

TOWN OF HAMPDEN, MAINE

ZONING ORDINANCE

Adopted by Referendum

March 13, 1979

As Amended

**TOWN OF HAMPDEN, MAINE
ZONING ORDINANCE**

CERTIFIED BY:

Denise Hodsdon, Town Clerk

Town Clerk
Affix Seal

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AMENDED:	Hampden Town Council, November 18, 2002 Effective Date, December 18, 2002	Articles: 4.5.4.2, 4.5.4.3, 7.2
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ARTICLE 1
GENERAL ADMINISTRATION

1.1. Title and Purpose - This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Hampden, Maine" and will be referred to herein as this "Ordinance". It is enacted by the inhabitants by dividing the Town into zones and regulating the use and construction of buildings and premises with a view to encourage the most appropriate use of land in the Town of Hampden, Maine.

1.2. Basic Requirements - All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and all uses of premises in the Town of Hampden shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land, or water area is located.

1.3. Severability - Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

1.4. Conflict with other Ordinances - This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings, or structures, the provisions of this ordinance shall prevail.

All ordinances or parts of ordinances now existing which are in conflict with the provisions or intent of this Ordinance are hereby repealed.

1.5. Amendment

1.5.1. Initiation of Amendment - An amendment to this Ordinance may be initiated by:

1. The planning board, provided a majority of the board has so voted;
2. Request of the town council to the planning board;
3. Written petition of ten (10) percent of the registered voters of the town; or
4. Written application from the property owner seeking a change of the zoning classification for the owner's property, or any portion thereof. Any person or entity with a legally binding interest in or to said property may make such an application, provided such person or entity submits satisfactory evidence of such interest and written documentation from the property owner authorizing such person or entity to make application for the change of zoning classification.

1.5.2. Proposed Amendments

1. **Text Amendments** - Any proposed amendment to the text of this Ordinance shall be referred to the planning board for its review and recommendation. The planning board shall make a recommendation of approval or denial for any proposed text amendment, and may make a recommendation of approval with proposed modifications for any proposed text amendment. Such recommendation(s) shall be returned to the council within forty-five (45) days after the next regularly scheduled meeting of the Planning Board following the date of referral of the proposed amendment to the board. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purpose of this Ordinance.

2. Zoning District Amendments

- a. Any proposed amendment to the zoning classification of property initiated under *Article 1.5.1(4)* shall be processed by the completion and filing of a form for such purposes with the code enforcement officer, together with payment in accordance with the Town of Hampden Fees Ordinance. (*Amended: 11-17-03*)
- b. Upon receipt of such form and fees, the Code enforcement officer shall take all necessary action to schedule a public hearing to be conducted by the planning board on the request. The planning board shall hold a public hearing within sixty (60) days of receipt of such application and fees by the code enforcement officer. Prior to said public hearing, and in accordance with the requirements of this Ordinance and the laws of the State of Maine, notice of said hearing shall be given. Said notice shall include, but not be limited to, the following information:
 - i) Date, time and place of said hearing.
 - ii) A summary map of the proposed zone change.

Said notice shall be published at least seven (7) days in advance of said hearing in a daily newspaper of general circulation in the Town of Hampden and shall be sent by U.S. Mail to all persons initiating the proposed zone change and to all persons owning abutting property and/or within three hundred (300') feet of the exterior boundaries of the real estate to be affected by said proposed zone change.

For purposes of the notices required under this section, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person owning property within said three hundred (300') feet to receive notices provided herein shall not necessitate another hearing or invalidate any action by the planning board or the town council.

- c. The planning board shall make a recommendation of approval or denial for any proposed zone change, and may make a recommendation of approval with proposed modifications for any proposed zone change. To constitute planning board approval of such a proposed amendment, the amendment and any proposed modifications thereto must receive at least four (4) affirmative votes from the board. Such recommendation(s) shall be returned to the council in writing within forty-five (45) days of the public hearing. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purposes of this Ordinance.
- d. After receipt of the planning board's recommendation, or after expiration of the time allotted for such recommendation, the town council shall hold a public hearing on the proposed amendment within sixty (60) days. Notice of said hearing shall be given as provided in *Article 1.5.2(2)(b)*.
- e. Any proposed amendment to the zoning classification of property initiated pursuant to *Article 1.5.1(1) - (3)* shall be processed in accordance with *Article 1.5.2(2)(b) - (d)*.

1.5.3. Adoption of Amendment

1. Ordinance amendments not involving the zoning classification of property may be adopted by a majority vote of the town council members present and voting, if the amendment is recommended by the planning board, or by a two-thirds majority vote of the town council members present and voting, if the amendment is not recommended by the planning board.
2. Ordinance amendments involving the zoning classification of property may be adopted by a vote of five (5) town council members present and voting, if the amendment is recommended by the Planning

Board, or by a vote of six (6) town council members present and voting, if the amendment is not recommended by the planning board.

3. The Department of Environmental Protection shall be notified by the municipal clerk of zone changes in shoreland areas or amendments to Shoreland Regulations within thirty (30) days of the effective date of such amendments.
4. Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. (*Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91*)

1.6. Effective Date - The effective date of the ordinance shall be thirty (30) days after it is adopted by referendum vote of the town.

ARTICLE 2 ESTABLISHMENT OF ZONES

2.1. Zoning Districts - To implement the provisions of this Ordinance, the Town of Hampden is hereby divided into the following districts:

1. Industrial Park District
2. Industrial District
3. Commercial Service District
4. Business District
5. Rural Business District
6. Interchange District
7. Residential A District
8. Residential B District
9. Rural District
10. Seasonal District
11. Resource Protection District (Repealed)
12. Industrial 2 District
13. Business District B
14. Village Commercial District
15. Village Commercial II District
(Amended: 11-8-83, 11-3-97)

2.2. Location of Districts - Districts are located and bounded as shown on the Official Zoning Map which is adopted by reference. The Official Zoning Map shall be identified by the signature of the town manager and attested by the signature of the town clerk. The aforesaid signatures shall be affixed and dated at the time of adoption or amendment of this Ordinance. Additional copies of the Official Zoning Map shall be available at the town office.

2.3. Uncertainty of Boundary Location - Where uncertainty exists with respect to the boundaries of the various districts as shown on the Official Zoning Map, the following rules shall apply:

2.3.1. Centerlines - Boundaries indicated as approximately following the center lines of streets, highways, alleys, railroads, or other rights-of-way shall be construed to follow such center lines;

2.3.2. Lot Lines - Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines;

2.3.3. Water Boundaries - Boundaries indicated as approximately following shoreline shall be construed as following the mean high tide line if such exists; otherwise it shall be construed as following the shoreline. In the event of natural change in the shoreline, the boundary shall follow the change in the shoreline. Boundaries indicated as following the center line of a body of water shall be construed as following such center line;

2.3.4. Features - Boundaries indicated as being parallel to features, natural or man-made, shall be so construed;

2.3.5. Determination of Distances - Distance not specifically indicated on the Official Zoning Map shall be determined by scale of map;

2.3.6. Existing Structures - Existing structures located in more than one zoning district shall be subject to the provisions of the zoning district in which the majority of the structure is located, provided no portion of the structure is located in a shoreland area or in another municipality. (Amended: 11-03-03)

2.3.7. Questions of Interpretation - Where question of interpretation of the Official Zoning Map arises, the Board of Appeals shall interpret the district boundaries. All appeals for interpretation of the Official Zoning Map shall be subject to the provisions *Article 6* of this Ordinance and of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court.
(Amended: 11-03-03, 09-18-06)

2.4 Explanation of Zoning Requirements of Parcels Involving More Than One Zoning District. (Amended: 11-03-03)

The intent of this ordinance is to allow full utilization of a parcel of land that is divided by a zoning district boundary line as depicted on the Official Zoning Map. Although the use of any portion of such a parcel of land shall be governed by the permitted and conditional uses allowed in the zoning district in which said parcel is located, the remaining portion of such a parcel of land shall be counted for the purposes of satisfying lot area, road frontage, setback, lot/ground coverage, and density requirements of the zoning district in which the principal use is located.

EXAMPLES: The following examples illustrate how the full utilization of parcels of land that is divided by zoning map district boundary line should be accomplished.

Conformance with Zoning District Use Standards: A two-acre lot is comprised of one acre of Interchange District and one acre of Industrial District. In this instance, a mixed-use site development could locate a service station in the Business District and a self storage warehouse use in the Industrial District.

Conformance with Zoning District Density Standards: A four-acre lot served with sewer and water is comprised of three acres of Residential B District and one acre of Rural District. The Residential B District permits five dwelling units per acre and the Rural District permits two dwelling units per acre (based on a maximum density of a four-unit building on a two-acre lot). Thus, despite the fact that the Rural District portion of the lot does not meet the two-acre minimum lot standard, that Rural District land may still be credited to establish a building containing two residential units. Overall the lot could contain 17 dwelling units provided that all zoning ordinance standards are satisfied.

Conformance with Zoning District Area Standards: A two-acre lot on well and septic system is comprised of one acre of Rural District and one acre of Resource Protection District. Despite the fact that the Rural District portion of the lot does not meet the two-acre minimum lot standard, the Resource Protection District area is credited toward meeting the minimum lot requirement of the Rural District. Resource Protection District generally prohibits establishment of most uses and thus few structures or primary uses could expand into this area.

ARTICLE 3
REGULATIONS PERTAINING TO INDIVIDUAL ZONES

3.1. Industrial Park District

3.1.1. Purpose - This district is established to provide a location for fully serviced industrial development. It is intended that land within this district will be protected from encroachment of non-industrial uses, however, the district also contemplates planned business parks with a more diverse mixture of uses and development standards implemented in a closely managed context. *(Amended 2-20-01)*

3.1.2. Permitted Uses (Subject to Site Plan or Subdivision Review) – Manufacturing, compounding, assembling, packing, treatment, warehousing, wholesaling of goods and products, research and testing operations, take-out restaurant, business park, essential service, wireless telecommunications facilities (subject to *Section 4.22*), consulting operations, public or private utility service providers and their related operation, service and maintenance activities, accessory uses or buildings, and other industrial operations, but not including excavation, gravel pit and quarry activities, which conform to all performance standards in this Ordinance. *(Amended 2-20-01, 10-01-01, 12-6-04, 12-17-07)*

In addition to the permitted uses set forth above, permitted uses within a Business Park may also include the following: Office and service businesses, government and institutional uses, places of assembly such as hotel and conference center, bar in conjunction with hotel or conference center, small restaurant, sit down restaurant, retail sales not exceeding 5,000 sq. ft. gross floor area per retail business space or module, accessory uses or structures, day care facilities, essential services, buildings necessary for essential services. A master plan for a Business Park must be prepared by a State of Maine registered engineer, landscape architect, or architect, submitted, and approved by the Planning Board as part of the subdivision review and approval process. The master plan shall indicate the full build-out of the subdivision including but not limited to: building footprint, building height, impervious surface, stormwater management, architectural guidelines, traffic, and other items that the Planning Board may require. The plan shall:

1. Depict the land area designated for the Business Park use.
2. Depict the lotting of the Business Park subdivision. *(Amended 12-17-07)*
3. Establish the overall development criteria for the Business Park.
4. Propose covenants governing use and the appearance, size, and physical location of the building and other necessary site improvements. *(Amended 2-20-01, 12-6-04, 10-01-07)*

3.1.3. Conditional Uses (Subject to Site Plan Review) – Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility (subject to *Article 4.24*), methadone clinic (subject to *Article 4.24*), Stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities, living quarters for security personnel, buildings necessary for essential services, buildings greater in height than thirty-five (35) feet. *(Amended 3-5-88, 6-15-92, 12-17-07, 03-07-11)*

3.1.4. Lot Dimensions

	Typical	Business Park as described in 3.1.2. only
Minimum Lot Area	- 1 acre	- 20,000 sq. ft.
Minimum Road Frontage	- 200 feet	- 50 feet
Minimum Setbacks:		
Street Yard	- 50 feet	- 20 feet
Other Yards	- 50 feet	- 20 feet
Maximum Lot Coverage	- 25 percent	- 30 percent
Maximum Impervious Surface	- 60 percent	- 70 percent

(Amended 2-20-01, 12-6-04)

3.1.5. Special District Regulations - In addition to the general regulations in *Article 4* of this Ordinance, the following specific requirements shall be applicable to the Industrial Park District:

1. When necessary to store or keep articles, goods and materials in the open, the area shall be limited to the rear two thirds of the property. Where necessary to protect the visual amenities of the Industrial Park, the planning board may require screening, as defined, around areas designed for the keeping of articles, goods, or materials where they are exposed to the public view.
2. Buildings in this district shall not be used for any of the following purposes: storage of junk, automobile wrecking, operation of a mine or quarry, rendering plant, or any business having appearance, odor, or noise characteristics detrimental to other businesses in the park, the future of the park, the neighborhood, or the Town of Hampden.
3. Notwithstanding other requirements in this section any structure which requires access to rail service shall not be required to setback from the railroad siding.
4. In order to protect the integrity of the industrial park, to insure that it is developed in a manner which fits harmoniously with the surrounding environment, and to prevent erosion, the planning board may require landscaping, with lawn, trees, or shrubs, of the front setback. It may also require landscaping of a buffer strip of up to twenty (20) feet on the side and rear lot lines. In such cases, an occupancy permit shall not be issued until the landscaping is complete or until a certified check for the amount of one hundred twenty-five (125%) percent of any unfinished work is accepted by the Town Manager. *(Amended 6-15-92)*

3.2. Industrial District

3.2.1. Purpose - These areas are set aside for non-service intensive industrial uses which do not require the amenities of an industrial park and which would fit into the surrounding rural area with ease. Industries needing public sewer or water are not expected to locate in these areas.

3.2.2. Permitted Uses (Subject to Site Plan Review) - Facilities for manufacturing, compounding, processing, packaging, essential service, wireless telecommunications facilities (subject to *Section 4.22*), treatment or warehousing of goods and products, wholesale distribution, take out restaurant, retail sales where such activities are part of and accessory to an industrial use, such facilities having less than five thousand (5,000) square feet of gross floor area, and accessory uses and structures. Excavation, gravel pit and quarry activities are not permitted in the district. *(Amended: 10-01-01, 12-6-04, 12-17-07)*

3.2.3. Conditional Uses (Subject to Site Plan Review) - Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility (subject to *Article 4.24*), methadone clinic (subject to *Article 4.24*), facilities for manufacturing, compounding, processing, packaging, treatment, buildings necessary for essential services, or warehousing of goods and products, wholesale distribution, retail sales

where such activities are part of and accessory to an industrial use, such facilities having more than five thousand (5,000) square feet of gross floor area. Stockpiles (subject to *Article 4.9*), but not including excavation, gravel pit and quarry activities. Accessory uses or structures, building or living quarters for security personnel. (*Amended: 12-17-07, 03-07-11*)

3.2.4. Lot Dimensions

Minimum Lot Area	-	2 acres
Minimum Road Frontage	-	150 feet
Minimum Setbacks:		
Street Yard	-	50 feet
Other Yards	-	35 feet
Maximum Ground Coverage	-	25 percent
Maximum Building Height	-	35 feet

3.2.5. Special District Regulations

1. Notwithstanding the above requirements any structure which requires access to rail service shall not be required to setback from the railroad siding.
2. In order to provide for harmonious development and preserve the rural character the Planning Board may require additional buffers beyond that required in *Article 4.7.11*. (*Amended 8-17-92*)

3.3. Commercial Service District

3.3.1. Purpose - This district is intended for the location of heavy commercial uses, wholesale uses, office buildings, automotive type of uses such as sales and service, convenience stores and commercial service type of uses. In general this area is devoted to service or wholesale uses.

3.3.2. Permitted Uses (Subject to Site Plan Review) - Any retail or service business, hotel and motels, business or professional offices, take-out restaurant, small restaurant, sit-down restaurant, automobile service, place of assembly, outdoor recreation and accessory uses or structures. Essential service and buildings for essential service, single family dwellings in existence on the date of this amendment. (*Amended 12-6-04*)

3.3.3. Conditional Uses (Subject to Site Plan Review) – Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility (subject to *Article 4.24*), methadone clinic (subject to *Article 4.24*), Fast-food restaurant, outdoor dining restaurant, tavern, bar, dance hall, commercial school, church, drive-thru business, wholesale distribution, truck terminal, light industrial operations (but not including excavation, gravel pit and quarry activities) which do not exceed 10,000 square feet, such as warehousing assembly or fabrication. Functionally water-dependent uses along the Penobscot River. Any establishment which provides in excess of 5,000 square feet of outdoor display or storage of goods or equipment. Stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities. (*Amended 4-7-03, 12-6-04, 12-17-07, 03-01-10, 03-07-11, 11-14-11*)

3.3.4. Lot Dimensions

Minimum Lot Area	-	20,000 sq. ft.
Minimum Road Frontage	-	100 feet
Minimum Setbacks:		
Street Yard	-	40 feet
Other Yards	-	30 feet
Maximum Ground Coverage	-	25 percent
Maximum Building Height	-	35 feet

3.3.5. Special District Regulations

1. Where a commercial or industrial use abuts any residential use or residential district, the other yard setback shall be double where it abuts the residential property.
2. Notwithstanding the maximum building height regulations in Article 3.3.4. building height may be up to 50 feet under the following standards. Buildings in excess of 35 feet in height shall provide additional setbacks on all yards as herein stipulated: Subtract 35 feet from the proposed building height and add that difference to each yard setback requirement. *(Amended 03-01-10)*

EXAMPLE: A 48 foot tall building is proposed. By subtracting the base Commercial Service District maximum building height from the proposed height the following is the result $48' - 35' = 13'$.

Then add that amount to each yard or setback.

Setback Type		Base Setbacks:	Total Setback
Street Yard	-	40 feet	53 feet
Other Yard	-	30 feet	43 feet

3. Notwithstanding other requirements in this section any structure which requires access to rail service shall not be required to setback from the railroad siding. *(Amended 8-17-92, 10-4-93)*
4. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 feet and no part of the vehicle queue shall be located within 100 feet of a residential structure. *(Amended 12-6-04)*
5. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants and fast-food restaurants. *(Amended 12-6-04)*
6. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. Title 28-A. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. Title 28-A: LIQUORS §1051. Licenses generally which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. *(Amended 12-6-04)*
7. Notwithstanding the maximum building height regulations buildings used for functionally water-dependent uses along the Penobscot River are not subject to the maximum building height standard in Article 3.3.4. or 3.3.5.2. provided the lot area for such a use is at least five acres in size. *(Amended 03-01-10)*
8. Notwithstanding the above requirements, residential use accessory structures which are not attached to a residential principal building may be located on a lot in accordance with the following:

Accessory Structures Ground Floor Area		Up to 150 Square Feet
Maximum Height	-	16 Feet
Minimum Other Yard	-	5 Feet

Once located in accordance with the foregoing requirements, said accessory structures shall not be attached to a principal building unless said structures are in compliance with the Other Yard requirement of the District. *(Amended 02-07-11)*

3.4. Business District

3.4.1. Purpose - These areas are intended to provide a location for commercial enterprises. The focus of commercial development in these areas should be retail sales and service businesses designed to meet the needs of the community.

3.4.2. Permitted Uses (Subject to Site Plan Review) - Retail sales, service business, business or professional office, take-out restaurant, small restaurant, community facility, home occupation (subject to *Article 4.10*), essential service, single family structures, multi-family structures limited to four (4) units maximum, accessory uses or structures. (*Amended 12-6-04*) (*03-21-05*)

3.4.3. Conditional Uses (Subject to Site Plan Review) - Sit-down restaurant, fast-food restaurant, outdoor dining restaurant, tavern, motel, hotel, church, place of assembly, automobile service, drive thru businesses, outdoor recreation, nursing and convalescent homes, commercial schools, mixed residential/commercial use limited to a maximum of four (4) dwelling units per building, buildings for essential services. Stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities. (*Amended 12-6-04, 12-17-07*)

3.4.4. Lot Dimensions

Minimum Area	-	12,500 sq. ft.
Minimum Road Frontage	-	75 feet
Minimum Setbacks:		
Street Yard	-	35 feet
Other Yards	-	20 feet
Maximum Ground Coverage	-	20 percent
Maximum Building Height	-	35 feet

3.4.5. Special District Regulations –

1. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 feet and no part of the vehicle queue shall be located within 100 feet of a residential structure. (*Amended 12-6-04*)
2. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants and fast-food restaurants. (*Amended 12-6-04*)
3. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051. Licenses generally* which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. (*Amended 12-6-04*)
4. Land area required for multi-unit buildings. Each lot shall have a minimum of seven thousand five hundred (7,500) square feet of lot area for every additional dwelling unit over one (1). (*Amended: 5-15-89, 1-21-92*)

3.5. Rural Business District

3.5.1. Purpose - These areas are designed to provide a location for commercial facilities designed to serve the needs of rural residents. Large commercial enterprises, designed to serve the needs of the whole community, should not be encouraged in these areas.

3.5.2. Permitted Uses (Subject to Site Plan Review) - Grocery/superette, drug store, self-service laundromat, business or professional office, home occupation (subject to *Article 4.10*), essential service, and wireless telecommunications facilities (subject to *Article 4.22*). (*Amended: 10-01-01*) (*03-21-05*)

3.5.3. Conditional Uses (Subject to Site Plan Review) - Other retail uses not included as permitted uses, motel, hotel, restaurant, single or two family residential uses, automotive uses such as new or used car sales or service, gasoline station, farm and recreational vehicle sales and service, outdoor storage of articles, goods, or materials, stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities, community service or community recreation organization, and buildings necessary for essential services but not including excavation, gravel pit and quarry activities. (*Amended: 03-21-05, 12-17-07*)

3.5.4. Lot Dimensions

Minimum Area	-	2 acres
Minimum Road Frontage	-	200 feet
Minimum Setbacks:		
Street Yard	-	30 feet
Side Yard	-	30 feet
Rear Yard	-	30 feet
Maximum Ground Coverage	-	25 percent
Maximum Building Height	-	35 feet

3.5.5. Special District Requirements –

1. All uses shall conform to all applicable provisions of this Ordinance with regard to performance standards and general regulations. In addition, no use shall exceed four thousand (4,000) square feet in building floor area per level. In issuing a conditional use permit for outdoor storage of articles, goods, and materials in this district, the planning board may, if it feels it necessary to preserve the rural character of the area, require that the storage area be screened from public view with appropriate material.
2. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants. (*Amended 12-6-04*)
3. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051. Licenses generally* which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. (*Amended 12-6-04*)

3.6. Interchange District

3.6.1. Purpose - This district is intended to provide areas for motels, restaurants, service stations and similar uses that provide accommodations for tourists and other travelers using Interstate 95. Residential structures in existence prior to January 1, 1979 may be repaired or modified and accessory structures may be added, provided minimum setback requirements are met.

3.6.2. Permitted Uses (Subject to Site Plan Review) – Any retail or service business, hotel, motel, take-out restaurant, small restaurant, sit-down restaurant, automobile and truck service station and repair facility, gift shop, truck terminal, business or professional office, indoor recreation, home occupation (subject to *Article 4.10*), accessory uses or structures, essential services, and wireless telecommunications facilities (subject to *Article 4.22*). (*Amended: 03-08-99, 05-21-01, 10-01-01, 12-6-04, 03-21-05, 1-17-12*).

3.6.3. Conditional Uses (Subject to Site Plan Review) - Fast-food restaurant, outdoor dining restaurant, tavern, bar, dance hall, outdoor recreation, stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities and buildings necessary for essential services. Any establishment which provides in excess of 5,000 square feet of outdoor display or storage of goods or equipment (*Amended: 05-21-01, 12-6-04, 12-17-07, 1-17-12*)

3.6.4. Lot Dimensions

Minimum Area	-	1 acre
Minimum Road Frontage	-	200 feet
Minimum Setbacks:		
Street Yard	-	30 feet
Side Yard	-	20 feet
Rear Yard	-	20 feet
Maximum Ground Coverage	-	25 percent
Maximum Building Height	-	50 feet

(*Amended: 01-19-06*)

3.6.5. Special District Regulations

1. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 feet and no part of the vehicle queue shall be located within 100 feet of a residential structure. (*Amended: 12-6-04*)
2. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants and fast-food restaurants. (*Amended: 12-6-04*)
3. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051. Licenses generally* which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. (*Amended: 12-6-04*)
4. No bar or dance hall shall be located within 500 feet of a residence. (*Amended: 12-6-04*)
5. Buildings in excess of 35 feet in height shall provide additional setbacks on all yards as herein stipulated: Subtract 35 feet from the proposed building height and add that difference to each yard setback requirement. (*Amended: 01-19-06*)

EXAMPLE: A 48 foot tall building is proposed. By subtracting the base Interchange District maximum building height from the proposed height the following is the result $48' - 35' = 13'$. Then add that amount to each yard or setback.

Setback Type		Base Setbacks:	Total Setback
Street Yard	-	30 feet	43 feet
Side Yard	-	20 feet	33 feet
Rear Yard	-	20 feet	33 feet

(Amended: 01-19-06)

3.7. Residential A District

3.7.1. Purpose - This district is intended for the development of low density single family housing types. While this district is predominately intended for detached housing the district may allow certain low impact civic and institutional uses.

3.7.2. Basic Requirements - All permitted and conditional uses are limited to 20% ground coverage maximum and 35 foot height limit unless noted.

