHER ACCESSES TO TOWN ROADS**

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It shall be unlawful to construct a driveway or other access to a Town road, or to alter in anyway the size or grade of any driveway, entrance, exit, or approach within the limits of the right-of-way of any Town road to the extent that the new construction or alteration fails to conform to the terms and specifications of a written permit to be issued by the Planning Board or its agent, in accordance with the regulations promulgated by the Planning Board under RSA 236:13. (*Amended March 14, 2000*).

**ARTICLE X: ADMINISTRATION**

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- A. It shall be the duty of the Board of Selectmen, and the Board is hereby given authority and power, to enforce this Ordinance and to issue permits hereunder.
- B. Under any well-founded information that this Ordinance is being violated, the Board of Selectmen shall take immediate steps to enforce this Ordinance by seeking appropriate legal action.

**ARTICLE XI: BOARD OF ADJUSTMENT**

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- A. Change the method of selection of the Zoning Board of Adjustment (ZBA) members from being appointed by the Selectmen to being elected by the voters pursuant to RSA 673::3 and RSA 669, beginning with Town Meeting March 11, 2008 and authorizing the ZBA to fill those member and alternate vacancies that may occur between March 13, 2007 and March 11, 2008, pursuant to RSA 669. (*Amended March 13, 2007*)
- B. The Board of Adjustment shall have all powers assigned to it under this Ordinance and by applicable State law.

**ARTICLE XII: AMENDMENTS**

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- A. This Ordinance may be amended as provide for in RSA 675:3, 675:4, and 675:5.
- B. Upon petition of 25 or more registered voters to the Board of Selectmen for an amendment to this Ordinance, the procedures set forth in RSA 675:4 shall be followed. Petitions shall be received during the period of time 90 to 120 days prior to the Annual Town Meeting.

**ARTICLE XIII: PENALTY**

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Every person, persons, firm or corporation violating any of the provisions of the Ordinance shall be subject to penalties as defined and established under RSA 676.

**ARTICLE XIV: SAVING CLAUSE**

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The invalidity of any provisions of this Ordinance shall not affect the validity of any other provision.

**ARTICLE XV: OUTSIDE TECHNICAL REVIEW**

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The Planning Board or the Zoning Board of Adjustment or both may retain technical experts, at any time, during the process of the Boards' consideration of an application in order to verify technical and detailed claims, plans and/or documentation. Such experts could include, but are not limited to, engineers, architects, soil scientists, attorneys, planners etc., The cost of such technical review shall be borne by the applicant (*Amended March 13, 2001*).

**ARTICLE XVI: CONTROLLED GROWTH (Amended 3/11/97)**

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To control the growth of the Town of Salisbury, New Hampshire in a manner not to exceed the capacity for providing the expanded services to support such growth, the following restrictions are set:

- A. Building permits for new dwellings units are limited to 3% of the number of dwelling units in the Town at the start of each calendar year.
- B. Said permits will be limited to three (3) per property owner, within a calendar year. Permits shall be issued one at a time; each dwelling shall be completed before another permit is issued to the same individual.
- C. Permits shall be issued on a first come first served basis. Permits are non-transferable.
- D. Any one subdivision shall be limited to a total of 25 % of permits available per year.

**ARTICLE XVII: TELECOMMUNICATIONS EQUIPMENT & FACILITIES**

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*(Draft Language Adopted 9/14/00.)*

**SECTION 1: FINDING, INTENT & GENERAL PROVISIONS**

- A. The Town of Salisbury finds that specific regulation of the placement, spacing, installation, location and number of telecommunications facilities is in the public interest so as to conserve and enhance property values, to minimize the visual impact of such facilities upon the natural landscape and scenic vistas within the municipality, to minimize the number of towers and/or to reduce the height and visual impact of towers, and to avoid congestion in the location of such facilities.
- B. The Town hereby states its intent not to discriminate against or favor providers of telecommunications facilities and services.
- C. The Town also finds that regulation of wireless and personal telecommunications facilities, consistent with federal and state policies and law, is in the public interest.
- D. The purposes of this Article are as follows:
  - 1. Provide a reasonable balance between the interests of residents, property owners, business owners, wireless telecommunication providers and telecommunication customers so as to ensure coordinated development of communications infrastructure while preserving the health, safety and welfare of the Town and its constituents;
  - 2. To preserve the authority of the Town to regulate the siting of telecommunications facilities while facilitating the proper location of facilities to provide such services to the community quickly, effectively, and efficiently.
  - 3. To reduce the adverse impacts such facilities may create, including but not limited to impacts on community character and community aesthetics, environmentally sensitive areas, community gateways, historically significant properties and structures, village and rural settings, residential development patterns, flight corridors, public health and safety by injurious accidents to person and property and community prosperity through protection of property values;
  - 4. To encourage co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative

siting techniques, and siting possibilities beyond the political jurisdiction of the Town;

5. To require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town.
6. Permit the construction of new tower facilities only where all other reasonable alternatives and opportunities have been exhausted and to encourage the users of towers and antennas to configure them in a way that minimizes proliferation and other adverse visual impacts of the towers and antennas;
7. To assure responsibility for adequate telecommunications continuous maintenance and safety inspections for all facilities;
8. To provide for the prompt and safe removal of abandoned or discontinued/outdated technological facilities that are no longer inspected for safety concerns including a mechanism for the Town to remove such facilities in order to protect the public from imminent harm and danger;
9. To ensure that all telecommunication carriers providing facilities or services within the Town comply with these articles and sections and any decisions of the Town made thereto.

