

TOWN OF HENNIKER
NEW HAMPSHIRE



CHAPTER 133
ZONING REGULATIONS

March 8, 2011 Edition

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ARTICLE I
Preamble and Title

133-1 Preamble.

Pursuant to the authority conferred by RSA 672 through 677, as amended, and for the purpose of promoting the health, safety and general welfare of the community, and to provide for the orderly development of the town, the following chapter is hereby adopted by the Town of Henniker, New Hampshire, in Town Meeting convened. All provisions become effective from the date of that Town Meeting and apply only to actions taken after that date.

133-2 Title.

This chapter shall be known and may be cited as the "Henniker Zoning Ordinance."

ARTICLE II
Definitions

133-3 Terms defined.

For the purpose of this chapter, certain terms or words used shall be interpreted as follows:

ABANDONMENT -- Surrender of the right to continue a nonconforming use evidenced by some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use, and that the owner intends to give up or relinquish this use. Such intent is presumed if the owner or person with the right to use the property discontinues such use for a period of two years.

ABUTTER -- Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. Notification of condominiums will be through the officers of the association. Manufactured housing park notification shall be to the owner of the park and all tenants. For further information see New Hampshire Revised Statute Annotated Chapter 672:3 Abutter. [Added 3-8-2005]

ACCESSORY BUILDING OR USE -- A building or use subordinate and customarily incidental to the main building or use on the same lot.

AGRICULTURE -- See New Hampshire Revised Statute Annotated Chapter 21:34-a Farm, Agriculture, Farming. [Revised 3-8-2005].

AUTO SERVICE STATION -- Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, mechanical repairs or otherwise cleaning or servicing such motor vehicles. A service station is not a sales or major repair agency for autos, trucks or trailers.

BUILDING -- A combination of any materials, whether portable or fixed, having a roof, built to form a structure for the shelter of persons, animals or property.

CAMPGROUND -- An area used for overnight seasonal occupation in temporary facilities (such as tents, campers and trailers).

COMMERCIAL/LIGHT INDUSTRY -- The assembly, manufacture, processing, packaging or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke and vapor are effectively confined to the premises or disposed of so as to avoid any air pollution and conducted in such a manner that the noise level at the property line will not exceed 80 decibels and objectionable flashing and vibration will not occur.

ARTICLE II - DEFINITIONS

COMMERCIAL/MANUFACTURING -- A commercial activity that assembles, fabricates, modifies, stockpiles or otherwise produces items for sale or resale.

COMMERCIAL/PROFESSIONAL SERVICES -- Paid services provided by an individual or individuals in one of the learned professions, including attorneys, physicians, engineers, dentists, accountants and similar vocations.

COMMERCIAL/RECREATIONAL -- Commercial uses that relate to recreational activities, including restaurants, skiing areas, clothing shops, motels, athletic activities, including sports equipment sales and rentals, and related activities. This use does not include manufacturing.

COMMERCIAL/RETAIL -- Commercial use that relates to the ultimate sale of goods and services to the consumer. Such uses include stores, rentals, services, restaurants and food services.

COMMERCIAL/SERVICES -- Labor, assistance or provision of amenities to consumers on a retail basis for profit.

COMMERCIAL/SERVICES/TECHNICAL -- Trades and occupations relating to construction, installation, repair or replacement of structures, equipment, machinery or motorized vehicles, including recreational motorized vehicles, usually associated with some kind of repair shop, garage or machine shop. [Added 3-9-1994]

COMMON LAND -- One or more parcels of usable quality land owned by more than one owner or by an association of owners for the private use and recreation of the owners and occupants and as a buffer to existing and future neighborhood land uses.

CONDOMINIUM -- The form of ownership of real property, and any interests therein, in accordance with the provisions of RSA 356-B, in which individual owners own or lease separate units but together, or through an owner's association, own the common areas appurtenant to the units. A duplex that meets the foregoing definition is sometimes known as a "condex" and is included in the definition of condominium. [Added 3-14-2006].

DRIVE-THROUGH FACILITY -- A building opening (including windows and doors) and/or mechanical devices which occupants of a motor vehicle either drive up to or drive through to receive or request a product or service (other than mechanical services or vehicle refueling) while the driver remains in the vehicle. [Added 3-9-2004]

DWELLING UNIT -- One or more habitable rooms arranged for the use of one or more individuals living as a single housekeeping unit, together with cooking, living, sanitary and sleeping facilities. In a dwelling or area rented to a group (non-related) a unit shall consist of 3.6 people, in conformity with Chapter 88, Sewers.

ARTICLE II - DEFINITIONS

EARTH -- Sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

ELDERLY HOUSING -- Housing that qualifies as “Housing for Older Persons” pursuant to NH RSA 354-A:15, as it may be amended. [Added 3-9-2004]

EXCAVATION -- A land area, which is used, or has been used, for the commercial taking of earth, including all slopes.

EXPAND -- To increase in size, volume or scope. [Added 3-8-1988]

FAMILY -- Any number of persons related by blood or by marriage, or not more than four persons not related by blood or by marriage, living together as a single nonprofit housekeeping unit.

FRATERNITY / SORORITY – A fraternal organization, officially recognized by a State-chartered College/University, and organized to benefit the Henniker/College/University community through the efforts of its members, who are students currently enrolled at the College/University. [Added 3-10-2009]

FRATERNITY / SORORITY HOUSE – A building used to provide lodging facilities for the exclusive use of the bona fide members of a fraternity or sorority. [Added 3-10-2009]

HAZARDOUS MATERIAL -- Substances or effects of processes that are deleterious to the public good and health as a result of their use, neglect or other circumstances.

HOME BUSINESS -- A use, that is not the primary use, by a resident to provide offices for his or her own recognized professions, such as physicians, architects, attorneys, real estate or insurance agents, or such home occupations as hairdressers, dressmakers and sewing, manufacture of craft products, home baking and antique shops, that conforms to Article XII of this chapter.

HOME BUSINESS/RETAIL -- A secondary use by a resident to provide home occupations that provide retail outlets for resale of previously manufactured goods, that conforms to Article XII of this chapter.

HOME RENTAL -- The rental of an apartment as an accessory use within a building whose primary use is a single family owner-occupied dwelling. This use is clearly incidental and subordinate to the primary dwelling.

HOUSE OF WORSHIP – A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs; a special-purpose building that is designed and particularly adapted for the primary use of conducting formal religious services on a regular basis. [Added 3-10-2009]

ARTICLE II - DEFINITIONS

JUNKYARD -- See New Hampshire Revised Statutes Annotated Chapter 236:112 (I). [Revised 3-10-2009]

KENNEL -- A commercial establishment in which dogs or other domesticated animals are housed, bred, boarded, trained and/or sold, all for a fee or compensation. [Added 3-9-1994; amended 3-15-1995, revised 3-8-2005]

LOT -- A portion or parcel of land occupied or intended to be occupied for a use, building or unit group of buildings and accessory buildings, together with such open spaces as may be required under this chapter and further meeting any other requirements of this chapter for a lot in the district in which the land is located.

MANUFACTURED HOUSING -- 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 sq ft 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 here shall not include pre-site built housing as defined in RSA 674:31-a. [Amended 3-19-2004]

MANUFACTURED HOUSING PARK -- See New Hampshire Revised Statutes Annotated Chapter 205-A:1(II) [Amended 3-10-2009]

MULTIUNIT DWELLING -- A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

NON-CONFORMING LOT -- A lot, which does not meet the requirements of this ordinance for the district in which the lot is located. [Added 3-8-2005]

OPEN SPACE RESIDENTIAL DEVELOPMENT -- A form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks reduced from conventional sizes, provided that the density of the tract as a whole shall not be greater than the density allowed by the zoning district under existing regulations and the remaining land area is devoted to common open space.

PARKING SPACE, OFF-STREET -- An area of 9 x 18 feet or more suitable for use of parking one motor vehicle, together with reasonable access. (Revised 3-8-2011).

REMOVAL OF NATURAL MATERIAL -- The removal of loam, sand, gravel, stone or other fill material for sale in commercial quantities.

SCHOOLS -- Any building, part thereof, or group of buildings, the use of which meets State requirements for elementary, secondary, vocational or higher education.

ARTICLE II - DEFINITIONS

SIGN -- A structure, building wall or other outdoor surface, or any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, or to display, identify and publicize the name and product or service of any person.

SINGLE-FAMILY DWELLING -- A detached residential dwelling unit designed for and occupied by one family.

SPECIAL EXCEPTION -- Permission for a use, or waiver of the requirements of an ordinance or ordinances upon approval of the Zoning Board of Adjustment, pursuant to RSA 674:33, following application and hearing before that Board in cases where these ordinances permit such application and exception by express provision.

STORY -- That part of a building between a floor and the floor or ceiling next above not including the underside of the roof. A basement shall be classified as a story when its ceiling is six or more feet above the finished grade at any point.

STRUCTURE -- Anything constructed or erected with a fixed location on the ground. Structures include, but are not limited to, buildings, swimming pools, manufactured housing, billboards and poster panels. It shall not include minor installations, such as fences, mail boxes and flagpoles. [Added 3-8-1988, Revised 3-8-2011]

DORMITORY -- Dwelling(s) and/or structures owned, operated, and/or sanctioned by an educational entity for use by student(s) as a residence. [Amended 3-19-2004, 3-10-2009]

TWO-FAMILY DWELLING -- A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

TRAVEL TRAILER -- A vehicular, portable, non-self-propelled structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, having a body width not exceeding eight feet and a body length not exceeding 32 feet.

VARIANCE -- Such departure from the terms of this chapter as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize under the terms of Article XV and applicable statutes of the State of New Hampshire.

WETLANDS - See New Hampshire Revised Statute Annotated Chapter 482-A, and Chapter 674:55 [Revised 3-8-2005]

YARD SALES -- An outdoor sale of secondhand articles held by the occupants or any other party. [Added 3-13-1996]

ARTICLE III
Establishment of Districts

133-4 Zoning districts.

- A. For the purpose of this chapter, the Town of Henniker is divided into districts that relate to land use, as shown on the map filed with the Town Clerk and is available at the Town Hall, which includes the following:

Residential Districts

- RV Village Proper
- RN Residential Neighborhood
- RR Rural Residential

Commercial Districts

- CH Heavy Commercial
- CM Medium Commercial
- CR Commercial Recreational
- CV Village Commerce
- CR-1 Commercial Recreational 1 [Added 3-13-2007]

FD Federal Lands

ED Educational District [Added 3-12-1997]

- B. These districts are shown on the Town of Henniker Land Use Map of 1980, as amended for adoption in this chapter on June 9, 1987 (Appendix A). Land subject to special construction requirements due to flood hazards is shown on the Flood Insurance Rate Map (FIRM). The provisions in this chapter shall apply to each district and all uses within the Town of Henniker, except as otherwise listed.
- C. The CR-1 District will extend from the current southeastern boundary of the CR District, along both sides of Route 114 to the Weare Town Line. The lots included in this CR-1 zone are lots 590-FX, 663-A, 661, 660, 742, 742-X, 743 and all lots between those and Route 114 on the west side, and lots between the Federal lands and Route 114 starting with lot 540-X7 and all those south of that to lot 695-D, then all the lots south of the railroad right-of-way, west of Ireland Road, north of and including lots 751, 752-C and 753-A, and east of Route 114. These lots were all previously zoned RR. [Added 3-13-2007]

133-5 Boundaries of districts.

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules apply:

ARTICLE III – ESTABLISHMENT OF DISTRICTS

- A. Where a boundary is indicated as a street, railroad, watercourse or other body of water, it shall be construed to be the center line or middle thereof, or where such boundary approximates a town boundary, then to the limits of the town boundary.
- B. Where a boundary is indicated as intersecting the center line of a street, railroad, watercourse or other water body, it shall be construed to intersect at right angles to said center line, or in the case of a curved center line, at right angles to the tangent to the curve at the point of intersection.
- C. Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than 100 feet into the more restricted part, provided that the lot has frontage on a street in the less restricted district.

ARTICLE IV
General Provisions

133-6 Continuation of existing use.

Nothing in this chapter shall be construed to prevent the continuation of any existing use of land and buildings in any district unless and until such use has been abandoned.

133-7 Injurious or obnoxious uses prohibited.

Any use or other establishment that may be injurious or obnoxious because of the production or emission of smoke, fumes, dust, odor, glare, refuse material, gas, pests, noise, vibration, radiation or light condition, or that endangers the health, safety, peace or enjoyment of the community or tending to its disturbance or annoyance is prohibited.

133-8 Minimum lot size.

Lot sizes shall be appropriate for the location and type of use and shall conform to the requirements of Article X of this chapter, unless the requirements of a particular district prescribe a larger minimum size than provided in Article X, in which case the provision requiring the larger minimum lot size shall control.

133-9 Fire and other ruins.

Owners or occupants of land shall not permit fire or other ruins to be left but shall remove same to ground level and fill to grade within one year of the damage. Owners who will rebuild as specified in 133-72 shall secure the property so as not to constitute a hazard or visual blight.

133-10 Parking

Parking for all land uses outlined in the Chapter, unless otherwise noted, shall adhere to the parking requirements specified in Chapter 202 Land Subdivision Regulations and/or Chapter 203 Site Plan Review Regulations.

133-11 Proposals impacting town services; statements from town agencies.

When any proposal, including applications for variances or special exceptions, may have a significant impact on town services, such as school enrollment, fire protection, maintenance and use of roads and sidewalks, police services, traffic safety, health, water or sewer, then statements from all agencies or departments of the town potentially affected may be required and considered as a condition of approval of said proposal or application.

ARTICLE IV – GENERAL PROVISIONS

133-12 **Junkyards.**

No junkyards are permitted in any of the districts other than the CH Heavy Commercial District.

- A. No junkyards are permitted in any of the districts other than the CH Heavy Commercial District;
- B. All junkyards must have a 6' high fence that screens the area from public view, per NH RSA 236:123;
- C. Junkyards must be located at least 1,000' from a Class I highway, 660' from a Class II, III, or III-a highway, and at least 300' from a Class IV, V, or VI highway per NH RSA 236:118; and
- D. Junkyards must meet the requirement for the operation or maintenance listed in NH RSA 236:114.

133-13 **Selling of local homegrown products.**

The selling of local homegrown produce and local homegrown farm products is permitted in all districts.