3.7.3. Permitted Uses (Subject to Site Plan Review where applicable) - Single family dwelling, (including modular homes), home day care (subject to Article 4.19), accessory uses and structures, non-commercial park or playground, home occupation (subject to Article 4.10), essential service. (Amended: 8-22-94) (03-21-05)

3.7.4. Conditional Uses (Subject to Site Plan Review where applicable) - Church, nursing home, non-profit school, public schools, community building, government structure or use except storage or repair facility, two family dwelling, congregate care facility, buildings necessary for essential services. Animals other than usual pets provided the premises consists of at least 2 1/2 acres, and animals shall be kept a minimum of 50 feet from any property line. (Amended: 8-22-94, 1-21-97)

3.7.5. Lot Dimensions

		Public Sewer		On-site waste disposal
Minimum Area	-	18,000 sq. ft.	-	30,000 sq. ft.
Minimum Road Frontage	-	125 feet	-	150 feet
Minimum Setbacks:				
Street Yard	-	25 feet	-	30 feet
Side Yard	-	20 feet	-	30 feet
Rear Yard	-	20 feet	-	30 feet

(Amended: 5-4-92, Effective 6-3-92)

Notwithstanding the above requirements, accessory structures which are not attached to a principal building may be located on a lot in accordance with the following:

Accessory Structures Ground Floor Area		Up to 250 Square Feet
Maximum Height	-	16 Feet
Minimum Other Yard	-	5 Feet

Once located in accordance with the foregoing requirements, said accessory structures shall not be attached to a principal building unless said structures are in compliance with the Other Yard requirement of the District. (Amended: 10-3-94)

3.7.6. Special District Regulations

1. Dwellings other than nursing homes and congregate care facilities shall be limited to a maximum of

two dwelling units. *(Amended: 06-21-04)*

2. Only existing single family dwellings may be converted to a two-family dwelling through addition or division. This provision prohibits construction of new two-family dwellings or complexes. Where a two-family dwelling conversion is proposed the second dwelling unit shall be subordinate to the first or primary dwelling unit. The size of the primary dwelling unit shall not be regulated by this standard. The finished floor area of the subordinate dwelling unit shall be at least 500 sq. ft. so that all subordinate dwelling units constructed under this provision shall be adequate in size. For properties in which the finished floor area of the primary dwelling unit exceeds 1,000 sq. ft., the finished floor area of the subordinate dwelling unit shall not exceed 50 percent of the finished floor area of the primary dwelling unit. *(Amended: 06-21-04)*
3. Where a two family dwelling conversion is proposed the Planning Board shall determine that design features that distinguish two-family dwellings from single family dwellings are avoided. Such designs may prohibit separate driveways, separate front door entrances, broken facades and other such distinguishing characteristics that call attention to the two-family use of the building and site development. The Board shall encourage creative use of common driveways, side door entrances, and traditional single family architectural elements. *(Amended: 06-21-04)*
4. Where a two-family dwelling conversion is proposed the Planning Board shall require a report from the Code Enforcement Officer making a determination that the proposed conversion meets applicable building codes and that the conversion is designed in such a way that the structure could easily be returned to a single-family dwelling, and detailing what building alterations are required to do so. *(Amended: 06-21-04)*
5. In addition to the minimum lot area requirements found in 3.7.5. two-family dwellings shall provide an additional 10,000 square feet in lot area.
6. In addition to the dimensional requirements found in 3.7.5. churches, schools, community buildings, nursing homes, and congregate care facilities which abut an existing residential use or district shall provide an additional 50% lot area and yards along the applicable property line(s). *(Amended: 1-16-96)*
(Amended: 06-21-04)
7. Nursing homes shall not exceed a density of 25 beds per acre.
8. Churches, schools, community buildings, congregate care facilities, nursing homes, shall be served by public sewer and water service and have access and frontage on an arterial street.
9. Congregate care facilities shall not exceed 5 units per acre.
10. *Infill Uses of Existing Community Buildings.* Community buildings of which portions are occupied by qualified community educational, fraternal, cultural and recreational activities such as an auditorium, library, historical building, lodge, indoor swimming, performing arts, etc. may also infill their vacant space with low traffic uses such as a single residential apartment unit, business or professional office, a single storage space consisting of records management and other similar uses as determined by the Code Enforcement Officer. Nonresidential infill uses may not be open between the hours of 9:00 pm and 8:00 am, except for special events upon a prior determination by the Code Enforcement Officer that the proposed event will not be unreasonably disruptive to other occupied buildings in the vicinity. The Planning Board review of the infill use must determine that the existing site development can either function properly with no changes or the Planning Board must be provided with a revised site plan that details the changes to the building and site development that will function properly and with minimal disruption to the neighborhood and limited modifications to the existing site development and building. Existing community buildings are not required to satisfy

the area and yard requirements of Article 3.7.6.6 to utilize the provisions of Article 3.7.6.10. *Amended 10-29-2012.*

3.7.7. Cluster Development Standards: (subject to site plan review where applicable).

1. *Special Provisions:*

- a. Notwithstanding other requirements of this district cluster developments shall be allowed 30 percent lot coverage.
- b. The development type proposed shall be indicated on all plans submitted.
- c. Cluster development standards shall supersede the lot dimension requirements and special district regulations of *Articles 3.7.5 and 3.7.6.*
- d. Cluster developments shall be served by public sewer and water service.
- e. Congregate care facilities shall have access from and frontage on an arterial street.

2. *Lot Dimensions*

		Development Type	
		Single Family	Congregate Care Facility
Minimum Lot Area	-	9,000 sq. ft.	- 40,000 sq. ft.
Minimum Road Frontage	-	75 feet	- 100 feet
Minimum Setbacks:			
Street Yard	-	15 feet	- 50 feet
Other Yards	-	15 feet	- 75 feet
Minimum Open Space Ratio	-	.35	- .5
Maximum Gross Density	-	3.146 units/acre	- 10.0 units/acre

(Amended 05-04-92 Effective 06-03-92) (Amended 06-21-93 Effective 07-21-93)

3.8. Residential B District

3.8.1. Purpose - These areas are designated for a mixture of residential uses: single family, multi-family, and mobile home parks, developed as either individual lots, conventional subdivisions or cluster subdivisions. In addition, the RB District shall allow certain low impact nonresidential uses.

3.8.2. Deleted - *(Amended 12-05-05, Effective 01-04-06)*

3.8.3. Permitted Uses (Subject to Site Plan Review where applicable) - Single family dwellings, certified manufactured homes, home day care (subject to *Article 4.19*), accessory uses and structures; non commercial parks or playgrounds, essential service, congregate care facility, public schools, multi-family structures, multi-family attached structures, elderly housing, mobile home parks (subject to *Article 4.13.3*) home occupation (subject to *Article 4.10*),. *(Amended: 8-22-94, 1-21-97) (03-21-05)*

3.8.4. Conditional Uses (Subject to Site Plan Review) - Day care facility (subject to *Article 4.19*), churches, non-profit schools, funeral homes, community buildings, community facilities, nursing homes, institutional buildings in excess of 35 feet in height, buildings necessary for essential services, animals other than usual pets provided the premises consists of at least 2.5 acres, and animals shall be kept a minimum of fifty (50) feet from any property line. *(Amended: 8-22-94) (Amended: 12-04-01) (03-21-05) (Amended: 08-11-2008)*

3.8.5. Lot Dimensions

		Public Sewer & Water		On-Site Waste Disposal
Minimum Lot Area	-	16,500 sq. ft.	-	25,000 sq. ft.
Minimum Road Frontage	-	100 feet	-	125 feet
Minimum Setbacks:				
Street Yard	-	25 feet	-	30 feet
Other Yards	-	20 feet*	-	30 feet
Maximum Ground Coverage	-	25 percent	-	25 percent
Maximum Building Height	-	35 feet	-	35 feet

(Amended 12-05-05, Effective 01-04-06)

* Any lawfully existing lot of record situated in a Residential B District containing road frontage of 100' or less as of July 3, 1991 which is served by public sewer may be developed for single family dwellings and accessory structures with minimum side yards of not less than 10' each. Any such lots containing between 100' and 120' of road frontage may be developed for single family dwellings and accessory structures with minimum side yards of 10' each, plus .5' per side yard for each foot of road frontage in excess of 100'. *(Amended 7-6-92)*

Notwithstanding the above requirements, accessory structures which are not attached to a principal building may be located on a lot in accordance with the following:

Accessory Structures Ground Floor Area		Up to 250 Square Feet
Maximum Height	-	16 feet
Minimum Other Yard	-	5 feet

Once located in accordance with the foregoing requirements, said accessory structures shall not be attached to a principal building unless said structures are in compliance with the Other Yard requirement of the District. *(Amended: 10-3-94)*

3.8.6. Special District Regulations

1. No multi-family structures, cluster developments, and group developments in the RB District shall be established without public sewer and water service. Notwithstanding this regulation a single multifamily structure may be established with public water only
2. A single multi-family structure of up to six units may be located in areas with public water only provided that an additional 10,000 sq. ft. of lot area is provided for each dwelling unit over the base lot area requirement. Adequate area must be provided for an approved on-site waste disposal design and for an approved replacement on-site waste disposal system design.
3. Any combination of multi-family structures shall be allowed provided the maximum gross density does not exceed five (5) units per acre, nor shall any structure contain more than ten (10) units.
4. For multi-family structures in excess of four (4) units, the required yards shall be increased by two (2') feet per unit over four (4).
5. For churches, schools, funeral homes, community buildings, nursing homes and congregate care facilities, which abut an existing residential use or district shall increase the required other yard(s) setback by fifty 50% along the applicable property line(s). *(Amended: 1-16-96)*

6. Nursing homes shall not exceed a density of twenty-five (25) beds per acre.
7. No churches, schools, funeral homes, or community buildings shall be established unless it has public sewer and water service and access from, and frontage on an arterial street.
(Amended 12-05-05, Effective 01-04-06)
8. Notwithstanding the maximum building height regulation herein building height for institutional uses may be up to 60 feet maximum height under the following condition: Buildings in excess of 35 feet in height shall provide additional setbacks on all yards as herein stipulated: Subtract 35 feet from the proposed building height and add that difference to each base yard setback requirement. *(Amended: 08-11-2008)*

EXAMPLE: A 60 foot tall building is proposed. By subtracting the base district building height from the proposed height the following is the result $60 - 35 = 25$. *(Amended: 08-11-2008)*

	Minimum Setbacks:	Modified Setback
Street Yard	- 25 feet	50 feet
Other Yard	- 20 feet	45 feet

9. *Infill Uses of Existing Community Buildings.* Community buildings of which portions are occupied by qualified community educational, fraternal, cultural and recreational activities such as an auditorium, library, historical building, lodge, indoor swimming, performing arts, etc. may also infill their vacant space with low traffic uses such as a single residential apartment unit, business or professional office, a single storage space consisting of records management and other similar uses as determined by the Code Enforcement Officer. Nonresidential infill uses may not be open between the hours of 9:00 pm and 8:00 am, except for special events upon a prior determination by the Code Enforcement Officer that the proposed event will not be unreasonably disruptive to other occupied buildings in the vicinity. The Planning Board review of the infill use must determine that the existing site development can either function properly with no changes or the Planning Board must be provided with a revised site plan that details the changes to the building and site development that will function properly and with minimal disruption to the neighborhood and limited modifications to the existing site development and building. Existing community buildings are not required to satisfy the area and yard requirements of Article 3.8.6.5. to utilize the provisions of Article 3.8.6.9. *Amended: 10-29-2012.*

3.8.7. Cluster Development Standards (Subject to site plan review where applicable)

1. *Special Provisions:*
 - a. Notwithstanding other requirements of this district, cluster developments shall be allowed thirty (30) percent lot coverage.
 - b. The development type proposed shall be indicated on all plans submitted.
 - c. Cluster development standards shall supersede the lot dimension requirements and special district regulations of *Article 3.8.5 and 3.8.6* except in the case of conditional uses which shall meet the applicable "non-cluster" development standards of *3.8.5 and 3.8.6*.

2. Lot Dimensions

	Limited to Single Family	Multi-family Structure, 6 units/bldg. maximum	Multi-family Structure, 10 units/ bldg. maximum	Elderly Housing 30 units/ bldg. maximum	Congregate Care Facility
Minimum Lot Area (In square feet)	9,000	9,000	12,000	25,000	40,000
Minimum Road Frontage (In feet)	75	80 ²	80 ²	80 ⁴	100 ⁴
Minimum Setback: (In feet)					
Street Yard	15	15	30	15	30
Other Yards	15	20 ¹	20 ¹	20 ³	30 ³
Minimum Open Space Ratio	.35	.42	.50	.30	.50
Maximum Gross Density (Units/Acre)	3.146	8.00	6.0	10.0	10.0

¹For buildings with more than 4 units add 2' per unit over 4

²For buildings with more than 4 units add 5' per unit over 4

³For buildings with more than 10 units add 1' per unit over 10

⁴For buildings with more than 10 units add 2' per unit over 10

(Amended: 9-19-83, 10-7-85, 1-2-89, 8-6-90, 9-17-90, 6-3-91, 6-21-93)

3.9. Rural District

3.9.1. Purpose - The intent of this district is to protect and promote the rural use and character of the area, to provide for traditional agricultural and open space uses, and to provide for low density residential development where appropriate. It is intended that much of the residential development occurring in this district will be either dispersed in nature or, where the developer chooses, will be clustered with extensive open space surrounding the development. (Amended: 12-18-95)

3.9.2. Permitted Uses (Subject to Site Plan Review where applicable) - Agriculture, forestry, single family dwelling, certified manufactured home, two family dwelling, three or four family dwelling when serviced by public sewer and water, home day care (subject to *Section 4.19*), accessory use, golf course or other outdoor recreational facilities, home occupation (subject to *Article 4.10*), cluster subdivisions, essential service, and wireless telecommunications facilities (subject to *Section 4.22*). (Amended: 9-19-83, 8-22-94, 12-18-95, 10-01-01, 6-3-02, 03-21-05)

3.9.3. Conditional Uses (Subject to Site Plan Review) - Daycare facility, child care center (subject to *Section 4.19*), nursing home, non-profit school, public schools, church, non-profit club, hospital or clinic, mobile home park (subject to *Section 4.13*), campground, cemetery, buildings and parking for recreational facilities, processing agricultural products which are not accessory to an agricultural use, processing and excavation, gravel pit and quarry activities (subject to *Article 4.23 Excavations, Gravel Pits and Quarries*), stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities, commercial nursery, indoor recreational facilities, boarding of animals; to include training and grooming, veterinary hospital, buildings necessary for essential services, community facility (including solid waste facility), Customary Rural Business (subject to *Section 4.20*). (Amended: 8-22-94, 12/18/95, 12-2-96, 1-21-97, 03-21-05, 12-17-07, 01-03-11)

3.9.4. Lot Dimensions

Minimum Area	-	2 acres
Minimum Road Frontage	-	200 feet
Minimum Setbacks:		
Street Yard	-	30 feet
Other Yards	-	30 feet
Maximum Ground Coverage	-	10 percent
Maximum Building Height	-	35 feet

Notwithstanding the above requirements, accessory structures which are not attached to a principal building may be located on a lot in accordance with the following:

Accessory Structures Ground Floor Area	Up to 250 Sq. Ft.	251 – 650 Sq. Ft.
Maximum Height	- 16 feet	- 24 feet
Minimum Other Yard	- 5 feet	- 15 feet

Once located in accordance with the foregoing requirements, said accessory structures shall not be attached to a principal building unless said structures are in compliance with the Other Yard requirement of the District. *(Amended: 10-3-94)*

3.9.5. Special District Requirements

1. All buildings for the commercial raising or keeping of animals shall be set back a minimum of fifty (50') feet from side and rear property line. *(Amended: 10-3-94, 12-18-95)*
2. Kennels for the commercial boarding, raising, and training of six or more dogs shall be kept fifty (50') feet from side and rear property lines. *(Amended: 12-18-95)*
3. Accessory structures or buildings associated with single family residences may be larger than the principal building (single family residence) in both building height and total floor area provided that: The accessory building shall function as an accessory use to the residential use and not as a second primary use. Vehicles or equipment owned or leased by the person(s) residing on a lot may be stored or repaired in the accessory structure or building, and shall be considered to be an accessory use to the single family residential use. The accessory building shall not exceed 5,000 sq. ft. in floor area. The accessory building shall be constructed on a lot of at least 3 acres in size. Accessory buildings that meet these requirements do not require site plan approval. *(Amended: 7-6-2010)*

3.10. Seasonal District

3.10.1. Purpose - This district is designed to provide for seasonal residential use of waterfront areas so that the process of accelerated nutrient enrichment of water bodies, which almost always accompanies shoreland development, will be kept to a minimum. This district additionally allows for traditional recreational uses associated with waterfront areas, as well as for forest and agricultural uses.

3.10.2. Permitted Uses (Subject to Site Plan Review) - Seasonal dwellings, agriculture, forestry, public and non-profit recreational facilities, accessory uses, essential service.

3.10.3. Conditional Uses (Subject to Site Plan Review) - Water recreation facilities, tenting and camper trailer park, buildings necessary for essentials services, private recreational facilities.

3.10.4. Lot Dimensions

Minimum Area	-	20,000 sq. ft.
Minimum Road Frontage	-	100 feet
Minimum Setbacks:		
Street Yard	-	25 feet
Side Yard	-	25 feet
Rear Yard	-	25 feet
High Water Mark	-	75 feet
Maximum Ground Coverage	-	20 percent
Maximum Building Height	-	35 feet

3.10.5. Special District Requirements

1. All land area and uses in this district shall conform to the standards established in *Article 4.14* of this ordinance.
2. For lot dimensions established under *Article 3.10.4*, minimum setback from high water mark takes precedence over other yard depth requirements where it is applicable.

3.11. Resource Protection (Repealed) See Shoreland Zoning Ordinance (Amended 03-01-10)

3.12. Industrial 2 District

3.12.1. Purpose - The Industrial 2 District is established to accommodate all types of industrial and commercial uses. No recreational use shall be allowed in this district. As used in this section, recreational uses include but are not limited to campgrounds; facilities for amusement or entertainment; and facilities for the operation of recreational vehicles.

3.12.2. Permitted Uses (Subject to Site Plan Review) - Commercial and industrial uses, take-out restaurant, accessory uses or structures, essential services, buildings necessary for essential services, and wireless telecommunications facilities (subject to *Article 4.22*). Excavation, gravel pit and quarry activities are not permitted. (Amended: 10-01-0, 12-6-04, 12-17-07)

3.12.3. Conditional Uses (Subject to Site Plan Review) - Living quarters for security personnel, limited to one dwelling unit per use and stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities. (Amended: 12-17-07)

3.12.4. Lot Dimensions

Minimum Area	-	None
Minimum Road Frontage	-	See 3.12.5.1
Minimum Setback From Lot Lines	-	10 feet
Maximum Building Height	-	See 3.12.5.2

3.12.5. Special District Requirements

1. *Access* - Each lot shall have a frontage of fifty (50') feet or more on a public street or shall have an unobstructed easement of access or private right-of-way which is everywhere fifty (50') feet or more in width to a public street.

2. *Building and Structure Height* - No building or structure shall be greater in height than thirty-five (35') feet except that buildings or structures may be erected with conditional use approval of the Planning Board.
3. No structure or building may be constructed within three hundred (300') feet of the Route 202 right-of-way.

3.13. Business B District

3.13.1. Purpose - This district is intended to provide a location for larger commercial developments (in excess of 10,000 sq. ft. of floor area) in central locations of Hampden.

3.13.2. Permitted Uses (Subject to Site Plan Review) - Business and professional offices, retail and service businesses, take-out restaurant, small restaurant, accessory uses or structures and essential service. *(Amended: 12-6-04)*

3.13.3. Conditional Uses (Subject to Site Plan Review) - Sit-down restaurant, fast-food restaurant, outdoor dining restaurant, tavern, drive-thru business. *(Amended: 12-6-04)*

3.13.4. Lot Dimensions

Minimum Lot Area	-	1 acre
Minimum Road Frontage	-	125 feet
Minimum Setbacks:		
Street Yard	-	35 feet
Other Yards	-	30 feet
Maximum Lot Cover	-	20 percent
Maximum Building Height	-	35 feet

3.13.5. Special District Regulations

1. Along any boundary line adjacent to a residential district a Class III landscaped buffer strip shall be provided.
2. Shopping centers shall provide accommodations for pedestrians, bicyclists, handicap accessibility and public transportation. *(Adopted: 11-8-83) (Amended: 8-8-94)*
3. Buildings with the exception of one and two unit dwellings constructed, reconstructed, moved or structurally altered, shall comply with the following standards:
 - a. Buildings shall have a pitched roof with a minimum pitch of six (6) in twelve (12), or have a roof form and pitch consistent with adjacent structures within 300 feet or if in the development of structures in excess of 10,000 square feet, has an appearance similar to that of a pitched roof.
 - b. Buildings shall have exterior siding that is compatible with those of the adjacent buildings, such as brick or masonry veneers, wood siding, wood shingles, aluminum or vinyl siding simulating a clapboard pattern, or hardboard siding. Inconsistent architectural elements created by illumination, form or color shall be discouraged.
 - c. Buildings in excess of 10,000 square feet shall treat the predominately visible street facade(s) within the guidelines of the above materials to provide a consistent architectural appearance.

4. In order to evaluate consistency with Special District Regulation 3, the site plan submission shall include elevation drawings with details as to how the above standards are met. *(Amended: 07-19-00)*
5. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 and no part of the vehicle queue shall be located within 100 feet of a residential structure. *(Amended: 12-6-04)*
6. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants and fast-food restaurants. *(Amended: 12-6-04)*
7. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051. Licenses generally* which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. *(Amended: 12-6-04)*

3.14. Village Commercial District

3.14.1. Purpose - The Village Commercial District is established to accommodate the daily or frequent shopping needs of the Hampden consumer. In this district, which is located in close proximity to existing residential areas, land uses are limited to small service businesses and retail stores primarily serving the town. The style, appearance, and placement of buildings, parking and landscaping will be regulated to promote consistency with existing buildings and residential uses. The Village Commercial District shall encourage pedestrian circulation and face to face retail sales.

3.14.2. Basic Requirements - Uses in a Village Commercial District; no business may be conducted in a structure with more than six thousand (6,000) square feet in ground coverage. No goods or materials may be displayed or stored outdoors, except goods or materials of a seasonal nature displayed for retail sale. Such outside storage display area may not exceed five (5%) percent of the gross floor area of the building. No business whether a permitted use or a conditional use shall be open to the public between the hours of 10:00 p.m. and 6:00 a.m. No more than two (2) vehicles used for business purposes shall be stored outdoors. *(Amended: 11-3-97)*

3.14.3. Permitted Uses - (Subject to Site Plan Review) - No permitted commercial use shall exceed six thousand (6000) square feet in floor area within a building. One (1) and two (2) family dwellings, home day care (subject to *Article 4.19*), any business office or professional office, retail sales, service business, home occupation (subject to *Article 4.10*), take-out restaurant, small restaurant, accessory uses or structures. *(Amended: 8-22-94, 11-3-97, 12-6-04) (03-21-05)*

3.14.4. Conditional Uses (Subject to Site Plan Review) - The following uses shall be allowed in a Village Commercial District, but only upon the granting of a conditional use permit by the planning board pursuant to *Article 4.2* of this Ordinance. Any business or professional office, retail sales, sit down restaurant, fast food restaurant, outdoor dining restaurant, tavern, service business in excess of six thousand (6000) square feet, mixed residential/commercial uses, limited to a maximum of four (4) dwelling units, day care facilities (subject to *Article 4.19*), preschools, essential service and buildings, place of assembly, nursing home, community facilities, drive thru business, three-four (3-4) unit residential buildings. Animals other than usual household pets when accessory to a residential use provided the premises consists of at least 2 1/2 acres, and animals are kept a minimum of 50 feet from any property line. *(Amended: 8-22-94, 11-6-95, 11-3-97, 12-6-04) (03-21-05)*

3.14.5. Lot Dimensions

Minimum Lot Area	-	10,000 sq. ft.
Minimum Road Frontage	-	75 feet
Minimum Setbacks:		
Street Yard	-	None
Other Yards	-	14 feet
Maximum Lot Coverage	-	25 percent
Maximum Building Height	-	35 feet

(Amended 4-5-99)

3.14.6. Special District Regulations

1. Buildings, with the exception of one (1) and two (2) unit dwellings, constructed, reconstructed, moved, or structurally altered shall comply with the following standards:
 - a. Buildings shall have a pitched roof with a minimum pitch of six (6) in twelve (12) or have a roof form and pitch consistent with adjacent structures within 300 feet.
 - b. Buildings shall have exterior siding that is residential in appearance, such as brick or masonry veneers, wood siding, wood shingles, aluminum or vinyl siding simulating a clapboard pattern or hardboard siding.
 - c. Except for Commercial Storefronts, as defined, no windows or doors shall have a glass area in excess of thirty-two (32) square feet. In the instance of grouped or double windows no group of windows shall exceed eighty (80) square feet in glass area.
 - d. No building exteriors shall contain elements which detract from the architectural style or design of the building by inappropriate use of colors, internally illuminated elements, or other means.
(Amended: 11-3-97)
 - e. Parking shall be located to the side and/or the rear of buildings and not in the street yard.
 - f. Street yards not occupied by buildings, shall be seeded and landscaped. (Amended 4-5-99)
2. Elevation drawings required. In order to verify compliance with *Article 3.14.6.1* (building standards) elevation drawings shall be submitted which indicate compliance with those standards. While these plans shall be a guide of the elements involved and not an exact blueprint for the final construction, in no case shall the final building facades violate any of the provisions of *Article 3.14.6.1*. (Amended 4-5-99)
3. Land area required for multi unit buildings; In addition to the minimum lot requirement each lot shall have a minimum of five thousand (5,000) square feet of land area for every additional dwelling unit over one (1). (Amended: 11-3-97)
4. Applicants may request the Board extend the hours of operation when treated as a conditional use if the Board makes a positive finding that there will be no adverse impact on the adjacent properties. In making its determination the Board shall consider the type and size of the proposed use, its potential impact on adjacent properties, the additional hours requested, and the adjacency of residential properties and districts. The Board may consider mitigation measures provided by the applicant such as additional screening, setbacks, and limiting outdoor lighting to lessen the potential impact.
(Amended: 11-3-97)

5. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 feet and no part of the vehicle queue shall be located within 75 feet of a single family dwelling. *(Amended: 12-6-04)*
6. Drive thru business uses including fast food restaurants shall comply with the following standards:
 - a. Both the queuing lane and the drive thru window shall be at least fifty (50) feet from any residentially zoned property.
 - b. Each queuing lane and drive thru window shall be visually screened from adjacent residential properties through placement of the building on the site and through the use of buffer walls and other buffering devices.
 - c. Sidewalks shall be provided both on-site and along the street right of way and shall provide separation from contiguous vehicular travel with at least a four inch elevation and curbing and where feasible esplanade, lawn areas and planter boxes. *(Amended: 12-6-04)*
7. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants. *(Amended: 12-6-04)*
8. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051*. which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. *(Amended: 12-6-04)*

3.15. Village Commercial II District

3.15.1. Purpose - The Village Commercial II District is established to accommodate the daily or frequent shopping needs of the Hampden consumer. The District may provide for larger businesses which serve a market greater than the immediate neighborhood when developed in a compatible style. The style, appearance, and placement of buildings, parking and landscaping will be regulated to promote consistency with existing buildings and residential uses. The District shall encourage pedestrian circulation and face to face retail sales.