E. *GENERAL SITING STANDARDS AND POLICIES:* Wireless telecommunications facilities shall be permitted within the Town, only in accordance with this article, of the Salisbury Zoning Regulations and the specific provisions of this entire article. In the case of conflict with any other provisions of this ordinance or any town ordinance or regulation, that provision imposing the more stringent standard shall apply.

F. *GENERAL PROVISIONS:*

1. Wireless telecommunications facilities may be allowed as primary or secondary uses, either as permitted uses or by conditional use permit issued in accordance with Article XVII, Section 4. In any case, however, the facility must conform to all other applicable ordinances and regulations, and must be approved by the Planning Board through site plan review. If allowed by the Planning Board, an applicant may seek to combine conditional permit review with site plan review.
2. When allowed by this ordinance, and after approval by the Planning Board, a wireless telecommunications facility may be placed upon a property as a primary or secondary use of the property on which it is located. A different primary use of the property shall not preclude the use of the property for an antenna or tower, provided that the Planning Board approves such use as a condition use under Article XVII, Section 4. Any other wireless telecommunication structure or facility shall be allowed only by condition use permit in accordance with Article XVII, Section 4.

3. For purpose of determining whether the installation of a tower or antenna complies with this ordinance, including but not limited to set-back requirements, lot-coverage requirements, and other requirements, the dimension of the entire lot shall control, even though the antenna or tower may be located on a leased parcel within the lot. Towers that are constructed, and antennas that are installed strictly in accordance with this ordinance shall not be deemed to constitute the expansion of a non-conforming use or structure. Wireless telecommunication facilities shall not be deemed to be an “accessory use.”

## **SECTION 2: AUTHORITY**

- A. This **Draft** Ordinance has been temporarily adopted by the Salisbury Planning Board on Thursday, September 14, 2000, in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally pursuant to Revised Statutes Annotated 675:1,II.

## **SECTION 3: INTERPRETATION & APPLICABILITY**

- A. The terms of this Section and the Site Plan Review Regulations shall apply to personal wireless service facilities proposed, to be located on property owned by the Town, on privately owned property; and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.
- B. The following are exempt from the provisions of this Ordinance:
  1. *Emergency Wireless Telecommunication Facility.* Temporary Wireless Telecommunication Facilities for emergency communication by public officials.
  2. *Amateur (ham) radio services.* In accordance with RSA 674:16, IV, this article shall not apply to any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur (ham) radio station operator and is used exclusively for receive-only antennas.
  3. *Parabolic (dish) antenna.* Parabolic antenna that is accessory to a residential use of property.
  4. *Maintenance, repair or reconstruction:* Maintenance, repair or reconstruction of a Wireless Telecommunications Facility and related equipment, provided that there is no change in the height or any other dimension of the facility, notwithstanding the provisions of Article XVII, Section 9(A) 1-4.
  5. *Essential Services and Public Utilities:* Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in this ordinance or any other Town ordinance or regulation. Siting for telecommunication facilities constitutes a use of land and is regulated by this Article.

## **SECTION 4: CONDITIONAL USE PERMITS AND SITE PLAN REVIEW; CRITERIA CONSTRUCTION AND PERFORMANCE STANDARDS**

- A. *Conditional Use Permits and Site Plan Review; Criteria; Construction and Performance Standards:* In acting upon a conditional use permit, or in applying its site plan review regulations to a wireless telecommunication facility, the Planning Board shall apply and utilize the criteria and standards set forth in this Article, Section 10, in addition to such other standards and criteria as it may establish. The Planning Board may waive one or more of these requirements, in accordance with Article XVII, Section 15, only if it determines that the goals of this Article are served thereby.

## SECTION 5: FEDERAL REQUIREMENTS

A. *Federal Requirements:* All towers and antennas must meet or exceed current standards and regulation of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners or operators of the towers and antennas shall bring such towers and antennas into compliance with such revised standards and regulations within 6 months of the effective date of such standards and regulation, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower and antenna in accordance with Article XVII, Section 14, at the owner's expense through the execution of the posted security [Article XVII, Section 14(D)].

