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[**HISTORY:** Adopted by the 1961 Town Meeting as Amended through the 1979 Town Meeting. Subsequent amendments noted where applicable.]

[Reorganized ordinance adopted by the 2010 Town Meeting. Intent of reorganization was to eliminate duplicated wording and make the ordinance more readable. No substantive change from the 2009 ordinance was proposed or intended. In case of questions/interpretations, refer to 2009 ordinance; references are shown in italics, i.e. (§309-1)]

GENERAL REFERENCES - SALEM TOWN CODE

Board of Adjustment -	See Ch. 4.
Planning Board -	See Ch. 83.
Building/construction -	See Ch. 147.
Excavations -	See Ch. 182.
Flood control -	See Ch. 193.
Historical District -	See Ch. 205.
Housing standards -	See Ch. 208.
Individual sewage disposal systems -	See Ch. 253.
Sewers -	See Ch. 264.
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**CHAPTER 309
ARTICLE 1
GENERAL PROVISIONS**

Section 1:1 Authority, Purpose, and When Effective (§309-1; §309-126)

Pursuant to the authority conferred by RSA 674:16-23 and 675:2-9 for the purposes contained in RSAs, this Salem Zoning Ordinance of 1961 shall take effect immediately upon passage. Amendments take effect immediately upon passage.

Section 1:2 Amendments (§309-124)

This chapter, or any part thereof, may be amended from time to time in accordance with procedures currently prescribed under the applicable sections of the New Hampshire Revised Statutes Annotated.

Section 1:3 Establishment of Zoning Districts (§309-2)

For the purpose of this chapter, the Town of Salem is divided into the following districts as shown on the Zoning Map:

Residential District

Rural District

Recreational District

Garden Apartment R-A District

Manufactured Housing Park District [Amended 1982 Town Meeting]

Business Office Districts, including subdistricts I and II [Added 1982 Town Meeting]

Limited Community Shopping Village District [Added 1982 Town Meeting]

Town Center District [Added 1998 Town Meeting]

Commercial-Industrial Districts, including subdistricts A, B and C

[Highway Commercial District: added 1981 Town Meeting; incorporated into Comm. Ind. C District 2003 Town Meeting]

Industrial District

Section 1:4 Zoning Map Incorporated (§309-3)

The Zoning Map is made part of this chapter and is available at the Town Hall for viewing or purchase.

Section 1:5 Contiguous Lots In Single Ownership

Residential, Rural, and Recreation Districts: (§309-10.E) (§309-33.E) (§309-55.E)

Subject to the provisions contained in Sections 3:1.1, 3:2.1 and 3:3.1, if two (2) or more contiguous lots or combination of lots and portions of lots are in single ownership and if all or part of the lots do not meet the requirements established by lot width and area, the Planning Board shall continue to consider the lands involved to be an undivided parcel for the purpose of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this chapter.

Section 1:6 Severability (§309-125)

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

Section 1:7 Definitions

Source (definitions were consolidated from the following sections):

- (a) Section 1:7 - Zoning [Amended 1982 Town Meeting] (§309-4)
- (b) Section 6:1 - Seniors Housing Overlay District (§309-175, §309-180)
- (c) Section 7:5 - Regulations for Floodplain Development (§309-93.1 A)
- (d) Section 7:6 - Wetland Conservation Ordinance [Amended 1996, 2006, 2007 Town Meetings] (§309-74)
- (e) Section 7:7 - Personal Wireless Services Ordinance (§309-158)
- (f) Section 7:9 - Home Occupation Ordinance (§309-7.2. B; §309-30.2 B; §309-51.1 B)
- (g) Section 7:2 - Sign Ordinance [Amended 2006 Town Meeting] (§309-83)
- (h) Section 8:17 - Sexually Oriented Business [Added 1992, Amended 2007 Town Meetings] (§309-47.2)
- (i) Section 7:11 - Impact Fee Ordinance (§309-128)
- (j) Section 4:3 - Town Center District (§309-171)
- (k) Section 5:1 - Commercial-Industrial District (§309-46.K)
- (l) Section 7:12 - Small Wind Energy Systems Ordinance [Added 2010 Town Meeting]

As used in this chapter, the following terms shall have the meanings indicated for the sourced sections:

Abutter – in accordance with RSA 676:4, any person whose property adjoins or is directly across the street or stream from the land under consideration by the Planning Board or Board of Adjustment. (a)

Active Adult Community – a community or living facility designed specifically for the interests of persons age 55 and older, which typically contains recreational amenities and support services for older adults who are healthy, active, and capable of completely independent living. (b)

Adult Bookstore or Adult Video Store – a business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of (1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or, (2) instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct" as defined in RSA 571-B:1, other than birth control devices. An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals. (h)

Adult Cabaret – a nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances in which a person appears in a state of nudity and/or which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a "substantial portion of the total presentation time" of which is devoted to showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. (h)

Adult Drive-in Theater – an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a "substantial portion of the total presentation time" being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. (h)

Adult Motel – a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a "substantial portion of the total presentation time" of which are distinguished or characterized by an emphasis upon the depiction or

description of materials which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. **(h)**

Adult Motion Picture Arcade – any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a “substantial portion of the total presentation time” of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. **(h)**

Adult Motion Picture Theater – an establishment with a capacity of five or more persons where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a “substantial portion of the total presentation time” is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, for observation by patrons. **(h)**

Adult Nude Model Studio – a place where a person, who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals, is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; or such display is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. **(h)**

Adult Sexual Encounter Center – a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration: (A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (B) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in Adult Bookstores, Adult Video Stores, or Adult Motion Picture Theatres are characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. **(h)**

Adult Sexually Oriented Business – any place of business at which any of the following activities are conducted, and the activities are not a matter of serious literary, artistic, scientific or political value: Adult Bookstore or Adult Video Store, Adult Cabaret, Adult Drive-in Theater, Adult Motel, Adult Motion Picture Arcade, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center. **(h)**

Adult “Substantial Portion of the Total Presentation Time” – shall mean the presentation of films or shows for viewing on more than seven days within any 56 consecutive day period. **(h)**

Adult Theater – a theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a “substantial portion of the total presentation time” of which are distinguished or characterized by an emphasis on activities in which a person appears in a state of nudity and/or which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1. **(h)**

Alternative Siting – innovative siting techniques that shall include the location of Antennae which are roof-mounted, side mounted or structure mounted, including but not limited to man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of Antennae. **(e)**

Alzheimer’s Facility – a group living or health services facility providing health care and support services exclusively for residents requiring assistance with daily living due to a form of dementia, normally associated with aging, defined as Alzheimer’s disease. **(b)**

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

Antenna Array – a collection of Antennae attached to a structure or Mount to send and receive radio signals for a single Carrier. **(e)**

Applicant – a Carrier, Tower Company, or any other person applying for a permit under Section 7:7. **(e)**

Area of Special Flood Hazard – the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area designated as Zones A and AE on the Flood Insurance Rate Map. [Amended 2009 Town Meeting] **(c)**

Assisted Living Facility (ALF) – housing for frail elderly persons, typically age 75 to 85, who require limited supportive services for their daily living activities. ALF's typically require residents to be mobile and capable of performing most routine tasks. **(b)**

Basement – any area of a building having its floor subgrade (below ground level) on all sides. **(c)**

Building – see "structure". **(c)**

Business Office – a room or building in which one (1) or more persons conduct clerical work, engage in administrative functions and engage in transactions and meetings with others in connection with the advancement of commercial or industrial enterprises **(a)**

Canopy – a permanent roof-like structure of rigid material supported by and extending from the facade of a building. **(g)**

Carrier – a person that provides personal wireless services, as defined in the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(ii). **(e)**

Community Residential Facility (CRF) – a multi-unit facility providing residential and habilitative services to persons with developmental disabilities. [Added 1991 Town Meeting] **(a)**

Congregate Care Facility – a congregate care facility is a group living facility for seniors who may or may not require assistance with daily living. Congregate care facilities tend to be limited in size and scope of services, often providing more intensive services than can be provided in an ALF, but requiring residents to have at least partial mobility and reasonably good health. **(b)**

Continuing Care Retirement Community (CCRC) – cluster of a variety of housing options to meet the spectrum of needs and interests ranging from active adults through assisted living, often including on-premises skilled nursing facilities. CCRC's primary feature is the provision of "lifetime" supportive services at each stage of a senior's later life. **(b)**

Curved Street – a street with a centerline radius of less than two hundred fifty (250) feet and a change in bearing of the centerline of at least fifteen (15) degrees in front of a lot shall be deemed a curved street for the purpose of determining the frontage requirement for that lot. [Amended Town Meeting 1996] **(a)**

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. [Amended 2009 Town Meeting] **(c)**

Elderly – persons age 62 and older, as defined in federal regulations. **(b)**

Environmental Assessment (EA) – an EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas. (e)

Equipment Shelter – an enclosed structure, cabinet, shed, vault, or box near the base of the Personal Wireless Service Facility within which are housed equipment for those facilities such as battery and electrical equipment. (e)

FAA – an acronym for the Federal Aviation Administration. (e)

Fall Zone – the area on the ground within a prescribed radius from the base of a Personal Wireless Service Facility. The Fall Zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. (e)

FCC – an acronym for the Federal Communications Commission. (e)

Fee Payer – the applicant for a subdivision or site plan approval, or a building permit that would create “new development” as defined in this Section. (i)

FEMA – an acronym for the Federal Emergency Management Agency. (c)

Flood, Base – a flood having a one percent chance of being equaled or exceeded in any given year. (c)

Flood, Flooding – a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, and (2) the unusual and rapid accumulation or runoff of surface waters from any source. (c)

Flood, 100 year – see "Flood, Base". (c)

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. (c)

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. (c)

Flood Insurance Study – see "flood elevation study." (c)

Floodplain or Flood-Prone Area – any land area susceptible to being inundated by water from any source. (c)

Flood Proofing – any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. (c)

Floodway/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. [Amended 2009 Town Meeting] (c)

Frontage – the continuous length of the lot bordering on an accepted municipal street. (a)

Height – shall be defined in accordance with the International Building Code and its commentary, as amended. [Added 2000 Town Meeting; amended 2008 Town Meeting] (a)

High Water Mark – : [added 1999 Town Meeting] (c)

1. For natural freshwater bodies without artificial impoundments, the reference line for the natural mean high water level as set forth in RSA 483-B:4 XV II, and established by the NH Department of Environmental Services.
2. For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights; and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
3. For Arlington Pond, specifically = 161.712 feet, the minimum pond water elevation between April 30th – October 10th of each year, prior to use of the pond's waters for use in the Town's water supply (Agreement for Water Management between the Town of Salem and Arlington Pond Protective Associate, March 14, 1996). The Base Flood Elevation is established = 162 feet, as published in the Flood Insurance Rate Map (FIRM) dated April 6, 1998. A reference mark is provided = 168.42 feet, identified by a brass plug on the east side of the gatehouse on Wheeler Dam (National Geodetic Vertical Datum of 1929).
4. For all rivers and streams, as established as set forth in RSA 483-B:4 XI-a. as the “ordinary high water mark”. [Revised 2009 Town Meeting]

Highest Adjacent Grade – the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. (c)

Historic Structure – any structure that is: (c)

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
3. 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
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - by an approved state program as determined by the Secretary of the Interior, or
 - directly by the Secretary of the Interior in states without approved programs.

Home Occupation – an occupation conducted entirely within the dwelling unit. It is clearly a secondary use of the property which does not adversely affect the residential character of the neighborhood. It is in compliance with the criteria established for a minor home occupation. Home occupations do not include garage sales and yard sales, nor home parties which are held for the purpose of the sale or distribution of goods or services. (f)

Impact Fee – a fee or assessment imposed upon development, including subdivision, building construction 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 or operated by the municipality, including and 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 rights-of-way; municipal office facilities; public school facilities; the municipality's 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 recreation facilities, not including public open space. (i)

Independent Living Facilities – housing which groups seniors for the purpose of social interaction and mutual support in a common interest community. Group facilities may be provided on premises for recreation and social interaction, but only limited support services are typically provided. Typically multi-family residential structures. (b)

kennel – any building(s) or land used or operated as a business for the boarding, breeding, training or selling of five (5) or more dogs, cats or other household pets. [Added 2009 Town Meeting] **(a)**

Lot Occupation – maximum lot occupation or coverage shall be defined as the maximum portion of the lot area devoted to buildings, driveways, parking lots and other impermeable areas.[Added 1991 Town Meeting] **(a)**

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

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” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision. [Amended 2009 Town Meeting] **(c)**

Manufactured Home Park or Subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. **(c)**

Mast – a thin pole that resembles a street light standard or a telephone pole. **(e)**

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. **(c)**

Monopole – a thicker type of structure than a Mast that is self supporting with a single shaft of wood, steel or concrete that is designed for the placement of Antennae and Antenna Arrays along the shaft. **(e)**

Mount – the structure or surface upon which Antennae are mounted, including the following four types of Mount: (a) roof mounted or mounted on the roof of a building; (b) side mounted or mounted on the side of a building; (c) ground mounted or mounted on the ground; d) structure mounted or mounted on a structure other than a building. **(e)**

New Construction – for the purposes of determining flood 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 structures 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. [Added 2009 Town Meeting] **(c)**

New Development – an activity that results in (1) the creation of a new dwelling unit or units; (2) the conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units; (3) construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building; or (4) the conversion of a lawful existing use to another use, including changing a dwelling unit from ‘seasonal use’ to ‘year-round use’, if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment; however, (5) new development shall not include the replacement of an existing housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster, provided that the replacement unit or structure does not involve a change in use that would generate a net increase in the demand on capital facilities for which impact fees are assessed. **(i)**

Nursing Home – a group living facility providing basic domiciliary services and semi-skilled, rehabilitative nursing service for patients who have impaired mobility or health problems of a limited duration. Nursing homes may or may not cater exclusively to senior patients, and may provide rehabilitation services for patients of all ages. [Amended 1999 Town Meeting] **(b)**

Off-Site Improvements – those improvements that are necessitated by a development, but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the Planning Board. As used in Section 7:11, the definition of off site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. **(i)**

Personal Wireless Service Facility – any facility which provides commercial mobile wireless services, unlicensed wireless services and common Carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(i). **(e)**

Planning Board or Board – the Town of Salem Planning Board. **(e)**

Preferred Siting Locations – the locations for a Personal Wireless Service Facility in the Town of Salem, ranked in the order of preference, contained in Section 7:7.3.1.1.a through 7:7.3.1.1.e. **(e)**

Private Garage – a building or structure for the storage or parking of four or fewer passenger motor vehicles without provision for repairing or servicing such vehicles for profit. [Added 1991 Town Meeting] **(a)**

Private, Non-profit – a 501(C)(2) or 501(C)(3) non-profit organization as designated by the Internal Revenue Service. **(b), (j)**

Public Open Space – a parcel of land essentially unimproved and available to the public only for passive recreational uses such as walking, sitting, picnicking, table games, natural resource conservation, and similar uses. Town parks which do not include “public recreation facilities” constitute public open space within the meaning of this Section 7:11. **(i)**

Public Recreation Facilities – the land and facilities owned or operated by the Town of Salem or the Salem School District, other than public open space, which are designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which include equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs. **(i)**

Radio Frequency (RF) Engineer – an engineer specializing in electrical or microwave engineering, especially the study of radio frequencies. **(e)**

Recreational Vehicles –

1. A vehicular camping trailer unit not exceeding thirty-six (36) feet in length, eight (8) feet in width or twelve (12) feet in height or a boat/boat trailer not exceeding twenty-four (24) feet in length, eight (8) feet in width and twelve (12) feet in height, primarily designated as temporary living quarters for recreational camping, travel or boating use; it is designed to be mounted on or drawn by an automotive vehicle. A vehicle meeting the above definition except for size is not deemed incidental to a dwelling unit. [Added 1983 Town Meeting] **(a)**

2. A vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use. [Added 1994 Town Meeting] **(c)**

Riverine – relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. **(c)**

Seniors – persons age 55 and older. **(b)**

Seniors Housing – a variety of housing types designed specifically to meet the varied needs of persons age 55 and older. Such housing may include, active adult facilities; independent living facilities; continuing care retirement communities (CCRC); assisted living facilities (ALF); congregate care facilities; nursing homes; skilled nursing facilities (SNF); and, Alzheimer’s facilities. **(b)**

Sign – any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any establishment, product, goods, or service, or otherwise for the purpose of providing information. [Amended 2006 Town Meeting] **(g)**

Sign, Advertising Display Area – the advertising display surface (copy area) encompassed within any regular geometric figure which would enclose all parts of the sign. The structural supports for a sign, whether they be columns, pylons, or a building, or any part thereof shall not be included in the advertising area. On a freestanding sign, such area shall be calculated as the maximum projected area of the sign. **(g)**

Sign, Banner – a sign made of fabric or any non-rigid material with no enclosing framework. **(g)**

Sign, Billboard – a non-point-of-sale sign which advertises a business, organization, event, person, place, or thing. **(g)**

Sign, Changeable Copy – a sign that is designed so that characters, letters, or illustrations can be changed or rearranged either manually in the field (i.e. reader-boards with changeable letters) or automatically on a lampbank or through mechanical means without altering the face of the surface of the sign. Changeable copy signs are only allowed on freestanding signs. [Amended 2000, 2005 Town Meetings] **(g)**

Sign, Construction – a temporary sign identifying an architect, contractor, lender and/or material supplier participating in construction on the property on which the sign is located. **(g)**

Sign, Directional – those signs located at the point of access/egress directing traffic in and out of the site. **(g)**

Sign, Freestanding – a sign supported upon the ground by poles or braces and not attached to any building. **(g)**

Sign, Identification – a sign whose copy is limited to the commercial name and address of a building, institution, or person and/or to the activity or occupation being identified. **(g)**

Sign, Legal Nonconforming – a sign which (1) was erected legally but which does not comply with subsequently enacted sign restrictions and regulations; or, (2) does not conform to the sign code requirements, but for which a special permit has been issued. **(g)**

Sign, Nameplate – a non-electric on-premise residential identification sign giving only the name, address, and/or occupation of an occupant or group of occupants. **(g)**

Sign, Off-site – any sign which does not advertise the name, address, business, and/or products of the site on which it is located. [Amended 2006 Town Meeting] **(g)**

Sign, Projecting – a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign. **(g)**

Sign, Real Estate – a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale. **(g)**

Sign, Roof – any sign erected over or on the roof of a building. **(g)**

Sign, Rotating – a sign in which the sign itself or any portion of the sign moves in a revolving or similar manner. Such motion does not refer to methods of changing copy. (g)

Sign, Temporary – a sign not constructed or intended for long-term use. (g)

Sign, Under Canopy – those signs underneath a sheltered walkway or awning in front of a building. They shall be placed perpendicular to the building. (g)

Sign, Wall – a sign painted on or attached to and erected parallel to the face of, or erected and confined within the limits of the outside wall of any building and supported by such wall or building and which displays only one advertising surface. (g)

Single Family Dwelling – a detached or free-standing residence designed for and occupied by one family to be used for living, eating, sleeping, and cooking. These dwellings shall include any room, or rooms connected together forming a habitable unit for one family, or a manufactured home which is used for residential occupancy, built upon a permanent chassis and which conforms to the definition of manufactured homes under the provisions of NH RSA 674:31. [Added by 1990 Town Meeting] (a)

Skilled Nursing Facility (SNF) – an institution providing primarily extended nursing care. [Amended 1999 Town Meeting] (b)

Special Flood Hazard Area – an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, and AH (see Area of Special Flood Hazard). (c)

Start of Construction – includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on 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. (c)

Story – shall be defined in accordance with the International Building Code and its commentary, as amended. [Added 2000, amended 2010 Town Meetings] (a)

Structure – for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. (c)

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 percent of the market value of the structure before the damage occurred. (c)

Substantial Improvement – any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during the life of the structure the cumulative cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage regardless of the actual repair work performed. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external

dimensions of the structure. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places. [Amended 2002 Town Meeting] **(c)**

Tower – any structure that is designed and constructed primarily for the purpose of supporting one or more Antennae for a Personal Wireless Service Facility, including self-supporting Lattice Towers, Guyed Towers, Stealth Towers, Masts or Monopole Towers. **(e)**

Tower Company – a company in the business of building Towers and selling or leasing them, or selling or leasing space on them, to Carriers. **(e)**

Tower, Guyed – a Monopole or Lattice Tower that is secured to the ground or other surface by diagonal cables for lateral support. **(e)**

Tower, Height – when referring to a Tower or other structure, the distance measured from ground level to the highest point on the Tower or other structure, even if said highest point is an Antenna. **(e)**

Tower, Lattice – a type of structure that is self supporting with multiple legs and a cross bracing of structural steel. **(e)**

Tower, Pre-existing and Antennae – any Tower or Antenna lawfully constructed or permitted prior to the adoption of Section 7:7. Shall also mean any Tower or Antenna lawfully constructed in accordance with Section 7:7. **(e)**

Tower, Stealth – any Tower on which the Antennae are integrated as architectural features of the Tower to disguise them, so that the purpose of the Tower for providing wireless services is not readily apparent. **(e)**

Used Car Dealership – for Section 5:1, that portion of a lot or structure devoted in whole or part to: **(k)**
1. The sale of two (2) or more used automobiles; or
2. The display of two (2) or more used automobiles for the purpose of sale. [Amended 1981 Town Meeting]

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 required in Sections 7:5.4.5; 7:5.4.7; and 7:5.4.8.2.2 is presumed to be in violation until such time as that documentation is provided.
[Added 2009 Town Meeting] **(c)**

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 flood plains of coastal or riverine areas. **(c)**

Wetlands – those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **(d)**

Wind Energy Meteorological Tower (met tower) – includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of Section 7:12, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system. **(l)**

Wind Energy System Modification – any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification. (I)

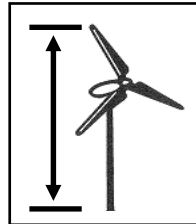
Wind Energy System Net Metering – the difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer’s small wind energy system that is fed back into the electric distribution system over a billing period. (I)

Wind Energy Systems Power Grid – the transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England. (I)

Wind Energy System Shadow Flicker – the visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow. (I)

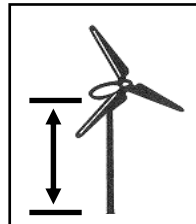
Wind Energy System, Small – a wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption. (I)

Wind Energy System Height – The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point. (I)



Wind Energy System Tower – the monopole, guyed monopole or lattice structure that supports a wind generator. (I)

Wind Energy System Tower Height – the height above grade of the fixed portion of the tower, excluding the wind generator. (I)



Wind Generator – the blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity. (I)

CHAPTER 309
ARTICLE 2
PERMITTED USES & DIMENSION RESTRICTIONS

Section 2:1 Permitted Uses Table

Note: This table provides the user with a quick reference in order to determine uses permitted in a particular zoning district. For details and restrictions regarding a particular land use, consult the appropriate text in the Salem Zoning Ordinance.

Abbreviations:

DU = dwelling unit P = permitted use SE = use permitted by a special exception – = use not permitted
R = Residential GA = Garden Apartment BO-II = Business Office II CI-A = Commercial-Ind. A
RU = Rural MFG = Manufactured Hsg LCSV = Ltd Comm. Shop Village CI-BC = Comm.-Ind. B & C
REC = Recreational BO-I = Business Office I TC = Town Center I = Industrial

PRINCIPLE USE	R	RU	REC	GA	MFG	BO-I	BO-II	LCSV	TC	CI-A	CI-BC	I
RESIDENTIAL												
One Family DU	P	P	P	P	P	P	P	P	P	-	-	-
Two Family DU	P	P	-	P	P	P	P	P	-	-	-	-
Two or more families	-	-	-	P	-	-	-	-	-	-	-	-
In-law apartment	P	P	P			-	-	P	-	-	-	-
Accessory apartment	P	P	-	-	-	-	-	-	-	-	-	-
Home occupation	P	P	P		-	-	-	P	-	-	-	-
Private garage	P	P	P	P	P	-	-	P	-	-	-	-
Manufactured housing	-	-	-	-	P	-	-	-	-	-	-	-
Community residential	-	-	-	-	-	P	-	-	-	-	-	-
Gardens, orchards:Resid. use	P	-	P	-	-	-	-	-	-	-	-	-
Casual sales	P	P	-	P	P	-	-	P	-	-	-	-
Use accessory to perm. use				P		P	P		P	P	P	P
EDUCATIONAL AND INSTITUTIONAL												
Public and parochial schools	P	P	-	P	P	-	-	P	-	-	P	-
Secondary schools	-	-	-	-	-	-	-	-	P	-	P	-
Post secondary /university	-	-	-	-	-	-	-	-	P	P	P	-
Family day care home	P	P	P	P	P	-	-	P	-	-	-	-
Other private schools	SE	SE	-	SE	-	-	-	-	-	P	P	-
Day-care facilities	-	-	-	-	-	-	-	P	-	-	-	-
Child care, nursery, nursery school	-	-	-	-	-	-	-	-	P	-	P (CI-B)	-
Group day care center	-	-	-	-	-	P	P	-	-	-	-	-
Churches	P	P	P	P	P	-	-	P	-	-	P	-
Parish houses, convents	P	P	P	P	P	-	-	P	-	-	-	-
Religious institutions	-	-	-	-	-	-	-	-	P	-	-	-
Municipal buildings	P	P	P	P	P	P	-	P	P	P	P	P
Libraries	P	P	-	P	P	-	-	P	P	-	-	-
Parks and playgrounds	SE	SE	-	SE	-	-	-	-	P	-	-	-
Community service center	-	-	-	-	-	-	-	-	P	-	-	-
SERVICES – ENTERTAINMENT AND RECREATION												
Commercial activities common to recreation areas	-	-	SE	-	-	-	-	-	-	-	-	-
Golf course	-	SE	-	-	-	-	-	-	-	-	-	-
Indoor skating, tennis	-	-	-	-	-	-	-	-	-	-	-	P
Amusement park	-	-	-	-	-	-	-	-	-	-	P	-
Racetrack	-	-	-	-	-	-	-	-	-	-	P	-
Bowl alley, golf driving, dance hall, drive-in, movie theater	-	-	-	-	-	-	-	-	-	-	P	-
Sexually oriented business	-	-	-	-	-	-	-	-	-	-	P	-
Health clubs, rec. & sports fac.	-	-	-	-	-	-	-	-	-	-	P	-

Section 2:1 Permitted Uses Table

PRINCIPLE USE	R	RU	REC	GA	MFG	BO-I	BO-II	LCSV	TC	CI-A	CI-BC	I
SERVICES – MEDICAL												
Hospital	SE	SE	-	SE	-	-	-	-	P	-	P	-
Adult care agency	-	-	-	-	-	-	-	-	P	-	-	-
Nursing, convalescent home	-	-	-	-	-	-	-	-	P	-	-	-
Continuing care	-	-	-	-	-	-	-	-	P	-	-	-
Assisted living facility	-	-	-	-	-	-	-	-	P	-	-	-
Health care facilities	-	-	-	-	-	-	-	-	P	-	-	-
SERVICES – TRANSPORTATION												
Parking facility, pub. & priv.	-	-	-	-	-	SE	-	-	P	P	P	-
Public garages, repair shops	-	-	-	-	-	-	-	-	-	-	P	-
Passenger / taxi services	-	-	-	-	-	-	-	-	-	P	P	P
SERVICES – RETAIL AND COMMERCIAL												
Retail stores	-	-	-	-	-	-	-	P	-	P	P	-
Business/Prof. Offices	-	-	-	P	-	P	P	P	P	P	P	P
Mixed office residential	-	-	-	-	-	P	-	-	-	-	-	-
Funeral establishment	-	-	-	-	-	P	-	-	-	-	P	-
Banks	-	-	-	-	-	-	-	P	-	P	P	P
Studios	-	-	-	-	-	-	-	P	-	P	P	P
Restaurants	-	-	-	-	-	-	-	P	-	P	P	-
Personal services	-	-	-	-	-	-	-	P	-	P	P	-
Feed, hay, grain and building materials sales	-	-	-	-	-	-	-	-	-	-	P	-
Motor vehicles fuels, storage /dispensing	-	-	-	-	-	-	-	-	-	P	P	P
Gasoline station	-	-	-	-	-	-	-	-	-	-	P	-
Sales/repair for autos, boats, industrial, farm, const. equip	-	-	-	-	-	-	-	-	-	-	P	-
Monuments storage, sales	-	-	-	-	-	-	-	-	-	-	P	-
Liquor storage, sales	-	-	-	-	-	-	-	-	-	-	P	-
Furniture storage, sales	-	-	-	-	-	-	-	-	-	-	P	-
Construction, plumbing sales	-	-	-	-	-	-	-	-	-	-	P	-
Energy sales	-	-	-	-	-	-	-	-	-	-	P	-
Veterinarian facility	-	-	-	-	-	-	-	-	-	-	P	-
Animal hospital	-	-	-	-	-	-	-	-	-	-	P	-
Printing plants	-	-	-	-	-	-	-	-	-	-	P	-
Laundry – commercial	-	-	-	-	-	-	-	-	-	-	P	-
Laundry – self serve	-	-	-	-	-	-	-	-	-	P	P	-
Motels and Hotels	-	-	-	-	-	-	-	-	-	-	P	P
Community Shop Village	-	-	-	-	-	-	-	P	-	-	-	-
AGRICULTURE												
Farming / agriculture	-	P	-	-	-	-	-	-	-	P	P	-
Forestry	-	P	-	-	-	-	-	-	-	-	-	-
Keeping of cows, goats, sheep, horses etc.	-	P	-	-	-	-	-	-	-	-	-	-
Greenhouses / nurseries	-	P	-	-	-	-	-	-	-	-	P	-
Kennels / animal shelters	-	-	-	-	-	-	-	-	-	-	P	-
Roadside stands	-	-	-	-	-	-	-	-	-	-	P	-
RESEARCH AND MANUFACTURING												
Facilities for research and manufacture, assembly, storage, etc.	-	-	-	-	-	-	-	-	-	-	P	P

Section 2:2 Zoning Dimension Restrictions Table

Refer to referenced sections in each District for restrictions not included in this table.