3.15.2. Permitted Uses - (Subject to Site Plan Review) - Any business office or professional office, retail sales (limited to 6:00 am to 11:00 pm), service business, take out restaurant, small restaurant, community facility, place of assembly, essential service, single family and multifamily units including mixed commercial/residential uses (limited to 4 units maximum), accessory uses or structures. *(Amended: 12-6-04)*

3.15.3. Conditional Uses (Subject to Site Plan Review) - Sit down restaurant, fast food restaurant, outdoor dining restaurant, tavern, any of the above permitted uses except restaurant and tavern uses in excess of 10,000 square feet in floor area, hotels, motels, the reconstruction, replacement, or expansion of existing automobile service business, indoor recreation facilities, commercial schools, drive thru businesses, multi-unit and mixed commercial/residential uses in excess of four units, buildings for essential service. *(Amended: 12-6-04)*

3.15.4. Lot Dimensions

Minimum Lot Area	-	12,500 sq. ft.
Minimum Road Frontage	-	100 feet
Minimum Setbacks:		
Street Yard	-	None
Other Yards	-	14 feet
Maximum Lot Coverage	-	25 percent
Maximum Building Height	-	35 feet

(Amended 4-5-99)

3.15.5. Special District Regulations

1. Buildings, with the exception of one (1) and two (2) unit dwellings, constructed, reconstructed, moved, or structurally altered shall comply with the following standards:
 - a. Buildings shall have a pitched roof with a minimum pitch of six (6) in twelve (12), or have a roof form and pitch consistent with adjacent structures within 300 feet, or if in the development of structures in excess of 10,000 square feet has an appearance similar to that of a pitched roof.
 - b. Buildings shall have exterior siding that is residential in appearance, such as brick or masonry veneers, wood siding, wood shingles, aluminum or vinyl siding simulating a clapboard pattern or hardboard siding.
 - c. Except for a Commercial Storefront, as defined, no windows or doors shall have a glass area in excess of thirty-two (32) square feet. In the instance of grouped or double windows no group of windows shall exceed eighty (80) square feet in glass area.
 - d. Building exteriors shall not contain elements which detract from the architectural style or design of the building by inappropriate use of colors, internally illuminated elements, or other means.
 - e. Parking shall be located on the side or rear of the building and not in the street yard.
 - f. Street yards, not occupied by buildings, shall be seeded and landscaped with the minimum of three street trees and four shrubs per 100 feet of frontage. Tree size shall be consistent with the requirements of *Article 4.7.11*. (Amended 4-5-99)
2. Elevation drawings required. In order to verify compliance with *Article 3.15.5.1* (building standards) elevation drawings shall be submitted which indicate compliance with those standards. While these plans shall be a guide of the elements involved and not an exact blueprint for the final construction, in no case shall the final building facades violate any of the provisions of *Article 3.15.5.1*. (Amended 4-5-99).
3. Land area required for multi unit buildings; In addition to the minimum lot requirement each lot shall have a minimum of five thousand (5,000) square feet of land area for every additional dwelling unit over one (1).
4. Buildings in excess of 10,000 square feet, and automobile service uses shall meet a minimum other yard setback of 30 feet where it abuts a residential use or district.
5. Applicants may request the Board extend the hours of operation when treated as a conditional use if the Board makes a positive finding that there will be no adverse impact on the adjacent properties. In making its determination the Board shall consider the type and size of the proposed use its potential

impact on adjacent properties, the additional hours requested, and the adjacency of residential properties and districts. The Board may consider mitigation measures provided by the applicant such as additional screening, setbacks, and limiting outdoor lighting to lessen the potential impact. (Amended: 11-3-97)

6. Fast-food restaurant use shall be located on a lot having a minimum lot size of 1.5 acres, minimum frontage of 200 feet and no part of the vehicle queue shall be located within 75 feet of a single family dwelling. (Amended: 12-6-04)
7. Drive thru business uses including fast food restaurants shall comply with the following standards:
 - a. Both the queuing lane and the drive thru window shall be at least fifty (50) feet from any residentially zoned property.
 - b. Each queuing lane and drive thru window shall be visually screened from adjacent residential properties through placement of the building on the site and through the use of buffer walls and other buffering devices.
 - c. Sidewalks shall be provided both on-site and along the street right of way and shall provide separation from contiguous vehicular travel with at least a six inch elevation and curbing and where feasible esplanade, lawn areas and planter boxes. (Amended: 12-6-04)
8. Sale or consumption of alcoholic beverages is prohibited for outdoor dining restaurant uses in conjunction with take-out restaurants. (Amended: 12-6-04)
9. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051*. which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers. (Amended: 12-6-04)

3.16. Waterfront 1 District (Amended 6-4-12)

3.16.1. Purpose - This district is intended for the location of a wide variety of water dependent and water related uses as well as commercial retail and service uses. In general this area is devoted to uses that are consistent with the Shoreland Zoning General Development uses. Furthermore it is recognized that limited land area is available for such uses thus innovative development standards are required.

3.16.2. Permitted Uses (Subject to Site Plan Review) - Any retail or service business, boat sales, service and storage, hotel and motels, business or professional offices, take-out restaurant, small restaurant, sit-down restaurant, place of assembly, outdoor recreation and accessory uses or structures. Essential service and buildings for essential service.

3.16.3. Conditional Uses (Subject to Site Plan Review) –Outdoor dining restaurant, tavern, bar, dance hall, commercial school, Functionally water-dependent uses along the Penobscot River. Any establishment which provides in excess of 5,000 square feet of outdoor display or storage of goods or equipment. Stockpiles (subject to *Article 4.9*) not accessory to excavation, gravel pit and quarry activities.

3.16.4. Lot Dimensions

Minimum Lot Area	-	20,000 sq. ft.
Minimum Road Frontage	-	none
Minimum Setbacks:		
Street Yard	-	10 feet
Other Yards	-	10 feet
Maximum Ground Coverage	-	50 percent
Maximum Building Height	-	35 feet

3.16.5. Special District Regulations

1. Notwithstanding the maximum building height regulations in Article 3.16.4. building height may be up to 50 feet under the following standards. Buildings in excess of 35 feet in height shall provide additional setbacks on all yards as herein stipulated: Subtract 35 feet from the proposed building height and add that difference to each yard setback requirement.

EXAMPLE: A 48 foot tall building is proposed. By subtracting the base Commercial Service District maximum building height from the proposed height the following is the result $48' - 35' = 13'$.

Then add that amount to each yard or setback.

Setback Type		Base Setbacks:	Total Setback
Street Yard	-	10 feet	23 feet
Other Yard	-	10 feet	23 feet

2. Outdoor dining areas proposed for outdoor dining restaurant uses shall be clearly delineated on a site plan including barriers required under M.R.S.A. *Title 28-A Section 1051(3)*. Outdoor dining restaurant uses proposing outdoor consumption of alcoholic beverages shall comply with M.R.S.A. *Title 28-A: LIQUORS §1051. Licenses generally* which requires that outside areas be controlled by barriers and by signs prohibiting consumption beyond the barriers.
3. Notwithstanding the maximum building height regulations buildings used for functionally water-dependent uses along the Penobscot River are not subject to the maximum building height standard in Article 3.16.4. or 3.16.5.1. provided the lot area for such a use is at least five acres in size.
4. All new lots in the district are to be served by and have access to a paved right-of-way leading to a public way. Such right-of-way shall be dimensionally adequate to accommodate two-way traffic and utility services.

ARTICLE 4 GENERAL REGULATIONS

The following regulations pertain to all districts unless otherwise indicated.

4.1. Site Plan Review

4.1.1. Purpose - Site Plan review regulations are established to promote the public health, safety and general welfare by requiring plans to be submitted to and reviewed by, the planning board for certain uses which have a potential for significant impact on a neighborhood, but which, when properly designed with respect to their surroundings, can become acceptable uses in the neighborhood. The overall purpose of such review shall be to ensure orderly and beneficial development and the most appropriate use of land in keeping with the purposes of the district in which a development is proposed.

4.1.2. Requirement - The planning board shall review and make recommendations concerning plans for all non-residential uses, public and semi-public buildings, group development as defined and subject to *Article 4.17 Lots and Planned Group Developments*, microcell wireless telecommunications facilities, multi-family residential units, conditional uses, and mobile home parks, whether or not such development includes a subdivision or a re-subdivision of a site. The construction of a single family dwelling, a two (2) family dwelling, the establishment of a home day care, or the placement of a certified manufactured home on a lot outside a mobile home park shall not be covered by this section. The planning board may waive the requirement for site plan review for essential services and for buildings/structures necessary for essential service if they are owned and maintained by the Town of Hampden or the Hampden Water District. (*Amended: 9-19-83, 8-22-94, 2-7-05*)

In addition, site plan review and approval shall not be required for minor revisions (in accordance with *Article 4.1.8*) or a change in use from one permitted use in the zone to another permitted use in the zone under the following conditions: (*Amended: 1-21-97*)

1. The proposed change in use is limited to the occupancy of an existing structure.
2. No increase in the floor area of the structure is proposed.
3. No change in exterior site improvements is proposed.
4. The number of parking spaces required under the Ordinance for the new use is not greater than the number of parking spaces required for the existing or last use of the premises.
5. The foregoing exemption from site plan review shall not apply to conditional uses. (*Amended: 12-4-89*)

4.1.3. Application Procedure - Persons seeking site plan approval shall file one original and fifteen (15) copies of site plans, meeting the specifications of *Article 4.1.6*, with the code enforcement officer. Applicant shall also file site plan review application fees and other applicable fees paid in accordance with the Town of Hampden Fees Ordinance. The code enforcement officer shall review the plans to determine whether or not the plans conform to the requirements of this Ordinance and shall, within 45 days from the receipt of such plans, either notify the applicant in writing of any deficiencies or refer such plans to the planning board. (*Amended: 4-17-89, 12-4-89, 11-17-03*)

4.1.4. Public Hearing - Within forty-five (45) days from the date of referral of an application for site plan review by the code enforcement officer, and before taking final action thereon, the planning board shall hold a public hearing on the application. Notice of said hearing shall be published in a local newspaper at least ten (10) days in advance of said hearing. A notice of said hearing shall be mailed to each landowner abutting the proposed development and each landowner within three hundred (300') feet

of the property line of the proposed development. Landowners shall be considered to be those against whom property taxes are assessed. Failure of any landowner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the planning board. Responsibility for such notification shall be assumed by the code enforcement officer. The applicant shall bear all associated costs of advertisements and notifications. The purpose of public hearing shall be to receive input from the general public relative to the elements listed in *Article 4.1.7*. (Amended: 12-4-89)

4.1.5. Planning Board Review and Action - Within thirty (30) days after the public hearing, the planning board shall approve, approve with modifications, or disapprove the site plan at a public meeting. The board shall limit its review to the criteria set forth in *Article 4.1.7*. The board may consult with the applicant or any other party in making its review. The board shall inform the applicant of its decision in writing, and in cases of disapproval or approval with modifications, reasons for such action shall be stated. A copy of the board's decision shall be filed with the code enforcement officer. No building or use permit shall be issued until site plan approval is granted.

4.1.6. Required Information on Plans - Application for the establishment of uses requiring site plan review shall be accompanied by plans, drawn to scale, containing the following information:

1. Scale of the map.
2. Name of applicant.
3. Boundaries of the tract of land.
4. Location of existing and proposed buildings and other structures, including use and proposed use thereof.
5. Location of buildings on abutting properties or within three hundred (300') feet of the property line of the proposed development.
6. Location of existing public streets.
7. Location of proposed access drives to the lot from public streets.
8. Location and arrangement of proposed off-street parking and loading areas and their appurtenant drives and maneuvering areas.
9. Location of existing and proposed pedestrian walkways.
10. Location of existing and proposed utilities and easements thereof, including sanitary sewerage, water, and electricity.
11. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc.
12. Location, intensity, type, size and direction of all outdoor lighting.
13. Location and proposed use of areas proposed for outdoor recreation.
14. Location and type of existing and proposed fences, hedges, and trees of twelve (12") inch diameter and over at a point four and one half (4.5') feet above ground level.
15. Contour lines at appropriate intervals to show the effect on the land of existing and proposed grades for areas proposed to be excavated or filled.
16. Location and size of signs and all permanent outdoor fixtures.
17. Existing zoning.

4.1.7. Standards Governing Site Plan Review - In approving an application for site plan review, the planning board shall first determine that the development, as planned, will conform to the requirements of the district in which it is to be located and to other pertinent requirements of this Ordinance. Following such determination, the board shall approve the proposed plan if it makes a positive finding based on the evidence presented that it meets all of the following standards. In all cases, the burden of proof shall be upon the applicant. (Amended: 4-03-88)

1. The proposed use, buildings, design and layout meets the provisions of all applicable regulations and ordinances of the Town of Hampden and meets the intent of the comprehensive plan, as amended.

2. The proposed buildings, design, and layout shall, consistent with generally acceptable engineering and architectural design practices, be properly integrated with the terrain and the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location, and height of the building(s) and such natural features as soil type, slope and drainage ways. *(Amended: 10-17-88)*
3. The proposed site layout shall provide for safe ingress and egress to and from public and private roads by providing adequate location, numbers, and control of access points including sight distances, turning lanes, and traffic signals, if necessary. Factors for the planning board to consider in this determination are the turning movements in relation to traffic flow, proximity to intersections, location and access of off street parking, provisions of pedestrian traffic, access by emergency vehicles, and minimization of pedestrian-vehicular contacts. *(Amended: 10-17-88)*
4. The layout and design of on-site vehicular and pedestrian traffic patterns shall provide for safe interior circulation, access by emergency vehicles, separation of pedestrian and vehicular traffic and storage of plowed snow. *(Amended: 10-17-88)*
5. Signs and exterior lighting shall be in accordance with the regulations in this Ordinance and in addition shall be so designed and located so as not to present a hazard, glare, reflection or unattractive appearance on or to adjacent properties and the traveling public. *(Amended: 10-17-88)*
6. Buildings shall, consistent with generally acceptable engineering and architectural design practices, be designed and located so as to be properly integrated with the existing topography, terrain, and other natural features of the site. *(Amended: 10-17-91)*
7. The development shall be designed and constructed to preserve the landscape in its natural state in so far as practicable by minimizing earthmoving, erosion, tree clearance, disturbance of existing vegetation, and the destruction of natural amenities. *(Amended: 10-17-88)*
8. All manufactured slopes, other than those constructed of stone, concrete or other impervious materials shall be planted or otherwise protected from the effects of storm runoff erosion. All graded slopes shall be of a character so as to cause the slope to blend with the surrounding terrain and development.
9. Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream water quality, soil erosion, or any public or private storm drainage system. Whenever possible, on-site absorption shall be utilized to minimize discharges from the site. In reviewing the adequacy of surface water drainage plans, the planning board shall emphasize protection of flood plains, reservation of stream corridors, establishment of drainage rights-of-way and the adequacy of the existing system, and the need for improvements, both on-site and off-site, to adequately control the rate, volume, and velocity of storm drainage. In addition, the planning board shall review maintenance responsibilities to determine their adequacy. *(Amended: 10-17-88)*
10. Adequate provisions shall be made to mitigate any adverse impact on existing scenic or natural beauty, rare or irreplaceable historic sites, or other features of importance to the community.
11. The development shall not impose an unreasonable burden on, nor exceed the capacity of, utilities such as sewer, sanitary and storm drains, water lines, or on municipal services such as, but not limited to, fire, police, solid waste disposal, schools, open spaces, recreational programs and facilities, roads, or other municipal services and facilities.

12. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize any adverse impact on other land uses within the development area and surrounding properties.
13. The proposed use, buildings, and site development shall have no unreasonable adverse effect on surface water quality ground water quality, ground water quantity, soil quality, or air quality.
(Amended: 10-17-88)

4.1.8. Minor Revisions - Minor revisions to approved site plans may be approved in accordance with the following provisions. Minor revisions shall apply to both Permitted and Conditional Uses.

1. Four copies of a plan indicating the proposed revisions shall be submitted to the Code Enforcement Officer.
2. The Code Enforcement Officer, Public Safety Director, Public Works Director, and Town Planner shall review and approve the proposed plan revisions. If the proposed revisions are not approved by all the parties listed above, the applicant may revise their plan or apply to the Planning Board for site plan approval.
3. The proposed revision must meet all lot standards, dimensional, and screening requirements for the district in which it lies, meet the provisions of the Zoning Ordinance and other pertinent regulations.
4. Minor revisions may not be approved for site developments which are inconsistent with their original approved plan.
5. Minor Revisions may include: Building expansions and accessory buildings less than two hundred and fifty (250) square feet which do not over-exceed parking requirements or eliminate existing parking. In the case of building expansions, no more than two hundred and fifty (250) square feet of building expansion shall be allowed via minor revision in a five (5) year period. The addition or relocation of permitted signage. The alteration of utility service by elevation changes, changes in pipe size, and relocation of service lines. Re-grading which does not adversely impact adjacent properties or the public storm-water system. The addition of landscaping, plantings or fences. Rearranging parking spaces which meets applicable design criteria.
6. Minor revisions may not: Violate any provisions of the Zoning Ordinance. Alter roadway access points. Increase or decrease parking, loading or maneuvering areas. Delete screening or buffers. Violate any previous condition of approval.

4.1.9. Site Sketch and Site Exhibit. (Amended: 03-21-05) Notwithstanding the requirements of *Article 4.1 Site Plan Review* this section lays out standards for submission of plan information for which site plan review is not required but for which the Planning Board requires information illustrating the existing physical features of a subject premises.

4.1.9.1. Site Sketches. Site sketches are intended to be a representational depiction of a parcel of land and must show significant features on both the subject lot and neighboring lots depicted in a plan view. Submission requirements for uses requiring site sketch shall be accompanied by plans containing the following information:

1. Plan legend including: names of the applicant, development and preparer of the plan, drawing scale, north arrow and sources of attribution.
2. Subject lot including: depiction of lot lines, their dimensions and total lot area attributed to available tax map, deed or survey information.
3. Buildings on the subject lot including: location and dimensions, floor area and number of stories, and service and overhead doorways (Based on actual measurements).
4. Buildings on neighboring lots within 300 feet of the subject lot. The purpose of this requirement is only to establish the distance to the subject building not to depict specific size and shape or other information about neighboring buildings.
5. Dimensions measured at closest point between building and property lines and neighboring buildings. (Based on actual measurements).
6. Structures including but not limited to: fences, poles, sidewalks and other structures.
8. Landscaping including: trees, hedges, flower gardens, etc.
9. Location of existing public street(s) (name identified on plan), driveways, turn-arounds, and existing and proposed parking spaces.
10. Photographs depicting the exterior of the building(s), driveway and parking area, and particularly views depicting sight distances at intersection of driveway and street.
11. A photocopy of the pertinent FEMA Flood Map upon which the subject lot lines and building have been superimposed.
11. A copy of the deed or lease to the subject property.
12. A copy of subdivision covenants and a copy of conditions appearing on the subdivision plat plan for those properties located in a subdivision.

Site Sketch of John Q. Public Home Occupation (For Illustration Purposes Only)

Prepared by John Q. Public

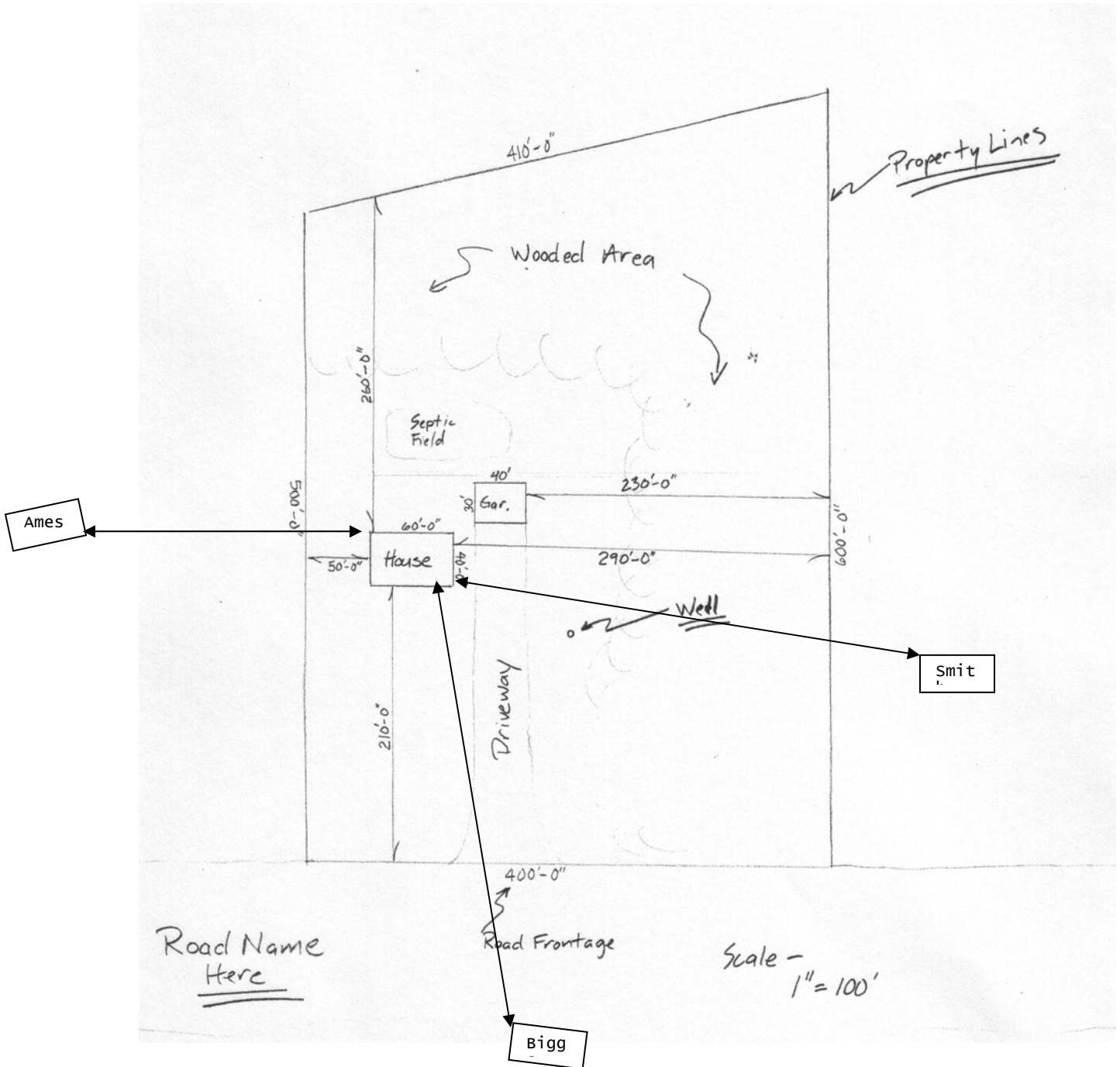
Scale one inch equals 100 feet

Drawn in conventional north orientation.

Dimensional information on plan from deed and verified in the field using walking wheel.

Lot area 5.0 acres.

Building information: House is two story, 2,000 sq. ft. with freestanding garage, single story, 700 sq. ft.



4.1.9.2. Site Exhibit Submission Requirements. Submission requirements for uses requiring site exhibits collected with global positioning systems with sub-meter accuracy shall be accompanied by plans containing the following information: *(Amended: 12-17-07)*

1. Plan legend including: names of the applicant, development and preparer of the plan, drawing scale, north arrow use(s) proposed, tax map and lot number, deed book and page, zoning district and sources of attribution.
2. Subject lot including: depiction of lot lines, their dimensions and total lot area attributed to available property line information, monuments or survey information.
3. Photography that is ground controlled and of high resolution upon which the physical items listed herein would either be superimposed or would be evident and discernable from the photograph without further delineation.
4. Buildings on the subject lot and buildings on neighboring lots within 300 feet of the subject lot.
5. Outstanding physical features including but not limited to pits, quarries, excavations and stockpiles.
6. Structures including but not limited to: fences, poles, sidewalks and other structures.
7. Existing tree growth and ground cover and existing water bodies.
8. Location of existing public street(s) (name identified on plan), driveways, turn-arounds, and existing parking spaces.
9. A photocopy of the pertinent FEMA Flood Map upon which the subject lot lines and building have been superimposed.
10. A copy of the deed(s) or lease to the subject property.
11. A signed statement certifying that the information contained on the site exhibit and accompanying submissions is true and correct.

4.2. Conditional Uses

4.2.1. Permit Required - All uses listed as conditional uses in a particular district require a conditional use permit except that the Planning Board may waive the requirement for conditional use review for buildings/structures necessary for essential service if they are owned and maintained by the Town of Hampden or the Hampden Water District. Applications for a conditional use permit shall be submitted to the planning board for approval. The planning board shall follow procedures outlined in *Article 4.1.3*, *4.1.4*, and *4.1.5* in reviewing applications for conditional use approval except that the review criteria for conditional use permits shall be those outlined in *Article 4.2.3* of this Ordinance.

4.2.2. Information Required in Application - The information required for a site plan review under *Article 4.1.6* of this Ordinance shall be sufficient for a conditional use permit application except that the planning board may request further information which may reasonably be necessary for them to make their decision. Applicant shall also file site plan review application fees and other applicable fees paid in accordance with the Town of Hampden Fees Ordinance. (*Amended: 11-17-03*)

4.2.3. Standards Governing Conditional Use Permits - The planning board shall approve the conditional use permit application if it makes a positive finding based on the evidence presented that the proposed use meets all of the following standards. In all cases, the burden of proof shall be upon the applicant.

1. The proposed use is designed and sited so as to comply with all provisions of this Ordinance, and the applicant shall demonstrate that the use will be operated and maintained in compliance with the performance standards set forth in *Article 4.4* of this Ordinance.
2. The proposed use will provide adequate and safe provision for the collection, storage, and disposal of all wastes generated or stored on the site.
3. The proposed use will not significantly devalue abutting property or property located across a public or private way. In making its determination, the board shall take into consideration the following facts: the type, size, bulk, height, architecture, and use of the structure proposed, the topography of the area, the market value of the surrounding real estate, the availability of utilities, traffic conditions, and other relevant facts.
4. The proposed use will not cause unreasonable noise, odors, dust, gas, fumes, smoke, light or other annoying or dangerous emissions. In making its determination, the board shall require the applicant to demonstrate that none of the foregoing will interfere with the peaceful use and enjoyment of residential properties located in the area of the proposed use.
5. The proposed use will not cause or aggravate hazardous traffic congestion on contiguous or adjacent streets.
6. The proposed use will not deny light and air to surrounding properties.
7. The proposed use will:
 - a. Maintain the existing level of safe and healthful conditions.
 - b. Not cause water pollution, erosion, or sedimentation.
 - c. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
 - d. Conserve shore cover and visual, as well as actual, access to water bodies.
8. The applicant has adequate financial and technical capacity to meet the requirements of this Ordinance and any conditions imposed by the planning board under the provisions of *Article 4.2.4*.

9. The proposed use, if a home occupation, shall meet the standards contained in *Article 4.10* of this Ordinance. (Amended: 10-17-88)

4.2.4. Conditions Attached to Conditional Uses: Upon consideration of the factors listed above, the planning board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restriction; restrictive covenants; locations of piers, docks parking and signs; type of construction; or any other conditions necessary to fulfill the purposes of this Ordinance.

4.2.5. Provision for Combined Review - In situations where the planning board is required to review a proposed use under both the site plan review section of this Ordinance and the conditional use section of this Ordinance, a single combined review may be performed. However, if such a combined review is performed, the planning board shall include in its considerations standards established in *Article 4.1.7 - Standards Governing Site Plan Review* and standards established in *Article 4.2.3 - Factors Applicable to Conditional Use permits*. The planning board shall make a separate determination relative to site plan review and conditional use review.

4.3. Conditional Lot Dimensions

4.3.1. Purpose - It is the purpose of this section of the Ordinance to establish a procedure which would allow for residential development on certain lots which, because of inadequate road frontage, would not otherwise be usable for residential purposes. The lots must meet certain requirements as established in this section of the Ordinance and the development of the lots must be consistent with wise land use planning.

4.3.2. Permit Required - A conditional lot dimension permit issued by the planning board is required for the development of any lot having inadequate road frontage. The planning board shall follow the procedures outlined in *Article 4.3.5* in reviewing any application for conditional lot dimension permit.

4.3.3. Information Required in Application - Application for the development of lots requiring a conditional lot dimension permit shall be accompanied by plans, drawn to scale, containing the following information:

1. Scale of map.
2. Name of applicant.
3. Boundaries of tract of land.
4. Location of existing and proposed buildings and other structures, including use and proposed use thereof.
5. Location of buildings on abutting properties or within five hundred (500') feet of the property line of the proposed development.
6. Location of existing public streets.
7. Location of all curb cuts within one thousand (1,000') feet of the curb cut which will result from the development of the lot.
8. Location of existing and proposed rights of way, utilities and easements therefor; including sanitary sewerage, water and all electricity.
9. Location, intensity, type, size and direction of all outdoor lighting.

4.3.4. Application Procedure - Persons seeking conditional lot dimension approval shall file one (1) original and twelve (12) copies of a complete application, including all information required under *Article 4.3.3*, with the code enforcement officer at least fifteen (15) days before the planning board meeting when

they will be considered. Applicant shall also file site plan review application fees and other applicable fees paid in accordance with the Town of Hampden Fees Ordinance. Upon receipt of complete plans the code enforcement officer shall refer such plans to the planning board. The filing of the required application with the code enforcement officer shall constitute filing of an application for conditional lot dimension approval. (*Amended: 11-17-03*)

4.3.5. Planning Board Review and Action - Within forty-five (45) days of the filing of the application for conditional lot dimension approval, the planning board shall approve, approve with modifications, or disapprove the application at a public meeting. The board shall limit its review to the criteria set forth in *Article 4.3.6*. The board may consult with the applicant or any other party in making its review. The board shall inform the applicant of its decision in writing, and in cases of disapproval or approval with modifications, reasons for such action shall be stated. A copy of the Board's decision shall be filed with the code enforcement officer.