## SECTION 6: DEFINITIONS

For the purpose of this Article, the following terms shall have the meaning given herein:

**ACT:** the federal laws governing telecommunications facilities, as amended, including the Telecommunications Act of 1996, and FCC regulations promulgated thereunder.

**ALTERNATIVE TOWER STRUCTURE:** an innovative siting technique or structure such as man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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

**ANTENNA ARRAY:** A collection of antennas attached to a mount to send and receive radio signals.

**AVERAGE TREE CANOPY HEIGHT:** An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area.

**CAMOUFLAGED.** A personal wireless service facility that is disguised, hidden, part of an existing proposed structure, or placed or within an existing or proposed structure.

**CARRIER:** A Company that provides personal wireless services also sometimes referred to as a provider.

**CO-LOCATION:** The use of a single mount on the ground by more than one carrier (vertical co-location) for the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

**ENVIRONMENTAL ASSESSMENT (EA):** An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designed areas.

**EQUIPMENT SHELTER:** An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometime referred to as base transceiver stations.

**FAA:** the Federal Aviation Administration

**FCC:** the Federal Communications Commission

**FACILITY:** See Personal Wireless Service Facility

**FALL ZONE:** The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**GUYED TOWER:** A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**HEIGHT:** The height above ground level (AGL) from the natural grade of a site to the highest point of a structure, even if said highest point is an antenna.

**LATTICE TOWER:** A type of mount with multiple legs and structural cross bracing between the legs that is self supporting and free-standing.

**MAST:** A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

**MONOPOLE:** A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

**MOUNT:** The structure or surface upon which antennas are mounted, including the following four types of mounts:

- Roof-mounted: Mounted on the roof of a building.
- Side-mounted: Mounted on the side of a building.
- Ground -mounted: Mounted on the ground.
- Structure-mounted: Mounted on a structure other than a building.

**PERSONAL WIRELESS SERVICE FACILITY:** Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment.

**PERSONAL WIRELESS SERVICES:** The three types of services regulated by this Ordinance. Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

**PREEXISTING TOWER OR ANTENNA:** means any tower or antenna lawfully constructed or permitted prior to the adoption of this Article (*draft adopted on 9/14/00*).

**RADIO FREQUENCY (RF) ENGINEER:** An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

**RADIO FREQUENCY RADIATION ( RFR):** The emissions from personal wireless service facilities.

**SECURITY BARRIER:** A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

**SEPARATION:** The distance between one carrier’s array of antennas and another carrier’s array.

**TELECOMMUNICATIONS FACILITY – includes both:**

1. *“Wireless telecommunication facilities”* such as any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services; and
2. *“Conventional telecommunications facilities”* such as any telecommunications facility installed within, upon, or across a public right-of-way including poles, wires, conduits, and similar equipment or property, whether installed above or below ground.

**TOWER:** any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

**SECTION 7: ZONING DISTRICT REGULATIONS**

A. LOCATION: Wireless telecommunications towers and antennas may be located within the Town only in accordance with the following table:

Zoning District	New Tower Construction	Co-location on Existing Tower	Co-location on Existing Structure
Residential	Allowed	Conditional Use Permit	Conditional Use Permit
Agricultural/ Conservation	Allowed	Conditional Use Permit	Conditional Use Permit
Retail Village District	Conditional Use Permit	Conditional Use Permit	Conditional Use Permit

**NOTES:**

*“Permitted”* means permitted without a conditional use permit, but site plan review still required, and subject to any restrictions on existing tower or structure.

*“Conditional Use Permit”* means allowed only by conditional use permit issued under Article XVII, Section 4, and site plan review also required.

*“New Tower Construction”* permits construction of a tower for one or more antennas, as allowed in the permit issued by the Planning Board.

*“Co-location on existing tower”* permits additional number of antenna(s) to an existing telecommunications tower in the manner permitted in the conditional use permit or site plan review as appropriate.

*“Co-location on existing structure”* permits the placement of an antenna on an existing structure other than a telecommunications tower in the manner permitted in the conditional use permit or site plan review as appropriate.

- B. **EXISTING STRUCTURES: Policy - Personal Wireless** service facilities may be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles, or towers, and related facilities, provided that such installation preserves the character and integrity of those structures; and must be confirmed by a licensed professional civil engineer.
- C. **EXISTING STRUCTURES: Burden of Proof -** The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take the following actions to the extent applicable:
1. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
  2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post office shall be provided for each owner of existing structures that was contacted.
  3. If the applicant claims that a structure is not capable for physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- D. **Ground Mounted Facilities: Policy -** If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping, and placement within trees.

## **SECTION 8: USE REGULATIONS**

- A. A personal wireless service facility shall require a building permit in all cases and may be permitted as follows:
1. *Existing Tower Structures:* Subject to the issuance of a building permit that includes review by the Planning Board, which review shall be limited to issues relating to access, bonding, and security for removal, structural integrity and appropriate camouflage of such siting, carriers may locate a personal wireless service facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article, or on any personal wireless service facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met. The provisions shall apply only if the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.