133-14 **Excavation**

- A. General: This section is enacted pursuant to the authority granted to the Town of Henniker to regulate earth excavation activities within its boundaries under the provision of RSA 155-E inclusive, as amended. [Added 3-10-2009]
- B. Regulator: The Planning Board for the Town of Henniker was designated the Regulator at the 1981 Town Meeting (Article 32), as provided in RSA 155-E:1(III) as amended, and shall have all the powers and duties granted thereto by RSA 155-E: inclusive. [Added 3-10-2009]
- C. Regulations: Pursuant to the responsibility as the regulator and in accordance with the provisions of RSA 155-E:11, as amended, the Planning Board has adopted a set of regulations (Chapter 201) and will from time to time amend said regulations governing earth excavation activities in the Town of Henniker. The intent of the regulations being to ensure that said activities are conducted in a safe manner in accordance with sound environmental practices and to further provide proper assurance that suitable reclamation of the affected areas is obtained. [Added 3-10-2009]
- D. If clay, sod, loam, sand or gravel is removed within 100 feet of any public highway, stream, roadway or waterway, the area shall be re-graded and redressed within 90 days of the removal of materials to assure that the premises will be left in a sightly condition and protected against erosion and washouts. [Revised 3-10-2009]

ARTICLE IV – GENERAL PROVISIONS

133-15 General use restrictions.

No building, structure or land shall be used except for the purposes permitted in the districts as specified in this chapter. Any use not listed shall be construed to be prohibited.

133-16 Certain uses not considered home business.

For the purpose of this chapter, retail sales outlets for items such as but not limited to snowmobiles, motorcycles, appliances, and automotive repair shall be considered commercial/services/technical use and not a home business.

133-17 One principal building allowed per lot.

There shall be only one principal building on a lot, except for Multi-unit dwelling(s) developments that are located in the RV Village Proper & CV Village Commerce Districts, Commercial Uses located in the CH, CM, CR, and CV Districts and condominium developments. [Revised 3-10-2010, 3-8-2011]

133-18 Yard and other outdoor sales. [Added 3-13-1996]

Yard sales, including flea markets and any other similar types of outdoor sales, shall not be conducted for more than 10 days in a calendar year, per tax lot. After each sale event, all evidence of sale and merchandise shall be removed from sight.

133-19 Use of capped foundations. [Added 3-12-1997]

A capped foundation may not be occupied as a permanent residence. Any occupancy of a capped foundation for temporary residential use for any length of time will be permitted only upon the issuance of a certificate of permitted use by the Code Enforcement Officer.

133-20 Fences around swimming pools. [Added 3-13-2001]

Construction of an in-ground swimming pool shall include safety fencing of at least four feet in height. The gate shall have a locking mechanism to deter unauthorized or unsupervised use of the swimming pool area.

ARTICLE V
RV Village Proper District

133-21 Purpose.

The RV Village Proper District provides a residential area in the built-up center of town, typical of many New England villages, that is close to business and community services. With added safeguards, certain other uses are permitted by special exception that can complement the Village Commerce District and serve the residents as well.

133-22 Land uses.

A. Permitted uses and uses allowed by special exception shall be as follows:

<p><u><i>RV - Permitted</i></u></p> <ul style="list-style-type: none">- Home rental of up to 2 apartments- Single-family dwellings- Two-family dwellings- Home business- Agricultural- Open space residential development- House of Worship- Schools-Use accessory to permitted use	<p><u><i>RV - Allowed by Special Exception</i></u></p> <ul style="list-style-type: none">- Home rental of 3 or more apts.- Home business/retail- Multi-unit dwelling- Commercial/professional- Use accessory to special exception- Bed & Breakfast Homes
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[Amended 3/8/2005, 3/10/2009, 3/9/2010]

- B. Only one home business shall be permitted per lot at any one time; provided, further, that off-street parking is provided on the premises as required in 133-22G1.
- C. Multi-unit dwellings of three or more, up to 40 units, shall be allowed by special exception only, provided that the ratio of area of unimproved land to the total combined area of living area, including all habitable floor area, driveways and roadway stated in Article X, is maintained. Multiunit dwellings greater than 40 units are not permitted. [Amended 9-13-1988; 3-12-1997]
- D. No building shall be constructed more than three stories above grade level.
- E. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings that are within the same lot.
- F. No building shall be constructed within 15 feet of side or back lot boundaries.

ARTICLE V – RV VILLAGE PROPER DISTRICT

G. Parking.

1. One parking space for each 500 square feet of floor space used for home business or home business/retail.
2. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way.

ARTICLE VI
RN Residential Neighborhood District

133-23 Purpose.

The RN Residential Neighborhood District provides a mixture of single- and two-family homes in neighborhoods removed from the center village. With additional safeguards, certain other uses are permitted by special exception that can complement these homes.

133-24 Land uses.

A. Permitted uses and uses allowed by special exception shall be as follows:

<p><u><i>RN - Permitted</i></u></p> <ul style="list-style-type: none">- Home rental of up to 1 apartment- Single-family dwellings- Two-family dwellings- Home business- Agricultural- Manufactured Housing- Open Space Residential Development- Use accessory to permitted use

<p><u><i>RN - Allowed by Special Exception</i></u></p> <ul style="list-style-type: none">- Home rental of 2 or more apts.- Home business/retail- Multi-unit dwelling- Use accessory to special exception- Bed & Breakfast Homes- Houses of Worship- Schools

[Revised 3/8/2005, 3/20/2009, 3/9/2010]

- B. Only one home business shall be permitted per lot at any one time; provided, further, that adequate off-street parking is provided on the premises, as 133-24H.
- C. Two home businesses shall be allowed per lot at any one time by special exception only.
- D. Multi-unit dwellings of three or more, up to 40 units, shall be allowed by special exception only, provided that the ratio of area of unimproved land to the total combined area of living area, including all habitable floor area, driveways and roadway stated in Article X, is maintained. Multi-unit dwellings greater than 40 units are not permitted. [Amended 9-13-1988; 3-12-1997].
- E. No building shall be constructed more than three stories above grade level.
- F. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- G. No building shall be constructed within 15 feet of side or back lot boundaries.

ARTICLE VI – RN RESIDENTIAL NEIGHBORHOOD DISTRICT

- H. One parking space for each 500 square feet of floor space used for home business or home business/retail. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way.

ARTICLE VII
RR Rural Residential District

133-25 Purpose.

The RR Rural Residential District provides for a mixture of agriculture and low-density rural living outside of the built-up districts of the community where public water and sewer services are not generally available. The low-density open areas complement and encourage agricultural uses that are characteristic of the town. With additional safeguards, certain uses appropriate to a rural setting are allowed by special exception.

133-26 Land uses.

A. Permitted uses and uses allowed by special exception shall be as follows:

<p><u>RR - Permitted</u></p> <ul style="list-style-type: none">- Home rental of up to 1 apartment- Single-family dwellings- Two-family dwellings- Home business- Agricultural- Open Space Residential Development- Use accessory to permitted use- Manufactured Housing	<p><u>RR - Allowed by Special Exception</u></p> <ul style="list-style-type: none">- Home rental of 2 or more apts.- Home business/retail- Manufactured Housing Park- Use accessory to special exception- Excavation on land accessible to a state highway by traveling a distance no greater than 1,000 feet on secondary roads- Bed & Breakfast Homes- House of Worship
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3/14/1989, 3/8/2005, 3/20/2009, 3/9/2010]

- B. No more than two home businesses shall be permitted per lot at any one time; provided, further, that adequate off-street parking is provided on the premises.
- C. No building shall be constructed more than three stories above grade level.
- D. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- E. No buildings shall be constructed within 15 feet of side or back lot boundaries. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way.

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

**ARTICLE VIII
Commercial District Regulations**

133-27 Regulations for commercial districts.

- A. All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this article, except that no building or commercial enterprise is permitted within 1,000 feet of town-owned land used for the Cogswell Spring Waterworks except by special exception.
- B. The uses of land permitted in the following commercial areas, as designated on the land use map that are stated in 133-29 through 133-32 of this article.

133-28 Regulations for all commercial districts.

- A. No building shall be constructed more than three stories above grade level.
- B. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- C. No buildings shall be constructed within 15 feet of side or back lot boundaries.
- D. One parking space for each 500 square feet of floor space of commercial, home business or home business/retail. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way. Reduction of these requirements may be permitted by special exception.
- E. Multi-unit dwellings of three or more, up to 40 units, shall be permitted in the CR, CR-1, CV and CM Commercial Districts by special exception only, provided that the ratio of area of unimproved land to the total combined area of living area, including all habitable floor area, driveways and roadway stated in Article X, is maintained. Multi-unit dwellings greater than 40 units are not permitted in any commercial district. No multi-unit dwellings are permitted in the CH District. [Amended 3-12-1997;3-13-2007]
- F. Drive-through facilities may be permitted as accessory uses but only by special exception. In addition to the requirements of 133-62, no drive-through facility shall be permitted within 100 feet of a residential lot. [Added 3-12-1997]
- G. No commercial retail building, defined as any building for commercial retail use, with a building footprint greater than 35,000 square feet will be allowed within any of the zoning districts in the Town of Henniker. [Added 3-13-2007]

133-29 Commercial uses in CH Heavy Commercial District.

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

The CH Heavy Commercial District provides a business and manufacturing area outside of the village with good highway access for non-retail types of commerce operations. It is located so that it will not be a detriment to the residential areas and will not cause undue traffic through the village proper.

<p><u>CH - Permitted</u></p> <ul style="list-style-type: none">- Commercial/manufacturing- Commercial/recreational- Commercial/retail- Commercial/services- Commercial/professional- Junkyard- Commercial/services technical- Agriculture- Commercial/light industry- Automotive service station- Single-family dwelling- Two-family dwelling- Home business- Home business/retail- Home rental of up to 2 apartments- Manufactured housing- Excavation- Use accessory to permitted use- House of Worship- Schools	<p><u>CH - Allowed by Special Exception</u></p> <ul style="list-style-type: none">- Home rental of 3 or more apts.- Manufactured Housing Park- Kennel- Sexually Oriented Business- Use Accessory to Special Exception
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[Amended 3/14/1989, 3/15/1995, 3/10/2009, 3/9/2010]

133-30 Commercial uses in CM Medium Commercial District.

The CM Medium Commercial District provides a business area outside of the village with good highway access for light manufacturing types of commerce operations. It is located so that it will not be a detriment to the residential and manufacturing areas and be able to provide services to the surrounding community.

(continued on next page)

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

- CM - Permitted
- Commercial/light industry
 - Commercial/recreational
 - Commercial/retail
 - Commercial/services
 - Commercial/professional
 - Agriculture
 - Commercial/services technical
 - Automotive service station
 - Single-family dwelling
 - Two-family dwelling
 - Home business
 - Home rental of up to 2 apartments
 - Manufactured housing
 - Excavation
 - Use accessory to permitted use
 - House of Worship
 - Schools

- CM - Allowed by Special Exception
- Home rental of 3 or more apts.
 - Manufactured Housing Park
 - Multi-Unit Dwelling
 - Home business/retail
 - Use Accessory to Special Exception
 - Bed & Breakfast Homes

[Amended 3-14-1989, 3/8/2005, 3/10/2009, 3/9/2010]

133-31 Commercial uses in CR Commercial Recreational District.

CR Commercial Recreational District provides for commercial sales and services that complement the recreational nature of the area, such as lodgings, restaurants and retail sales and services related to recreational uses.

- CR - Permitted
- Home Business
 - Commercial/recreational
 - Commercial/retail
 - Commercial/services
 - Commercial/professional
 - Agriculture
 - Single-family dwelling
 - Two-family dwelling
 - Home rental of up to 2 apartments
 - Manufactured housing
 - Excavation
 - Use accessory to permitted use
 - House of Worship
 - Schools

- CR - Allowed by Special Exception
- Home rental of 3 or more apts
 - Use Accessory to Special Exception
 - Multi-Unit Dwelling
 - Home business/retail
 - Bed & Breakfast Homes

[Amended 3/14/1989, 3/8/2005, 3/20/2009, 3/9/2010]

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

- A. The CR-1 District will have the same description and allowances as the CR zone with the following additions [Added 3-13-2007]

CR1 Permitted
- Open space residential development
- House of Worship
- Schools

CR1 Allowed by Special Exception
- Excavation

133-32 Commercial uses in CV Village Commerce District.

The CV Village Commerce District provides business sales and services to the center area of town that are typical to many New England villages. These businesses serve the village district as well as the community at large.

CV Permitted
- Home Business
- Commercial/recreational
- Commercial/retail
- Commercial/services
- Commercial/professional
- Agriculture
- Single-family dwelling
- Two-family dwelling
- Home rental of up to 2 apartments
- Home business/retail
- Use accessory to permitted use
- House of Worship
- Schools

CV Allowed by Special Exception
- Home rental of 3 or more apts.
- Use Accessory to Special Exception
- Multi-Unit Dwelling
- Commercial/services/technical
- Bed & Breakfast Homes

[Amended 3/8/2005, 3/10/2009, 3/9/2010]

133-33 ED Educational District. [Amended 3-19-2004]

- A. The ED Educational District provides a zone in which educational organizations may be allowed to build or expand facilities.

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

- ED Permitted
- Home Business
 - Classrooms
 - Dining Halls
 - Offices
 - Libraries
 - Health Care Facilities
 - Single-family dwelling
 - Maintenance and Storage Buildings
 - Agriculture
 - Use accessory to permitted use
 - House of Worship
 - Schools

- ED Allowed by Special Exception
- Auditoriums
 - Assembly Halls
 - Dormitories
 - Theaters
 - Sport Arenas and Buildings
 - Use Accessory to Special Exception
 - Bed & Breakfast Homes
 - Fraternity House
 - Sorority House

[Amended 3-8-2005, 3-10-2009]

- B. For single-family development, the following lot size dimensions shall apply:
1. **With Town Water and Sewer:** *20,000 sq. ft and 100 feet of frontage*
 2. **With no Town Water and Sewer:** *2 acres and 125 feet of frontage*
- C. For all uses in this zone, except for single-family dwellings, the total area (footprint) of building coverage and other impermeable surfaces shall not exceed 50% of the lot or parcel. 100 feet of frontage (if on town water and sewer) or 125 feet of frontage (not on town water and sewer) are also required for each lot or parcel
- D. Land owners must meet parking requirements and lot coverage restrictions within a total planned area, which must be approved by the Planning Board.
- E. Parking regulations are as follows:
- | | |
|---|---|
| Classrooms and dining halls: | 1 parking space for every 5 seats |
| Offices and libraries: | 1 parking space for every 300 square feet of gross floor area |
| Health care facilities and sport arena and buildings: | 1 parking space for every 300 square feet of gross floor area |
| Auditoriums, theaters, houses of worship, assembly halls: | 1 parking space for every 4 seats of gross assembly area |

ARTICLE VIII – COMMERCIAL DISTRICT REGULATIONS

Fraternities, sororities, and dormitories	1 parking space for every bedroom in the structure
Maintenance and storage buildings	1 parking space for every 500 square feet of gross floor area
Single-Family Dwellings	2 parking spaces for each dwelling and 1 parking space for each 500 sq. ft. of floor space used for a home business

[Revised 3-10-2009]

- F. The parking regulations above may be modified at the discretion of the Planning Board if the applicant establishes that there is adequate parking for the proposed structure and/or use on applicant-owned land.
- G. No parking space or access driveways shall be located within 10 feet of any side or back lot boundaries, and no parking spaces shall be located within 10 feet of a public right-of-way.
- H. No building shall be constructed more than three stories above grade.
- I. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings that are within the same lot.
- J. No building shall be constructed within 15 feet of side or back lot boundaries.