4.3.6. Standards Governing Conditional Lot Dimension Permits

1. *General Requirements* - A conditional lot dimensions permit may only be issued if the following conditions are met:
 - a. The lot and access way must be located in the Rural District, the Residential A District or the Residential B District.
 - b. The frontage of the lot must not have been reduced since January 1, 1979 below either 1.) the minimum lot frontage required in the district which it is located or, 2.) the nonconforming frontage in existence on January 1, 1979.
 - c. The lot is of such dimensions that an imaginary square whose minimum side dimension is the minimum road frontage required in the district where the lot is located, can be accommodated within its borders. Any building that is located on the lot shall be located within the perimeter of such a square. If the lot falls within more than one zoning district, the side dimension for the square shall be determined by the district in which the building is to be built.
 - d. No building shall be placed closer to any lot line or right of way boundary than the distance of the greatest required minimum setback in the district in which the building is located. In determining which dimension is applicable, the characteristic of the lot relative to off and on lot sewer and/or water and the dimensional, requirements associated with such characteristics shall be used.
 - e. There shall be no alternative access to the lot which conforms with the road frontage requirements established for the district.
 - f. The development of the lot shall cause no unsafe or unhealthful condition. Of particular concern in this regard should be traffic safety.
 - g. The lot shall conform to all dimensional requirements of this Ordinance except road frontage. Building setback requirements shall be determined by *Article 4.3.6.1.d* of this Ordinance.
 - h. Only single family residential uses shall be allowed on these lots.
 - i. The development of the lot shall not preclude the orderly development of the neighborhood and the community.
 - j. The lot must have at least thirty (30) feet of road frontage.

2. *Requirements Pertaining To Lots Having More Than 66 Feet Road Frontage* - In addition to the general requirements in 4.3.6.1.a-j, all lots with road frontage of sixty-six (66') feet or more, but less than the required minimum road frontage in the district where the lot fronts the road, shall meet the following standards.
 - a. A sixty-six (66') foot right-of-way into and through the lot must be provided to allow for future road building and/or subdivision activity. The right-of-way must be designed so as to make optimal use of the lot and adjacent undeveloped land, if such development becomes desirable in the future. In determining whether sufficient land is available for development of a dwelling unit, the land in the required right-of-way shall not be considered.
 - b. Conditional lot dimension permits shall not be issued in a subdivision. All subdivision activity shall be governed by the Subdivision Ordinance of the Town of Hampden.
 - c. No more than one (1) dwelling unit may be placed on the lot.
3. *Requirements Pertaining to Lots Having Less Than Sixty-Six (66') Feet but at Least Thirty (30') Feet of Road Frontage* - In addition to the general requirements in 4.3.6.1. a-j, all lots with less than sixty-six (66') feet but at least thirty (30') feet of road frontage shall meet the following standards:
 - a. There must be no alternative access which is greater than or equal to sixty-feet (66') feet (if such access exists, that must be used and reviewed under the provisions of 4.3.6.2).
 - b. No more than one (1) dwelling unit may be placed on the lot.

4.4. Performance Standards

4.4.1. Odorous Matter - The emission of odorous or toxic matter in such quantities as to be readily detectable at any point along lot lines so as to produce a public nuisance or hazard is prohibited. Such activities as might produce such emission, or which might produce smoke, dust, or other particulate matter, shall comply with applicable minimum Federal, State and local requirements and detailed plans for abatement shall be submitted to the code enforcement officer for approval before a building permit is granted. Violations of this standard shall be considered a public nuisance.

4.4.2. Electromagnetic Interference - No use, activity, or process shall be conducted which produces electromagnetic interference in the transmission or reception of electrical impulses beyond the lot line, including radio and television. Provided that >wireless telecommunications facilities= as defined in *Article 7.2* shall be subject to Federal Communications Commission (FCC) requirements, not to provisions of this section with respect to the environmental or health effects of electromagnetic or radio frequency emissions. (*Amended: 10-01-01*)

4.4.3. Fire Safety - All uses, activities, structures, and processes shall comply with applicable Federal, State and local fire safety standards. Upon request of the code enforcement officer, detailed plans for fire safety shall be submitted for approval before a building permit is granted.

4.5. Nonconforming Uses, Site Developments, and Structures

4.5.1. It is the intent of this Ordinance to promote land use conformities. However, the use of land, buildings, or structures, lawful at the time of adoption of this Ordinance or subsequent amendment, may continue although such use does not conform to the provisions of this Ordinance.

1. *Transfer of Ownership* - Non-conforming structures, lots, uses and site developments may be transferred, and the new owner may continue the non-conforming use, structure, lot or site development, subject to the provisions of this Ordinance.
2. *Repair and Maintenance* - This Ordinance allows the normal upkeep and maintenance of nonconforming uses, structures and site developments including repairs or renovations which do not involve the expansion of the nonconforming use, structure, or site development.

4.5.2. *Non-conforming Structures*

1. *Expansions* - A nonconforming structure may be added to or expanded after obtaining the applicable permits, if such addition or expansion does not increase the nonconforming elements of the structure. In the Shoreland Area, property changes and structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. (Amended 10-21-02)

a. *Further Limitations in the Shoreland Area: (Amended 10-21-02)*

- i. After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume by thirty (30%) percent or more, during the lifetime of the structure.
 - ii. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided: that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Code Official, basing its decision on criteria specified in *Article 4.5.2.2 Relocation*, that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3') feet.
2. *Relocation* - A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to the setback requirements to the greatest practical extent as determined by the CEO. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether a building relocation meets the setback to the greatest practical extent, the CEO shall review the size of the lot, slope of the land, the potential for erosion, the location of other structures on the property and adjacent properties, the existence and/or location of the septic system and other on-site soils suitable for septic systems and the types and amount of vegetation to be removed to accommodate the relocation.

3. *Reconstruction or Replacement* - Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than fifty (50%) percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent, as determined by the CEO in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming structure which is damaged or destroyed by fifty (50%) percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit from the CEO. In determining whether a building reconstruction or replacement meets the water setback to the greatest practical extent, the CEO shall consider in addition to the criteria in paragraph 2 above, the physical condition and type of foundation present if any.

4.5.3. Non-conforming Site Developments

1. All site developments legally established prior to the adoption of this Ordinance or subsequent amendment which does not conform to the applicable development standards, parking setbacks, screening, parking spaces, building setbacks, etc., shall be allowed to continue.
2. Any site development may expand provided that all new development shall meet the applicable site development standards.

4.5.4. Non-conforming Uses

1. *Continuing Non-conforming Use of Land or Structure* - The use of land, or structures which lawfully existed prior to the adoption or subsequent amendment of this Ordinance, may continue although such use is not in conformance with the provisions of this Ordinance.
2. *Expansions* - Expansions of non-conforming uses are prohibited.
Exception: Non-conforming residential uses in all districts may be expanded in that accessory structures such as sheds and decks may be added, provided that all other provisions of this ordinance are met. Foundations may be added in conformance with *Article 4.5.2.b* of this ordinance. (Amended 11-18-02)
3. *Resumption Prohibited* - A lot, or structure in or on which a non-conforming use has been discontinued for a period exceeding one year, or which is superseded by a conforming use, shall not again be devoted to a non-conforming use.
Exception: Owner Occupied residential structures are exempt from *Article 4.5.4.3*. (Amended 11-18-02)
4. *Reconstruction* - A nonconforming structure or use which has been destroyed by fire or other hazard shall not be rebuilt except in conformity with this Ordinance. The issuance of a building permit shall be deemed intent to rebuild.
Exception: Owner Occupied residential structures are exempt from *Article 4.5.4.4*. (Amended 01-21-03)
5. *Changes of Use* - A legally existing non-conforming use may be converted to another non-conforming use if reviewed and approved as a conditional use by the Planning Board and subject to the following provisions:
 - a. The Planning Board finds the proposed use will be more consistent with the purpose of the District in which the property is located and the provisions of the Comprehensive Plan than is the existing non-conforming use.
 - b. The Planning Board finds that the impact and effects of the proposed use on the existing uses in the neighborhood or on adjacent properties will be less than the impact and effects of the existing non-conforming use.
 - c. In making its findings, the Planning Board shall consider the following factors in evaluating the impact and effects of proposed uses: traffic, noise, odor, hours of operation, lighting, effect on property values of adjacent properties.

- d. If the Planning Board finds that the impact and effects of the proposed use on the existing uses in the neighborhood or on adjacent properties are equal to, or greater than the impact and effects of the existing non-conforming use, it may nevertheless approve the conversion if the applicant provides for such operational conditions, physical features, or other measures which mitigate those impacts and effects to the satisfaction of the Board.
- e. Other site development improvements, such as parking, may be permitted as part of a non-conforming use conversion, as long as said improvements are in compliance with the development standards for the District in which the property is located.
- f. In order to insure that the conversion from one non-conforming use to another non-conforming use complies with the spirit and intent of this Ordinance, the Planning Board may impose conditions as to the location and arrangement of parking, screening and buffers, and such other conditions as the Planning Board deems necessary.
- g. For the purpose hereof, a non-conforming use which has been discontinued for a period exceeding one year, or which has been superseded by a conforming use, may not be converted to another non-conforming use.

6. *Review Process*

- a. Conversion Determination - Requests for the conversion of non-conforming uses shall also be subject to review and approval as conditional uses. Applications for a conversion determination under *Article 4.5.4(5)* shall be submitted to the Planning Board for approval.
- b. Information Required For Application - For the purposes of a conversion determination, the applicant need not provide all the information required for a site plan review under *Article 4.1.6* of this Ordinance. The applicant shall submit adequate information to enable the Board to make its conversion determination. The Planning Board may request such further information as may reasonably be necessary for it to make its decision.
- c. Notice - Upon receiving a completed application and appropriate fees for processing and advertising, the Code Enforcement Officer shall publish a notice and notify abutters of a public hearing consistent with the procedures in *Article 4.1.4*.
- d. Code Enforcement Determination - Prior to the Public Hearing, the Code Enforcement Officer shall make a written finding to the Board as to the nature and extent of the legally existing non-conforming use, including the date of establishment of such use, history of operation and ownership, and any documented complaints or municipal ordinance violations.
- e. Public Hearing - Within forty-five (45) days from the date of referral of an application for a conversion determination by the Code Enforcement Officer, and before taking any final action thereon, the Planning Board shall hold a public hearing on the application.
- f. Planning Board Review and Action - Within thirty (30) days of the public hearing, the Planning Board shall approve, deny, or approve with conditions the application for a conversion determination. A copy of the Board's finding shall be forwarded to the applicant and the Code Enforcement Officer. Action of the Board to approve a specific conversion request shall not constitute site plan, conditional use, or subdivision approval under the Town's Ordinances, but only a finding that the proposed conversion complies with *Article 4.5.4 (5)*. Any conversion determination shall expire if the new use is not commenced within one (1) year from the date of approval.

7. *Expansion of Non-conforming Use Mobile Home Parks.* Notwithstanding the provisions of 4.5.4 Non-conforming Uses in order to comply with Title 30-A, § 4358 the following provision shall apply to existing mobile home parks located in districts where that use is not permitted. It is not the intent of this ordinance to expressly prohibit existing non-conforming use mobile home parks from expanding in their existing location. Such expansions are subject to the following regulations. (Amended: 10-12-04)
 1. Such expansion shall be limited to environmentally suitable locations.
 2. Such expansion shall only be permitted only in the context of a total redevelopment of the entire existing mobile home park meeting the requirements found in *Article 4.13* of this ordinance and those found in the Mobile Home Park Ordinance.
 3. Such expansion shall be limited to a one time 50 percent expansion of the existing number of mobile homes located in the mobile home park.

4.5.5. Non-conforming Lots

1. A lawfully existing non-conforming lot of record as of the effective date of this Ordinance or amendment hereto may be built upon, without the need for a variance, provided that all provisions of this Ordinance, except for lot size and frontage, can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals. All appeals and variance requests shall be subject to the provisions of *Article 6* of this Ordinance and the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. (Amended: 09-18-06)
2. If two (2) or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided the guidelines for subsurface waste water disposal are met. (Amended: 11-18-91, 10-21-96)
3. *Reduction in Lot Size.* Except as expressly provided in this ordinance or for a taking by eminent domain or a conveyance in lieu thereof, no lot shall be reduced in size by conveyance of a portion thereof unless (1) the remaining land meets the minimum dimensional standards required for the zoning district or districts in which that land is located, and (2) the land to be conveyed either meets the minimum dimensional standards requirement or will be conveyed to (a) the owner of abutting property, (b) the Town, or (c) to a conservation organization in conjunction with covenants or similar restrictions that prohibit its development. (Amended: 11-03-03)
4. *Division or Alteration of Non-conforming Lots.* The boundaries of a lawfully existing non-conforming lot of record (as of the effective date of this Ordinance or amendment hereto) shall not be changed unless the Code Enforcement Officer makes a written determination that the extent of the non-conformity will remain unchanged or will be reduced and that the remainder of the non-conforming parcel otherwise meets the minimum dimensional standards of the zoning district or districts in which that land is located. The Code Enforcement Officer is hereby authorized to require whatever information deemed necessary to make such a determination. The determination must be recorded in the Penobscot County Registry of Deeds within 120 days after its issuance or the determination becomes null and void. (Amended: 11-03-03)

4.6. Rural Cluster Housing - In order to promote the health and general welfare of the community and to preserve and make available open space for recreation and conservation, the Planning Board may grant a developer permission to vary lot size requirements in districts in which cluster development is allowed, thus leaving a substantial area free of building lots to become permanent open space. This section shall apply to the Rural District. The cluster provision for Residential A and Residential B are contained in *Article 3.7.6 and 3.8.7* respectively.

(Amended: 06-03-91 and 05-04-92)

4.6.1. Minimum Size - A cluster proposal shall not be considered unless the land area involved is at least ten (10) times the minimum lot size in the district for which it is being proposed.

4.6.2. Uses Allowed - No use shall be allowed in a cluster subdivision which is not allowed in the district for which it is being proposed with one exception: The planning board may allow dwellings with four (4) dwelling units in the Rural District in cluster subdivisions provided that such allowance shall not increase the maximum number of dwelling units allowed as determined by *Article 4.6.3* of the Ordinance.

4.6.3. Maximum Number of Dwelling Units Allowed - The maximum number of dwelling units permitted on a particular parcel of land shall be determined with reference to *Article 3* of this Ordinance and the following:

1. Subtract fifteen (15%) percent of the gross acreage of the tract (for streets) to obtain the net acreage of the tract.
2. Determine the maximum number of dwelling units allowed in the district in which the cluster is being proposed based on the net acreage of the parcel. The maximum number of dwelling units is determined by reference to *Article 3*. In the rural district the maximum number of dwelling units shall be based on three (3) dwelling units for two (2) acres of land.
3. The gross acreage of the tract shall include only land that is not encumbered with easements or other restrictions which prevent the full use of the area. Open space, set aside as required under 4.6.5, which is not otherwise encumbered with easements or restrictions, shall be considered part of the gross acreage of the tract.
4. An example for the Rural District of the calculation necessary to determine the maximum number of dwelling units is as follows: Parcel size: 20 acres (less) - 15% for streets - net acreage 17 acres. 17 acres (divided by 2 acres per lot) = 8.5 lots + 3 units per lot = 25.5 or 26 units, 2 acre lots. These twenty-six (26) units can be either one, two, three, or four unit buildings.

4.6.4. Density Bonus - For excellence in site design or for dedication of more than thirty (30%) percent of the gross area of the tract to permanent open space, the planning board may award up to ten (10%) percent more dwelling units than allowed under *Article 4.6.3* above.

4.6.5. Open Space - The land area not allocated to building lots and street shall be permanently and legally preserved as open space. At least twenty (20%) percent of the gross area of the development shall be so dedicated. These areas shall be in locations designated as open space or green belts in the Comprehensive Plan or, where the subdivider proposed open space in other areas, such proposals shall be subject to the approval of the planning board.

Land dedicated to permanent open space shall be in such condition, size and shape as to be readily usable for recreation or conservation.

1. **Maintenance of Open Space** - The developer shall make provision for the permanent maintenance of open space areas. The planning board shall approve such provision when it is satisfied that the

provision, proposed by the developer, will result in the open space continuing as such and being properly maintained. No building permit shall be issued until the approval of the Planning Board has been given regarding the maintenance of open space. The developer shall either:

- a. Dedicate such open space to public use if the town or another public agency has indicated it will accept such dedication;
- b. Retain ownership and responsibility for maintenance of such open space;
- c. or Provide for and establish one or more organizations for the ownership and maintenance of all common open space and property. Such organization shall be either, a non-profit homeowners corporation or a community open space trust.

2. *Rules Governing Home-Owners Associations or Open Space Trusts* - If a homeowners association or open space trust is formed, it shall be governed according to the following regulations:

- a. The organization shall be formed by the developer and be operating, with financial subsidization by the developer if necessary, before the sale of any lots within the development.
- b. Membership in the organization is mandatory for all purchasers of homes therein and their successors.
- c. The organization shall be responsible for maintenance of common open space and property. It shall also be responsible for insurance and taxes on common open space and property.
- d. The members of the organization shall share equitably the cost of maintaining and developing common open space and property in accordance with procedures established by them.
- e. The organization shall have or hire adequate staff to administer common facilities and maintain the common open space.

4.6.6. Single Family Cluster Subdivision - Lot Requirements In cluster subdivisions or sections of cluster subdivisions made up of single family residences, individual lots shall meet the following requirements with regard to area, width, setback, etc:

1. *Minimum lot area* - One-quarter (1/4) the minimum lot area required in the district for which the cluster is proposed. In no case, however, to be less than 8,000 square feet.
2. *Minimum lot frontage* - 66 feet
3. *Maximum lot coverage* - 35%
4. *Minimum side yard setback* - 10 feet
5. *Minimum street yard setback* - 10 feet
6. *Minimum rear yard setback* - 25 feet

All of the above dimensions may be increased (decreased in the case of #3) by the planning board if they feel it is necessary to insure good site design. The objective of reducing them from the dimensions normally required is to allow flexibility in the development of the site. The flexibility thus allowed should result in more creative patterns of land utilization and savings in land development costs over those possible under conventional subdivision patterns.

4.6.7. Multi-Family Cluster Subdivision

4.6.7.1. *Requirements* - In cluster subdivisions or sections of cluster subdivisions made up of multi-family residences, the following requirements with regard to lot design shall apply:

1. *Maximum density of dwelling units.* - 16 units per acre
Subject to the other provisions of this Ordinance, especially *Article 4.6.3*,
2. *Minimum building setback:* - 40 feet.
3. *Minimum distance between buildings:*
 - a. Where both facing walls contain a window or windows; such distance shall be no less than one and one half (1-1/2') feet for each foot of height of the higher facing wall above the lowest adjacent ground elevation.
 - b. Where only one of the facing walls contains a window or windows; such distance shall be no less than one foot for each foot of height of the facing wall with no windows, above the lowest adjacent ground elevation.
 - c. Where neither of the facing walls contains a window or windows; such distance shall be no less than twenty (20') feet.
 - d. Between corners of two (2) buildings where no exterior wall of one building lies such that it can be intersected by a line drawn perpendicular to any exterior wall of the other building, other than such a line that results from co-linear exterior walls: ten (10') feet.
4. Minimum side yard - 20 feet
5. Minimum parking - 2 spaces per dwelling unit
6. Maximum building height - 35 feet

4.6.7.2. *Maintenance of Common Property* - In cases where common property or facilities exist such as elevators, stairwells, heating units, etc., the developer shall make provision for their continual ownership and maintenance either through a homeowners association or by retaining ownership and responsibility for maintenance himself. In the case of a homeowners association, the rules governing homeowners associations as stated in *Article 4.6.5.2* of this Ordinance shall apply.

4.6.8. This multi-family cluster subdivision provision will be allowed only in the case of land development. Land subdivision without subsequent development of housing units by the developer does not qualify as cluster subdivision.

4.6.9. All pertinent sections of this Ordinance or any other ordinance of the Town of Hampden shall apply to cluster subdivisions with the exception of those regulations specifically waived in the cluster section of this Ordinance.

4.7. Off-Street Parking, Loading, Drive-Thru Design and Bufferyard Requirements – The purpose of this section is to provide minimum standards and design guidelines for off-street parking, and loading areas, drive-thru businesses and bufferyards. (*Amended: 10-12-04*)

4.7.1. Parking Basic Requirement - No use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street parking spaces in accordance with the following parking requirements. No required parking space shall serve more than one use. Parking areas with more than five (5) parking

spaces shall be so arranged that vehicles can be turned around within such area and are prevented from backing into the street.

4.7.1.1. Minimum Off-Street Parking Space Requirements. The following are the minimum number of off-street parking spaces that may be provided for each of the uses stated. *(Amended: 10-12-04)*

1. Elderly housing; one (1) space per dwelling unit plus one (1) additional space for every ten (10) dwelling units or fraction thereof.
2. Congregate care facility; one (1) space per dwelling unit.
3. All other dwellings; two (2) spaces for each dwelling unit.
4. Hotels, motels, tourist homes, rooming houses, bed and breakfast establishment; one (1) space per guest room.
5. Hospital or nursing home; one (1) space per three (3) patient beds.
6. Restaurant parking space requirement is based on the following formula:
 - A. Divide the total seats by three. Where seating is provided by bench, booth or picnic table a seat shall be considered two linear feet.
 - B. Divide the total restaurant sq. ft. floor area by 75 sq. ft.Restaurant minimum parking spaces shall be the sum of A plus B divided by 2.
Parking shall also be provided for outdoor seating in excess of 12 outdoor seats at one parking space per three seats. *(Amended: 10-12-04)*
7. Other places of assembly such as churches, theaters, funeral homes, auction houses and galleries, where seating can be determined; one (1) space per three (3) seats or one (1) space per six (6) linear feet of bench space. Where seating cannot be determined; one (1) space per one hundred-fifty (150) sq. ft. of gross floor area.
8. Office use; one (1) space per two hundred-fifty (250) sq. ft. gross floor area.
9. Retail and service businesses; one (1) space per two hundred (200) sq. ft. gross floor area (minimum of five [5] spaces).
10. Industrial use, wholesale, warehouse, manufacturing plant; three-quarters (3/4) of a space per employee (minimum of five [5] spaces).
11. Golf course including miniature golf; one and one half (1.5) spaces per hole.
12. Marina; one (1) space per berth, ten (10) spaces per boat launching ramp.
13. Campgrounds, tenting areas, and recreational vehicle parks; one and one half (1.5) spaces per camp site.
14. Preschool facility; one (1) space per three (3) students. *(Amended: 8-22-94)*

15. Auto service; four (4) spaces per service bay (non drive thru service) Drive thru service; two (2) spaces per service bay.
16. Outdoor display and sales such as automobiles, farm equipment, heavy machinery, boats, recreational vehicles; one (1) space per five thousand (5,000) sq. ft. of display area.
17. Uses not listed in this schedule; the standard shall be determined by the planning board based on the most similar use listed or on other available adopted zoning ordinance or published sources of parking standards.
18. Notwithstanding these Minimum Off-Street Parking Space Requirements a site development established prior to the adoption of this ordinance for which a change of use is proposed shall meet parking space requirements for the new use to the maximum practical extent as determined by the Code Enforcement Officer provided that at least 75 percent of the required parking spaces are provided. This provision shall apply to both on-site and off-site parking spaces. Determination of the number of parking spaces in parking lots where spaces are not delineated shall be based on the traditional usage of the lot. It is not the intent of this regulation to retroactively apply current parking location, setback and design standards to site developments established prior to the adoption of this ordinance. *(Amended: 10-12-04)*
19. For medical a marijuana dispensary, five (5) spaces per one thousand (1,000) square feet total floor area, plus one additional space for every two (2) employees. *(Amended 03-07011)*
20. For methadone clinic, five (5) spaces per one thousand (1,000) square feet total floor area, plus one additional space for every two (2) employees. *(Amended 03-07011)*

4.7.1.2. Location of Parking - All parking shall be on the same lot as the principal use/building served or in accordance with the following provisions.

Where all of the required parking cannot be provided on the same lot, parking shall be allowed on another lot within three hundred (300') feet, provided that the lot is in the same ownership or lease and is in the same or a less restrictive district than the use served.

Off-site parking shall meet the following standards:

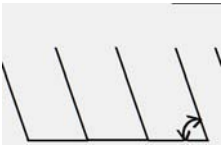
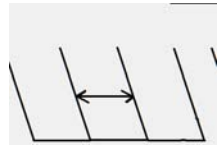
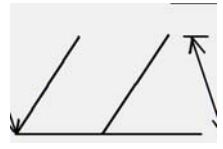
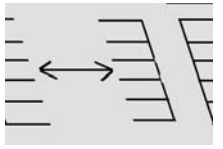
1. Leased parking must provide for a minimum of one (1) year availability through a recordable document and provide notification to the code enforcement officer upon termination.
2. No more than fifty (50%) percent of required spaces shall be provided off-site.
3. Off-site spaces shall conform to *Articles 4.7.1.3, 4.7.1.4, and 4.7.1.5. (Amended: 10-12-04)*

4.7.1.3. Parking Setbacks - All parking shall be setback in accordance with the following minimum standards. (Amended: 10-12-04)

ZONE	STREET YARD	OTHER YARD	PRINCIPAL BLDG.
BB IA, IB, I2,	20'	10'*	5'
B, BR, CS, INT, VC, VCII	10'	5'*	3'
RA, R, S	10'	5'	N/A
RB	10'	10'	5'
RP Subject to Site Plan Approval			

* Where any property line abuts a residentially zoned or used property the standard shall be doubled.

4.7.1.4. Minimum Parking Space Design Standards - All off-street parking areas shall be constructed in conformance with the following minimum standards.

PARKING ANGLE (Degrees)	STALL WIDTH (Feet)	STALL DEPTH (Feet)	(Travel) AISLE WIDTH (Feet)
			
90	9	18	24
60	9	19	16 One Way
45	9	17.5	12 One Way

4.7.1.5. Required Improvements and Landscaping for Large Parking Lots.

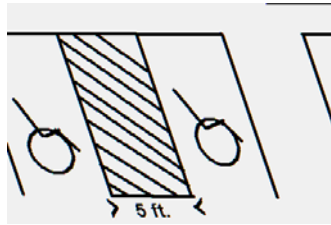
Parking lots of fifty (50) or more spaces shall meet the following additional requirements.

1. Raised landscaped traffic islands shall separate parking areas from access aisles.
2. A minimum of ten (10%) percent of the interior area of the parking lot shall be landscaped and planted with trees (minimum of one [1] tree per ten [10] spaces).
3. The parking lot shall be designed to prevent travel across parking stalls.
4. Parking aisles should be oriented perpendicular to building entrances to enhance pedestrian access and safety.
5. Parking lots shall be a level, uniform, dust free surface constructed of concrete, bituminous asphalt, brick or pavers, or other similar material.