2. *Reconstruction of Existing Tower Structures:* An existing guyed tower, lattice tower, monopole, or mast may be re-constructed with the maximum height which shall not exceed 20 feet above the average tree height. The mount shall be replaced with a similar mount, or smaller, that does not significantly increase the visual impact on the community. A site plan review is required for any reconstruction request.
3. *Existing Structures:* Subject to the provisions of this Article and minor site plan review under RSA 674:43:III and except as otherwise permitted under Section 7; a carrier may locate a personal wireless service facility on an existing structure, building, utility tower or pole, or water tower. For the purpose of this section, new structures that are conforming to all other zoning district requirements shall be considered as existing structure e.g., steeple, stove pipe, chimney etc.
4. *Ground Mounted Facility:* A personal wireless service facility involving construction of a ground mount shall require site plan review and be subject to the provision of this Article.

## **SECTION 9: DIMENSIONAL REQUIREMENTS**

- A. Personal wireless service facilities shall comply with the following requirements:
  1. *Height, Maximum:* The maximum height for any telecommunications tower, support for an antenna, utility pole, ground-mounted facility or existing structure, shall not exceed or project higher than 20 feet above the average tree canopy height, within an inventoried, one hundred and fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. The trees in the inventoried area must not be disturbed without Planning Board written approval. Tower or telecommunication equipment shall not be within a 300 feet of any ridge line. Any height limit imposed may be decreased or increased by the Planning Board by approval of a conditional use permit, if the Board affirmatively finds the intent of the ordinance will be preserved, and where the Board finds that a modification is reasonably necessary and appropriate to further the purposes of this Article.
  2. *Width, Maximum:* The maximum width of the tower with antenna mounted, shall not exceed four (4) feet.
- B. Setbacks: These setback requirements shall supersede any less stringent applicable standard found elsewhere in this ordinance or any other Town ordinance or regulation.
  1. Towers shall be set back a distance equal to 125% of the height of the tower from any off-site residential structure.
  2. Tower, guys, and accessory facilities shall comply with the minimum zoning district setback requirements.
  3. Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
  4. Security Fencing: Towers enclosed by security fencing shall not be less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

C. Fall Zone Dimensional Requirements:

1. Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review.
2. Fall Zone for Non-Ground Mounts: In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply (see section 9B of this Article). In the case of pre-existing non-conforming structures, personal wireless service facility and their equipment shelters shall not increase any non-conformities.
3. Planning Board Flexibility: Heights – See Section 9(A)1.

**SECTION 10: PERFORMANCE AND DESIGN STANDARDS**

A. Visibility: Visual impacts are measured on the basis of:

1. Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within their proposed surroundings.
2. New visible elements proposed on a contrasting background.
3. Different colors and textures proposed against a contrasting background.
4. Use of materials that are foreign to the existing built environment.

B. Enhancements: Enhancements are measured on the basis of:

1. Conservation of opportunities to maintain community scale, e.g., buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
2. Amount and type of landscaping and/or natural vegetation.
3. Preservation of view corridors, vistas, and view sheds.
4. Continuation of existing colors, textures, and materials,

C. Visibility focuses on:

1. Eliminating or mitigating visual impact.
2. Protecting, continuing, and enhancing the existing environment.
3. Camouflage for Facilities on Existing Buildings or Structures: Roof Mounts: When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

4. Camouflage for Facilities on Existing Buildings, or Structures – Side Mounts: Personal wireless service facilities which are side mounted shall blend with the existing building’s architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with non-glare material consistent with the design features and materials for the building.
5. Camouflage for Ground Mounted Facilities: All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, security barrier, or designated clear area for access or equipment, whichever is greatest, and screens views of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. For towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer, if approved by the Planning Board. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement, not to be less than 10 feet wide, or be within the area of the carrier’s lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.
6. Color – To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings. Color shall be approved by the Planning Board and it should result in a no “sun” glare.

D. Equipment Shelters – Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:

1. Equipment shelters shall be located in underground vaults; or
2. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or
3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of neighborhood; or
4. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be part of the original structure.

E. Lighting, Signage, and Security Barrier

1. Lighting: The mounts of personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
2. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. Towers shall not contain any permanent or temporary signs,

writing, symbols, or any graphic representation of any kind, except as allowed by the Planning Board in the interest of public safety. All signs shall comply with the Requirement of the Salisbury Zoning Ordinance, Article VIII.

