



**Site Plan Regulations**  
**Hanover, New Hampshire**

**adopted by the  
Hanover Planning Board  
April 27, 1982**

**and amended  
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**ARTICLE I. AUTHORITY**

The Hanover Planning Board hereby adopts these Site Plan Regulations as authorized and required by New Hampshire Revised Statutes Annotated (“RSA”), Chapter 674:43 and 674:44 and pursuant to authorization from the Town of Hanover by Town Meeting action on March 4, 1975, (Article XII, Non-Residential Use) March 10, 1981, (Article XIX, Multi-Family Use), and May 12, 2009 (Article V, Minor Projects Review Committee).

**ARTICLE II. PURPOSE**

The purpose of site plan review is to provide for all the purposes set forth in RSA 674:44 II.

**ARTICLE III. COMPLIANCE**

The site plan review procedure shall in no way relieve an applicant from compliance with the Hanover Zoning Ordinance, the Hanover Subdivision Regulations, or any other regulation, ordinance or by-law which pertains to the proposed project. No site plan shall be approved unless such plan complies with all applicable local ordinances and regulations.

**ARTICLE IV. DEFINITIONS**

For the purpose of these Site Plan Regulations, and unless otherwise defined herein, the meaning of terms used herein shall conform to the definitions found in Section 902 of the Hanover Zoning Ordinance and in Article 18 of the Hanover Subdivision Regulations. In the case of conflicting definitions as between the Hanover Zoning Ordinance and the Hanover Subdivision Regulations, the definition in the Hanover Zoning Ordinance shall apply.

For the purpose of these Site Plan Regulations, “project” shall mean any man-made change to improved or unimproved real estate including but not limited to buildings and other structures, mining, dredging, filling, grading, paving, excavation or drilling occupations, or storage of equipment or materials.

Throughout these Site Plan Regulations, reference is made to the “Reviewing Authority” which shall refer to the entity, either the Planning Board or Minor Projects Review Committee, responsible for reviewing the application at issue.

**ARTICLE V. DELEGATION OF POWERS**

As authorized by RSA 674:43 III and by a vote of Town Meeting on May 12, 2009, the Planning Board hereby creates a Minor Projects Review Committee and delegates its site plan review and approval power to the Minor Projects Review Committee with respect to the projects listed in Article VI.B.1. Notwithstanding the foregoing, the Planning Board does not delegate its powers to waive any standards or requirements as set forth in Article IX of these regulations and the Minor Projects Review Committee may not grant such a request from an applicant. The Minor Projects Review Committee shall be governed by rules and regulations approved by the Planning Board, which rules and regulations may be amended by a majority vote of the Planning Board.

**ARTICLE VI. PROJECTS SUBJECT TO SITE PLAN REVIEW**

A. Exempt projects

The following projects do not require site plan review under these Site Plan Regulations:

1. One-family and two-family dwellings or associated accessory uses that are not part of a planned residential development or continuing care retirement community that includes a multi-family dwelling; and
2. Incidental installations:  
For the purposes of this section, “incidental installations” are benches, bike racks, bubblers, bus shelters, emergency phones, fences, mail boxes, sculptures, signs, and trails. Upon written request to the Planning Board, the Planning Board may consider and determine whether other structures are incidental installations.

**B. Minor Projects Review Committee—Minor Projects**

1. Except as exempted in VI.B.2 below, any project that meets one or more of the following criteria shall be eligible for review and approval by the Minor Projects Review Committee:
  - a. Changes of less than ten (10) feet in any dimension or relocation of a structure and where there is no substantial change in parking, loading or vehicular access;
  - b. Changes of less than 2,000 square feet of disturbed area associated with the project and where there is no substantial change in parking, loading or vehicular access;
  - c. Changes of less than 6,000 cubic feet in the volume of a building and where there is no substantial change in parking, loading or vehicular access;
  - d. Regardless of square footage, any change in the dimensions, configuration, landscaping, circulation or location of sidewalks, parking lots, parking facilities or parking areas that do not change the number of parking spaces and do not encroach into any required landscaped buffer area;
  - e. Minor relocation or replacement of existing outdoor light fixtures with sharp cutoff, direct down cast fixtures;
  - f. Regardless of square footage, changes or additions intended to create barrier free access to a structure or to add an additional egress to a structure;
  - g. Changes or additions to stormwater controls;
  - h. Changes or additions to exterior waste receptacles or their screening;
  - i. Changes or additions to exterior equipment associated with existing telecommunication facilities;
  - j. Regardless of square footage, burial of overhead utilities or changes or additions, including relocation, of underground utilities; or
  - k. Addition of solar panels, wind generators, condensers, generators or transformers.
2. A project otherwise eligible for review and approval by the Minor Projects Review Committee shall be subject to review and approval by the Planning Board if:
  - a. The project involves construction of a new building;
  - b. At their sole discretion, the project is deemed by the Minor Projects Review Committee to be beyond the scope of minor project site plan review because the cumulative impact or amount of disturbed area and improvement proposed renders it a major project;
  - c. The applicant has requested a waiver from any standards or requirements set forth in Article IX of these Site Plan Regulations; or
  - d. The project is construed as having a potential regional impact.

**C. Site Plan Review by the Planning Board—Major Projects**

Except as exempted by VI.A or delegated by VI.B, the following projects are subject to Planning Board review and require Planning Board approval:

1. All new multi-family or non-residential projects or uses, including new buildings, structures, and disturbed area;
2. All changes or expansion of existing multi-family or non-residential projects or uses including additions to existing buildings or structures, new buildings or structures, or disturbed area;
3. All new planned residential developments or continuing care retirement communities that include a multi-family dwelling; and
4. All changes or expansions to planned residential developments or continuing care retirement communities that include a multi-family dwelling.

## **ARTICLE VII. PROCEDURES FOR SITE PLAN REVIEW**

### **A. General Provisions**

#### **1. Public Hearings:**

All proceedings conducted by the Planning Board and the Minor Projects Review Committee, except informal discussions as set forth in section VII.B.1.a, shall be held as public hearings at which abutters and members of the public may speak about an application.

#### **2. Notice:**

##### **a. General Notice Provisions:**

Notice regarding a public hearing on the application shall be given by town staff as required in RSA 676:4 I(d).

##### **b. Additional Notice Requirements for Developments of Regional Impact:**

Pursuant to RSA 36:56, the Planning Board shall determine whether or not the project if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact. Regional impact could result from a number of factors, such as, but not limited to those set forth in RSA 36:55.

Upon determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony and shall follow the procedures set forth in RSA 36:57.

#### **3. Procedure When Subdivision Approval Is Required:**

When both subdivision and site plan approval are required on a proposed development, the Planning Board may hold the site plan review hearing at the same time as the hearing required by the Subdivision Regulations.

### **B. Procedures for Site Plan Review of Major Projects by the Planning Board**

#### **1. Overview of Phases:**

Pursuant to RSA 674:43 and 676:4 II, site plan review shall be subject to up to three phases of review by the Planning Board: informal discussion, design review, and final plan review.

- a. Informal Discussion (Preliminary Conceptual Consultation Phase):  
A potential applicant may request, through the Planning and Zoning Department, an informal meeting with the Planning Board to discuss a potential project and solicit guidance and concerns from the Board. The discussion will be directed at review of the basic concept of the proposed project, whether design review is required, and suggestions that might be of assistance in resolving problems with meeting requirements during final plan review.
- b. Design Review:
  - (1) The purpose of design review is to provide a full understanding of the site's potential, to carefully evaluate natural constraints, aesthetic concerns and development options, to identify and consider concerns of the neighbors, to identify any municipal infrastructure limitations, and to facilitate effective exchange with the Planning Board.
  - (2) Design review will be required if either the Planning Board or the applicant so elects and notifies the other party. Design review requires public notice as required in RSA 676:4 I(d).

Notwithstanding the above, design review is required and must be completed prior to submission of an application to the Zoning Board of Adjustment for any project requiring site plan approval and either a special exception or an administrative permit under Section 702 of the Hanover Zoning Ordinance. Such application shall fully reflect the Planning Board's recommendations.