DISTRICT <i>Notes:</i>	MINIMUM LOT SIZE <i>2:1.1.1</i>	MINIMUM FRONTAGE <i>2:1.1.2</i>	MINIMUM WIDTH <i>2:1.1.2</i>	SETBACKS <i>2:1.1.3 and 2:1.1.4</i>	MAXIMUM COVG. <i>2:1.1.5</i>	MAXIMUM HEIGHT <i>2:1.1.6</i>
Residential Ref: Section 3:1 (§309-7)	25,000 sf single w/sewer, or 37,500 sf duplex w/sewer	150' single, + 40' extra unit; 125' curved st., +40' extra unit	100' @ building line	Front: 30' Side: 15' Rear: 30'	30% bldg 1 unit/lot	35', or 2-1/2 stories
Rural Ref: Section 3:2 (§309-30)	87,120 sf single w/sewer, or 174,240 sf duplex w/sewer, or 5 acres (see notes)	150' single, + 20' extra unit; 125' curved st., +40' extra unit		Front: 30' Side: 30' Rear: 30'	30% bldg 1 unit/lot	35', or 2-1/2 stories
Recreational Ref: Section 3:3 (§309-52)	25,000 sf single w/sewer	100'	100' @ building line	Front: 30' Side: 15' Rear: 15'		
Garden Apts Ref: Section 3:4 (§309-16:-23)	2 acres			Front: 40' Side: 30' Rear: 30'	25% bldg	35', or 2-1/2 stories
Mfg Hsg Park Ref: Section 3:5 (§309-62)	15,000 sf w/public water supply, or else 25,000 sf	100' w/public water supply, or else 150'		Front: 30' Side: 15' Rear: 30'	30% bldg 1 unit/lot	
Busn Office I & II Ref: Section 4:1 (309-37, 42)	25,000 sf single or busn use, or 37,500 sf duplex or mixed off/resid	150' single, + 40' extra unit; 125' curved st., +40' extra unit		Front: 30' Side: 15' Rear: 30'	50% lot	I: 35', or 2-1/2 stories II: 35'
LCSV Ref: Section 4:2 (§309-58.1)	1.5 acres	150'		Front: 50' Side: 25' Rear: 25'	30% bldg	35'
Town Center Ref: Section 4:3 (§309-170)	3 acres	150'		Front: 100' Side: 75' Rear: 75'	30% bldg.	
Comm Ind-A Ref: Section 5:1					90% lot	35', 45', or 3 stories
Comm Ind-B, C Ref: Section 5:1				Front: 30' Side: 20' Rear: 20'	70% lot	35', 45', or 3 stories
Industrial Ref: Section 5:2		300'		Front: 50' Side: 40' Rear: 40'	30% bldg.	35', or 3 stories
Sr Hsg O/L Ref: Section 6:1 (§309-178)	10 acres	200'		Front: 50' Side: 50' Rear: 50'		35'

2:2.1 Notes for Zoning Dimensions Restriction Table

2:2.1.1 Minimum Lot Size

Residential, Rural, Recreational, and Business Office Districts: if a lot is not served by the municipal sewerage system, the minimum lot size shall be as set forth in the table above, or the minimum lot size determined by the lot's soil type and slope as set forth in the Subdivision Control Regulations, whichever is greater. [Amended 1984 Town Meeting]

Rural District: some agriculture or other activities may require 5 acres. See Section 3:2.1.2.
Garden Apartment District: see Section 3:4.3 for additional restrictions.

2:2.1.2 Minimum Frontage

Recreational District: in the area of Lot 6601, Map 41, each lot shall have a 150' minimum frontage and a 150' minimum width at the building line.

Business Office Districts: The minimum frontage for each lot is for one unit for all permitted uses. The added feet requirement is for each additional family unit.

Industrial District, see Section 5:2.3.1.3 for additional restrictions.

2:2.1.3 Setbacks are for structures; and are from any street or streets on which a lot abuts, and from other lot lines. The following structures may be erected to within:

Residential District

- | | |
|--|-----------------------------------|
| 1. Swimming pool | 15' of the rear lot line; |
| 2. Garage | 10' of the rear lot line; |
| 3. Utility shed (up to 100 sf, 7' high) | 1' of the rear or side lot lines; |
| 4. Utility shed (up to 200 sf, 10' high) | 10' of the rear lot line. |

Rural District

- | | |
|------------------|------------------------------------|
| 5. Swimming pool | 15' of the side or rear lot lines. |
|------------------|------------------------------------|

Recreational District

- | | |
|---|-----------------------------------|
| 6. Utility shed (up to 100 sf, 7' high) | 1' of the rear or side lot lines; |
|---|-----------------------------------|
- The "rear lot line" will not be construed to be a property line fronting on a body of water or fronting on a street.

Garden Apartment District, see Section 3:4.3 for additional restrictions.

Manufactured Housing District

- | | |
|-----------|---------------------------|
| 7. Garage | 10' of the rear lot line; |
|-----------|---------------------------|

Limited Community Shopping Village District, see Section 4:2.5 for additional restrictions.

Commercial-Industrial District, see Section 5:1.3.13 for additional restrictions.

2:2.1.4 Other Restrictions (for all Districts, when applicable).

- | | |
|--|---------------------------------|
| 1. Wetland (see Section 7:6) | 40' from edge of wetland |
| 2. Prime wetland (see Section 7:6) | 100' from edge of prime wetland |
| 3. Proximity to Water Bodies (see Section 8:4) | 40' |
| 4. Leach fields | 75' |

2:2.1.5 Maximum Coverage applies to principle and accessory buildings (see definition for Lot Occupation, Section 1:7.)

Residential and Rural Districts: one residential structure allowed. However, the Chief Building Official may authorize an existing dwelling or mobile home to remain on a lot while a new dwelling is constructed on the same lot in the Rural and Residential Districts, provided that the existing dwelling or mobile home is removed no more than thirty (30) days after issuance of an occupancy permit for the new dwelling and that a suitable performance guarantee or legal agreement is submitted to ensure such removal. [Amended 2004 Town Meeting]

Manufactured Housing District: one housing unit allowed, plus garage, carport, tool or utility building, awning or entry. [Amended 1982 Town Meeting]

2:2.1.6 Maximum Height

Garden Apartment District, see Section 3:4.3.1.3 for additional restrictions.

Commercial-Industrial District, see Section 5:1.3.4 for additional restrictions.

Business Office Districts: Height restrictions apply to new buildings or additions to existing buildings.

**CHAPTER 309
ARTICLE 3
RESIDENTIAL DISTRICTS**

Section 3:1 Residential District

3:1.1 Applicability of Section (§309-5)

The following regulations shall govern the erection and alteration of buildings or structures and the use of land in the Residential District, except that they shall not apply to existing buildings or structures nor to the existing use of any building or structure, but shall apply to any alteration of a building or structure for use for a purpose or in a manner substantially different from the use to which it was put before alteration. However, no building or structure qualifying as a nonconforming use shall be occupied for a greater portion of the year than such building or structure was occupied as a prior nonconforming use unless minimum lot size, setbacks, frontage, building line, and all other dimensional requirements for this district are met or a variance is granted by the Board of Adjustment. In either case, the requirements for septic systems, as stated in Chapter 253 of the Salem Code, shall be met. Additionally, no building permits or variances shall be granted that would be likely to result in an increase of the portion of the year during which a building or structure qualifying as a nonconforming use will be occupied if such increased occupation will affect adversely public health standards, water quality, sewage treatment requirements or the water quality of any lake, stream or surface water system. The restrictions of Section 2:2 minimum lot size, minimum frontage, and minimum width at the building line, shall not apply to lots shown in a plat approved by the Salem Planning Board prior to the adoption of this chapter until January 1, 1981, except that if two (2) or more lots are contiguous, are held in identical ownership and none of the lots are improved by a house, then the restrictions of Section 2:2 minimum lot size shall apply forthwith. Discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months shall subject such property to all of the requirements of this Section. [Amended 1986 Town Meeting]

3:1.2 Permitted Uses (§309-6)

The following uses shall be permitted in the Residential District:

3:1.2.1 One family and two family dwellings.

3:1.2.2 Private garages, gardens and orchards incidental to residential use.

3:1.2.3 Churches, parish houses, convents, public and parochial schools, municipal buildings and libraries, including structures and uses normally incidental thereto.

3:1.2.4 Casual sales, such as garage sales, may be authorized by the Selectmen on such terms and conditions as they may impose. However, no person shall be granted permission to conduct such sales for more than thirty-six (36) hours in any calendar year. Neither shall any person be granted permission to conduct such sales on more than three (3) calendar days in any calendar year.

3:1.2.5 Family day care homes, as defined in RSA 170-E:2, if licensed by the State of New Hampshire to operate as such under RSA 170-E.

3:1.2.6 In-law unit within a single family dwelling.

3:1.3 Restrictions (§309-7)

The following restrictions shall govern permitted and all other uses in the Residential District:

3:1.3.1 Zoning dimensions: see Section 2:2.

3:1.3.2 When applicable, regulations and restrictions in the following sections shall be met:

- | | |
|---|-------------|
| 1. Off-street Parking and Loading Ordinance | Section 7:1 |
| 2. Open Space Preservation Ordinance | Section 7:4 |
| 3. Home Occupation Ordinance | Section 7:9 |
| 4. Accessory Apartments | Section 8:1 |
| 5. In-law Apartments | Section 8:2 |
| 6. Obstructed View | Section 8:3 |
| 7. Proximity to Water Bodies | Section 8:4 |

3:1.4 Exceptions [Amended 1995] (§309-8)

The Board of Adjustment shall grant the following exceptions in the Residential District upon finding that the specified conditions exist:

3:1.4.1 The use of land for parks, playgrounds of a nonprofit type, other private schools and hospitals, if the Board of Adjustment shall find that all restrictions of this Section are met, or an exception or variance therefore granted, and that such land is reasonably adapted to the use, and either that the use will so alleviate the burden of similar facilities in the town or that such use will be advantageous to the health, morals, and general welfare of such numbers of persons in such degree as will outweigh any diminution of property values created thereby.

3:1.4.2 Relief from any of the provisions of this Section shall be granted for a specified temporary period of time if the Board of Adjustment shall find either:

1. That a public emergency exists or is threatened of so serious a character as to outweigh any diminution of surrounding property values, or any fire or health dangers or any overcrowding of land or public facilities occasioned by such relief; or
2. That such relief from any such provisions for one (1) year would be reasonably necessary for the ultimate use of development of land in a permitted and desirable way, other than as a one-family dwelling, and that such relief would be outweighed by the advantages available from such ultimate use of the land.

3:1.5 Variances (§309-9)

In granting variances, the following shall be generally considered contrary to the spirit of this chapter in the Residential District:

3:1.5.1 The use of land for the keeping of livestock and poultry, but not domestic pets.

3:1.5.2 The use of land for mobile homes, mobile home developments, trailers or trailer parks.

3:1.6 Contiguous Lots In Single Ownership (§309-10)

See Section 1:5

Section 3:2 Rural District

3:2.1 Applicability of Section (§309-28)

The following regulations shall govern the erection and alteration of buildings or structures and the use of land in the Rural Districts, except that they shall not apply to existing buildings or structures nor to the existing use of any building or structure, but shall apply to any alteration of a building or structure for use for a purpose or in a manner substantially different from the use to which it was put before alteration. However, no building or structure qualifying as a nonconforming use shall be occupied for a greater portion of the year than such building or structure was occupied as a prior nonconforming use unless minimum lot size, setbacks, frontage, building line, and all other dimensional requirements for this district are met or a variance is granted by the Board of Adjustment. In either case, the requirements for septic systems, as stated in Chapter 253 of the Salem Code, shall be met. Additionally, no building permits or variances shall be granted that would be likely to result in an increase of the portion of the year during which a building or structure qualifying as a nonconforming use will be occupied if such increased occupation will affect adversely public health standards, water quality, sewage treatment requirements or the water quality of any lake, stream or surface water system. The restrictions of Section 2:2 minimum lot size, minimum frontage, and setbacks, and Section 8:4 Proximity to Water, shall not apply to lots shown in a plat approved by the Salem Planning Board prior to the adoption of this chapter until January 1, 1981, except that if two (2) or more lots are contiguous, are held in identical ownership and none of the lots are improved by a house, then the restrictions of Section 2:2 minimum lot size shall apply forthwith. Discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months shall subject such property to all of the requirements of this Section.

3:2.2 Permitted Uses (§309-29)

The following uses shall be permitted in the Rural District:

3:2.2.1 Any use permitted in the Residential District.

3:2.2.2 Farming and agriculture activities, as defined and restricted by RSA 21:34-a; forestry; the keeping of cows, goats, sheep, horses, and other domestic non-commercial livestock (excluding the keeping of pigs); greenhouses and nurseries as defined in RSA 433:21; provided that no such use shall be allowed on a lot less than five acres in size. [Amended 1993 & 2009 Town Meetings]

3:2.3 Restrictions (§309-30)

The following restrictions shall govern uses under this Section in the Rural Districts.

3:2.3.1 Zoning dimensions: see Section 2:2.

3:2.3.2 When applicable, regulations and restrictions in the following sections shall be met:

- | | |
|--|-------------|
| 1. Off-street Parking | Section 7:1 |
| 2. Open Space Preservation regulations | Section 7:4 |
| 3. Home Occupation | Section 7:9 |
| 4. Accessory Apartments | Section 8:1 |
| 5. In-law Use | Section 8:2 |
| 6. Obstructed view | Section 8:3 |
| 7. Proximity to Water Bodies | Section 8:4 |

3:2.4 Exceptions (§309-31)

The Board of Adjustment shall grant the following exceptions in the Rural District upon finding that the specified conditions exist:

3:2.4.1 The uses of land for the purposes specified in Section 3:1.4.1, if the Board of Adjustment shall find that the conditions specified in the respective sections are met.

3:2.4.2 Relief from any of the provisions of this Section shall be granted for a specified temporary period of time if the board of Adjustment shall find either:

1. That a public emergency exists or is threatened of so serious a character as to outweigh any diminution of surrounding property values, any fire, health or aesthetic dangers or any overcrowding of land or of public facilities occasioned by such relief; or

2. That such relief from any such provisions for such temporary period not exceeding one (1) year would be reasonably necessary for the ultimate use or development of land in a permitted or desirable way, and that any disadvantage of such relief would be outweighed by the advantages available from such ultimate use of the land.

3:2.4.3 Golf courses and ancillary structures such as clubhouses, driving ranges, equipment sheds and other buildings necessary for the normal operation of golf courses if and to the extent that the Board of Adjustment shall find that such relief will not create a fire, sanitation, odor, health or traffic hazard, and that such relief would tend to promote more advantageous use of land in the immediate area, and that such relief would not seriously diminish the value of surrounding property, and that such relief would not be contrary to the spirit of the ordinance. [Added 1990 Town Meeting]

3:2.5 Variances (§309-32)

In granting or denying variances in the Rural Districts, the Board of Adjustment shall consider:

3:2.5.1 That variances which will or may require disproportionate expenditures of public funds during the period in which the Residential and Commercial Districts are being developed are not in the spirit of this chapter nor generally in the public interest.

3:2.5.2 The use of land for commercial or domestic piggeries shall be considered contrary to the spirit of this chapter.

3:2.6 Contiguous Lots In Single Ownership (§309-33)

See Section 1:5

Section 3:3 Recreational District

3:3.1 Applicability of Section (§ 309-50)

The following regulations shall govern the erection and alteration of buildings or structures and the use of land in the Rural Districts, except that they shall not apply to existing buildings or structures nor to the existing use of any building or structure, but shall apply to any alteration of a building or structure for use for a purpose or in a manner substantially different from the use to which it was put before alteration. However, no building or structure qualifying as a nonconforming use shall be occupied for a greater portion of the year than such building or structure was occupied as a prior nonconforming use unless minimum lot size, setbacks, frontage, building line, and all other dimensional requirements for this district are met or a variance is granted by the Board of Adjustment. In either case, the requirements for septic systems, as stated in Chapter 253 of the Salem Code, shall be met. Additionally, no building permits or variances shall be granted that would be likely to result in an increase of the portion of the year during which a building or structure qualifying as a nonconforming use will be occupied if such increased occupation will affect adversely public health standards, water quality, sewage treatment requirements or the water quality of any lake, stream or surface water system. The restrictions of Section 2:2 minimum lot size, setbacks, and minimum width at the building line, and Section 8:4 Proximity to Water, shall not apply to lots shown in a plat approved by the Salem Planning Board prior to the adoption of this chapter until January 1, 1981, except that if two (2) or more lots are contiguous, are held in identical ownership and none of the lots are improved by a house, then the restrictions of Section 2:2 minimum lot size shall apply forthwith. Discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months shall subject such property to all of the requirements of this Section.

3:3.2 Permitted Uses (§309-51)

The following uses shall be permitted in the Recreational District:

3:3.2.1 One-family dwellings.

3:3.2.2 Private garage, municipal buildings, gardens and orchards incidental to residential use.

3:3.2.3 Family day-care homes, as defined in RSA 170-E:1X(a), if licensed by the State of New Hampshire to operate as such under RSA 170-E.

3:3.2.4 Churches, parish houses and convents. [Amended 1986 Town Meeting.]

3:3.2.5 In-law unit within a year-round single family dwelling. [Added 2000 Town Meeting]

3:3.3 Restrictions (§309-52)

The following restrictions shall govern permitted and all other uses in the Recreational District:

3:2.3.1 Zoning dimensions: see Section 2:2.

3:2.3.2 Sewage drainage disposal facilities, whether through septic tanks, dry wells, leaching fields, or public systems, adequate for the use intended, shall be available.

3:2.3.3 When applicable, regulations and restrictions in the following sections shall be met:

- | | |
|------------------------------|-------------|
| 1. Off-street Parking | Section 7:1 |
| 2. Home Occupation | Section 7:9 |
| 3. In-law Use | Section 8:2 |
| 4. Obstructed view | Section 8:3 |
| 5. Proximity to Water Bodies | Section 8:4 |

3:3.4 Exceptions (§309-53)

The Board of Adjustment shall grant the following exceptions in the Recreational District upon finding that the specified conditions exist:

3:3.4.1 The use of land for such commercial activities common to recreation areas, such as public bathing beaches, children's camps, sales and service establishments, boat rental agencies, marinas, boat clubs, picnic grounds and parking areas, if the Board of Adjustment shall find that all other restrictions of this Section are met, or a variance or exception therefore granted, and that the land is adapted to such use and either that there is a public need for such use or that the facilities would be enjoyed by a sufficient number of persons in such degree as to outweigh any diminution in value of surrounding properties.

3:3.4.2 Relief from any of the provisions of this Section for a specified temporary period of time not to exceed one (1) year, if the Board of Adjustment shall find either:

- 1.** That a public emergency exists or is threatened of so serious a character as to outweigh any diminution of surrounding property values or any fire, health or traffic dangers or any overcrowding of land or of public facilities occasioned by such relief; or
- 2.** That such relief from any of the provisions of this Section for such temporary period would be reasonable, necessary, or desirable for the ultimate use of development of land in a permitted or desirable way, and that any temporary disadvantages to surrounding properties resulting from such relief would be outweighed by the advantages available from such ultimate use of the land.

3:3.5 Variances (§309-54)

In granting or denying variances in the Recreational District, the Board of Adjustment shall consider:

3:3.5.1 That much of the land in the Recreational District has been developed and used without regard to problems or public interest, including but not limited to water pollution and sanitation, resulting from such development and use.

3:3.5.2 That dangers of serious contamination of bodies of water, which are great town assets, and dangers of contamination of private water supplies have resulted.

3:3.5.3 That the protection of such bodies of water and such water supplies is in the public interest and in the spirit of this chapter.

3:3.5.4 That continuation of the practice of development of small lots in the Recreational District is generally contrary to the public interest and to the spirit of this chapter.

3:3.5.5 The use of land for mobile homes, mobile home developments and trailers or trailer parks is considered contrary to the spirit of this chapter.

3:3.6 Contiguous Lots In Single Ownership (§309-55)

See Section 1:5

Section 3:4 Garden Apartment R-A District

3:4.1 District Boundaries (§309-27)

The Garden Apartment R-A District shall include the following described land: Beginning at the intersection of the center line of Cluff Crossing Road with the westerly line of land owned by the Boston & Maine Railroad; thence by various courses westerly along the center line of Cluff Crossing Road a distance of approximately two thousand one hundred ten (2,110) feet to the center line of Policy Brook; thence southerly by the center line of Policy Brook approximately nine hundred (900) feet to Lot 8888, as shown on Property Tax Map 127, Town of Salem, 1987; thence northeasterly by the rear lot lines of Lots 8888, 8889, 8890, 8891, 8892, property Tax Map 127; thence southeasterly by the side lot line of 8892 the terminus of Sillen Drive, and the rear lot lines of 8893, 8894, 8895, 8896, 8897 and 8898, Property Tax Map 127, thence continuing the course of the rear lot line of Lot 8898, in a southeasterly direction approximately three hundred (300) feet to a point where such line would intersect with the course of an extension in a southwesterly direction of the rear lot line of the Buy-Rite Realty Trust land shown as Lot 8942 on Property Tax Map 136; thence following both the extended and actual rear lot lines of Lot 8942, Property Tax Map 136, in a northeasterly direction approximately eight hundred sixty (860) feet to land of the Boston & Maine Railroad, thence following the Boston & Maine Railroad land in a northwesterly direction approximately one hundred fifty (150) feet, in a northeasterly direction approximately seventy (70) feet and in a northwesterly direction approximately two thousand one hundred thirty (2,130) feet to the point of beginning. [Amended 1988 Town Meeting]

3:4.2 Permitted Uses (§309-11, §309-12, §309-14)

In the Garden Apartment R-A District, a building may be erected, constructed, reconstructed, altered, designed or used, and a lot or premises may be used, for any of the following purposes and for no other:

3:4.2.1 Any use permitted by right in the Residential District, in accordance with the requirements of the said district.

3:4.2.2 A dwelling for two (2) or more families provided that the entire lot occupied by such dwelling shall be maintained in single ownership throughout the life of the building.

3:4.2.3 A professional office or studio other than accessory to a use otherwise permitted, provided that the number of such offices or studios on any lot shall not exceed one (1) for each twenty-five (25) dwelling units or major fraction thereof on the lot, and provided further, that such office or studio shall be located only on the street floor of any building and shall have access provided thereto from other than a public hall.

3:4.2.3 Any accessory use permitted in the Residential District shall be permitted in the R-A District.

3:4.3 Restrictions

3:4.3.1 Zoning dimensions: see Section 2:2. Additionally:

1. No lot shall have an average depth of less than one hundred fifty (150) feet. The lot shall contain not less than three thousand five hundred (3,500) square feet for each dwelling unit on each lot. (§309-16)

2. There shall be a front yard with a minimum depth of forty (40) feet; side yards with no buildings erected nearer than thirty (30) feet to any side lot line; and a rear yard with a depth of not less than thirty (30) feet.. However, cornices or cantilevered roofs may project not more than two (2) feet; and belt courses, window sills, and other ornamental features may project not more than six (6) inches into a required yard. Paved terraces, steps and walks (other than such as are needed for access to the buildings on the lot) shall not project within twenty-five (25) feet of a street or four (4) feet of a property line. (§309-17 & §309-18)

3. Chimneys, flues, towers, bulkheads, spires and other decorative features shall be exempt from the provisions of Section 2:2, maximum height, provided that they occupy not more than twenty percent (20%) of the area of the roof of the building of which they are a part. (§309-15)

3:4.3.2 No building shall exceed a length of one hundred sixty (160) feet. (§309-20)

3:4.3.3 A minimum distance of forty (40) feet shall be maintained between all buildings on the same lot. (§309-21)

3:4.3.4 Any swimming pools provided on the lot shall conform to the Town of Salem Swimming Pool Ordinance. (§309-25)

3:4.3.5 Open Space. Except as otherwise required, usable open space shall be provided on the same lot with dwellings containing three (3) or more dwelling units. Not less than four hundred (400) square feet for each dwelling unit on said lot shall be provided. On any lot containing fifteen (15) or more dwelling units, such usable open space shall be devoted to improved and landscaped play and sitting areas for the use of the residents thereof. The design, layout, and equipment of such play and sitting areas shall be subject to approval by the Planning Board. (§309-19)

3:4.3.6 Outer courts. The minimum width of an outer court shall be twenty (20) feet, and the depth thereof shall not exceed its width. (§309-22)

3:4.3.7 Inner courts. An inner court is permitted if the minimum dimension of such court is equal to not less than one-half (1/2) times the average height of all surrounding walls in the case of nonresidential buildings and not less than one and one-half (1 1/2) times such height, but not less than sixty (60) feet, in the case of residential buildings. The height of walls surrounding an inner court shall be measured from finished grade, at the base thereto, to the top of such walls, except that in the case of roofs with a slope exceeding five (5) inches vertical to twelve (12) inches horizontal, the height shall be measured to the mean point between the top of the said wall and the highest point of the roof. (§309-22)

3:4.3.8 Off-street Parking Requirements. For dwellings for three (3) or more families, there shall be provided garage space or paved off-street parking space, or both, sufficient in the area for the parking at one time of not less than one and one-half (1 1/2) times as many passenger vehicles as there are dwelling units on the lot. Parking in front yards, within ten (10) feet of any side or rear lot line or within fifteen (15) feet of any wall or portion thereof of a three-or-more-family dwelling, which wall contains legal windows, other than a legal bathroom or kitchen window, with a sill height of less than eight (8) feet above the level of said parking space, is prohibited. If provided in the open, all required parking spaces shall be individually identified by means of pavement markings. (§309-24)

3:4.3.9 The restrictions for proximity to water bodies in Section 8:4 shall be met. (§309-26)

3:4.4 **Exceptions** (§309-13)

Any special exception use permitted in the Residential District, upon approval of the Board of Adjustment.

Section 3:5 Manufactured Housing Park District [Amended by the 1982 Town Meeting]

3:5.1 Applicability of Section (§309-60)

The following regulations shall govern the construction and alteration of buildings and structures and the use of land in the Manufactured Housing Park District; except, however, that these regulations shall not apply to an existing building, structure or land if such existing building or structure or existing use of any building, structure or land was a lawful use under the governing provisions of prior zoning ordinances, nor to an alteration thereof for a use or for any purpose or in any manner which is not substantially different from that to which it was put before alteration. However, in the event of discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months, then the following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Manufactured Housing Park District.

3:5.2 Permitted Uses (§309-61)

The following uses shall be permitted in the Manufactured Housing Park District:

3:5.2.1 Any use permitted in the Residential District.

3:5.2.2 Manufactured housing. [Amended 1982 Town Meeting]

3:5.3 Restrictions (§309-62)

The following shall govern permitted and all other uses in the Manufactured Housing Park District:

3:5.3.1 Zoning dimensions: see Section 2:2.

3:5.3.2 The restrictions for proximity to water bodies in Section 8:4 shall be met.

3:5.4 Exceptions (§309-63)

The Board of Adjustment shall grant the following exceptions in the Manufactured Housing Park District upon finding that the specified conditions exist:

3:5.4.1 The use of land for the purpose specified in Section 3:1.4, if the Board of Adjustment shall find that the conditions specified in the respective sections are met.

3:5.5 Variances (§309-64)

In granting variances, the following shall be generally considered contrary to the spirit of this chapter in the Manufactured Park District:

3:5.5.1 The use of land for livestock and poultry.

