

Date: 11/15/2017

To: Stratham Planning Board

From: T. Austin, Town Planner

RE: 11/15/2017 Zoning Amendment List

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3.96 amended to mirror 3.86 from 3/2017	Pages 57-59
Table 3.8.8/3.9.8 AApt-ADU	Page(s) 38, 64
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Section VIII; page 120 Section 8.1 Density Bonus	Pages 123-124
Section XII; page 134 Section 12.6.4	Pages 137
Section XIX; Page 169 Section 19 re-write ('whole')	<i>Separate packet</i>

3.6 TABLE OF USES: (Rev. 3/13, 3/14, 3/16)

USES:	ZONING DISTRICT									
	R/A	MAH	PRE	TC	G CBD CZ	G CBD OZ	SC	CLIO	IND	
A. RESIDENTIAL USES:										
1. Single-Family Dwelling.	P	P	P	P	X	P	X	X	X	
2. Two-Family Dwelling.	P	P	P	P	X	P	S	X	X	
3. Multi-Family Dwelling in accordance with Section 5.8 of this Ordinance.	X	X	C	P	C	P	C	C	X	
4. Cluster Developments by conditional use permit in accordance with Section VIII of this Ordinance. (Rev. 3/99) Also Senior Housing as set forth in Section 5.7 (3/05)	C	X	C	P	C	P	C	X	X	
5. Work force and Elderly Affordable Housing in accordance with Section 5.8 of this Ordinance.	C	X	C	P	C	P	C	C	X	
6. Manufactured Housing.	P	P	X	P	C	P	X	X	X	
Mobile Homes; in accordance with Section IX of this Ordinance.	X	P	X	X	X	X	X	X	X	
7. Home Occupations in accordance with Sections 2.1.27, 5.13 (3/10)	S	S	S	P	C	P	X	X	X	
8. Accessory Dwelling Units in accordance with Section 5.4. (Rev. 3/18)	S	S	S	P	C	P	X	X	X	
B. TEMPORARY RESIDENTIAL USES										
1. Overnight and Day Camps, Cottage Colonies, Vacation Resorts, and similar Recreational Facilities.	S	S	X	X	C	P	X	X	X	
2. Bed and Breakfast Inns.	S	S	S	P	C	P	P	P	X	
3. Hotels, Motels, and Hostels. (Rev. 3/98)	X	X	X	P	C	P	P	C	X	
C. OUTDOOR/RECREATIONAL USES:										
1. Forestry, Wildlife, Timber Preserves, Reservoirs, and Nature Study areas.	P	P	P	P	C	P	P	P	P	
2. Public Parks and Playgrounds.	P	P	P	P	C	P	P	S	S	
3. Commercial Riding Stables and Riding Trails.	S	S	X	X	X	P	X	X	X	
4. Historic Building or Site open to public.	P	P	P	P	C	P	P	P	P	
5. Recreational Camping Parks, Recreational Areas, Residential Tenting and Recreational Vehicles.	S	S	X	X	C	P	X	X	X	
D. AGRICULTURAL/ FORESTRY USES:										
1. Agriculture and agritourism as defined in Section II, Definitions, 2.1.1.6 (Rev. 3/16)	P	P	P	P ¹	C	P	P	P	P	
2. Tree Farming, Commercial Timbering, Non-commercial Harvesting of Forest Products.	P	P	X	P ¹	C	P	P	P	S	

3.9.6 The Board of Selectmen will hereby create a Technical Review Committee ("TRC") comprised of the Town Planner, a member of the Heritage Commission, and three (3) members and two (2) alternates appointed by the Board of Selectmen and recommended by the Planning Board. The TRC shall process applications for development within the District for the purpose of determining compliance with the provisions of the Ordinance. The TRC may consult with other committees, commissions, and professionals for review and comment on applications within the District. Any cost associated with professional review shall be the responsibility of the applicant. The TRC review of any application shall be deemed equivalent to a Preliminary Consultation with the Planning Board, however, applicants may also submit for Preliminary Consultation.

Should any construction, site work, or development be commenced without an approved Conditional Use Permit, Subdivision, Site Plan approval, or any should a violation of an approved Development Plan or Conditional Use Permit occur, the Planning Board or the Town Planner has the right to require the property owner to stop, remove, and/or mitigate the violation, or seek the appropriate appeal process to gain compliance. (Rev. 3/**)

a. Review Process (Rev 3/**):

- i. Projects that do not require a Conditional Use Permit shall be evaluated for compliance with this ordinance by the TRC, and then be processed by the Planning Board as required under the Subdivision and/or Site Plan Review Regulations of Stratham. Such applications should follow the submission requirements of a Site Plan Review Application.
- ii. For those development applications within the District that include a request for a deviation from the requirements of this ordinance, a complete Site Plan Review Application shall be accompanied with a Conditional Use Permit Application that includes a narrative description of the deviation(s) and a site plan illustrating proposed deviation from any requirement within this ordinance. Deviation from the requirements of this Ordinance shall only be permitted by grant of a Conditional Use Permit issued by the Planning Board. A Conditional Use Permit is a decision that would permit deviation from or reduction in a specific provision(s) of this Ordinance but that is otherwise generally consistent with the provisions of Section 3.8.3 Purpose and Intent (See 3.8.6 a. iii).
- iii. The Planning Board shall have the authority to grant or deny a request for a Conditional Use Permit, pursuant to the provisions of RSA 674:16 and RSA 674:21.A Conditional Use Permit, for relief from the requirements of this Ordinance, after proper public notice and public hearing where the Planning Board finds that an application complies with standards 1. and 2. below.