- (3) During design review, the Board shall engage in nonbinding discussion with the applicant, which involves more specific design and engineering details than the conceptual and general discussions that may take place at the informal discussion. The applicant shall explain the results of the design process used to develop the design review plan. The Board may request additional information to assist in its review. The Board may solicit comments from abutters and other interested persons as it deems appropriate.
- c. Final Plan Review:
  - (1) The purpose of final plan review is to ensure the project is in conformance with the purposes referenced in Article II and in compliance with the standards in Article IX.
  - (2) Final plan review must be conducted before site plan approval.
  - (3) During final plan review, the Board and applicant engage in binding discussions about the project. This review consists of determination of the completeness of the application, a public hearing, deliberation by the Board on the merits of the project, and Board action to approve or disapprove the request. In addition to describing the project and its potential impacts, the applicant shall explain the design process used to develop the final site plan. The Board may request additional information to assist in its review. The Board may solicit comments from abutters and other interested persons as it deems appropriate.

## 2. Pre-Submission Staff Evaluation:

Prior to the submission of an application for design review and, if deemed necessary by the Planning Board, also prior to an application for final plan review, the applicant shall meet with town staff representative of relevant town departments, to discuss the project and impacts, in order that town staff may make recommendations about the project to the applicant and to the Board. Staff evaluation meetings shall be scheduled by the Senior Planner.

3. Submission of Application:

Application to the Planning Board shall be made through the Planning and Zoning Department. In accordance with RSA 676:4, the Board shall determine whether the application is complete. If the application is found incomplete, the Board shall so notify the applicant. If the application is found complete, the Board shall begin formal consideration of the application.

4. Site Visit:

The applicant may be required to arrange for one or more site visits to the property with the Planning Board. The purpose of the visit is to familiarize Planning Board members with the property's existing conditions and special features, to identify potential site design issues, and provide an opportunity to discuss site plan concepts, including the layout of the open space, locations for proposed buildings, and road alignments.

5. Action of the Board:

a. For Design Review:

After review of the design review plans and site visit, if required by the Board, the Board shall convey to the applicant its recommendations, reservations, and requirements with respect to the proposed site plan, the advisability of preparing a final site plan, and whether staff evaluation will be required for the final plan. The applicant may submit a revised design review plan for review by the Board prior to proceeding to development of a final plan.

b. For Final Plan Review:

(1) The Board shall determine if the application is complete. For this determination, the Board shall consider receipt of submission requirements listed in Article VIII.A and B, waivers requested for submission requirements and for standards contained in Article IX, and the need for any additional information to assist the Board in its review of the project. The Board shall consider the applicant's request for waivers and make a determination regarding those requests. If the Board determines that the application is complete, further review of the project will take place. If the Board determines that certain waivers cannot be granted or that the application is otherwise not complete, the Board may decide to continue the submission until missing elements of the application are submitted, or the Board may decide to disapprove the application. Completeness review may necessitate more than one meeting before the Board.

(2) Following the completeness review, the Board shall hold a public hearing on the project. The public hearing will include a presentation by the applicant, Planning Board and town staff questions of the applicant, questions of the applicant or Planning Board from the public, and Planning Board dialogue with the applicant. After receiving testimony from the applicant, abutters, and other interested parties, the Board may decide that input sufficient for the Board to consider approval of the project has been given and will close the public hearing.

- (3) After the public hearing has been closed, the Board shall consider the merits of the project and in accordance with RSA 676:4, the Board shall act to approve, approve with modifications, or disapprove the proposed final site plan within sixty-five (65) days from the date the application was deemed to be complete, except that the Board may apply to the Board of Selectmen for an additional ninety (90) days within which to act upon the application. The applicant may waive the requirement for Board action within the time periods specified and consent to such extension as may be mutually agreeable. The Board shall notify the applicant in writing, by means of an official Notice of Action signed by the Chair of the Planning Board, of its action on the final site plan.

The Planning Board may grant conditional approval of a project, which shall become final without further public hearing upon certification to the Board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Final approval of a project may occur in the foregoing manner only when the conditions are:

- (a) Minor plan changes, compliance with which is administrative and which involves no discretionary judgment on the part of the Board;
- (b) Conditions that are in themselves administrative and which involve no discretionary judgment on the part of the Board; or
- (c) Conditions with regard to the applicant's possession of permits and approval granted by other boards or agencies.

All other conditions shall require a hearing and notice.

In case of disapproval, the Board shall clearly set forth in the Notice of Action to the applicant the reasons for its action, with specific reference to standards contained in these Site Plan Regulations.

6. Appeals:

Any person aggrieved by a decision of the Planning Board concerning site plan review may appeal such decision as set forth in RSA 677:15.

7. Failure to act:

If the Board fails to act within the time limits set forth above, the proposed site plan shall be deemed to have been approved. A certificate of the town stating the date of submission of the application for site plan review and the failure to take action thereon within such time shall be issued by the Director of the Planning and Zoning Department on demand, which shall be sufficient in lieu of written endorsement or other evidence of approval required herein. The applicant may waive these time requirements.

C. Procedures for Site Plan Review by the Minor Projects Review Committee (the "Committee")

1. Review of the Minor Project Plan:

Once the application is deemed to be complete by the Committee pursuant to these regulations, the Committee shall review the minor project plan to assess the criteria as set forth in Article IX.

2. Action of the Committee:

The Committee's procedure used to review minor project plans shall be the same as that described in RSA 676:4 and 674:43, and above in VII.B.5.b, except that the Committee shall review the application with respect to the submission requirements listed in Article VIII.A and C. The Committee shall act to approve, approve with modifications or disapprove the proposed

minor project plan within sixty (60) days from the date the application was deemed to be complete, except that the Committee may apply to the Selectmen for an additional ninety (90) days within which to act upon the application. The applicant may waive the requirement for Committee action within the time periods specified and consent to such extension as may be mutually agreeable. The Committee shall notify the applicant, in writing, by means of an official Notice of Action, signed by the Chair of the Committee, of its action on the minor project plan.

In case of disapproval, the Committee shall clearly set forth in the Notice of Action to the applicant the reasons for its action, with specific reference to standards contained in these site plan regulations.

3. Appeals:

Appeals from the decision of the Committee shall be made to the Planning Board pursuant to RSA 674:43 III. The twenty (20) day time period shall be calculated in the same way the thirty (30) day time period is calculated in RSA 677:15.

## **ARTICLE VIII. SUBMISSION REQUIREMENTS**

### **A. General Submission Requirements**

1. The following shall apply to all applications for site plan review:

- a. The application shall be made on the form prescribed by the town and shall include all requirements as set forth herein, and all required plans and supporting materials;
- b. The application shall include all requirements pursuant to RSA 676:4;
- c. The application shall be signed by the property owner or authorized agent and shall include a completed submission requirements checklist; and
- d. Along with the application, the applicant shall submit all filing fees, notice costs, and other applicable costs and fees as stated on the application form. In addition, the Reviewing Authority may require the applicant to pay additional reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other technical or legal matters which the Reviewing Authority may determine to be necessary to its review of the application.

2. Requests for Waiver of Submission Materials:

The applicant may request in writing a waiver of any of these submission requirements and, the Reviewing Authority may waive any submission requirement. However, if a waiver is requested by the applicant but not granted by the Reviewing Authority, the review of the project will be delayed for a period of time agreed so that the applicant may prepare and submit the relevant information.

3. Completeness of an Application:

The Reviewing Authority shall not consider or act on an application unless the Reviewing Authority has first found it to be complete. At minimum, a complete application shall contain all documents set forth in this Article, except those for which the applicant has requested and been granted a waiver. Moreover, the Reviewing Authority, at its sole discretion, may find an application incomplete if the informational content of any of the submitted documents is unclear, inadequate or inconsistent. In accordance with RSA 676:4, the Reviewing Authority by motion shall accept or reject the application as complete. If the Reviewing Authority finds an application

to be incomplete, it shall so notify the applicant.

If, during subsequent review of the application, the Reviewing Authority determines that additional information is necessary or desirable, the Reviewing Authority shall so inform the applicant, and the applicant shall supply such information within the timeframe agreed between the Reviewing Authority and the applicant.