3:5.5.2 The addition to manufactured housing of living quarters.[Amended 1982 Town Meeting]

ARTICLE 4 MIXED USE DISTRICTS

Section 4:1 Business Office Districts (includes Subdistricts I and II) [Added by the 1982 Town Meeting]

4:1.1 Intent

4:1.1.1 Subdistrict I: It is the intent of this Section to provide a district within the community for the development and expansion of business and professional office space. The architectural character of the district shall remain as it is today, residential. (§309-34)

4:1.1.1 Subdistrict II: This district is in a section of the community on Main Street that abuts a business district at the Methuen Town line and has a heavily traveled thoroughfare that serves as the easterly approach to Salem. It is the intent of this Section to create a district for the development and expansion of business and professional office space to encourage orderly development that will promote and enhance the community environment and to only permit development which is residential in its architectural character. (§309-39)

4:1.2 District Boundaries

4:1.2.1 Subdistrict I: The district shall include only those lots which have frontage on Main Street, and only to a lot depth of two hundred (200) feet. The district boundaries are described as follows: (§309-35)

1. Commencing at the westerly property line of the lot known as Map 89, Lot 3902, on the northerly side of Main Street, and thence easterly to the westerly zoning district boundary of the Commercial A District, and thence along the westerly zoning district boundary of the Commercial A District to the southerly side of Main Street, and thence in a westerly direction along Main Street two hundred (200) feet to the easterly side of South Policy Street, and thence easterly along Main Street back to a point directly opposite the southwest corner of the lot known as Map 89, Lot 3902, and thence northerly to the point of beginning. The above description is meaning and intending to create a district two hundred (200) feet in depth parallel to Main Street on both the northerly and southerly sides of Main Street.

2. Also setting aside another area to be zoned Business Office Subdistrict I, said district being bounded on the south by the northerly line of Main Street, on the east by the westerly line of the Geremonty Drive Extension, on the north by a line two hundred (200) feet northerly of and parallel to the northerly line of Main Street, and on the west by the easterly line of Martin Avenue, meaning and intending said district to be two hundred (200) feet in depth and extending from Martin Avenue to Geremonty Drive Extension. Also including an area on the south side of Main Street, said district being bounded on the south by a line two hundred (200) feet southerly of and parallel to the southerly line of Main Street, on the east by the westerly line of Geremonty Drive, on the north by the southerly line of Main Street and on the west by the easterly line of Granite Avenue, meaning and intending said district to be two hundred (200) feet in depth and extending from Granite Avenue to Geremonty Drive.

3. Map 91, Lots 1435, 1436, 1437, 1438, 1439 and 1440 will be zoned Business-Office Subdistrict I. land known as 202 and 204 Main Street shown on Tax Map 90, Lot 1442 and 1443 will be rezoned from partly Business-Office Subdistrict I –partly Residential District to all Business-Office Subdistrict I. [Adopted 2006 Town Meeting]

4:1.2.2 Subdistrict II: The district shall include only those lots which have frontage on Main Street, easterly of North Main Street and to the westerly side of Hampstead Road, and only to a lot depth of two hundred fifty (250) feet for the lots on the northerly side of Main Street (Route 97). Also the district is to include the southerly side of Main Street from the easterly boundary of the Spicket River to the westerly boundary of Hampstead Road, and only to a lot depth of four hundred (400) feet for those lots on the southerly side of Main Street. (§309-40)

4:1.3 Permitted uses (*Subdistrict I - §309-36; Subdistrict II - §309-41*)

4:1.3.1 The following shall be permitted uses:

1. Business and professional offices.
2. One-family and two-family dwellings.
3. Use accessory to a permitted use.

4:1.3.2 The following shall be additional permitted uses in Subdistrict I:

1. Mixed office and residential, not to have more than two (2) apartment dwelling units.
2. Funeral establishments.
3. Group day-care center limited to 35 children maximum capacity. [Amended Town Meeting 2001]
4. Municipal buildings.
5. Community Residential Facility (see Section 4:1.5). [Added 1991 Town Meeting]

4:1.3.3 The following shall be additional permitted uses in Subdistrict II:

1. Group day-care center.[Added 1987 Town Meeting]

4:1.4 Restrictions (*Subdistrict I - §309-38; Subdistrict II - §309-43*)

4:1.4.1 Zoning dimensions: see Section 2:2.

4:1.4.2 In the Business Office Subdistrict I, the gross square footage for new buildings shall not exceed 12,500 square feet. The total size of existing buildings and proposed additions shall not exceed 12,500 square feet. (Added 2006 Town Meeting)

4:1.4.3 Parking. In addition to conforming to the off-street parking requirements of Section 7:1, the parking area shall be located to the rear of the principal structure when practical and possible.

4:1.4.4 Signage. [Section repealed 1988 Town Meeting and incorporated into Section 7:2 - Signs.]

4:1.4.5 Landscaping and screening.

1. Landscaping shall be included in the overall site design that enhances the aesthetic qualities and character of the district.
2. Dumpsters or other trash receptacles shall be screened on all four (4) sides. Screening shall also be required when necessary to protect against the glare of lights or other visual impact that may negatively impact adjacent properties.
3. Buffer zones shall be used whenever necessary to separate residential and Business Office Subdistrict uses.

4:1.4.6 No more than one (1) habitable structure shall be permitted on each parcel. Garages and storage buildings may be permitted in addition to the principal structure. [Added 1985 Town Meeting]

4:1.4.7 Poorly drained soils and very poorly drained soils may be used to satisfy up to one-half (1/2) of the unoccupied lot requirement.[Added 1985 Town Meeting]

4:1.4.8 Structures shall be residential in architectural appearance with the following guidelines: [Added 1990 Town Meeting]

1. Existing buildings with historic features should be preserved whenever possible.
2. New buildings should be designed so that their scale, proportions and materials blend with the existing residential character of the district with consideration of the following items:
 - a. height, bulk, and area of the building
 - b. type and pitch of roof
 - c. size and spacing of windows, doors and other openings
 - d. size, type, and location of towers, chimneys, and roof structures
 - e. exterior colors and materials

3. In Subdistrict I, new buildings should be designed to resemble the traditional form of single family residential and accessory buildings found in the Salem area in the 18th and 19th centuries. Samples of this architectural style can be found in Gilbert's History of Salem, NH (available in the Kelley Library and Planning Department). [Amended 1990 and 2006 Town Meetings]

4. In Subdistrict II, new buildings should be designed to resemble the traditional form of residential buildings found in the Salem area in the 18th and 19th centuries. Samples of this architectural style can be found in Gilbert's History of Salem, NH (available in the Kelley Library and the Planning Department).[Amended 1990 Town Mtg.]

4:1.5 Restrictions on Community Residential Facilities (§309-38.1) [Added 1991 Town Meeting]
In Subdistrict I, the following additional restrictions shall govern community residential facilities:

4:1.5.1 The Community Residential Facility shall be built and managed by a 501(C)(2) or a 501(C)(3) non-profit organization as designated by the Internal Revenue Service.

4:1.5.2 No more than five (5) habitable structures shall be permitted on each parcel with a maximum of four dwelling units per structure. (This provision supersedes the first sentence of Section 4:1.4.6 which places a limit of one (1) habitable structure on each parcel.)

4:1.5.3 Each lot shall contain not less than 5000 square feet of land area for each dwelling unit and each lot shall have a minimum frontage of one hundred fifty (150) feet. (These provisions shall supersede the requirements of Section 2:2.

4:1.5.4 In no case shall there be more than twenty dwelling units on each lot.

4:1.5.5 There shall be no more than an average of two bedrooms per dwelling unit.

4:1.5.6 No Community Residential Facility may be located any closer than 1500 feet to any other Community Residential Facility.

4:1.5.7 The Community Residential Facility shall be town house styled dwelling units.

4:1.6 Special Exceptions (§309-36, §309-41)

4:1.6.1 In Subdistrict I, special exception uses shall be as follows:

1. Public or private parking facility.

4:1.6.2 In Subdistrict II, there shall be no special exception uses.

4:1.7 Variances (§309-36, §309-41)

The following shall be considered in granting variances:

1. That the use is compatible with the character of the district.

Section 4:2 Limited Community Shopping Village District [Added 1982 Town Meeting]

4:2.1 Intent [Amended 1985 Town Meeting] (§309-56)

The Limited Community Shopping Village District is established as a district in which the principal use of land is for activities offering accommodations, supplies or certain specialized commercial activities, such as retail outlets or service establishments, where achieving conformity with abutting areas necessitates that commercial development be limited and more closely regulated than in other commercial zoning districts:

4:2.1.1 To encourage the construction of and the continued use of land for commercial and service uses designed to serve both local and long-distance travelers.

4:2.1.2 To provide for orderly and responsible development and concentration of such uses in those areas as may be determined appropriate by the Town Meeting.

4:2.1.3 To provide appropriate space and, in particular, sufficient depth from the street to satisfy the needs of commercial development where access is entirely dependent on the use of motorized vehicles.

4:2.1.4 To encourage the development of a district with such uses and in such a manner so as to minimize traffic hazards and interference from highway-oriented businesses and to enhance adjacent living environments by providing for needed commercial services.

4:2.2 Applicability of Section (§309-57)

The following regulations shall govern the erection and alteration of structures and the use of land in the Limited Community Shopping Village District, except that they shall not apply to existing structures nor to the existing use of any structure, but shall apply to any alteration of a structure for a purpose or in a manner substantially different from the use to which it was put before alteration.

4:2.2.1 Discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months shall subject such property to all of the requirements of this Section.

4:2.3 District Boundaries [Amended March 1985 Town Meeting] (§309-57)

This district shall include the land commencing on the northerly side of Main Street at the Salem and Methuen Town line, thence running along said roadway in a general westerly direction to Hampstead Road, thence turning and running in a general northeasterly direction along the easterly line of Hampstead Road a distance of one thousand (1,000) feet, thence turning at a ninety-degree angle and running in a general easterly direction to the Methuen line, thence in a general southerly direction along said state and town line to the point of beginning. This district shall also include the land on all four (4) corners of the intersection of Route 111 with Ermer Road, and more particularly described as being Salem Tax Map 5, Lots 5920, 5921, 5922, 5930, 5935, and that portion of Map 10, Lot 5917, below Lot 5922, bounded by the Route 111 right-of-way on the northwest for approximately two hundred (200), plus or minus, feet, thence bounded by a surface water course on the southwest until said surface water course intersects a line drawn parallel to the Route 111 right-of-way approximately four hundred twenty-five (425) feet to the southeast of said right-of-way and which joins said watercourse to the right-of-way for Ermer Road.

4:2.4 Permitted Uses (§309-58)

Permitted uses shall be:

4:2.4.1 General consumer retail.

4:2.4.2 Offices, both professional and business.

4:2.4.3 Establishments serving food and beverage.

4:2.4.4 Banking facilities.

4:2.4.5 Day-care facilities.

4:2.4.6 All uses presently permitted in rural districts.

4:2.4.7 Studios and personal service shops.[Added 3/92 Town Mtg]

4:2.4.8 Community shopping villages in which:

1. No single store is larger than eight thousand (8,000) square feet.

2. The parking is in accordance with the requirements of this Section 7:1.

3. No part of any building shall be within three hundred (300) feet of a New Hampshire dwelling in existence at the date of adoption of this Section.

4. No building shall be higher than two and one-half (2 ½) floors.

5. No parking area shall be within one hundred (100) feet of a New Hampshire residential dwelling in existence at the date of adoption of this Section.

6. There shall be maintained a landscaped area containing shrubbery, plantings, trees, benches and grass, which area shall be maintained between the parking area and/or the structures, and any adjoining roadway in such area shall be at least equal in square footage to the total footage of all buildings on the site.

7. No part of any freestanding light shall be higher than eight (8) feet.

8. Signage. [Section repealed 1988 Town Meeting and incorporated into Section 7:2 - Signs.]

9. The design of said development shall be consistent with and complementary to the existing nearby historic district.

10. Setback requirements: seventy (70) feet from front lot line, fifty (50) feet from side lot line and twenty-five (25) feet from rear lot line.

4:2.4.9 Other uses compatible and consistent with the above uses which do not create excessive noise, light or odors.

4:2.5 **Restrictions** [Added 1985 Town Meeting] (§309-58.1)

The following restrictions shall govern uses under this Section in the Limited Community Shopping Village District:

4:2.5.1 Zoning dimensions: see Section 2:2.

4:2.5.2 Where a lot sides or rears upon property in any residential zoning district, a landscaped yard of at least twenty-five (25) feet deep shall be provided. Any such yard shall be used and maintained only as a landscaped planting or screening strip except for access-ways on which shall be placed hedges, evergreens, shrubbery or other suitable planting or screening materials. Plantings within the twenty-five-foot yard shall effectively screen from view activities in the abutting zoning districts.

4:2.5.3 The restrictions for obstructed view in Section 8:3 shall be met . The restriction includes vehicles.

4:2.5.4 The restrictions for proximity to water bodies in Section 8:4 shall be met.

4:2.6 **Special Requirements** [Added 1985 Town Meeting] (§309-58.2)

4:2.6.1 Landscaping. Dumpsters shall be effectively screened on all sides. Lighting shall be designed and located so as to avoid glare on abutting properties and traveled ways.

4:2.6.2 Access and travel controls. Each lot shall have not more than one (1) access-way to any street or highway, which access-way shall comply with the following requirements:

1. The width of any access-way leading to or from a street or highway shall not exceed thirty-six (36) feet nor be less than fifteen (15) feet in width at the right-of-way line. Alignment of access-ways shall be determined through site plan approval.
2. Insofar as practicable, the use of common access-ways by two (2) or more permitted uses shall be encouraged in order to reduce the number of access points along roadways, and when not common, no part of any access-way, shall be nearer than twenty (20) feet to any other access-way, nor shall any part of any access-way be nearer than ten (10) feet to any side or rear property line.
3. The locations of access-ways shall be so arranged that they will reduce the possibilities of traffic hazards.

4:2.6.3 Architectural controls. The design of any development in the Limited Community Shopping Village District shall be consistent with design criteria as shall be developed by the Salem Planning Board for:

1. Compatibility of design with surrounding residentially zoned districts.
2. Permitted size of building masses, treatment of projections, wall expanses and the like.
3. Buildings/parking/pedestrian relationships.
4. Landscaping or screening plans.

4:2.7 **Exceptions** [Added 1985 Town Meeting] (§309-58.3)

The Board of Adjustment shall grant the following exceptions in the Limited Community Shopping Village District upon finding that the specified conditions exist:

4:2.7.1 Relief from any of the provisions of this Section for a specific, temporary period of time [not longer than one (1) year] if the Board of Adjustment shall find that:

1. A public emergency exists which necessitates grant of relief requested; or
2. Grant of relief would be reasonably necessary in order to permit the ultimate and desirable permitted use and development of the land.

4:2.8 **Variances** [Amended 1985 Town Meeting] (§309-59)

4:2.8.1 The following shall generally be considered contrary to the spirit of this Section:

1. Manufacturing of any kind.
2. Truck terminals.
3. Arcades.
4. Dance halls and nightclubs.

4:2.8.2 In granting or denying variances in the Limited Community Shopping Village District, the Board of Adjustment shall consider:

1. That traffic safety and convenient property access/egress are of prime importance in the design and administration of this Section.
2. That no activity within the Limited Community Shopping Village District shall be allowed to adversely impact abutting residentially zoned districts whether by reason of fire, sanitation, odor, health, traffic, storm water runoff or visual hazard/nuisance or any other reasonably preventable condition.

Section 4:3 Town Center District [Added 1998 Town Meeting]

4:3.1 Intent (§309-166)

It is the intent of this Section to provide a district which primarily provides municipal services, community services, and services to senior citizens that shall serve as the Town's primary civic center. The goal is to preserve and enhance the character of Salem's civic center by achieving the following objectives in accordance with the Town Master Plan update adopted in 1992:

4:3.1.1 To allow for government, institutional, and public uses in a designated district.

4:3.1.2 To provide safeguards for the preservation, enhancement, and construction of appropriate buildings and landscape within the municipal district which represent, or reflect elements of the Town's civic, aesthetic, cultural, social, economic, political, and architectural heritage.

4:3.1.3 To enhance and preserve open space, featuring natural vegetation and a forest like setting in the district, including the approaching access from Veteran's Memorial Parkway.

4:3.1.4 To provide an attractive environment suitable for higher education.

4:3.1.5 To enhance and preserve critical community recreational and cultural resources located in the district.

4:3.1.6 To provide a safe and attractive environment for senior citizens to live and congregate.

4:3.2 Applicability (§309-167)

The following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Town Center District; except, however, that these regulations shall not apply to an existing building or structure, nor to the use of any building, structure, or land, if such building or structure was a lawful use under the governing provisions of prior zoning ordinances, nor to an alteration thereto for a use or for any purpose or in any manner which is not substantially different from that to which it was put before alteration. Single family residential development is permitted under the provisions of Section 3:1.1. However, in the event of discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months, then the following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Town Center District.

4:3.3 District Boundaries (§309-169)

The district shall include the following properties: Map 90, Lot 1441, Map 91, Lots 7518, 7520, 7525, 7528, 7529, 7530, 7532, 7533, 7534, and 10481, Map 99, Lots 7521 and 7892, Map 100, Lots 7514, 7519, 7526, 7527, 7529, 7534, 7893, 7959, and 11377, Map 108, Lots 7892, 7894, and 7960, and Map 109, Lot 7960. [Added 2003, amended 2006 Town Meeting]

Note: Lots 1435, 1436, 1437, 1438, 1439, and 1440 will be zoned Business-Office District I. [Amended 2006 Town Meeting]

Town Center District. The lots on the south side of Main Street, between Geremonty Drive and Granite Avenue, for a depth of 200 feet, which had been zoned Business-Office I District prior to March 1998, may be developed in accordance with the requirements of the Business-Office District I. [Added 2000 Town Meeting] (§309-170.I)

Other properties which are currently zoned Town Center District will revert to their prior (pre-1998) zoning designations (200' deep Business-Office District I along Main Street from Granite Avenue to Geremonty Drive, the rest Residential District). [Added 2003 Town Meeting]

The land known as 202 and 204 Main Street shown on Tax Map 90, Lot 1442 and 1443 was rezoned partly Business-Office I-partly Residential District to all Business-Office District I. [Adopted 2006 Town Meeting]

4:3.4 Permitted Uses (§309-168)

The following uses shall be permitted in the Town Center District:

4:3.4.1 Municipal activities including, but not limited to: Government, Police, Fire Department, Library, Court Facilities, Public Recreation, and other public activities.

4:3.4.2 Public facilities, including parking facilities

4:3.4.3 Temporary activities as authorized by municipal agencies having jurisdiction

4:3.4.4 Public parks and playgrounds

4:3.4.5 Secondary school and associated customary uses

4:3.4.6 Post secondary school and associated customary uses

4:3.4.7 Adult care agency, nursing home, convalescent home, continuing care retirement center, or assisted living facilities

4:3.4.8 Child care agency, day nursery, or nursery school

4:3.4.9 Private, non-profit community service centers available to the general public

4:3.4.10 Private, non-profit social service centers, both residential and non-residential, available to the general public

4:3.4.11 Hospitals and health care services

4:3.4.12 Business and professional offices

4:3.4.13 Religious institutions

4:3.4.14 Single family dwellings

4:3.4.15 Use accessory to the primary permitted use

4:3.5 Development Standards (§309-170)

The visual character of the district is currently defined by government and community services buildings surrounded by generous open spaces and natural wildlife habitat. New buildings and additions to existing buildings should have generous setbacks as seen from the major streets and provide natural, open space buffers between uses in order to maintain the character of the district.

4:3.5.1 Zoning dimensions: see Section 2:2.

1. Open space shall consist of no less than 50% of the lot area.

4:3.5.2 Design and architectural standards.

1. Massing and style. Building massing and style must draw on the historical design elements that are contextually consistent with regional New England architecture. Historical and traditional design elements are encouraged. Neo-classical design vocabularies are preferred within the district. Fences and landscaping to screen service areas must be provided, consistent with the intent and use of the space.

2. Roofs. Preference shall be given to pitched roofs, consistent with New England traditional or vernacular styles. Material must be consistent with the architecture of the building. Composition shingle material is acceptable, providing that it is of high quality and provides architectural definition

to the tab shingle to emulate traditional wood shingle styles. Tile, slate, or metal roofing is permitted, provided it is consistent with the architectural style of the building.

3. Facade element. Design of the facade shall be highly detailed and articulated to be compatible with the scale and sensitivity to the institutional uses within the district. Facades should have a well defined foundation, a modulated wall element, and pitched roof or articulated cornice which defines the character of the building.

4. Entrances. Building entrances must comply with all current accessibility regulations, however the use of ramps and lifts is discouraged. Buildings should be designed with entrances that are barrier free for the intended uses. Where grade separation of an entrance is required because of site topography, accommodation should be provided in the architectural detail of the entry to allow barrier free use by building occupants and visitors.

5. Door and window openings. Doors and windows should be entirely consistent with the architecture of the buildings in design and placement. The use of cornices, architectural moldings, side lights, transom lights, and raised panels in doors is encouraged. A wide range of material for doors and windows is acceptable, except that the use of commercial, anodized or painted aluminum or steel storefront assemblies is discouraged.

6. Materials and design elements. Material chosen for exterior elements should be consistent with the intent and use of materials traditionally found in commercial and residential design in New England. Siding materials such as clapboard and shingle are preferred, and the use of new materials which reduce maintenance, but emulate the look and feel of traditional materials is encouraged. The use of a variety of trim material to provide detail at the eaves, corners, gables, pediments, lintels, sills, quoins, and balustrades is encouraged. The use of bays, towers, cupolas, cross gables, and dormers to provide unique character to a building and provide articulation of the facade is encouraged.

7. Paving and curbing. Granite curbing, gray in color, is required on all public roads. Rolled asphalt (Cape Cod berm) curbing is unacceptable on all public roads, but is permissible on private roads, driveways, and parking lots. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkways is encouraged. The use of textured materials for walkway borders is encouraged.

8. Signs. Signs of all types and description must conform to all criteria and requirements established in Section 7:2.4.

4:3.5.3 Parking. In addition to the requirements as set forth in Section 7:1, public parking for more than 10 cars must be allocated to the side and rear of all buildings in such a way as to be buffered from public view from the access street. The intent of this section is to maintain a high standard of land planning and landscape architecture within the district consistent with Salem's rural heritage. The criteria established in Chapter §268-8 are to be applied in this district. In addition, the following special landscaping requirements apply:

1. A twenty-five foot (25) landscaped buffer area shall be maintained along the parking area perimeter fronting the access street consisting of ground cover, shrubs, and shade or ornamental trees.
2. Parking lots of five or more spaces shall be screened from the access street and adjoining lots by stone walls typical of the rural area farms and homes, continuous screening hedges, or earth berms a minimum of 42 inches high.
3. At the time of planting, deciduous trees must be of a 2" caliper or greater, and evergreen trees must be a minimum of 6' in height.
4. There must be one shade or ornamental tree provided in the landscaped buffer for every one thousand (1000) square feet of parking area.
5. Contiguous parking areas with 11 or more parking stalls shall provide canopy shade trees of three-inch caliper or greater for every six parking stalls or fraction thereof selected from the species as set forth in Chapter §268-8. Alternately, one shade tree of four-inch caliper or greater may be planted for every twelve parking stalls or fraction thereof. Each tree shall be located in a planting area and/or tree well no less than nine square feet in area.

6. If wheel stops or curbing are provided, continuous planting areas with low ground cover, and tree wells with trees centered at the corner of parking stalls may be located within the three-foot overhang space of parking stalls.
7. Hedges and other landscape elements, including planter boxes over six inches in height, are not permitted within the overhang space of the parking stalls.
8. Trees shall be sited so as to be evenly distributed throughout the interior of any parking lot.

4:3.5.4 Trash storage and service areas. All outdoor trash and service areas, except those for single family dwelling use, shall be screened from public view and view from abutting lots on a minimum of three sides by a wall or hedge at least six feet in height. The wall must be painted, surfaced, or otherwise treated to blend with the development it serves.

4:3.5.5 Transformer entrances. All utility substations, other than individual transformers, shall be enclosed by a solid wall or fence a minimum of five feet in height, except for necessary openings for access. Transformer vaults for underground utilities and similar uses shall be enclosed by a landscape hedge.

4:3.5.6 Irrigation. All plant material and landscaping shall be provided with a permanent irrigation system.

4:3.5.7 Waivers. The Planning Board may grant waivers to Section 4:3.5 (Development Standards), if the considered use is consistent with and compatible to the character of the district.

4:3.5.8 The use of existing lots in the Town Center District for one family and two family dwellings shall be exempt from the provisions of this Section, but shall comply with the provisions of the Residential District. (Added 1999 Town Meeting)

4:3.6 **Restrictions** (§309-171)

4:3.6.1 Residential facilities designed for exclusive occupancy by senior citizens, at a minimum, must meet federal regulations for such facilities.

4:3.7 **Administration** (§309-172)

The Planning Board shall administer this ordinance.

**ARTICLE 5
NON-RESIDENTIAL DISTRICTS**

Section 5:1 Commercial-Industrial District (includes Subdistricts CI-A, CI-B, and CI-C)

5:1.1 Applicability of Section (§309-44)

The following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Commercial-Industrial District; except, however, that these regulations shall not apply to an existing building or structure, nor to the existing use of any building, structure or land, if such existing building or structure or existing use of any building, structure or land was a lawful use under the governing provisions of prior zoning ordinances, nor to an alteration thereto for a use or for any purpose or in any manner which is not substantially different from that to which it was put before alteration, nor to lots shown in a subdivision plat which has been approved by the Salem Planning Board. However, in the event of discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months, then the following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Commercial-Industrial Subdistricts.

5:1.2 Permitted Uses (§309-45)

The following uses shall be permitted in Commercial Subdistricts: [Amended 1981 Town Meeting]

5:1.2.1 All Subdistricts: (§309-45.A)

1. Business and professional offices, banks, studios, municipal buildings, passenger and taxi stations, and parking lots.
2. Retail stores, except that those of the type specified in Sections 5:1.2.3.1 through 5:1.2.3.5 are not permitted in CI-A. [Amended 1992 Town Meeting]
3. Restaurants and other places for the preparation, serving or sale of food or beverages.
4. Personal service shops, including tailor, barber-beauty, shoe repair, dressmaking and similar shops, and self-service laundry.

5:1.2.2 In Commercial-Industrial Subdistrict B(§309-45.C)

1. Child-care centers shall be permitted; see Section 8:16 for restrictions. [Added 1988 Town Meeting]

5:1.2.3 In Commercial-Industrial Subdistricts B and C (§309-45.B) [Amended 1981 & 2009 Town Meetings]

1. Feed, hay, grain and building material storage, and sales facilities.
2. Public garages and repair shops, sales agencies for automobiles, boats, farm, industrial and construction equipment and filling stations. However, no such filling station shall be permitted on a lot that is within one thousand (1,000) feet of another lot on which there is an existing filling station or of another lot for which a building permit has been issued for the erection of such a filling station.
3. Establishments for the sale or storage of furniture, plumbing supplies, construction supplies, coal, oil or gas, monuments and liquor.
4. Hospitals and funeral homes, animal hospitals, kennels and animal shelters, veterinarian establishments, greenhouses and nurseries, roadside stands, printing plants, commercial laundry or cleaning plants. [Amended 2009 Town Meeting]
5. Racetrack, amusement park, bowling alley, golf driving range, dance halls and drive-in movies.
6. Motels and hotels.
7. Facilities for research and for the manufacture, assembly, storage, distribution and servicing of products and materials. However, any manufacturing or industrial use shall be conducted solely within a building or buildings. Products and materials must be stored in a fashion that prohibits their being seen from highways or streets. No fabrication, processing, converting, altering, chemical treatment or process, manufacturing, or industrial procedure shall be permitted which will result in:
 - a. Dissemination of noise, vibration, odor, dust, smoke, observable gas or fumes or other noxious or toxic atmospheric pollutants beyond the boundaries of the immediate site of the building in which such use is conducted.
 - b. Hazard of fire or explosion or other physical hazard to any person, building or vegetation.

- c. Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted.
 - d. A harmful discharge of waste materials.
 - e. Unusual traffic hazards or congestion due to the type of vehicles required.
 - f. The flowage of waste into the municipal sewer system that would impose an unusual or abnormal burden upon the system either because of the amount or quality of the waste.
 - g. The requirement of an unusual or abnormal supply of water from the municipal water system.
8. Health clubs, sports and recreational facilities, indoor movie theaters, colleges, private schools, and other educational uses, agricultural uses, and places of worship. [Amended 2004 Town Meeting]
9. Accessory uses customarily incident to any of the foregoing.