1. Consistent with the Gateway Business District Master Plan, including but not limited to:

- a. Both public and private buildings and landscaping shall contribute to the physical definition of streetscapes and public spaces; and
- b. Development shall adequately accommodate automobiles and emergency vehicles, while respecting the pedestrian and the spatial form of public spaces; and
- c. Design of streets and buildings shall reinforce safe environments, but not at the expense of accessibility and efficient traffic flow; and
- d. Architecture and landscape design shall complement climate, topography, community character, and building practice; and

- e. Open space and public gathering places shall be provided as locations that reinforce the identity and activity of the District and the community; and
 - f. New development and redevelopment shall be otherwise consistent with the intent and purpose of this ordinance; and
 - g. Does not unduly impact adjacent properties and uses in the District.
 - 2. Improves public safety within the District and/or in adjacent zoning districts; or provides environmental and natural resource protection; or provides a measureable public benefit (such as increased public space, open space or public amenities).
 - iv. The granting or denial of a Conditional Use Permit by the Planning Board may be appealed to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5
iii)Review and Permitting Process:
 - a. Review Process:
 - i. The Board of Selectmen will hereby create a Technical Review Committee ("TRC") comprised of the Town Planner, one (1) member of the Heritage Commission, three (3) members and two (2) alternates appointed by the Board of Selectmen and recommended by the Planning Board. The TRC shall process applications for development the Gateway Commercial Business District and Town Center District for the purpose of determining compliance with the provisions of the Ordinance. The TRC may consult with other boards, committees, commissions, and professionals for review and comment on applications within the District. Any cost associated with professional review shall be the responsibility of the applicant.
 - ii. Projects that do not require a Conditional Use Permit shall be evaluated for compliance with this ordinance by the TRC, administratively approved by the Town Planner, and processed by the Planning Board when required under the Subdivision or Site Plan Review Regulations of Stratham.
 - iii. An administrative decision by the Town Planner relating to compliance with the requirements of this ordinance (approval or denial of an application) may be appealed to the Zoning Board of Adjustment.
- Should any construction, site work, or development be commenced without an approved Conditional Use Permit, Subdivision, Site Plan approval or administrative approval, or should a violation of an approved Development Plan or Conditional Use Permit occur, the Planning Board or the Town Planner has the right to require the property owner to stop, remove, and/or mitigate the violation, or seek the appropriate appeal process to gain compliance.
- b. Conditional Use Permit:
 - i. Applications for development within the District may include a request for a Conditional Use Permit to deviate from the requirements of this ordinance. All such requests shall be accompanied by a narrative description of the deviation and a site plan showing the deviation from any requirement within this ordinance. Deviation from the requirements of this Ordinance shall be permitted by grant of a Conditional Use Permit issued by the Planning Board.
 - ii. A Conditional Use Permit is a decision that would permit deviation from or reduction in a specific

provision(s) of this Ordinance but that is otherwise generally consistent with the provisions of Section 3.9.3 Purpose and Intent. The Planning Board shall have the authority to grant or deny a request for a Conditional Use Permit pursuant to the provisions of RSA 674:16 and RSA 674:21.

- iii. The granting or denial of a Conditional Use Permit by the Planning Board may be appealed to the Superior Court, as provided for in RSA 677:15. [A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).]
- iv. A Conditional Use Permit, for relief from the requirements of this Ordinance, may be granted by the Planning Board after proper public notice and public hearing provided the Planning Board finds that an application complies with standards 1. and 2 below:
 - 1. Consistent with the following District principles, including but not limited to:
 - a. Both public and private buildings and landscaping shall contribute to the physical definition of streetscapes and public spaces; and
 - b. Development shall adequately accommodate automobiles and emergency vehicles, while respecting the pedestrian and the spatial form of public spaces; and
 - c. Design of streets and buildings shall reinforce safe environments, but not at the expense of accessibility and efficient traffic flow; and
 - d. Architecture and landscape design shall complement climate, topography, community character, building practice, and context/setting of historically significant structures and spaces; and
 - e. Open space and public gathering places shall be provided as locations that reinforce the identity and activity of the District and the community; and
 - f. New development and redevelopment shall be otherwise consistent with the intent and purpose of this ordinance and with the historical resources identified within the District; and
 - g. Does not adversely impact adjacent properties and uses in the District.
 - 2. Improves public safety within the District and/or in adjacent zoning districts; or provides environmental and natural resource protection; or provides a measureable public benefit (such as increased public space, open space or public amenities).

3.9.7 Building and Site Design Standards:

a. Purpose:

In order to provide for harmonious and aesthetically pleasing development in the built environment [RSA 674:44,II(b)], the Technical Review Committee (refer to Section 3.9.6) and the Planning Board will apply the following Building and Site Design Standards in its review of all applications in the District.

b. Intent:

- i. Maintaining the quality and character of the Town Center is dependent upon the quality and character of the architecture and development that is allowed to occur. Poorly planned and executed development detracts from the character and function of the built environment, while well-planned development enhances community character, quality of life, and value of the surrounding properties and the community overall.