4. All applications for site plan review shall include:
  - a. A summary description of the project;
  - b. A vicinity sketch showing the location of the site in relation to the surrounding public street system;
  - c. A notification list prepared by the applicant that shall include:
    - (1) A list of the names of owners of the subject property and abutting property owners, together with their mailing addresses taken from the Town tax maps and verified in Town records not more than five (5) days before the day of filing;
    - (2) A list of the names of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on the plan, and their business addresses; and
    - (3) A list of the names of all holders of conservation, preservation or agricultural preservation restrictions as defined in RSA 477:45 and their mailing addresses; and
  - d. The name and address of the preparer of the plan. The plan shall include the professional license stamp of the preparer.

**B. Applications for Major Projects Reviewed by the Planning Board**

In addition to the documents set forth in VIII.A above, all staff evaluation, design review, and final plan applications for major projects subject to review by the Planning Board shall include:

1. Number and Format:

Plans and plan notes shall be drawn at a scale not smaller than 1"=40', on sheets not smaller than 11"x17" or larger than 23"x36", with font size not less than six (6) point, judged by the Senior Planner to be legible, and contain a north arrow, bar scale, original date and dates and descriptions of revisions. Other documents shall be typed or printed on 8.5"x11.0" paper, double-sided.

Number of copies to be submitted:

- a. For staff evaluation: fifteen (15) collated and stapled sets of application documents, three (3) sets of which shall include plans that are full-size.
- b. For design review: nineteen (19) collated and stapled sets of application documents, three (3) sets of which shall include plans that are full-size.
- c. For final plan review: nineteen (19) collated and stapled sets of application documents, three (3) sets of which shall include plans that are full-size.

2. Content:

- a. Certification, dated within six (6) months, of a currently valid boundary survey by a land surveyor licensed to practice in New Hampshire. The perimeter boundaries of the lot or lots on which the project is located, including compass bearings, distances, and lot areas;
- b. Existing and proposed grades, including topographic contours at intervals not exceeding five (5) feet;

- c. The location of water resources, other significant natural features, and man-made features including, but not limited to, existing roads, structures, and man-made drainage features. The plan shall also indicate those natural and manmade features which are to be removed, retained or altered;
- d. The 100-year flood elevation, floodway and floodplain limit shall be included where applicable;
- e. The use of abutting properties within one hundred (100) feet of the site boundary; roads, streets, and driveways within two hundred (200) feet of the site boundary, and trail easements of abutting properties within five hundred (500) feet of the site boundary;
- f. All legal rights of ways and easements;
- g. The shape, size, and location of all existing and proposed structures, including typical elevations;
- h. The use of all rooms and areas;
- i. Proposed streets, driveways, parking spaces, and sidewalks, with indication of direction of travel, the inside radii of all curves, the width of the traveled way of all streets, driveways and sidewalks, and the total number of parking spaces and handicapped parking spaces;
- j. A circulation plan of the interior of the lot showing provisions for both vehicle and pedestrian circulation;
- k. All areas designated or intended for loading and unloading passenger or freight deliveries;
- l. Fire lanes, fire hydrants, and emergency access;
- m. The size and location of all existing and proposed public and private utilities;
- n. The location of any vents (intake or exhaust) and nature thereof (for example: emergency generator exhaust, lab waste pipe vent, etc., building ventilation supply air areaway, etc.);
- o. Mechanical equipment located exterior to, or on top of, any structures such as air handlers, generators, chillers, etc;
- p. A plan for exterior lighting and signs;
- q. Landscaping plan indicating plantings to be installed and natural cover to be retained. The plan shall specify in detail the size and types of shrubs, plants, caliber of trees, etc. Such plan shall also show the proposed landscaping and natural cover of the perimeter of the site including all sizes and types of trees, screens, fences, and walls and natural cover to be retained (See Article IX.B.3);
- r. The zoning designation and dimensional requirements applicable to the site under the Hanover Zoning Ordinance;
- s. The following zoning information indicating the zone designation, tax map and lot number and the following:
  - (1) Area of lot;
  - (2) Location and gross area of existing and proposed buildings;
  - (3) Off-street parking spaces;
  - (4) Handicap/Accessible spaces;
  - (5) Loading spaces;
  - (6) Height and number of stories of existing and proposed buildings, with indication of height from finished grade to highest elevation of building and height of any towers, spires, chimneys, penthouses, or other similar rooftop structures; and
  - (7) Front, side and rear setbacks;
- t. Plans for snow removal and storage;
- u. Paving, grading and drainage plans including but not limited to walks, steps, curbing and

- drainage structures;
- v. All surface and subsurface storm drainage facilities, including town storm drainage facilities located immediately adjacent to the site;
  - w. An estimated timetable for construction and completion of buildings, parking facilities, and landscaping;
  - x. A copy of the approval(s) for any required special exception or variance for the proposed project;
  - y. The Planning Board may require such additional information as may be reasonably necessary for the purposes of these Site Plan Regulations. In the event additional information is so required, and if the Planning Board's request is not made to the applicant prior to the public hearing, the Planning Board shall adjourn the public hearing to a specified date; and
  - z. Contents specific to review phases:
    - (1) The application for design review and, if deemed necessary by the Planning Board, the application for final plan review shall fully address all comments and recommendations made by town staff at the staff evaluation meeting;
    - (2) The application for final plan review shall contain a road and utility plan acceptable to and signed by the Director of Public Works. This road and utility plan shall be developed by the applicant with input from the Director of Public Works;
    - (3) The application for final plan review shall fully address, to the satisfaction of the Planning Board, all comments and recommendations that were made by the Board at the design review hearings and reflected in the Board's design review action.
- C. Applications for Minor Projects Reviewed by the Minor Projects Review Committee
- In addition to the documents set forth in Article VIII.A above, all applications for minor projects subject to review by the Minor Projects Review Committee shall include:
- 1. Number and Format:

Seven (7) collated and stapled sets of application documents:

    - a. Plans and plan notes shall be drawn at a scale not smaller than 1"=40', on sheets not smaller than 11"x17" or larger than 23"x36", with font size not less than six (6) point, judged by the Senior Planner to be legible, and contain a north arrow, bar scale, original date and dates and descriptions of revisions.
    - b. Other documents shall be typed or printed on 8.5"x11.0" paper, double-sided.
  - 2. Content:

Plans will be sufficiently accurate and detailed so as to:

    - a. Indicate the site location within Hanover, the address and zoning classification of the subject property, and the uses of adjoining properties;
    - b. Describe the size, shape, and use of the subject property, together with relevant information about existing site topography, drainage, hydrologic features, vegetation, and other natural features, and about proposed changes to these;
    - c. Show the size, dimensions, location, and height of existing and proposed structures, expansions to existing structures, or other improvements, including landscaping, parking areas, ramps, walkways, driveways, lighting fixtures, signs, stormwater control devices, exterior waste receptacles, exterior equipment, utilities, solar panels, wind generators, condensers, transformers, or other;
    - d. Demonstrate conformity with the standards and requirements for proposed developments set forth in Article IX; and
    - e. Demonstrate full compliance with the Hanover Zoning Ordinance, including proposed height

and setbacks, of the proposed improvements or changes.

## **ARTICLE IX. STANDARDS AND REQUIREMENTS FOR PROPOSED DEVELOPMENTS**

The Reviewing Authority may approve a proposed project, including a minor project plan and a final site plan, only upon determination that the following requirements have been met:

### **A. Site Characteristics, and General Considerations and Requirements**

#### **1. Site Characteristics:**

The development shall conform to the extent appropriate to the natural topography of the site. Site clearing shall be kept to the minimum required for the construction of buildings and improvements, taking into consideration the need for pedestrian and vehicular safety and the need for light and air. Natural cover shall be retained to supplement required landscaping to the extent possible and reasonable. Landscaping shall be provided in all projects and should be in keeping with the character of the area where the site is located, the purpose of the development, and the location of buildings, and improvements.