5:1.3 Restrictions (§309-46)

The following restrictions shall govern permitted and all other uses:

In all Commercial Subdistricts:

5:1.3.1 Zoning dimensions: see Section 2:2. (§309-46.A, B, D, I)

5:1.3.2 When applicable, regulations and restrictions in the following sections shall be met:

- | | |
|---|--------------|
| 1. Off-street Parking (§309-46.G) | Section 7:1 |
| 2. Obstructed view (§309-46.F) | Section 8:3 |
| 3. Proximity to Water Bodies (§309-46.E) | Section 8:4 |
| 4. Large Scale Redevelopment Projects (§309-46.S) | Section 7:10 |
| 5. Motel Use (CI-B) (§309-47) | Section 8:15 |
| 6. Child Care Centers (CI-B) (§309-47.1) | Section 8:16 |
| 7. Sexually Oriented Businesses (CI-B & CI-C) (§309-47.2) | Section 8:17 |

5:13.3 Wrecking and salvage yards shall be fenced or screened so as to be completely hidden from view from the highway or street. (§309-46.H)

5:1.3.4 Church steeples, flag poles within the Commercial-Industrial Subdistricts, and amusement rides in properly zoned amusement parks, may exceed 35 feet in height, but may not exceed 80 feet in height. [Amended 1989 Town Meeting]. Office buildings may be allowed a maximum height of forty-five (45) feet. (§309-46.I) [Added 2004 Town Meeting]

In Commercial Subdistrict A:

5:1.3.5 Adequate provision shall be made for sidewalks in front of lots where no public sidewalks have presently been provided by the town. In front of such lots, provision shall be adequate if either sidewalk space is available for continuation of existing sidewalk lines, or sidewalk space, not less than six (6) feet in width, is made available. A certificate from the Selectmen of intent ultimately to make sidewalk areas available in front of the property shall be sufficient to exempt such area from the requirements of this subsection. (§309-46.B)

5:1.3.6 Each building may be located so that the building front coincides with the inner sidewalk line. (§309-46.C)

In Commercial Subdistrict B:

5:1.3.7 In that portion of CI-B north of the intersection of North Broadway and Rockingham Road, no structures other than signs will be permitted within seventy-five (75) feet of the North Broadway right-of-way. (§309-46.J)

5:1.3.8 In that portion of CI-B north of the intersection of North Broadway and Old Rockingham Road, permitted uses shall be limited to those allowed in Section 5:1.2.1, Sections 5:1.2.3.1 through 5:1.2.3.4, Section 5:1.2.3.6, and Section 5:1.2.3.8. (§309-46.L) [Amended 1988 Town Meeting]

5:1.3.9 In that portion of CI-B north of the intersection of North Broadway and Old Rockingham Road, no pavement shall be permitted within twenty-five (25) feet of the North Broadway right-of-way. This area shall be grassed or landscaped and may be included in the open space requirement. (§309-46.M) [Amended 1987 Town Meeting]

5:1.3.10 That portion of CI-B north of the intersection of North Broadway and Old Rockingham Road is designated as a Controlled Highway Access Area. The purpose of this designation is to provide for control of the number and location of accesses to the highway, subject to approval of the State Highway Department, to ensure the safety of those using the highway and abutting properties. The Planning Board shall have the power to require dedication of rights of way to provide for access to and circulation within the designated area, and to limit the number and location of driveways connecting to North Broadway. (§309-46.N) [Amended 1987 Town Meeting]

5:1.3.11 In that portion of the CI-B west of Interstate Route 93, the permitted uses under Section 5:1.2.1 and 5:1.2.3 shall be restricted as follows: (§309-46.O) [Amended 2003 Town Meeting]

1. Any single retail store permitted under Section 5:1.2.1.2 shall be limited to not more than 1500 square feet, and no more than three (3) such uses, in combination, shall be permitted on any one lot.

[Amended 2003 and 2007 Town Meetings]

2. No lot shall be dedicated exclusively to the uses outlined in Section 5:1.2.1.2 but such uses shall constitute not more than 50% of the effective use of the buildings or structures on said lot. [Amended 2003 and 2007 Town Meetings]

3. Restaurants permitted under Section 5:1.2.1.3 shall not be larger than 5000 square feet and shall not be allowed to have drive-through service. [Added 1992, Amended March 2007 Town Meetings]

4. Retail stores associated with permitted uses under Section 5:1.2.3 shall be accessory to the main use and shall not comprise more than 20% of the gross floor area of the building. [Added 2003 Town Meeting]

5. Sales agencies for automobiles and boats shall not be allowed. [Added 2006 Town Meeting]

5:1.3.12 In that portion of CI-B District between Interstate Route 93 and South/North Policy Street, any single retail store permitted under Section 5:1.2.1.2 shall be limited to not more than 1500 square feet in gross floor area, and no more than three (3) such uses, in combination, shall be permitted on any one lot. Sales agencies for automobiles and boats shall not be allowed. (§309-46.Q) [Added 1994, amended 2006 Town Meetings]

In Commercial Subdistricts B and C:

5:1.3.13 In a filling station, a gasoline pump, light standard or similar installation may be placed to within twenty (20) feet of the street line. (§309-46.D) [Amended 1980 and 1981 Town Meetings]

5:1.3.14 No used car dealership in CI-B and CI-C may be located any closer than two thousand (2,000) feet to any other used car dealership. See Section 1:7 for the definition of "used car dealership". (§309-46.K)

5:1.3.15 All buildings, parking lots, and other commercial improvements in CI-B and CI-C shall include a buffered area when abutting a Residential or Rural District. The buffer area shall include evergreens, fences, shrubs, walls, or some combination thereof, which will provide a visual screening at all seasons of the year as approved by the Planning Board. (§309-46.R) [Added 1990 Town Meeting]

In Commercial Subdistrict C:

5:1.3.16 In that portion of the CI-C Subdistrict bounded on the east by the Boston & Maine Railroad right-of-way (now existing), on the southern by the Methuen Town line, and on the west and north by the Spicket River, the permitted uses under Section 5:1.2 shall be restricted as follows: (§309-46.P)

- 1.** No single retail store shall be established greater than 1500 square feet, except for stores which sell goods or materials manufactured, built, or assembled on such lot as a permitted use, in which case such retail use may not occupy more than 10,000 square feet.
- 2.** No more than three (3) retail uses may exist on any one lot, nor shall any lot be devoted exclusively to retail uses, but that such uses shall constitute not more than 50% of the effective use of the buildings or structures on said lot.
- 3.** The uses in Section 5:1.2.1.3 shall not be permitted, except as ancillary to a permitted use otherwise existing. [Added 1996 Town Meeting.]

5:1.4 Exceptions (§309-48) [Amended 2005 Town Meeting]

The Board of Adjustment shall grant the following exceptions in the Commercial Subdistricts upon finding that the specified conditions exist.

5:1.4.1 Relief from any of the provisions of this Section for a specified temporary period of time, if the Board of Adjustment shall find either:

- 1.** That a public emergency exists or is threatened of so serious a character as to outweigh any diminution of surrounding property values or any fire, health or traffic dangers or overcrowding of land or of public facilities occasioned by such relief; or
- 2.** That such relief from any such provisions for such temporary period, not to exceed one (1) year, would be reasonably necessary or desirable for the ultimate use or development of land in a permitted or desirable way, and that any disadvantage by such relief would be outweighed by the advantages available from such ultimate use of the land.

5:1.4.2 Relief from any of the regulations of this Section, if, and to the extent necessary or desirable for the proposed use, such proposed use involves the availability of a railroad siding as a necessary or desirable adjunct.

5:1.5 Variances (§309-49)

In granting or denying variances in the Commercial Subdistricts, the Board of Adjustment shall consider:

5:1.5.1 That the compact development of CI-A, with maximum utilization of its land area without waste thereof, is within the spirit of Chapter 309.

5:1.5.2 That traffic hazards and traffic congestion exist in CI-B. That except in extraordinary cases, any increase in such hazards and congestion is contrary to the spirit of Chapter 309.

5:1.5.3 That growth of activity in the districts is considered desirable within the spirit of this chapter, and that the retention of parking area for such growth is in the public interest.

Section 5:2 Industrial District

5:2.1 Applicability of Section (§309-69)

The following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Industrial District; except, however, that these regulations shall not apply to an existing building or structure, nor to the existing use of any building, structure or land, if such existing building or structure or existing use of any building, structure or land was a lawful use under the governing provisions of prior zoning ordinances, nor to an alteration thereto for a use or for any purpose or in any manner which is not substantially different from that to which it was put before alteration, nor to lots shown in a subdivision plat which has been approved by the Salem Planning Board. However, in the event of discontinuance of a nonconforming use for whatever reason for twelve (12) consecutive months, then the following regulations shall govern the erection and alteration of buildings and structures and the use of land in the Industrial District. Further, signs of all types and descriptions must conform to all requirements of this chapter not later than April 1, 1982.

5:2.2 Permitted Uses (§309-70)

The following uses shall be permitted in the Industrial District:

5:2.2.1 Business and professional offices, banks, studios, municipal buildings, and passenger and taxi stations.

5:2.2.2 Facilities for research.

5:2.2.3 Facilities for the assembly, warehousing, storage, and/or manufacture of goods and materials, except for truck terminals. [Amended 2007 Town Meeting]

5:2.2.4 Commercial indoor skating and tennis facilities.

5:2.2.5 Motels and hotels.

5:2.2.6 Accessory uses customarily incidental to any of the foregoing.

5:2.3 Restrictions (§309-71)

The following restrictions shall govern all uses in the Industrial District:

5:2.3.1 Zoning dimensions: see Section 2:2.

5:2.3.2 No building, parking lot or other industrial improvements shall be located within one hundred (100) feet of residentially or rurally zoned land if such residentially or rurally zoned land is not separated by a public way. Existing vegetation within this setback shall remain undisturbed, but may be enhanced to provide a year-round visual screen. (§309-71.E) [Amended 1998 Town Meeting.]

5:2.3.3 Frontage is on a paved Class I, II, II, IV or V highway, as defined in RSA 30, or on a street shown on a subdivision plat approved by the Salem Planning Board. Frontage on Interstate Route 93 shall not be deemed to constitute frontage under this provision. (§309-71.J)

5:2.3.4 Lighting devices shall have continuous light. Lights shall not shine on any street or adjacent property. Illuminating devices shall not have visible moving or flashing parts.

5:2.3.5 When applicable, regulations and restrictions in the following sections shall be met:

- | | |
|-------------------------------------|--------------|
| 1. Off-street Parking | Section 7:1 |
| 2. Obstructed view | Section 8:3 |
| 3. Proximity to Water Bodies | Section 8:4 |
| 4. Motel Uses | Section 8:15 |

ARTICLE 6 OVERLAY DISTRICTS

Section 6:1 Seniors Housing Overlay District [Adopted 1998 Town Meeting]

6:1.1 Intent and Purpose (§309-173, §309-174)

6:1.1.1 It is the intent of this Section to recognize the need for granting provisions in certain districts of the Town of Salem whereby appropriate housing alternatives may be provided for: active adults age 55 and over; elderly persons living independently; frail elderly persons; elderly persons requiring skilled or specialty nursing facilities; and, provide appropriate supportive health care and services for older persons.

6:1.1.2 This Section is intended to operate as a Seniors Housing Overlay District, and will prevail in lieu of the underlying zoning, in appropriate circumstances, as determined by the Town of Salem Planning Board, to provide housing opportunities for elderly persons, and provide opportunity for transitional uses between commercial districts, business districts, the Town Center District, and abutting residential districts.

6:1.2 Definitions: see Section 1:7 (§309-175, §309-180)

Cross Reference: NH RSA 151 and RSA 151-C contain specific definitions of residential care and health facilities requiring licensing. Applicants for development of projects in the Seniors Housing Overlay District must comply with all state and federal regulations applicable to these facilities. (Added 1999 Town Meeting)

6:1.3 District Locations (309-177) [Amended 2002 Town Meeting]

The primary intent of applying an overlay to established districts is to provide a compatible location for senior housing projects. Senior facility developers and operators may apply for any of the defined senior uses in Section 1:7; however, the Planning Board shall have the sole authority for approval of a proposed project for a particular site based on the standards and criteria noted in this ordinance. A senior housing overlay district may be established on any parcel, or combination of parcels that has the following characteristics:

6:1.3.1 A total land area appropriate to the use as set forth in Section 6:1.6 below, unless otherwise waived by the Planning Board, consistent with the interests of the community.

6:1.3.2 Served by municipal sewer and water, or by private systems approved for community use by the Planning Board and the State of New Hampshire.

6:1.3.3 Having frontage on an existing or proposed Class V town road of at least 200 feet, or access to a Class V town road through an adjoining commercially zoned or business-office property with conforming frontage on a Class V town road.

6:1.3.4 Commercial-Industrial A or C Subdistricts, or abutting or adjoining commercially zoned land; or Business-Office Districts. [Amended 2004 Town Meeting]

6:1.3.5 Town Center District.

6:1.3.6 Notwithstanding the foregoing, the Planning Board may approve placement of an overlay in any rurally or residentially zoned area after employing the development standards in Section 6:1.6.

6:1.4 Permitted Uses (§309-176) [Amended 2002 Town Meeting]

The following uses shall be permitted in the Seniors Housing Overlay District:

6:1.4.1 A variety of housing types exclusively addressing the needs of senior citizens including, but not limited to, active adult homes and facilities; independent living facilities; Continuing Care Retirement Communities; Assisted Living Facilities; congregare care facilities; nursing homes; and, skilled nursing facilities.

6:1.4.2 Only single family detached dwellings shall be allowed in the Residential and Rural Districts. [Added 2004 Town Meeting]

6:1.5 Evaluation Criteria (§309-176.1) [Added 2002 Town Meeting]

In considering plans submitted under this ordinance, the Planning Board shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and the residents of the immediate neighborhood in particular; and shall make any appropriate conditions and safeguards in harmony with the general purpose and intent of this ordinance, and particularly in regard to achieving:

6:1.5.1 Maximum safety of traffic access and egress, minimum on the capacity of existing roads and sufficient parking areas to provide for adequate off-street parking.

6:1.5.2 A site layout which would have no adverse effect upon any properties in adjoining residential districts by impairing the established character or the potential use of properties in such districts.

6:1.5.3 The reasonable screening of all parking lots, service areas, and multi-family housing developments from the view of adjacent residential properties and streets.

6:1.5.4 Conformance of the proposed plan with the Salem Master Plan.

6:1.5.5 Installation of public improvements and amenities, at the expense of the applicant, to assist in the establishment of a sound urban environment. Such improvements may include, but shall not be limited to, granite curbing, sidewalks and street trees, extension of utilities and, when deemed necessary, improvements to existing roadways and/or drainage systems in order to adequately serve the proposed project.

6:1.5.6 Conformance of the building and all related signs and structures to the properties of the aesthetic character of the area, as determined by consideration of architecture, building size and type, scale of lot coverage, and consistency of uses in the immediate area.

6:1.6 Development Standards (§309-178)

6:1.6.1 General Standards. (§309-178.A)

1. Zoning dimensions (minimum acreage, frontage, setbacks, height restriction): see Section 2:2.
2. Seniors facilities must be served by municipal water and sewer, or by private systems approved for community use by the Planning Board and the state of New Hampshire.
3. Facilities designed as dwelling units within the district may have a maximum of two bedrooms.
4. Open space shall consist of no less than 50% of the lot area.

6:1.6.2 Design and architectural character. (§309-178.B)

1. Massing and style. Building massing and style must be distinctively residential in character, drawing on the historical design elements that are contextually consistent with regional New England architecture. Historical and traditional design elements are encouraged. Front yards which use boxwood hedges, evergreen hedges, traditional style picket fences, stone walls, or iron picket fences with granite curb and pilasters is encouraged. Fences or hedges should not exceed three feet in height

at the fronts of buildings. Fences and landscaping to screen service areas may exceed this height, consistent with the intent and use of the space.

2. Roofs. Preference shall be given to roof pitches consistent with single family, residential design. New England traditional or vernacular styles are preferred. Material must be consistent with the architecture of the building. Composition shingle material is acceptable, providing that it is of high quality and provides architectural definition to the tab shingle to emulate traditional wood shingle styles. Tile, slate, or metal roofing is permitted, provided it is consistent with the architectural style of the building. Gutters and down spouts are encouraged to provide drainage away from foundations, but must be consistent with the other architectural elements of the building. The installation of chimneys on the roofs of all buildings is encouraged to convey the look and feel of residential use.

3. Facade element. Design of the facade shall be highly detailed and articulated to be compatible with the scale and sensitivity to the residential uses of the project. Facades should have a well defined foundation, a modulated wall element, and pitched roof or articulated cornice which defines the character of the building, and provides relation to the human scale of typical family residences.

4. Entrances. Building entrances must comply with all current accessibility regulations; however, the use of ramps and lifts is discouraged. Buildings should be designed with entrances that are barrier free for the intended residential or commercial uses. The use of sloping entry walks, covered entryways, porticos, arcades, and covered porches is encouraged. Where grade separation of an entrance is required because of site topography, accommodation should be provided in the architectural detail of the entry to allow barrier free use by building residents and visitors.

5. Door and window openings. Doors and windows form the transition from public to private space, and should reflect residential detailing in design and placement. The use of cornices, architectural moldings, side lights, transom lights, and raised panels in doors is encouraged. Window openings should vary between buildings, but should not be unbroken and continuous in any circumstance. The use of opening sash windows with true divided lights, or detailing to convey the character of divided lights is encouraged. The use of shutters consistent with the architecture of a building is encouraged. A wide range of material for doors and windows is acceptable, except that the use of commercial, anodized or painted aluminum or steel storefront assemblies is discouraged.

6. Materials and design elements. Material chosen for exterior elements should be consistent with the intent and use of materials traditionally found in residential design in New England. Siding materials such as clapboard and shingle are preferred, and the use of new materials which reduce maintenance, but emulate the look and feel of traditional materials is encouraged. The use of a variety of trim material to provide detail at the eaves, corners, gables, pediments, lintels, sills, quoins, and balustrades is encouraged. The use of bays, towers, cupolas, cross gables, and dormers to provide unique character to a building and provide articulation of the facade is encouraged. The color palette chosen for any building should be consistent with traditional residential colors.

7. Paving and curbing. Granite curbing, gray in color, is required on all public roads, and is preferred, except in areas of very low traffic volume where no curbing will be required. Rolled asphalt (Cape Cod berm) curbing is unacceptable in all public ways. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving which provides a non-skid surface and is contrasting in design, materials, or color is encouraged at all pedestrian crosswalks and walkways.

8. Parking. Parking lots in front setbacks are prohibited. Parking areas are to be to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. Parking lot interiors shall be landscaped to provide shade and relief. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged. Textured paving or grade separated (elevated) walkways are desired on all pedestrian access ways. Separate loading areas are required for service vehicles in all residential projects of twenty or more units and at all other facilities greater than 2500 square feet. In multi-family buildings of 20 or more units, at least one loading area must be provided for 20-50 units, and one additional loading area for each additional increment of 25 units. In other facilities, loading areas must be provided at the ratio of one space for each 10,000 square feet of building area on a site, except that all activities of 2500 square feet or more

shall have at least one loading area provided. Loading areas must be at least 20 X 9 feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

9. Parking ratios shall be as follows:

	<u>ratios per dwelling unit</u>
Adult Community	2.2:1
Independent Living Facilities	1.5:1
CCRC	2:1
ALF	1:1 plus 1:each employee
Congregate Care Facility	0.5:1 plus 1:each employee
Nursing Home	0.25:1 plus 1:each employee
SNF	0.25:1 plus 1:each employee
Alzheimer's Facility	0.25:1 plus 1:each employee

10. Signs. Permitted signs are to be as specified in Section 7:2.4.1 for Residential, Rural, Recreational or Garden Apartment districts.

11. Lighting. Multi-halide lighting or color corrected sodium lighting is encouraged. Street lighting, except as required for vehicle entrances and public rights-of-way in Chapter §278.8 Q, should be pedestal mounted or mounted on adjacent buildings at pedestrian scale heights between 10 and 14 feet. Lights should not illuminate adjacent properties, and caps or cutoffs must be provided to prevent direct lighting of abutting or adjacent properties. The use of porch lights, gate post lights, and bollard lighting to illuminate walkways is encouraged.

12. Foundation planting and general landscaping. A broad range of foundation plants and general landscape planting is encouraged. The intent is to provide an intensity of landscaping that creates a residential character for any project in this district.

6:1.6.3 Development Density. (§309-178.D) [Amended 2002 and 2004 Town Meetings]

1. Maximum allowable density shall be based on project location as follows:

- a. Commercial-Industrial Districts – 10 units per acre [Amended 2004 Town Meeting]
- b. Town Center District – 8 units per acre
- c. Residential Districts – 4 units per acre
- d. Business-Office Districts – 4 units per acre
- e. Rural Districts – 2 units per acre

2. A density bonus of up to ten (10) percent of the total units allowed above may be granted by the Planning Board for projects which restrict the age of all occupants to age 62 and older. An additional density bonus of up to ten (10) percent may be granted by the Planning Board for projects of any size which dedicate a greater percentage of affordable units than required in Section 6:1.8.5, but in no case may the total density bonus exceed twenty (20) percent of the total units otherwise allowed. [Added 2003 Town Meeting]

3. Density calculations shall be based on the amount of contiguous upland area of a lot. [Added 2004 Town Meeting]

6:1.6.4 Open space requirements. Land within the parcel or lot which is not specifically covered by the buildings, roads, driveways, parking areas, or service areas, and not set aside as private yards, patios, or gardens for residents shall qualify as open space. Further, all open space shall be unobstructed and open to the sky. Flagpoles, sculptures, benches, swimming pools, tennis courts, atriums, trees, and similar objects shall not be considered obstructions. No more than 25% of the minimum required open space may lie within a wetland. The size, dimension, character, and location of open space shall be suitable to enable its enjoyment and use for conservation, recreation, or agricultural persons by residents or the community. Such restrictions regarding open space shall be in a form and substance as the Planning Board may prescribe, and shall be recorded in an instrument enforceable by the Town. (§309-178.E)

6:1.6.5 Single family detached dwelling units may be situated on individual lots, may be part of a detached condominium regime, or may be separate rental units. Single family detached projects within

the district require a minimum parcel size of 10 acres. In the case of condominium units, condominium projects must be 75% owner occupied. If separate lots are created, they shall not be less than 10,000 square feet, and may have frontage on either town roads or private roads within the overlay district, in which case the roads shall be maintained by an owner's association. In the case of single family detached dwellings, the density of a district may not exceed one unit for each 10,000 square feet of lot area. (§309-178.F)

6:1.6.6 Multi-family residential structures may be either condominium units or rental units, except that condominium units must be 75% owner occupied. More than one structure may be built on a lot in accordance with the density limits for the project type. (§309-178.G)

6:1.7 Special Use Permits (§309-179)

The implementation of Seniors Overlay Districts shall be overseen by the Town of Salem Planning Board. Under the provisions of RSA 674:21, the Planning Board may, by application for a special use permit, provide an exception from the development standards in Section 6:1.6 provided that:

6:1.7.1 Such exception is consistent with the purpose and intent of this Section;

6:1.7.2 The exception is in the public interest;

6:1.7.3 The exception will not aggravate or worsen the impact on adjoining residential areas;

6:1.7.4 The exception will provide a development opportunity that could not be otherwise obtained.

6:1.8 Restrictions (§309-180)

6:1.8.1 Residential facilities designed for exclusive occupancy by senior citizens, as a minimum, must meet federal regulations for such facilities.

6:1.8.2 All occupants shall be age 55 or older. [Amended 2004 Town Meeting]

6:1.8.3 A unit occupied by surviving members of a household, in which the head of household met the age requirements at time of death, may continue to be occupied by surviving household members regardless of age.

6:1.8.4 Residency restrictions for residential projects within the Seniors Housing Overlay District shall be accomplished by restrictions recorded in Condominium Declarations, Restrictive Covenants, or other documents recorded in the Rockingham Registry of Deeds. All such covenants shall be subject to review by Town Counsel and shall include enforcement provisions in favor of the Town.

6:1.8.5 At least 10% of the total dwelling units in all projects shall be dedicated as affordable to low income households, defined as being available at a cost of no more than 30% of gross household income of households at or below 80% of the Lawrence, MA. PMSA – NH Portion median income as reported by the U.S. Department of Housing and Urban Development. As an alternative to providing these units, an applicant may contribute a fee to a local housing trust fund to be used for the development of affordable senior housing. The fee shall be equivalent in value to the units which otherwise would have been provided within the development, in accordance with a fee schedule adopted by the Salem Planning Board, and shall be paid on a timetable approved by the Board. [Amended 2004 and 2007 Town Meetings]

6:1.8.6 Pursuant to RSA 674:21,I(b), to insure that the rate of growth of new dwelling units does not unreasonably interfere with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such growth, the construction of new dwelling units approved under this ordinance shall be phased so that no more than 20 single family detached units or 50 multi-family units shall be built in any one project per year. [Added 2004 Town Meeting] [Amended 2008 Town Meeting]

ARTICLE 7 ORDINANCES

Section 7:1 Off-Street Parking and Loading Ordinance [Amended 1981 Town Meeting]

7:1.1 Intent (§309-65)

To provide for the free movement of ordinary public and private traffic in the streets at all times, to reduce congestion in the streets and to permit the rapid but safe passage of emergency vehicles of all sorts, to facilitate the maneuvering of public emergency equipment in the streets, to facilitate the removal of snow, and for all related purposes, it is declared to be the intent of this section that all structures and land uses be provided with adequate associated off-street vehicular parking space to meet the reasonable parking needs of persons making use of the premises.

7:1.2 Existing Structures and Uses; Exceptions (§309-66)

7:1.2.1 The off-street parking requirements as set forth in the Table of Off-Street Parking Requirements in Section 7:1.5 shall apply to all buildings and land uses except those:

1. In existence at the effective date of adoption of this Section;
2. For which building permits were approved by the effective date of adoption of this Section;
3. Located in Commercial-Industrial Subdistrict A.

7:1.2.2 After the adoption of this Section:

1. No expansion of a building or use may take place unless the requirements of this Section are met with respect to such expansion;
2. No change of use may take place unless the requirements of this Section are met for such changed use.

7:1.3 Lot Design and Landscaping Requirements (§309-67) [Amended 2005 Town Meeting]

7:1.3.1 Parking lot design, except for one- and two family dwellings, shall be regulated by the following provisions:

1. All parking areas and driveways shall be surfaced with a minimum of two (2) inches of bituminous concrete or equivalent material acceptable to the Town Engineer. Parking spaces shall be clearly marked on the parking lot surface.
2. All parking areas shall be graded and drained so as not to cause puddling or water accumulation within the parking area.
3. Joint off-street parking facilities may be provided by two (2) or more separate buildings or land uses on the same lot or on contiguous lots, but in such case, the total spaces required shall be the sum of the spaces required for the individual buildings and land uses.
4. Each required off-street space shall be at least nine (9) feet in width and at least twenty (20) feet in length. The minimum parking aisle width for 90 degree parking shall be 24' except for expansion of existing parking lots where 22' width is already provided. [Amended 2006 Town Meeting]
5. Handicap parking space requirements must comply with all applicable state and federal regulations. [Amended 2004 Town Meeting]
6. At least seventy-five (75) percent of the required parking spaces for non-industrial uses must be located within four hundred (400) feet (as measured by walking distance) from the nearest public entrance to the building they serve unless the Planning Board determines that all of the following criteria are met: [Added 2008 Town Meeting]
 - a. The applicant's particular situation justifies a modification to the requirement;
 - b. The site and proposed uses(s) are suitable for the proposed parking layout;
 - c. There will be no adverse impact on neighboring properties;
 - d. There will be no adverse impact on traffic or pedestrian safety;
 - e. The modification will be consistent with the spirit and intent of the Parking Regulations.

7:1.3.2 Parking lot landscaping requirements. Parking lot landscaping shall be regulated by the following provisions:

1. In off-street parking lots for ten (10) or more cars, but less than fifty (50) cars, the area within five (5) feet of the perimeter of such parking lot, except for the entrances to the lot and except where the lot is adjacent to the building that it serves, will be landscaped and adequately maintained with grass, shrubs, shade or ornamental trees or ground cover plantings.
2. In off-street parking lots for fifty (50) or more vehicles, the Planning Board shall require, within the perimeter of the parking lot, not less than one (1) live shade or ornamental tree for each two thousand (2,000) square feet of parking area. Additionally, the area within ten (10) feet of the perimeter of such parking lot, except for the entrances to the lot and except where the lot is adjacent to the building that it serves, will be landscaped and adequately maintained with grass, shrubs, shade or ornamental trees, or ground cover plantings.
3. The provisions of this section do not apply to multiple-story parking decks.
4. In off-street parking lots for one hundred (100) or more vehicles, no pavement other than access ways shall be permitted within twenty (20) feet of the front property line. This area shall be grassed or landscaped and may be included in the open space requirement. [Added 1990 Town Meeting]

7:1.4 Conditional Use Permits (§309-68.1) [Added 2008 Town Meeting]

7:1.4.1. The Planning Board may grant a conditional use permit to modify the requirements of Section 7:1.5.1 in limited respects provided the Board finds that all of the following criteria are met:

1. The modification complies with the purposes of the parking regulations noted in Section 7:1.1;
2. The applicant's particular situation justifies a modification to the requirements;
3. The site is suitable for the proposed modification;
4. There will be no adverse impact on neighboring properties;
5. There will be no adverse impact on traffic or pedestrian safety;
6. The aesthetic character of the site and the surrounding area will not be adversely affected;
7. The modification will be consistent with the spirit and intent of the Zoning Ordinance and the Master Plan.

7:1.4.2. An applicant is not entitled to a Conditional Use Permit and the Planning Board may, in its discretion, decline to grant it if the Board determines such permit is not justified or warranted.