ARTICLE IX
FD Federal Land District

133-34 Location.

The FD Federal Land District begins east of the Route 114 bridge across the Contoocook River and covers an extensive area of lowland in the eastern and southeastern part of the town.

133-35 Purpose.

This land is owned by the United States Army Corps of Engineers (USACE) for storage of upstream floodwaters in connection with the operation of the Hopkinton flood control dam. When the water level must be raised in the Elm Brook reservoir and at the dam to prevent downstream flooding, high water levels in the FD areas often require the closing of town roads which traverse this land.

133-36 Permitted uses.

- A. Certain agricultural uses in parts of these areas are allowed by the United States Army Corp of Engineers by lease agreements with individual farmers. The remainder is available for conservation and recreation purposes as permitted by the owner.
- B. All uses and proposed structures must be specifically authorized by the USACE, and further must conform to all requirements of the RR Rural Residential Districts in this chapter.

133-37 Areas of special flood hazard.

Specific construction limitations and use requirements affect certain lands in the Contoocook River Valley which have been designated "areas of special flood hazard" and which are identified on the Flood Insurance Rate Map (FIRM) issued by the Federal Insurance Administration, together with an engineering report dated 1977. Both are available in the Town Hall. The lands most affected lie near the river between Route 114 and the Hillsboro town line.

**ARTICLE X
Lot Size Regulations**

133-38 Lot size and shape.

Lot size, width, depth, shape and orientation shall be appropriate for the location of the proposed use.

133-39 Minimum lot sizes.

- A. Minimum lot sizes shall be determined by the minimum lot size required by the individual zoning districts.
- B. Land on Class VI streets, and land on primitive public ways not maintained by the town, shall not be subdivided.
- C. Land on Class V streets with gravel surfaces that do not meet current Town road standards may be subdivided with a minimum of 10 acres. [Amended 3-13-2007]
- D. Land on Class V streets that are seasonally maintained by the town may be subdivided with a minimum lot size of 10 acres, subject to the filing of a release-of-responsibility form which is available from the Selectmen's office.
- E. Waterfront lots in all zones shall have a minimum shore frontage of 125 feet and a minimum area of two acres, or as required by the New Hampshire Water Supply and Pollution Control Commission, or required by the individual zoning district, or by state law, whichever is greater. Waterfront lots shall have legal access to at least a Class B gravel road. Such lots shall have no construction of dwellings, major buildings or septic systems within 75 feet of the shoreline. Lots bordering on ponds whose surface is at least 10 acres and lots bordering on the Contoocook River shall also be so regulated.
- F. Each lot, including those dedicated to open space or to other common use, shall have frontage on a public right-of-way. Frontage access for each area of open space or common land shall be at least 25 feet wide.
- G. Parking space required for any residences for students, for fraternal housing or for any institutional personnel may be provided off the premises of the building served.
- H. All driveways are to be located at least 75 feet from a street line intersection for all uses except for one- and two-family dwellings.

ARTICLE XI – SIGNS

133-40 Lot size table. [Amended 3-13-2007]

The lot size requirements described in 133-40 are specified as follows:

Minimum Lot Size Area and Frontage*
For Single-Family and Two-Family Dwellings
 TABLE

Zoning District	Town Water and Sewer	No Town Water and Sewer	Minimum Frontage
RV	20,000 sq. ft.	2 acres	125 feet
CV	20,000 sq. ft.	2 acres	100 feet
CM	2 acres	2 acres	125 feet
CR	2 acres	2 acres	125 feet
CR-1	5 acres	5 acres	125 feet
CH	2 acres	2 acres	125 feet
RN	2 acres	2 acres	200 feet
RR	5 acres	5 acres	250 feet

*All lots on gravel roads must meet the acreage requirement of 133-39C.

Minimum Lot Size Area and Frontage
For Multifamily Dwellings (3 or more Units)
 TABLE

Zoning District	Town Water and Sewer-plus*	No Town Water and Sewer-plus*	Minimum Frontage
RV	20,000 sq. ft. + 10,000	2 acres + 1 acre	100 feet
CV	20,000 sq. ft. + 10,000	2 acres + 1 acre	100 feet
CM	2 acres + 1 acre	2 acres + 1 acre	125 feet
CR	2 acres + 1 acre	2 acres + 1 acre	125 feet
CR-1	5 acres + 1 acre	5 acres + 1 acre	125 feet
CH	2 acres + 1 acre	2 acres + 1 acre	125 feet
RN	2 acres + 1 acre	2 acres + 1 acre	125 feet
<p>* The additional amount in this column is required for each additional unit over two in a multi-unit dwelling. Example shown for a four-unit dwelling in the RV and CV Districts: 20,000 square feet minimum for 2 units + 10,000 square feet for 3rd unit + 10,000 square feet for 4th unit = 40,000 square feet minimum lot size required.</p>			

ARTICLE XI – SIGNS

133-41 Multi-unit ratio. [Amended 3-12-1997, 3-13-2007]

In those districts where multiunit dwellings of three or more units are permitted, the following ratios of area of unimproved land to the total combined area of living area, including all habitable floor area, and driveways, and roadway shall be maintained:

<u>District</u>	<u>Ratio</u>
RV	6:1
CV	6:1
CM	10:1
CR	10:1
CR-1	10:1
RN	10:1

133-42 Multi-unit dwellings of three or more. [Amended 3-12-1997]

In addition to meeting the lot size and lot ratio requirements of this chapter, development plans for multi-unit dwellings of three or more units shall demonstrate to the Henniker Planning Board that the following requirements, in addition to any other applicable requirements, are met:

- A. The development of multi-unit dwellings of three or more units shall require that an impact study, deemed by the Planning Board to be proper, adequate and commensurate with the size and scope of the project, be conducted.
- B. A landscaped buffer shall be provided to assure that the development of the project conforms at its boundaries with the character of the adjoining land and its uses. These buffer areas shall be of sufficient width to provide privacy and noise protection, but in no case shall the width of such buffer be less than the setbacks otherwise required in that zoning district.
- C. Storage areas, waste collection areas and service areas shall be fenced or screened from on-site and adjoining parking areas and from neighboring properties.
- D. There shall be adequate traffic access to and from town streets to ensure the safety of vehicles, pedestrians and bicycles.
- E. To minimize the likelihood that public safety will be endangered by extensive use of interior roads and parking areas for recreation, there shall be adequate provision for on-site recreational needs of the residents of the proposed development.
- F. There shall be adequate access to each structure for fire, police and medical emergency vehicles and personnel.

ARTICLE XI
Signs

133-43 Purpose.

It is the purpose of this article to provide reasonable uniformity in the size and treatment of signs within the various zoning districts. Signs should not detract from the overall rural character which the town, through its Master Plan, wants to maintain. The town recognizes the need to protect the safety and welfare of the public and the need for reasonable and adequate business identification and advertising.

133-44 Sign regulations.

- A. No sign, flag or advertising device shall be erected on any premises or be visible from the outside of any structure in the Town of Henniker, except as specified in this article, including every sign, flag and advertising device affixed to a vehicle and allowed to remain on the premises with the intent to serve as a sign.
- B. If signs are located in an area in which signs are subject to regulation either by the federal government, because they are appurtenant to interstate and federal-aid primary highways, or by the State of New Hampshire, because they are appurtenant to primary or secondary highways and roads of the state, then all applicable federal, state and local sign regulations must be complied with. [Amended 3-12-1997]
- C. Flags and banners. Each establishment shall be allowed one flag or banner, not to exceed limits established in this Article XI. [Amended 3-11-1992]
- D. Flashing signs. No sign shall be intermittently illuminated or flashing, nor be of a traveling light type, except such portions of a sign that consist solely of internally lighted indicators of time or temperature.
- E. Illumination. No neon, tubular glass, fluorescent or internally lighted sign shall be permitted in any district. In all districts, signs may be illuminated only between the hours of 7:00 a.m. and 11:00 p.m., or during the hours the premises are open to the public, except that residential nameplates, street directional and government signs may be illuminated. Illumination fixtures shall be arranged to direct the light away from streets and away from adjoining structures. [Amended 3-12-1997]
- F. Sign movement. No sign shall move or contain moving parts, including but not limited to pinwheels or decorative tinsel.
- G. Maintenance. All surfaces and supporting or mounting structures, whether erected prior to the effective date of this chapter or not, shall be kept in satisfactory condition. Failure to correct a condition within 30 days after notification shall constitute a violation of this chapter, subject to the prescribed remedies.

ARTICLE XI – SIGNS

- H. Sign measurements. The size of the sign shall be the surface area and shall be considered to include the inscriptions thereon. The supporting framework and bracing incidental to the sign shall not be designed to attract attention. Where the sign consists of letters, symbols and devices affixed to the surface of a building, the area measured shall be the smallest quadrangle, which encloses the limits of all the letters, symbols and devices. A double-faced sign shall be treated as a single-faced sign for purposes of calculating sign areas.
- I. Location. No privately owned sign shall project over a public or private way, project above the parapet or eaves of a building or be located in such a position as to endanger highway, street or alley traffic by obscuring a clear view or by confusing the official traffic control signs and signals. No sign shall be placed closer than 20 feet from side or rear property lines. A sign may be at the front property line, but the other provisions of this chapter shall be followed. The required setback of a sign may be increased when, in the opinion of the Board of Selectmen, the sign will interfere with the sight distance from driveways, intersections, along streets or roads, or otherwise present a safety hazard.
- J. Sign height. The height of signs shall not exceed 30 vertical feet from ground level of the sign support to the top of the sign and any of its appendages, unless granted a waiver by the Board of Selectmen.
- K. Nonconforming. Any nonconforming sign erected prior to the adoption of this chapter may be continued and maintained. Any changes thereafter to such sign shall be made in conformance with this chapter.
- L. All new signs erected after the effective date of this chapter shall require a permit approved by the Board of Selectmen in accordance with this chapter.

133-45 Sign types.

- A. Principal business sign. The principal sign for a business shall be considered an advertising sign which may be attached to the principal business building pertaining only to that specific business physically located within. A single business building shall comply with the table in 133-46. If it is a multi-business building, the building must have a multiple business listing sign in accordance with 133-46. [Amended 3-12-1997]
- B. Multiple business listing signs. A single multiple business listing directory sign shall be permitted for businesses that are co-located within a common structure. In addition to the multi-listing signs, the CH Heavy Commercial and the CM Medium Commercial Districts are allowed to have up to a twenty-square-foot principal business sign on the building, and in the RV, RN, RR, CV and CR Districts, the business may have a three-square-foot sign on the building to advertise their exact location within the building. [Amended 3-12-1997]

ARTICLE XI – SIGNS

- C. Freestanding business signs. In addition to the principal business sign, one additional, off-site, freestanding advertising sign shall be permitted.
- D. Directional signs. Signs that are remotely located from the principal place of a local business, organization or group of residences that do not contain advertising in any form shall be considered directional signs. The number of directional signs utilized to provide direction to the public shall be limited to such a number deemed by the Board of Selectmen to be adequate and to reasonably serve the intended purpose.
- E. Portable/seasonal/temporary signs. A portable sign, designed with changeable letters, shall be permitted four times a year for periods of up to 30 days in addition to the signs permitted in this article.

133-46 Permitted sign sizes in districts.

The maximum size allowed in each district for each sign type shall be as follows:

Maximum Size for Districts
(square feet)
TABLE

Sign Type	RV	RN	RR	CV	CH	CM	CR	ED*
Principle Business	8	8	8	40	40	40	40	20
Multiple business listing	8	8	8	40	40	40	40	20
Freestanding business	8	8	8	40	40	40	40	20
Directional	3	3	3	3	3	3	3	3
Portable/seasonal/temporary	8	8	8	20	20	20	20	10
* [Added 3-8-2005]								

133-47 Sign permits.

- A. The erection of principal business signs, multiple business listing signs, freestanding signs, directional signs and portable/seasonal/temporary signs, described in 133-46 of this article, require the issuance of a permit by the Board of Selectmen.
- B. A temporary sign not exceeding 20 square feet in area advertising the sale or construction on the premises on which it is located until such time as construction or sale is completed shall be allowed and shall not require a permit.
- C. Applications for a sign permit shall include location, sign size and method of illumination. An application fee set by the Board of Selectmen shall be required.

ARTICLE XII
Home Business

133-48 Home occupation or profession. [Amended 3-13-1996]

A home occupation or profession shall consist of any use customarily conducted entirely within a dwelling, or accessory building, by the principal occupant only, which use is clearly incidental and subordinate to the dwelling use. Home occupation or profession shall include dressmaker, artist, barber shop, beauty parlor, craftsman, writer, teacher, musician, lawyer, doctor, dentist, architect, engineer or practitioner of any other profession or service which may be unobtrusively pursued. Such uses as clinic, mortician, animal hospital, kennel and other of similar nature shall not be considered a home occupation.

133-49 General regulations.

- A. There shall be no display of goods or wares visible from the street. However, home food and home garden produce may be exposed for sale.
- B. The dwelling and lot occupied shall not be rendered objectionable to the neighborhood because of exterior appearance, emission of odors, gas, glare, smoke, dust, noise, electrical disturbance, hours of operation or in any other way.
- C. In a multifamily dwelling, the use shall in no way become objectionable or detrimental to any residential use within the multifamily structure. It shall include no features of design not customary in buildings for residential use.
- D. No outside storage of equipment will be permitted in connection with the home occupation.
- E. The number of persons employed shall be no more than two in addition to the resident.

133-50 Home businesses involving sale of previously manufactured goods.