3.8.8 DEVELOPMENT OF STANDARDS AND TABLES (REV. 3/16)

a. Permitted Uses by Zone

Type of Use	Central Zone	Outer Zone	Open Space Zone
Agriculture and Forestry	By Conditional Use Permit Agriculture and agritourism as defined in Section II, Definitions, 2.1.6. See footnote 5. Agricultural structures greater than four hundred (400) square feet require a Conditional Use Permit from the Planning Board. (Rev. 3/16)	Permitted Agriculture and agritourism as defined in Section II, Definitions, 2.1.6 (Rev. 3/16)	See Footnote
Civic/ Institutional	By Conditional Use Permit Includes private schools, nursery through college schools; day care facilities; senior citizen centers; outpatient clinics and treatment facilities; non-profit lodges and fraternal organizations; place of worship including customary ancillary facilities; public utilities; and municipal buildings	Permitted Includes private schools, nursery through college schools; day care facilities; senior citizen centers; outpatient clinics and treatment facilities; non-profit lodges and fraternal organizations; place of worship including customary ancillary facilities; public utilities; and municipal buildings	By Conditional Use Permit; see Footnote
Commercial	Permitted Includes retail sales and service, business and professional services, banking and lending institutions, food service/bar/entertainment, special promotional sales and displays, conference centers, movie and performance theatres, indoor entertainment complex, By Conditional Use Permit Includes self-storage facilities, light manufacturing facilities ³ , and veterinary hospitals	Permitted Includes retail sales and service, business and professional services, banking and lending institutions, food service/bar/entertainment, special promotional sales and displays, conference centers, movie and performance theatres, indoor entertainment complex, By Conditional Use Permit Includes self-storage facilities, light manufacturing facilities ³ , and veterinary hospitals	Not Permitted
Drive-through Service	Not Permitted	Not Permitted	Not Permitted
Food Service/Bar/ Entertainment¹	Permitted	By Conditional Use Permit	Not Permitted
Mixed Use²	Permitted	Permitted	Not Permitted
Open Space/Conservation	See #4	See #4	Permitted
Residential – single-family, two-family	Not Permitted	Permitted Includes single-family (1 unit), two-family (2 units), workforce housing, manufactured housing, home occupations, accessory dwelling units/apartments	Not Permitted
Residential – multi-family and other residential uses	By Conditional Use Permit Includes multi-family (3-8 units), workforce housing, manufactured housing, home occupations, accessory apartments/dwelling units, bed and breakfast inns, hotels, motels, and hostels	Permitted Includes multi-family (3-8 units), workforce housing, manufactured housing, home occupations, accessory dwelling units/apartments, bed and breakfast inns, hotels, motels, hostels, and open space cluster developments	Not Permitted
Recreational	By Conditional Use Permit Includes public parks and playgrounds; passive, non-motorized recreation; natural resource management and research	Permitted Includes forestry, wildlife, timber preserves, reservoirs; public parks and playgrounds; commercial riding stables and riding trails; recreational camping parks, recreational areas, and residential tent camping; passive, non-motorized recreation; natural resource management and research	Permitted
Other Uses not listed	By Conditional Use Permit	By Conditional Use Permit	By Conditional Use Permit; See #4

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¹Food Service/Bar/Entertainment includes all food service and entertainment related uses such as restaurants, dinner theatres, bars, pubs, cafes, and coffee shop/diners.

² Mixed Use includes Residential and Commercial and/or Professional Business uses in combination in one or several structures; non-residential use shall comprise >50% of the gross floor area.

³ Light Manufacturing Facility* includes facilities that produce and sell artisanal products derived from materials such as paper, wood, metal and ceramic, food products, and fine art.

⁴ Uses may be permitted according to the terms and restrictions of any open space designated on a specific property.

⁵ Agricultural buildings four hundred (400) square feet and smaller do not require a Conditional Use Permit from the Planning Board. Agricultural buildings greater than four hundred (400) square feet are subject to a Conditional Use Permit (CUP) Agricultural buildings requiring a CUP are not required to have engineered plans. The Planning Board is authorized to request studies prepared by professional consultants if the planning Board determines that such studies are necessary to render a decision regarding the CUP. (Rev. 3/16)

3.9.8 DEVELOPMENT OF STANDARDS AND TABLES

a. Permitted Uses

Type of Use	Town Center District
Agriculture and Forestry	<u>Permitted</u> Includes crop production; customary accessory uses; forestry (tree farming, commercial timbering, non-commercial harvesting of forest products); community gardening.
Civic/ Institutional	<u>Permitted</u> Includes schools, nursery through college schools; day care facilities; senior citizen and community centers; outpatient clinics and treatment facilities; non-profit lodges and fraternal organizations; place of worship including customary ancillary facilities; public utilities; and municipal buildings.
Commercial	<u>Permitted</u> Includes retail sales and service; personal and commercial services; professional office; banking and lending institutions; food service/bar/entertainment; special promotional sales and displays; conference centers, movie and performance theatres, indoor entertainment complex.
Drive-through Service	Not Permitted
Food Service/Bar/ Entertainment¹	By Conditional Use Permit
Mixed Use²	Permitted
Open Space/Conservation	See #4
Residential – single-family, two-family	<u>Permitted</u> Includes single-family (1 unit), Two-family (2 units), workforce housing, manufactured housing, home occupations, accessory dwelling units/apartments.
Residential – multi-family and other residential uses	<u>Permitted</u> Includes multi-family (3-8 units), workforce housing, manufactured housing; home occupations; accessory dwelling units/apartments; bed and breakfast inns, hotels, motels, hostels; and open space cluster developments.
Recreational	<u>Permitted</u> Includes forestry, wildlife, timber preserves, reservoirs; public parks and playgrounds; natural resource management and research.
Other Uses not listed	By Conditional Use Permit.

¹ Food Service/Bar/Entertainment includes all food service and entertainment related uses such as restaurants, dinner theatres, bars, pubs, cafes, and coffee shop/diners, permitted mobile food vendors, and farm stands.

² Mixed-Uses includes Residential and Commercial and/or Professional Business uses in combination in one or several structures; non-residential use shall comprise >50% of the gross floor area.