7:1.4.3. This provision is adopted as an innovative land use control pursuant to RSA 674:21 and the Planning Board is vested with sole authority to administer it and to grant the conditional use permits. [Added 2010 Town Meeting]

7:1.5 Table of Minimum Off-Street Parking Requirements (§309-68)

Off-street parking requirements are shown in the following table.

This 'note' is applicable to the Principle Use "Sports Complex" in the table:

*NOTE: Applicant shall submit a traffic analysis which would include but not be limited to design hourly volume (DHV), peak hour traffic entering and leaving the site and generated traffic; and a comprehensive traffic assessment concerning traffic circulation within the parking lot, and conflict points at the site, and adjacent roadways and intersections.

TABLE OF MINIMUM OFF-STREET PARKING REQUIREMENTS

7:1.5.1

PRINCIPLE USE	OFF-STREET PARKING REQUIREMENTS
Agricultural - road stand	7 per customer service employee
Colleges, universities, trade schools, and vocational institutions	1 per 2 seats and 1 per employee
Covered skating rinks, bowling alleys and all other similar places of assembly, the capacity of which cannot be measured in terms of seats	1 per 150 sf. of gross floor area
Group day care centers and child care centers [Amended 2001 Town Meeting]	1 per employee; and 1 per every 4 students maximum capacity in Business-Office I District; or 1 per 7 students maximum capacity in other Districts.
Housing - single Family dwelling & apartments	2 per dwelling unit
Housing for the elderly	1 per dwelling unit
Industrial - wholesale, warehouse, and storage [Amended 2004 Town Meeting]	1 per employee; and 1 per company vehicle operating from premises; and 1 per 1000 sf of first 20,000 sf of gross floor area; and 1 per each additional 10,000 sf of gross floor area
Industrial - manufacturing, research, and testing laboratories [Amended 2004 Town Meeting]	1 per employee; and 1 per company vehicle operating from premises; and 1 per 1200 sf of gross floor area
Medical & dental offices and medical office buildings [Amended Town Meeting 2008]	1 per 250 square feet of gross floor area
Membership club [Amended 1988 Town Meeting]	1 per 150 sf. of gross floor area; and 1 per 3 seats for ancillary restaurant and 1 per employee
Motels & hotels	1 per rental unit; and 1 per 5 seats in ancillary restaurant, of gross floor area used; and 1 per 300 sf. of gross floor area for function rooms and other such uses
Office: business, professional administrative and bank [Amended 1988 Town Meeting]	1 per 300 sf. of gross floor area
Places of assembly: Theaters, auditoriums, churches and other places of assembly with fixed seats (based on maximum capacity)	1 per 3 seats; and 1 per 55 inches of permanent bleacher or bench seating space; and 1 per 150 sf. of area without permanent seating facilities that is devoted regularly to public assembly; and 1 per employee
Restaurants [Amended 2006 Town Meeting]	1 space per 75 sq. ft. of gross floor area or 1 space per 2 seats, whichever is greater. Minimum 25 spaces required for all restaurants.
Retail sales of furniture, automobiles, nursery stock, and such other goods as usually involve extensive display areas in relation to customer traffic	1 per 500 sf. of gross floor area
Retail stores, store groups, shops and service establishments	1 per 200 sf. of gross floor area of first floor area and 1 per 400 sf. of gross floor area above and below first floor
Sports Complex (*Note – Section 7:1.5)	0.25 per seat as a general requirement

Section 7:2 Sign Ordinance [Amended 1988, 2002, 2005, and 2006 Town Meetings]

7:2.1 Purpose (§309-82)

The purpose of this section is to regulate the erection of signs for the purpose of providing information and advertising in an orderly, effective and safe manner. Restrictions on type, location and size of signs protect the public from hazardous and distracting displays and create an attractive environment which is conducive to business, industry, and tourism.

7:2.2 Definitions: see Section 1:7 (§309-83)

7:2.3 Administration and Enforcement (§309-88)

7:2.3.1 A permit shall be applied for and received from the Building Department prior to erecting, (re)placing, rebuilding, reconstructing, or moving any sign. A permit is not necessary for sign repair and maintenance.

7:2.3.2 The application for a sign permit shall be accompanied by a sketch plan of site and elevation drawings of the proposed sign, caption of the proposed sign, and such other data as are pertinent to the application.

7:2.3.3 All signs shown on an approved site plan may not be altered without the approval of the Planning Board, unless the proposed alteration is to change a tenant name or the effect of the alteration does not make the sign more intensive and/or obtrusive. [Added 2000 Town Meeting]

7:2.3.4. In accordance with RSA 676:17, any person who violates any part of this ordinance shall be guilty of a misdemeanor and is subject to a fine of \$100 for each day the violation continues after written notification.

7:2.4 Permitted Signs (§309-85)

Notwithstanding any provisions of this section to the contrary, to the extent this section permits a sign containing commercial copy, it shall permit a non-commercial sign to the same extent. [Added 2006 Town Meeting]

7:2.4.1 Within any Residential, Rural, Recreational, or Garden Apartment District, signs or nameplates advertising those uses permitted in the respective district, are permitted with a thirty (30) foot setback as follows:

- 1.** For multi-family or multi-unit (multi meaning greater than two) structures, one (1) identification sign for which the display area shall not exceed 12 square feet.
- 2.** For nonresidential uses one (1) identification sign not exceeding a total of 16 square feet.
- 3.** Signs shall be painted on or be placed flat against the building facade or detached provided they do not exceed six (6) feet in height and shall not be internally illuminated.
- 4.** Subdivision development identification signs – one freestanding sign identifying a subdivision is allowed at each entrance to the subdivision with a minimum setback from the right-of-way of 5', a maximum height of 5', and a maximum display area of 20 sf. Such signs may not be located in the public right-of-way. [Amended 2000 Town Meeting]

7:2.4.2 Within any Commercial - Industrial, Business Office, Industrial District, or Limited Community Shopping District, signs are permitted in accordance with the following table and as restricted by following subparagraphs.

TABLE OF PERMITTED SIGNS

7:2.4.2

PERMITTED SIGNS	DEPOT CI-A	CI-B & CI-C	BUS./OFC. I - II	INDUSTRIAL	LTD COMM. SHOP. DIST.
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Per Lot: Maximum display area of all signs based on street frontage

0-300 feet	300 sf.	No Cap	24 sf. - 48 sf.	150 sf.	300 sf.
301-599 feet	300 sf.	No Cap	24 sf. - 48 sf.	150 sf.	300 sf.
600-899 feet	375 sf.	No Cap	24 sf. - 48 sf.	150 sf.	300 sf.
900+ feet	375 sf.	No Cap	24 sf. - 48 sf.	150 sf.	300 sf.

Free Standing: Maximum number allowed per lot based on frontage

0-599	1/lot	1/lot	1/lot	1/lot	1/lot
600-899	1/lot	2/lot	1/lot - 1/lot	2/lot	1/lot
900+ feet	1/lot	3/lot	1/lot-1/lot	3/lot	1/lot
Minimum set-back from R/O/W	5 feet	20 feet	5 ft - 5 ft	10 feet	10 feet
Max. Height	20 feet	20 feet	15 feet	15 feet	12 feet
Max. Display area per sign	100 sf.*	100 sf.*	16 s.f.-32 sf.	75 sf.	40 sf.

*or 1 sf. per linear foot of frontage, whichever is less.

Wall/Canopy/Roof

Max. Area - only sign on lot	2 s.f./lin. ft of bldg.	2.5 s.f./lin. ft of bldg.*	16 s.f.-16 sf.	2.5 s.f./lin. ft of bldg.	2 s.f./lin. ft. of bldg.
In Combination w/free standing sign(s)	1.5 s.f./lin. ft of bldg.	1.5 s.f./lin. ft. of bldg.*	16 sf. - 16 sf.	1.5 s.f./lin. ft. of bldg.	1.5 s.f./lin. ft. of bldg.
In Combination w/projecting signs	1 s.f./lin. ft. of bldg.	---	---	---	---

*maximum 100 sf per sign; maximum 1 sign per business or 1 per frontage for businesses with frontage on more than 1 public road [Added 2002 Town Meeting]

Projecting Signs: Maximum number of signs based on street frontage

0-300 feet	1	---	---	---	---
399+ feet	2	---	---	---	---
Min. Clearance	10 feet	---	---	---	---
Min. Setback	2 ft from curb	---	---	---	---
Max. Projecting length of sign as measured from bldg facade	6 feet	---	---	---	---
Max. Height	3 feet above bldg	---	---	---	---

[Amended 1989 and 1997 Town Meetings]

7:2.4.2.1. Freestanding Signs.

1. Where more than one freestanding sign is permitted the minimum distance between the signs is 300 feet.
2. Where a parcel fronts on more than one (1) public street (excluding alleys and service- ways), the provisions of this subsection shall apply to each frontage.
3. The maximum portion of a freestanding sign dedicated to changeable copy is twenty (20) percent.
4. Minimum setback for freestanding signs may be reduced to 10 feet provided the freestanding sign area is reduced by at least 50%. [Amended 1997 Town Meeting]
5. All freestanding signs must incorporate the property's street address and plaza name (if any) on the sign. [Added 2000 Town Meeting]
6. In the Business-Office I District, signs may not be internally illuminated. [Added 2000 Town Meeting]
7. Ground/monument signs shall be located perpendicular to the road. [Added 2000 Town Meeting]

7:2.4.2.2. Wall Signs.

1. Linear building frontage refers to building frontage facing on each public right-of-way (excluding service streets and alleys) or interior courtyard/parking area. Businesses without frontage on streets may be allowed one (1) wall sign not exceeding fifteen (15) square feet in size. [Amended 1992 Town Meeting]
2. Lots fronting on more than one (1) public right-of-way may not combine allowable square feet for one (1) frontage with that of another frontage for the purpose of placing the combined area of signs on one frontage.
3. The maximum permitted area for wall signs may be increased by 10% provided the applicant reduces the area of their permitted freestanding sign(s) by at least 30% and/or reduces the number of freestanding signs permitted on the property. [Amended 1992 Town Meeting]

7:2.4.2.3. Roof Signs.

1. All roof signs must be set back a distance of at least four (4) feet from all the outside walls of the building on or over which they are located.
2. Roof signs are not permitted in the Limited Community Shopping District.

7:2.4.2.4. Projecting Signs. The projecting sign may exist instead of, but not in addition to, a freestanding sign.

7:2.4.2.5. Under Canopy Signs. Under canopy signs shall be placed perpendicular to the building. In the Limited Community Shopping District, these signs shall be of a carved wooden design.

7:2.4.2.6. Commercial Temporary Signs. [Amended 2006 and 2009 Town Meetings]

1. A poster or banner that does not exceed twenty (20) square feet in size is permitted on a building or wall or on an existing freestanding sign, or one A-frame/sandwich board sign up to nine (9) square feet in size and no taller than three (3) feet is permitted up to 14 days at a time up to three (3) times per calendar year. Permits are required for these temporary signs.
2. Signs described in Section 7:2.3.5, and portable or wheeled signs, are limited to thirty days upon the opening of a new business.

7:2.4.2.7. Office/Industrial Park Identification Signs. Freestanding signs with a maximum display area of 24 square feet are permitted at the entrance to an industrial or office park development with multiple lots. These signs shall be less than 6 feet in height. Such signs may identify the industrial or office park by name and street address, but shall not list the subdivision tenants, nor be situated in the public right-of-way. [Amended 2000 Town Meeting]

7:2.4.2.8. Directional Signs. One (1) such sign is permitted near each driveway path (i.e. lane). The area of each sign may not exceed four (4) square feet. Such signs shall be limited to "in," "out," "enter," "exit," etc. Directional signs shall not be used to advertise the business or products on site.[Amended 1989 Town Meeting]

7:2.4.2.9. Illumination. No sign which is visible from a property used for residential purposes shall be illuminated between the hours of 11:00 pm and 7:00 am unless the premises on which it is located is open for business. [Added 2000 Town Meeting]

7:2.4.2.10. Signs allowed without permits (provided all other provisions of this section are met)
[Amended 2006 Town Meeting]

- 1. Real Estate Signs.** One (1) real estate "for sale", "for rent" or "for lease" sign is permitted, provided that:
 - a.** The size of the sign shall not exceed six (6) square feet in area in districts zoned residential, rural, or recreational nor twenty (20) square feet in all other districts.
 - b.** The sign advertises only the premises on which it is located and is removed promptly after completion of the sale or rental.
- 2. Construction Signs.** Construction signs are permitted provided that:
 - a.** The total area of all signs shall not exceed twenty (20) square feet per lot in districts zoned residential or rural, nor thirty-two (32) square feet in all other districts.
 - b.** The signs are to be maintained on the premises during actual construction and must be removed two (2) days after issuance of certificate of occupancy.
- 3. Political Signs.**
 - a.** These signs are permitted for a period of thirty days prior to the election and shall be removed within ten days after the election, except when the election is a state primary and the sign concerns a candidate who is a winner in the primary.
 - b.** Prior to the posting of political signs, notice shall be given in writing to the Building Department as to the number, size, and location of such signs by the candidate for office or their representative.
- 4. Nameplates for Residential Uses,** but not exceeding four (4) square feet per single-family residence or eight (8) square feet per duplex.

7:2.5 Prohibited Signs and Materials (§309-84)

The following types of signs are expressly prohibited in all districts unless otherwise provided for in this section.

7:2.5.1 Animated, moving, flashing, intensely lighted signs and signs that emit audible sound, noise, or visible matter. This includes scrolling, flashing, or repeating messages, images or displays. Electronic reader-boards and electronic changeable copy signs are prohibited. [Amended 2002 & 2005 Town Meetings]

7:2.5.2 Off-site signs, billboard signs. [Amended 2006 Town Meeting]

7:2.5.3 Parking of advertising vehicles is prohibited. No person shall park a vehicle or trailer on a public right-of-way or public property, or on private property so as to be visible from the public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby property or any other premises. This section is not intended to prohibit any form of vehicular signage, such as a sign attached to a bus or lettered on a motor vehicle.

7:2.5.4 Signs located on public property or over or across any public street or right-of-way. Special permission for such signs may be granted by the Board of Selectmen where a public benefit can be ascertained. [Amended 2000 Town Meeting]

7:2.5.5 Banners, pennants, searchlights, twirling signs, A-frame signs, sandwich board signs, sidewalk or curb signs, balloons or other gas-filled figures shall not be used except as provided in Section 7:2.4.6.

7:2.5.6 Signs which imitate, and may be confused with, an official traffic control sign or signal, or an emergency or road equipment vehicle.

7:2.5.7 Signs which bear or contain statements, words or pictures of an obscene, pornographic or immoral character or which contain advertising matter which is untruthful, or as otherwise prohibited by State law.

7:2.5.8 Fences or any wall which is not structurally a part of a building may not be used for a sign.
(Amended 2006 Town Meeting)

7:2.5.9 In accordance with RSA 236:75, it shall be unlawful to affix, attach, or display any advertisement upon any object of nature, utility pole, telephone booth, or highway sign.

7:2.5.10 Signs which block the view of traffic, street signs, or traffic signals, or which, due to their placement, inhibit adequate sight distance. [Added 2000 Town Meeting]

7:2.6 Uniformity (§309-86)

In order to improve a particular lot's aesthetics and commercial value, all wall and under canopy signs on the lot shall be of uniform size and shape, color, and style, with the exception of trademarks and logos.

7:2.7 Nonconforming Signs (§309-87)

7:2.7.1 A sign shall immediately lose its legal nonconforming status when:

1. The sign is enlarged or altered such that its effect is more intensive and/or obtrusive.
2. The sign is relocated.
3. The sign is abandoned for one hundred eighty (180) days or more. [Amended 2000 Town Meeting]
4. The sign advertises or calls attention to any products, businesses or activities which have not been carried on or sold at the premises for the past six (6) months.
5. The sign shall not have been repaired or properly maintained within thirty (30) days after written notice to the effect has been given by a Building Official.

7:2.7.2 No sign and/or advertising structures that had been erected in violation of any previously existing sign ordinance shall, by virtue of adoption of this ordinance, become legal nonconforming.

7:2.8 Conditional Use Permits (§309-88.1) [Added 2009 Town Meeting]

7:2.8.1 The Planning Board may grant a conditional use permit to modify the requirements of Section 7:2.4.2 in limited respects provided the Board finds that all of the following criteria are met:

1. The modification complies with the purposes of the sign regulations noted in Section 7:2.1;
2. The applicant's particular situation justifies a modification to the requirements;
3. The site is suitable for the proposed modification;
4. There will be no adverse impact on neighboring properties;
5. There will be no adverse impact on traffic or pedestrian safety;
6. The aesthetic character of the site and the surrounding area will not be adversely affected;
7. The modification will be consistent with the spirit and intent of the Zoning Ordinance and the Master Plan.

7:2.8.2 An applicant is not entitled to a conditional use permit and the Planning Board may, in its discretion, decline to grant it if the Board determines such permit is not justified or warranted in accordance with the above criteria.

7:2.8.3 This provision is adopted as an innovative land use control pursuant to RSA 674:21 and the Planning Board is vested with sole authority to administer it and to grant the conditional use permits.

Section 7:3 Workforce Housing Ordinance [Adopted 2010 Town Meeting (replaced Affordable Housing Ord.)]

7:3.1 Purpose (§309-95)

The purpose of this ordinance is to promote and provide for the development of workforce housing in the Town of Salem as provided for in RSA 674: 58-61. It is intended to ensure the continued availability of a broad spectrum of home ownership and tenancy opportunities for individuals and families with moderate income. All workforce housing proposed to be developed in the Town of Salem shall be approved and developed in accordance with the provisions of this ordinance.

7:3.2 Authority (§309-96)

This workforce housing ordinance is adopted under the authority of the Workforce Housing Statute (RSA 674:58-61) and the Innovative Zoning Statute (RSA 674:21).

7:3.3 Applicability (§309-97)

The following provisions apply to the terms of this ordinance:

7:3.3.1 The innovative land uses allowed under this ordinance function as permitted variations of the underlying zoning requirements by conditional use permit administered by the Planning Board, to the general requirements of Chapter 309 solely for the purposes stated in Section 7:3.1 above. Provisions of this ordinance shall not be applied for any other purpose.

7:3.3.2 Variances to the requirements of this ordinance, including increased residential densities without having received a conditional use permit under this ordinance, shall be considered contrary to the spirit of the ordinance.

7:3.4 Administration (§309-98)

This ordinance shall be administered by the Planning Board. The Planning Board shall amend subdivision and site plan regulations as provided by RSA 675:6 to include procedures for administering the provisions of this ordinance.

7:3.5 Restrictions (§309-99)

The following restrictions govern the Planning Board's implementation of this ordinance:

7:3.5.1 The number of additional/bonus housing units authorized to be constructed under provisions of this ordinance in any calendar year shall not exceed one percent of the existing housing supply. Additional housing units are defined as residences in excess of the number which could be constructed at the density permitted for single family detached housing in the underlying district.

7:3.5.2 No single project or group of projects will have an unreasonable or disproportionate impact on the environment, traffic, schools, recreation areas, requirements for public services, or property rights. Impact shall be considered disproportionate if it is substantially greater per unit of housing than that for housing constructed under provisions of the underlying district.

7:3.5.3 The design of housing to be constructed under this ordinance shall be controlled to ensure that requirements of this subsection are maintained. Expansion of housing contrary to provisions of this subsection shall not be permitted, and variances to permit such expansion shall be contrary to the spirit of this ordinance.

7:3.5.4 Since this ordinance grants broad authority to the Planning Board to facilitate development of workforce housing in Salem, the Planning Board is granted discretion to reject or require modification of plans which it finds would have an unanticipated or undesirable impact on the community. If a plan is rejected, the Planning Board shall state the reasons for the rejection and offer suggestions for modifications to the plan that would make it acceptable, after which the applicant may submit a revised plan for the Planning Board's consideration.

7:3.5.5 Affordability for home ownership shall be based on housing costs including mortgage principal, interest, taxes and insurance not exceeding 30% of the household income for a family of four persons with an annual income that does not exceed 100% of the area median income as determined annually by the US Department of Housing and Urban Development. Affordability for housing rental shall be based on monthly rental and utility costs not exceeding 30% of the household income for a three person household with an annual income that does not exceed 60% of the area median income as determined annually by the US Department of Housing and Urban Development.

7:3.6 Procedure (§309-100)

7:3.6.1 An applicant desiring to develop under the provisions of this ordinance shall file an application with the Planning Board on forms prescribed by it in regulations adopted pursuant to Section 7:3.4. Said application shall include a written statement of the applicant's intent to develop workforce housing and how they intend to comply with the terms and conditions of this ordinance.

7:3.6.2 The Planning Board shall review an application for a workforce housing development in a manner consistent with its procedures for other subdivision and/or site plan proposals.

7:3.6.3 Final approval and review of considerations: Since one of the objectives of this ordinance is to provide long term affordability of units approved under this ordinance, the Planning Board will be mindful of potential added development costs that could impair the affordability of the development. If the applicant for a project reviewed under the provisions of this ordinance believes that the affordability of the project has been impaired as a result of the conditions of project approval, the applicant may seek resolution of these issues as provided for in RSA 674:60 - II and III.

7:3.6.4 The Planning Board is not required to allow a workforce housing development that does not meet the Town's normal development standards, required fees, or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

7:3.7 Design Criteria (§309-101)

The following provisions govern the design and construction of workforce housing proposals under this ordinance:

7:3.7.1 Development in the Rural District is limited to single family detached and single family attached (maximum of two units per grouping) dwellings and uses incidental thereto situated on development parcels that are at least five (5) acres in size.

7:3.7.2 Development in the Residential District is limited to single family detached and single family attached (maximum of four units per grouping) dwellings and uses incidental thereto situated on development parcels that are at least five (5) acres in size.

7:3.7.3 Density in the Residential District shall be based on either of the following standards. Density in the Rural District shall be based on the density bonus standards in the following paragraph (2):

1. The number of bedrooms shall be no more than fifty (50) percent greater than permitted on the basis of four (4) bedrooms per single family detached dwelling in the underlying district. In calculating permitted density, the fifty percent increase shall be applied to the number of single family lots which are shown on a conceptual subdivision or site plan meeting all the requirements of the underlying district. All of the units developed under this standard shall meet the affordability requirements of Section 7:3.5.5.

2. The number of dwelling units shall be no more than thirty (30) percent greater than permitted in the underlying district. In calculating permitted density, the thirty percent increase shall be applied to the number of single family lots which are shown on a conceptual subdivision or site plan meeting all the requirements of the underlying district. All of the bonus units developed under this standard shall meet the affordability requirements of Section 7:3.5.5.

Units may be constructed with various numbers of bedrooms, except that all of the units shall contain at least two (2) bedrooms. Furthermore, none of the units approved for a development under this ordinance may be age restricted.

Any fractional product of the maximum dwelling unit density calculation in Section 7:3.7.3 shall be rounded down to the nearest whole number if below 0.6, or rounded up to the nearest whole number if 0.6 or above.

7:3.7.4 Workforce housing constructed in Commercial-Industrial Districts shall contain not less than three thousand five hundred (3,500) square feet of upland (non-wetland soils) lot area for each dwelling unit that shall consist exclusively of upland (non-wetland) soils. Such housing may be configured as one family attached, townhouse, multi-family or mixed use. If a mix of multi-family housing and permitted Commercial-Industrial uses are proposed, calculation of the maximum residential density shall be made after deducting the building footprint area for the non-residential uses. Such housing shall conform to the Garden Apartments maximum lot coverage in Section 2:2, plus applicable requirements of Section 3:4.3, subject to exceptions as provided in this ordinance. All of the units developed under this standard shall meet the affordability requirements of Section 7:3.5.5.

Units may be constructed with various numbers of bedrooms except that more than fifty percent (50%) of the units shall contain two (2) or more bedrooms. Furthermore, none of the units approved for a development under this ordinance may be age restricted.

The Planning Board may permit multi-family workforce housing developments that comply with the requirements of this ordinance in other zoning districts if the following additional criteria can be met to the satisfaction of the Planning Board:

1. Total development parcel size shall be a minimum of ten (10) acres.
2. The development shall have a landscaped buffer around the perimeter of the development that provides an effective year-round visual screen between the development and abutting properties.
3. The Planning Board finds that all of the other requirements of this ordinance are met.
4. The development is substantially funded by state and/or federal affordable housing programs that require long term housing affordability.

7:3.7.5 Projects with a residential density greater than permitted by the district wherein they are located will be served by the municipal water and sewer systems or by private systems acceptable to the Planning Board and State of New Hampshire.

7:3.7.6 The Planning Board may require extension of roads and utilities, construction of community facilities, dedication of land for public purposes, and payment for off site improvements to the extent that they are reasonably necessitated by developments authorized under provisions of this ordinance.

7:3.7.7 Developments which differ moderately from abutting residential developments shall be visually buffered from them by distance and vegetation.

7:3.7.8 The plan shall comply with the lot requirements and design criteria of the underlying district unless a conditional use permit is specifically requested and voted by the Planning Board under Section 7:3.8.

7:3.7.9 Workforce housing units shall be similar in exterior appearance to market rate units and dispersed throughout the development.

7:3.7.10 Workforce housing units must be constructed in a sequence proportional to the construction sequence of the market rate units and all workforce housing units must be completed and made available for sale or rental before the final ten percent (10%) of the market rate units are approved for occupancy.

7:3.8 Conditional Use Permits (§309-101.1)

The Planning Board may grant a conditional use permit for the development of workforce housing under this ordinance which results in a design that modifies the requirements of the underlying district, subject to the following specific criteria:

7:3.8.1 The proposed design or development is compatible with surrounding neighborhoods, and that no diminution of surrounding property values will be suffered.

7:3.8.2 That the modifications are necessary to accomplish the purpose and intent of this ordinance.

7:3.8.3 Modification of the requirements for maximum allowable height that exceed three (3) stories, compliance with Wetlands Ordinance, and to permit commercial development in non-commercial Districts shall not be permitted.

7:3.8.4 The plan meets all of the provisions of this ordinance.

7:3.8.5 The Salem Housing Authority, the NH Housing Finance Authority or other similar organization has established agreements with the applicant subject to review and approval by the Planning Board, to ensure that the purpose of this ordinance will be fulfilled and will continue to be fulfilled after the project is completed, that the benefit to affordability will be commensurate with the increased value resulting from the increased density permitted by this ordinance, and such agreements are an integral part of the proposal. Agreements shall include provisions to enforce the requirement of Section 7:3.5.5. They may include agreements to provide a share of equity in trust of the Salem Housing Authority, NH Housing Finance Authority or other similar organization, restrictions related to the sale or rental price, resale, or occupancy of the housing, and other provisions and conditions consistent with development and allocation of a limited housing resource, provided that said restrictions benefit the development or retention of moderately priced housing in Salem.

7:3.8.6 The applicant has demonstrated and the Planning Board has found that the benefit to be gained from the project in providing workforce housing outweighs any adverse impact on the community or Town as a whole and that the project is in the public interest.

An applicant is not entitled to a conditional use permit and the Planning Board may, in its discretion, decline to grant it if the Board determines such permit is not justified or warranted in accordance with the above criteria.

7:3.9. Nonseverability. (§309-101.2)

If any of the requirements, conditions, or discretionary authority granted to the Salem Housing Authority, NH Housing Finance Authority, or other similar organization, or to the Planning Board are found to be invalid or unenforceable, then the authority in this ordinance to grant conditional use permits to permit residential densities greater than permitted in the existing Residential and Rural Districts shall be invalid.

Section 7:4 Open Space Preservation Ordinance (§309-7.J; §309-30.I) [Amended 1996 Town Meeting]

7:4.1 General Description (§309-7.J-1; §309-30.I-1)

This ordinance applies to the Residential and Rural Districts.

7:4.1.1 General Concept: An Open Space Preservation Design (hereinafter OSPD) shall mean a residential development in which the buildings and accessory uses are located more closely together with reduced lot sizes, into one or more groups. All land not included in the building lots or street rights-of-way shall be dedicated as permanently-preserved open space. The overall housing density shall not exceed that which could be built under a conventional development plan, except as noted below, and all lots must be serviced by municipal water and sewer or by private systems acceptable to the Planning Board and State of New Hampshire. [Amended 2003 Town Meeting]

7:4.1.2 Permitted Uses: Residential uses are limited to single family detached dwellings and accessory uses, including residential additions, garages, sheds, fences, and pools. Open space uses are limited to non-commercial parks, conservation and recreation areas, and commercial agriculture and forestry. The following uses shall not be permitted: day care facilities, accessory apartments and kennels. [Amended 2000 Town Meeting]

7:4.1.3 Authority: In order to allow OSPD under the powers granted under RSA 674:21, the Planning Board may waive the restrictions in Section 2:2 (except Maximum Height) and Section 8:4, in the Residential or Rural Districts for new subdivisions on lots of 15 acres or more, provided that the criteria in this Section are met.