4.7.1.6. Handicapped Parking - Any building or facility constructed as a place of public accommodation, a place of assembly, a place of employment or a dwelling unit which is designed to be handicapped accessible shall provide handicapped parking in accordance with the following

standards:

1. *Minimum Off-Street Handicapped Parking Space Requirements* – This standard requires provision of one off-street handicapped parking space out of every twenty-five (25) off-street parking spaces provided, to be reserved for the exclusive use of the handicapped.
2. *Off-Street Handicapped Parking Space Design Standards.* Spaces reserved for the handicapped shall include the following minimum design features.
 - a. A five (5) foot access aisle in addition to the space required under *Article 4.7.1.4.*



Five foot shared access aisle.

- b. One access aisle may be shared by two (2) parking spaces.
- c. All handicapped parking spaces shall be located within the shortest barrier free accessible route to a handicapped accessible entrance.

4.7.2. Off-Street Loading. The following uses shall provide off-street loading spaces in accordance with this regulation: Retail and service businesses, warehouses, wholesale distributors, industrial and manufacturing uses. *(Amended: 10-12-04)*

4.7.2.1. Minimum Off-Street Loading Space Requirements. A minimum number of off street loading spaces shall be provided in accordance with this section. The following table provides the minimum loading area required (based on square footage of gross floor area).

BUILDING SIZE	LOADING AREA REQUIRED
<5,000 SF	NONE
5,000 - 25,000 SF	25 feet plus 25 feet per each additional 10,000 SF over 5,000 SF
>25,000 SF	50 feet plus 50 feet for each additional 25,000 SF over 25,000 SF

4.7.2.3. Minimum Off-Street Loading Space Dimensional Requirements. ~~Spaces required~~ - Loading spaces provided shall be a minimum of ten (10) feet in width and provided in twenty (25') foot increments. Spaces shall be a minimum of ten (10') foot by twenty-five (25') foot bays or ten (10') foot by fifty (50') foot bays depending on needs of the use.

4.7.2.4. Special Provisions

1. Joint use of loading spaces by two (2) abutting users in a shopping center shall be allowed.
2. No loading spaces shall be allowed which require trucks to maneuver in the public street.
3. No loading spaces shall be allowed within the required parking setbacks.
4. Loading spaces shall not be located in the street yard.

4.7.3. Drive thru Business - In addition to the parking requirements of *Article 4.7.1.* all drive thru businesses including fast food restaurants and automobile service uses are subject to the following standards. (*Amended: 11-05-90*)-(Amended: 10-12-04)

4.7.3.1. Location.

- 1 Drive-thru windows, ATMs, or other devices by which a customer may conduct business shall not be located in the street yard space or in front of the principal use building. Notwithstanding this requirement gasoline service islands may be located in front of principal use structures.
- 2 Drive-thru businesses shall have direct access to principal arterials, minor arterials or major collectors as identified in the Federal Highway Functional Classification Map. Notwithstanding this requirement drive-thru businesses may be an element of a group development which has direct access to said street types.
- 3 Drive-thru business shall not be located within any building located in a Historic District that the Historic Preservation Commission determines is a “contributing structure”, nor shall they be located on a “historic landmark” or within a “historic site” as defined in the Hampden Historic Preservation Ordinance.

4.7.3.2. Lot Coverage. That portion of a site development that is solely related or dedicated to the drive-through use shall not cover more than ten percent (10%) of the lot.

4.7.3.3. Site Design and Layout.

1. *Driveway Curb Cuts.* A drive-thru business shall not be designed with multiple driveway curb cuts except as authorized by the Planning Board through site plan review. Two curb cuts may be considered where one serves as an entrance to the site development and one serves as an exit. Curb cuts shall be located such that neither the vehicles entering or exiting the site nor vehicles standing in a related off-site center turn lane would create conflicts with vehicles utilizing neighboring curb cuts.
2. *Site to Accommodate Larger Vehicles.* A drive-thru business shall be designed to accommodate class A commercial delivery vehicles. The purpose of this provision is to provide adequate radius, lane widths and other design considerations so delivery vehicles entering the site can circle and leave the site without backup. This provision does not require drive thru queues, windows and overhangs be designed to accommodate class A vehicles for service direct to the vehicle.
3. Maneuvering space shall be provided in the rear or side yard.
- 4 The radius of drive through lanes shall be a minimum of forty-five (45) feet.

5. *Drive thru Vehicular Queue Requirements.*
 - a. Each service window, ATM, side of a gasoline pump island or service bay, shall be considered as a separate activity which must meet the queue requirements of this section. However, where two (2) or more windows are used in tandem, they shall be treated as one, and gasoline pump islands with multiple pumps shall be treated as one.
 - b. The design standard for a single space in a queue shall be ~~10~~ 9 feet in width and 18 feet in length.
 - c. Queue lanes shall be designed with a tandem bypass lane to allow vehicles to exit the queue and leave the site.
 - d. Queue lanes shall be designed to not interfere with access and egress to the site, vehicle maneuvering areas and customer parking.
 - e. ATMs, service bays and each side of a gasoline pump island shall require five queueing spaces. Service windows and remote tellers shall require a minimum of eight queueing spaces.
 - f. A minimum of 180 feet total driveway stacking area must be provided between the entrance curb of the site development and any drive thru window or speaker device for fast food restaurants and other intensive uses as may be determined by the Planning Board.
 - g. Both the queuing lane and the drive-in window shall be at least fifty (50) feet from any residentially zoned property.
 - h. The queue lane shall provide an area for two vehicles to wait just beyond the drive thru service window for services or products not immediately available. This area shall not be considered parking spaces but rather part of the drive thru queue. Notwithstanding this regulation if the location this waiting area conflicts with Zoning District regulations or the Historic Preservation Ordinance the Planning Board may approve alternative locations for such spaces.
6. Additional provision shall be made for parking of vehicles where any product is to be consumed on premises or where service to vehicles away from drive-up windows or stations is contemplated or possible.
7. Site design and layout shall minimize impacts to traffic circulation on adjacent public streets and arterials; where impacts cannot be avoided, the applicant shall be required to mitigate such impacts by making improvements to public roadways, including but not limited to, the addition of center/ turn lanes, breakdown lanes, widening, or other measures to mitigate unavoidable impacts to adjacent roadways. If an MDOT Traffic Permit is required for the drive-through use, the Town shall coordinate its traffic mitigation recommendations for the site development with MDOT at the MDOT Traffic Permit scoping meeting. However, securing an MDOT Traffic Permit shall not relieve applicants from demonstrating that the traffic and safety considerations found in this Ordinance are met.

4.7.3.5. Landscaping. Drive-through facilities shall be buffered with landscaping pursuant to *Article 4.7.4, Screening/Buffers*. Where abutting residential districts, such buffer shall include a solid wall or fence of at least six {6} feet in height.

4.7.3.6. Additional Standards

1. Signs associated with a drive-through facility shall be regulated pursuant to *Article 4.8, Sign Regulations*.
2. All utilities associated with a drive through facility shall be entirely enclosed or buried. (*Amended: 11-05-90*)

4.7.4. Screening/Buffers

4.7.4.1. Basic requirement - No use shall be authorized or extended, and no building or structure shall be constructed or enlarged unless the applicable bufferyard and screening requirement is met in accordance with this section.

4.7.4.2. Bufferyard Types

1. *Class I Bufferyard* is either: 1) a hedge or buffer strip at least five (5') feet wide consisting of densely planted shrubs or trees, at least four (4') feet in height at the time of planting, and eventually reaching a mature height of at least six (6') feet; or, 2) a wall or fence at least six (6') feet in height, but not exceeding eight (8') feet, which provides an effective visual barrier.
2. *Class II Bufferyard* is a buffer strip at least twenty-five (25') feet wide of which a ten (10') foot width shall be vegetated with trees and/or shrubs (existing or planted) at least four (4') feet in height at the time of planting, and eventually reaching a mature height of at least six (6') feet.
3. *Class III Bufferyard* is a buffer strip at least fifty (50') feet wide of which a twenty-five (25') foot width shall be vegetated with trees and/or shrubs (existing or planted) at least four (4') feet in height at the time of planting, and eventually reaching a mature height of at least six (6') feet.

4.7.4.3. Location of Class I Bufferyards.

1. All off-street parking areas containing five (5) or more spaces and all outdoor off street loading areas shall have screening on each side adjoining or fronting on any residential district or any public or private street or way.
2. Any non residential use in a residential district shall have screening along each property line abutting a residential use.
3. Any commercial or industrial use shall provide a buffer along each property line abutting a residential use or district.

4.7.4.4. Location of Class II Bufferyards.

1. Any use in a commercial or industrial district in excess of five thousand (5,000) square feet in floor area, or one (1) acre in land development, shall provide a buffer strip along each property line abutting a residential use or district.
2. Any multi-family development of fifty (50) units or more shall have a buffer strip along each property line abutting a residential use or district.

4.7.4.5. Location of Class III Bufferyards. Any multi-family development of one hundred (100) or more units shall have a buffer strip along each property line abutting a residential use or district.

4.7.4.6. Special Provisions

1. Where two (2) or more classes of buffers are required, the stricter requirement shall apply.
2. All screening/buffers required by this section shall be maintained so as to provide an effective visual barrier. *(Amended: 11-05-90, 06-03-91)*
3. In its review the Planning Board may waive or reduce the screening requirements along property lines where the adjacent property has an existing vegetated buffer and written permission is provided by the applicable property owner. *(Amended: 1-16-96)*

4.8. Signs. Signs provide vital information to the public, assist in the response and rescue of public safety and engender a sense of place. The following provisions shall apply to signs and billboards in all districts where permitted. *Amended 01/21/03*

4.8.1. Off-Premises Signs - No off-premises signs shall be erected or maintained in the Town of Hampden except in conformity with *23 MRSA section. 1901-1925 the Maine Traveler Information Services Law*. Off-premises official business directional signs may be located in the Town of Hampden in such locations and in such a manner as allowed under *23 MRSA sections 1901-1925* and under the rules and regulations of the State of Maine Department of Transportation. Provided, however, that off-premises official business directional signs for home occupations are prohibited. Authorization for official business directional signs shall be obtained from the Code Official. *Amended 01/21/03*

1. *Exception for property identification numbers* - Each residential premises is allowed a mailbox with the identification number of the property clearly marked on it. If the mail box is on the opposite side of the street of the house or if there is no mailbox, the premises is also allowed an MDOT approved sign post, or similar structure, with numbers that meet the standards of subparagraph a below. Such signs are also allowed on an adjacent parcel with written permission of the landowner. *Amended 01/21/03*
 - a. All non residential uses must display the identification number of the property. The area required by the number is not included in the calculation of the total square footage of the sign. *Amended 01/21/03*
 - b. Approved address numbers shall be placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). *Amended 01/21/03*
2. *Exception for industrial subdivision entrance sign* - In Planning Board approved Industrial Subdivisions a sign marking each public street entrance shall be permitted. Such signs shall be limited to 70 square feet per face and shall only contain the name of the subdivision, the name of the public subdivision's street, and owner identification information. The sign may be located in the raised median of the entrance street provided that it is at least 20 feet from the nearest perpendicular traveled way and the sign itself creates no visual barrier from the ground up to a height of 6 feet. *Amended 01/21/03*
3. *Exception for industrial subdivision directory sign* - In Planning Board approved Industrial Subdivisions a directory sign marking tenants in the subdivision located near each public street entrance shall be permitted. Such signs shall: be unlighted, be limited to 50 square feet per face, not

exceed five feet in height, and shall only contain the name of subdivision, information about the subdivision's management, and the name and address of each subdivision's tenant. The sign may be located in the public right of way provided that it is at least 100 feet from the entrance and does not create a visual barrier to individual lot entrances. *Amended 01/21/03*

4.8.2. On-Premises Signs - All on-premises signs shall be located and erected in conformity with State Law (23 MRSA sections 1901-1925). In addition the following regulations apply:

1. *Visual obstruction* - No sign shall be erected adjacent to any public way in such a manner as to obstruct clear and free vision or where, by reason of its position, shape, color, illumination, or wording, the sign may interfere with, obstruct the view of, or be confused with any authorized traffic sign, or device or otherwise constitute a hazard to pedestrian or vehicular traffic.
2. *Visual distraction* - Flashing, moving, or animated signs are prohibited.
3. *Height limit* - No sign shall exceed twenty-five (25') feet in height.
4. *Size limit* - No sign shall exceed the maximum sign size for the district in which the sign is placed. Freestanding signs are sized on the basis of one sign face. Except that signs located on-premises but greater than fifty (50') feet from a building and visible from Interstate 95 shall be limited to one sign and shall not exceed one hundred fifty (150) square feet in area or the maximum sign size allowed in the district, whichever is less. Such signs, visible from Interstate 95, shall have no panel dimension greater than twenty (20') feet. *Amended 01/21/03*
5. *Neighborhood nuisance* - No sign shall be erected which may cause nuisance or undue distraction to nearby residents or occupants.
6. *Setbacks* - Signs shall be set back at least eight (8') feet from the street line and other lot lines, except signs on properties adjacent to Residential A, B, or Rural District boundaries. In that case, signs shall be set back from the side lot line at least the distance of the minimum required side yard depth for the district to which they are adjacent and shall be set back from the street line at least eight (8') feet.
7. *Roof signs* - Roof signs shall not extend more than ten (10') feet above the roofline.

4.8.3. Permitted Signs Not Requiring a Permit – The following signs shall be permitted in all districts without a permit: *Amended 01/21/03*

1. *Real estate signs* - The following signs relating to the sale, rental or lease of a premises may be displayed on the premises of a premises which is available for sale, rent or lease.
 - a. A single freestanding sign, not over five (5) square feet in area.
Amended 01/21/03
 - b. A single wall sign not over three (3) square feet in area.
All such signs shall be removed when PURPOSE IS FULFILLED.
2. *Posting signs* - Signs relating to trespassing and hunting.
3. *Residential identification signs* - A single sign denoting the name and/or address of the occupants of residential premises, such sign shall not exceed four (4) square feet in area.
 - a. Or one sign naming the premises where located. Such sign shall not exceed six (6) square feet if it is a wall sign, or four (4) square feet if it is a freestanding sign. (Examples: Twin Oaks, Fox Fire, Kinsley House, etc.). *Amended 01/21/03*

4. *Tradesman signs* - A single sign, placed on the premises where construction, repair, or renovation is in progress, which denotes the architect, engineer, contractor, and/or funding source for the work in progress. Such sign shall not exceed sixteen (16) sq.ft. in area and shall be removed when the work is completed. Federal and state government-mandated signs are exempt.
5. *Traffic signs* - Signs providing traffic and directional information to the public.
6. *Home occupation sign* - In place of the sign allowed in *Article 4.8.3.3.* above, approved home occupations may display a single sign, not over four (4) sq.ft. in area, relating to the home occupation.
7. *For sale signs* - In addition to the sign allowed in *Article 4.8.3.3.* above, residential users may display a single temporary sign, not over four (4) sq.ft. in area, relating to goods or services for sale on the premises, if such sale does not constitute either a business, a home occupation, or a yard sale. Examples of sales falling under this provision are the sale of a used vehicle, the sale of a used appliance, or other occasional sales.
8. *Temporary event signs* - Temporary signs announcing public and semi-public occasional events, political campaigns, candidates, etc. Such signs shall be displayed not more than two (2) weeks before the event and shall be removed within one (1) week after the event. Signs established more than two weeks prior to the announced event shall be deemed unlawful and are subject to removal under *Article 4.8.10.2.* *(Amended 04-04-05)*

4.8.4. Permitted Signs With a Permit - The following signs shall be permitted in all districts with a permit: *Amended 01/21/03*

1. *Housing project sign* - A single sign not over thirty-two (32) sq.ft. describing a multi-family housing project or a subdivision. *Amended 01/21/03*
2. *Subdivision sign* - A single sign not over thirty-two (32) sq.ft. describing a subdivision. *Amended 01/21/03*
3. *Non-residential principal building or use sign* - A single sign not over sixteen (16) sq. ft. describing a non-residential principal building or use on the premises. *Amended 01/21/03*

4.8.5. Signs in the Rural District - In the Rural District the following signs shall be considered accessory to the principal use of the premises on which they are located: *Amended 01/21/03*

1. *Farm product signs* - A maximum of two (2) signs describing farm products raised or produced on the premises. The maximum sign size shall not exceed sixteen (16) sq.ft.

4.8.6. Signs In Residential Districts - In the Residential A and Residential B Districts the following signs shall be considered accessory to the principal use of the premises on which they are located:

1. *Housing project or subdivision sign* - A maximum of two (2) signs whose combined area shall not exceed thirty-two (32) square feet, describing a multi-family housing project or a subdivision on the premises.
2. *Non-residential sign* - A maximum of two (2) signs whose combined area shall not exceed sixteen (16) square feet, describing a non-residential principal building of less than 5,000 square feet gross floor area or use on the premises. *Amended 01/21/03*

3. *Non-residential sign for larger site developments* - A maximum of one sign located at each street entrance whose area shall not exceed sixteen (16) square feet and describing a non-residential principal building or buildings in excess of 5,000 square feet gross floor area or use. Additional signage shall be permitted on the interior of such site developments provided that each individual sign has a maximum size of sixteen (16) square feet and is set back a minimum of 30 feet from all property lines. *Amended 01/21/03*
4. *Prohibited signs* - Notwithstanding the provisions of this section roof signs and internally illuminated signs are prohibited in the residential districts. *Amended 01/21/03*
5. *Scoreboards* - Notwithstanding the provisions of this section scoreboards are permitted in the residential districts and are not subject to the preceding regulations including size. The content of a scoreboard shall be generally limited to the score, period, time, and other information pertinent to the sporting activity, the name of the school and team. Scoreboards may contain limited product advertising provided it is not back-lighted and is limited to 10 sq. ft. *Amended 01/21/03*

4.8.7. Signs in the Commercial Districts *Amended 01/21/03*

1. *Signs in the Business District and Rural Business District* - Two (2) of the following sign options identifying on-premises business names, uses or goods sold or services rendered shall be allowed for uses in the Business District and the Rural Business District: *Amended 01/21/03*
 - a. One (1) freestanding sign, not to exceed thirty-six (36) square feet. *Amended 01/21/03*
 - b. Wall signs not to exceed one and one-half (1-1/2) square feet of area for every running foot of building frontage. The aggregate area of all wall signs on the premises shall not exceed one hundred fifty (150) square feet.
 - c. One (1) projecting or roof sign not to exceed thirty-six (36) square feet in area. *Amended 01/21/03*
2. *Signs in the Business B District* - Two (2) of the following sign options identifying on-premises business names, uses or goods sold or services rendered shall be allowed for uses in the Business B District provided total signage does not exceed 250 square feet in area. *Amended 01/21/03*
 - a. One (1) freestanding sign, not to exceed fifty (50) square feet in area. *Amended 01/21/03*
 - b. Wall signs not to exceed two square feet of area for every running foot of building frontage. The aggregate area of all wall signs on the premises shall not exceed two hundred (200) square feet.
 - c. Projecting signs not to exceed (25) square feet in area.
3. *Signs in the Commercial Service District* - The following signs, identifying on-premises business names, uses or goods sold or services rendered shall be allowed for uses in the Commercial-Service District: *Amended 01/21/03*
 - a. One (1) freestanding sign, not to exceed thirty-six (36) square feet. *Amended 01/21/03*
 - b. Wall signs not to exceed two (2) square feet of area for every running foot of building frontage. The aggregate area of all wall signs on the premises shall not exceed two hundred (200) square feet.

- c. One (1) projecting, or roof sign not to exceed seventy-two (72) square feet in area. *Amended 01/21/03*
 - d. Industrial Parks, as defined, may erect one industrial park sign per entrance. Such sign shall not exceed fifty (50) square feet.
4. *Signs in the Interchange District* - The following signs, identifying on-premises business names, uses or goods sold or services rendered, shall be allowed for uses in the Interchange District: *Amended 01/21/03*
- a. One (1) freestanding, projecting, or roof sign not to exceed one hundred fifty (150) square feet in area. *Amended 01/21/03*
 - b. Wall signs not to exceed four (4) square feet of area for every running foot of building frontage. The aggregate area of all wall signs on the premises shall not exceed four hundred (400) square feet.
 - c. Industrial parks, as defined, may erect one (1) industrial park sign per entrance. Such sign shall not exceed fifty (50) square feet.
5. *Signs in the Village Commercial and Village Commercial II Districts* - Two (2) of the following sign options identifying on-premises business names, uses or goods sold or services rendered shall be allowed for uses in the Village Commercial District provided total signage does not exceed 30 square feet in area. *Amended 01/21/03*
- a. One (1) freestanding sign indirectly illuminated not to exceed twenty-four (24) square feet in area and fifteen (15') feet in height. *Amended 01/21/03*
 - b. Wall signs not to exceed twelve (12) square feet in area.
 - c. Projecting signs not to exceed (12) square feet in area.
 - d. *Prohibited signs* - No internally illuminated or roof signs shall be permitted in the Village Commercial District.
 - e. *Shopping center signs* - Shopping Center Signs shall be allowed in conformance with *Article 4.8.7.7*, provided the sign is neither internally illuminated nor exceeds fifteen (15') feet in height.
6. *Fuel sales* - In addition to signs allowed under *Article 4.8.7* of the Ordinance, uses selling gasoline or diesel fuel may display one sign not to exceed sixteen (16) square feet in area, advertising the price of said gasoline or diesel fuel.
7. *Signs in shopping centers* - In addition to signs allowed under *Article 4.8.7* of the Ordinance, Shopping centers, as defined, each store or shop may have a projecting or roof sign not to exceed thirty-six (36) square feet. Additionally stores shall be allowed wall signs as allowed in 4.8.7.1.b above and one (1) detached or freestanding sign as allowed under *Article 4.8.7.1.a* above. Each shopping center may display a shopping center sign naming the shopping center and identifying uses or services rendered on the premises and/or the name(s) of stores on the premises. The main panel of the sign, which names and gives general information about the shopping center shall not exceed twenty-four (24) square feet in area. In addition, each store or shop in the shopping center may display a single sign, attached to the shopping center sign, identifying the name of the store or shop and services it provides. Such store or shop sign shall not exceed six (6) square feet in area. *Amended 01/21/03*

4.8.8. Signs in the Industrial Districts – The following signs, identifying on-premises business or industrial uses, shall be allowed on conforming uses in the Industrial District, the Industrial Park District, and the Industrial 2 District:

1. One freestanding, projecting or roof sign not to exceed one hundred (100) square feet in area; *Amended 01/21/03*
2. Wall signs, not to exceed four (4) square feet of area for every running foot of building frontage. The aggregate area of all wall, signs on the premises shall not exceed four hundred (400) square feet;
3. Industrial Parks, as defined, may erect one Industrial Park sign per entrance. Such sign shall not exceed fifty (50) square feet.

4.8.9. Maintenance of Signs - All signs shall be properly maintained and kept. Any sign which advertises a business, product, activity, or campaign which is no longer operative or extant shall be removed by the owner, agent, or person having the beneficial use of the structure or lot upon which such sign may be found, within ten (10) days after written notification from the town manager or Code Official. Upon failure to comply with such notice, the Code Official or Town Manager is hereby authorized to cause removal of such sign, and any expense incident thereto shall be paid by the owner of the building or lot to which the sign is attached. *Amended 01/21/03*

4.8.10. Removal of Unlawful Signs *Amended 01/21/03*

4.8.10.1. Removal of Unlawful On-premise Signs. *(Amended 04-04-05)*

1. *Notice to remove* - The owner of a sign which was or is unlawfully erected or maintained either prior to or after the effective date of this ordinance shall be in violation of this ordinance until the sign is removed. The owner of the sign shall remove the sign within 30 days of receipt of a notice to remove, sent by certified mail, return receipt requested, by the Code Official. If the identity of such owner is not known or reasonably ascertainable by the Code Official, such notice may instead be sent to the owner of the land on which the sign is placed. All removed signs shall be held at the Transfer Station for a period of 30 days before they are disposed of.
2. *Code Official to remove sign* - If the owner fails to remove the sign as required, the Code Official shall remove the sign at the expense of the owner without any further notice or proceeding and may recover the expense of this removal from the owner.
3. *Procedure for notice, hearing, appeal.* The procedure for notice, hearing and appeal is as follows.
 - a. The Code Official shall send to the sign owner notice by certified mail, return receipt requested, that a sign is to be removed. Such notice shall be a final order if not appealed under *Article 4.8.10.4.B*. If the identity of such owner is not known or reasonably ascertainable by the Code Official, such notice may instead be sent to the owner of the land on which the sign is placed.
 - b. The person owning or controlling the sign may, within 30 days of his receipt of the notice to remove, appeal the order of removal to the Board of Appeals pursuant to *Article 6* of this ordinance. All appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. *(Amended: 09-18-06)*

4.8.10.2. Removal of Unlawful Off-premise Signs.*(Amended 04-04-05)*

1. *Notice to remove*- Because the difficulty to identify those individuals that own, erect or established off-premise signs the Code Enforcement Officer shall contact the subject of the sign

or their local representatives. The subject of the sign or their local representative shall remove the sign within 48 hours of receipt of a notice to remove, sent by certified mail, return receipt requested, by the Code Official. If the identity of such owner is not known or reasonably ascertainable by the Code Official, such notice may instead be sent to the owner of the land on which the sign is placed. All removed signs shall be held at the Transfer Station for a period of 30 days before they are disposed of.

- 2 *Code Official to remove sign* - If the owner fails to remove the sign as required, the Code Official shall remove the sign at the expense of the owner without any further notice or proceeding and may recover the expense of this removal from the owner.