SECTION IV: DIMENSIONAL REQUIREMENTS

4.1 GENERAL REQUIREMENTS

The following general requirements shall be met:

- 4.1.1 No building or structure shall be erected, enlarged or moved nor shall any use be authorized or extended nor shall any existing lot be changed as to size except in accordance with the Table of Dimensional Requirements, Table 4.2.
- 4.1.2 A lot having frontage or an area less than required by Table 4.2 may be considered to be in compliance therewith provided that:
 - a. The lot had received final subdivision approval prior to the enactment of this Ordinance or was shown on a recorded plan or deed filed before the Planning Board that was granted jurisdiction to control the subdivision of land, and provided that,
 - b. Contiguous lots in common ownership shall be combined to create a lot or lots most nearly consistent with Section 4.2, and provided that,
 - c. Contiguous lots in common ownership shall not have been separated or transferred in ownership so as not to comply with the provisions of this Ordinance.
- 4.1.3 More than one building may be allowed on a lot in the Town Center, Industrial, Commercial/Light Industrial/Office and Professional Residential districts provided that there is a minimum distance of sixty (60) feet separating each of the buildings in the Commercial/Light Industrial/Office and Industrial zones, a minimum of twenty (20) feet separating each of the buildings in the Town Center and thirty (30) feet of separation between buildings in the Professional Residential zones. . (Adopted 3/96, Rev. 3/98, Rev. 3/00, Rev. 3/13, Rev. 3/14)

4.2 TABLE OF DIMENSIONAL REQUIREMENTS

The Table of Dimensional Requirements shall apply for all lots, uses of land, and developments within the various districts, unless modified by other sections of this ordinance. This section shall not regulate any Gateway (Central or Outer) or Town Center Zoning which are regulated under Section 3.8 and Section 3.9 respectively of this Ordinance.

7. A photograph of existing signage, including dimensions drawn onto the photograph; provided, however, for multi-unit properties, condominiums and the like, the applicant need only submit a photograph detailing existing signage for the Applicant's particular unit.
8. The material from which the proposed sign(s) is to be constructed.
9. Design information such as illumination, function, name and contact number for individual(s) responsible for the installed sign, and other essential characteristics of the proposed sign(s).

b. Permit Review and Action:

- i. **Completeness Review:** The Code Enforcement Officer shall determine whether the sign permit application is complete within ten (10) calendar days after the application is filed.
- ii. All new signage, related to any new development, which may require Site Plan Review and/or Conditional Use Permit and not exempted in Section 7.5 shall receive Planning Board approval prior to the issuance of any permit.
- iii. **Decision:**
 1. The Code Enforcement Officer shall either approve or deny the sign permit application within the time periods specified below after the Code Enforcement Officer determines that the application is complete. Applications found to be incomplete shall be denied.
 2. Upon a finding by the Code Enforcement Officer that the sign permit application complies with the provisions of this Ordinance, the Code Enforcement Officer shall cause to be issued a sign permit for installation by the applicant. The sign permit shall be issued within ten (10) calendar days of the date on which the application was deemed complete.
 3. If the sign permit application is denied, the applicant shall be notified within ten (10) calendar days of the date on which the application was deemed complete. The notice of denial shall specifically explain any deficiencies in writing in the application and how the applicant may proceed under this Section.
 4. The Code Enforcement Officer shall not consider any sign permit application until the Code Enforcement Officer has determined that the application is complete.
 5. No sign permit shall be issued in any case of an incomplete sign permit application.
 6. No sign permit may be issued until all fees have been paid and other requirements of the Sign Ordinance have been satisfied.
- iv. **Approval Criteria:** The Code Enforcement Officer shall issue the requested sign permit if the sign permit application complies with this Ordinance. Otherwise, the Code Enforcement Officer shall deny the sign permit application.
- v. **Photograph.** When the sign has been completed, the Applicant shall photograph both sides of the completed sign and forward the photograph to the Code Enforcement Officer; the photo must show the responsible party's name and contact

number displayed on the installed sign. The Code Enforcement Officer shall then inspect the sign.

- vi. Inspection for Compliance. The Code Enforcement Officer, or a designee, shall perform a final inspection after installation of any approved sign.
- vii. Discrepancies. Any discrepancies between any sign as approved and the sign as constructed shall be identified in writing by the Code Enforcement Officer and may result in the halt of construction and correction of the discrepancy.

7.5 **EXEMPT SIGNS (REV. 3/16)**

The following signs are exempt from the permit requirements of this Article, but are otherwise subject to the standards contained herein. Any failure to comply with these standards and any other provisions of this Article shall be considered a violation of the Zoning Ordinance.

- a. Nameplate signs giving property identification names or numbers, or names of occupants.
- b. Signs on mailboxes or newspaper tubes.
- c. Signs posted on private property warning the public against trespassing, danger from animals, or restricting specific recreational activities which signs shall each be no greater than two (2) square feet in area.
- d. Signs erected by or on behalf of or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic, directional, or regulatory signs.
- e. Signs required by Town Ordinance.
- f. Historic marker signs, provided that said signs are no more than two (2) square feet.
- g. Utility Signs.
- h. Flags of any governmental organization when not displayed in connection with a commercial promotion or as an advertising device. No flag shall be flown from a pole that is more than fifty (50) feet in height.
- i. Directional Signs that do not exceed four (4) square feet each and that bear no advertising matter; the total number of signs per location shall not exceed two (2) in number.
- j. Real Estate Signs if limited to one (1) per premises and four (4) square feet in area in residential zones and thirty-two (32) square feet in all other zones. These signs shall be removed within thirty (30) days of settlement or lease of the property. (Rev. 3/17)
- k. Construction Site Identification Signs / Permanent Subdivision Signs shall not exceed thirty-two (32) square feet in area, and shall not be illuminated.
- l. Signs erected in connection with elections or political campaigns shall comply with all provisions of NH RSA 664:14-21. No such sign may exceed the sign area permitted for other signs within the zoning district in which it is located.
- m. Signs indicating that a special event such as a grand opening, fair, carnival, circus, festival, or similar event is to take place on the lot where the sign is located. Such signs may be erected not sooner than fourteen (14) days before the event and must be

removed not later than three (3) days after the event. Please see Section 7.10.b.vi. for number and area requirements.