#### **2. General Considerations:**

In its review of the final site plan, the Planning Board shall assess:

- a. The character of the land proposed for development;
- b. Conformance with the Hanover Master Plan and local ordinances;
- c. The likely impact upon the abutters, neighborhood and others, public infrastructure, town services and fiscal health, and natural and cultural resources on the property and abutting properties;
- d. The adequacy of drainage and likelihood of flooding on the property or that of another;
- e. The possible impacts on the quality of groundwater;
- f. The extent to which the project guards against undesirable and preventable elements of pollution such as noise, smoke, soot, particulates or any other discharge into the environment that might prove harmful to persons, structures or adjacent properties;
- g. The adequacy of fire safety, prevention, and control;
- h. The relationship of the project to the harmonious and aesthetically pleasing development of the town and its environs;
- i. The provision of open spaces and green spaces of adequate proportions;
- j. The proper arrangement and coordination of streets within the site in relation to existing or planned streets; and
- k. The suitability of streets of sufficient width to accommodate existing and prospective traffic, to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, which shall be coordinated so as to compose a convenient system.

#### **3. General Requirements:**

- a. The site shall be of such a character that it can be used safely for the construction and installation of the improvements proposed by the applicant without excessive grades, inadequate drainage, and other hazardous conditions. If the applicant has obtained a special exception from the Zoning Board of Adjustment (“ZBA”), and the ZBA has specifically considered, made findings and included in its decision the character of the site and a review of excessive grades, inadequate drainage and/or hazardous conditions, the Planning Board shall take such decision into consideration in applying the within standard.
- b. The plan shall provide for the safe and attractive development of the site and guard against

such conditions as would involve danger or injury to health, safety, and welfare.

- (1) Smoke, soot, particulates or other discharge into the air shall not exceed the levels established under the State Ambient Air Quality Standards.
- (2) Noise at property boundaries shall not exceed ambient levels except for short periods of time.

## B. Specific Requirements

### 1. Requirements for Trash Container Rooms or Enclosures:

All new buildings and expansions or changes of use of existing buildings that require site plan review, shall provide for a trash container room within the building or a trash container enclosure outside the building. The trash container room or enclosure shall be constructed according to the following provisions:

- a. Buildings located less than ten (10) feet from the side lot line shall include a trash container room for the purpose of housing trash containers.
    - (1) The trash container room shall be located only in the rear or side of the building and shall be easily accessible for servicing.
    - (2) The trash container room shall be fully enclosed and include lockable doors;
  - b. Buildings located ten (10) feet or more from the side lot line shall include a trash container room as required above, or a trash container enclosure according to the following:
    - (1) The trash container enclosure may not be located in the front yard;
    - (2) The trash container enclosure shall be placed at least five (5) feet from any property line;
    - (3) The trash container enclosure shall contain:
      - (a) A prepared surface such as hardpack, concrete, asphalt or pavers; and
      - (b) Enclosure walls as appropriate;
    - (4) A paved surface shall be provided between the trash container enclosure and the street from which the container will be serviced;
    - (5) Containers and enclosures shall be located so as to allow ease of access for collection trucks. No parking or other obstruction shall be permitted in the access area for enclosures. Trash collection trucks shall not block streets while servicing containers; and
    - (6) Containers and enclosures shall be situated so that they do not cause nuisance or offense to abutters;
  - c. Businesses producing special waste, such as organic matter, shall provide:
    - (1) Sealed containers within the enclosures, or
    - (2) Containers as required by applicable regulations;
  - d. Hazardous or noxious wastes must be contained and disposed in a safe and sanitary manner, in accordance with applicable regulations;
  - e. For storage of recyclable materials, the enclosure area shall be large enough to accommodate the materials and their containers. Plans for disposing of recyclable materials shall be reviewed by the appropriate town offices; and
  - f. Trash container enclosures may be shared upon evidence of the abutters agreement to do so. The enclosures shall comply with the requirements above.
  - g. The Planning Board may, at its discretion, approve an alternative design that accomplishes the objectives set forth in this section.
- ### 2. Requirements for Exterior Lighting and Signs:
- a. Lighting under this section includes street and driveway lighting, sidewalk and walkway lighting, parking area lighting, floodlighting, sports lighting, and all lighting in which the

- light source is located either externally to a structure or a building, or which lights an area or object that is not within the same structure or building as the light source. All light sources including poles, standards, hangers, light fixtures, reflectors, shields and lamps (including their wattage, color, and initial lumen output), shall be listed and located on a plan which shall be submitted to the Board for approval. The Board will require additions, deletions or changes to the submitted plans if appropriate for safety or aesthetic reasons.
- (1) Lighting will be provided as appropriate at street intersections, along walkways, at entrances, between buildings, and in parking areas.
  - (2) The maximum height of standards, poles, or fixtures shall not exceed fifteen (15) feet unless expressly approved by the Board.
  - (3) To the extent possible, the design of standards, poles, hangers, fixtures, and lamps (including their wattage, color and initial lumen output) shall be compatible with similar units in the vicinity of a new installation, unless expressly approved by the Board.
  - (4) All street light fixtures and parking light fixtures shall be of the sharp cut-off type so as to direct downward all of the light from the fixture.
  - (5) All lighting, including sign lighting shall be designed, placed, shielded or arranged so as to direct light only at the building or ground of the property and shall minimize glare, light, or reflection of light upon adjacent areas, sky, buildings or streets. Light spill on adjacent areas is not permitted. Special attention shall be paid to ensure that glare does not interfere with the vision of motorists.
  - (6) Floodlighting equipment should be shielded from view by trees, rocks, buildings, structures, shrubbery, etc.
  - (7) Except for holiday lighting, the use of “flashing” lights is not allowed. “Flashing” lighting is any lighting in which the artificial light is not maintained stationary or constant in position, intensity, and/or color at all times. Any moving and/or turning illuminated sign shall be considered a “flashing” light.
  - (8) All permanent outdoor sports lighting, including scoreboards, must be approved by the Board.
  - (9) Exterior lighting shall be installed and operated in such a way that adjacent residential uses are suitably protected and shall conform to Section 320 of the Hanover Zoning Ordinance.
- b. Signs shall be illuminated only by continuous indirect white light, with light sources so placed that they will not constitute a hazard to street or highway driving from the glare (See also Sections 317.1 D and E of the Zoning Ordinance).
3. Landscaping and Screening Requirements:
- a. Objectives:

The goals of these landscaping and screening requirements are: to enhance the visual appearance of the town; to maintain and protect property values; to provide a better transition between and improve the compatibility of abutting and nearby land uses, particularly as concerns residential neighborhoods and adjacent to or in the vicinity of commercial or business districts; to provide, within and on the perimeter of parking areas, landscaping that facilitates safe movement of pedestrians and vehicles, breaks up large areas of impervious surfaces, and provides shade; to ensure throughout the town, appropriate barriers to and relief from traffic, noise, heat, glare, and odor; to improve air quality; and to promote energy

efficiency and conservation in site design, building construction, and landscaping.

b. General Requirements for Landscaping:

(1) Energy Conservation and Efficiency:

Earth berms and plant materials should be used where practical to assist in energy conservation and efficiency. Suggested alternatives are as follows: use earth berms and dense evergreens to protect buildings and exterior use spaces against winter winds; use deciduous trees to provide summer shade and allow winter sun; and use deciduous vines on fences, trellises and arbors to provide summer shade. All plant material shall be hardy for Zone 4 or less;

(2) Maintenance:

The property owner shall be responsible for maintaining all landscaping within the boundaries of the property in good condition so as to present a healthy, neat, and orderly appearance. The property owner shall replace any unhealthy or dead plant materials required by the approved landscaping and screening plan. Such plant materials shall be replaced within the ensuing year by the property owner. Non-living durable material shall likewise be maintained in attractive condition;

(3) Erosion Control:

(a) Graded areas shall be re-vegetated to ensure erosion control by seeding, mulching and fertilizing. Disturbed areas shall be planted with suitable plant materials.