4.8.10.3. Removal of signs from Right of Ways. Notwithstanding the notice to remove provisions of this Article the Code Enforcement Officer, Public Works Director and Public Safety Director shall have the authority to immediately remove signs located in public right-of-ways that are deemed to constitute a traffic hazard or impede snow removal. In such cases notification of the removal of the sign may be after the fact. Notice of removal shall be sent by certified mail, return receipt requested, by the Code Official. All removed signs shall be held at the Transfer Station for a period of 30 days before they are disposed of. *(Amended 04-04-05)*

- 4.9. Filling and Grading of Land and Stockpiling of Materials** These provisions shall apply retroactively to all applications received after May 14, 2007. *(Amended 12-17-07)*

4.9.1. Purpose This section is intended to apply to two general categories of earth moving activities: 1) the preparation of land for development and construction activities through filling and grading and 2) stock piles of materials for use in construction and site development activities or for use in industrial activities. These activities, if not properly engineered and constructed can result in uncontrolled erosion and sedimentation and in land unstable for development. These provisions shall apply to filling, grading, lagooning, dredging, excavation, processing and storage of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling, grading, lagooning, dredging and other earth-moving activity which would result in erosion, sedimentation, or impairment of water quality or fish and aquatic life is prohibited. These provisions are not intended to supersede any review of earth-moving activity conducted by state or federal agencies. Activities such as excavation, gravel pit and quarry are governed in Article 4.23 *Excavations, Pits And Quarries. (Amended 12-17-07)*

4.9.2. Earth Moving Permit Required - All earth moving activities, processing and storage within the Town of Hampden shall require an earth moving permit in accordance with this section. *(Amended 12-17-07)*

EXCEPTIONS: The following earthmoving activities do not require an earth moving permit: 1) Earth-moving activity conducted during construction of Planning Board approved subdivisions, or site plans, 2) Earth moving activity conducted during the construction of structures authorized by a building permit or subsurface wastewater disposal permit. 3) The removal or filling of less than two hundred (200) cubic yards of material from or onto any lot in any one (1) year provided such removal or fill does not: A. Disturb more than 10,000 sq. ft. of land area, B. Change the existing topography by more than three feet, C. Redirect the natural flow of stormwater toward or impound stormwater upon a neighboring property, D. Place fill in wetlands or E. Place fill in FEMA mapped 100 year flood plain. 4) Earthmoving associated with construction of public utilities projects and street and highway projects except for placement of excess fill related to the project. *(Amended 12-17-07)*

4.9.2.1. Erosion and Sedimentation Control. All earth moving activities, including filling and grading activities and stockpiling activities shall utilize erosion and sedimentation control measures in accordance with Maine Department of Environmental Protection's publication entitled "Erosion and Sediment Control Best Management Practices". (This document is available online at www.hampdenmaine.com and a printed copy is available for purchase from the Code Enforcement Office). *(Amended 12-17-07)*

4.9.3. Earth Moving Permit Issued by the Code Enforcement Officer. Earth moving permits for activity in the Rural District (Article 3.9) may be issued by the Code Enforcement Officer in accordance with this section. (Note: Urbanized areas such as Hampden's Residential and Commercial Districts are subject to state and federal regulations which require additional stormwater considerations that require Planning Board review and approval), (Amended 12-17-07)

4.9.3.1. *Erosion and Sedimentation Control.* All earth moving activities, including filling and grading activities and stockpiling activities shall utilize erosion and sedimentation control measures in accordance with Maine Department of Environmental Protection's publication entitled "Erosion and Sediment Control Best Management Practices". The Code Enforcement Officer shall be notified that erosion and sedimentation control devices are in place prior to commencing work authorized by any earth moving permit. (Amended 12-17-07)

4.9.3.2. *Earth Moving Permit Jurisdictional Review.* Prior to issuing the required earth moving permit the Code Enforcement Officer must find that the activity does not: 1) remove or fill more than one thousand (1000) cubic yards of material from or onto any lot, 2) disturb more than 20,000 sq. ft. of land, 3) change existing topography by more than ten feet, 4) create side slopes in excess of 2:1, 5) redirect the natural flow of stormwater toward or impound stormwater upon a neighboring property, or 6) disturb or in any way impact wetlands. If the Code Enforcement Officer finds that the application exceeds his/her authority he/she shall refer the matter to the Planning Board for consideration in accordance with section 4.9.4. The Code Enforcement Officer also hereby has the authority to refer applications over which he/she has jurisdictional authority to the Planning Board if in his/her judgment the proposal represents a potential neighborhood concern. (Amended 12-17-07)

4.9.3.3. *Earth Moving Permit Application Requirements* All applications for earth moving permits issued by the Code Enforcement Officer shall include applicable fees in accordance with the Town of Hampden Fees Ordinance and be accompanied by a plan, drawn to scale which shall show: (Amended 12-17-07)

1. The name and current address of the owner of the property involved;
2. The location and boundaries of the lot or lots for which the permit is requested; (Amended 12-17-07)
3. The location of all proposed access roads and, staging areas, disturbed areas topographic details and physical features such as streets and rock walls; (Amended 12-17-07)
4. The proposed provisions for drainage and erosion control including a plan that shows the location of sediment barriers, water diversions, temporary stockpiles, constructed ditches and swales and culverts. (Amended 12-17-07)
5. The plan for stabilizing all disturbed soil following the earth-moving activity including details on loam and seed and other ground cover treatments; (Amended 12-17-07)
6. Any other information the Code Enforcement Officer may deem necessary to carry out the intent of this section. (Amended: 11-17-03, 12-17-07)
7. Copy of deed and subdivision plat plan if applicable (Note: This requirement is to determine if and where deeded drainage easements may be located on a land parcel). (Amended 12-17-07)

4.9.3.4. *Earth-Moving Permit Review Procedure* - The code enforcement officer shall review the application and issue an earth-moving permit if the proposal will result in no erosion, sedimentation, drainage problems, or impairment of water quality or fish or aquatic life or habitat. In issuing such a permit he may impose any conditions as outlined in Article 4.9.5 or 4.9.6 which may be reasonably assumed to be necessary to prevent erosion, sedimentation, drainage problems, or impairment of water quality or fish or aquatic life or habitat. If the code enforcement officer denies a permit, the applicant may apply to the planning board under the provisions of Article 4.9.4 of this Ordinance. (Amended 12-17-07)

4.9.4. Earth Moving Activity Requiring a Permit from the Planning Board – All earthmoving activities other than those addressed under 4.9.2. *Exceptions* to a permit and 4.9.3 *Earthmoving Permit Issued by the Code Enforcement Officer* shall require approval from the Planning Board under these provisions. Application for an earth-moving permit from the planning board for excavation, processing and storage of soil, loam, sand, gravel rock and other mineral deposits shall include site plan review application fees and other applicable fees paid in accordance with the Town of Hampden Fees Ordinance and be accompanied by a plan prepared by a registered professional engineer which shall show: *(Amended 12-17-07)*

1. The name and current address of the owner of the property involved;
2. The location and boundaries of the lot or lots for which the permit is requested;
3. The existing contours of the land within and extending beyond the above boundaries for two hundred (200') feet of intervals not to exceed five (5') feet referred to mean sea level or, if the five (5') foot interval is inappropriate to the site, at intervals approved by the planning board;
4. The contours as proposed following completion of the operation at intervals not to exceed five (5') feet referred to mean sea level;
5. The location of all proposed access roads and temporary structures;
6. The proposed provisions for drainage and erosion control, including drainage plan prepared by a professional engineer; and *(Amended 12-17-07)*
7. Other information necessary to indicate the physical characteristics of the proposed operation. *(Amended: 11-17-03)*

4.9.5. Conditions of an Earth-Moving Permit from the Planning Board - The planning board may approve an earth moving permit providing the following conditions shall be met: *(Amended 12-17-07)*

1. The smallest amount of bare ground shall be exposed for the shortest time feasible. The planning board shall set a specific date after which bare ground shall not be exposed.
2. Temporary ground cover such as mulch shall be used. The planning board shall set a specific date by which permanent ground cover shall be planted.
3. Diversions, silting basins, terraces and other methods to trap sediment shall be used.
4. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources and Fisheries or Inland Fisheries and Game, as applicable, prior to consideration by the planning board.
5. The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
6. Fill shall not restrict a floodway, channel or natural drainage-way.
7. The sides and bottom of cuts, fills, channels, and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission; "Technical Guide, Standards and Specifications."
8. Deleted. *(Amended 12-17-07)*
9. Topsoil or loam shall be restored to a depth of not less than three (3") inches and seeded.

4.9.6. Optional Conditions of an Earth-Moving Permit from the Planning Board - The planning board may impose other reasonable conditions to safeguard the neighborhood and the Town of Hampden which may include those relating to:

1. Methods of removal or processing;
2. Hours of operations;
3. Type and location of temporary structures;
4. Routes of transporting material;
5. Area and depth of excavations;
6. Provision of temporary or permanent drainage;
7. Disposition of stumps, brush and boulders; and
8. Cleaning, repair and/or resurfacing of streets used in earth-moving activity which have been

adversely affected by said activity.

4.9.7. Performance Guarantees. The Planning Board may require a bond payable to the Town with sureties satisfactory to the Town Manager or such other security as the Town Manager may determine adequately secures compliance with this ordinance, conditioned upon the faithful performance of the requirements set forth in this ordinance. In determining if a bond is necessary the Planning Board shall review the magnitude of the proposed activity to determine: what level of effort necessary to either complete or remove an unfinished project, what environmental impact would the proposed disturbed earth pose, and consider what is the financial capacity of the applicant to complete the project. Other security may include a security deposit with the Town, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the Town Manager shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the Town for the reclamation of the area for which the bond was posted and any remainder returned to the operator. Assurance may include the following: *(Amended 12-17-07)*

4.9.7.1. Performance standards relating to operation or maintenance plans; *(Amended 12-17-07)*

4.9.7.2. Performance standards for determining the reclamation period including annual revisions of those plans; *(Amended 12-17-07)*

4.9.7.3. Limits, terms and conditions on bonds or other security; *(Amended 12-17-07)*

4.9.7.4. Proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; *(Amended 12-17-07)*

4.9.7.5. Estimation of reclamation costs; and *(Amended 12-17-07)*

4.9.7.6. Reports on reclamation activities; or the manner of determining when the bond or other security may be discharged. *(Amended 12-17-07)*

4.9.7.7. The applicant shall grant and record a limited easement to provide the Town and/or a third party the right to enter the subject property and engage in construction activities therein for the purpose of completing reclamation of the property in the event that the performance guarantee must be utilized. *(Amended 12-17-07)*

4.9.8. Existing Operations - Any existing earth moving operation subject to this section in lawful operation on January 16, 2008 (the effective date of this amendment) may operate for a period of one year from the effective date. Continuance of any existing operation for more than one year shall require a permit from the planning board. *(Amended 12-17-07)*

Exceptions: Notwithstanding the one year regulation any currently permitted excavation, pit or quarry approved under *Section 4.9 Application for an Earth-moving Permit from the Planning Board* approved prior to this effective date of this amendment may operate for the period established in the Planning Board approval. Also notwithstanding the one year regulation existing, lawfully established stockpile operations as of the effective date of this amendment may continue to operate and do not require site plan review or an earthmoving permit from the Planning Board. However expansion or relocation of the stockpile operation to a new area would require an earthmoving permit and site plan review. *(Amended 12-17-07)*

4.9.9. Stockpiles - Any stockpile not accessory to excavation, gravel pit and quarry operation, and not associated with construction activities otherwise approved by the Planning Board and/or permitted by building permit shall be regulated under the following standards: *(Amended 12-17-07)*

4.9.9.1. *Earthmoving Permit Required.* All proposed stockpiles shall require an earthmoving permit. The Planning Board may authorize a permanent earthmoving permit for a proposed permanent stockpile operation. (Amended 12-17-07)

4.9.9.2. *Site Plan Review Required.* All stockpiles must be shown on a site plan approved by the Planning Board. (Amended 12-17-07)

4.9.9.3. *Limits of the Stockpile to be Marked.* The limits of the stockpile must be clearly marked in a manner acceptable to the Code Enforcement Officer including but not limited to bollards or offsets from buildings or other structures on the property to establish the maximum extent of the pile. (Amended 12-17-07)

4.9.9.4. *Best Management Practices to be Adhered To.* All stockpiles must comply with Best Management Practices. Cleaning, repair and/or resurfacing of streets shall be required for any street upon which stockpile activity has been found by the Public Works Director to adversely impacted a street in the Town of Hampden. (Amended 12-17-07)

4.9.9.5. *Total Stockpile Size.* Total gross stockpile footprint shall be less than 1 acre unless otherwise authorized in Section 4.9.10. (Amended 12-17-07)

4.9.9.6. *Maximum Lot Coverage.* Total gross stockpile footprint must not exceed 20 percent of the lot area of the subject parcel unless otherwise authorized in Section 4.9.10. (Amended 12-17-07)

4.9.9.7. *Setbacks.* No portion of the stockpile or any drainage device related to the stockpile shall be placed in a building setback required for front, side or rear yard setback within the zoning district where the stockpile is proposed to be located. (Amended 12-17-07)

4.9.9.8. *Shielding is Required.* Appropriate shielding of the stockpile activity from roads and neighboring properties shall be required. (Amended 12-17-07)

4.9.9.9. *Approved Materials for Stockpiles.* All applications for stockpiles shall include information on the materials proposed to be stockpiled. Stockpiles shall be comprised of materials that are earth, stone, sand, inert fill, grindings or other materials approved by the Planning Board after finding that storage of such materials poses no unreasonable environmental threat. (Amended 12-17-07)

4.9.9.10. *Reclamation of Stockpile Area.* All operators and or owners of existing and proposed stockpile areas upon discontinuation and removal of the stockpile shall be required to restore affected areas to a condition that is environmentally sound and sustainable in accordance with Best Management Practices. (Amended 12-17-07)

The Planning Board shall consider the proposed duration of a proposed stockpile and its visual impact on neighboring properties when determining how such a stockpile is to be sited and shielded. The Board shall have the authority to require additional setbacks and natural buffer strips for operations that shall be conducted for more than one year. (Amended 12-17-07)

4.9.10. Stockpiles in Excess of One Acre. In addition to the foregoing requirements stockpiles in excess of one acre and or in excess of 20 percent lot coverage shall also be regulated by the following provisions. (Amended 12-17-07)

4.9.10.1. *Existing Stockpile Operations in Old Pits and Excavations.* Operators and owners of existing stockpile operations currently located within otherwise inactive existing old pits or excavations shall be required to comply with the applicable provisions of Article 4.23 which require

excavations to be reclaimed. Nothing within Section 4.9 shall relieve the owner of an excavation from restoring affected areas to a condition that is environmentally sound and sustainable in significant un-reclaimed, un-used, inactive areas of the existing old pits or excavations. *(Amended 12-17-07)*

4.9.10.2. Landscaping. All proposed stockpiles in excess of one acre or 20 percent lot coverage shall be screened with native plants from view of abutting properties, to the maximum extent practicable. The intent is to site such facilities in an existing stand of mature wooded land. This wooded area must surround the stockpile in all directions for a radius of at least 50 feet from the edge of the proposed development. The site shall be preserved as follows: Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Notwithstanding the above provisions, no more than forty (40%) percent of the total volume of trees four (4") inches or more diameter, DBH may be removed in any ten (10) year period. *(Amended 12-17-07)*

4.10. Home Occupation Permits - A home occupation permit shall be granted to a person or corporation and is not granted to run with the land nor is the permit transferable to a subsequent owner or renter. Applicants shall demonstrate that they have adequate right, title and interest in a property in order to apply for a home occupation. Where home occupations are expressly prohibited by deed restriction, lease, subdivision covenant and or subdivision plan condition the Planning Board shall find that the applicant lacks adequate right, title or interest to grant a home occupation permit. Application for a home occupation permit shall include a plan in accordance with *Article 4.1.9, Site Sketch*. If new construction is proposed the requirements of *Article 4.1., Site Plan Review* shall be met in addition to the requirements of *Article 4.10 Home Occupation Permits*. All home occupations shall be planned, operated and maintained according to the following standards: *(Amended: 03-21-05)*

4.10.1. Employees - A home occupation shall be conducted by a member or members of the immediate family occupying the dwelling unit. There shall be no more than one person employed who does not reside on the premises.

4.10.2. Incidental and Subordinate - To insure that the character of the neighborhood is not transformed from one which is primarily residential, the home occupation shall be clearly incidental and subordinate to the use of the dwelling place as a place of residence. The home occupation shall be carried on wholly within the principal residential or accessory structure on the premises. If carried on within the principal residential structure, it shall not occupy more than thirty (30%) percent of the floor area. If the home occupation is carried on within an accessory structure the total floor area dedicated to the home occupation use shall not exceed fifty (50%) percent of the total finished floor area of the principal residential structure. Home occupations shall not utilize outdoor storage or display. *(Amended: 02/06/84) (03-21-05)*

4.10.3. Appearance and Performance Standards - In no way shall the appearance of the structure or the premises be altered or the occupation within the residence be conducted such that the structure or premises differs from its residential character by use of colors, materials, premises layout, construction or lighting. Temporary garages, instant garages or portable garages constituted of a metal or wooden frame and a tarpaulin-like canvas or vinyl cover do not satisfy the requirements of this section. The proposed home occupation shall not be overtly evident from beyond the property line of the subject premises except for the presence of a sign and customer or client parking. Home occupations shall not cause sound, noise, odors, dust, gas, fumes, smoke, light or other dangerous emissions discernable or detectable from beyond the property line of the subject property. In addition, no home occupation shall be allowed which creates a fire hazard to the premises or neighboring premises or which creates electrical interference such that it causes visual or audible interference in any radio or television receivers off the premises. The applicant shall demonstrate that the proposed home occupation will not interfere with the peaceful use and enjoyment of residential properties located in the area of the proposed use. *(Amended: 03-21-05)*

4.10.4. Signs and Advertising - Permitted: one (1) unlighted, unreflective sign no greater than four (4) square feet located on premises only. Off-premises Official Business Directional Signs, as defined in 23 M.R.S.A. section 1903, are prohibited. Newspaper, radio, T.V. or telephone listing advertising may be used to the extent that *Articles 4.10.5 and 4.10.6* are not violated. (*Amended: 11-05-90) (03-21-05)*

4.10.5. Traffic and Parking - The proposed site layout shall provide for safe ingress and egress to and from public and private roads by providing adequate sight distances and minimal turning conflicts with roads and driveways. Provision shall be made available for vehicles to turn around on the premises. Off-street parking which includes no more than three (3) spaces located in the front yard shall be provided for all expected customer/clients of the home occupation. No home occupation shall be approved or allowed to operate if it generates more than ten (10) auto trips by customer/clients in any one day. (*Amended: 03-21-05*)

4.10.6. Commercial Vehicles - No commercial vehicles in excess of three-quarter (3/4) ton capacity shall be used by a home occupation for the delivery of materials to and from the premises and no commercial vehicles in excess of three-quarter (3/4) ton capacity shall be parked on or about the premises.

4.10.7. Utilities and Public Facilities - There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes. (*Amended: 03-21-05*)

4.10.8 Additional Conditions Necessary for Approval of Home Occupations. If in the judgment of the Planning Board additional improvements or safeguards are necessary in order to make a proposed home occupation safe, sanitary or less intrusive in a neighborhood the Board may place conditions on the approval of the home occupation that further limit the operation of the business, provide for screening or bufferyards or improve traffic safety. (*Amended: 03-21-05*)

4.10.8. Alterations to Land and Buildings of Previously Approved Home Occupations. If additions or alterations have been constructed, or are proposed for construction to primary use residences or to accessory use buildings which in the opinion of the Code Enforcement Officer significantly alter a Planning Board approved home occupation the Code Enforcement Officer shall require that the home occupation use seek a revision from the Planning Board. In order to determine if the alterations or additions alter the approved Home Occupation the Code Enforcement Officer shall review the municipal documents on file including the minutes of the Board meeting at which the Home Occupation was approved. The Code Enforcement Officer shall not issue a building permit or certificate of compliance for such additions or alterations that have not received Planning Board Home Occupation permit approval unless the applicant surrender the home occupation permit and or conditional use/site plan home occupation use approval in writing. (*Amended: 03-21-05*)

4.10.9. Discontinuation and Abandonment of a Legacy Home Occupation. If a home occupation, created under the provisions of the Ordinance prior to January 1, 2005, has been discontinued or abandoned for a period of 12 months the home occupation use may not be re-established without first receiving a Home Occupation Permit under the provisions of *Article 4.10* of this ordinance. The Code Enforcement Officer shall have authority to issue a determination that the use has been discontinued or abandoned for a 12-month period. (*Amended: 03-21-05*)

4.11. Sanitary Provisions

4.11.1. Sewage Disposal

1. All plumbing facilities in the Town of Hampden and all sewage disposal systems shall be installed and operated in compliance with the municipal sewer ordinance.

2. Plumbing and sewage disposal systems shall be installed only after a plumbing permit has been obtained.

4.11.2. Solid Waste Handling and Disposal Sites or Facilities

1. No hazardous, radioactive, or nuclear waste shall be disposed of in the Town of Hampden. *(Amended: 12-21-87)*
2. Solid waste handling and disposal sites or facilities shall be designed and operated in accordance with the regulations of this Ordinance, the State of Maine Department of Environmental Protection, and the United States Environmental Protection Agency.

4.12. Temporary Structures - Temporary structures necessary for the construction of approved facilities such as construction trailers, contractors offices, as well as, temporary office space, portable classrooms and similar structures are permitted in all zones. When the reason for their existence has been completed, they shall be removed. Persons contemplating erecting a temporary structure shall obtain a permit for such structure from the code enforcement officer prior to erecting it. Permits for temporary structures shall be for no more than one (1) year from date of issuance. The Code Enforcement Officer may extend the duration of the permit one additional year for due cause. Structures which will be needed for longer than the one year time frame, or need extensions beyond the two years allowed by the CEO shall obtain the appropriate permits in accordance with the provisions of this Ordinance. *(Amended: 1-21-97)*

4.13. Mobile Homes *(Amended: 10-12-04)*

4.13.1. Purpose - To regulate mobile homes and mobile home parks; to establish minimum standards governing the construction and maintenance of mobile home parks; to establish minimum standards for utility service, facilities and site design in mobile home parks which serve to make such parks, decent, safe, and sanitary residential areas; to establish the responsibilities and duties for owners and operators of mobile home parks. *(Amended: 9-19-83)*

4.13.1.1. Administration of Mobile Home Parks Mobile home parks shall be administered in accordance with the Town of Hampden Mobile Home Park Ordinance.

4.13.2. Mobile Homes Located Outside Mobile Home Parks *(Amended: 10-12-04)*

4.13.2.1. Non-certified Mobile Homes. No person shall locate, maintain, occupy or operate a non-certified mobile home, as defined, in the Town of Hampden that fail to meet the standards found in *Article 8, Safety Standards of the Town Of Hampden, Maine Mobile Home Park Ordinance*. Written findings by the Code Enforcement Officer that the non-certified mobile home satisfies the standards of *Article 8, Safety Standards of the Town Of Hampden, Maine Mobile Home Park Ordinance* shall be required prior to locating said mobile home on a lot in the Town. Provided, however, that any non-certified mobile home in the Town of Hampden as of August 2, 2004 that is not located in a mobile home park may continue in accordance with *Article 4.5.1* of this Ordinance. Such a mobile home shall not be replaced by another non-certified mobile home unless the replacement complies with the referenced safety standards.

4.13.2.2. Certified Mobile Homes. No person shall locate, maintain, or operate a certified mobile home, as defined, in the Town of Hampden outside a licensed mobile home park except in conformity with *Article 3* of this Ordinance and the following:

1. All running gear including wheels, tires and axle assembly and all hitch assembly gear shall be removed from the mobile home.

2. The mobile home shall have a pitched, shingled roof with a minimum pitch of 2 in 12 (2 vertical units for every 12 horizontal units). A shingled roof shall mean asphalt or fiberglass composition or other similar materials.
- 3.. The mobile home shall be placed on a permanent foundation constructed according to the standards for foundations found in the building code of the Town of Hampden.
4. In cases where a mobile home is not placed on a full foundation, the area below the unit shall be fully enclosed with skirting. The skirting shall be properly installed in accordance with the BOCA Basic Building Code.
5. The mobile home shall have exterior siding which is residential in appearance, such as brick or masonry veneers, stucco or exterior plaster, wood siding, wood shingles, aluminum or vinyl siding simulating a clapboard pattern, or hardboard siding.
6. The mobile home shall not have been modified after it was inspected and certified by the State of Maine Department of Business Regulation or, if it was modified, the manufactured home still meets or exceeds the standards of the National Manufactured Housing Construction and Safety Standards Act.

4.13.2.3. No person shall locate, maintain or operate any other mobile home, as defined, in the Town of Hampden. (*Amended: 10-07-85, 05-04-92*)

4.13.3. Construction of a New Mobile Home Park or Modification of an Existing Mobile Home Park
(*Amended: 10-12-04*)

4.13.3.1. Procedure - Construction of a New Mobile Home Park shall require Site Plan approval and Major Subdivision Plan approval. Modification of an existing Mobile Home Park shall require Site Plan approval and may require Major or Minor Subdivision Plan approval as determined by the Planning Board. The Planning Board shall apply the standards found in *Article 4.13.3.3. Design Standards, Article 4.13.3.4. Utilities, Article 4.13.3.5, Road Construction and Traffic Standards, Article 4.13.3.6. Drainage, Article 4.13.3.7. Open Space and Recreation, Article 4.13.3.8. Landscaping, Article 4.13.3.9. Accessory Structures, and Article 4.13.3.10 Service Buildings* to all applications for construction or modification of a Mobile Home Park.

4.13.3.2. Plans to be Submitted - Applicant shall submit plans prepared by a Registered Professional Engineer. The plans should be drawn to scale of not more than 100 feet to the inch. The plans shall include:

1. A location map of a scale not less than 500 feet equals one inch
2. A boundary survey prepared by a register land surveyor
3. A topographic plan indicating the existing and proposed grading at a minimum of 2 foot intervals
4. The names of all abutting property owners of record
5. The size and shape of all lots numbered on the plan
6. The location of all parking areas
7. The right of ways, streets and pedestrian ways existing and/or proposed
8. The location of all manufactured housing units
9. The location of all utilities above ground and below ground and the easements therefore
10. The location of existing and proposed vegetation
11. The size and location of all recreation areas
12. Adjacent building outlines and other significant features within 300 feet
13. The location and use of all proposed accessory structures and signs
14. The location of all existing streams, drainage channels, and wetlands.
15. The location, type, and intensity of all outdoor lighting.

16. The location of drainage ways, culverts, and storm drainage facilities including size and inverts of facilities.
17. The existing zoning

In addition to the above required plans detail drawings shall be required for the following:

1. Road construction: plan, profiles and cross sections
2. Utilities
3. Typical lot layout
4. Recreation areas and service buildings
5. Other details as requested by the Planning Board

4.13.3.3. Design Standards

- | | | | |
|-------------------------------------|---|---------------|---------------|
| 1. <i>Lot Dimensions</i> | | Standard | Cluster |
| Minimum Lot Area | - | 6,500 sq. ft. | 5,000 sq. ft. |
| Minimum Road Frontage | - | 55 feet | 50 feet |
| Minimum Lot Depth | - | 110 feet | 100 feet |
| Minimum Setbacks: | | | |
| Street Yard | - | 30 feet | 20 feet |
| Other Yards | - | 10 feet | 5* feet |
| Lot Coverage | - | 30 percent | 35 percent |
| Open Space (percent of lotted area) | - | 10 percent | 35 percent |
2. *Parking* - All parking shall be designed in conformance with *Article 4.7*. All mobile homes shall have a minimum of 2 off-street parking spaces on each lot. In addition, mobile home parks with an excess of 40 units shall provide visitor parking at a rate of 1 space per 4 units. Cluster design shall permit clustered parking within 250 feet of the unit served. If mobile home lots are located along a public street, parking shall be designed and arranged so that cars do not have to back into the street. On-street parking shall be prohibited
 3. *Access* - Mobile home lots shall not have direct access to collector or arterial streets.
 4. *Additional Cluster Design Standards for Mobile Home Parks*
 1. Underground electrical utilities
 2. Maximum of 32 units clustered with 30 foot open space break between clusters
 - 3*. 20' separation between all units required

4.13.3.4. Utilities

1. *Water Supply Requirements* - All mobile home parks shall be connected to a public water supply, capable of furnishing a minimum of 150 gallons per day per mobile home space.
2. *Hydrants* - Hydrant locations shall be approved by the Fire Chief.
3. *Plumbing* - All plumbing in the mobile home park shall comply with State and local plumbing laws and regulations and shall be maintained in good operating condition.
4. *Sewage Disposal* - All mobile home parks in the Town of Hampden shall be connected to the public sewer system. Each mobile home space shall be provided with a satisfactory sewer connection. All sewage disposal apparatus, including appurtenances thereto, shall be provided, maintained, and operated in accordance with the Hampden Sewer Ordinance.

5. *Refuse and Garbage Disposal* - The storage, collection and disposal of refuse in the park shall not create health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution. All refuse and garbage shall be stored in fly-tight, watertight, rodent-proof containers, which shall be provided in sufficient number and capacity to prevent any refuse from overflowing. Satisfactory container racks or holders shall be provided by the mobile home park owner or operator and shall be located not more than 150 feet from any mobile home lot.
6. *Electric Installation and Outlet Requirements* - Mobile home service equipment and power outlet assembly will be installed in accordance with the National Electrical Code as adopted by the State of Maine.
7. *Lighting* - All outdoor lighting shall be designed so as not to create a nuisance to the residents or abutters of the park. Streets shall have a minimum lighting level of 1.0 foot candle and pedestrian walkways .5 foot candles.