7:4.2 Purposes (§309-7.J-2; §309-30.I-2)

The purposes of OSPD are to:

7:4.2.1 Preserve undeveloped land in its existing natural state in order to protect valuable land and water resources for conservation, forestry, agriculture, aquifer recharge, watershed protection, wildlife habitat, outdoor recreation, and scenic and historic values beyond the extent provided by existing regulations.

7:4.2.2 Encourage housing development alternatives which are harmonious with natural features through more sensitive siting of buildings and better overall site planning. [Amended 2003 Town Meeting]

7:4.2.3 Preserve views of open fields, woodlands, and undeveloped land as seen from existing streets and observation points. [Added 2003 Town Meeting]

7:4.2.4 Enable economical and efficient street, utility, and public facility installation, construction and maintenance, and a more efficient provision of municipal services.

7:4.2.5 Encourage a range of housing development alternatives which add recreational and aesthetic amenities to new neighborhoods.

7:4.3 Review and Approval Process (§309-7.J-3; §309-30.I-3)

7:4.3.1 Evaluation and approval of an OSPD shall be by the Planning Board in accordance with the purposes, standards and guidelines set forth in this Section and the Salem Subdivision Control Regulations.

7:4.3.2 Pre-Application Meetings: Prior to the submission of any final plans, applicants are encouraged to prepare conceptual plans under both conventional and OSPD regulations, review these plans with the Planning Director, then review the plans with the Planning Board at a regularly-scheduled meeting. The conceptual design process for an OSPD should start with a delineation of the most valuable natural resources and open space attributes of the site. Potential house locations, lot lines, road alignments and drainage facilities should then be configured so as to accomplish the protection and preservation of these resources and attributes.

7:4.4 Density Standards (§309-7.J-4; §309-30.I-4)

7:4.4.1 Maximum Permitted Lots: The number of lots or homes must be equal to or less than the number allowed under Section 3:1.3 in the Residential District or Section 3:2.3 in the Rural District, except as noted below. A conventional subdivision layout, in accordance with the restrictions in Sections 3:1.3 and 3:2.3, and the Section 7:6 shall be used to determine the total number of lots or homes allowed. Any land area used in the calculation of allowed homes or lots in an approved OSPD shall not thereafter be eligible as contributing land area in any subsequent development proposal.

[Amended 2003 Town Meeting]

7:4.4.2 Unbuildable Lots: For the purposes of determining the number of lots allowable under this Section, there shall be excluded from the number of lots shown on such conventional subdivision layout all lots which the Planning Board finds are not reasonably buildable, whether by reason of excessive development or site preparation costs due to remote proposed location, poorly-drained soils or steep slopes; sanitary disposal, drainage or water supply requirements; limited or unusually-configured buildable area; the permitting requirements of the state or other town boards; or a combination of the above. In consideration of the foregoing, the Planning Board may consider recommendations of the Town Engineer, Conservation Commission, Planning Director, or any appropriate state agencies.

7:4.4.3 Incentive Provision: To encourage the preservation of open space within the remaining large undeveloped parcels in the community, the Planning Board may, at its discretion, award a density bonus not to exceed twenty (20) percent of the conventional number of lots allowed in a subdivision (rounded to the highest number after 0.6) if the following criteria are met: [Added 2003 Town Meeting]

1. Initial parcel size of forty (40) acres or greater; and [Added 2003 Town Meeting]
2. The Planning Board determines that the location of open space and house lots demonstrates conformance with the purposes and site design guidelines in Sections 7:4.2 and 7:4.7 of this ordinance.

[Added 2003 Town Meeting]

7:4.5 Open Space Standards (§309-7.J -5; §309-30.I-5)

7:4.5.1 General: All land not utilized for road rights-of-way or building lots shall be dedicated as permanently-preserved open space.

7:4.5.2 Minimum Required Open Space: At least 50 percent of the site must be reserved in perpetuity as common open space. Of the minimum open space required, at least 50 percent must consist of non-wetland soils and soils with slopes less than 25 percent. Open space dedicated in excess of the minimum required area may contain any percentage of wetland soils or steep slopes. Open water may not be used to meet more than twenty-five (25) percent of the open space requirement. [Amended 2003

Town Meeting]

7:4.5.3 Protection, Ownership and Management: All common open space shall be permanently protected by covenants and restrictions in perpetuity, approved by the Conservation Commission, and shall be conveyed by the applicant to:

1. a homeowners association or other legal entity under New Hampshire State Statutes, or similar legal arrangement, subject to review and approval by the Town Attorney, Or [Amended 2003 Town Meeting]
2. to a non-profit organization, the principal purpose of which is the conservation of open space; or

3. subject to approval of the Planning Board and Board of Selectmen, may be dedicated to the Town of Salem with a trust clause insuring that it be maintained as open space.

7:4.5.4 The Board may allow open space in excess of the minimum requirements to be unrestricted by a conservation easement provided that use of the open space is limited by deed covenant to non-commercial parks, conservation and recreation areas or commercial agriculture and forestry. The Planning Board may require further legal review of any documents submitted, the cost of which shall be borne by the applicant.

7:4.6 Dimensional Standards for Building Lots (§309-7.J-6; §309-30.I-6)

7:4.6.1 Zoning dimensions:

1. Lot Shape and Size: house lots and building envelopes should generally be square or rectangular in shape and contain sufficient area to accommodate average-sized houses and typical amenities such as garages, pools and sheds. The minimum lot size shall be no less than 15,000 square feet if serviced by municipal sewer and 25,000 square feet if serviced by on-site septic systems.

2. Frontage: the minimum lot frontage shall be 100 feet. Individual lot frontages may be further reduced to 75 feet when fronting on curved streets, or when the Planning Board determines that the purposes and standards of this ordinance are better met, provided that in no case shall there be less than 100 feet of lot width at the building line. [Amended 2003 Town Meeting]

3. Setbacks (Yards): for all dwelling units, the minimum front yard setback shall be 30 feet; the minimum side yard setback shall be 15 feet; and the minimum rear yard setback shall be 30 feet. Garages, sheds and pools must meet the setbacks in the underlying district. [Amended 2000 and 2003 Town Meetings]

7:4.6.2 The Planning Board may vary these dimensional standards in limited respects provided the intent and purposes of this Section are met.

7:4.7 Site Design Guidelines (§309-7.J-7; §309-30.I-7)

The layout and configuration of lots, homes, streets, building setbacks and open space is subject to the approval of the Planning Board. The layout must demonstrate preservation of open land in furtherance of the stated purposes of this Section, without detracting from the character of the neighborhood and without seriously diminishing the value of surrounding property. Toward that end, the Planning Board shall evaluate each proposal for an OSPD using the following design guidelines, modified as appropriate to each individual development site:

7:4.7.1 Development Location: Residences should be grouped in locations so that scenic views and vistas will remain unblocked, particularly as seen from public roads; prime agricultural soils, wildlife habitat and shoreline areas will be protected; stone walls, historic sites and their environs will be preserved; and significant natural features such as, but not limited to, vernal pools, prime aquifers, older-growth trees, unique geologic formations and ridgelines will be protected. Wherever possible, structures should be located within any wooded upland on the parcel, or along the far edges of open fields and so that silhouettes of structures will be below the ridgeline or hilltop or, if the site is wooded, the building silhouettes will be lower than the existing canopy height. New dwellings and structures should be screened from view from public roads with a buffer of existing trees or new plantings. [Added 2003 Town Meeting]

7:4.7.2 Open Space Layout: Open space should include the most sensitive resource areas of the property and should be designed in larger blocks of land, preferably as part of an integrated open space network, laid out to be contiguous with open space areas of similar character (whether permanently-preserved or not) on adjacent parcels. Contiguous open space should generally be more than 3 acres in area and should have a length-to-width ratio of no greater than four-to-one, except where intended to buffer linear features such as watercourses and wetlands, or designed as trail links. Fragmentation, or the creation of long, thin strips of open space, should be avoided. Where open space directly adjoins private lots, it shall be demarcated with logical, straightforward boundaries such as existing stone

walls, boulders, tree lines, topographic breaks, a roadway or path, or post-and-rail fencing, small signs or monuments. [Amended 2003 Town Meeting]

7:4.7.3 Pedestrian Access/Circulation: Open space should be laid out in conjunction with existing and proposed streets, sidewalks and lots so that the greatest degree of internal pedestrian circulation and access from the lots to both on-site and off-site open space is achieved. Access to the open space must be clear and direct, and arranged in a manner that does not conflict with the actual or apparent use of private lots.

7:4.7.4 Landscaping: Common areas (such as community greens, cul-de-sac islands, and along both sides of new streets) should be landscaped with deciduous shade trees and flowering shrubs. The suggested minimum caliper is two (2) inches and street tree interval is 50 feet, but may vary according to species selected and site-specific factors, at the discretion of the Planning Board.

Section 7:5 Floodplain Development Ordinance

7:5.1 Adoption of Flood-Related Maps (§309-91) [Amended 2009 Town Meeting]

The Flood Insurance Rate Maps referred to in Section 7:5.4 as prepared for the Town of Salem by the Federal Emergency Management Agency, are hereby adopted, and such maps shall be a part of the Salem Zoning Ordinance and Salem Building Codes.

7:5.2 Developments or Encroachments in Floodway Prohibited (§309-92)

Any development or encroachment, including fill, is prohibited in the floodway, as shown on the Flood Insurance Rate Maps referred to in Section 7:5.1, which would result in the increase in flood levels during the base flood discharge. [Amended 2009 Town Meeting]

7:5.3 Restrictions on Mobile Homes in the Floodway (§309-93) [Amended 2009 Town Meeting]

No mobile home shall be placed in the floodway as shown on the Flood Insurance Rate Maps referred to in Section 7:5.1, unless the area is zoned for mobile homes and there is an existing mobile home park at such location at the time of the adoption of this section.

7:5.4 Regulations for Floodplain Development (§309-93.1) [Added 1989 Town Meeting]

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 Rockingham County, NH" dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Map Panels numbered 0543, 0545, 0551, 0552, 0553, 0554, 0558, 0561, 0562, 0563, 0564, 0570, 0657, 0676, 0677, 0681 dated May 17, 2005 or as amended, which are declared to be part of this Ordinance and are hereby incorporated by reference. [Amended 1998 & 2005 Town Meetings]

7:5.4.1 Definitions: See section 1:7 (§309-93.1A)

7:5.4.2 The construction or placement of new buildings and structures in any special flood hazard area is prohibited. Other proposed development such as additions to existing buildings or replacement of existing buildings in any special flood hazard areas shall require a permit. In addition to the Town building permit application form, applicants shall also complete a supplemental building permit application ("Floodplain Building Permit Application") for proposed construction in the special flood hazard area. [Amended 2002 and 2007 Town Meetings] (§309-93.1B)

7:5.4.3 The Town of Salem 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 special flood hazard area, all new construction and substantial improvements shall (1) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (2) be constructed with materials resistant to flood damage, (3) be constructed by methods and practices that minimize flood damages, and (4) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. [Amended 2009 Town Meeting] (§309-93.1C)

7:5.4.4 Where new and replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Town of Salem with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding. [Revised March 10, 2009] (§309-93.1D)

7:5.4.5 The Town of Salem 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

such 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. (§309-93.1E)

7:5.4.6 The Town of Salem 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 Town of Salem. (§309-93.1F)

7:5.4.7 Riverine Situations (§309-93.1G)

1. 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 Town of Salem, 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.

2. Within the altered or relocated portion of any watercourse, the applicant shall submit to the Town of Salem, certification provided by a registered professional engineer assuring that the flood carrying capacity of the water course has been maintained.

3. Along watercourses that have a designated Regulatory Floodway, no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory 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.

4. In Zone A the Town of Salem shall obtain, review, and reasonably utilize any floodway data available from a Federal, State, or other source as criteria for requiring that development meet the following floodway requirement: “No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory Floodway that would result in any increase in flood levels within the community during the base flood discharge.”

[Amended 2009 Town Meeting]

5. Along watercourses that have not had a regulatory floodway designated, 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. [Amended 2009 Town Meeting]

7:5.4.8 Special Flood Hazard Areas (§309-93.1H)

1. In special flood hazard areas the Town of Salem shall determine the 100 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 Town of Salem shall obtain, review, and reasonably utilize any 100 year flood elevation data available from Federal, State, development proposals submitted to the community (example subdivision, site approvals, etc.) or other source. [Amended 2009 Town Meeting]

2. The Town of Salem’s 100 year flood elevation determination will be used as criteria for requiring in Zones A and AE that: [Amended 2009 Town Meeting]

a. Residential Construction. New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation.

b. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial or non-residential building (or manufactured building) shall: (1) have the lowest floor, including basement, mechanical and utility equipment, elevated no lower than one (1) foot above the level of the base flood elevation; or, (2) be flood proofed to a level no lower than one (1) foot above the level of the base flood elevation, provided that all areas of the building

(including basement, mechanical and utility equipment) below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and (3) 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. [Amended 2002 Town Meeting]

c. Recreational vehicles placed on sites within Zones A and AE shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of the National Flood Insurance Program Regulations Section 60.3(B)(1) and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c)(6) of Section 60.3. [Amended 1994 and 2009 Town Meetings]

d. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 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.

e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements: (1) the enclosed area is unfinished or flood resistant, useable solely for parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of 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 square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

f. A licensed professional engineer or architect shall develop or review the structural design, specifications and plans for the foundation of the building and shall certify that the design and methods of construction are in accordance with accepted practices to withstand flotation, collapse, lateral movement, erosion and scour, undermining and the effects of water and wind action simultaneously on all building components during the base flood. [Added 2002 Town Meeting]

7:5.4.9 Any encroachment, including fill, new construction, substantial improvement, or other development within a special flood hazard area shall provide compensatory floodplain storage equal to twice the amount of encroachment. All parking areas located within a special flood hazard area shall be tiered, sloped, or otherwise designed to flood during a base flood event. A licensed professional engineer shall prepare the floodplain storage site plan and/or certify that the proposed compensatory floodplain storage is properly designed and that the floodplain storage capacity is of adequate volume to accommodate the water displaced by the proposed development. After construction of the approved compensatory site, an "as-built" plan shall be certified by a professional engineer and submitted to the Town for inclusion in the project file. [Added 1991, 2002 and 2007 Town Meetings] (§309-93.11)

7:5.4.10 Variances and Appeals. (§309-93.11)

1. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, 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 result; and (3) that the variance is the minimum necessary, considering the flood hazard, to afford relief.

3. 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. Such notification shall be maintained with a record of all variance actions.

4. 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. [Amended 1998 Town Meeting.]

7:5.4.11 Certificate of Occupancy. No certificate of occupancy may be issued for a building or structure that is within the purview of the regulations contained in Section 7:5.4 until the Building Inspector certifies that all site and building improvements as contained in the building permit application plans and associated documents have been completed provided, however, that an applicant may request that the Town accept a suitable and sufficient performance bond or letter of credit, in a form suitable to Town Counsel, to assure the completion of certain site or building improvements that, due to factors beyond the control of the applicant, have not been completed. [Added 2002 Town Meeting] (§309-93.1K)

Section 7:6 Wetlands Conservation Ordinance [adopted 1987 Town Mtg.]

7:6.1 Purpose and Intent (§309-73)

The purpose of this ordinance is to promote and protect the public health, safety, and welfare by regulating the development and use of those areas designated as wetlands pursuant to Section 7:6.2. This ordinance is adopted pursuant to the authority granted by New Hampshire RSA 674:16-17 and RSA 674:20-21. This ordinance is intended to affect the following public policy: [Amended 2007 Town Mtg]

- prevent the pollution of surface water and groundwater;
- prevent the destruction of or significant changes to natural wetlands that provide flood protection or filtration of water flowing into water bodies;
- protect unique and unusual natural areas;
- protect residents against the dangers of increased flooding;
- protect wildlife habitats and maintain ecological balances;
- protect potential water supplies and existing aquifers and aquifer recharge areas;
- prevent unnecessary or excessive expenditures of municipal funds for the purpose of providing and/or maintaining essential services and utilities that might be required as a result of misuse or abuse of wetlands;
- encourage those low-intensity uses that can be harmoniously, appropriately, and safely located in wetlands;
- promote conservation corridors along all major rivers, streams, and drainage waterways;
- maintain the integrity of wetlands by protecting adjacent vegetated upland areas; and
- lessen damage to structures and properties resulting from inappropriate wetland development.

7:6.2 Wetlands Definition and Limits (§309-74) [Amended 1996, 2006 and 2007 Town Meetings]

7:6.2.1 The Wetland Conservation Ordinance applies to wetlands as defined in Section 1:7 and RSA 482-A:2(X). Wetlands include, but are not limited to, swamps, marshes, bogs and other similar areas. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Corps of Engineers, Wetlands Delineation Manual (Technical Report Y-87-1, January 1987) and Field Indicators for Identifying Hydric Soils in New England (Version 3, as amended), New England Interstate Water Pollution Control Commission.

7:6.2.2 The limits of the Wetlands Conservation Ordinance are hereby determined to be (1) wetland areas one half acre or more in size; or (2) wetland areas of any size if contiguous to or containing surface waters (such as lakes, ponds, and streams) or very poorly drained soils.

7:6.3 Wetlands Incorrectly Delineated (§309-75) [Amended 2006 and 2007 Town Meetings]

In the event that an area has been incorrectly delineated as a wetland, or that an area not so designated was subsequently found to meet the criteria for a wetlands designation, the Planning Board shall determine whether the regulations contained herein have application.

7:6.3.1 When it is believed that an area has been incorrectly designated a wetland, the applicant may present to the Planning Board the findings of an independent certified wetland scientist as defined in RSA 310-A:76II-a as chosen by the Board or its agent. The Planning Board shall make their judgment based upon the determination of the independent certified wetland scientist. The applicant shall bear the costs of the certified wetland scientist.

7:6.3.2 Where an area is not designated as a wetland and the Planning Board reasonably believes it to be a wetland, the Planning Board may require the applicant to supply the findings of an independent certified wetland scientist as defined in RSA 310-A:76II-a as chosen by the Board or its agent. The Planning Board shall make their judgment based upon the determination of the independent certified wetland scientist. The applicant is responsible for bearing the costs of the certified wetland scientist.

7:6.4 Permitted Uses (§309-76) [Amended 2007 Town Meeting]

Permitted uses are those that will not require the erection or construction of any structure or building; will not alter the natural surface configuration by the addition of fill or by dredging; and that otherwise are permitted by the Zoning Ordinance. Such uses may include the following or similar uses only: (1) forestry, tree farming; (2) cultivation and harvesting of crops according to recognized soil conservation practices; (3) wildlife refuge; (4) parks and recreation uses that are primary uses of the property and that are consistent with the purpose and intent of this ordinance; and (5) conservation areas and nature trails. [Amended March 2007]

7:6.5 Conditional Use Permit (§309-77) [Amended 2007 Town Meeting]

7:6.5.1 A conditional use permit may be granted by the Planning Board for streets, roads and other access ways and utility rights- of-way easements, including power lines and pipe lines if essential to the productive use of land not designated as wetland and if so located and constructed as to minimize the detrimental impact of such uses upon the wetlands, and if no alternative route(s) exist which do not cross the wetlands, or have a less detrimental impact on the wetland. Economic considerations alone are not sufficient reason for granting a conditional use permit. For those projects that equal three thousand (3000) square feet or more of wetland fill, the Planning Board shall require applicants to provide a minimum gain of two (2) square feet of wetland for each square foot of wetland lost. See Section 7:6.7.4.2 for provisions relating to a prime wetland buffer.

7:6.5.2 Permission for the use of land for other than the permitted uses in Section 7:6.4 and those uses listed in Section 7:6.5.1 may be granted by a conditional use permit provided the Planning Board shall find that all other restrictions of this ordinance are met, and that:

1. the land is reasonably adapted to the use;
2. there is no diminution of surrounding property values;
3. there is no impairment of soil conditions on abutting lots;
4. the proposed use is allowed in the underlying zoning district;
5. the applicant has received all necessary state and federal permits prior to the issuance of the conditional use permit;
6. the applicant provides the Planning Board and Conservation Commission findings of an independent certified wetland scientist chosen by the Planning Board or its agent at his own expense;
7. the applicant follows the direction of the Planning Board and Conservation Commission in providing for a minimum gain of two (2) square feet of wetland for each square foot of wetland lost, except for Prime Wetlands where a gain of five (5) square feet of wetland shall be provided for each square foot of wetland lost;
8. there is Conservation Commission approval.

7:6.6 Minimum Lot Sizes (§309-78) [Amended 2007 Town Meeting]

Total wetland area used to satisfy minimum requirements shall not exceed 25% of lot size with the following provisions:[Added 1989 Town Meeting]

7:6.6.1 Areas designated as poorly drained may be used to satisfy up to twenty-five percent (25%) of the minimum lot size required by the underlying zoning district.

7:6.6.2 Areas designated as very poorly drained or fresh water marsh may not be used to fulfill any portion of the minimum lot size required by the underlying zoning district. [Amended 1996 Town Meeting]

7:6.7 Restrictions (§309-79)

7:6.7.1 No septic tank or leach field may be constructed or enlarged closer than 75 feet to any wetland and no building or surface structure shall be constructed within 40 feet of a wetland area. (§309-79.A)

7:6.7.2 An undisturbed natural buffer area of at least 20 feet in width shall be maintained between any wetland, as defined in Section 1:7, and new structures, dwellings, roads, and septic systems. Exempted from this requirement are the construction of additions and extensions to buildings which existed prior to the effective date of this section or the development or redevelopment of a lot where the buffer does not already exist as of the effective date of this section. Access through the buffer zone shall be granted to allow activities in furtherance of those wetland uses permitted under Section 7:6.4. Dead, diseased, unsafe or fallen trees may be removed. (§309-79.B)

7:6.7.3 All paved surfaces shall be setback 40 feet from any wetland. Paved surfaces shall include but not be limited to, parking lots, fire lanes, and roads. Residential driveways are exempted from this regulation. Also exempted are accesses to a property, such access shall not include parking spaces, and road crossings approved under the Section 7:6.5.1 Conditional Use Permit criteria. [Amended 1989 Town Meeting] (§309-79.C)

7:6.7.4 Prime Wetlands (§309-79.I)

1. An undisturbed natural buffer area of at least 100 feet in width shall be maintained between any designated Prime Wetland, as defined in RSA 482-A:15 and adopted by Town Meeting, and any new development, including but not limited to structures, dwellings, septic systems, and roads. Exempted from this requirement are those uses permitted under Section 7:6.4, those lots separated from the Prime Wetlands by an existing public road and the construction of additions and extensions to buildings which existed prior to the effective date of this section. Nothing herein is intended to prohibit the development or redevelopment of any portion of a lot which has already been improved, or developed and regularly maintained as of the effective date of this section. [Adopted 1997 Town Meeting; Amended 2006 Town Meeting]

2. Conditional Use Permits to allow streets, roads, and other access ways and utility easements, such as power lines and pipe lines, within the 100' buffer, but no closer than 40' to the Prime Wetlands, may be granted by the Planning Board provided the conditions of Section 7:6.5.1 are met. [Amended 1997 Town Meeting.]

7:6.7.5 Where water and other effluents leave a man-made drainage system, adequate measures, including but not limited to buffer zones and natural treatment swales, shall be provided to protect the wetland from pollution, erosion, or siltation. (§309-79.D)

7:6.7.6 Adequate erosion control, including but not limited to hay bales, silt fences, and temporary rip-rap, shall be maintained before, during, and after construction (until site stabilization) to protect undisturbed wetland areas from intrusion and siltation. [Added 1989 Town Meeting] (§309-79.H)

7:6.8 **Special Provisions (§309-79)** [Amended 2007 Town Meeting]

7:6.8.1 The Town of Salem, as a governmental body, shall not be exempt from this ordinance nor the rules and regulations found therein. (§309-79.F)

7:6.8.2 Any property on which a conservation easement has been obtained, shall be maintained in perpetuity as open space. Activities conducted thereon shall be limited to those specifically allowed for in Section 7:6.4. Conservation easement boundaries shall be marked by the easement grantor with granite monuments or by other durable means approved by the Planning Board. (§309-79.G)

7:6.8.3 Granting variances to this Wetlands Conservation Ordinance shall be considered contrary to its spirit and intent. (§309-79.E)

7:6.9 **Administration and Enforcement (§309-80)**

Administration and primary enforcement of this ordinance shall be the responsibility of the Planning Board.

7:6.10 Exemptions (§309-81)

7:6.10.1. State Statute 674:39 applies.

7:6.10.2. Notwithstanding other provisions of this section, the construction of additions and extensions to one and two-family dwellings shall be permitted within the areas controlled by the Wetlands Conservation Ordinance provided that: (1) the dwelling lawfully existed prior to the effective date of this section; (2) that the proposed construction conforms with all other applicable ordinances and regulations of the Town of Salem; and (3) the dwelling continues in its present use.

Section 7:7 Personal Wireless Service Ordinance [Added 1998 Town Meeting; Amended 2005 Town Meeting]

7:7.1 Purpose and Intent (§309-157)

This Ordinance is enacted to permit the siting of Personal Wireless Service Facilities (hereinafter PWSF) in the Town of Salem consistent with the power granted to municipalities under Federal and New Hampshire law. (47 U.S.C. §332(c)(7); RSA 12-K:1 et seq. and 674:16 et seq.). The Town of Salem, in siting wireless facilities, shall act consistent with the following:

7:7.1.1 Avoid and mitigate adverse impacts such facilities may create, including, but not limited to the following impacts: visual, environmental, historical, flight corridors, health, safety and prosperity.

7:7.1.2 Promote co-location for facilities when such co-location minimizes the adverse impacts described in Section 7:7.1.1 above through an assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

7:7.1.3 Permit the siting of facilities on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.

7:7.1.4 Create a hierarchy of preferred locations to further the Town's planning goals by legislatively declaring siting preferences favoring siting first on Town-owned sites located in industrially or commercially zoned sites and public rights-of-way and Town controlled structures throughout the Town, by building permit only; second, on industrially zoned sites; third, commercially zoned sites; and rural or residentially zoned sites last, as well as preferring lower or stealth towers where possible, including sensitivity to historic locations and environmentally sensitive areas, aesthetic and planning concerns.

7:7.1.5 Require that facilities be constructed and maintained safely.

7:7.1.6 Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense to protect the citizens from imminent harm and danger.

7:7.2 Definitions: see Section 1:7 (§309-158)

7:7.3 Siting Standards (§309-159)

7:7.3.1 General (§309-159.A)

1. Siting Priority. An Applicant seeking approval for a PWSF shall comply with the following: **(1)** preference will be given to the siting of PWSF on existing PWSF, including preexisting Towers and Antennae, where such co-location can exist while preserving the character and integrity of the existing structure and without other adverse impacts; **(2)** to the extent that there are no existing PWSF which meet the requirements of the Applicant, preference will be given to locating facilities on Town-owned land in industrial or commercial districts or within the public rights-of-way throughout the Town or on Town-owned or controlled structures throughout the Town; **(3)** to the extent existing facilities or Town-owned property or structures under (1) and (2) above are not available, preference will be given to locating facilities on existing structures of other kinds, such as a water tower or church steeple, where such co-location preserves the character and integrity of the existing structure, and does not create other adverse impacts; **(4)** to the extent that siting locations under (1), (2), and (3) above are not available, preference will be given to siting a facility within the industrial district; **(5)** to the extent that siting locations under (1), (2), (3) and (4) above are not available, preference will be given to siting a facility within the commercial district; **(6)** to the extent that siting locations under (1), (2), (3) (4), and (5) above are not available, then the siting of the PWSF shall be governed by a conditional use permit under this Ordinance (Section 7:7.5). (§309-159.A.1)

2. Burden of Proof on Applicant Regarding Siting Priority: (§309-159.A.2)

- a.** The burden of proof that there are no existing structures upon which an Applicant may locate its PWSF and/or transmit or receive radio signals shall include, at a minimum: (1) the Applicant shall submit a list of all owner contacts, including the Town, made with regard to the availability of a site for a potential PWSF. If the Planning Board or Town staff finds additional existing buildings and structures that may be satisfactory, the Applicant shall contact the property owners; (2) the Applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered “return receipt requested” forms from the US Post Office shall be provided for each owner of existing structures that was contacted; (3) if an Applicant claims that a structure is not structurally capable of supporting a PWSF, this claim must be certified by a registered professional engineer licensed in the State of New Hampshire. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the PWSF at a reasonable cost.
- b.** The burden of proof, that no locations in areas of the Town identified herein as Preferred Siting Locations to the location proposed by the Applicant are suitable for Applicant’s needs, shall include at a minimum: maps certified by a radio frequency engineer licensed in the State of New Hampshire showing (1) coverage gaps of existing PWSF in or near Salem, and (2) coverage of PWSF if built on the available Preferred Siting Locations.