- n. Directory Signs that do not exceed four (4) square feet in area.
- o. Landmark Signs or other signs that are located on, or are an integral part of, a property that has been placed on or determined eligible for the National Register of Historic Places, provided that such signs are recognized as contributing to the National Register status of the property.
- p. Flags, of no more than 15 square feet in size and solely containing one word such as "open", "antiques", "food", or "restaurant". To be exempt from the sign permit requirements, Properties are limited to one of these Flags unless the property is located on a corner and has two (2) sides on a public way in which case the property may use two of these (2) Flags, one on each side.
- q. Agricultural Signs are exempt from the sign permit requirements of this Article so long as on-site signs are limited to directional signs (one roadside, no limit if unseen from the public right of way) and signs listing agricultural or horticultural products grown or produced by the resident seller, in season, for such operations as farm stands or Christmas tree sales. (Rev. 3/16)
- r. Signs no greater than two (2) square feet in area and containing messages such as Open, Closed, Vacancy, No Vacancy and credit card, telephone, restroom, gasoline prices, and other similar informational messages.
- s. Not-For-Profit Fundraising event signs which may be permitted on the same site as a permitted event, or off-premise on private property, with owner's permission, subject to the same time limits as the permitted event, and where such sign may not exceed sixteen (16) square feet in surface area.

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s.t. Temporary Signs not covered in the foregoing categories, provided that such signs meet the following restrictions:

- i. Not more than one (1) such sign may be located on any lot;
- ii. No such sign may exceed six (6) square feet in surface area; and,
- iii. The maximum sign height shall be six (6) feet above grade to the top of the sign and its supporting structure.
- iv. Such a sign may not be displayed for longer than seven (7) consecutive days or no more than fourteen (14) days out of any one (1) year period.
- v. The Code Enforcement Officer is authorized to mark temporary signs in any reasonable way that does not interfere with the content of the temporary sign so as to ensure compliance with this Article.

7.6 PROHIBITED SIGNS

The following signs are prohibited:

- a. Any sign located within, on, or projecting over a property line which borders a public or private street, highway, alley, lane, parkway, avenue, road, sidewalk, or other right-of-way, except as provided in this Ordinance. The Code Enforcement Officer may

easements. However, actively operated farmland, classified as "prime" or "unique" by the Rockingham County Conservation District will be entitled to current use taxation or discretionary easements.

- f. The open space and/or common area within a cluster development shall be owned by and bound by one or more of the following:
 - i. Mandatory Homeowners Association: Which may use it for common recreational facilities or may designate it as Open Space, or may grant a public body an Open Space Easement.
 - ii. A Public Body: Which shall use it as Conservation Land or Public Open Land.
 - iii. Such Designation must be made prior to approval of the subdivision application by the Planning Board; such lands shall be held in such type of legal entity as the Planning Board deems appropriate.

8.11 MAXIMUM DEVELOPMENT DENSITY (REV. 3/13)

a. Density.

The maximum density for a Residential Open Space Cluster Development shall be determined by use of a yield plan. The purpose of a yield plan is to show the density that is reasonably achievable under a conventional subdivision in accordance with the requirements of the zoning ordinance and subdivision regulations. The Planning Board shall adopt regulations that provide for the generation of a yield plan in accordance with this section.

b. Density Bonus:

The Planning Board may award a development an additional number of lots or units as a density bonus, if the required criteria as performance standards are met. Additional density allowances are based on the number of lots or units achievable under the yield plan baseline. The allowances are cumulative and may be allowed based on the performance standards stated below. In no instance shall the density bonuses awarded exceed 50% of the maximum number of lots or units achievable under the yield plan.

- i. The minimum density bonus, regardless of other frontage or innovative protection bonuses achieved, shall be one lot.
- ii. A density bonus of up to 2 lots may be awarded for the preservation of each potential frontage lot as open space.
- iii. If required criteria as set forth in the Stratham Subdivision Regulations for preservation of unique land and environmental features and/or facilities are met, the Stratham Planning Board may award the development an additional density bonus of up to 10%.
- iv. Innovative layout and design of the project to encourage a village or community type environment with such amenities as village greens and parks, community viewsheds and/or integration into existing protected farm activities or existing recreational opportunities, the Stratham Planning Board may award the development additional density bonus of up to 10%.
- v. For the development of new recreational facilities such as parks, playgrounds, bicycle or pedestrian trails, and/or community centers, ~~the board may grant an~~

additional density bonus of up to 5%. If the improvements are made available to the general public, this bonus may be increased to a maximum of 10%.

vi. Elderly Affordable and Workforce Housing.

To encourage the development of diverse and affordable housing, the following bonuses for elderly housing, may be granted as follows:

- 1. If the project is developed as an Elderly Housing Development and no less than 20% of the units are provided as elderly affordable, a density bonus of 10% shall be awarded. If 50% or more of the units are offered as affordable, a 25% density bonus shall be granted.
 - a. Any elderly housing developed under this section must be established and maintained in compliance with the Fair Housing Act, as amended, 42 U.S.C. Sec. 3601 et seq. and NH Human Rights Commission Regulations Hum 302.02 62 or Over Housing, 302.03 55 or Over Housing as may be amended.
 - b. Any applicant seeking approval of a development that is intended to qualify as elderly affordable housing under this section shall adhere to requirements stated in Section 5.8.
 - c. Housing for adults aged 55 and older shall at a minimum provide that at least 80% of the units shall be occupied by at least one person 55 years of age or older per unit.
 - d. Within a residential open space cluster development, elderly affordable multi-family units, as defined under section 8.8.c, may be permitted to be increased up to a unit count of 6 per building or structure.
- 2. To encourage the development of diverse workforce housing opportunities, the Planning Board may allow a density bonus and/or reduction to the minimum required acreage if certain conditions are met.
 - a. For developments consisting of twenty (20) acres or greater, the Planning Board shall grant a density bonus of 15% if the project designate at least 20% of the units as workforce affordable.
 - b. The Planning Board may allow a reduction of the minimum open-space cluster development acreage to ten (10) acres for a plan which guarantees a designated percentage of units reserved for workforce housing as set forth below:

Percentage of Workforce Units in the Development	Density Bonus Units
40%	30%
25%	25%
20%	15%

- c. Within a residential open space cluster development, workforce multi-family units, as defined under section 8.8.c, may be permitted to be increased up to a unit count of 6 per building or structure.