Any home business that involves the resale of previously manufactured goods is permitted only in districts so specified in this chapter; provided, further, that all conditions and regulations for home business as stated in 133-49 of this chapter are met.

**ARTICLE XIII
Administration**

133-51 Enforcement by Board of Selectmen.

It shall be the duty of the Board of Selectmen, and the Board is hereby authorized, to enforce the provisions of this chapter.

133-52 Permit required; regulations implementing permit system.

After passage of this chapter, it shall be unlawful to erect or expand any structure or building, to change any use of a structure or building or to relocate any structure or building in any zoned district without first obtaining an appropriate permit from the Board of Selectmen. This permit is to ensure that the proposed construction conforms to the permitted uses in the zone that it will occupy and also that it is located a proper distance from the boundaries of the lot on which it is to be built, and in all other respects conforms to this chapter. The Selectmen shall adopt regulations implementing the permit system.

133-53 Issuance of permit.

The Board of Selectmen shall issue the permit requested when such permit is in accordance with the provisions of the chapter or when a special exception has been granted by the Board of Adjustment.

133-54 Injunction or other legal action to enforce chapter.

Upon any well-founded information that this chapter is being violated, it is the duty of the Board of Selectmen to take immediate steps to enforce the provisions of this chapter by seeking an injunction in Superior Court, or by any other legal action as set forth in RSA 676:17, 676:17-a and 676:17b.

133-55 Permit not required for certain construction. [Amended 3-12-1991; 3-13-2001, 3-12-02]

To provide all homeowners with an exemption from building permits, building permit fees, building inspections and building permit oversight by any and all Town of Henniker officials for all home improvements with a materials value of five thousand dollars (\$5,000) or less. The exemption will also apply to work performed by the homeowner or his agent and specifically will allow all labor (of any value) to be exempted. The homeowner will be relied upon to affirm the materials cost if the Board of Selectmen vote to request that specific affirmation in the open session of a regular meeting of the board. Only elected board members may make the affirmation request, and the authority for this purpose may not be delegated. One formal majority vote by the board for each request to each homeowner is also required. The homeowner's receipts for those materials will constitute proof. No additional requirement shall be made. The purpose of this exemption is to allow homeowners to make improvements that the homeowner deems reasonable to their property without interference from the Town.

ARTICLE XIV
Board of Adjustment

133-56 Creation and appointment.

- A. Within 30 days after the adoption of this chapter, and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to the Board of Adjustment of five members, and not more than five alternate members, whose duties shall conform to the provisions of RSA 673:33. Thereafter as terms expire or vacancies occur, the appointing authority shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment.
- B. The Board of Adjustment here provided shall conform in membership and term of office to the provisions of said RSA 673:3 and 673:5.

133-57 Jurisdiction.

The Board of Adjustment shall have the following powers:

- A. Appeal of Administrative Decision: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or interpretation by any administrative official, including, but not limited to the Planning Board, see RSA 676:5, in the interpretation, application, or enforcement of this chapter;
- B. Variance: To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done (See RSA 674:33 I);
- C. Special Exceptions: All special exceptions are to be made subject to the general purpose and intent of the zoning ordinance and shall be made in accordance with the general or specific rules contained in the ordinance (See RSA 674:33 IV);
- D. Equitable Waiver of Dimensional Requirements: To hear and decide on situations where a good faith error was made in the siting of a building or other dimensional layout issue, in accordance with the requirements of RSA 674:33-a;
- E. To act and hear appeals, as per RSA 673:1(V), as amended, as the Building Code Board of Appeals;
- F. To issue a certificate of approval which must accompany an application for a local junkyard license, as per RSA 236:115.

[Revised 3-10-2009]

ARTICLE XIV – BOARD OF ADJUSTMENT

133-58 Appeal of a decision made by an administrative official.

- A. On appeal from an order or decision made by an administrative official, the Board shall have the power to decide the following questions:
1. Determination of the meaning of any provision of the text of this chapter;
 2. Determination of the exact location of any district boundary as shown on the official zoning map; and
 3. Determination of the appropriateness of the reasons for withholding a permit.
- B. The Board shall hear and decide appeals de novo and review on appeal any order, requirement, decision, or determination made by an administrative official in the enforcement or application of this chapter. Upon such appeal, the Board may, in accordance with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify any such order, requirement, or decision, as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

133-59 Granting a Variance.

- a. The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Chapter, under the powers specified in RSA 674:33 I (b).

[Amended 3/9/2010]

133-60 Additional conditions and safeguards for the granting of variances.

In authorizing a variance, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and the community, including but not limited to a time limit when the variance will expire if not utilized.

133-61 Special Exception uses permitted under certain circumstances.

Special exception is a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, order, comfort, convenience, appearance, prosperity or general welfare. Such a use may be permitted in a zoning district as a special exception, when specific provisions for such special exceptions are explicitly included in this chapter.

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133-62 Special Exception general conditions.

The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant a permit for a special exception. All uses requiring a special exception are judged by the Board of Adjustment on a case-by-case basis.

- A. In granting a special exception, the Board of Adjustment shall require that the lot on which a use is proposed must be adequate and appropriate.
- B. Before granting a permit, the Board shall determine that all the provisions set forth in this article and all other conditions enumerated in the chapter are met and shall hold an abutters' hearing to hear any valid objections based on demonstrable fact.
- C. The Board, in acting on an application for a special exception, shall take into consideration the following conditions. In addition, the Board shall not be limited by these conditions and may at its discretion deny a proposed use.
 - 1. The specific site is an appropriate location for the use or structure.
 - 2. The use requested is allowed by special exception.
 - 3. The use will be compatible with neighboring land uses.
 - 4. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
 - 5. That granting the permit would be in the public interest.
 - 6. That the proposed use would not create hazards to the health, safety or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.
 - 7. That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare or unsightliness.

133-63 Special Exception additional conditions and requirements.

In approving an application for a special exception, the Board of Adjustment may further impose relevant conditions as specified in the individual district's requirements, and the Board also may impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of the chapter, including but not being limited to the following:

- A. Screening of part or all of the premises of the proposed use by walls, fencing, plantings or suitable on-site landscaping.

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- B. Modification of the design of any building involved in the proposed use, and limiting the lot coverage or height of buildings because of obstruction to view and reduction of sunlight and air to adjacent properties.
- C. Parking facilities greater than those otherwise required under this chapter.
- D. Limitation of the number of occupants or employees upon the premises, and restrictions of the method and/or time of operation and use, and of the size or extent of facilities.
- E. Increasing the required lot size or yard dimensions in order to protect the adjacent properties.
- F. Controlling the location and number of vehicular access points to the property.

133-64 Special Exception Time Limits

- A. If the use or construction so authorized by the granting of a Special Exception has not commenced within a two year period from the date of the decision, then the Special Exception shall be deemed to have expired and the ZBA's decision rendered null and void.
- B. If after commencement, a Special Exception is abandoned or discontinued for a period of two years, then the Special Exception shall be deemed to have expired and cannot be re-established without a new application process and the affirmative decision of the ZBA.

133-65 Equitable Waivers of Dimensional Requirements

- A. Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions.
- B. The ZBA may grant a waiver only if each of the four findings, as outlined in RSA 674:33-a (I) are made.
- C. If it can be demonstrated that the violation has existed for ten years or more and that no enforcement action was commenced against the violation during that time by the municipality or by any person directly affected, only the findings in RSA 674:33-a (I) (c and d) need to be met.
- D. Once a waiver is granted, the property is not considered to be a nonconforming use and the waiver does not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance.

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- E. The application and hearing procedures are governed by RSA 676:5-7; rehearings and appeals are governed by RSA 677:2-14.

[Revised 3-10-2009]

133-66 ZBA Procedure.

- A. The Zoning Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions on this chapter and the provisions of RSA 676:1, as amended.
- B. Whenever an application is made to the Board of Adjustment, a public hearing shall be held pursuant to the requirements of RSA 676:7, as amended.
- C. When an appeal is filed with the Board of Adjustment, it must also be filed with the officer with whom the appeal is taken. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
- D. The Board of Adjustment shall notify all abutters of any proposed land use application by certified mail not less than five days before the date of any public hearing regarding said site. The names and addresses of the abutters shall be supplied by the applicant on the plat plan to be submitted to the Board of Adjustment. The applicant shall pay the total cost of posting and mailing prior to the hearing.
- E. Following the public hearing of an appeal, the Board shall, in accordance with RSA 676:3, as amended, notify the applicant in writing of the decision and have the decision available for public inspection within 144 hours of such vote.
- F. A special exception, equitable waiver of dimensional requirements, or variance will require an application and may additionally require a site plan duly made to the Board of Adjustment.
- G. A site plan for the proposed development of a site seeking a special exception or variance shall provide the following information where applicable:
 - 1. The lot dimensions and any bounding streets and their right-of-way and pavement widths.
 - 2. Location and dimensions of existing or required service areas, buffer zones, landscaped areas, recreational areas, signs, rights-of-way, streams and drainage and easements.
 - 3. All existing buildings or other structures with their dimensions.

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4. All proposed buildings, structures or additions with their dimensions indicated on the proposed plan.
5. Indicate all setback (front, rear, side) dimensions and building heights.
6. Computed lot and building areas and percentage of lot occupancy.
7. Elevations or contours, if required or if relevant.
8. Location and number of parking spaces and lanes with their dimensions.
9. Any required loading and unloading and trash storage areas.
10. Dimensions and directions of traffic lanes and exits and entrances.

[Revised 3-10-2009]

133-67 Motion for Rehearing

- A. Any party to the action or proceedings may appeal any order or decision of the Zoning Board of Adjustment, or any person directly affected thereby, by applying for a rehearing. The request for a rehearing may be in respect to any matter determined in the action or proceeding, or covered or included in the order; and the Board of Adjustment may grant such rehearing if, in its opinion, good reason therefore is stated in the motion. For purposes of this section the appeal period for a rehearing shall be as specified by RSA 677:2, as amended.
- B. A motion for rehearing made under Part A of this Section shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Board of Adjustment shall be taken unless the appellant shall have made application for rehearing as provided for in Part A of this Section; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a Court unless the Court, for good cause shown, shall allow the appellant to specify additional grounds.
- C. Upon the filing of a motion for rehearing, the Board of Adjustment shall either grant or deny the application, or suspend the order or decision complained of pending further consideration. If the Board takes no action on the motion within the appeal period as specified by RSA 677:3, as amended, or does not request an extension of time from the appellant, the appellant can assume the motion has been denied. Any order of suspension may be upon such terms and conditions as the Board of Adjustment may prescribe.

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- D. Pursuant to RSA 676:6, as amended, the appeal shall stay any order or other enforcement action until such time as the appeal has been acted on.

[Revised 3-10-2009]

133-67.1 Appeal from Decision on Motion for Rehearing

Any person aggrieved by any order or decision of the Board of Adjustment may apply to the Superior Court, within the appeal period as specified by RSA 677:4, as amended, by sworn petition, setting forth that such decision or order is illegal or unreasonable, in whole or in part, and specifying the grounds upon which the same is claimed to be illegal or unreasonable. [Added 3-10-2009]

ARTICLE XV

[Removed 3-10-2009]

ARTICLE XVI
Non-conforming Uses and Non-complying Structures

133-68 Continuation of existing non-complying use.

Any lawful building or use of a building or premises or parts thereof in existence at the time of the adoption of this chapter, or of any amendment hereto, may be continued although such building or use does not comply to the provisions hereof.

133-69 Change and expansion of non-conforming use. [Amended 3-9-1999]

No non-conforming use may be changed to another non-conforming use. A non-conforming use may be enlarged or extended only in accordance with RSA 674:19.

133-70 Enlargement or extension of non-complying structures. [Amended 3-9-1999]

A non-complying structure may be enlarged or extended, provided that the enlargement or extension complies with the provisions of this chapter.

133-71 Change of non-conforming use to permitted use.

A non-conforming use, if changed to a use permitted in a district in which it is located for a period of four months or more, shall not be changed back to a non-conforming use.

133-72 Abandonment of non-conforming use.

A non-conforming use shall be considered to be abandoned if the use has been discontinued for a period of two years. No abandoned non-conforming use may be resumed.

133-73 Damage by fire.

If a non-complying structure or a non-complying structure housing a non-complying use is damaged by fire, explosion or other catastrophe, the Board of Selectmen may issue a permit for the rebuilding and restoration of such building which may not be greater in volume or floor space than the original structure unless any addition conforms to the provisions of this chapter. Application for a building permit and initiation of construction to restore the non-complying structure must occur within two years of the date of the damage.

ARTICLE XVII
Penalty

133-74 Violations and penalties.

Upon conviction thereof, every person, firm or corporation violating any of the provisions of this chapter shall pay a civil fine of not more than \$275 for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator received written notice from the town that he or she is in violation of the chapter, whichever date is earlier. In any legal action brought by the town to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any provision of this chapter, or to enforce any Planning Board, Zoning Board of Adjustment or Building Code Board of Appeals decision, or to seek the payment of any fine levied under this section, the town may recover its cost and reasonable attorneys' fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action.

**ARTICLE XVIII
Miscellaneous**

133-75 Amendment of chapter.

This chapter may be amended as provided by RSA 675:3, as amended.

133-76 Greater restrictions to prevail.

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

133-77 Repeal.

Upon the valid adoption of this chapter pursuant to RSA Title 64, the existing Zoning Ordinance and all amendments thereto are hereby repealed. In the event that the "Amendment to the Zoning Ordinance for the Town of Henniker" is not adopted, then the existing Zoning Ordinance and all amendments thereto shall continue to be in full force and effect.

ARTICLE XIX
Natural Preserve Areas

133-78 Purchase of space; designation as natural preserve areas.

- A. As the needs of the town require, the town may purchase such space for the purpose of maintaining natural preserve areas. The natural preserve areas will maintain wild, undeveloped areas of Henniker for managed forest resources, recreational values, wildlife habitats and unspoiled natural beauty. Expected uses may include conservation, pedestrian trails, camping, swimming and educational uses.
- B. Those lots owned by the Town of Henniker or otherwise determined to be areas set aside for conservation by organizations, private or public, are designated natural preserve areas.

133-79 Regulation by covenant and deed restrictions.

The use of these lots, when superimposed over any other zoning district, shall be regulated by any covenants or deed restrictions related to these lots, provided that they conform to the regulations of the zoning districts in which they are located. The names and location of these lots may be obtained from the Selectmen's office.