3. Security Barrier: The Planning Board shall have final authority on whether a ground mounted personal wireless service facilities should be surrounded by a security barrier and shall approve the size area requested for it.
- F. Scenic Landscapes and Vistas - Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth as outlined in Section 10(C).
1. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely, if approved by the planning board.
- G. Driveways - If available, existing entrances and driveways to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a personal wireless service facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.
- H. Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than four (4) feet, inclusive of the diameter of the mount.
- I. Ground and Roof Mounts - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 8(A), 2.
- J. Hazardous Waste - No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.
- K. Noise - Personal wireless service facility shall not generate noise in excess of that permitted under Article VII entitled *Non-Conforming Uses, Structures & Lots Special Exceptions*, see(B) 3 Article VII.
- L. Radio Frequency Radiation (RFR) Standards - All equipment proposed for a personal wireless service facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequently Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

## **SECTION 11: MONITORING AND MAINTENANCE**

- A. Maintenance - The owner of the facility shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

- B. Monitoring - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Salisbury may enter the subject property to obtain RFR measurements and noise measurements, at the expense of the carrier and landowner, and provides them the opportunity to accompany the Town representative when the measurements are conducted.

## SECTION 12: PERMIT PROCEDURES

- A. *GENERAL*: All applications under this subdivision shall apply to the Zoning Board of Adjustment for Special Exception and upon their decision, make application with the Planning Board for Site Plan Review, in accordance with Site Plan Review Regulations. In addition, applications under this subdivision shall submit the information required by this section. All applications shall be handled as required by RSA 676:4.
- B. Joint meetings and public hearings between the Planning Board and Zoning Board of Adjustment may be held in accordance with the provision of RSA 676:2.
- C. Applications shall be submitted to the Zoning Board of Adjustment to grant a Special Exception. It shall be the burden of the applicant to provide sufficient evidence to persuade the Zoning Board of Adjustment that all applicable criteria have been met and that the proposal does not represent unreasonable adverse impacts. An applicant's failure to satisfy the burden of proof shall result in the denial of an application. When the Zoning Board reviews an application for Special Exception it confirms:
1. The proposal is in harmony with Section 1 of this Article; and
  2. The proposal is in accordance with the general and specific provisions of this Ordinance, particularly Sections 7 through 10 of this Article.
- D. *INFORMATION REQUIRED*: Each applicant requesting a Conditional Use Permit or Site Plan approval shall submit a scaled plan in accordance with the Site Plan Review Regulations. The application shall also include: a scaled elevation view, topography, inventory map of trees over 20 feet tall (including data on each tree height), radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200 feet away), and any other information deemed necessary by the Planning Board to assess compliance with this Article. The applicant shall also submit the following prior to any approval by the Board:
1. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
  2. Written proof that an evaluation has taken place which demonstrates that the use/facility satisfies the requirements of the National Environmental Policy Act (NEPA). If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirement.

3. An inventory of existing towers that are within the jurisdiction of the Town and those within two miles of the Town borders, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for the co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate antennas within the jurisdiction of the Town, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
  4. A description of the proposed coverage range together with the technical reasons for the facility design.
  5. A description of the tree cover on the subject property and adjacent properties by dominant species and average height as measured by or available from a verifiable source.
  6. Representations, dimensioned to scale, of the proposed tower, antennas, equipment shelters including elevation drawings of all structures and the vegetative buffer.
  7. A visual impact assessment including, before-condition photographs and after-condition photographic simulations of the proposed facility, showing what can be seen from any public view point.
- E. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna in a manner that will achieve the required technical result. This evidence may consist of:
1. Substantial evidence that no existing towers or structure are located within the geographic area required to meet the applicant's engineering requirements, including a description of the geographic area required.
  2. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
  3. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  4. Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with antennae on existing towers or structures, or antennae on existing towers or structures would cause interference with the applicant's proposed antenna.
  5. Substantial evidence that the fees, costs or contractual provisions required by the owner to share the existing tower or structure are unreasonable.
  6. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

- F. An applicant proposing to build a new tower shall execute an agreement that allows for the maximum allowance for co-location upon the new structure, which shall become a condition of any approval. This agreement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town and grounds for denial of approval for the tower.
- G. The applicant shall submit engineering information detailing the size and coverage required for the facility location. The Planning Board or the Zoning Board of Adjustment or both may retain technical expert(s) in the field of radio frequency engineering and "planning" experts to review and verify technical claims made by the applicant including but not limited to the co-location findings, alternative locations, and innovative design opportunities. The cost of such technical reviews shall be borne by the applicant in accordance with RSA 676:4, I (g).
- H. *FACTORS CONSIDERED IN DECISIONS:* The Planning Board shall consider at least the following criteria when acting upon an application for a conditional use permit:
1. Height of proposed tower or other structure;
  2. Proximity of tower to residential development or zones;
  3. Nature of uses on adjacent and nearby properties;
  4. Surrounding topography;
  5. Surrounding tree coverage and foliage;
  6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  7. Proposed ingress and egress to the site;
  8. Availability of suitable existing towers and other structures.
  9. Visual impacts on view sheds, ridgelines and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures; and
  10. Availability of alternative tower structure and alternates siting locations.
- I. *DECISIONS:*
1. In approving an application for Site Plan Review or an application for Special Exception and/or in granting a conditional use permit, the respective Board may impose such conditions as it deems appropriate to minimize any adverse effect of the proposed tower on adjoining properties, and to substantially secure the objectives, standards or requirements of the applicable local land use regulations.
  2. The Planning Board or the Zoning Board of Adjustment may approve, approve with conditions, or deny an application. All decisions shall be in writing and a denial shall be based upon the record presented to the Board(s).