4.13.3.5. Road Construction & Traffic Standards - Mobile Home parks may be constructed with either public or private roadways. Public roadways shall be constructed to the towns road standards. Private roadways must provide a minimum of:

1. 23 foot right of way
 2. 20 foot paved surface
 3. Be designed by a registered professional engineer.
 4. Be built to generally accepted engineering and construction standards
5. Private roadways shall conform to *Article 551 of the Town of Hampden, Maine Subdivision Ordinance*.

4.13.3.6. Drainage - Applicant shall provide pre development and post development storm water analysis in accordance with the Hampden Subdivision Ordinance guidelines including a narrative explaining the results and recommendations.

4.13.3.7. Open Space & Recreation - Open space shall be required in accordance with *Article 3* District standards. 50% of the open space area required shall be of such character as to be useable for active recreation and accessible by all residents of the park. All development proposals shall provide a plan for pedestrian circulation.

4.13.3.8. Landscaping - All development shall provide the required buffer yards in accordance with *Article 4.7.* of this Ordinance. All existing vegetation to be retained where possible. All disturbed areas shall be covered with lawn, ground cover or other suitable material. In addition, all clustered parking areas, dumpster or trash buildings, utility structures and other nonresidential buildings shall be screened from view by means of trees shrubs or other vegetation.

4.13.3.9. Accessory Structures - Accessory structures shall conform to the following requirements: No accessory structure shall exceed 500 Sq. Ft. Accessory structures shall not exceed 18 feet in height. Accessory structures shall be located as not to obstruct light, air or access from any unit. All decks, porches, or other accessory structures shall meet the setbacks in accordance with this section.

4.13.3.10. Service Buildings - All service buildings used in the operation and or promotion of the mobile home park shall comply with the following requirements: Service buildings shall be set back a minimum of 30 feet from any street right of way and 25 feet from any mobile home lot line. Service buildings shall not exceed 1500 Sq. Ft. in ground coverage or 30 feet in height.

4.14. Shoreland Regulations - Repealed See Shoreland Zoning Ordinance (Amended 03-01-10)

4.15. Water Recreation and Sewage Lagoons - Any swimming pool, as defined, and any sewage lagoon shall comply with the following requirements:

4.15.1. The facility shall conform with setback requirements.

4.15.2. The facility shall be enclosed by a fence no less than four (4) feet high to prevent uncontrolled access. *(Amended: 3-16-87)*

4.16. Easements

4.16.1. Required Easements - If, in the administration of this Ordinance, the Town of Hampden requires that a landowner provide the town or the Hampden Water District with an easement of any kind, title to such easement shall be drawn up in a form and substance acceptable to the Town of Hampden (or the Hampden Water District if appropriate) and turned over to the town or water district before a building permit is issued.

4.16.2. Voluntary Easements - If a landowner requests that the Town of Hampden be the recipient of an easement on his property, such easement will only be accepted by the town if it is in a form and substance acceptable to the town. The town council shall determine if the easement is acceptable to the town. In making its decision the town council shall consult with the planning board.

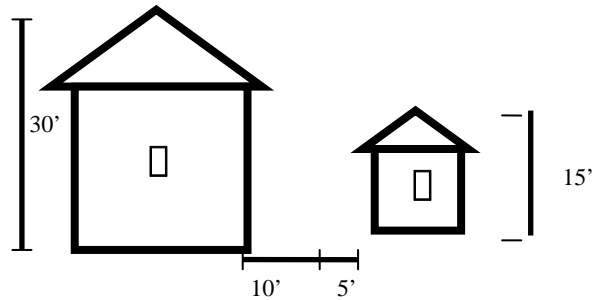
4.17. Lots and Planned Group Development *(Amended:07-14-03)*

4.17.1. Lots - Where a parcel of land is to be occupied by more than one principal building, each principal building shall be treated as though on a separate lot and shall meet all applicable development standards unless the Planning Board, after site development review, authorizes a redistribution of required yard space in harmony with the intent and purpose of this ordinance. This ordinance also governs building spacing of accessory buildings in planned group developments.

4.17.2. Planned Group Development Standards – The planning board may relax applicable development standards in conformance with the regulations of this section where two (2) or more principal buildings are located on a lot and provide increased flexibility in the placement of buildings and other site improvements. A planned development for any residential, commercial or industrial complex permitted under other provisions of this ordinance shall be considered as one site development lot under the applicable site development standards of the zoning district in which it lies and for subdivision purposes regardless of the proposed method of ownership for the land area, buildings, portions of buildings, site improvements or any combination thereof, provided that:

1. All group developments must be reviewed and approved by the planning board via site plan review or subdivision review.
2. The planned development shall not exceed the prescribed densities and/or lot coverage or reduce the required area for yards and off-street parking or violate any other site development standards applicable to the district.
3. Required yards shall be increased by twenty-five (25%) percent of the minimum required for the proposed use(s).
4. Principal and accessory building spacing (internal yard requirements), shall be governed by a height to spacing ratio of three to one (3:1) or 20 feet, whichever is greater, unless a stricter building spacing is provided by the district in which the use is proposed.

EXAMPLE



A 30 foot tall building at 3:1 requires a 10 foot setback
Building A requires 10 feet.
Building B requires 5 feet.
Total building spacing is 15 feet or 20 feet whichever is greater.
ANSWER: 20 feet.

5. Any method of ownership for the land area, buildings, portions of buildings, site improvements or any combination thereof shall afford those acquiring such ownership interests, access to, and use of such other portions of the planned development as are necessary for:
 - A. Access to all portions of the planned development from a public right-of-way;
 - B. Access to the parking areas required by this ordinance;
 - C. Access to the common areas of the planned development including the yards and open spaces required by any local ordinance; or
 - D. Compliance with the site development standards required under this chapter in the district in which such group development lies.
6. The applicant shall have the burden of demonstrating that the proposed method of ownership complies with the foregoing requirements. To that end, the applicant shall submit, as part of the land development review process, copies of all proposed documents relating to the creation of ownership interests, the dedication of all common areas or elements and the organizational arrangements for the ownership, maintenance, use and preservation of all common areas or elements of the planned development.

4.18. Essential Service - Whereas the provision of essential services is vital to the operation of the town and the welfare of its citizens and the size, shape and location of utilities offers little flexibility, the following exemptions shall apply to essential services and buildings for essential services.

Lot area, lot coverage and frontage shall not be required for the installation of essential services and buildings.

Above ground buildings for essential services shall meet the applicable yard requirements for the district in which they are located.

Above ground buildings for essential services shall be screened from residential properties to the extent possible.

Buildings and/or structures for essential service may exceed the height limitations of the zone in which they are located provided they are setback one third (1/3) the height from any property line.

(Amended: 11-18-91)

4.19. Day Care Provisions

4.19.1. Purpose - In order to provide suitable day care opportunities in all areas of Hampden without adversely impacting the peaceful enjoyment of residential neighborhoods, day care facilities of all types which provide for the supervision and care of children under the age of sixteen shall comply with the following provisions.

4.19.2. Day Care Types:

1. Home Day Care
2. Day Care Facility
3. Child Care Center (Amended: 01-03-11)

4.19.3. Performance Standards

1. Density: Day Care Facilities shall not exceed a density of 12 children per acre. (Amended: 01-03-11)
2. Outside Play Area: Outside play areas proposed as part of Home Day Care, Day Care Facility or Child Care Center shall be fenced and no closer than 25 feet to any adjacent property lines. (Amended: 01-03-11)
3. Hours of Operation: Home Day Care and Day Care Facilities located in the Residential A, Residential B or Rural Districts shall not operate between the hours of 6:00 pm and 6:00 am. (Amended: 01-03-11)
4. Parking: Home Day Care, Day Care Facilities and Child Care Centers shall provide one off-street parking space per four (4) children plus one (1) space per employee who does not reside on the premises. (Amended: 01-03-11)
5. Signs: Home Day Care shall not display any outdoor signage. Day Care Facilities located in the Residential A, Residential B or Rural Districts may have an unlighted sign not to exceed two (2) square feet. (Amended: 01-03-11)
6. Employees: Day Care Facilities located in the Residential A, Residential B or Rural Districts may employ one (1) person who does not reside on the premises. (Amended: 8-22-9 and 01-03-11)
7. Day Care Facility. Notwithstanding the definition of Day Care Facility, when located in a commercial or industrial district this use is not required to be operated within a dwelling or by a person residing on the premises. Notwithstanding the definition of Day Care Facility, when located in a Rural District this use may be operated within a separate building on a lot common to a dwelling in which a person or persons operating the facilities reside. (Amended: 01-03-11)
8. As part of the review process written comment shall be obtained from Hampden Public Safety to identify any child safety issues. (Amended: 01-03-11)

4.19.4. Approvals Required. (Amended: 01-03-11)

1. Home Day Care. Home Day Care shall be subject to *Article 5.3.2 Certificate of Compliance* regulations.
2. Day Care Facility. Day Care Facility located in the Residential B or Rural Districts shall be subject to Planning Board approval pursuant to *Article 4.1.9.1 Site Sketch*.

3. Child Care Center. All Child Care Centers operated as Service Businesses shall require Site Plan Approval pursuant to Article 4.1 Site Plan Review. Child Care Center operated as accessory to a church or community building does not require site plan review.

(Please note that day care is regulated by the State of Maine Title 22: HEALTH AND WELFARE Subtitle 6: FACILITIES FOR CHILDREN AND ADULTS Chapter 1673: CHILD CARE FACILITIES HEADING: PL 2001, C. 645, §5 (RPR) §8301-A. Licensure of child care facilities; certification of family child care providers).

4.20. Customary Rural Business - To insure that the character of the rural area is not transformed from one which is rural, Customary Rural Businesses shall be operated and designed to blend in with the rural landscape. All Customary Rural Businesses shall be planned, operated and maintained according to the following standards.

4.20.1. Ownership - A Customary Rural Business shall be owned and operated by the property owner or a lease hold interest of a person or persons residing on the property.

4.20.2. Floor Area Limitation - The floor area devoted to a Customary Rural Business shall not exceed 2,000 square feet. Structures within a historic district or designated as a historic landmark shall have no restriction as to floor area.

4.20.3. Appearance - New structures or expansions of existing structures shall meet the following minimum architectural standards:

1. A pitched roof with a pitch of no less than 4 inches in 12 inches.
2. Exterior siding shall be limited to siding which is either wood clapboard or wood shingles, brick, aluminum or vinyl siding which imitates clapboard or other hardboard siding.

4.20.4. Signs - Permitted: one (1) non internally illuminated sign no greater than twelve (12) square feet located on premises. Only free-standing, pole, or wall mounted signs shall be allowed.

4.20.5. Parking - Off-street parking which includes no more than ten (10) spaces located in the side or rear yard shall be located no closer than 20 feet to any property line and screened from public view and that of adjacent properties in accordance with *Article 4.7.11*.

4.20.6. Commercial Vehicles - No more than one commercial vehicle in excess of one (1) ton capacity used in the conduct of the business shall be parked outdoors on the premises.

4.20.7. Uses Intended - Customary Rural Businesses shall be limited to uses defined in *Article 7.2*.

4.20.8. Outdoor Storage - Outdoor storage shall be limited to goods displayed for sale and limited to 500 square feet in area. There should be no other outdoor storage of materials used in conducting the business.

4.20.9. Location Requirements - In order to protect existing residential development from the intrusion of nonresidential uses which may be incompatible, Customary Rural Businesses shall only be located on the following roads: Back Winterport Road, Bog Road, Canaan Road, Carmel Road North & South (Route 69), Fowler Road, Kennebec Road, Meadow Road, Miller Road, Monroe Road, Patterson, Road, Pond Road, Sawyer Road, Shaw Hill Road, Western Avenue, Emerson Mill Road and Papermill Road.
(Amended: 12-2-96, 1-21-97)

4.21. Structures Necessary For Access For Person With Disabilities

4.21.1. Intent - Whereas the Americans with Disabilities Act requires all structures to be barrier free and accessible by the public, and whereas many existing structures may not be able to be economically retrofitted in compliance with existing setback requirements, flexibility in meeting the applicable setback requirements is in the best interest of the Town of Hampden.

4.21.2. Applicability - Existing structures providing access for persons with disabilities which comply with the design guidelines of *MRSA Title 25, Section 2701, American National Standards Institute Document A117.1-1986*, and *Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.)*, as may be amended from time to time.

4.21.3. Review - Such structures shall meet the applicable yard setback requirements to the greatest extent possible as determined by the CEO for buildings and or uses which do not require approval by the Planning Board. Where such uses and/or structures require Planning Board approval the Planning Board shall determine whether the proposed structure, for access, meets the setback to the greatest extent possible.

4.22. Wireless Telecommunications Facilities (Amended: 10-01-01)

4.22.1. Applicability - This subsection applies to all construction and expansion of wireless telecommunications facilities, as defined in *Article 7.2*, except as provided in *Article 4.22.2* below.

4.22.2. Exemptions - The following are exempt from the provisions of *Article 4.22*:

1. *Public Wireless Telecommunications Facilities.* Wireless telecommunications facilities for communications by public officials.
2. *Amateur (Ham) Radio Stations.* Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
3. *Parabolic Antennae.* Parabolic antennae less than seven feet (7') in diameter, that are an accessory use of the property.
4. *Maintenance or Repair.* Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
5. *Temporary Wireless Telecommunications Facilities.* Temporary wireless telecommunications facilities, including temporary microcell wireless tele-communications facilities, in operation for a maximum period of one hundred eighty (180) days shall be permitted under the provisions of *Article 4.12 Temporary Structures.* (Amended: 2-7-05)
6. *Antennas as Accessory Uses.* An antenna or satellite dish that is an accessory use to a residential dwelling unit.
7. *Microcell Wireless Telecommunication Facilities.* Microcell wireless telecommunication facilities as defined in *Article 7.2* when co-located on water towers. (Amended: 2-7-05)

4.22.3. Site Plan Review Application. Wireless telecommunications facilities shall be subject to Site Plan Review under the provisions of *Article 4.1* of this ordinance. Applications for approval of wireless telecommunications facilities, including expansions of existing facilities, shall comply with the application requirements of *Article 4.1.6* and shall include the following additional information:

1. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility that the facility will comply with all applicable FCC regulations.

2. A site plan prepared and certified by a professional engineer, registered in Maine, indicating the location, type and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, and setbacks from property lines. The site plan must include certification by a professional engineer registered in Maine that the proposed facility complies with all American National Standards Institute (ANSI) and other applicable technical codes.
3. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level.
4. A landscaping plan indicating the proposed placement of the facility on the site; the location of existing structures, trees and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing; the color of the structure; and the proposed lighting method.
5. A written description of how the proposed facility fits into the applicant=s telecommunications network. This submission requirement does not require disclosure of confidential business information. The narrative shall identify the following:
 - a. Duration of time for which the proposed facility would be visible to a passing motorist or boater within a designated scenic resource as identified in the Town of Hampden Comprehensive Plan;
 - b. The tree line elevation of vegetation within 100 feet of the facility; and
 - c. The distance to the proposed facility from scenic areas and scenic views located within a one mile radius of the proposed site, as designated in the Comprehensive Plan.
6. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant=s proposed facility, which may consist of one or more of the following:
 - a. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant=s engineering requirements;
 - b. Evidence that existing facilities do not have sufficient height, or cannot be increased to a sufficient height at a reasonable cost and within the height limitations of this ordinance, to meet the applicant=s engineering requirements;
 - c. Evidence that existing facilities do not have sufficient structural strength to support the applicant=s proposed antenna(e) and related equipment;
 - d. For facilities existing prior to the effective date of this subsection, evidence that the fees, costs or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable; or
 - e. Evidence that an otherwise suitable facility is legally unavailable for the applicant=s use after a good-faith effort to secure authorization to use such facility.
7. A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is discontinued.

4.22.4. Standards. The applicant for approval of a new wireless telecommunications facility or expansion must demonstrate compliance with the following approval standards:

1. Lot Dimensions. Notwithstanding the lot dimension requirements of the underlying zoning district, the following dimensional standards shall apply to new wireless telecommunications facilities approved under this ordinance:

- a. Minimum lot area. The minimum lot area for new wireless telecommunications facilities shall be 10,000 square feet. The area of any access drives shall be excluded in calculating the lot area for this purpose. The Planning Board may require a larger lot when necessary to accommodate guy wires or other supporting cables or structures. The minimum lot area shall not apply to facilities, other than towers, co-located on existing facilities or structures. Provided, that any new facility requiring on-site sewage disposal or an on-site ground water supply shall meet the minimum lot area requirements of the underlying zoning district.

Where a lot meeting the requirements of this subparagraph is created through division of an existing lot, through sale, lease, or otherwise, the existing lot, following such division, must continue to meet all dimensional requirements of the underlying zoning district.

- b. Minimum road frontage and street yard. The minimum road frontage and street yard requirements of the underlying zoning district shall not apply to lots for new wireless telecommunications facilities. Provided, however, that each lot for a new wireless telecommunications facility shall be provided with leased or deeded access, sufficient for use by emergency and service vehicles, to a public road or year-round public right-of-way.
 - c. Minimum other yard. The minimum depth for other yards shall be as provided in the underlying zoning district. Transmission towers, tower-mounted antennas, guy wires and other supporting cables and structures may not be located within the required other yard areas. Yard requirements for the principal and accessory structures must be met within the leased or deeded area of the lot concerned.
 - d. Maximum ground coverage. The maximum ground coverage provisions of the underlying zoning district shall not apply.
 - e. Maximum height. The maximum height for transmission towers, tower-mounted antennas and supporting towers or antennas shall be two hundred feet (200'). The maximum height for other structures or buildings shall be as provided in the underlying zoning district.
 - f. Accessory structures. Dimensional requirements for accessory structures shall be as provided in the underlying zoning district.
2. Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility, on municipal property, the applicant must show the following:
 - a. The proposed location complies with applicable municipal policies and ordinances.
 - b. The proposed facility will not interfere with the intended use of the property.
 - c. The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.
 3. Design for Co-location. A new wireless telecommunications facility and related equipment must be designed to accommodate future co-location of at least three additional wireless telecommunications facilities or providers.

4. **Public Road Setback Requirements.** New wireless telecommunications facilities approved under this ordinance must be located a minimum of two hundred feet (200') from all public roads and public rights-of-way existing as of the application date. Except as provided in paragraph 5 below, the setback area need not be owned or controlled by the facility owner or applicant.
5. **Clear Zones.** All telecommunications towers and tower-mounted antenna must be set back one hundred five percent (105%) of the tower height from all abutting properties. This setback requirement may be satisfied by including areas outside the wireless telecommunication facility=s lot boundaries, if secured by a recorded easement that precludes location of buildings intended for human or animal occupancy from the clear zone area. The following exceptions apply to this requirement:
 - a. The required setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
 - b. An antenna is exempt from the setback requirement if it extends no more than five feet (5') horizontally from the edge of the structure to which it is attached, and does not encroach upon an abutting property.
6. **Landscaping.** A new wireless telecommunications facility must be screened with native plants from view of abutting properties, to the maximum extent practicable. The intent is to site such facilities in an existing stand of mature wooded land.
 - a. This wooded area must surround the tower and accessory structures in all directions for a radius of at least 100 feet from the edge of the proposed development.
 - b. This landscaping requirement may be satisfied by either a lot of sufficient size to include the required landscaping area or by including areas outside the wireless telecommunication facility=s lot boundaries, if secured by a recorded easement that provides adequate control to preserve existing native plants and natural landforms.
 - c. The site shall be preserved as follows: Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well-distributed stand of trees and other vegetation" adjacent to a tower, shall be defined as maintaining a rating score of twelve (12) or more in any twenty-five (25') foot by twenty-five (25') foot square (six hundred twenty-five [625] square feet) area as determined by the following rating system:

Tree Diameter DBH (four and one half [4.5] feet)		Point Value
2 - 4 inches	-	1
4 - 12 inches	-	2
Larger than 12 inches	-	4

Notwithstanding the above provisions, no more than forty (40%) percent of the total volume of trees four (4") inches or more diameter, DBH may be removed in any ten (10) year period.

7. **Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
8. **Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with Federal Aviation Administration (FAA) or other applicable federal and state

requirements. However, security lighting may be used as long as it is shielded to be down-directional, so as to retain light within the boundaries of the site to the maximum extent practicable.

9. **Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard titled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
10. **Noise.** A new wireless telecommunications facility or expansion must be designed to minimize noise disturbances to abutting properties, to the extent practicable. This requirement shall not apply during construction, repair or replacement, while operating a back-up generator during electric power outages, or during testing of a back-up generator between the hours of 8:00 a.m. and 6:00 p.m.

4.22.5. Standard Conditions of Approval. The following standard conditions of approval shall be a part of any approval issued by the Planning Board. Reference to the conditions of approval shall be clearly noted on the site plan, and shall include:

1. **Future Co-Location.** The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a. Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - c. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;
 - d. Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on rates typically charged by commercial facility owners in the local market. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the facility tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the projected economic life span of the wireless telecommunications facility.

4.22.6. Discontinuance. A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months after commencement of operation shall be considered to be discontinued. The Code Enforcement Officer shall notify the owner of a discontinued facility in writing and order removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from receipt of the written notice to demonstrate to the Code Enforcement Officer that the facility has not been discontinued.

If the owner fails to show that the facility has not been discontinued, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all necessary and reasonable site reclamation costs, as determined by the Code Enforcement Officer, to return the site to its pre-construction condition, including the removal of roads and the re-establishment of vegetation.

If a surety has been given to the municipality to assure removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment have

been removed by the owner to the satisfaction of the Planning Board, or when the expense of removal and reclamation by the municipality have been reimbursed by the owner or surety.

4.23 Excavation, Gravel Pit and Quarry *(Amended 12-17-07)*

4.23.1. Purpose. *(Amended 12-17-07)* The purpose of Article 4.23 is to:

4.23.1.1 Regulate in an environmentally sound manner the excavation, removal, processing, and storage or stockpiling of topsoil, loam, rock, sand, gravel, clay, and other similar earth materials within the Town. and provide for the sound reclamation of all excavations within the Town.

4.23.1.2 Protect the quantity and quality of the groundwater and other water bodies.

4.23.1.3 Prevent a lowering of the average water table.

4.23.1.4 Control erosion.

4.23.1.5 Regulate access to excavations to and from public and private streets or roads.

4.23.1.6 Provide for the safety of the public.

4.23.1.7 Ensure continued access to and availability of a critical natural resource for the benefit of the people of Hampden and the State of Maine.”.

4.23.2 Effective Date. These provisions shall apply to all applications received after January 16, 2008.
(Amended 12-17-07)

4.23.3 Applicability: After January 16, 2008, all excavations within the Town shall be operated and maintained in accordance with the requirements of this Ordinance except for those excavations with previously issued valid permits that specifically allow otherwise. Examples of exceptions include, but are not limited to, previously issued site location of development permits, (38 MRSA §480), filed a Notice of Intent to Comply with the Performance Standards for Excavation and/or Quarries (38 MRSA §490) and amendments and variances thereof or other arrangements that have been approved by the Maine Department of Environmental Protection. Notwithstanding other permits or approvals all excavations in the Town will be subject to the Reclamation provisions of this Ordinance. Notwithstanding the foregoing all excavations, gravel pits and quarries shall be subject to the requirements of *4.23.4 Registration of Existing Excavations, 4.23.7.3 Buffer Strips, 4.23.8 Reclamation, and 4.23.7.10. Noise.* Activities such as filling and grading land in preparation for development and construction activities and stockpiles of materials for use in construction and industrial activities are governed in *Article 4.9 Filling and Grading of Land and Stockpiling of Materials.*
(Amended 12-17-07)

4.23.4 Registration of Existing Excavations: In order to preserve existing conforming bufferyards, improve the quality of undersized natural buffer areas and to create a benchmark for future review and closure of existing excavations, gravel pits and quarries any such activity within the Town of Hampden shall be registered with the town under this ordinance. Registration will create a benchmark for excavations, gravel pits and quarries. The basis of the benchmark document will be a site exhibit of the excavation parcel(s) superimposed upon Town provided digital aerial photography dated April, 2006 (and revisions thereafter). In addition to the site exhibit and the aerial photography the following items shall be included. *(Amended 12-17-07)*

4.23.4.A Name, address, telephone number, fax, and email address of current owner of the property.

4.23.4.B Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.4.C For excavations subject to current Maine Department of Environmental Protection permitting or any other State or Federal regulations copies of those permits and plans shall be submitted with the application.

4.23.4.D A site exhibit plan containing the following:

- 4.23.4.D.1 Boundaries of the entire parcel to sub-meter accuracy.
- 4.23.4.D.2 Present use of entire parcel including existing excavated areas.
- 4.23.4.D.3 Type and location of all existing and proposed surface water including drainage ways.
- 4.23.4.D.4 Limits (top of bank) of the areas previously excavated to sub-meter accuracy.
- 4.23.4.D.5 Limits of the areas previously reclaimed.
- 4.23.4.D.6 Limits of the areas proposed to be excavated including those areas (identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting)
- 4.23.4.E A narrative description of the operations including methods of excavation, gravel pit and quarry, uses of on-site processing equipment, type and location of any structures, stockpiled materials, disposition of stumps, brush, or other materials, and on-site storage of any hazardous materials.
- 4.23.4.F Parcel description by tax map and copy of deed with Registry of Deeds Book and Page Number.
- 4.23.4.G A signed statement attesting that, to the best of the Applicant's knowledge, the information contained in the application is true, accurate, and complete.

All existing excavations, gravel pits and quarries within the Town of Hampden shall register their operation with the town and submit the required documents in accordance with this section within six months of the effective date of this amendment.

4.23.5 Jurisdictional Classifications. This section recognizes two general jurisdictional classifications of excavations and the regulations contained herein make certain distinctions between them: (*Amended 12-17-07*)

4.23.5.1 Those excavations that are required to have a permit from the Maine Department of Environmental Protection in accordance with PERFORMANCE STANDARDS FOR EXCAVATIONS FOR BORROW, CLAY, TOPSOIL, OR SILT 38 MRSA §§ 490-A to 490-M (generally five acres of activity), PERFORMANCE STANDARDS FOR QUARRIES (38 MRSA §§490W – 490Z) or excavations that have (or are required to have) filed a notice of intent to comply pursuant to 38 MRSA § Section 484-A of the Site Location of Development Law and have adhered with the compliance schedule as required by that Section.

4.23.5.2 Those excavations that are not required to have a permit from the Maine Department of Environmental Protection as identified in 4.23.5.1, but are required to have an excavation permit from the Town.

4.23.5.3 Note that there are also earthmoving activities governed under *Article 4.9, Filling and Grading of Land and Stockpiling of Materials.*

4.23.6 Excavation Permits (*Amended 12-17-07*)

4.23.6.1 *Permit required.* Any proposed new excavation, or any proposed expansion of an existing excavation, beyond previously approved limits, is required to obtain an excavation permit from the Town in accordance with the requirements of this Ordinance.

4.23.6.2 *Duration.* An excavation permit shall be for eight years by the Planning Board.

4.23.6.3 *Planning Board approval required.* Planning Board approval is required before an excavation permit is issued by the Town.

4.23.6.4 *Application procedure and contents.* An application for an excavation permit shall be submitted to the Code Enforcement Officer. The application and its contents shall be sealed by a professional engineer. The Code Enforcement Officer shall verify that the application is complete. The following information shall be included with the application for a permit:

4.23.6.4.A Name, address, telephone number, fax, and email address of current owner of the property.