ARTICLE XX
Manufactured Housing Parks
[Added 9-13-1988]

133-80 Purpose.

It is the purpose of this article to provide reasonable uniformity in the size and treatment of manufactured housing in manufactured housing parks within the various zoning districts in order to promote the general health and welfare of the residents of Henniker. For the purposes of this article, "park" shall mean a manufactured housing park. For the purposes of this article, "unit" shall mean a manufactured housing unit.

133-81 Exemption for conforming units; storage.

- A. Any manufactured housing unit lawfully situated in the Town of Henniker at the effective date of this article which conforms to all health and other regulations of the State of New Hampshire and the Town of Henniker shall be exempt from the provisions of this article for so long as said unit is not moved from the lot on which it is located at the effective date of this article.
- B. Nothing in this chapter shall be construed to prohibit the storage of any unit if it is not used for living or sleeping purposes.
- C. Where these regulations are in conflict with other ordinances or regulations, the more stringent will apply.

133-82 Permitted locations.

- A. Manufactured housing units shall be permitted on individual lots, in manufactured housing parks and in manufactured housing subdivisions. Manufactured housing parks are allowed by special exception in the RR Rural Residential, CM Medium Commercial and CH Heavy Commercial Districts.
- B. Office or construction trailers are permitted in all zoning districts on a temporary basis by specific permission of the Board of Selectmen.
- C. Manufactured housing parks shall be located on a well-drained site properly graded to ensure proper rapid drainage and freedom from stagnant pools of water. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable sudden flooding, subsidence or erosion which would expose persons or property to hazards.
- D. Units not located in manufactured housing parks shall comply with requirements of lot size, frontage, space limitation and other reasonable controls that a single-family dwelling in the same zoning district must meet. This will include but not be limited to:

ARTICLE XX – MANUFACTURED HOUSING PARKS

1. Those regulations as set forth in this chapter.
2. Town of Henniker Subdivision regulations (Chapter 202 of the Code of the Town of Henniker), as amended.
3. Approval of septic system design and construction by the New Hampshire Water Supply and Pollution Control Commission.
4. Driveway permit from the Town of Henniker Board of Selectmen.
5. All applicable local and state fire and safety regulations.

133-83 General requirements.

- A. The establishment, operation or expansion of a manufactured housing park shall require a permit from the Town of Henniker Board of Selectmen in accordance with the procedures set forth in 133-97 of this article.
- B. All electrical, sewer, gas, water and communication lines shall be installed underground.
- C. All parks shall provide not less than 33% of the total land area for public open space to be used by the occupants of the park for recreational purposes.
- D. All parks shall provide and maintain, in good condition, a buffer strip at least 10 feet in width adjoining the boundaries of the park, planted with trees or shrubs, for the purpose of providing a permanent screen.

133-84 Park management.

- A. There shall be a caretaker/attendant, whose legal residence shall be within the park. The park owner or licensee may be the caretaker/attendant.
- B. The caretaker/attendant shall be in charge of the park at all times and shall be responsible, with the licensee, for compliance with the provisions of this chapter.
- C. The person to whom a license for a manufactured housing park is issued shall operate the park in compliance with this article and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and satisfactory condition.
- D. The park management shall notify park occupants of all applicable provisions of this article.

ARTICLE XX – MANUFACTURED HOUSING PARKS

- E. The park management shall be responsible for the connection and disconnection of each unit and all utilities to that unit, including the placement of each unit on its stand and ensuring the unit is securely installed.
- F. The park management shall maintain a register of all park occupants and shall make that register available to any civil authority inspecting that park.
- G. The license shall be conspicuously posted in the park office or on the park premises at all times.

133-85 Responsibilities of park occupant.

The park occupant shall comply with all applicable requirements of this article and shall maintain his/her unit, its facilities and equipment in good repair and in a clean and sanitary condition.

133-86 Emergency service buildings.

- A. Emergency service buildings shall be provided in the ratio of one emergency service building per 100 units or fraction thereof. Each emergency service building shall contain one flush toilet, one shower and one lavatory for each sex, as well as one laundry facility.
- B. Toilets shall be located in separate compartments equipped with self-closing doors. Single-person shower stalls shall be installed so as to prevent direct view of the interior when the exterior doors are open.
- C. Hot and cold water shall be furnished to each emergency fixture as appropriate.

133-87 Size of unit lots within park.

One unit lot size of a manufactured housing park shall be a minimum of 10,000 square feet, unless more land is required for a septic system by the New Hampshire Water Supply and Pollution Control Commission.

133-88 Setbacks and clearances.

No manufactured housing unit shall be located closer than 25 feet to the right-of-way within the manufactured housing park or 20 feet to a park service building. A minimum of 20 feet shall be maintained between a manufactured housing unit and its side and rear boundaries. Any enclosed structure attached to a manufactured housing unit shall be considered part of the unit for the purposes of measuring setbacks and clearances.

133-89 Streets, rights-of-way and parking.

- A. All park streets shall be well drained, paved and maintained in good condition.

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- B. No street names shall be used which will duplicate or be confused with the names of existing streets within the park and the Town of Henniker.
- C. Each manufactured housing unit shall abut or face a right-of-way at least 30 feet wide which contains a paved roadway of at least 24 feet in width. All dead-end roads shall have paved turnarounds.
- D. Parking. Space shall be provided on each manufactured housing lot for off-street parking of two cars, located so as to provide convenient access to the unit.

133-90 Park lighting.

The park shall be kept properly and adequately lighted at all reasonable times to keep the grounds safe for occupants and visitors.

133-91 Electrical systems.

- A. All electrical installations shall be constructed of new materials, in accordance with state and town regulations.
- B. All direct burial conductors or cables shall be installed at least 18 inches below the ground surface and shall be insulated and specifically designed for that purpose. Such conductors shall be located not less than one foot radial distance from water, sewer, gas communication lines.
- C. Each unit shall be provided with an approved disconnecting device and over-current protective equipment.
- D. All exposed non-current carrying metal parts of each unit shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method of grounding metallic wiring. The neutral conductor shall not be used as an equipment ground for the unit or other equipment.

133-92 Water supply.

- A. An accessible, adequate, safe and potable supply of water shall be provided each unit. Where a public supply of water of satisfactory quantity, quality and pressure is available, its supply will be used exclusively, if recommended by the Water Commissioners.
- B. The water system of the park shall be connected by pipes to all units, buildings, structures and other facilities requiring water.

ARTICLE XX – MANUFACTURED HOUSING PARKS

- C. All water piping, fixtures and other equipment shall be constructed and maintained in accordance with state and town regulations and in locations approved by the Code Enforcement Officer.

133-93 Sewage and waste.

- A. An adequate sewage disposal system, consisting of a common sewage system for all the lots, or, where permitting, connection to the town sewage system, shall be provided and conform to the requirements of the New Hampshire State Water Supply and Pollution Control Board and Chapter 88, Sewers, as amended.
- B. Where appropriate, use of public sewer systems is required under Article II of Chapter 88, Sewers, as amended. If any property lot line of the park falls within the area requirements for sewer hookup, the entire park shall use the public sewer system.
- C. All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movement and shall be separated from the park water supply at a safe distance. All sewer lines shall be constructed of materials approved by the Code Enforcement Officer, shall be adequately vented and shall have watertight joints.
- D. All unit toilet and waste facilities shall be connected to the public or common sewage system and shall be in good working order.
- E. Effluent from park sewage facilities shall not be discharged into any surface waters.

133-94 Refuse disposal.

- A. Collection and removal of garbage shall be provided for at least once every seven days. The park shall be kept in a clean and sanitary condition.
- B. The storage and collection of refuse/garbage in the park shall be conducted so as to create no health or fire hazards, air pollution, rodent harborage/hazard, insect breeding hazards or accident hazards.
- C. Where the Town of Henniker or other agency provides for the collection of refuse/garbage a least once every seven days, dumpster refuse containers of six cubic yards may be provided in the ratio of one dumpster for every 20 units.
- D. Where disposal service is not available, containers which are fly-tight, watertight and rodent-proof shall be provided and located not more than 150 feet from any unit lot. Refuse collection stands shall be provided for all refuse containers. Such container stands shall be designed to prevent the containers from being tipped.

133-95 Fire protection.

- A. Portable fire extinguishers of the type approved by the Fire Department shall be kept in service buildings and at all other locations designated by the Fire Chief and shall be maintained in good working condition. Locations of fire extinguishers and fire safety rules and regulations shall be posted in conspicuous places and in accordance with procedures outlined by the National Fire Protection Association Standard No. 501A, Fire Protection in Trailer Courts.
- B. Fire hydrants shall be installed when the park is within 500 feet of the town water system, if recommended by the Fire Chief. Fire hydrants shall be located within 600 feet of any unit, service building or other structure in the park.

133-96 Unregistered motor vehicles.

Unregistered motor vehicles are not allowed in manufactured housing parks.

133-97 Permit procedure.

- A. To apply for permission to establish or expand a manufactured housing park, application shall be made to the Planning Board; legal notice shall be posted in three public places and mailed to the abutters.
- B. Application shall be made in writing to the Planning Board on such forms as the office may supply and shall contain:
 - 1. Name of the applicant, mailing address, telephone number and date of application.
 - 2. Name and address of the landowner, if different from the applicant.
 - 3. Proposed location within the town, with relevant tax lot numbers.
 - 4. A site plan drawn to scale showing size and proposed location of units, distances to lot boundaries, distance to street, locations of driveways, water supply, septic system, sizes and locations of all existing buildings.
 - 5. Type and dimensions of unit.
 - 6. Names, tax lot numbers and mailing addresses of all abutters.
 - 7. Signature of the applicant.
 - 8. Letter of authorization of the landowner if the applicant is not the landowner.

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- C. Payment of the application fee and actual costs of outside consultants will be set by the Planning Board.
- D. For manufactured housing parks, the site plan shall be prepared by a licensed surveyor. It shall show the information required in 133-97B of this article for each separate unit lot, and in addition:
 - 1. Total number of units proposed.
 - 2. Location of all unit lot sites, driveways, streets and off-street parking.
 - 3. Plans for water supply and sewerage, including leach field or connection to the town sewer.
 - 4. Present contours and proposed finished contours at two-foot intervals, showing the plan for storm drainage.
 - 5. Locations of service buildings.
 - 6. Open space and recreation areas.
 - 7. Plans for all electrical systems and park lighting.
 - 8. Plan for water supply.
 - 9. Plan for refuse disposal showing locations of all areas for the disposal of refuse/garbage.

133-98 Public hearing.

- A. The Board of Selectmen and the Planning Board shall hold a joint public hearing within 30 days of the date of receipt of application material in the office of the Board of Selectmen.
- B. Notice of the hearing shall be sent by certified mail, at least 10 days before the hearing, to each abutter of the lot or lots on which the unit or units are to be located and at the same time shall be posted in three public places. Publication of this notice in a newspaper of local circulation shall be at the discretion of the Board of Selectmen. Postal costs and publication charges shall be payable by the applicant at or before the hearing.
- C. Action shall be taken on the proposal by vote of the Board of Selectmen within 90 days of the receipt of the application. Upon approval by the Board, an additional ninety-day extension may be added to the review period. Other extensions will be allowed where both the Board and the applicant agree. In the case of a

ARTICLE XX – MANUFACTURED HOUSING PARKS

manufactured housing park, approval shall require a positive vote by both the Board of Selectmen and the Planning Board. [Revised 3-10-2009]

ARTICLE XXI
Floodplain Development
[Amended 2-16-10]

133-99 Purpose.

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the County of Merrimack, NH dated April 19, 2010 or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference.¹

133-100 Definition of terms.

As used in this article, the following terms shall have the meanings indicated:

AREA OF SPECIAL FLOOD HAZARD -- The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.

BASE FLOOD -- The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT -- Any area of the building having its floor subgrade (below grade level) on all sides.

BUILDING -- See "structure."

DEVELOPMENT -- 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 operations or storage of equipment or materials.

FLOOD or FLOODING -- A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters.
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY -- An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

¹ Editor's Note: The Flood Insurance Study is on file in the Office of the Selectmen.

ARTICLE XXI – FLOODPLAIN DEVELOPMENT

FLOOD INSURANCE RATE MAP (FIRM) -- An official map of a community on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY -- See "flood elevation study."

FLOODPLAIN or **FLOOD-PRONE AREA** -- Any land susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING -- Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY -- See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE -- 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 facilities, port facilities that are necessary for the loading and unloading of cargo or passengers and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE -- The highest natural elevation of the ground surface prior to construction next to the proposed walls of the structure.

HISTORIC STRUCTURE -- Any structure that is: [Added 3-11-1982]

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the 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 place;
- 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 the approved state program as determined by the Secretary of the Interior, or

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2. Directly by the Secretary of the Interior in states without approved programs.

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

MANUFACTURED HOME -- 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 attached to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

MANUFACTURED HOME PARK OR SUBDIVISION -- A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL -- For purposes of the National Flood Insurance Program, 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.

NEW CONSTRUCTION -- For the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structure for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

ONE-HUNDRED-YEAR FLOOD -- See "base flood."

RECREATIONAL VEHICLE -- A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. [Added 3-9-1994]

REGULATORY FLOODWAY -- 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 cumulatively increasing the water surface elevation more than a designated height.

RIVERINE -- Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

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SPECIAL FLOOD HAZARD AREA -- An area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M or E. (See "area of special flood hazard.")

START OF CONSTRUCTION -- Includes substantial improvement, and means the date the building permit was issued, provided that 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 a 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 a 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 excavation 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 not part of the main structure.

STRUCTURE -- For floodplain management purposes, a walled and roofed structure, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

SUBSTANTIAL DAMAGE -- 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% of the market value of the structure before the damage occurred. [Added 3-11-1992]

SUBSTANTIAL IMPROVEMENT -- Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should be the appraised value of the structure prior to the start of the initial repair or improvement or, 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. The term does, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code conditions or any alteration of a structure listed on the National Register of Historic Places.

VIOLATION – The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance in Chapters 133-104, 133-107(B2), 133-106(C) or 133-106(D) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION -- 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 of coastal or riverine areas.

133-101 Permit required.

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

133-102 Review of building permit applications by Building Inspector.

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 in a flood-prone area, all new construction and substantial improvements shall be:

- A. Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrostatic loads, including the effects of buoyancy.
- B. Constructed with materials resistant to flood damage.
- C. Constructed by methods and practices that minimize flood damages.
- D. 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.

133-103 Water and sewer systems.

Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas, the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

133-104 Maintenance of records of certification of flood-proofing and as-built elevations.