(b) Netting shall be provided on slopes exceeding 2:1 while ground cover is being established;

(4) Existing Plant Material Credit:

Where healthy plant material exists on the site prior to development and provision is made to preserve that plant material on a permanent basis, credit may be given for such preserved natural plant materials against these landscaping requirements when such planting meet the intent and purpose of said requirements;

(5) Sight Obscuring Plantings Prohibited:

All planting, fences, and/or walks necessitated by these landscaping and screening requirements must conform with the street intersection sight obstruction requirements provided in Section 313 of the Hanover Zoning Ordinance. All plant materials must be pruned as necessary to comply with Section 313 of the Hanover Zoning Ordinance;

(6) Encroachment on Landscaped Areas:

The storage, display or parking of vehicles, boats, manufactured housing, travel trailers, or construction equipment within landscaped areas shown as such on the approved landscape or site plan is expressly prohibited, except during construction;

(7) Protection of Landscaping:

Landscaped areas provided within and adjacent to all parking and maneuvering areas shall be protected through the installation of either curbing or wheel stops. In the Business Zoning District (B), Service Business and Limited Manufacturing (BM), Institutional (I), and the Office and Laboratory (OL), granite curbing shall be required in all landscaping projects; and

(8) Adjustments to Landscaping and Screening Requirements:

Minor revisions to planting plans shall be approved by the appropriate town staff if there is no reduction in the quality of plant material or no significant change in size or location of plant materials, and if the new plants are of the same general category (i.e., shade,

ornamental, or evergreen trees) and have the same general design characteristics (mature height, crown spread) as the materials being replaced. Proposed materials must also be compatible with the area to ensure healthy tree growth. If these criteria are not fulfilled, changes to approved plans must be resubmitted to the Planning Board for review.

c. Landscaping of Parking Areas:

(1) Minimum size:

The minimum size of a parking area that requires landscaping is six (6) spaces.

(2) Landscaping Requirements for the Perimeter of Parking Areas Containing Six or More Spaces:

(a) A landscaped strip at least five (5) feet wide shall be provided on the perimeter adjacent to abutting properties. In the B, BM, I, and OL Zoning Districts where curbing is indicated on the interior boundary of the landscaped strip, curbs shall be granite;

(b) A landscaped strip at least ten (10) feet wide shall be provided on the perimeter of the parking area adjacent to abutting streets. In the B, BM, I, and OL Zoning Districts where curbing is indicated on the interior boundary of the landscaped strip, curbs shall be granite;

(c) Where the perimeter of a parking area containing six (6) or more parking spaces adjoins or is within a residential zoning district such perimeter shall have a minimum landscaped width of fifteen (15) feet;

(d) One (1) tree of at least 2½-inch caliper at six (6) inches above ground shall be provided for at most every thirty-five (35) feet of perimeter;

(e) One (1) or more shrubs at least three (3) feet high at maturity shall be planted singly or in groups, at regular or irregular intervals, so that the average distance between plants is at most fifteen (15) feet. On public rights-of-way or driveway boundaries, the planting shall not exceed forty-two (42) inches in height. When earth berms are used their total height, including plantings, shall be in accordance with these two limits;

(f) In addition to landscaping, the Planning Board may require screening (see IX.B.3.d. below) for parking areas containing six (6) or more parking spaces; and

(g) The Planning Board may at its discretion approve an alternative landscaping design that accomplishes the objectives set forth in this Section.

(3) Landscaping Requirements for the Interior of Parking Areas:

(a) A minimum of five percent (5%) of the interior parking and maneuvering area, that area bounded by all perimeter curbing, shall be landscaped for all parking areas containing six (6) or more spaces;

(b) One tree of a least 2½-inch caliper at six (6) inches above ground shall be provided for each three hundred (300) square feet of landscaped area required in (1) above, or one per each landscaped area that is less than three hundred square (300) feet in size. Additional shrubbery within landscaped areas is recommended;

(c) Each landscaped area or island required above shall be a minimum of twenty five (25) square feet in size with no linear dimension less than five (5) feet including curbs;

(d) The landscaped areas or islands required above shall be dispersed within the parking

lot to provide maximum shading, shall divide parking areas and shall be located so as to guide traffic flow and direction; and

- (e) Graduated requirements for interior landscaping as a percentage of total size of the parking and maneuvering area measured in square feet:

Column I:	Column II:
Size of area available for <u>Parking and landscaping:</u>	Percent of area in Column I that must be designated <u>in the plan as landscaped:</u>
Up to 35,000 square feet	5%
35,000 - 135~000 square feet	8%
Over 135,000 square feet	10%

d. Screening and Buffering Requirements and Methods:

(1) Screening Requirements:

In all districts, in addition to landscaping, (see Section IX.B.3.c above) screening may be required to eliminate or reduce visual impacts, noise, odor, dust, and air pollution. Special consideration will be given to the buffering and screening between residential uses and commercial or industrial uses, and in visually sensitive areas. Among the areas and uses that will require screening are the following:

- (a) Service areas and facilities, including garbage and waste disposal containers, recycling bins, and loading areas (see Section IX.B.1);
- (b) Outdoor storage areas;
- (c) On-grade and above-grade electrical and mechanical equipment such as transformers, heat pumps, air conditioners, and fuel tanks;
- (d) Commercial or industrial uses abutting other land uses in a residential district; and
- (e) The Planning Board may at its discretion require screening for parking lots containing six (6) or more contiguous parking spaces.

(2) Screening Methods and Materials:

Screening may be accomplished by the use of suitable sight-obscuring plant materials, earth berms, walls, fences, building parapets, proper siting of disruptive elements, building placement or other design techniques. The decision by the Planning Board on which screening technique is appropriate shall be governed by the screening height and density required in each situation. Example of alternatives for adequate screening include:

- (a) Berms:
  - Lawn and low-growing evergreen and/or deciduous shrubs covering the top and sides of the berm may be provided.
- (b) Walls and Fences:
  - (i) Walls and fences shall be erected where required for privacy, screening, separation, security, erosion control or to serve other necessary and reasonable functions.
  - (ii) The design and materials used shall be functional and compatible with existing and proposed site architecture.
  - (iii) No fence or wall shall be so constructed or installed as to constitute a hazard to

traffic or safety.

- (c) The Planning Board may at its discretion approve an alternative screening design that accomplishes the screening and landscape objectives set forth in this section.

e. Submittal Requirements:

A separate landscaping and screening plan shall be submitted including but not limited to the following:

- (1) Location, general type, size, and quality of existing vegetation;
- (2) Existing vegetation to be saved;
- (3) Methods and details for protecting existing vegetation during construction and an erosion control plan;
- (4) Locations and labels for all proposed plants;
- (5) Plant lists or schedules with the botanical and common name showing the required and proposed quantities, spacing, and size of all proposed landscape material at the time of planting;
- (6) Location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights, and courtyards, or paved areas; and
- (7) Planting and installation details as necessary to ensure conformance with all required standards.

f. Screening and Landscaping Definitions:

(1) Berm:

An earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise.

(2) Buffer:

A combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen incompatible land uses from each other.

(3) Landscaping:

Landscaping shall consist of any of the following or combination thereof: living material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees, and non-living durable material commonly used in landscaping, such as but not limited to rocks, pebbles, sand, walls or fences but excluding paving.

(4) Screen:

A method of reducing the impact of noise, air pollution and unsightly visual intrusions, using less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

4. Coordination of Streets, Parking, Loading, and Safety:

- a. The public highways providing access to the site shall be sufficient and adequate for the safety of vehicles, pedestrians and bicycles. This will include not only the public highways on which the site fronts, but also public highways which constitute the main traffic arteries which must be used by traffic to and from the site.
- b. The traffic patterns on and at the site shall be coordinated so as to compose a convenient system.

- c. There shall be proper arrangement of streets within the site and in relation to other existing and planned streets (or with the features of the official map of town) such that the proposed development of the site shall not endanger public safety or welfare and shall promote public convenience and prosperity.
  - d. There shall be adequate traffic access to and from town streets to ensure the safety of vehicles, pedestrians and bicycles.
  - e. Site plans for multi-family structures shall make adequate provision for the on-site recreational needs of the residents of the proposed development. The plan shall be designed to minimize the likelihood that public safety will be endangered by the extensive use of internal roads and parking areas for recreation.
  - f. There shall be adequate access from suitably located existing public streets of sufficient width to afford adequate light, air, and access to each structure for fire, police, and medical emergency vehicles and personnel. Adequacy shall be established by approval in writing from the town fire and police departments or as indicated in the report of the Planning Staff.
  - g. The Board at its discretion may require that parking areas and areas for internal circulation on the site shall be physically delineated (for instance, by curbing) so as to protect adjacent grass and plantings.
  - h. Parking spaces shall be a minimum of 8x18 feet. Aisles between parallel rows of spaces shall be a minimum of twenty-four (24) feet apart with twenty-six (26) feet preferred. Parking spaces for disabled people require an adjacent access aisle with a minimum width of five (5) feet.
  - i. All loading areas shall be designed so as not to interfere with other planned circulation on the site and so as to provide adequate space and facilities.
  - j. No construction, contractors' or project employees' vehicles shall be parked in any public parking space.
5. Water Drainage:  
Provision shall be made for handling water drainage on the site to prevent the flooding of the site or that of another abutting property.
6. Groundwater Protection:  
The quality of ground water shall not be adversely affected by the proposed development. This shall be established by the applicant showing that the proposed development will not violate the rules and regulations of the Water Supply and Pollution Control Commission with regard to ground water.
7. Provisions shall be made for snow storage or removal.
8. Upgrading Off-Site Public Facilities:  
The Board may require as a condition precedent to the approval of a site plan, the extent to which, and the manner in which existing public streets providing access to the site shall be upgraded and improved as a result of the additional burdens placed on such streets and sidewalks by the proposed use of the site, including water, sewer and other utility mains, piping, connections or other facilities. The applicant's share of such costs for off-site improvements shall be allocated in a manner consistent with applicable New Hampshire law.