12.6 PERMITTED USES

12.6.1 General: The following uses are permitted under this Section:

- a. Any Use Otherwise Permitted: By the Zoning Ordinance and by State and Federal laws that does not involve the erection of a structure, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along the Squamscott River, Great Bay Estuary, and associated tidal marshes, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline or upland extent of the tidal marsh;
- b. Agriculture: Including grazing, hay production, truck gardening, and silage production, provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion and stream sedimentation;
- c. Forestry and Tree Farming: To include the construction of access roads for said purpose. Within the Shoreland Protection District the cutting of trees shall be limited to fifty percent (50%) of live trees in a 20-year period;
- d. Wildlife Habitat: Development and management;
- e. Recreational Uses: Consistent with the purpose and intent of this Section as defined in Section 12.2;
- f. Conservation Areas: And nature trails;
- g. Water Impoundment: And the construction of well water supplies;
- h. Drainage Ways: To include streams, creeks, or other paths of normal runoff water and common agricultural land drainage;
- i. The Construction of Fences, Footbridges, Catwalks, and Wharves Only, provided:
 - i. Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
 - ii. Structures do not obstruct navigation on tidal creeks;
 - iii. The natural contour of the shoreline is preserved;
 - iv. The Planning Board has reviewed and approved the proposed construction.

12.6.2 Conflicting Provisions: In the event that the provisions of the Shoreland Protection District are found to conflict with other provisions of the Stratham Zoning and Land Use Ordinance, the more restrictive shall apply.

12.6.3 Effect on Lot Size: Areas within the Shoreland Protection District may be considered as part of a minimum lot size normally required by the Zoning Ordinance and Subdivision Regulations of the Town of Stratham.

12.6.4 Special Exception for Lots of Record: Upon application of the Board of Adjustment, a special exception shall be granted to permit the erection of any structure within the Shoreland Protection District provided that all of the following conditions are found to exist:

SECTION XIX: TELECOMMUNICATION FACILITIES (Adopted 3/97)

19.1 AUTHORITY

This ordinance is adopted by the Town of Stratham in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II.

19.2 PURPOSE AND GOALS STATEMENT OF PURPOSE AND FINDINGS:

The Town of Stratham hereby declares that the purposes of this Section are to:

~~This Ordinance is enacted in order to establish general guidelines for the siting of telecommunication facilities by first evaluating the use of existing utility poles and other suitable structures and for purposes of evaluating new towers, and antennas, and distributed antenna systems (DAS) or small cells and to enhance and fulfill the following goals:~~

Augment to include the use of existing utility poles and the siting of new poles as alternative tower structures to support distributed antenna systems (DAS) or small cells. The term "alternative tower structures" is appropriately referenced in Sec. 19.3.1

- ~~A. Establish standards for the siting of telecommunications facilities including but not limited to, towers, antennas, and distributed antenna systems (DAS) or small cells;~~
 - ~~B. Encourage the use of existing structures as an alternative to new tower construction;~~
 - ~~C. Encourage the joint use of towers;~~
 - ~~D. Encourage the design and construction of towers and antennae which minimize adverse visual impacts;~~
 - ~~E. Ensure compliance of all telecommunications facilities with current federal, state, and local regulations;~~
 - ~~F. Facilitate the provision of wireless telecommunications services; and~~
 - ~~G. Prevent harm to the health, welfare, and visual environment of the Town of Stratham and its citizens.~~
- 19.2.1 Preserve: The authority of Stratham to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.
- 19.2.2 Reduce: Adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- 19.2.3 Provide: For co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative sighting techniques, and sighting possibilities beyond the political jurisdiction of the Stratham.
- 19.2.4 Permit: The construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way, including but not limited to, the use of existing utility poles and the siting

of new poles as structures to support distributed antenna systems (DAS) or small cells, that minimizes the adverse visual impact of the towers and antennas.

Augment to include the use of existing utility poles and the siting of new poles as structures to support distributed antenna systems (DAS) or small cells.

19.2.5 Require: Cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Stratham.

19.2.6 Provide: Constant maintenance and safety inspections for any and all facilities.

19.2.7 Provide: For the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for Stratham to remove these abandoned towers to protect the citizens from imminent harm and danger. This shall include the right of the Town of Stratham to require the removal of abandoned poles whose singular purpose is the support of telecommunications facilities.

Include the right to remove abandoned poles whose singular purpose is the support of RF telecommunications facilities

~~19.2.8 Provide: For the removal or upgrade of facilities that are technologically outdated. It is unclear whether this is a right or obligation of the town or service provider and who determines if a facility is technologically outdated. Generally unclear.~~

19.3 DEFINITIONS

19.3.1 Alternative Tower Structure: Innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers where practical in furthering the Ordinance purpose.

These structures may not always “camouflage or conceal” the presence of telecommunications equipment or antennas.

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

The word “exterior” should be removed since antennae can be internal to telecommunications equipment, e.g. some small cells have antennas built in.

19.3.3 FAA: An acronym that shall mean the Federal Aviation Administration.

19.3.4 FCC: An acronym that shall mean the Federal Communications Commission.

19.3.5 Height: Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

19.3.6 Planning Board: Shall mean the Town of Stratham Planning Board and the regulator of this ordinance.

19.3.7 ~~Preexisting-Existing Towers and Antennas~~: Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any

tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Planning Board.

- 19.3.8 Telecommunications Facilities: Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), broadband WiFi services, and common carrier wireless exchange access services.

There is a lot of redundancy in this section but you might want to also add broadband WiFi services.

- 19.3.9 Tower: Shall mean any structure that is designed, ~~and~~ constructed, or in any way modified primarily for the purpose of supporting one or more antennas, including but not limited to self-supporting lattice towers, guy towers, or monopole towers, the use of existing utility poles, light poles, and surface mounted building telecommunication facilities. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Recognizing that future network growth to accommodate 5G will likely take place through the use of existing utility poles, light poles, and surface mounted building telecommunication facilities; the definition of a "tower" needs to be expanded. Utility poles were originally constructed for purposes other than supporting RF telecommunication facilities.