The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not structures contain a basement. If the structure has been flood-proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.

133-105 Review for federal and state approvals.

The Building Inspector shall review proposed developments to assure 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. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

133-106 Alteration and relocation of watercourses.

- A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by 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 Bureau.
- B. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. Along watercourses with a designated regulatory floodway, no encroachment, including fill, new construction, substantial improvements and other development, are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.
- D. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone-AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- E. Recreational vehicles placed on sites within Zones A and AE shall either be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph C(6) of Section 60.3.
- F. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring all development located in Zone A meet the following floodway requirement that no encroachments, including fill, new construction, substantial improvements, and

other development are allowed within the floodway that would result in any increase in flood level within the community during the base flood discharge.

133-107 Determination of one-hundred-year flood elevation.

- A. In special flood hazard areas, the Building Inspector shall determine the one-hundred-year flood elevation in the following order of precedence according to the data available:
 - 1. In Zone AE refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM.
 - 2. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any one-hundred-year flood elevation data available from federal, state, development proposals submitted to the community (for example, subdivisions, site approvals, etc.) or other source.
- B. The Building Inspector's one-hundred-year flood elevation determination will be used as criteria for requiring in Zones AE and A that:
 - 1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the one-hundred-year flood level.
 - 2. That all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the one-hundred-year flood level or, together with attendant utility and sanitary facilities, shall:
 - a. Be flood proofed so that below the one-hundred-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- C. No new manufactured homes shall be placed within special flood hazard areas. All existing manufactured homes to be 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 base flood level and be securely anchored to resist flotation, 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 that the enclosed areas meet the following requirements: the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; the area is not a basement; shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing entry and exit of floodwaters. 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 foot of enclosed area subject to flooding shall be provided. The bottom of all openings may be equipped with screens, louvers or other covering or devices, provided that they permit the automatic entry and exit of floodwater.

133-108 Variances and appeals. [Added 3-11-1992]

- A. Any order, requirement, decision or determination of the Building Inspector made under this chapter may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing, in addition to the usual variance standards under state law:
 - 1. That the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense.
 - 2. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will occur.
 - 3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that:
 - 1. 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
 - 2. Such construction below the base flood level increases risks to life and property

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- D. The community shall:
1. Maintain a record of all variance actions, including the justification for their issuance; and
 2. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE XXII
Wetlands Conservation
[Added 3-14-1989]

133-109 Purpose and intent.

The purpose of this chapter is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been identified as wetlands in accord with RSA 674:16 II. It is intended that this chapter shall:

- A. Control and/or prevent the development of structures and land uses on wetlands which will contribute to pollution of surface and ground water by sewage, toxic and hazardous substances or siltation.
- B. Prevent the destruction of or significant changes to wetlands which provide flood protection.
- C. Protect unique and unusual natural areas.
- D. Protect wildlife habitats and maintain ecological balances.
- E. Protect potential water supplies and existing aquifers (water-bearing strata) and aquifer recharge areas.
- F. Prevent expenditures of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of unwise development or other misuse or abuse of wetlands reconstructing or extending additional town sewer and/or treatment facilities.
- G. Encourage those uses that can be harmoniously, appropriately and safely located in wetlands.

133-110 Henniker wetlands defined.

Wetlands are areas where a significant part of the vegetation, soil and land types include one or all of the following:

- A. Swamps, scrub, shrub and/or forested wetlands are areas where the water table is at or near the ground surface for a significant part of the year. The vegetational community consists of mostly trees and woody shrubs, including but not limited to:
 - (1) Alders.
 - (2) Black ash.
 - (3) Buttonbush.
 - (4) Marsh rose.

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- (5) Rhodora.
- (6) Sweet pepperbush.
- (7) Winterberry.
- (8) Arrowwood.
- (9) Black gum.
- (10) Common elder.
- (11) Poison sumac.
- (12) Sphagnum moss.
- (13) Tamarack (larch).
- (14) Atlantic white cedar.
- (15) Black spruce.
- (16) High-bush blueberry.
- (17) Red maple.
- (18) Spicebush.
- (19) Willow.

B. Marshes are treeless wetlands dominated by soft-stemmed herbaceous plants. The surface of the marsh is covered with water most of the year though seasonal fluctuations in water depth are expected. Marshes range from the wet meadows variety to deep marshes which can be covered with several feet of water. The vegetational community is made up of some or all of the following but is not limited to:

- (1) Arums.
- (2) Cattails.
- (3) Frog's-bits.
- (4) Leatherleaf.
- (5) Smartweeds.
- (6) Water milfoil.
- (7) Sedges (incl. bulrushes, cotton grasses and wool grasses).
- (8) Bladder worts.
- (9) Duckweeds.
- (10) Horsetails.
- (11) Pickerel weeds.
- (12) Sweet gale.
- (13) Bur-reeds.
- (14) Eelgrass.
- (15) Hydrophylus grasses.
- (16) Rushes.
- (17) Water lilies.

C. Bogs consist of peat or muck deposits of significant depths and are characterized by a distinct group of trees and plants which are adapted to the bogs highly acidic conditions. The water in a bog is practically devoid of oxygen and nutrients. Bogs usually develop in un-drained glacial depressions. Typical plants include but are not limited to:

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- (1) Atlantic white cedar.
- (2) Bog or buchbean.
- (3) Cotton grass.
- (4) Pale laurel.
- (5) Sedges.
- (6) Sundews.
- (7) Black spruce.
- (8) Bog laurel.
- (9) High-bush blueberry.
- (10) Pitcher plants.
- (11) Sheep laurel.
- (12) Sweet gale.
- (13) Bladderworts.
- (14) Bog rosemary.
- (15) Leatherleaf.
- (16) Rhodora.
- (17) Sphagnum moss.

D. Soil series and land types commonly associated with wetlands as described by the Soil Survey of Merrimack County, New Hampshire, dated June 1965, include the following very poorly drained and poorly drained soils:

- (1) Very poorly drained soils include;
 - a. Marsh (Mh).
 - b. Mixed alluvial sand (Mn).
 - c. Muck and peat (Mp).
 - d. Saco silt loam (Sa).
 - e. Scarboro fine sandy loam (Sc).
- (2) Poorly drained soils include:
 - a. Augres series (Ag) (Au).
 - b. Limrick silt loam (Lm).
 - c. Ridgebury series (Rb) (Rd).
 - d. Rumney fine sandy loam (Ru).

E. Wetlands in the Town of Henniker shall also include but not be limited to:

1. Areas of retention of freshwater and their associated perennial and seasonal drainage ways (brooks, rivers, streams, ponds or lakes).
2. Areas where a site-specific soil survey performed by a qualified professional soil scientist locates poorly or very poorly drained soils not identified on the SCS published soil survey.
3. Areas identified on the Town of Henniker Wetlands Map.

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4. Wetlands incorrectly delineated.

- F. Where it is allowed that an area has been incorrectly delineated as a wetland in Henniker or that an area not so designated meets the criteria for wetlands designation, the Planning Board and Conservation Commission shall jointly determine whether the regulations contained herein shall have application.
- G. The Planning Board shall make its judgment under this section only upon the determination by a qualified soil scientist and/or biologist or botanist on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in writing by the scientist to the Planning Board and Conservation Commission. Any necessary testing and/or expenses incurred to clearly delineate questionable wetlands shall be at the sole expense of the landowner or developer disputing the designation.

133-111 Conflict with other regulations.

Where the provisions of this article conflict with the provisions of this chapter, the more restrictive regulation shall apply.

133-112 Wetlands permitted uses.

Permitted uses are those which will not require the erection, construction or addition of any structures or buildings; will not alter the natural surface configuration by the addition of fill, dredging or drainage; and are uses that otherwise are permitted by this chapter in wetlands. Such uses may include:

- A. Forestry. Tree farming using best management practices as outlined in the Water Supply and Pollution Control Division Guidelines for Timber Harvesting in order to protect streams from damage and to property.
- B. Cultivation and harvesting of crops according to recognized soil conservation practice, including the protection of wetlands and pollution caused by fertilizers, pesticides and herbicides used in such cultivation and from sedimentation caused by erosion.
- C. Wildlife refuges.
- D. Parks and recreation uses consistent with the purpose and intent of this chapter.
- E. Conservation areas and nature trails.
- F. Open spaces, permitted as required by Chapter 202, Land Subdivision, or this chapter.

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- G. State and federally approved water impoundments.
- H. Construction of wells for water supply.
- I. Dry hydrants and fire ponds.

133-113 Special exceptions. [Amended 3-9-2004]

All wetlands impacts, except those that qualify for Permit By Notification and/or the Expedited Minimum Impact Wetlands Permit by the New Hampshire Department of Environmental Services, require a Special Exception.

- A. A Special Exception may be granted by the Zoning Board of Adjustment after proper public notice and public hearing for the following wetlands impacts when the application has been referred to the Conservation Commission for review and comment at least 30 days prior to the hearing. Wetlands impacts essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands.
- B. The undertaking of a use not otherwise permitted in the wetlands area if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in 133-111 of this chapter.

133-114 Building permit and driveway permit process [Amended 3-9-2004]

Any person who desires to obtain a building permit or driveway permit on land impacting a wetlands area shall first submit to the Building Inspector a completed copy of the DES Wetlands permit. This is in addition to the existing requirements for building permits and driveway permits. The Conservation Commission shall be notified of the request for said permit and must submit a written report to the Building Inspector for consideration within 15 business days of receiving the request. No driveway or building permits may be issued until the Conservation Commission has commented and/or the 15 business days have passed.

133-115 Special Provisions

- A. All septic systems shall be constructed to meet New Hampshire Department of Environmental Services (NHDES) design criteria for subsurface disposal systems. [Amended 3-15-1995]
- B. No part of a wetland may be considered as part of the minimum size requirement of any lot.
- C. All land designated as wetlands shall be appraised for tax purposes at its full and true value as undeveloped land required to remain in open space.

ARTICLE XXIII
Open Space Residential Development
[Added 3-9-1994, Amended 3-14-2006]

133-116 Purpose.

The purpose of the open space development is to permit greater flexibility in design and to discourage development sprawl; facilitate the economical and efficient provision of public services; provide a more efficient use of land in harmony with its natural characteristics; preserve more usable open space, agricultural land, tree cover, recreation areas or scenic vistas; and expand the opportunity for the development of affordable housing without increasing the development's overall density, all of which will be consistent with the character of the Town of Henniker.

133-117 Definitions.

The following definitions apply specifically to this article of this chapter:

BUFFER -- An area of land used to separate visually one use from another or which acts as a separation between two land uses of different intensity.

BUILDABLE LAND AREA B That portion of the tract remaining after deducting areas in wetlands conservation as defined in Article XXIV, flood plains, areas of slope equal to or greater than 20% and soils with severe limitations as defined by the current US Department of Agriculture Soils Survey Interpretation Sheets.

COMMON OPEN SPACE -- Land within or related to an open space residential development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development, or the public, which may contain such accessory structures and improvements as are necessary and appropriate for recreational purposes. A condition of the open space residential development approval shall be that common space may not be further subdivided.

HOMEOWNERS' ASSOCIATION -- A private nonprofit association which is organized by the developer of an open space residential development in which individual owners share common interests in open space and/or facilities, share financial responsibility for the open space and responsibility for the management and maintenance of the common property, and is the association which will enforce covenants and restrictions.

OPEN SPACE RESIDENTIAL DEVELOPMENT -- A form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks reduced from conventional sizes, provided that the density of the tract as a whole shall not be greater than the density allowed by the zoning district under existing regulations and the remaining land area is devoted to common open space.

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

133-118 Lot size and Quantity.

- A. In each zoning district which allows open space residential development, the lot size for an open space development may be reduced below the minimum lot size required for that specific district. All reductions in lot size shall be offset by an equivalent amount of land set aside in common space, or as may be determined by the Planning Board. The maximum number of dwelling units permitted in an open space subdivision shall be determined by the conventional subdivision plan, unless the Planning Board determines that the increased quantity of proposed lots provide some additional overall benefit to the town such as public recreation or affordable housing and will not impair the integrity or character of the area.
- B. All sections of Chapter 202, Land Subdivision, or this chapter which are not superseded by the open space residential development options shall be applicable.

133-119 Review criteria.

An open space residential development proposal is subject to approval by the Planning Board. The Planning Board shall give particular consideration to the following criteria:

- A. The proposed development will be consistent with the general purpose, goals, objectives and standards of the Town of Henniker's Master Plan, this chapter, Chapter 202, Land Subdivision, and Chapter 203, Site Plan Review.
- B. The proposed development complies with all applicable provisions of this chapter, Chapter 202, Land Subdivision, and Chapter 203, Site Plan Review, unless expressly superseded by this article.
- C. The individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the natural site features.
- D. The suitability of all open space intended for recreational use or other specified uses shall be determined by the size, shape, topography and location for the particular purpose proposed and shall be accessible to all residents of the open space development.
- E. The proposed structures in open space development will not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities and other areas related to public health, safety and general welfare.
- F. The proposed development is consistent with the state of development and character of the area of the proposal.

133-120 General requirements.

- A. Location. The open space residential development option shall be permitted only in the RV, RN, RR and CR-1 Districts. [Amended 3-13-2007]
- B. Permitted uses. No open space residential development shall include any use other than single- and two-family dwellings, accessory structures and incidental recreation uses. This does not preclude site design for single-family or duplex attached housing if approved by the Planning Board.
- C. Minimum tract area. The minimum tract area for an open space residential development shall be on a single or adjacent tracts of contiguous land, under one ownership, or to be brought under one ownership, which have a net tract area of no less than 20 acres in the RV and RN Zones, and 30 acres in the RR Zone.
- D. Conceptual Consultation. A conceptual consultation shall be conducted by the Planning Board prior to submitting an application for subdivision approval. For the conceptual consultation, the applicant shall submit two plans for review and discussion:
 - 1. A conventional subdivision plan of the parcel using existing Town Zoning and Subdivision Regulations.
 - 2. A plan using the open space guidelines.
- E. Lot size. The minimum lot area for individual building lots within open space development shall be determined by the Planning Board and negotiated between the Board and the developer in the interest of encouraging flexibility in site design and the preservation of open space.
- F. Frontage. The minimum open space residential development frontage on a state- or town-maintained road shall be 100 feet in the aggregate which may consist of two fifty-foot rights-of-way serving as access to the development. The road frontage for individual building lots within open space residential development shall be as determined by the Planning Board and negotiated between the Board and the developer in the interest of encouraging flexibility in site design.
- G. Setbacks. Setbacks abutting the boundaries of the entire open space development site shall not be less than the minimum requirements for the zoning districts. The front setback for all dwelling units fronting any existing or proposed public street shall not be less than the setback requirements of the respective zoning district in which the open space development is located. The setbacks for internal dwelling units may be modified, allowing for flexibility in site design if approved by the Planning Board. The minimum distance between detached dwelling units shall be as determined by the Planning Board in the interest of site design and development costs.