9. Exterior Seating at Eating and Drinking Establishments:

The intent is to permit accessory outdoor seating for eating and/or drinking for up to 50% of the establishment's allowed indoor seating consisting only of chairs, tables and umbrellas without any additional parking requirement. The following requirements must be met:

- a. The seating must be entirely on privately owned or leased property and outside the public right of way. The seating shall not require or be dependent upon any new structures not otherwise permitted in the Zoning Ordinance. No outdoor electrical lighting, space heating or food preparation shall be allowed in the accessory outdoor seating area;
- b. The additional outdoor seating shall be arranged in such a way as to be safe under all conditions for pedestrian and vehicular travel. It shall not inhibit the free circulation on public sidewalks or safe egress from buildings; and
- c. The property owner shall be responsible for maintaining the outdoor seating area in a clean, sanitary, and orderly manner.

**ARTICLE X. COMPLIANCE WITH THE NOTICE OF ACTION**

**A. Period for Construction and Completion of the Work**

The applicant shall construct and complete all structures and landscaping required in the Notice of Action prior to the issuance of a Certificate of Compliance, and within the time limits specified in the Notice of Action. Where no time limits are specified, the period shall be within three (3) years from the date of acknowledgment and acceptance of the Notice of Action. Upon written request of the applicant and after a public hearing, when the Reviewing Authority finds that conditions beyond control of the applicant prevent compliance within the three (3) year period or the time limit specified in the Notice of Action, the Board may grant additional time for compliance with the Notice of Action.

A Certificate of Compliance shall be issued by the Director of Planning and Zoning under the Site Plan Regulations when the applicant has complied with all requirements of the Notice of Action. The applicant shall not use or occupy the site, or occupy any building or unit therein in a multi-building development, until the Certificate of Compliance has been issued. The Planning and Zoning Department shall not issue a Certificate of Occupancy under the Town Building Code, as provided in RSA 676:13, for any building, on a site plan which does not comply with the Notice of Action on the approved site plan. Any requirement of the Notice of Action to be performed in the future for which security has been provided under Article X will satisfy the condition for the issuance of the Certificate of Compliance.

**B. Security**

**1. Security for Work to Be Performed:**

When the Reviewing Authority agrees to accept security for work to be performed, the applicant shall submit security providing for and securing to the Town the completion of the actual construction and installation of all improvements and utilities within three (3) years from the date of the Notice of Action. The security shall be in an amount determined by the Reviewing Authority in consultation with the Director of Public Works, and shall be in a form satisfactory to the Director of Planning and Zoning and to Town Counsel. Such determination shall occur during a duly noticed public hearing. The applicant shall pay all notice costs and other applicable costs and fees associated with the public hearing.

Security may not be accepted for incomplete streets or utilities unless explicitly permitted by the Reviewing Authority in its Notice of Action approving the site plan or at a subsequent public hearing.

2. Work Which Cannot Be Completed Because of the Season of the Year:

The Reviewing Authority may require the applicant to provide security as a condition of the issuance of a Certificate of Compliance, for work which cannot be completed because of the time of the year, for example, landscaping due to cold weather.

3. Amount of Security:

The Reviewing Authority shall determine the amount of security based on the estimated cost of completing the work or of constructing, repairing or replacing landscaping, structures or Town facilities. The applicant may be required to pay a surcharge to cover any costs of inflation.

4. Form of Security:

The applicant shall sign and deliver security in the form approved by the Director of Planning and Zoning and Town Counsel. The security shall be an irrevocable letter of credit drawn on a New Hampshire bank or cash. It is intended that all such security shall be as close to cash as possible. The Director of Planning and Zoning may require satisfactory evidence of financial ability of any financial institution to pay security.

5. Reduction of Security:

The security may be reduced during the course of construction of the work by the Director of Planning and Zoning in such amount as the Director of Planning and Zoning deems to be in the best interests of the Town, but on the condition that the remaining security shall be sufficient to complete all remaining work.

6. Release of Security:

The security shall be released when the Director of Planning and Zoning is satisfied that the applicant has complied with all requirements set forth in the Notice of Action.

7. Default:

If the applicant has not complied within the period of time specified in the security with the requirements of the Notice of Action, the town shall enforce its rights under any form of security. In the event that the town is required to take any legal action to use the security to enforce the Notice of Action or conditions of approval, or to cause the project site to be completed as shown on the approved plan or to be completed according to town standards, the town shall be entitled to have reasonable attorney's fees paid by the applicant and awarded by the Court.

C. Changes and Alterations in an Approved Site Plan

The applicant shall implement the project in accordance with the plans and documents as approved by the Reviewing Authority. If at any time before or during the construction of the site plan unforeseen conditions make it necessary or desirable for the applicant to modify the location or design of any of the required work the Reviewing Authority may, after a duly noticed hearing, authorize such modifications which shall be set forth in writing and signed by the Chair of the Reviewing Authority.

Field changes may be made during construction provided that the Senior Planner determines that such revisions are of such a limited nature that there would not be a significant impact either on or off the site.

D. Certification of Compliance

The town shall be notified when the applicant believes all requirements of the Notice of Action have been met. Upon confirmation by the appropriate town department the Director of Planning and Zoning shall issue the Certificate of Compliance. The applicant shall certify that the location of site features and the layout of the line and grade of all public improvements are in accordance with the approved site plan.

E. As-Built Plans

The applicant shall submit to the Planning and Zoning Department a detailed and accurate “as-built” plan (three (3) full-size paper prints, and one (1) electronic file in a format and with content acceptable to the Director of Public Works) of the site plan denoting all utilities accurate to within six (6) inches of actual location. There shall be separate layers for each type of utility, grading, buildings, landscaping, and unique site features. Engineering field notes of utility depths, crossings, and measurements shall be included.

F. Correction of Deficiencies

If the Director of Planning and Zoning determines that any of the required work has not been completed in accordance with the plans and specifications as filed by the applicant and as required by the town, the Director of Planning and Zoning shall notify the applicant in writing of any such deficiencies. The applicant shall rectify all deficiencies at the expense of the applicant. If the applicant does not substantially rectify all deficiencies within a reasonable time as determined by the town, the town shall take all necessary action to protect and preserve the town’s rights and interests including suspension or revocation of final site plan approval. In the event of legal action, the town shall be entitled to have reasonable attorney’s fees paid by the applicant and awarded by the court.

G. Guarantee of Installation of Improvements

For a period of two (2) years after completion of all work or two (2) years after the correction of all deficiencies as described above, whichever occurs last, if the Director of Planning and Zoning determines that the work has failed for any reason or does not meet the specifications as filed by the applicant and as required by the town the Director of Planning and Zoning shall notify the applicant in writing of such failure and the applicant shall rectify all failures at the expense of the applicant. If the applicant does not substantially rectify all deficiencies within a reasonable time as determined by the town, the Director of Planning and Zoning shall take all necessary action to protect and preserve the town rights and interests. In the event of legal action, the town shall be entitled to have reasonable attorney's fees paid by the applicant and awarded by the Court.