19.4 SITING STANDARDS

- 19.4.1 General: The uses listed in this section are deemed to be permitted uses that may require further review under this ordinance in accordance with Section 19.7: ~~conditional~~ Conditional use-Use permits ~~Permits~~. However, all such uses must comply with other applicable ordinances and regulations of Stratham (including Site Plan Review). The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in Stratham.

a. ~~a.~~ Principal or Accessory Use: Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot- coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure, and:-

b. In all applications for construction of a new facility, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove that it has made all reasonable efforts to

procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least fifty percent, and;

c. Prior to the issuance of a permit for a new tower, the applicant shall demonstrate commitment to joint use as follows:

1. The applicant requesting the permit shall submit evidence to the Town of Stratham demonstrating to the Planning Board that a genuine effort has been made to solicit additional users for the proposed new tower. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within Rockingham County and adjacent counties, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen business days.

2. The applicant shall sign an instrument, maintained by the Town of Stratham, agreeing to encourage and promote the joint use of telecommunications towers within the Town and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use; and

d. The owner of a facility shall establish a \$10,000 cash security fund or provide the Town of Stratham with an irrevocable letter of credit in the same amount to secure the cost of removing an antenna, antenna array, or tower that has been abandoned. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the Town of the transfer.

19.4.2 Use Districts: (Rev 03/04, 3/17)

	New Tower Construction¹	Co-location on Pre-eExisting Tower²	Co-location on Existing Structure³
Industrial Zone:	CU	P	P
Commercial Zone: (GCBD, CLIO, PRE & TC)	CU ⁴	P	CU
Residential Zone:	S/CU ⁴	P	CU

P = Permitted Use without Conditional Use Permit

CU = Conditional Use Permit

S = Permitted by Special Exception

- 1 An antenna may be located on a tower, newly constructed, under this Ordinance.
- 2 An antenna may be located on a preexisting tower, constructed prior to the adoption of this ordinance.

~~3 An antenna may be located on other existing structures with certain limitations (See what?)~~

Again, since utility poles may be considered an existing structure, aesthetics and acoustic impact should be addressed..

4 Additional requirements, which shall be included in any consideration of the location of any facility, shall include the following:

1. Shall be of an “Alternative” type tower structure as defined in the ordinance.

Flag, light, or other ~~flush-mounted-interior-array~~ monopole types are recommended for location with any existing or proposed uses.

Not clear what a “flush mounted monopole” is.

2. Shall be located as part of an existing municipal, office, commercial, industrial or multi-family development which may include residential condominium developments ~~or, what?;~~
3. All facilities constructed as a camouflaged tree, shall be located on a parcel, which is no less than 10 acres, buffered by and integrated into the surrounding forest scape, and has a forest management plan which shall provide for the long- term protection of any forest buffers of the facility and associated structures.
4. All tower facilities and supporting structures shall be of a type and design to blend into the primary use of the site. It shall be the Planning Boards responsibility to review the architectural design of any and all supporting structures to ensure compatibility with surrounding properties. No equipment shed for a telecommunications facility shall exceed 750 square feet in area nor 12 feet in height. All such sheds shall be screened with vegetation or other aesthetically pleasing materials as determined by the Planning Board. Furthermore, all such sheds shall be secured with approved fencing and a locked gate

19.4.3 Height Requirements: (~~Amended 03-04~~)

A. These requirements and limitations shall preempt all other height limitations as required by the Stratham Zoning Ordinance and shall apply only to telecommunications facilities. These height requirements may be waived through the Conditional Use Permit process only if the intent of the Ordinance is preserved in impacts, but provides a greater opportunity for co-location).

	New Tower Construction	Co-location on Preexisting Existing Tower	Co-location on Existing Structure
Industrial Zone:	1050' ¹	Current Height + 15 10% ¹	Current Height + 30'
Commercial Zone: (GCBD, CLIO, PRE & TC)	1050' ¹	Current Height + 10% ¹	Current Height + 30'
Residential Zone:	1050' ¹	Current Height + 10% ¹	Current Height

¹In the event of dense vegetation or other substantial obstacles to signal propagation, facilities can extend to a height of no more than 20 percent above the average tree canopy height within 1,000 feet of the proposed facility. See also, “C” below;

B. Telecommunications facilities that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission, or telecommunications towers) may exceed 100 feet in height if, based on the judgment of the Planning Board, it would appear in context on the landscape, as aesthetically acceptable, and would be a preferable alternative to an undisguised facility;

C. Telecommunications facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten (10) percent of the structure’s height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.

This table may want to consider applications of telecommunications equipment (DAS, small cells), including external antennas, atop existing structures such as utility poles lamp poles, and building signs in commercial areas. The “current height + 30’ is quite generous for these types of applications.

19.5 APPLICABILITY

- 19.5.1 Amateur Radio; Receive-Only Antennas: This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.
- 19.5.2 Essential Services & Public Utilities: Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

19.6 CONSTRUCTION PERFORMANCE REQUIREMENTS

19.6.1 Aesthetics, Noise, and Lighting: The guidelines in this subsection shall govern the location of all towers, or alternative tower structures, and the installation of all antennas. However, the Planning Board may waive these requirements in accordance with Section 19.8: Waivers. Any new or modified tower structure shall comply with the Stratham Noise Regulations. (NOTE: Noise regs do not currently set dB ranges)

“Alternative tower structures” should also be specifically mentioned in addition to just “towers”. Acoustic limits and distance of the source from occupied structures or pedestrians should be included.