- H. Buffer. A buffer area having a minimum depth of 50 feet shall be provided between any proposed structure within the open space development and the perimeter of the tract. Whenever possible the existing vegetation shall be maintained or other vegetation shall be planted of sufficient size to shield the development from abutting properties.
- I. Common open space.
 - 1. The land designated as permanent common open space exclusive of road rights-of-way, utility easements, and common parking areas shall be a contiguous area equal to at least 40% of the total area of the tract. The area, configuration and location of designated open space shall be subject to approval by the Planning Board. The land so set aside shall be provided in such a manner that it is usable for recreation or other activities and is reasonably accessible to all residents of the open space development and to the public where appropriate. However, the open space shall be cited with sensitivity to the proposed and existing development.
- J. Roads. All roads shall be designed and constructed in accordance with the Town of Henniker's road standards, except that the Planning Board may approve reductions in the required right-of-way width. Pavement width of service roads which provide access within the development and to open space dwelling units may be modified by the Planning Board in consultation with the Town Engineer or Director of Public Works where deemed practical.

133-121 Open space ownership and management.

- A. Open space ownership. The type of ownership of land dedicated for open space purposes shall be limited to the following:
 - 1. Homeowner or cooperative association or organizations.
 - 2. Shared, undivided interest by all property owners in the subdivision.
- B. Homeowners' association.
 - 1. All common open space and any common areas or common facilities within the open space residential development shall be permanently protected by covenants and restrictions running with the land shall be conveyed by the property owner(s) to a homeowners' association.
 - 2. Common space 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

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borne by the applicant or the developer. Any proposed change in such articles of association or incorporation shall require the prior written approval of the Planning Board.

3. Covenants or other legal arrangements shall specify ownership of the common open space, responsibility for maintenance, compulsory homeowners' association membership and tax assessment provisions, guaranties that any association formed to own and maintain residential development open space will not be dissolved without the consent of the Planning Board.
 4. 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 133-120A 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, farmland, forest land, wetlands, recreational land, floodplain or wild land within the meaning of RSA 79-A, except where such consists of actively operated farmland.

ARTICLE XXIV
Sexually Oriented Businesses
[Added 3-15-1995]

133-122 Purpose.

This article is adopted for the purpose of regulating the secondary effects of sexually oriented businesses in the following areas:

- A. Protection of children.
- B. Protection of property values.
- C. Crime control.
- D. Public health.
- E. Prevention of urban blight.

133-123 Definitions.

As used in this article, the following terms shall have the meanings indicated:

SEXUALLY ORIENTED BUSINESS -- Includes, but is not limited to, an adult arcade bookstore or adult video store, adult cabaret, adult theater, adult motel, nude model studio or sexual encounter center, or any other business which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1 et seq.

133-124 Special exception required.

For a use to be established under this article, the applicant must demonstrate that the proposed site satisfies all the site requirements of site plan review from the Planning Board and must secure a special exception from the Zoning Board of Adjustment subject to the requirements and procedures of Article XVI.

133-125 Additional requirements.

A sexually oriented business use, in addition to all other requirements of this article, shall, prior to a request for a special exception, demonstrate compliance with the following requirements:

- A. No sexually oriented business shall be permitted within 750 feet of any residence, apartment or manufactured housing, church, place of worship, parish house, convent, public, parochial or private school, kindergarten, day-care center or public sports/recreation parks; and no sexually oriented business shall be permitted within 750 feet of the town boundaries.
- B. The hours of operation shall only be between 10:00 a.m. and 11:00 p.m., Monday through Saturday, and 12:00 noon to 9:00 p.m. on Sundays.

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- 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, semi-nude or which is not in compliance with RSA 571-B:1.
- E. The distance between any two sexually oriented businesses shall be a minimum of 1,000 feet and shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between each business.
- F. Sexually oriented businesses, as defined, shall be regulated by special exception only, provided that all other regulations, requirements and restrictions for the zone in which the sexually oriented business is to be located are met.

ARTICLE XXV
Wireless Communication Towers

[Added 3-12-1997; Amended 3-12-2002, 3-11-2003, 3-13-2007, 3/2010,3/2011]

133-126 Purposes.

These regulations have been enacted in order to establish general guidelines for the siting of personal wireless service facilities (APWSFs), including towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Henniker to regulate and to provide for reasonable opportunity for the siting of personal wireless service facilities, by enhancing the ability of providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.
- B. Reduce the adverse impacts that such personal wireless service facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, conservation lands, historically significant locations, ridgelines, scenic areas and vistas, airplane flight corridors, migratory bird flight corridors, health and safety by accidents to person and property, and prosperity through protection of property values.
- C. Provide for co-location and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the town.
- D. Permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the construction of new PWSFs in a way that minimizes the adverse visual impact of such facilities.
- E. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Henniker.
- F. Provide constant maintenance and safety inspections for all personal wireless service facilities.
- G. Provide for the removal of abandoned personal wireless service facilities.
- H. Provide for the removal of personal wireless service facilities that are technologically outdated.

133-127 Definitions.

As used in this article, the following words have the following meanings:

ANTENNA -- Means 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.

CAMOUFLAGED -- Means to be disguised, hidden, part of an existing or proposed building or structure, or placed within an existing or proposed building or structure, or designed to look like a structure which may commonly be found in the area surrounding the proposed facility, such as, but not limited to, flagpoles, traffic lights, farm silos, ranger or forest fire watch towers, or trees.

PERSONAL WIRELESS SERVICE FACILITY(IES) OR PSF(S) OR FACILITY(IES) Means any facility for the provision of commercial mobile services, unlicensed wireless services, or common carrier wireless exchange access services, as such terms are defined in the federal Telecommunications Act of 1996, 47 U.S.C. Section 332. For purposes of this ordinance such terms will also include, as the context may require, all towers and antennas used in connection therewith.

PRE-EXISTING FACILITIES -- Means any PWSF, tower or antenna lawfully constructed or permitted prior to the adoption of this article, as well as the replacement of any such PWSF, tower or antenna.

TOWER -- Means any structure that is constructed primarily for the purpose of supporting one or more antennas. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like.

133-128 Overlay District.

- A. General. Personal wireless service facilities shall be permitted as a principal or accessory (secondary) use in all zoning districts within the Town of Henniker, other than the residential village (RV) and commercial village (CV) districts, subject to compliance with the requirements of this article and site plan approval by the planning board.

- B. Existing Uses or Structures. The existence of a permitted use on a site shall not preclude the addition of a PWSF as a secondary use, provided that all other provisions of this article are satisfied. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a PWSF, tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the PWSF, tower or antenna may be located on an easement or leased parcel within the lot.

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PWSFs, towers, and antennas that are constructed or installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.

133-129 Applicability.

- A. General. The terms of this Article shall apply to all new personal wireless service facilities proposed to be located within the Town of Henniker whether on property owned by the Town of Henniker, on privately owned property or on property owned by another governmental entity. Applicants wishing to add to existing facilities are required to engage in a conceptual consultation with the Planning Board regarding the requirements of this article. [Amended 3-13-2007]

- B. Exceptions.
 - 1. Amateur Radio / Receive-Only Antennas. This article shall not govern any tower or antenna that is under 70 feet in height from the ground to the top of the tower or antenna and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

 - 2. Essential Services & Public Utilities. Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the town's ordinances and regulations.

133-130 Location, Construction, and Performance Requirements.

- A. Setbacks. All personal wireless service facilities, including equipment compounds, utility buildings, structures, towers and antennas, must meet the minimum setback requirements of the zoning ordinance. Further, facilities must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower's height; provided, however, that this requirement shall not apply to PWSFs and appurtenant facilities that are (1) enclosed within existing buildings or structures, or are less than thirty-five (35) feet in height, and (2) camouflaged as otherwise required by this Ordinance.

- B. Height Limitations.
 - 1. General. Subject to any stricter standards as set forth below, a personal wireless service facility shall not exceed one hundred fifty (150) feet in height, measured as the vertical distance from the average finished grade surrounding the facility to its highest point, including all attachments.

 - 2. PWSFs in Wooded Areas. A personal wireless service facility located in a wooded area shall not project higher than twenty (20) feet above the

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average height of the five tallest trees within a 180-foot radius of the proposed tower. Further, a PWSF located in a wooded area must be camouflaged to blend in with the natural character of such area.

Appropriate camouflaging for wooded areas includes: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.

[Amended 03-09-2010]

3. PWSFs in Fields or Agricultural Areas. A personal wireless service facility located in a field or other open area without a tree canopy shall be adequately camouflaged. Appropriate camouflaging for fields or open areas includes agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size typically found in the State of New Hampshire.
 4. PWSFs in or on Existing Structures. A PWSF may be located on or within an existing building or structure provided that such facilities are adequately camouflaged and shall be architecturally compatible with the host building or structure.
 5. New PWSF Structures. A PWSF may be located in a new building or structure provided that such building or structure (a) shall not exceed the maximum building height in the district where a PWSF is proposed, and (b) shall be architecturally compatible with the buildings in the immediately surrounding area.
- C. Location Prioritization. Any new personal wireless service facility shall be located in accordance with the following priorities:
1. Concealed or camouflaged on or within an existing building or structure, including but not limited to a historic building, an agricultural building or structure, a water tank, a utility transmission pole, an outdoor lighting structure, or a church steeple.
 2. On or within a new building or structure having a height not greater than the maximum building height in the zoning district where the PWSF is proposed;
 3. On an existing PWSF (co-location);
 4. On a new facility which is adequately camouflaged and subject to the height limitations set forth above.
- D. Easements or Leased Areas. If a PWSF is to be located on an easement or leased area, the PWSF shall be set back from the edge of the easement or leased area a

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distance of at least 125% of the tower’s height plus additional area for accessory structures and access, if required.

- E. Tower Construction. Traditional lattice or guyed towers are prohibited. All new PWSFs must be appropriately camouflaged and visually compatible and in scale with the rural character of the town. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. 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. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by law for such facilities.

- F. Viewshed Analysis. As part of the review process the applicant shall conduct a viewshed analysis to include, at a minimum,
 - 1. A mapped viewshed delineation; and
 - 2. A test balloon or crane extension moored at the site to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the PWSF site and other vantage points as determined by the Planning Board.

- G. Landscaping. The following landscaping requirements shall apply to personal wireless service facilities constructed under this ordinance.
 - 1. Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compounded from adjacent residential property. The standard buffer shall consist of a landscaped strip at least twenty (20) feet wide outside the perimeter of the compound. Natural vegetation is preferred.
 - 2. Locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
 - 3. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. There should be no significant adverse effect on the tree canopy, and the facility must not contribute sufficiently to erosion. In some cases, where PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

- H. Federal Requirements. All PWSFs must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities.

- I. Building Codes; Safety Standards. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower in accordance with section 133-32 at the owner’s expense through execution of the posted security.

133-131 Site plan review

- A. General. Any person seeking to construct a personal wireless service facility shall apply to the Planning Board for site plan review in accordance with the requirements set forth in the town’s site plan review regulations. In addition to the requirements contained therein, the applicant shall submit the information required by this section 133-30.
- B. Procedure on Applications. The Planning Board shall act upon an application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. In addition, applicants shall submit a list of all communities within a twenty- mile radius of the proposed facility, with mailing addresses for each, as required by RSA 12-K. Applicants shall also pay all fees required to notify each such community.
- C. Other Factors. In addition to the factors stated in the site plan review regulations, other factors to be considered by the Board in reviewing applications shall include:
 - 1. The height of the proposed tower or other structure shall not exceed that which is essential for its intended use and public safety.
 - 2. The proximity of a PWSF to residential developments 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 as discussed in section 133-29.C.
 - 9. Visual impacts on view-sheds, ridgelines, public parks, natural scenic vistas, historic buildings, major view corridors and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.

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D. Plan Requirements. Each applicant requesting site plan review shall submit a scaled plan in accordance with the site plan review regulations and further information including:

1. A scaled elevation view;
2. Topography;
3. Propagation Maps;
4. Radio frequency coverage;
5. Setbacks;
6. Adjacent uses (up to 400' away);
7. The location of all buildings and structures within 500 feet of proposed tower;
8. Diagram of the average tree canopy height determined for the proposed PWSF site;
9. Driveways and parking;
10. Fencing; and
11. Landscaping.

E. New PWSF.

1. If an applicant proposes to build a new PWSF, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence shall consist of one or more of the following:
 - a. Substantial evidence that no existing PWSFs, towers or structures located within the geographic area meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
 - b. Substantial evidence that existing towers in the Town are not of sufficient height to meet the applicant's engineering requirements, with supporting reasons.
 - c. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - e. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

2. The applicant shall also provide all of the following:
 - a. Substantial evidence that the applicant's proposed antenna or structures would not cause electromagnetic interference with other antennae on the existing towers, and visa versa.
 - b. Information on the number of sites for PWSFs each provider will require.
 - c. Information on sites outside of the Town of Henniker that are being considered.
 - d. Information on how future technology may reduce or eliminate the need for towers.
 - e. Information on the impact, if any, of the PWSF on a competitor's facility on the same property.
 - f. Information on whether it is feasible for carriers to locate base station equipment underground.
3. The applicant proposing to build a new PWSF shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new facility. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other person wireless service providers. Failure to provide such an agreement is a sufficient ground for a denial.
1. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board may retain the services of a consultant qualified in personal wireless services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, I (g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.

133-132 Bonding and Security Insurance.

In recognition of the extremely hazardous situation presented by abandoned and unmonitored PWSFs, towers and antennas, the Planning Board shall set the form and amount of security that represents the estimated cost for removal and disposal of such

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abandoned facilities in the event that such facility is abandoned and the owner thereof fails to remove the facility in accordance with section 133-32. The planning board may retain an independent licensed civil engineer to determine the estimated cost of removal and disposal, with the cost of such engineer to be paid by the applicant. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed PWSF, tower or antenna prior to the construction of such facilities.

133-133 Removal of Abandoned PWSFs.