- J. *EXPEDITED REVIEW*: The Planning Board may, by regulation, provide for an expedited review for facilities that utilize existing facilities or sites designated by the Planning Board and Selectmen as desired sites for such facilities.

### **SECTION 13: SECURITY AND/OR BOND**

- A. *SECURITY*: As a condition of approval for any new tower and, when deemed appropriate for other facilities, the Planning Board shall require the applicant to post adequate surety for the costs of maintenance, repair or removal thereof. The amount and form of the surety shall be determined by the Planning Board [Reference Section 14(D)].

### **SECTION 14: ABANDONMENT OR DISCONTINUATION OF USE**

- A. *Notification* - At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations. In addition, the facility owner shall notify the Town annually verifying the telecommunications facility is actively in use.
- B. *Removal* - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  3. Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. *Failure to Remove* - If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.
- D. *Security for Removal* - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunication facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 10.2. The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

## **SECTION 15: WAIVER/ APPEAL**

- A. In compliance with Section 253 of the Act, the Town does not intend to create barriers to the ability of any entity to provide interstate or intrastate telecommunication service. If any such entity, having duly exhausted all applicable avenues to providing such a service, believes that the procedures or standards established by this Article have created such an barrier, the entity may apply within 20 days after the final administrative decisions, to the Planning Board for administrate relief in accordance with this section.
- B. Upon application duly made in accordance with the procedures required for a conditional use permit, the Planning Board may grant waivers from the strict application of the requirements of this Article where the Board finds, on the probability of evidence presented to it, with the burden upon the applicant for the facility, that:
1. Strict adherence to the requirements of this chapter is not required to effectuate the purposes hereof;
  2. Strict compliance would create practical difficulty and unnecessary inconvenience;
  3. Strict compliance could potentially cause a conflict with the Act.

## **ARTICLE XVIII: SEXUALLY ORIENTED BUSINESSES**

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### **SECTION 1: PURPOSE AND INTENT**

It is the purpose of this Article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Salisbury and to:

- Protect and promote public health, safety and general welfare;
- To prevent adverse impact which may occur and is brought about by the concentration of sexually oriented business.
- It is not the intent of this Article to restrict or deny access by adults, to sexually oriented materials, protected by the first Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, nor is it the intent of this Article to condone or legitimize the distribution of obscene material.

### **SECTION 2: ZONING DISTRICTS**

The Town of Salisbury does not have any Commercial Districts. Salisbury is comprised of three zoning districts: Residential, Retail Village District and Agricultural District and any sexually oriented business shall only be permitted by Special Exception. All proposed development must comply with both the provisions of this article and the zoning regulations and requirements, and any other applicable Ordinances, and State Laws to include in that limitation: RSA 571-B-1.

### **SECTION 3: BUFFERS**

A. Sexually oriented businesses shall not be permitted within 1000' feet of facilities listed below. Note: the measure of distance between any sexually oriented business and other named point of reference shall be measured in a straight line: church, school, daycare center, residence, another sexually oriented business, or a sexually oriented business for which a building permit application has been made.

- B. Sexually oriented businesses shall not be permitted within 300' feet buffer of any other buildings or facilities used for commercial purposes.

**SECTION 4: FREE STANDING STRUCTURES:**

Sexually oriented businesses shall only be permitted in single use, free-standing structures. In no instance shall sexually oriented businesses share premises, facilities or buildings with businesses which are not sexually oriented.

**SECTION 5: SPECIAL EXCEPTION & SITE PLAN REVIEW**

A Site Plan Review by the Planning Board, will be required, if a permit/special exception is granted. A sexually oriented business may be allowed in the town, as a Special Exception, provided that it is otherwise lawful and meets all other zoning requirements and is approved by the Board of Adjustment as a Special Exception and is subject to the following conditions:

- A. Meets all regulations in Sections 3 and 4 of this Article.
- B. The proposed site may be required to be screened in such a manner that limits pedestrian and vehicular access to the property, but which does not restrict adequate lines of sight or create unsafe site conditions. This visual barrier shall be maintained by the owner of the property.
- C. The site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.
- D. Signs shall not visually depict any person in a "State of Nudity" or "Semi-Nude", and no sexually explicit material or advertising shall be visible from outside the building.
- E. Other reasonable conditions found legally acceptable elsewhere in New Hampshire.