7:7.3.2 Use Regulations. (§309-159.B)

A PWSF shall require a building permit in all cases and may be permitted as follows:

- 1. Existing Personal Wireless Service Structures:** A PWSF may locate, subject to the issuance of a building permit that includes review of the application required by this Ordinance by the Planning Director, on any existing Personal Wireless Service structure, including any Guyed Tower, Lattice Tower, Mast Tower, Stealth Tower or Monopole Tower in existence prior to the adoption of this Ordinance, so long as co-location complies with any approved site plan. All the requirements stated in this Ordinance at Section 7:7.4 shall be met. This provision shall apply only so long as the Height of the existing Tower structure is not increased, a security barrier already exists, and the area of the security barrier is not increased. (§309-159.B.1)
- 2. Town-Owned or Controlled Land and Structures:** A PWSF may locate, subject to the issuance of a building permit that includes review of the application required by this Ordinance by the Planning Director, on any Town-owned land in any Industrial or Commercial District, so long as the facility complies with the requirements stated in this Ordinance at Section 7:7.4, the facility does not exceed the height limitations in this Ordinance, and the PWSF includes a security barrier. In addition, Antennae may be located on existing telecommunications poles or replacement poles located on Town-owned land or in the public right-of-way throughout the Town, subject to applicable federal and state law. In addition, Antennae may be located on existing Town-owned or controlled structures located throughout the Town, including but not limited to, municipal communications facilities, athletic field lights, traffic lights, street lights and/or other types of utility poles. All other sitings shall require site plan review and approval by the Planning Board. (§309-159.B.2)
- 3. Existing Structures:** A PWSF may locate, subject to the provisions of this Ordinance and site plan review, on an existing structure other than on an existing Personal Wireless Service or Tower structure. (§309-159.B.3)
- 4. Industrial or Commercial District:** A PWSF may locate within the Industrial or Commercial District, subject to the provisions of this Ordinance and subject to site plan review. (§309-159.B.4)
- 5. Conditional Use Permit:** A PWSF may locate in any other area of the Town subject to a conditional use permit granted by the Planning Board and subject to site plan review by the Planning Board. The elements of the conditional use permit are described at Section 7:7.5 below. (§309-159.B.5)

7:7.4 General Application Requirements (§309-160)

7:7.4.1 General. Unless otherwise provided, all Applicants under this Ordinance shall apply to the Planning Board for Site Plan Review, and comply with the requirements as provided herein in Section IV, and as provided for in the Site Plan Review Regulations. Applicants for conditional use permits

under this Ordinance shall also be required to submit the information provided for in this Section. All applications for a PWSF shall contain the following: (§309-160.A)

1. Appropriate application form signed by the Applicant, accompanied by the appropriate fee.
2. Copy of lease, deed or letter of authorization from property owner (if other than Applicant) evidencing Applicant's authority to pursue the application.
3. Copy of the Applicant's FCC license(s), establishing credibility to deploy a PWSF in the area being applied for, or a copy of a contract between an FCC licensed Carrier and the Applicant, along with a copy of that Carrier's license.
4. Detailed maps showing all the Applicant's current externally visible Tower and Monopole PWSF locations in New Hampshire within a twenty (20) mile radius of the proposed externally visible PWSF, both active and inactive.
5. Site descriptions for each of those locations including Antenna height and diameter and a depiction of all externally visible structures.
6. A description of why less visually intrusive alternatives for the facility which the Applicant seeks approval for were not proposed.
7. Drawings detailing proposed improvements related to all the requirements specified in Section 7:7.4.2. below.
8. Fees to cover the Town's costs for any regional notification required by RSA 12-K:7.
9. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
10. Written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal thirty (30) day comment period, and the Town process, shall become part of the application requirements.

7:7.4.2 General PWSF Requirements. The requirements and limitations in this Ordinance shall preempt all other requirements and limitations as required by the zoning ordinance and shall apply only to PWSF. (§309-160.B)

1. Height (§309-160.B.1)
 - a. Existing Structures: New PWSF located on any of the following existing structures shall be exempt from the Height restrictions of the zoning ordinance provided that there is no more than a twenty (20) foot increase in the Height of the existing structure as a result of the installation of a PWSF: water towers, electric transmission and distribution towers, utility poles, and similar existing utility structures, Guyed Towers, Lattice Towers, Monopoles, flagpoles, steeples or chimneys.
 - b. Height for Ground Mounted Facilities: Ground Mounted PWSF located in the Industrial District shall not exceed one hundred fifty (150) feet in height. Ground Mounted PWSF located in the Commercial District shall not exceed one hundred twenty (120) feet in height. In addition, Ground Mounted PWSF located throughout the Town may project twenty (20) feet above the average surrounding tree canopy height.
2. Setbacks. All PWSF and Equipment Shelters shall comply with building setback provisions of the zoning district in which the facility is located, except that no PWSF and Equipment Shelter shall be located within two hundred (200) feet of any existing residence. (§309-160.B.2)
3. Fall Zone. In order to ensure public safety, the minimum distance from the ground Mount of a PWSF to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 100% of the Height of the facility, including any Antennae or other appurtenances. This setback is considered the "Fall Zone." The Planning Board may reduce the Fall Zone upon a showing that the technical quality and nature of the facility does not require as large a Fall Zone as is otherwise required by this section. In the event that an existing structure is proposed as a Mount for a PWSF, a Fall Zone shall not be required, but the set back provisions of the zoning district shall apply. In the case of preexisting non-conforming structures, PWSF and Equipment Shelters shall not increase any nonconformities except as provided herein. (§309-160.B.3)

4. Performance Standards. (§309-160.B.4)

- a. Visual Impact and Lighting. Visual impacts are measured on the basis of: (1) change in community scale, as exhibited in relative Height, mass or proportion of the PWSF within its proposed surroundings; (2) new visible elements proposed on a contrasting background; (3) different colors and textures proposed against a contrasting background; and (4) use of materials that are foreign to the existing built environment. (§309-160.B.4.a)

Enhancements: Preservation of the existing developed and natural environments within Salem are enhancements to the Town. Enhancements are measured on the basis of: conservation of opportunities to maintain community scale, amount and type of landscaping and/or natural vegetation; preservation of view corridors, vistas and view sheds; and continuation of existing colors, textures and materials.

Visibility focuses on eliminating or mitigating the visual impact, and maximizing enhancement of the existing environment.

Location. The requirements in this paragraph (a) shall govern the location of all facilities, and the installation of all Antennae. The requirements are as follows: (1) towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts; (2) towers or ground Mounts shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness; (3) the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the Tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements; (4) if an Antenna is installed on a structure other than a Tower, the Antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the Antenna and related equipment as visually unobtrusive as possible (5) facilities 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; and (6) facilities shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

- b. Federal Requirements. All facilities 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 facilities and Antennae. If such standards and regulations are changed, then the owners of the facilities governed by this Ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Section 7:7.7.2, of the facilities at the owner's expense through the execution of the posted security required by Section 7:7.7.1. (§309-160.B.4.b)
- c. Building Codes-Safety Standards. To ensure the structural integrity of facilities and Antennae, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards for PWSF that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer licensed in New Hampshire and thereafter shall provide certifying reports to the Town every five (5) years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. If, upon inspection, the Town concludes that a facility 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 facility, the owner shall have thirty (30) days to bring such

facility into compliance with such standards. If the owner fails to bring such facility into compliance within thirty (30) days, such action shall constitute grounds for the removal, in accordance with Section 7:7.7.2, of the facility at the owner's expense through execution of the posted security required by Section 7:7.7.1. (§309-160.B.4.c)

- d. Additional Requirements. These requirements shall supersede any and all other applicable standards found elsewhere in Salem Ordinances or Regulations that are less strict. (§309-160.B.4.d)

1. Landscaping

- a. Towers or ground Mounted facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the Equipment Shelter from adjacent residential property and public roads. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the Tower compound. Natural vegetation is preferred.
- b. In locations where the visual impact of the Tower would be minimal, the landscaping requirement may be reduced or waived entirely.
- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

7:7.5 Conditional Use Permits (§309-161)

7:7.5.1 General. All Applicants under this Ordinance for conditional use permits shall be required to apply to the Planning Board for Site Plan Review, to comply with the requirements provided herein in Section 7:7.4, to comply with the Site Plan Review Regulations, and to submit the information required below in Section 7:7.5.2. (§309-161.A)

7:7.5.2 Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed siting on adjoining properties, and to preserve the intent of this Ordinance. (§309-161.B)

1. **Procedure on application**. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

2. **Decisions**. Possible decisions rendered by the Planning Board include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

3. **Elements of Conditional Permit**. The Applicant has the burden of addressing the following:

- a. The Height of the proposed Tower or other structure is necessary to provide Personal Wireless Services;
- b. The effect of the proximity of the facility to residential development or districts;
- c. Nature of uses on adjacent and nearby properties;
- d. Surrounding topography;
- e. Surrounding tree coverage and foliage;
- f. Design of the facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- g. Proposed ingress and egress to the site;
- h. Availability of suitable existing sites and other structures as required herein in Section 7:7.3.1.2;
- i. Visual impacts on view sheds, ridge lines, and other impacts by means of cell site location, tree and foliage clearing and placement of incidental structures; and
- j. Availability of Alternative Siting locations as required herein in Section 7:7.3.1.2.

7:7.5.3 Information Required. Each Applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including a scaled elevation view, topography, radio frequency coverage, facility Height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200' away), and any

other information deemed necessary by the Planning Board to assess compliance with this Ordinance. Furthermore, the Applicant shall submit the following prior to any approval by the Board: (§309-161.C)

1. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines; (§309-161.C.1)
2. Written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal thirty (30) day comment period, and the Town process, shall become part of the application requirements; (§309-161.C.2)
3. An inventory of its pre-existing facilities that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, Height, design of each facility, as well as economic and technological feasibility for co-location on the inventoried facilities. The Planning Board may share such information with other Applicants applying for approvals or conditional use permits under this Ordinance or other organizations seeking to locate Antennae within the jurisdiction of the governing authority; provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. (§309-161.C.3)
4. If the Applicant is proposing to build a new Tower or other ground Mounted structure, the Applicant shall submit written evidence demonstrating that no existing structure can accommodate the Applicant's proposed facility. This evidence can consist of: (1) substantial Evidence that no existing Towers or structures are located within the geographic area required to meet the Applicant's engineering requirements, provided that a description of the geographic area required is also submitted; (2) substantial Evidence that existing structures, including Towers, are not of sufficient Height to meet the Applicant's engineering requirements, and why; (3) substantial Evidence that the existing Towers or structures do not have sufficient structural strength to support Applicant's proposed Antenna and related equipment; (4) substantial Evidence that Applicant's proposed Antenna would cause electromagnetic interference with the Antenna on the existing Towers or structures, or the Antenna on the existing Towers or structures would cause interference with the Applicant's proposed Antenna; (5) substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing Tower or structure are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable; and (6) substantial Evidence that the Applicant can demonstrate other limiting factors that render existing Towers and structures unsuitable. (§309-161.C.3)
5. The Applicant proposing to build a Tower or ground Mounted structure shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure to the extent such co-location can exist while minimizing adverse impacts noted in Section 7:7.1.1. 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 telecommunications providers. Failure to provide such an agreement is evidence of the Applicant's unwillingness to cooperate with the orderly and well-planned development of Salem, and is grounds for a Denial. (§309-161.C.4)
6. The Applicant shall submit the engineering information detailing the size and coverage required for the PWSF location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the Applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the Applicant in accordance with RSA 677:4, I(g). (§309-161.C.5)

7:7.6 Waivers (§309-162)

7:7.6.1 General. Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the terms of Sections 7:7.4 and 7:7.5 or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations, including waivers of the Height standard in Section 7:7.4.2.1. The purpose of granting waivers under provisions of these regulations shall be to insure that an Applicant is not unduly burdened as opposed to merely inconvenienced by

said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply: (§309-162.A)

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Salem Zoning Ordinance, Salem Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to (1) topography and other site features; (2) availability of Alternative Site Locations; (3) geographic location of property; (4) size/magnitude of project being evaluated and availability of co-location.

7:7.6.2 Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations. (§309-162.bB)

7:7.6.3 Procedures. A petition for any such waiver shall be submitted in writing by the Applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the Applicant. Failure to submit petition in writing shall require an automatic denial. (§309-162.C)

7:7.7 **Miscellaneous** (§309-163)

7:7.7.1 Bonding, Security and Insurance. Recognizing the extremely hazardous situation presented by inadequately maintained or abandoned and unmonitored facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned facilities in the event that the PWSF is abandoned or inadequately maintained and the PWSF owner is incapable and unwilling to remove or maintain it. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

7:7.7.2 Removal of Abandoned Antennae and Facilities. Any Antenna or PWSF that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned PWSF 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 facility. If the abandoned facility is not removed within ninety (90) days the Town may execute the security 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.

7:7.7.3 Enforcement. Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and Salem Zoning Ordinance.

7:7.7.4 Saving Clause. If any provision of this Ordinance is found to be unenforceable or unlawful by a court of competent jurisdiction, such provision of the Ordinance shall be considered severable and such a finding shall not be construed to invalidate the remainder of the Ordinance.

Section 7:8 Satellite Earth Station Antennae Ordinance (§309-164) [Added 2006 Town Meeting]

7:8.1 Purpose. The purpose of this Ordinance is to conform Salem's Zoning Ordinance to Federal law requirements for the regulation of satellite earth station antennae and to permit regulation by the Town for legitimate public health, safety and/or historical reasons. This Ordinance is to be interpreted to be consistent with the regulations of the Federal Communications Commission on Earth Station Antennae, currently located in 47 C.F.R. §1.4000 and §25.104, as those regulations may be amended from time to time.

7:8.2 Districts Allowing Satellite Earth Station Antennae

7:8.2.1 Except as specifically allowed, Federal law and regulations require that the Town of Salem not impair the installation, maintenance or use of:

1. antennae used to receive direct broadcast satellite service, or to receive or transmit fixed wireless signals via satellite as defined by 47 C.F.R. §1.4000(a)(2) and that are one meter or less in diameter.
2. antennae used to receive video programming services via multipoint distribution services, instructional television fixed services, and other local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and that are one meter or less in diameter or diagonal measurement; or
3. a mast supporting any such antennae described above.

7:8.2.2 Specifically, (1) all satellite dish antennae that are one meter or less in diameter are permitted in any district in the Town of Salem, except as noted below in Section 7:8.2.3; and (2) satellite dish antennae that are two meters or less in diameter are permitted in any commercial or industrial district in the Town of Salem, except as noted in Section 7:8.2.4.

7:8.2.3 Exceptions: Satellite Dish Antennae One Meter or Less in Diameter are not permitted in residential or commercial districts when:

1. The Code Enforcement Officer determines that (1) the siting of such a facility constitutes a legitimate and clearly defined hazard to public safety, including but not limited to, fire or traffic; or (2) not permitting the siting is necessary to preserve a pre-historic or historic district, site, building, structure or object included in, or eligible for inclusion on the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470;
2. the antenna is not located in an area within the exclusive control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property.
3. The Code Enforcement Officer shall apply the standard set forth in Sections 7:8.2.3.1 and 7:8.2.3.2 above in a non-discriminatory manner and impose no greater restrictions on antennae covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennae. The application of this Ordinance shall be no more burdensome to affected antennae users than is necessary to achieve the objectives described in Sections 7:8.2.3.1 and 7:8.2.3.2 of this Section 7:8.2.3.
4. Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices.

7:8.2.4 Exceptions: Satellite Dish Antennae in Commercial or Industrial Districts

1. Satellite dish antennae are not permitted in commercial or industrial districts when the Code Enforcement Officer determines that the siting of such a facility constitutes a hazard to public health or safety including, but not limited to, fire or traffic.
2. The application of this Ordinance shall be no more burdensome to satellite users than is necessary to achieve the health or safety objective.

Section 7:9 Home Occupation Ordinance (§309-7.2; §309-30.2; §309-51.1) [Added 1996, amended 2005 Town Meetings] Home occupations are allowed in the Residential, Rural, and Recreational Districts.

7:9.1 Purpose. (§309-7.2.A; §309-30.2.A; §309-51.1.A)

The purpose of this ordinance is to (1) ensure the compatibility of home occupations with other uses permitted in residential districts; (2) maintain and preserve the character of the residential neighborhood; (3) protect residential areas from adverse impacts of activities associated with home occupations; and (4) establish criteria for home occupations.

7:9.2 Definitions: see Section 1:7

7:9.3 Permit Procedures. (§309-7.2.C; §309-30.C; §309-51.1.C)

7:9.3.1 Application for a home occupation permit shall be made to the Building Department on a form provided by the Building Department and shall be accompanied by a fee as determined by the Board of Selectmen. Home occupations complying with the criteria established in Section 3:1.2.4 shall be considered minor in character and shall receive a home occupation permit.

7:9.3.2 Time limit: All home occupation permits shall be issued annually.

7:9.3.3 Publication: Permits issued for home occupations shall be published in the same manner as building permits.

7:9.3.4 Inspection: Home occupation applicants shall permit a reasonable inspection of the premises by the Building Department to determine compliance.

7:9.3.5 Renewal: Home occupation permits shall be renewed each year provided there has not been any violation of the provisions of Sections 7:9.4 and 7:9.5. Requests for renewals shall be submitted to the Building Department accompanied by the renewal fee prior to expiration of the permit.

7:9.3.6 Non-transferable: Home occupation permits are intended for use by the current resident-owner or tenants with the owner's written permission and shall not be transferred from person to person or address to address.

7:9.3.7 Voiding of permit: The Building Department may void any home occupation permit for noncompliance with the criteria set forth in Sections 7:9.4 and 7:9.5.

7:9.4 Criteria for Home Occupation. (§309-7.2.D; §309-30.2.D; §309-51.1.D)

7:9.4.1 The use shall be conducted entirely within the main dwelling unit and the total shall not exceed the maximum space of twenty-five percent (25%) of the habitable area. Home Occupations shall be permitted in all dwelling units meeting all requirements. [Amended 2005 Town Meeting]

7:9.4.2 The home occupation shall be clearly incidental and secondary to the residential use, shall not change the residential character of the neighborhood, and shall have no visible appearance.

7:9.4.3 The home occupation shall be carried on by the resident-owners or tenants with the owner's written permission and employ no others.

7:9.4.4 Multiple home occupations are permitted within the dwelling, provided that the cumulative impact on the surrounding neighborhood is not greater than the maximum usage of a single home occupation.

7:9.4.5 No home occupation nor any storage of goods, materials, products, equipment, supplies or vehicles connected with a home occupation shall be allowed in any accessory buildings or garages, attached or detached or outside the dwelling unit. No additional parking areas will be permitted.

7:9.4.6 There shall be no display of products visible in any manner from the outside of the dwelling.

7:9.4.7 There shall be no change in the outside appearance of the dwelling or premises or any visible evidence of the conduct of a home occupation. There shall be no entrance or exit way specifically provided in the dwelling or on the premises for the conduct of the home occupation.

7:9.4.8 No signs or advertising display signs shall be permitted. Section 7:2.4 does not apply.

7:9.4.9 The use shall not require additional pedestrian or vehicular traffic.

7:9.4.10 No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, or odor detectable off the property.

7:9.4.11 No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.

7:9.4.12 The street address of a home occupation business shall not be advertised to the general public in any commercial telephone directory listing, newspaper, radio, or television service.

7:9.4.13 The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises which is not consistent with normal residential activities.

7:9.4.14 Any unit that has day care, shall not be permitted to obtain a Home Occupation permit.

7:9.5 Variances (*§309-7.2.E; §309-30.2.E; §309-51.1.E*)

Any business not meeting the criteria of a Home Occupation shall not be permitted and a variance will be required to have that use. [Amended 2005 Town Meeting]

Section 7:10 Large-Scale Redevelopment Projects. (§309-46.S) [Added 2009 Town Meeting]

The provisions of Sections 7:10.1 through 7:10.5 of this Section 7:10 shall apply to any lot in the Commercial Industrial District C which consists of 25 acres or more as of December 31, 2008 or any lots which are consolidated to comprise at least 25 acres, but shall not apply to additions or expansion of existing uses and facilities, including horse racing and/or gaming uses (as defined in Section 7:10.7 hereof). The additions or expansions of existing uses and facilities, including horse racing and/or gaming uses, on such lots shall be subject to the provisions of Section 7:10.6 of this section 7:10.

7:10.1 In accordance with NH RSA 674:21.I(i), the intent of these provisions is to promote flexibility in certain large-scale redevelopment of larger parcels in the Commercial-Industrial C District based upon a Conceptual Development Plan which is consistent with the Town of Salem Master Plan. The process allows flexibility for the redevelopment project to be proposed largely independent from current land use regulations, including the selection of land uses, density, setbacks, buffers, building heights, lot sizes, lot dimensions, and parking requirements otherwise applicable to the property.

7:10.2 The Planning Board may grant Conditional Use Permits to vary the restrictions in Section 5:1.2 (Permitted Uses), Section 5:1.3 (Restrictions) and Section 7:1 (Off-Street Parking and Loading), consistent with the criteria noted below. An applicant is not entitled to a Conditional Use Permit and the Planning Board may, in its discretion, decline to grant such permit if the Board determines such permit is not justified or warranted in accordance with the below criteria and the intent of this regulation. This provision is adopted as an innovative land use control pursuant to RSA 674:21, II and the Planning Board is vested with sole authority to administer it and to grant the conditional use permits. All other zoning regulations shall apply.

7:10.3 As part of the site plan approval process for large-scale redevelopment in the Commercial-Industrial C District, the applicant/owner shall be required to prepare a Conceptual Development Plan for the entire parcel. The Conceptual Development Plan shall show existing site conditions and proposed development, including the general types, locations and intensities of proposed land uses and proposed traffic and pedestrian flows, and shall generally indicate how the proposed development of the site will impact municipal services and facilities and abutting properties.

7:10.4 The Conceptual Development Plan shall meet the following criteria for redevelopment:

7:10.4.1 Creating a well planned and integrated development with a mixture of land uses, including residential, retail, office, entertainment, hotels, restaurants, or other compatible land uses.

7:10.4.2 Mitigating negative impacts on traffic, public utilities, municipal services, and natural resources.

7:10.4.3 Limiting new access points on South and North Broadway.

7:10.4.4 Providing transitions between existing and proposed land uses which protect residential abutters.

7:10.4.5 Providing high quality site planning and architectural, landscaping and signage designs that meet the Retail Design Standards in the Site Plan Review Regulations.

7:10.4.6 Minimizing views of large parking lots from existing streets.

7:10.4.7 Creating pedestrian and vehicular links to abutting parcels.

7:10.4.8 Establishing open space and pedestrian amenities including useable common land and wide sidewalks.

The Planning Board shall have sole authority for approval of a Conceptual Development Plan based on the criteria noted above. The Board may approve amendments or revisions to a previously approved Conceptual Development Plan.

7:10.5 All subsequent site plans and subdivisions submitted to the Planning Board for approval within the parcel shall conform to the Conceptual Development Plan and these provisions and the Site Plan Review Regulations. The Planning Board may adopt additional performance standards for Large-Scale Redevelopment projects. The construction standards in the Subdivision Regulations in Chapter 278-8, the Retail Design, Landscaping, Exterior Lighting, and Signage Standards in Chapter 268-8A(8), and the Traffic Management Regulations in Chapter 268-8.I shall apply.

7:10.6 The addition or expansion of existing uses and facilities, including horse racing and/or gaming uses (as defined in Section 7:10.7 of this Section 7:10) shall not be subject to the provisions of Sections 7:10.1 through 7:10.5 of this Section 7:10. The Planning Board may grant conditional use permits to vary the restrictions in Section 5:1.2 (permitted uses), Section 5:1.3 (restrictions) and Section 7:1 (off-street parking and loading), for the addition or expansion of existing uses and facilities, including horse racing and/or gaming uses (as defined in Section 7:10.7 of this Section 7:10), consistent with the following criteria. The proposed addition or expansion must:

7:10.6.1 Mitigate negative impacts on traffic, public utilities, municipal services, and natural resources.

7:10.6.2 Limit new access points on South and North Broadway.

7:10.6.3 Provide transitions for protection to residential abutters.

7:10.6.4 Minimize views of large parking lots from existing streets.

7:10.6.5 Be consistent with the spirit and intent of the Zoning Ordinance.

7:10.6.6 Not adversely affect the aesthetic character of the site and surrounding area.

An applicant is not entitled to a conditional use permit and the Planning Board may, in its discretion, decline to grant such permit if the Planning Board determines such permit is not justified or warranted in accordance with these criteria.

This provision is adopted as an innovative land use control pursuant to RSA 675:21, II and the Planning Board is vested with sole authority to administer it and to grant the conditional use permits.

7:10.7 For purposes of this Section 7:10, the phrase “horse racing and/or gaming uses” shall include the operation of pari-mutuel wagering on live horse racing, simulcast horse and dog racing, charitable gaming activities, and other gambling activities that are or may be authorized by the state of New Hampshire including the operation of slot machines, video lottery terminals, electronic games of chance, racinos, and casinos. For purposes of Section 7:10, expansion or additions to horse racing and/or gaming uses shall include expansion of uses and accessory uses located within existing, reconstructed, temporary, or new facilities used for horse racing or gaming. All other accessory uses shall comply with Sections 7:10.1 through 7:10.5 of this Section 7:10.

Section 7:11 Impact Fee Ordinance

[Note: the original Article XXI Impact Fee Assessment (1994) was repealed by adoption of this Article at 2005 Town Meeting]

7:11.1 Authority and Purpose (§309-127)

This ordinance is enacted pursuant to RSA 674:21.V as an innovative land use control, and in order to:

7:11.1.1 Promote the goals and objectives of the Salem Master Plan and the Salem Capital Improvements Program in providing adequate public facilities in Salem.

7:11.1.2 Make adequate and appropriate public capital facilities available to accommodate the needs of new development;

7:11.1.3 Allocate an equitable share of the cost of public facilities to new development;

7:11.1.4 Require new development to provide the funds necessary to accommodate its impact on public capital facilities in proportion to the needs reasonably attributable to new development;

7:11.1.5 Consolidate the existing authority for school and road impact fee assessments into a single section of the Zoning Ordinance, and enable impact fee assessments for public recreation facilities and public safety facilities, subject to adoption by the Planning Board of specific methods of assessment and fee schedules therefore.

7:11.2 Definitions: see Section 1:7

7:11.3 Authority to Assess Impact Fees (§309-129)

7:11.3.1 The Planning Board is hereby authorized to assess impact fees for public capital facilities, including and limited to (1) public road systems and rights-of-way; (2) public school facilities; (3) public safety facilities; and (4) public recreation facilities, not including public open space.

7:11.3.2 The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance and to delegate the administrative functions of impact fee assessment, collection and disbursement.

7:11.3.3 The use of the following documents, as amended, provides a proportionate basis for the assessment of impact fees in Salem:

1. the Planning Board's current Cost Allocation Procedure for roads, including amendments or revisions thereto;
2. public School Impact Fees: Basis of Assessment – Town of Salem - 2004 Update, as amended;
3. public Recreation Impact Fees: Basis of Assessment – Salem, NH (2004), as amended; and
4. public Safety Impact Fees: Basis of Assessment – Town of Salem, New Hampshire (2005), as amended.

7:11.4 Standards and Methodology for Assessment (§309-130)

7:11.4.1 The amount of any impact fee shall be a proportional share of public facility improvement costs which are 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.

7:11.4.2 The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules therefore.

7:11.4.3 No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.

7:11.4.4 In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee calculated for the new use as compared to the impact fee that was, or would have been assessed for the previous use.

7:11.4.5 Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

7:11.5 Review and Change in Assessment Schedules (§309-131)

The impact fee assessment schedules shall be reviewed by the Planning Board in conjunction with updates to the Master Plan, but no less frequently than every 5 years, along with the foundation documents that provide the basis for the assessment schedules. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as they affect the variables in the fee calculations. Changes in the impact fee assessment schedules shall be effective only where the change in the basis of assessment or the fee schedule is adopted following a public hearing on the proposed change.

7:11.6 Assessment and Collection of Impact Fees (§309-132)

7:11.6.1 Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.

7:11.6.2 When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit.

7:11.6.3 Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use.

7:11.6.4 The Planning Board and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees at the time of subdivision or site plan approval by the Planning Board. If an alternate schedule of payment is established, the Planning Board may require the applicant 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.

7:11.6.5 No building permit for new development requiring payment of an impact fee shall be issued until the amount of the impact fee assessment has been determined by the Chief Building Official.

7:11.6.6 No building permit shall be issued for new development until the fee payer has established a mutually acceptable schedule for payment of such fee with the Town of Salem. No Certificate of Occupancy shall be issued for new development which is subject to impact fee assessment until the fee is paid in full.

7:11.7 Waivers (§309-133)

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

7:11.7.1 A fee payer may request a full or partial waiver of public school and recreation impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A:15, Housing

For Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years.

7:11.7.2 A person undertaking the development of in-law apartments, accessory apartments, or projects approved under the Senior Housing Overlay District may apply for a waiver of school and recreation impact fees otherwise required by this section. Prior to granting such a waiver for certain dwelling units in such a development, the Planning Board shall find that, due to lawful, long-term occupancy restrictions pertaining to such units, that no significant school enrollment impacts are anticipated as a result of the construction of those units.