Any PWSF, tower or antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said facility provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned PWSF, tower or antenna is not removed within ninety (90) days of the determination of abandonment, the Town may execute on the security posted in accordance with section 133-31 and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

133-133A Waivers

Where the Planning Board finds that a particular Section of this Article would serve no valid public purpose, given the specific characteristics of the site and neighborhood in which a Personal Wireless Service Facility (PWSF) is proposed and would not be in conflict with the goals outlined in Section 133-126 Purpose, the Board may approve a waiver to any specific Section of this Article. [Added 3-9-2010]

ARTICLE XXVI
Bed-and-Breakfast Homes
[Added 3-13-2001]

133-134 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BED-AND-BREAKFAST HOME -- Any residential dwelling located on one lot of record, containing lodging units offered to the public for compensation for transient accommodations, provided that such dwelling unit is operated by an individual person or persons, who shall occupy the dwelling unit.

133-135 Special exception and site plan review required.

For a use to be established under this article, the applicant must secure a special exception by the Zoning Board of Adjustment subject to the requirements and procedures of Article XV. The applicant must also demonstrate to the Planning Board that the proposed site satisfies all the requirements of site plan review.

133-136 Additional requirements.

A bed-and-breakfast home, in addition to all other requirements of this article, shall demonstrate compliance with the following requirement:

- A. The number of proposed lodging units shall be compatible with the surrounding area, and shall be reasonable, taking into consideration the floor size and configuration of the dwelling unit, and the size of the lot on which such dwelling unit is located.
- B. The dwelling units for the owner(s) of the bed-and-breakfast home shall be adequate for the number of operators and his, her or their family(ies).
- C. Breakfast shall be the only meal served to guests of a bed-and-breakfast home, and such meal may only be served to overnight guests of the bed-and-breakfast home.
- D. The applicant shall provide evidence that there are adequate sanitary facilities to accommodate the proposed number of lodging units and that the septic system complies with all applicable state statutes and regulations for the total number of proposed lodging units and the dwelling unit for the owner(s).
- E. The dwelling unit proposed for a bed-and-breakfast home shall be subject to all National Fire Protection Association (NFPA) Life Safety Codes.
- F. The applicant shall comply with all state statutes and regulations, with particular attention to the items listed below:

ARTICLE XXVI – BED AND BREAKFAST HOMES

1. Site plan review approval shall be contingent upon receipt of any operators' licenses, such as the meals and rentals operators license and food service license, and copies of said licenses shall be provided to the Planning Board.
 2. Adequate guest records shall be maintained in accordance with the requirement of state regulations.
- G. Only one business sign having an area of not more than eight square feet shall be located on the premises, and shall be compatible with the neighborhood. All other requirements for signage shall be in keeping with Article XI.

Article XXVII
Impact Fees
[Added 3-19-2004]

133-137 Purpose

This ordinance is enacted under the authority of RSA 674:21, V as an innovative land use control is intended to:

- A. Implement and be consistent with the Town of Henniker’s Master Plan and Capital Improvements Program,
- B. Allocate a fair and equitable share of the cost of public facilities to new development,
- C. Require new development to contribute its proportionate share of funds necessary to accommodate its impact on public facilities having a rational nexus to the proposed development, and for which the need is attributable to the proposed development.

133-138 Findings

- A. The Town of Henniker is responsible for and committed to the provision of public facilities and services at standards determined by the Town to be necessary to support development in a manner which protects and promotes the public health, safety, and welfare;
- B. Capital facilities have been and will be provided by the Town utilizing funds allocated through the Capital Improvements Program, which has been adopted by the Board of Selectmen;
- C. An impact fee ordinance for capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Henniker;
- D. New development in Henniker will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate facilities and services for its residents;
- E. Impact fees may be used to assess an equitable share of the growth-related cost of public facility capacity to new development in proportion to the facility demands created by that development;
- F. In the absence of impact fees, anticipated residential and non-residential growth and associated capital improvement costs could necessitate an excessive

expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety, and welfare;

- G. Impact fees assessed pursuant to this Article will not exceed the costs of:
 - 1. Providing additional public capital facilities necessitated by new development in Henniker; and/or
 - 2. Compensating the town of Henniker, the Henniker School District, or the John Stark Regional School District for facility capacity that it provided in anticipation of new development in Henniker.

133-139 Definitions

Impact Fee -- Impact Fee shall mean a fee or assessment imposed upon development, including subdivision, building construction/expansion, or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned and operated by the municipality.

These capital facilities include and are limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage, and flood control facilities; public road systems and right-of-way; municipal office facilities; public school facilities; the municipalities proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public libraries; and public recreational facilities, not including public open space.

New Development -- An activity which results in:

- A. The creation of a new dwelling unit or units; or
- B. The conversion of a lawfully existing use which would result in a net increase in the number of dwelling units; or
- C. A non-residential development or conversion of property that results in a net increase in the gross floor area of non-residential use or intensity of land use.

133-140 Authority to Assess Impact Fees

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance.

133-141 Assessment Methodology

The amount of any impact fee shall be a proportional share of municipal capital improvement costs, which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

133-142 Administration of Impact Fees

- A. Each impact fee shall be accounted for separately, shall be segregated from the Town’s general fund, may be spent upon order of the municipal governing body, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected.
- B All impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, such as Site Plan or Subdivision approval. Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of a cash bond, letter of credit, or performance bond so as to guaranty future payment of assessed impact fees.
- C. Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy, Building Permit, or other appropriate permission to proceed with development; provided however, in projects where off-site improvements are to be constructed simultaneously with a project’s development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a Building Permit, Certificate of Occupancy, or other appropriate permission.
- D. The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees.
- E. If the full impact fee assessed under this ordinance is not encumbered or otherwise legally bound to be spent for the purposes for which it was collected within six years, the fee shall be returned to the assessed party, with any accrued interest.
- F. Whenever the calculation of the impact fee has been predicated upon some portion of capital improvement costs being borne by the town, a refund shall be made upon the failure of the Town Meeting to appropriate the Town’s share of the capital improvement costs within six years for the date of payment thereof.

133-143 Applicability

This ordinance shall not be deemed to affect the existing authority of the Planning Board over subdivision and site plans, including, but not limited to the authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36,II(a).

133-144 Appeals

All appeals shall be handled in accordance with the provision of Article XIV of the Zoning Ordinance.

**ARTICLE XXVIII
GROWTH MANAGEMENT**

Expired at sunset on 3/9/2010

ARTICLE XXIX
Historic District
[Added 3-8-2005]

133-160 Authority

This ordinance is established under the authority granted in RSA 674:46 and 674:46-a.

133-161 Purpose and Intent

- A. To safeguard the heritage of the Town of Henniker as it is represented in structures of historical and architectural value.
- B. To preserve a district in the Town of Henniker that reflect elements of its cultural, social, and political history.
- C. To guide the development so as to be consistent with the character of a particular section of town.

133-162 District areas

- A. This Historic District reaffirms the Town Meeting votes of 1975 and 1976 when the existing Historic District was initially established.
- B. Historic District(s) shall be shown on the Historic District Overlay (HDO) Map adopted March 7, 2005, or as it may be amended, and is on file with the Town Clerk.
- C. An Historic District or Districts shall be superimposed upon other established Zoning Districts as an Overlay District.

133-163 Uses

Uses permitted in the underlying Zoning District are permitted in the Historic District(s).

133-164 Certificate of approval

- A. The activities set forth in subparagraph D below shall not be authorized until and unless a Certificate of Approval is issued by the Historic District Commission.
- B. A Certificate of Approval is required for all work within the purview of the Commission regardless of whether such work required a building permit or any other permits issued by the Town of other authorities.

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- C. Any person wishing to construct, alter, move or demolish any building or structure, which lies within an Historic District, must first obtain a Certificate of Approval from the Historic District Commission in the manner prescribed in Article 133-165.
- D. For the purposes of this article, the following activities shall be subject to a Certificate of Approval by the Historic District Commission:
 - 1. Erection, alteration, relocation, or demolition of a structure in the Historic District,
 - 2. Alteration, construction, or removal of stone walls, fencing, curbing, lighting, or signage within the Historic District,
 - 3. Any repairs, alterations, or improvements to the interior of all structures within the Historic District,
 - 4. Landscaping all property within the Historic District,
 - 5. Elements which are appurtenant to a building, including antennas, satellite dishes, flagpoles, mailboxes, window air conditioning units, and similar elements.

133-165 Activities Not Requiring Certificates of Approval

The following activities or elements are exempt from review by the Historic District Commission and a Certificate of Approval shall not be required.

- A. Work that had been done prior to the adoption of the Ordinance. Property owners are not required to bring any existing conditions into conformity with this Ordinance, except in cases where improving certain existing conditions may be integrally related to a proposal presented by the applicant.
- B. Construction, alteration, or demolition of any structures or element of a structure which is certified by the Town as being required for immediate public safety.

133-166 Guidelines for Review

The purpose of these guidelines is to preserve the distinctive character and integrity of the Historic District when rehabilitation and new construction are proposed.

- A. Changes to Existing Structures
 - 1. Routine maintenance of existing structures within the District shall be deemed of no interest to the Commission,

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2. When determining the appropriateness of all other alternatives, restorations, or remodeling of existing structures within the District the following criteria shall be used:
 - a. When an exterior or interior change is proposed, significant existing materials and elements shall be retained,
 - b. Where glass, plastic, wood, masonry elements are an integral part of a structure’s historical architectural character, consideration shall be given to preservation of these elements so as to retain their original appearance,
3. Any new design elements introduced shall respect the character, age and history of the structure,
4. Existing historical doors, door frames, windows, and window frames shall be retained and rehabilitated whenever possible. When replacement is essential, new doors, door frames, windows, and window frames shall be in character with the structure,
5. Features which give a roof historical character shall be preserved or restored to the extent that such features are visible from the ground,
 - a. Essential outdoor mechanical equipment shall be installed in locations which create the least disturbance to the historical appearance of the structure and which involve minimum alteration and impact to its structure.

B. Construction of New Structures

1. Construction shall be complementary to the configuration of existing structures in the District,
2. Structures shall utilize exterior materials in keeping with the exteriors of structures in the District,
3. Structures shall respect and reflect the traditional scale and proportions of other existing historical structures, taking into consideration the height, width, setback, roof shapes or pitches and facade patterns of existing structures within the District.

C. Demolition

1. No demolition permit may be issued by the Town until the Commission has either filed with the Town a signed letter of approval or has failed to file a

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Notice of Disapproval within the specified time period of forty five (45) days.

2. Where public safety needs require the immediate removal of a structure within the District, as determined and certified by the Town, the Historic District Commission shall allow removal if notice was provided to the Commission within 24 hours by certified mail of such determination.

D. Relocations

1. Structures within the Historic District shall be retained on their present sites whenever possible. Relocation shall be considered as an alternative to demolition.

E. Signs/Plaques

1. All new signs/plaques and all changes to existing signs/plaques within the Historic District shall require review and approval by the Historic District Commission;
2. New signs/plaques shall be constructed of wood, metal or stone, exhibiting historic sign design and color, and have no internal illumination;
3. Size shall be determined given the context of the site and building(s);
4. Portable/seasonal/temporary signs/plaques may be permitted for up to 30 days per year;
5. If there is a conflict between the requirements of the Historic District Ordinance and the Town of Henniker Sign Ordinance, this section of the Historic District Ordinance shall supersede the Sign Ordinance.

F. Streetscape

1. Off street parking shall be placed to the rear of the structures where possible and appropriated screened;
2. Historical and traditional marking for property boundaries and grounds, such as stone walls, fences, and tree borders shall be preserved. Replications or extensions may be introduced where appropriate.

133-167 Application Procedure

The following procedures and any Rules of Procedure duly adopted by the Historic District Commission shall be followed in processing applications for Certificates of Approval.

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- A. Applications must be submitted to the Historic District Commission for a Certificate of Approval prior to any work to be performed,
- B. Applications shall be submitted to the Commission, through the Henniker Town Hall offices, in a timely manner and format prescribed by the Historic District Commission,
- C. The application to the Commission maybe filed simultaneously with any other application or request for Town land use approvals or permits.

133-168 Public Hearings

- A. The Historic District Commission shall conduct a public hearing on all applications for Certificates of Approval. The applicant and all abutters shall receive a notice of the pubic hearing by certified mail, and a public notice of the hearing shall be posted in at least 2 public places and shall be published in a newspaper of general circulation in the Town of Henniker. Said notice shall be given not less than 10 days before the date of the hearing.
- B. At its meeting, the Commission shall review the application for completeness, as specified in the A Historic District Application.. If the application is determined to be complete, then the Commission shall vote to accept the application and commence with the public hearing. If the application is not complete, then consideration of the application shall be suspended until the next scheduled meeting,
- C. The Commission shall review the application using the criteria set forth in Section VII and then shall act to approve, approve with conditions, or disapprove the application.

133-169 Issuance of Certificate of Approval or Notice of Disapproval

- A. At the conclusion of its review, the Commission shall issue in writing a Certificate of Approval or Notice of Disapproval within forty five (45) days of the filing of the application, unless the applicant agrees, in writing, to a longer review period.
- B. Failure to render a decision within the specified time period shall be deemed to constitute approval by the Commission,
- C. A Certificate of Approval will be issued if, in the opinion of a majority of the Commission members present and voting, that the applicant’s proposal meets the criteria of Section VII.
- D. The Certificate of Approval, together with any changes, conditions or stipulations deemed necessary by the Commission for the applicant to comply with the

ARTICLE XXIX – HISTORIC DISTRICT

provisions of this Ordinance, shall be signed by the Chairperson of the Commission.

- E. A Notice of Disapproval shall be issued if, in the opinion of a majority of the Commission members present and voting, that the applicant’s proposal does not meet the criteria of Section VII.
- F. The Notice of Disapproval, together with the written reasons for such disapproval, shall be signed by the Chairperson, or a designee,
- G. If a Notice of Disapproval is issued, the applicant may make modifications to the proposed plan and submit a new application for review by the Commission,
- H. Decisions of the Commission shall be made available for public inspection within seventy two (72) hours and placed on file at the Town Hall.

133-170 Appeals

As per RSA 677:17, any person or persons jointly or severally aggrieved by a decision of the Commission shall have the right to appeal that decision to the Zoning Board of Adjustment in accordance with the provisions of RSA 676:5 and RSA 677:1-14.

133-171 Enforcement/Penalties

Violation of this Ordinance shall be subject to the remedies provided in RSA 676:15 and 676:17.

133-172 Validity/Severability

If any section, clause, provision or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of the Ordinance.