- a. Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness;
- b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements;
- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, and, no equipment shall be installed at height less than fifteen (15) feet above average surrounding grade within fifteen (15) feet of the tower;

If the alternative structure is a lamp pole or utility pole, requirements for the minimum mounting height of equipment boxes should be specified as well as any requirements for equipment structures mounted at ground level in municipal right-of-way. Note that the utility company typically has a requirement that no equipment be mounted lower than 15 feet on the pole.

- d. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views;
- e. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

19.6.2 Federal Requirements: All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owner’s expense through the execution of the posted security.

All support structures, including but not limited to generators, fuel storage facilities, etc., shall comply with the setbacks of the underlying zoning district as applicable at the time of application as well as with the Town Building Ordinance (See Also 19.6.3 below).

With the advent of 5G and the eminent deployment of DAS and small cells to densify the service provider's network, "alternative tower structures" will eventually become the more prominent deployment of choice. Consequently, state and municipal regulations and codes will become more dominant in regulating deployments of new base station sites on "alternative tower structures". The above paragraph should be expanded to reference state and local codes and the requirements for compliance.

In the event of an impacting FCC or FAA requirements change, it is highly likely that it would affect a majority of the service provider's tall towers. It would be unlikely that such a significant number of towers could be updated in six months considering that today's service providers operate nationally.

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

19.6.4 Additional Requirements for Telecommunications Facilities: These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict:

a. Setbacks and Separation:

- i. Towers must be set back a distance equal to 125 percent % of the height of the tower from any ~~off-site residential structure~~property line;

This setback should be 125% of the height of the tower from the property line.

- ii. Tower, guys, and accessory facilities must satisfy the minimum zoning district setback requirements;
- iii. Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
- iv. The setback required for any flag, light or other flush mounted monopole type facility shall be no less than that required within the underlying zone for any other structure after review by the planning board to ensure safe location of such facility.
- v. The Planning Board may after review, require additional setback distances to provide for safety and to reduce impacts to abutting residential properties.

b. Security Fencing:

- i. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
- ii. Flag, light or other ~~flush-mounted~~ monopole type facility may not require fencing if after review by the ~~planning-Planning board-Board~~ they are determined to have been safely integrated into the site.

c. Landscaping:

- i. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least fifteen (15) feet wide outside the perimeter of the compound;
- ii. In locations where the visual impact of the tower would be minimal or in the case of an “Alternative” design structure, the ~~planning-Planning board-Board~~ may reduce or waive entirely the landscaping requirement;
- iii. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

19.7 CONDITIONAL USE PERMITS

19.7.1 General: All applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations. In addition, applications under this ordinance shall also be required to submit the information provided for in this Section.

19.7.2 Issuance of Conditional Use Permits: In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

- a. Procedure on application: The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.
- b. Decisions: Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.
- c. Factors Considered in Granting Decisions:
 - i. Height of proposed tower or other structure.
 - ii. Proximity of tower or “**alternative tower structure**” to residential development or zones.
 - iii. Nature of uses on adjacent and nearby properties.

- iv. Surrounding topography.
- v. Surrounding tree coverage and foliage.
- vi. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- vii. Proposed ingress and egress to the site.
- viii. Availability of suitable existing towers and other structures as discussed in 19.7.3(c).
- ix. Visual impacts on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- x. Availability of alternative tower structures and alternative siting locations.
- xi. Acoustic impact**

19.7.3 **Information Required.**: Each applicant requesting a Conditional Use Permit under this ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including; a scaled elevation view, topography, radio frequency coverage, **and calibration data**, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200 feet away), and any other information deemed necessary by the Planning Board to assess compliance with this ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

- a. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines;
- b. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30-day comment period, and the Town **of Stratham** process shall become part of the application requirements;
- c. Each applicant for an antenna and or tower shall provide to the Planning Board an inventory of its existing towers **and radiating sites** that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing

authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna(s). This evidence can consist of:

- i. Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted;
- ii. Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why;
- iii. Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna(s) and related equipment;
- iv. ~~Substantial Evidence that applicant's proposed antennas would cause electromagnetic interference with the antennas on the existing towers or structures, or the antennas on the existing towers or structures would cause interference with the applicant's proposed antenna;~~

Highly unlikely with today's technology.
- v. Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable;
- vi. Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

~~19.7.4. Co-location Agreement: The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Stratham.~~

It should be recognized that this may not be reasonable for some "alternative tower structures" and especially pole mounted DAS and small cell systems leading to a potential proliferation of new poles for small cells. Today's small cell and DAS systems cannot support all the service providers at all of their frequencies simultaneously.

~~19.7.54~~—**Coverage and Capacity Engineering:** The applicant shall submit the engineering information detailing the size and coverage required for the facility location. Where applicants seek capacity relief, compelling data supporting cellular traffic congestion, in addition to coverage data, shall be submitted. ~~The T h e~~ Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with 676:4(I)(g).

Compelling data supporting cellular traffic congestion, in addition to coverage data, needs to be submitted if the claim is that the new cell is for capacity relief, not coverage.

19.8 WAIVERS

19.8.1 General: Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

- a. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property and will promote the public interest;
- b. The waiver will not, in any manner, vary other provisions of the Stratham Zoning Ordinance, Stratham Master Plan, or Official Maps;
- c. Such waiver(s) will substantially secure the objectives, standards, and requirements of these regulations;
- d. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
 - i. Topography and other Site features;
 - ii. Lack of availability of alternative site locations;
 - iii. Geographic location of property;
 - iv. Size/magnitude of project being evaluated and availability of future co-location.

19.8.2 Conditions: In approving waivers, the Planning Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

19.8.3 Procedures: A petition for any such waiver shall be submitted in writing by the applicant with the application for Planning Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to provide this written request shall require an automatic denial.

19.9 BONDING AND SECURITY

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with section 19.10.

19.10 REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed, pursuant to Section 19.4.1 (d), above. If there are two (2) or more users of a single tower, this provision shall not become effective until all users cease using the tower.;