**SECTION 6: LIMITING CLAUSE**

Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation or maintenance of any business, building or use which violates any Town of Salisbury ordinance or statute of the State of New Hampshire relative to public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

**SECTION 7: SEVERABILITY**

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

**ARTICLE XIX: SPECIAL PERMIT GRANTING AUTHORITY**

FIRST DRAFT: For Hearing on 1/9/2001

Special Permit Granting Authority shall be addressed on a case-by-case basis. Special Permits issued by keep with the spirit and intent of the flexible master plan.

**ARTICLE XX: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its passage. Effective March 8, 1994

# **REGULATIONS GOVERNING**

## ***DRIVEWAYS AND OTHER ACCESSES TO TOWN (CLASS V) ROADS***

### **ARTICLE I. SCOPE AND AUTHORITY.**

- A. These regulations are promulgated under authority vested in the Planning Board by RSA 236:13 and by Article IX of the Zoning Ordinance of the Town of Salisbury.
- B. It shall be unlawful to construct a driveway or other access to a Town (Class V) road, or to alter in any way the size or grade of any driveway, entrance, exit or approach within the limits of the right-of-way of any Town (Class V) road to the extent that the new construction or alteration fails to conform to the terms and specification of a written permit to be issued by the Planning Board in accordance with these regulations.

### **ARTICLE II: STANDARDS**

- A. For the purpose of these regulations, all-season safe sight distance is defined as a line located so as to represent the critical line of sight between the operator of a vehicle using the access and the operator of a vehicle approaching from either the access and the operator of a vehicle approaching from either direction, which encounters no visual obstruction between two points, each at a distance of three feet nine inches above the road surface.
- B. For residential use, the safe sight distance shall be 200 feet in either direction. For commercial use or new subdivision streets, the safe sight distance shall be 400 feet in either direction.
- C. All locations shall be selected to most adequately protect the safety of the traveling public.
- D. No residential driveway shall be constructed which allows a safe sight distance of less than 200 feet, unless it is approved by the Planning Board and is located at the point determined by the Planning Board to be the safest.
- E. No more than one driveway, entrance, exit or approach shall be constructed for any one road to any one parcel of land unless the frontage along that road exceeds 200 feet. The Planning Board shall not give approval for any additional accesses unless the all-season safe sight distance is obtainable.
- F. No driveway, entrance, exit or approach shall be constructed to exceed 20 feet in width for residential use or 50 feet in width for commercial use, except that such accesses may be flared beyond such widths at their junctions with the road to accommodate the turning radius of any vehicle expected to use the accesses.

### **ARTICLE III. APPLICATIONS**

- A. A written permit application must be filed with the Planning Board and a permit issued prior to the commencement of any construction.

- B. A fee of \$20.00 for residential access and \_\_\_\_ commercial access shall accompany the application.
- C. It shall be the responsibility of the applicant to present the application form and plans to the Road Agent for review prior to submission of the form to the Planning Board.
- D. The \_\_\_\_ shall \_\_\_\_ be any drainage \_\_\_\_ traffic control \_\_\_\_ and channelization islands to be \_\_\_\_ by the applicant.
- E. The application shall describe \_\_\_\_ which \_\_\_\_ and protect and \_\_\_\_ and which will permit safe and controlled approach to the road in all seasons.
- F. For commercial use of or for new subdivision \_\_\_\_ engineering drawings shall be submitted with the application.

**ARTICLE IV. EFFECTIVE DATE.**

These regulations shall take effect immediately upon passage.

*EFFECTIVE 11/3/86*

## APPENDIX A

### SECTION 1.

**Minor Home Occupation:** A minor home occupation does not require Town approval unless it exceeds the standards listed below. However all existing and future minor home occupation shall complete a registration form. This form shall be submitted to the Town Office and maintained in the Town records. The registration form shall include the locations, name of owner, and a brief description of the general nature of the minor home occupation.

Any activity that exceeds these standards is subject to the Special Exception requirements applicable to the Major Home Occupation. A home occupation is considered a minor occupation if the following criteria can be met:

- Conducted entirely within a residential dwelling or an accessory dwelling on a residential lot, but not both.
- Is clearly incidental and secondary to the use of the dwelling for dwelling purposes.
- Is capable of being unobtrusively pursued.
- No advertisement shall refer to the home site as the location of the occupation. This prohibition shall not pertain to an advertisement listing a telephone number, post office box or other business address.
- No on-site sales of goods is permitted unless agricultural food products for human consumption which were grown on the site.
- Creates no nuisances such as lights, noise, odors, smoke, dust, vibration, glare, fire hazard, heat, hazardous or toxic chemical, or interference's with radio or television reception, and any safety or health issues and would unreasonably interfere with anyone's enjoyment of their residence or that of neighboring residents.
- No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive or other restricted materials shall be used or stored on site, other than those associated with common household use.
- The home occupation shall not displace or block the use of parking spaces required for residential use including any business storage in required garage parking areas.
- The portion of the house used for a home occupation shall have an operable smoke detector working at all times.
- Does not change the character of the residential dwelling.
- Does not alter or change the exterior character or appearance of the dwelling
- Is conducted solely by the resident of the dwelling and by members residing in the dwelling unit only.
- Does not affect the residential character of the area in which it is located.
- Does not utilize an area of more than twenty-five (25%) of the total floor area of the dwelling (or 500 square feet whichever is less).
- It shall result in no external evidence of the enterprise.
- It shall not have any sign greater than (2) two square feet, the sign may not be illuminated, and a maximum of one sign is permitted. A two-sided sign is permitted.
- The use shall not create a traffic safety hazard, nor shall it result in a substantial increase in the level of traffic in the vicinity of the dwelling.
- There shall be no outside storage of equipment.
- There shall be no display of goods or wares visible from the street or to any to abutting properties and properties across the street or stream.

- Delivery traffic shall be limited to not more than (3) UPS or similar deliveries per week. No semi-tractor truck deliveries shall be permitted. Bulk deliveries can only be made between the hours of 8:00 a.m. to 5:00 p.m.
- No additional parking spaces shall be constructed and no additional vehicles except those used in a typical residential setting shall be permitted as outside storage.
- The residence or accessory buildings on the lot shall not provide any window displays or other characteristics or features normally associated with commercial use.
- No external mechanical equipment shall be installed except what is normally used for purely domestic or household purposes.
- No commercial vehicle used in connection with the home occupation may be stored or parked except within a fully enclosed and closed private garage.
- Separate entrances from the outside of the home may not be added except in conformance with Fire and Life Safety Codes for residential purposes.
- The direct sales of any product on display shelves or racks is not permitted.
- Shall not involve on-site retail business.
- Shall not create pedestrian or vehicular traffic detrimental to the property in the vicinity.

## **SECTION 2.**

**Major Home Occupation**- Major home occupations shall be contained on a residential property in an outbuilding, a detached building and/or in an open space subject to the provisions below. A major home occupation shall require a special exception from the Zoning Board of Adjustment.

The following types of uses may be permitted by special exception as a major home occupation and must comply with the provisions listed below. Prior to granting a special exception a public hearing must be held. All abutters shall be sent a certified letter noticing the meeting date. A major home occupation must not exceed the standards listed below and any that may be imposed by the ZBA.

### **Uses Permitted by Special Exception**

- Home based day care as defined in RSA 672:1 V-a which limits providers to six (6) full-time preschool children and three (3) part-time school age children, including children domiciled at the home
- Auto and truck sales (no more than three (3) vehicles may be located on the site at any time for existing or potential sales)
- Auto and truck repairs (no more than four (4) vehicles may be located on the site at any time for existing or potential repair)
- Forest related products
- Wood and metal fabrications
- Machine shops
- Retail shops shall be limited to incidental sales of goods which are manufactured, assembled or grown on site or products which are directly related to the good and services rendered by the general perceived nature of the business
- Contractor and construction related business and associated equipment yard
- Welding shops

## **Application Requirements**

- Completed application. Must include the notarized signature of all the property owners
- Typed list of abutters including name, address (refer to state statute for complete definition of abutter)
- Plan acceptable to the ZBA showing the following: location of all structures on the site, access points, vegetation, fencing, and other details of the site as deemed appropriate by the Zoning Board of Adjustment.

## **Requirements for granting a special exception for a major home occupation**

- All outside storage of goods and materials, parking and work areas shall not be greater in areas than 25,000 square feet, and shall be effectively screened from abutting and facing residential properties by appropriate fencing or dense landscaping screening which is not offensive to the neighboring properties. The planting of trees, shrubs or other vegetative materials must create a dense screening. The planting shall be at least four (4) feet in height at the time of planting. The planting must be conducted within one month of receiving a special exception or a fence of appropriate screening material shall be installed instead.
- Hours of operation shall be from 7:00 a.m. to 6:00 p.m. The hours of operation may be modified as deemed appropriate by the Zoning Board of Adjustment.
- Sales of commodities not produced on the premises may not be permitted unless directly associated with the business.
- The special exception shall be nontransferable. It shall be issued to the individual applicant only and shall automatically expire when such applicant is no longer the resident of the dwelling.
- Shall be carried on by residents of the premises and not more than two on-premise employees who are not residents at the same address.
- It shall not have any sign greater than six (6) square feet, the sign may not be illuminated, and a maximum of one sign is permitted. A two-sided sign is permitted.
- The total number of vehicle trips generated shall be established by the ZBA and shall not adversely affect the condition of the road.