7:11.7.3 The Planning Board may agree to waive all or part of an impact fee assessment and accept, in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. All costs incurred by the Town for the review of such proposal, including consultant and counsel fees, shall be paid by the fee payer.

7:11.8 Appeals Under this Section (§309-134)

7:11.8.1 If a fee payer elects to dispute the amount of the impact fee, the fee payer may prepare and submit to the Planning Board an independent fee calculation study for the new development activity which is proposed. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study shall be paid by the fee payer.

7:11.8.2 A party aggrieved by a decision of the Planning Board under this Section may appeal such decision to the Superior Court as provided by RSA 677:15, as amended.

7:11.9 Administration of Impact Fees (§309-135)

7:11.9.1 All funds collected shall be properly identified and promptly transferred for deposit to the appropriate capital facility impact fee account and shall be used solely for the purposes specified in the basis of assessment adopted by the Planning Board for that capital facility category. Impact fee accounts shall be special revenue fund accounts and under no circumstances shall such revenues accrue to the General fund.

7:11.9.2 The Town Treasurer shall have custody of all fee accounts, and shall pay out the same only upon written orders of the Board of Selectmen and shall be used solely for the reimbursement of the Town and School District for the cost of public capital improvements for which they were collected or to recoup the cost of capital improvements made by the Town or School District in anticipation of the needs for which the impact fee was collected. The Board of Selectmen shall annually order the release of school impact fee accounts to the Salem School District, upon a demonstration by the District of programmed expenditures eligible for reimbursement by impact fees.

7:11.9.3 The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Section for a period of at least nine (9) years.

7:11.9.4 At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen and the Salem School District, giving an account of all impact fee transactions during the year.

7:11.9.5 In the event that bonds or similar debt instruments have been issued for capital facilities that are the subject of impact fee assessments, and where improvements have been constructed in anticipation of new development, impact fees may be used to pay debt service on such bonds or similar debt instruments.

7:11.10 Refund of Fees Paid (§309-136)

The owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

7:11.10.1 The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the final payment of the fee; or

7:11.10.2 The Town, or in the case of school impact fees the Salem School District has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.

7:11.11 Other Authority Retained (§309-137)

This ordinance shall not be deemed to affect other authority of the Planning Board over subdivisions and site plans, including, but not limited to:

7:11.11.1 The authority of the Planning Board 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); or

7:11.11.2 The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21.V(j); or

7:11.11.3 Other authority of the Town of Salem to assess other fees under the authority of other statutes, ordinances of the Town of Salem, or the Salem Planning Board Site Plan Review and Subdivision Regulations.

7:11.12 Saving Clause (§309-138)

If any provision of this Ordinance is found to be unenforceable or unlawful by a court of competent jurisdiction, such provision of the Ordinance shall be considered severable and such a finding shall not be construed to invalidate the remainder of the Ordinance.

7:11.13 Impact Fee Schedules (§309-139)

The documents referenced in Section 7:11.3.3 support the impact fee schedules listed below. Land uses that are not within the categories listed in the schedules may require special calculations using a comparable basis of assessment, or the application of an assessment amount based on a land use of similar impact. Fees shall be based on the principal use of the structure.

7:11.13.1 Road Impact Fee Schedule: variable fee schedule applicable as detailed in the Planning Board’s current Cost Allocation Procedure for roads, including amendments or revisions thereto.

7:11.13.2 School Impact Fee Schedule, per residential dwelling unit:

<u>Type Unit/Units in Structure</u>	<u>Assessment Per Dwelling Unit</u>
Single Family Detached	\$ 3,991
Townhouse	\$ 2,277
Duplex/Two Unit	\$ 2,917
Multifamily (3+ unit structure)	\$ 1,547
Manufactured Housing	\$ 2,433

7:11.13.3 Recreation Impact Fee Schedule, per residential dwelling unit

<u>Type Unit/Units in Structure</u>	<u>Assessment Per Dwelling Unit</u>
Single Family Detached	\$ 1,003
Townhouse	\$ 1,048
Duplex/Two Unit	\$ 963
Multifamily (3+ unit structure)	\$ 667
Manufactured Housing	\$ 549

7:11.13.4 Public Safety Impact Fee Schedule, per unit applicable to residential and non-residential development

Residential Uses

<u>Type Unit/Units in Structure</u>	<u>Assessment Per Dwelling Unit</u>
Single Family Detached	\$ 538
Townhouse	\$ 821
Duplex/Two Unit	\$ 701
Multifamily (3+ unit structure)	\$ 709
Manufactured Housing	\$ 519
Senior Apartments (no personal care)	\$ 1,376
Assisted Living (with personal care)	\$ 1,846

Non-Residential Uses

<u>Use Category</u>	<u>Assessment Per Sq. Ft. of Gross Floor Area</u>
Retail	\$ 0.57
Lodging	\$ 1.50
Office	\$ 0.56
Industrial & Manufacturing	\$ 0.30
Hospital	\$ 1.62
Other Commercial & Institutional	\$ 0.69

Section 7:12 Small Wind Energy Systems Ordinance [Adopted 2010 Town Meeting]

7:12.1 Purpose

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

7:12.2 Definitions: see Section 1:7

7:12.3 Procedure for Review:

7:12.3.1 Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

7:12.3.2 Application: Applications submitted to the building inspector shall contain a site plan with the following information:

1. Property lines and physical dimensions of the applicant's property.
2. Location, dimensions, and types of existing major structures on the property.
3. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
4. Tower foundation blueprints or drawings.
5. Tower blueprints or drawings.
6. Setback requirements as outlined in this ordinance.
7. The right-of-way of any public road that is contiguous with the property.
8. Any overhead utility lines.
9. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
10. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
11. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
12. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
13. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
14. List of abutters to the applicant's property.

7:12.3.3 Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify, at the applicant's expense, all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

7:12.4 Standards:

The building inspector shall evaluate the application for compliance with the following standards:

7:12.4.1 Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.5	1.5

1. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

2. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

7:12.4.2 Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

7:12.4.3 Sound Level: The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

7:12.4.4. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

7:12.4.5. Signs: All signs including flags, streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

7:12.4.6. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

7:12.4.7. Aviation: The small wind energy system shall be built to comply with all applicable FAA regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

7:12.4.8. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

1. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

2. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.

3. A small wind energy system shall not be artificially lit unless such lighting is required by the FAA. If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

7:12.4.9. Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

7:12.4.10. Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

7:12.4.11 Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

7:12.4.12 Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

7:12.5 Abandonment

7:12.5.1 At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

7:12.5.2 Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:

1. Removal of the wind generator and tower and related above-grade structures.
2. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

7:12.5.3 In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

7:12.5.4 If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

7:12.6 Violation

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

7:12.7 Penalties

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

**ARTICLE 8
SUPPLEMENTAL REGULATIONS**

Section 8:1 Accessory Apartment (§309-7.1; §309-30.1) [Added 1989 Town Meeting.]

8:1.1 Accessory Apartments are allowed in the Residential and Rural Districts.

8:1.2 To increase housing alternatives while maintaining neighborhood aesthetics and quality, one accessory apartment within a detached single-family dwelling shall be permitted provided the following conditions are met:

8:1.2.1 Maximum of one (1) accessory apartment per property.

8:1.2.2 The property owner must occupy one of the two units.

8:1.2.3 The exterior appearance and entrances of the dwelling shall be consistent with a single-family residence.

8:1.2.4 Only one (1) bedroom is permitted in the accessory apartment and to qualify as an accessory apartment under this section, the apartment may not exceed 750 square feet of floor space. The 750 square foot limit shall not apply to conversion of in-law apartments having a permit as of December 28, 1988, provided they meet all other requirements of this section.

8:1.2.5 Where municipal sewer service is not provided, the septic system shall meet NH Water Supply & Pollution Control Division requirements for the combined use.

8:1.2.6 Off-street parking shall be provided for at least four (4) vehicles. Garage and "piggy-back" parking is encouraged.

8:1.2.7 The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single-family. Accessory apartment use shall be recorded by Deed Addendum.

8:1.2.8 An accessory apartment shall not be permitted in addition to an in-law apartment or a family day care center.

8:1.2.9 Accessory apartments shall not be permitted in conjunction with variances from any requirements of this section.

8:1.2.10 Variances from this section shall be contrary to the spirit and intent of this ordinance.

Section 8:2 In-Law Apartment (§309-7.1; §309-30.H; §309-52.H) [Added 2000 Town Meeting]

8:2.1 In-Law Apartments are allowed in the Residential, Rural and Recreational Districts.

8:2.2 In-law use within a single-family dwelling shall meet the following criteria:

8:2.2.1 In-law use shall be recorded by Deed Addendum;

8:2.2.2 Separate utility service connections shall not be allowed;

8:2.2.3 Common access between units shall be provided;

8:2.2.4 The structure's exterior appearance and the entrances to the dwelling shall be consistent with a single family residence;

- 8:2.2.5 Where municipal sewer is not provided, the septic system shall meet requirements for the combined use. In new construction, the septic system shall be designed for duplex use;
- 8:2.2.6 Use shall be by members of the immediate family or the principal owner-occupant of the dwelling;
- 8:2.2.7 It shall be contrary to this ordinance to provide in-law use in duplexes or multi-family dwellings;
- 8:2.2.8 The apartment shall not exceed 950 sf. of floor space. [Added 1993, amended 2006 Town Meetings]
- 8:2.3 In the Recreational District, the following additional criteria shall be met:
 - 8:2.3.1 A septic system site assessment which meets the requirements of RSA 485-A:39 and ENV-WS 1025 shall be submitted to the Engineering Department prior to issuance of a permit for the in-law apartment; (309-52.H.5)
 - 8:2.3.2 In-law use may occur only on those lots having not less than 10,000 (ten thousand) square feet. (309-52.H.9)

Section 8:3 Obstructed View (§309-7F, §309-30E, §309-46F, §309-58.1B, §309-71G)

No wall, fence, (*Note), or other structure and no tree, shrub or other growth on the property shall so obstruct the view as to cause danger to traffic in the street. *Note: includes “recreational vehicles” in the Residential and Rural Districts.

Section 8:4 Proximity to Water Bodies (§309-7.D, §309-26, §309-30.C, §309-46.E, §309-52.B, §309-58.1.A, §309-62.I, §309-71.F) [Amended 2010 Town Meeting]

No structure shall be constructed within forty (40) feet from the high-water mark of any lake, stream, or surface water system, except that no structure shall be constructed within fifty (50) feet from the high-water mark for the protected shorelands defined by the NH Department of Environmental Services in accordance with RSA 483-B. The high-water mark shall not be moved or disturbed without Planning Board approval.

Section 8:5 Building Identification (§309-94.2) [Added 1983 Town Meeting]

8:5.1. In the interest of public safety, all homes, buildings and other structures shall clearly display, at a location that provides for unobstructed viewing from the street, the identifying building name and/or street address as recorded in the Town Assessor's office.

8:5.2. The size, type and location of the identifying building name and/or street address must be approved by the Salem Fire Chief or his designee and must conform to Section 7:2, Signs, of this Chapter.

8:5.3. Effective April 1, 1983, any home, building or other structure which requires a permit from the Building Department shall be required to comply with the building identification requirements of this section. Any property which is transferred after April 1, 1983, shall be required to comply with the building identification requirements of this section within sixty (60) days of the date of the transfer.

Section 8:6 Unregistered Motor Vehicles and Boats (§309-89) [Amended 1988 Town Meeting]

No lot in the Residential, Garden Apartment, Rural, Recreational, or Manufactured Housing Park Districts may be used for the outside storage of more than one (1) unregistered and/or uninspected motor vehicle. No more than one (1) unregistered boat shall be permitted on a lot.

Section 8:7 Placement of Recreational Vehicles on Residential Lots (§309-94.1) [Added 1983 Town Meeting] The parking, but not occupation, of one (1) recreational vehicle shall be permitted in the Residential, Rural, and Recreational Districts, subject to the following requirements:

8:7.1 Parking is permitted inside any enclosed structure, which structure otherwise conforms to the zoning requirements of the particular district where located.

8:7.2 Parking is permitted in the rear yard or side yard, provided that the recreational vehicle is located such that it conforms to the lot line setbacks of the particular district where located.

8:7.3 Parking is permitted outside on a driveway, provided that:

8:7.3.1 Space is not available in the rear yard or side yard or there is no reasonable access to either the rear yard or side yard.

8:7.3.2 No part of the recreational vehicle may be any closer than five (5) feet to the street line.

8:7.3.3 The recreational vehicle shall be parked perpendicular to the street line.

8:7.4 Parking is permitted for storage purposes, and any recreational vehicle shall not be:

8:7.4.1 Used for dwelling purposes;

8:7.4.2 Used for storage of goods, material or equipment other than those items considered to be part of the recreational vehicle or essential for its immediate use.

8:7.5 The recreational vehicle shall be owned by the resident on whose property it is parked for storage.

Section 8:8 Temporary Occupancy of a House Trailer or Mobile Home (§309-90)

In instances where a dwelling located in the Residential, Rural, or Recreational District has been damaged by fire or other catastrophe and is being rebuilt or repaired, it shall be permissible to occupy one (1) house trailer or motor home on that lot for a period not exceeding ninety (90) days while the dwelling remains unoccupied, and up to an additional ninety (90) days if the Building Inspector deems it advisable.

Section 8:9 Curing Minor Setback Violations (§309-94.5) [Added 1994, amended 2005 Town Meetings]

8:9.1 Notwithstanding any other provision contained herein, for any single family or duplex dwelling, originally constructed by a lawfully issued building permit issued prior to January 1, 2000, the Chief Building Official, or his designated agent, may issue an Administrative waiver of any setback violations, provided that the waiver may not be issued for any encroachment exceeding ten percent (10%) of the required setback distance. In determining whether to issue such a waiver, the Chief Building Official shall consider the following factors:

8:9.1.1 The potential causes for the original non-compliance;

8:9.1.2 The effect on public health, safety and welfare created by the encroachment;

8:9.1.3 The effect of non-enforcement of the required provisions on surrounding complying properties;

8:9.1.4 No approval may be given for set-back encroachments on both of the opposite sides of any structure.

8:9.2. If the Chief Building Official should deny such waiver request, the property owner may file an administrative appeal of such a decision with the Zoning Board of Adjustment, or may alternatively seek a variance from the terms of the underlying setback requirement.

Section 8:10 Expansion of Certain Nonconforming Uses (§309-94.3) [Added 1992 Town Meeting]

A person shall be permitted to expand otherwise permitted uses on premises subject to site plan jurisdiction of the Planning Board, notwithstanding the fact that said premises may not conform to lot coverage or setback requirements otherwise applicable to new uses, provided such expansion does not further diminish the lot coverage or increase the area or volume of the structure or uses which encroach into required setback areas.

Section 8:11 Protection of Dwellings from Noise (§309-94.4) [Added 1992 Town Meeting]

Regular or sustained operation of equipment or unattended operation of vehicles, which causes noise exceeding 45dBA between the hours of 10:00 PM and 7:00 AM or 55dBA between 7:00 AM and 10:00 PM at any dwelling (house, apartment or other permanent residence) in any district wherein such dwelling is a permitted use, shall not be permitted in any district. Site development and construction, agriculture, forestry, maintenance of real property, and government operations are exempt from this requirement.

Section 8:12 Regulating Exterior Lighting (§309-94.6) [Added 1997 Town Meeting]

Residential exterior lighting shall be installed or arranged in a manner which prevents direct light or glare, vertical or angled, from shining onto any public street or adjacent property so as to constitute a nuisance. Direct or indirect lighting shall not cause illumination in excess of 1.0 foot candles when measured at any point vertically above the boundary of any residential property or right-of-way of any public way.

Section 8:13 Motor Vehicle Fuel Storage and Dispensing Facilities (§309-94)

Motor vehicle fuel may not be stored or dispensed in any district, except as follows:

8:13.1 Motor vehicle fuel may be stored and dispensed in Commercial-Industrial Subdistricts A, B, and C and in the Industrial District, at:

1. Motor vehicle service or filling stations which serve the general public, except that no new motor vehicle filling stations may be constructed or installed or located within one thousand three hundred twenty (1,320) feet of the Surface Source Water Protection Area as delineated by the NH Department of Environmental Services on a plan entitled "Public Water Supply and Drinking Water Protection Areas of the Town of Salem." [Amended 2003 Town Meeting]
2. Commercial enterprises, for vehicles owned or operated by that enterprise for business purposes. The provisions regarding filling stations contained in Section 5:1.2.3.2 shall not apply to such fuel dispensing facilities operated by such commercial enterprises.

8:13.2 The Board of Adjustment may grant special exceptions to permit storage and dispensing of motor vehicle fuel in any district, for the exclusive purpose of fueling motor vehicles (and equipment) operated on the same lot for agricultural purposes, provided that the Board of Adjustment finds that such storage and dispensing will not adversely affect the public health, safety or welfare.

Section 8:14 Phasing Requirement for Multi-Family Housing (§309-94.7) [Added 2008 Town Meeting]

Pursuant to RSA 674:21.I(b), to insure that the rate of growth of new dwelling units does not unreasonably interfere with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such growth, the construction of new non-senior multi-family housing units shall be phased so that no more than 50 units shall be built in any one project per year.

Section 8:15 Restrictions on Motel Uses (§309-47; §309-72)

The following additional restrictions shall govern motel uses in the Commercial-Industrial Subdistrict B and the Industrial District:

8:15.1. The minimum lot and land area shall be three (3) acres.

8:15.2. The minimum lot frontage shall be three hundred (300) feet, and the minimum lot depth two hundred (200) feet.

8:15.3. No building or structure shall be closer than fifty (50) feet to any lot line.

8:15.4. A space of not less than twenty (20) feet wide, grassed or shrubbed and prohibited for parking, shall be maintained along each lot line, except at driveways.

8:15.5. The maximum percentage of land area of each lot which may be occupied by buildings shall be twenty-five percent (25%).

8:15.6. Each motel shall consist of not more than twenty (20) units per acre of land area.

8:15.7. Each motel unit shall have one (1) paved parking space adjoining its entrance.

Section 8:16 Restrictions on Child Care Centers (§309-47.1) [Added 1988 Town Meeting]

The following restrictions apply to child care centers in Commercial-Industrial Subdistrict B:

8:16.1 Planning Board site plan approval is required.

8:16.2 Stockade fence and/or evergreen vegetation shall buffer all neighbors from children play areas as determined by the Planning Board.

8:16.3 Where municipal sewer is not provided, the septic system shall meet State WSPCD requirements for the permitted use.

8:16.4 An off-street area shall be provided for the loading and unloading of five (5) vehicles.

8:16.5 The number of students attending the center is limited to 35.

8:16.6 All relevant state laws shall be complied with.

8:16.7 All other restrictions for the District shall be complied with.

Section 8:17 Restrictions on Sexually Oriented Businesses (§309-47.2) [Added 1992, amended 2007 Town Meetings]

8:17.1 Purpose and Intent

It is the purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Salem; and, it is the intent to promote the health, safety and general welfare of the citizens of the Town of Salem through regulation of the location of adult retail establishments; and, it is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and it is the intent of this section to address secondary effects of increased crime, urban blight, public lewdness, and spread of sexually transmitted diseases; and it is the intent of this section that the regulations be utilized to preserve quality of life, preserve property values and the character of the surrounding neighborhoods; and, the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

8:17.2 Definitions: see Section 1:7

8:17.3 Allowed Locations and Location Restrictions of Sexually Oriented Businesses

8:17.3.1 Sexually oriented businesses, as defined, shall be permitted only in Commercial-Industrial Subdistricts B and C provided that all other regulations, requirements, and restrictions for the district in which the sexually oriented business is to be located are met; and, (1) no sexually oriented business shall be permitted within 1000 feet of another existing sexually oriented business or one for which a building permit has been applied for, on the date of the passage of this amendment; and, (2) no sexually oriented business shall be permitted within 750 feet of any residential, rural, garden apartment, manufactured housing or recreational district; and, (3) no sexually oriented business shall be permitted within 750 feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, State approved day care center or public sports/recreation parks; and, no sexually oriented business shall be permitted within 750 feet of the Town boundaries; and, (4) no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined in Section 1:7

8:17.3.2 Measure of distance. The distance between any two sexually oriented businesses 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.

8:17.4 Additional Reasonable Regulations

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics in the "Site Plan Review Regulations of the Town of Salem, New Hampshire," and to avoid site development layout which may result in negative environmental impacts.

8:17.5 Severability. See Section 1:6

**ARTICLE 9
ZONING BOARD OF ADJUSTMENT & ENFORCEMENT**

Section 9:1 Zoning Board of Adjustment (ZBA)

9:1.1 Membership; Appointment (§309-109)

The ZBA shall consist of five (5) members and requisite alternates as permitted by New Hampshire Revised Statutes Annotated and shall be elected in accordance with RSA 673:3II [Amended 2007 Town Meeting]

9:1.2 Duties (§ 309-110)

The duties of the ZBA shall be as specified in the New Hampshire Revised Statutes Annotated as Amended from time to time.

9:1.3 Persons Authorized to Appeal; Procedure (§309-111)

Appeals to the ZBA may be taken by any person aggrieved, or by any officer, department, board or bureau of Salem affected by any decision of the Building Inspector. Such appeal shall be taken within ten (10) days of the Building Inspector's decision by filing with the Building Inspector and with the ZBA a notice of appeal specifying the grounds therefore. The Building Inspector shall forthwith transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.

9:1.4 Notice of Hearing; Hearing Procedure (§309-112)

Notice of the time and place of any hearing of the ZBA shall be published in a paper of general circulation in the Town of Salem and given to all parties in interest. The Planning Board and the Building Inspector shall be notified. All hearings and meetings of the ZBA, including executive sessions, shall be public, except meetings or conferences solely for the purpose of granting or denying motions for rehearing. Any person shall have a right to have a stenographer or recording device present. The ZBA shall adopt rules in accordance with the provisions of this chapter. Meetings of the ZBA shall be held at the call of the Chairman and at such other times as the ZBA may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses and shall administer oaths and require that any or all evidence be under oath whenever requested by any party. The ZBA shall keep minutes of its proceedings and shall show the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and all other official actions, all of which shall be immediately filed in the town office and shall be a public record.

9:1.5 Publication of Description of Work Required (§309-113)

The ZBA shall require as a condition of the effectiveness of any permit, exception, or variance granted by it or any action taken by it that a person requesting such action shall cause to be published such description of the act, as the Chairman of the ZBA shall determine, including a description of the location and the construction, alteration or use, in a paper of general circulation in Salem within five (5) days of such action, the permit or action to become effective only upon such publication.

9:1.6 Rehearing (§309-114)

Within twenty (20) days after any order of the ZBA, any person affected by such order may apply for a rehearing in respect to any matter determined in the proceedings. Appeals from action on such rehearing shall be in accordance with New Hampshire Statutes.

9:1.7 Application for Rehearing (§309-115)

Such application 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 ZBA shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on or given any

consideration by the court unless the court for good cause shown shall allow the appellant to specify additional grounds.

9:1.8 Action on Rehearing Application; Subsequent Appeals (§309-116)

Upon the filing of such application for rehearing, the ZBA shall within ten (10) days either grant or deny the same or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the ZBA may prescribe. Failure to take any action within ten (10) days shall constitute a denial of the rehearing. Within thirty (30) days after the application for a rehearing is denied or, if the application is granted, within thirty (30) days after the decision on such application, the applicant, or any other person or party affected, may appeal by petition to the Superior Court.

9:1.9 Persons Who May be Part of Proceedings (§309-117)

Any party whose rights may be directly affected by any action of the ZBA may appear and become a party in any proceeding before it.

9:1.10 Criteria for Granting Exceptions (§309-118)

Exceptions shall be granted by the ZBA if, but only if, the ZBA finds that the conditions of this chapter relating to such permitted exceptions have been or will be met. No other criteria shall be imposed by the ZBA, and no other considerations shall govern its determinations. The burden of proving that such conditions have been or will be met shall be upon the applicant.

9:1.11 Criteria for Granting Variances (§309-119)

9:1.11.1. Variances shall be granted by the ZBA if, but only if, the ZBA shall find all five (5) of the following:

1. No diminution of surrounding property values would be suffered.
2. Granting the permit would be of benefit to the public interest.
3. Denial of the permit would result in unnecessary hardship to the owner seeking it. "Financial hardship" in this connection does not mean personal financial hardship of the owner, but means that the land, building or structure, if required to be constructed or used literally in accordance with the provisions of this chapter, would produce unnecessary hardship to the owner, whoever that might be.
4. By granting the permit, substantial justice will be done.
5. The use, construction or alteration would not be contrary to the spirit of this chapter.

9:1.11.2. No other criteria shall be imposed by the ZBA, and no other considerations shall govern its deliberations on variances. The burden of proving that such criteria have been or will be met shall be upon the applicant. The ZBA may attach reasonable conditions to the granting of any variance.

9:1.12 Conduct of Deliberations; Public Access to Information (§309-120)

In making its deliberations, the ZBA shall not receive or consider any evidence not submitted to it in public hearing. Any party to a hearing before the ZBA shall have a right to request in writing specific findings of fact and specific rulings. No action of the ZBA shall be effective unless and until it has passed upon and duly recorded its decision on each and every such request submitted to it in the public hearing upon such matter.

9:1.13 Termination of Variances and Exceptions (§309-121)

Any variance or exception granted by the ZBA shall be terminated one (1) year from its issuance by the ZBA unless the variance or exception granted has been exercised by the recipient. However, this section shall not preclude the earlier invalidity of a variance or exception if, prior to its exercise by the recipient, the circumstances in existence at the time of its issuance have altered appreciably.

9:1.14 Inspection of Sites (§309-122) [Added 1992 Town Meeting.]

ZBA may only turn down a request for a proposed project after making a physical inspection of the site.

Section 9:2 Enforcement

9:2.1 Designation of Enforcement Authority (§309-103)

9:2.1.1 Authority to issue building permits. It shall be the duty of the Board of Selectmen and the Board of Selectmen is hereby given power and authority to enforce the provisions of this Chapter 309. The Board of Selectmen shall appoint a Building Inspector, who shall hold office at the pleasure of the Selectmen and who shall take all action necessary for the initial issuance or denial of permits under the provisions of this chapter.

9:2.1.2 Enforcement of Land Use Regulations. (Added 1999 Town Meeting). The Board of Selectmen shall appoint a Chief Building Official who is the lead official responsible for the enforcement of Chapters 268, 278, and 309, together with the current Building Code as adopted by the Town. The Chief Building Official may call upon the police, fire, engineer, health officer, public works, or any other appropriate Town officials to assist in enforcement and investigation of an alleged violation. The Planning Director shall assist in inspection, research, and response to reports of violations relating to site plans or subdivision regulations. The Chief Building Official shall inspect private property and notify owners of code violations; issue summons for violations of building codes, housing, zoning codes, excavation, regulations, violations of the conditions or terms of Planning Board site plan or subdivision approval, and other related Town land use regulations; conduct research of records to identify and locate owners of property where violations occur; conduct field surveys for code compliance; and, interact with the public on issues of code compliance. The Chief Building Official also shall have the authority to seek injunctions in superior court, as deemed appropriate. Town officials shall be guided in their duties to enforce by the provisions contained in NH RSA Chapter 676.

9:2.2 Building Permit Required (§309-104)

Except for building structures and uses to which the regulations herein do not apply, no building, structure, trailer, mobile home or sign shall be erected or altered and no use of any building, structure or land shall be made until there has been obtained a building permit from the Building Inspector authorizing such construction, alteration or use. A permit may be obtained and shall, if appropriate, be granted upon the application of any person for construction, alteration or use which is excepted from the regulations herein.

9:2.3 Building Permit Application Procedure (§309-105)

Applications for building permits shall be filed with the Building Inspector and shall include a plot plan and shall contain such information as the Building Inspector may require to enable him to ascertain whether the proposed building or structure and its intended use comply with the provisions of this chapter.

9:2.4 Permit Fee (§309-106)

A fee of one dollar (\$1) for each one thousand dollars (\$1,000) of construction costs shall be paid to the building Inspector at the time of application, which shall be paid into the Town Treasury. This fee schedule shall only be operable in the absence of a Building Code (see Chapter 147) and fee schedule otherwise enacted.

9:2.5 Failure to Issue Permit Deemed a Denial (§309-107)

If the Building Inspector shall fail to grant the application within fifteen (15) days of the filing thereof, the application shall be considered denied as of that date unless an extension of time is agreed upon, in writing, by the applicant and the Building Inspector.

9:2.6 Notice of Application (§309-108)

The Building Inspector, at least five (5) days before granting a permit, shall be required to print in a paper of general circulation in Salem a description of the location and nature of the construction, alteration or use applied for.

Section 9:3 Violations and Penalties (§309-123)

In addition to any other remedies authorized by law, in case any building or structure is erected, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this chapter, the owner or owners of the building, structure or land, and any other person violating the provisions of this ordinance, may be punished by a fine up to the maximum permitted by statute in accordance with the provisions of RSA 676:17 as it may be amended.