## **ARTICLE XI. RELAXATION OR WAIVER OF REQUIREMENTS OR STANDARDS**

A. Relaxation or Waiver of Submission Requirements

Upon written request of the applicant, the Planning Board may relax or waive any of the submission requirements set forth in Article VIII in such cases where, in the opinion of the Board, such information is not needed to make an informed decision about the request for site plan review and

where strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of these regulations.

**B. Relaxation or Waiver of Design Standards or General Requirements**

Upon written request of the applicant, the Planning Board may relax or waive any of the design standards or general requirements set forth in Article IX in such cases where, in the opinion of the Board, where strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of these regulations.

**ARTICLE XII. SEPARABILITY**

If any provision of these Site Plan Regulations shall be held to be invalid for any reason by any court, such holding shall not invalidate in any manner any other provisions contained herein.

**ARTICLE XIII. FINES AND PENALTIES**

Any violation of these Site Plan Regulations may be punishable as provided under any applicable law, ordinance or regulation, including RSA 676, which statute includes a civil fine and a criminal penalty of a misdemeanor if the violation is committed by a natural person or a felony if the violation is committed by any other person. Enforcement may also include the institution of injunction, mandamus, abatement, or other appropriate action or proceeding to prevent or enjoin or abate or remove any unlawful erection, construction, alteration or reconstruction.

**APPENDIX**

New Hampshire Statutes Referenced in these Regulations:

**36:55 Definition.**

In this subdivision “development of regional impact” means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:

- I. Relative size or number of dwelling units as compared with existing stock.
- II. Proximity to the borders of a neighboring community.
- III. Transportation networks.
- IV. Anticipated emissions such as light, noise, smoke, odors, or particles.
- V. Proximity to aquifers or surface waters which transcend municipal boundaries.
- VI. Shared facilities such as schools and solid waste disposal facilities.

**36:56 Review Required.**

- I. A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.
- II. Each regional planning commission may, with public participation following the public posting of notice of the intent to develop guidelines, including notice published in a newspaper of general circulation in the planning region, develop guidelines to assist the local land use boards in its planning region in their determinations whether or not a development has a potential regional impact. The regional planning commission may update the guidelines as needed and provide them, as voted by the regional planning commissioners, to all municipalities in the planning region.

**36:57 Procedure.**

- I. Upon determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony.
- II. Within 144 hours of reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. The local land use board shall, at the same time, submit an initial set of plans to the regional planning commission, the cost of which shall be borne by the applicant.
- III. At least 14 days prior to public hearing, the local land use board shall notify, by certified mail, all affected municipalities and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the development.
- IV. Notwithstanding the foregoing, when the building inspector determines that a use or structure proposed in a building permit application will have the potential for regional impact and no such determination has previously been made by another local land use board, he or she shall notify the local governing body. The building inspector shall also notify by certified mail the regional planning commission and the affected municipalities,

who shall be provided 30 days to submit comment to the local governing body and the building inspector prior to the issuance of the building permit.

**477:45 Definitions.**

- I. A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area, including improvements thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space or forest use, or in any other use or condition consistent with the protection of environmental quality.
- II. A preservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a structure or site historically significant for its architecture, archaeology or associations, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the structure or site or in any order of taking, which right, limitation or obligation is appropriate to the preservation or restoration of such structure or site.
- III. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit construction or placement of buildings except those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; excavation, dredging or removal of loam, sod, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or other acts or uses detrimental to such retention of the land for agricultural use.

**672:3 Abutter.**

"Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

**674:43 Power to Review Site Plans.**

- I. A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board

has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site.

- II. The ordinance or resolution which authorizes the planning board to review site plans shall make it the duty of the city clerk, town clerk, village district clerk or other appropriate recording official to file with the register of deeds of the county in which the municipality is situated a certificate of notice showing that the planning board has been so authorized, giving the date of such authorization.
  
- III. The local legislative body of a municipality may by ordinance or resolution authorize the planning board to delegate its site review powers and duties in regard to minor site plans to a committee of technically qualified administrators chosen by the planning board from the departments of public works, engineering, community development, planning, or other similar departments in the municipality. The local legislative body may further stipulate that the committee members be residents of the municipality. This special site review committee may have final authority to approve or disapprove site plans reviewed by it, unless the local legislative body deems that final approval shall rest with the planning board, provided that the decision of the committee may be appealed to the full planning board so long as notice of appeal is filed within 20 days of the committee's decision. All provisions of RSA 676:4 shall apply to actions of the special site review committee, except that such a committee shall act to approve or disapprove within 60 days after submissions of applications, subject to extension or waiver as provided in RSA 676:4, I(f). If a municipality authorizes a site review committee in accordance with this paragraph, the planning board shall adopt or amend its regulations specifying application, acceptance and approval procedures and defining what size and kind of site plans may be reviewed by the site review committee prior to authorizing the committee.
  
- IV. The local legislative body of a municipality may by ordinance or resolution establish thresholds based on the size of a project or a tract below which site plan review shall not be required. If a municipality establishes a size limit below which site plan review shall not be required, the planning board shall adopt or amend its regulations to clearly reflect that threshold. Nothing in this paragraph shall preclude the planning board from establishing such thresholds in the absence of action by the legislative body.

**674:44 Site Plan Review Regulations.**

- I. Before the planning board exercises its powers under RSA 674:43, it shall adopt site plan review regulations according to the procedures required by RSA 675:6.
  
- II. The site plan review regulations which the planning board adopts may:
  - (a) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:
    - (1) Inadequate drainage or conditions conducive to flooding of the property or that of another;
    - (2) Inadequate protection for the quality of groundwater;
    - (3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and
    - (4) Inadequate provision for fire safety, prevention, and control.
  - (b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.

- (c) Provide for open spaces and green spaces of adequate proportions.
- (d) Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;
- (e) Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;
- (f) Require, in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the planning board for approval;
- (g) Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health;
- (h) Include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity;
- (i) Require innovative land use controls on lands when supported by the master plan; and
- (j) Require preliminary review of site plans.

III. The site plan review regulations which the planning board adopts shall:

- (a) Provide the procedures which the board shall follow in reviewing site plans;
- (b) Define the purposes of site plan review;
- (c) Specify the general standards and requirements with which the proposed development shall comply, including appropriate reference to accepted codes and standards for construction;
- (d) Include provisions for guarantees of performance, including bonds or other security; and
- (e) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:
  - (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or
  - (2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

IV. The site plan review regulations of the planning board may stipulate, as a condition precedent to the approval of the plat, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The regulations or practice of the planning board:

- (a) May provide for the conditional approval of the plat before such improvements and installations have been constructed, but any such conditional approval shall not be entered upon that plat.
- (b) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable letter of credit, or other type or types of security as shall be specified in the site plan review regulations. The planning board shall have the discretion to prescribe the type and amount of the bond or other security, require satisfactory evidence of the financial ability of any surety or financial institution to pay such bond or other type of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

V. The planning board may, as part of its site plan review regulations, require an applicant to pay all costs for

notification of abutters and may provide for the assessment of reasonable fees to cover the board's administrative expenses and costs of special investigation and the review of documents and other matters which may be required by particular applications.

**676:4 Board's Procedures on Plats.**

- I. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:
- (a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.
  - (b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). The applicant shall file the application with the board or its agent at least 15 days prior to the meeting at which the application will be accepted. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board. Since construction of any structure near streams or rivers downstream of a dam can increase the hazard classification of the dam established by the department of environmental services, the application shall identify the nearest dam upstream and include the name and address of the dam owners.
  - (c) (1) The board shall, at the next regular meeting or within 30 days following the delivery of the application, for which notice can be given in accordance with the requirements of subparagraph (b), determine if a submitted application is complete according to the board's regulation and shall vote upon its acceptance. Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete. Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). Upon failure of the board to approve, conditionally approve, or disapprove the application, the selectmen or city council shall, upon request of the applicant, immediately issue an order directing the board to act on the application within 30 days. If the planning board does not act on the application within that 30-day time period, then within 40 days of the issuance of the order, the selectmen or city council shall certify on the applicant's application that the plat is approved pursuant to this paragraph, unless within those 40 days the selectmen or city council has identified in writing some specific subdivision regulation or zoning or other ordinance provision with which the application does not comply. Such a certification, citing this

- paragraph, shall constitute final approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.
- (2) Failure of the selectmen or city council to issue an order to the planning board under subparagraph (1), or to certify approval of the plat upon the planning board's failure to comply with the order, shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application if the court determines that the proposal complies with existing subdivision regulations and zoning or other ordinances. If the court determines that the failure of the selectmen or the city council to act was not justified, the court may order the municipality to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order.
- (d) Notice to the applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, upstream dam owners, the department of environmental services dam bureau, and the public shall be given as follows: The planning board shall notify the abutters, the applicant, holders of conservation, preservation, or agricultural preservation restrictions, and every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board by certified mail of the date upon which the application will be formally submitted to the board. For those proposals near rivers and streams and downstream of a dam, the planning board shall also notify the owners of the upstream dam and the department of environmental services dam bureau by certified mail. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication as required by the subdivision regulations. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. For any public hearing on the application, the same notice as required for notice of submission of the application shall be given. If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the planning board to terminate further consideration and to disapprove the plat without a public hearing.
- (e) Except as provided in this section, no application may be denied or approved without a public hearing on the application. At the hearing, any applicant, abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the subdivision regulations or the board at each hearing. Public hearings shall not be required, unless specified by the subdivision regulations, when the board is considering or acting upon:
- (1) Minor lot line adjustments or boundary agreements which do not create buildable lots, except that notice to abutters and holders of conservation, preservation, or agricultural preservation restrictions shall be given prior to approval of the application in accordance with subparagraph (d) and any abutter or holder of conservation, preservation, or agricultural preservation restrictions may be heard on the application upon request; or
- (2) Disapprovals of applications based upon failure of the applicant to supply information required by the regulations, including identification of abutters or holders of conservation, preservation, or agricultural preservation restrictions; or failure to meet reasonable deadlines established by the board; or failure to pay costs of notice or other fees required by the board.
- (f) The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application. The applicant may waive the requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.

- (g) Reasonable fees in addition to fees for notice under subparagraph (d) may be imposed by the board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications.
- (h) In case of disapproval of any application submitted to the planning board, the ground for such disapproval shall be adequately stated upon the records of the planning board.
- (i) A planning board may grant conditional approval of a plat or application, which approval shall become final without further public hearing, upon certification to the board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Final approval of a plat or application may occur in the foregoing manner only when the conditions are:
  - (1) Minor plan changes whether or not imposed by the board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or
  - (2) Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the board; or
  - (3) Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies.

All other conditions shall require a hearing, and notice as provided in subparagraph I(d), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session were made known at the prior hearing.

- II. A planning board may provide for preliminary review of applications and plats by specific regulations subject to the following:
  - (a) Preliminary conceptual consultation phase. The regulations shall define the limits of preliminary conceptual consultation which shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan. Such discussion may occur without the necessity of giving formal public notice as required under subparagraph I(d), but such discussions may occur only at formal meetings of the board.
  - (b) Design review phase. The board or its designee may engage in nonbinding discussions with the applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review phase may proceed only after identification of and notice to abutters, holders of conservation, preservation, or agricultural preservation restrictions, and the general public as required by subparagraph I(d). The board may establish reasonable rules of procedure relating to the design review process, including submission requirements. At a public meeting, the board may determine that the design review process of an application has ended and shall inform the applicant in writing within 10 days of such determination. Statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken.
  - (c) Preliminary review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

- III. A planning board may, by adopting regulations, provide for an expedited review and approval for proposals involving minor subdivisions which create not more than 3 lots for building development purposes or for

proposals which do not involve creation of lots for building development purposes. Such expedited review may allow submission and approval at one or more board meetings, but no application may be approved without the full notice to the abutters, holders of conservation, preservation, or agricultural preservation restrictions, and public required under subparagraph I(d). A hearing, with notice as provided in subparagraph I(d), shall be held if requested by the applicant, abutters, or holders of conservation, preservation, or agricultural preservation restrictions any time prior to approval or disapproval or if the planning board determines to hold a hearing.

- IV. Jurisdiction of the courts to review procedural aspects of planning board decisions and actions shall be limited to consideration of compliance with applicable provisions of the constitution, statutes and regulations. The procedural requirements specified in this section are intended to provide fair and reasonable treatment for all parties and persons. The planning board's procedures shall not be subjected to strict scrutiny for technical compliance. Procedural defects shall result in the reversal of a planning board's actions by judicial action only when such defects create serious impairment of opportunity for notice and participation.

**676:13 Building Permits Restricted.**

- I. The building inspector shall not issue any building or occupancy permit for any proposed construction, remodeling, or maintenance which will not comply with any or all zoning ordinances, building codes, or planning board regulations which are in effect.
- II. If any building inspector is prosecuted for violation of RSA 643:1 and found guilty of issuing any permit contrary to the provisions of this section, it shall be prima facie evidence that the building inspector has knowingly refrained from performing a duty imposed on the building inspector by law.
- III. The building inspector shall adopt a form or set of standards specifying the minimum contents of a completed application for any building permit. Upon the submission of a completed application, the building inspector shall act to approve or deny a building permit within 30 days; provided, however, that nonresidential applications or residential applications encompassing more than 10 dwelling units shall be approved or denied within 60 days.

**676:15 Injunctive Relief.**

In case any building or structure or part thereof is or is proposed to be erected, constructed, altered, or reconstructed, or any land is or is proposed to be used in violation of this title or of any local ordinance, code, or regulation adopted under this title, or of any provision or specification of an application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title, the building inspector or other official with authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title, or the owner of any adjacent or neighboring property who would be specially damaged by such violation may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, alteration, or reconstruction.

**676:17 Fines and Penalties; Second Offense.**

- I. Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any

other person; and shall be subject to a civil penalty of \$275 for the first offense, and \$550 for subsequent offenses, for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. Each day that a violation continues shall be a separate offense.

- II. In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses.
- III. If any violation of a local ordinance, code or regulation, or any violation of a planning board, zoning board of adjustment or building code board of appeals decision, results in the expenditure of public funds by a municipality which are not reimbursed under paragraph II, the court in its discretion may order, as an additional civil penalty, that a violator make restitution to the municipality for such funds so expended.
- IV. The superior court may, upon a petition filed by a municipality and after notice and a preliminary hearing as in the case of prejudgment attachments under RSA 511-A, require an alleged violator to post a bond with the court to secure payment of any penalty or remedy or the performance of any injunctive relief which may be ordered or both. At the hearing, the burden shall be on the municipality to show that there is a strong likelihood that it will prevail on the merits, that the penalties or remedies sought are reasonably likely to be awarded by the court in an amount consistent with the bond sought, and that the bond represents the amount of the projected expense of compliance with the injunctive relief sought.
- V. The building inspector or other local official with the authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title may commence an action under paragraph I either in the district court pursuant to RSA 502-A:11-a, or in the superior court. The prosecuting official in the official's discretion may, prior to or at the time of arraignment, charge the offense as a violation, and in such cases the penalties to be imposed by the court shall be limited to those provided for a violation under RSA 651:2 and the civil penalty provided in subparagraph I(b) of this section. The provisions of this section shall supersede any inconsistent local penalty provision.

#### **677:15 Court Review.**

- I. Any persons aggrieved by any decision of the planning board concerning a plat or subdivision may present to the superior court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the date upon which the board voted to approve or disapprove the application; provided however, that if the petitioner shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the petitioner shall have the right to amend the petition within 30 days after the date on which the written decision was actually filed. This paragraph shall not apply to planning board decisions appealable to the board of adjustment pursuant to RSA 676:5, III. The 30-day time period shall be counted in calendar days beginning with the date following the date upon which the planning board voted to approve or

disapprove the application, in accordance with RSA 21:35.

- II. Upon presentation of such petition, the court may allow a certiorari order directed to the planning board to review such decision and shall prescribe therein the time within which return thereto shall be made and served upon the petitioner's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the order shall stay proceedings upon the decision appealed from. The planning board shall not be required to return the original papers acted upon by it; but it shall be sufficient to return certified or sworn copies thereof, or of such portions thereof as may be called for by such order. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- III. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with the referee's findings of fact and conclusion of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.
- IV. The court shall give any hearing under this section priority on the court calendar.
- V. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable. Costs shall not be allowed against the municipality unless it shall appear to the court that the planning board acted in bad faith or with malice in making the decision appealed from.