4.23.6.4.B Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.6.4.C For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting or any other State or Federal regulations copies of those permits and plans shall be submitted with the application.

4.23.6.4.D A site plan in accordance with *Article 4.1 Site Plan Review*. In addition to the requirements of 4.1 the site plan shall also contain the following:

4.23.6.4.D.1 Boundaries of the entire parcel to sub-meter accuracy.

4.23.6.4.D.2 Contours of land within the proposed excavation area and 100 feet beyond the limits of the excavation contour intervals of not more than five feet. For areas beyond those requiring five foot contour intervals and for land areas extending two-hundred (200) feet in all directions beyond the boundaries of the parcel contours intervals shall be not more than 10 feet.

4.23.6.4.D.3 Present use of entire parcel including existing excavated areas.

4.23.6.4.D.4 Type and location of all existing and proposed surface water including drainage ways.

4.23.6.4.D.5 Limits of the areas excavated, reclaimed and proposed to be excavated.

4.23.6.4.D.6 Location of all proposed accesses to and from public or private streets.

4.23.6.4.D.7 The location of existing wells and waterbodies.

4.23.6.4.E Reserved.

4.23.6.4.F The depth to groundwater at the site of the proposed excavation as determined by test pits or boring(s) to substantiate that the groundwater will not be disturbed. The number of test pits or borings to be required shall be a minimum of 1 per site and no less than 1 for each five-acre proposed excavation.

4.23.6.4.G Plans for controlling access to the site.

4.23.6.4.H Provisions for shielding the excavation from surrounding properties with adequate screening or buffering.

4.23.6.4.I Description of existing or proposed signs and lighting.

4.23.6.4.J A narrative description of the operations including methods of excavation, gravel pit and quarry, uses of on-site processing equipment, type and location of any structures, stockpiled materials, disposition of stumps, brush, or other materials, and on-site storage of any hazardous materials including SPCC plans (spill plan).

4.23.6.4.K Parcel description by tax map and copy of deed with Registry of Deeds Book and Page Number.

4.23.6.4.L Names and addresses of abutting property owners.

4.23.6.4.M Present uses of abutting and nearby properties.

4.23.6.4.N A signed statement attesting that, to the best of the Applicant's knowledge, the information contained in the application is true, accurate, and complete.

4.23.6.5 *Review.* The Planning Board shall review each application for an excavation permit according to the procedures of this Ordinance.

4.23.6.6 *Conflicting regulations.* For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting, in the event that the provisions of this ordinance are inconsistent with State statutes or regulations of the Department of Environmental Protection, the State statute or regulation shall prevail. The foregoing sentence shall not be construed as preventing the Town from adopting or enforcing more stringent requirements under this ordinance.

4.23.6.7 *Timeline.* Within 30 days of receipt of an application for an excavation, gravel pit and quarry permit the Code Enforcement Officer shall write a letter indicating that the application is complete and ready for review or detailing what elements of the application are deficient. A public hearing by the Planning Board shall be held within forty-five (45) days of the date that the Code Enforcement Officer determines that the application is complete.

4.23.6.8 *Planning Board review criteria.* The Planning Board shall determine that the excavation, as planned, will conform to the requirements of the district in which it is to be located and to other pertinent requirements of this Ordinance. Following such determination, the board shall approve the proposed excavation plan if it makes a positive finding based on the evidence presented that it meets all of the following standards. In all cases, the burden of proof shall be upon the applicant.

4.23.6.8.A Buffer strips and shielding in accordance with the requirements of *Article 4.23.7.* of this Ordinance.

4.23.6.8.B Fencing to protect children when adjacent to a school or for other similar special circumstances

4.23.6.8.C Signs in accordance with the provisions of *Article 4.8* and lighting in accordance with the provisions of *Article 4.1.7* designed to minimize public nuisance conditions or undesirable aesthetic effects on the neighborhood.

4.23.6.8.D Safe entrances and exits in accordance with the provisions of the Zoning Ordinance.

4.23.6.8.E Documentation of security provisions on both the site plan and in written narrative.

4.23.6.8.F Mitigation plan for control of noise, dust, runoff, and other environmental considerations that are outside of the property line boundaries of the excavation operation.

4.23.6.8.G The plan shall also present mitigation measures to minimize negative impacts of the project on surrounding or nearby properties or public facilities including, but not limited to public roads.

4.23.7 Excavation Regulations *(Amended 12-17-07)*

4.23.7.1 *General.* All excavation operations shall be in accordance with the excavation and reclamation requirements of the Maine Department of Environmental Protection and the requirements of the applicable sections of this Ordinance.

4.23.7.2 *Property lines.* All property boundaries must be identified by markers such as metal posts, stakes, flagging, or blazed trees.

4.23.7.3 *Buffer Strips.* A natural buffer strip of existing vegetation must be maintained in accordance with the following requirements:

4.23.7.3.1 A natural buffer strip at least twenty-five (25) feet wide must be maintained between any topsoil excavation and any property boundary. A natural buffer strip at least fifty (50) feet wide must be maintained between any other excavation and any property boundary. These distances may be reduced to not less than ten (10) feet with the written permission of the affected abutting property owner or owners. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Penobscot County Registry of Deeds. The distance may not be reduced to less than twenty-five (25) feet from the boundary of any cemetery or burial ground.

4.23.7.3.2 The buffer strip between excavations owned by abutting owners may be eliminated with the written permission of the abutters, provided that the elimination of this buffer strip does not increase the runoff from either excavation across the property boundaries.

4.23.7.3.3 A natural buffer strip at least one-hundred (100) feet wide must be maintained between any quarry and any property boundary. This distance may be reduced to not less than ten (10) feet with the written permission of the affected abutting property owner or owners. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Penobscot County Registry of Deeds.. The distance may not be reduced to less than twenty-five (25) feet from the boundary of any cemetery or burial ground.

4.23.7.3.4 The buffer strip between quarries owned by abutting owners may be eliminated with the written permission of the abutters, provided that the elimination of this buffer strip does not increase the runoff from either excavation across the property boundaries.

4.23.7.3.5 Natural buffer strips must be maintained for the environmental protection of flowing water, water bodies, wetlands, and significant wildlife habitats contained in wetlands as follows:

4.23.7.3.5.A A natural buffer strip at least one-hundred (100) feet wide must be maintained between the working edge of any excavation or quarry and the normal high water line of a great pond classified as GPA or a river or stream flowing to a great pond classified as GPA.

4.23.7.3.5.B A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and any other water body.

4.23.7.3.5.C A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and any river, stream, or brook as defined in 38 MRSA Section 480-B.

4.23.7.3.5.D A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and a freshwater wetland consisting of or

containing either or both of:

4.23.7.3.5.D.1 Under normal circumstances, at least twenty-thousand (20,000) square feet of aquatic vegetation, emergent marsh vegetation, or open water except for artificial ponds or impoundments (aka wetlands of special significance).

4.23.7.3.5.D.2 Peat lands dominated by shrubs, sedges, and sphagnum moss.

4.23.7.3.5.E A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and a significant wildlife habitat contained within a freshwater wetland.

4.23.7.3.6 A natural buffer strip at least one-hundred-fifty (150) feet wide must be maintained between the working edge of any excavation or quarry and the nearest edge of the right of way of an adjacent road designated as a Scenic Highway by the Department of Transportation.

4.23.7.3.7 A natural buffer strip at least one-hundred (100) feet wide must be maintained between the working edge of any excavation or quarry and the nearest edge of the right of way of any adjacent public road that has not been designated as a Scenic Highway.

4.23.7.3.8 A natural buffer strip at least fifty (50) feet wide must be maintained between the working edge of any excavation or quarry and any adjacent private road as well as the nearest edge of the right of way of any adjacent private road present at the time of application submission. The width of the buffer strip adjacent to a private right of way may be reduced if written permission is obtained from those who possess the use of the right of way. The written permission must be recorded in association with the deed of the affected property of the right of way at the Penobscot County Registry of Deeds

4.23.7.3.9. The vegetation located within natural buffer strips between the working edge of any excavation or quarry and any adjacent property lines and roads shall provide shielding from excavation activities. In the event that the Planning Board determines after a site visit that the required natural buffer strips called for in this section do not provide adequate levels of shielding, applicant shall provide a mitigation plan to augment the existing tree growth to satisfy this regulation. The Planning Board may consider adjacent land uses when determining the appropriate level of shielding.

4.23.7.4 *Dust.* Dust generated by activities at the excavation, including dust associated with traffic, must be controlled by reasonable means such as watering, paving, or other suitable management practices.

4.23.7.5 *Erosion and sedimentation control for all reclaimed and unreclaimed areas.* Erosion and sedimentation control for all reclaimed and unreclaimed areas, except for access roads, shall be in accordance with the following:

4.23.7.5.1 The area of a working excavation may not exceed ten (10) acres except for excavations that have received a variance under 38 MRSA § 490 E or § 490 CC.

4.23.7.5.2 Stockpiles of top soil to be used for reclamation must be seeded, mulched, or otherwise temporarily stabilized.

4.23.7.5.3 Grubbed areas shall be stabilized.

4.23.7.5.4 Sediment shall be contained within the excavation site. Sediment shall not leave the parcel and shall not enter a protected natural resource.

4.23.7.6 *Erosion and sedimentation control for access roads.* Erosion and sedimentation control for access roads, shall be in accordance with the Maine Department of Environmental Protection best management practices.

4.23.7.7 *Surface water discharges.* Surface water discharges from the excavation and associated improvements shall comply with the standards contained in Section 4.1.7.9 and may not increase the post development storm water runoff rate for storms up to a level of intensity of a twenty-five (25) year, twenty-four (24) hour storm and must also be in accordance with the following standards:

4.23.7.7.1 Grading or other construction activity on the site may not alter natural drainageways such that the drainage, other than that which occurred before development, adversely affects an adjacent parcel of land, or that any drainageways flowing from an adjacent parcel of land to the parcel are impeded.

4.23.7.7.2 Excavations or quarries two (2) acres or larger in size must be naturally internally drained. Structures such as detention ponds, retention ponds, and undersized culverts may not be used to meet the requirements of this Section unless the operator first obtains a variance from the Department of Environmental Protection in accordance with the requirements of 38 MRSA Section 490-E for gravel pits, 490-CC for quarries, and submits a copy of the variance approval to the Code Enforcement Officer.

4.23.7.8 *Protection of groundwater, setbacks & separation.* To ensure adequate protection of groundwater, setback requirements for excavations and quarries shall be in accordance with the following requirements:

4.23.7.8.1 Excavation may not occur within a vertical distance of five (5) feet of the seasonal high water table except for excavations that have received a variance under 38 MRSA § 490 E or § 490 CC. A benchmark sufficient to verify the height of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each five (5) acres of unreclaimed land.

4.23.7.8.2 A minimum separation of two-hundred (200) feet must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and that was in existence prior to the excavation.

4.23.7.8.3 A minimum separation of one-hundred (100) feet must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and that was in existence prior to the excavation.

4.23.7.8.4 A minimum separation of one-thousand (1000) feet must be maintained between any excavation and a public drinking water source present at the time of application submission.

4.23.7.9 *Protection of groundwater, contamination.* To ensure adequate protection of groundwater, operational requirements for excavations and quarries shall be in accordance with the following requirements: Refueling operations, oil changes, and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on site activity involving the storage or use of products that, if spilled, may contaminate groundwater, shall be conducted in accordance with a Maine Department of Environmental Protection spill prevention, control, and countermeasures plan. Petroleum products and other substances that may contaminate groundwater shall be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control, and countermeasures plan shall be on file and available for inspection at the site.

4.23.7.10 *Noise.* The level of noise associated with the operation of an excavation or quarry shall be

controlled to minimize impacts upon nearby neighbors. All operations shall be conducted in accordance with the following requirements:

4.23.7.10.1 Except as noted in Subsections 4.23.7.13. and 4.23.7.14. below, routine operation of an excavation shall not cause sound levels at any property line of the excavation, or a property line of a contiguous property owned by the operator whichever is farther from the sound source, that exceed the following limits: No such activities that would generate noise shall be permitted between 9:00 pm and 5:00 am Monday through Saturday and no noise generating activities shall be permitted at any time all day Sunday. Hours of operation may be waived temporarily in accordance with 4.23.7.10.2.

4.23.7.10.2. The Hampden Town Council shall have the authority to waive the hours of operation for a period not to exceed one month for cause, such as a special construction project. The Town Council shall consider ways to mitigate noise during these construction projects that will best balance industry needs and neighborhood needs.

4.23.7.10.3. In the event that noise levels are found by neighboring property owners to be a nuisance operators shall meet with the affected property owners and town officials to effect a mutually acceptable remediation plan which shall be established and followed. Particular attention shall be given to noise generators that are loud and intrusive as well as those that are persistent and repetitive for long periods of time.

4.23.7.11 *Sound levels, routine operation.* Sound levels resulting from routine operation of excavations and quarries shall be measured in accordance with the rules and regulations of the Department of Environmental Protection for noise as found in Chapter 375 Section 10-H.

4.23.7.12 *Sound levels, blasting.* .Sound resulting from production blasting at an excavation and quarry shall be measured in peak linear sound level (dBLA) with a linear response down to 5 Hz and shall be limited as follows:

4.23.7.12.1 Blasting shall not occur on Sundays.

4.23.7.12.2 Blasting shall not occur between the hours of 5:00 p.m. and 8:00 a.m.

4.23.7.12.3 Blasting shall not occur more frequently than four times per day.

4.23.7.13 *Governing Regulation Blasting.* Blasting must be conducted in accordance with 25 MRSA, Chapter 318 and 38 MRSA, Section 490-Z.

4.23.7.14 *Exemptions.* The following activities are exempt from the sound level limits in this Section.

4.23.7.14.1 Registered and inspected vehicles while operating on public ways, or while entering the excavation area to make a delivery or a pickup and which are moving, starting, or stopping, but not when they are parked continuously for more than sixty (60) minutes in the excavation area.

4.23.7.14.2 Warning signals and alarms. Notwithstanding this provision if back-up alarms create persistent noise and are found by the Code Enforcement Officer to be a noise nuisance to neighboring property owners those devices shall not be deemed as exempt from the sound limits of this section.

4.23.7.14.3 Emergency maintenance and repairs

4.23.7.14.4 Operations necessary for public works projects.

4.23.7.14.5 Railroad activities accessory to excavation activities regulated in this section.

4.23.7.15 *Significant Wildlife Habitat.* No part of any land affected by a gravel mining operation may be

located in a significant wildlife habitat, as defined in 38 MRSA Section 480-B, or in an area listed pursuant to the Natural Areas Program, 12 MRSA Section 544.

4.23.7.16 *Waste disposal.* Solid waste, including stumps, wood waste, and land-clearing debris generated on the affected land must be disposed of in accordance with the rules of the Maine Department of Environmental Protection Chapter 13, including any rules adopted to implement those laws.

4.23.7.17 *Traffic.* Truck traffic at any excavation operation shall be limited to thirty-five (35) trucks per hour or comply with applicable permit requirements of the Maine Department of Transportation under Title 23, Section 704-A, and all applicable Ordinances of the Town.

4.23.8 Reclamation *(Amended 12-17-07)*

4.23.8.1 *General.* Any land on which excavation or quarry activities were conducted thereon between May 14, 2007 and January 16, 2008, or which are conducted thereon at any time subsequent to January 16, 2008, must be reclaimed in accordance with the requirements of this Section or as provided under 38 MRSA Section 490-E or 490-CC.

4.23.8.2 *Purpose.* The purpose of reclamation is to restore affected areas to a condition that is environmentally sound and sustainable and that does not preclude the future development of such land because of instability, stagnant ponds or flooding.

4.23.8.3 *Categories of Reclamation.* Reclamation may include, but is not limited to:

- 4.23.8.3.A Stabilization of slopes.
- 4.23.8.3.B Creation of safety benches.
- 4.23.8.3.C Planting of forests.
- 4.23.8.3.D Seeding of grasses and legumes.
- 4.23.8.3.E Seeding for grazing purposes.
- 4.23.8.3.F Planting of crops for harvest.
- 4.23.8.3.G Enhancement of wildlife and aquatic habitat.
- 4.23.8.3.H Enhancement of aquatic resources.
- 4.23.8.3.I Enhancement of recreational resources.

4.23.8.4 *Alternate Reclamation.* An owner or operator may apply to the Planning Board for approval of plans for alternative forms of reclamation.

- 4.23.8.4.A The site may be converted to another use.
- 4.23.8.4.B An owner or operator may develop a recreational management area and be exempt from the reclamation standards set forth in this Section if the following three conditions are all met:
 - 4.23.8.4.B.1 The owner or operator first obtains a variance from the Maine Department of Environmental Protection in accordance with the requirements of 38 MRSA Section 490-E for gravel pits and 490-CC for quarries.

4.23.8.4.B.2 The Off-road Recreational Vehicle Division of the Maine Department of Inland Fisheries and Wildlife determines that the site is suitable under Title 12, Section 1893-A.

4.23.8.4.B.3 The owner or operator receives site plan approval from the Planning Board.

4.23.8.5 *Best Management Practices.* Unless otherwise approved by the Planning Board, reclamation shall be conducted in accordance with the Maine Department of Environmental Protection best management practices for erosion and sediment control within two (2) years after final grading and shall include:

4.23.8.5.1 Side slopes shall not be steeper than one (1) foot vertical for two-and-one-half (2 1/2) feet horizontal.

4.23.8.5.2 A vegetative cover shall be established by seeding within one year of the completion of excavation. Vegetative cover is acceptable if, within one year of seeding both of the following are accomplished:

4.23.8.5.2.A The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession, sufficient to ensure a 75% survival rate.

4.23.8.5.2.B The planting of all materials results in a permanent ninety (90) percent of ground coverage.

4.23.8.5.3 The CEO may require, when no longer in use for its intended purpose, the removal of all associated above ground structures, equipment, foundations, utilities, and access roads or driveways constructed to specifically service the reclaimed area.

4.23.8.6 *Surety.* The Town shall require an acceptable form of surety to cover the estimated cost to complete the reclamation of excavations with a working excavation larger than one acre in size, excluding any reclaimed areas, unless the operator demonstrates that a bond or similar financial assurance has been secured for the Maine Department of Environmental Protection pursuant to 38 MRSA Section 490-E. The estimated cost to complete the reclamation shall be determined on the basis of usual, customary, and reasonable costs for similar reclamation. The applicant shall provide surety in the form of cash, certified bank checks, insurance bonds, or irrevocable letters of credit all payable to the Town. Any such surety shall be satisfactory to the Municipal Officers and to the Town Attorney as to sufficiency, manner of execution, and amount. The applicant shall record a limited easement to provide the Town and/or a third party the right to enter the subject property and engage in construction activities therein for the purpose of completing reclamation of the property in the event that the performance guarantee must be utilized.

4.23.9 District Regulations (*Amended 12-17-07*)

4.23.9.1 *Excavation limited to the Rural District.* Excavation activities requiring a permit in accordance with *Section 4.23.6* of this Ordinance shall be considered allowed uses in the Rural District only.

4.23.9.2 *Excavation further regulated under Shoreland Zoning.* RP, SP Districts and land areas subject to Shoreland Zoning are further regulated under Article 4.14 Shoreland Zoning.

4.23.10 Inspections. Annual inspections are required for all excavations. The purpose of annual inspections is to determine or reaffirm that the excavation is in full compliance with all applicable requirements of *Article 4.23 Excavation Gravel Pits and Quarries.* (*Amended 12-17-07*)

4.23.10.1. Annual inspection shall be filed as part of the Annual Report required in *Section 4.23.14.*

4.23.10.2 *Annual inspections.* Annual inspections of excavations shall be performed by persons who are deemed qualified by the Code Enforcement Officer to determine the degree of compliance of the excavation with the requirements of this Ordinance. Persons deemed qualified shall include but not be limited to professional engineers and professional land surveyors.

4.23.10.2.A All costs of the inspection shall be borne by the owner or operator of the excavation.

4.23.10.2.B The person doing the inspection shall be provided with an escort in accordance with the rules and regulations of the Federal Mining Safety and Health Administration (MSHA). Upon appropriate notice, the operator or a designee shall be the escort for inspection of the excavation.

4.23.10.2.C The person doing the inspection shall determine, as much as may be possible, the extent of the compliance of the excavation with the requirements of this Ordinance. If there are any instances of not being in compliance, those instance shall be noted on the inspection form in accordance with *Section 4.23.10.2.D* of this ordinance.

4.23.10.2.D The person doing the inspection shall complete the proper inspection form “Annual Inspection for Excavations”, with any appropriate comments, and deliver the completed form to the owner or operator.

4.23.10.2.E The owner or operator shall forward a copy of the completed inspection report to the Code Enforcement Officer within thirty (30) days of receipt with payment of a fee in accordance with the Town of Hampden Fees Ordinance for the recording of the report.

4.23.10.3 *DEP inspections accepted.* Inspections of excavations (identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting) by the Maine Department of Environmental Protection shall be deemed sufficient provided that the owner or operator forwards a copy of the inspection report to the Code Enforcement Officer within thirty (30) days of receipt with payment of a fee in accordance with the Town of Hampden Fees Ordinance for the recording of the report.

4.23.10.4 *Additional inspection reports.* If any additional inspection reports related to an excavation are received from any State or Federal Agency, the owner or operator shall forward a copy of the inspection report to the Code Enforcement Officer within thirty (30) days of receipt.

4.23.10.5 *Entry to excavation.* By submitting an application for a permit, or by submitting an Annual Report, the applicant agrees to authorize a properly escorted designated representative of the Town to enter the property including buildings, structures, or conveyances on the property at reasonable hours to determine compliance with the terms and conditions of a permit for an excavation.

4.23.11 Expansions of Nonconforming Uses. No nonconforming mineral exploration, excavation, or removal of lands for the purpose of creating a sand, fill, or gravel pit shall be extended to other land or parts of land unless the other land or parts of the land were designated for such use prior to the effective date of this amendment January 16, 2008. *(Amended 12-17-07)*

4.23.12 Waiver of Provisions The Town shall accept waivers or variances granted by the Department of Environmental Protection under *38 MRSA Section 490-E* provided that the operator provides a copy of the variance approval to the Code Enforcement Officer prior to commencing the activity requiring the variance. *(Amended 12-17-07)*

4.23.13 Change of Owner or Operator. Notice of a change of owner or operator shall be submitted to the Code Enforcement Officer of the Town in accordance with the following requirements: *(Amended 12-17-07)*

4.23.13.1 *Documentation required.* For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting, the new owner or operator shall submit

evidence to the Town that the excavation meets either of the following conditions:

4.23.13.1.1 The excavation has a valid Site Location of Development License pursuant to 38 MRSA Section 481.

4.23.13.1.2 The excavation has a valid gravel pit or rock quarry registration from the Maine Department of Environmental Protection pursuant to 38 MRSA 490-C, or 490-Y.

4.23.13.2 *Certification of intent to comply.* The new owner or operator of all excavations shall submit a written certification of intent to comply with the requirements of this Ordinance.

4.23.13.3 *New surety required.* Where there is a change in ownership of an excavation operation for which a surety has been provided, the new owner shall be responsible for providing a new surety in accordance with the requirements of *Section 4.23.8.6*. Such surety shall be provided before the Town releases the original surety.

4.23.13.4 *New performance guarantee required.* Where there is a change in ownership of an excavation operation for which a performance guarantee has been provided, the new owner shall be responsible for providing a new performance guarantee in accordance with the requirements of *Section*

4.23.13.5. Such performance guarantee shall be provided before the Town releases the original performance guarantee.

4.23.14 Annual Report. The owner or operator of all excavations shall submit a report for each separately permitted excavation to the Code Enforcement Officer of the Town no later than March 1 of each year on a form specified by the Town. The report shall include the following information: *(Amended 12-17-07)*

4.23.14.1 Name, address, telephone number, fax, and email address of owner.

4.23.14.2 Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.14.3 Location of excavation with street address or directions to the excavation and Town Lot and Map designation.

4.23.14.4 Area in acres of working excavation.

4.23.14.5 Total area in acres that is currently permitted for excavation.

4.23.14.6 Total area in acres that is “grandfathered” in accordance with *Section 4.23.3*, *Section 4.23.7.1*, *Section 4.23.9.2*, or *Section 4.23.11* of this Ordinance.

4.23.14.7 Total area in acres that has been excavated.

4.23.14.8 Total area in acres that has been reclaimed.

4.23.14.9 An estimate of when the total area that is expected to be excavated will reach the limits of the area that has been permitted for excavation.

4.23.14.10 A statement of whether or not the Department of Environmental Protection has conducted an on-site inspection since the most recent previous report.

4.23.14.11 A signed statement attesting that the information submitted in the report is truthful, accurate, and correct to the best of the knowledge of the owner or operator and reaffirming that the excavation is in full compliance with the permit issued under this Ordinance.

4.23.14.12 Payment of required fee.

4.23.14.13. Copy of annual inspection as contained in *Section 4.23.10*.

4.23.15 Performance Guarantees. The Town may require a bond payable to the Town with sureties satisfactory to the Town or such other security as the Town may determine adequately secures compliance with this ordinance, conditioned upon the faithful performance of the requirements set forth in this ordinance. Other security may include a security deposit with the Town, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the Board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the Town for the reclamation of the area for which the bond was posted and any remainder returned to the operator. Assurance may include the following: *(Amended 12-17-07)*

4.23.15.1. Performance standards relating to operation or maintenance plans;

4.23.15.2. Performance standards for determining the reclamation period including annual revisions of those plans;

4.23.15.3. Limits, terms and conditions on bonds or other security;

4.23.15.4. Proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance;

4.23.15.4. Estimation of reclamation costs; and reports on reclamation activities; or the manner of determining when the bond or other security may be discharged.

4.23.16 Enforcement *(Amended 12-17-07)*

4.23.16.1 A penalty fee shall be assessed for a failure to file the required Annual Report with payment of the required Annual Fee by March 1 of each year in accordance with the Town of Hampden Fees Ordinance.

4.23.16.2 Failure to pay the required Annual Fee by July 1 of each year or failure to file the required Annual Report by July 1 of each year shall constitute sufficient cause for the Town to terminate any excavation permit that has been issued under the provisions of this Ordinance.

4.23.16.3 Failure to comply with any of the terms of the excavation permit granted under this Ordinance shall constitute sufficient cause for the Town to terminate that permit or to undertake any other appropriate enforcement action or penalties.

4.23.16.4. Failure to comply with any approval granted under this Ordinance or any other requirement of this Ordinance shall be considered a violation, which may be subject to enforcement under the provisions of *30-A M.R.S.A. § 4452*.

4.24 Performance Standards for Medical Marijuana Registered Dispensaries, Medical Marijuana Cultivation Facilities and Methadone Clinics *(Amended 03-07-2011)*

4.24.1 Adequacy of Building for the Subject Use. The property and building for a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility and/or Methadone Clinic shall be adequate to accommodate sufficient interior space so as not to have outside patient queuing on sidewalks, parking areas, and other areas outside of the building(s). A letter of compliance from the Town of Hampden Code Enforcement Officer shall be submitted to the Planning Board as part of the site

plan application. The size of the inside waiting area shall be calculated at a minimum of 15 square feet per person based on total client capacity (registered patients and the registered primary caregiver of each registered patient). Any Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall adhere to the laws of the State of Maine and the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), and any Methadone Clinic shall adhere to the laws of the State of Maine and the State of Maine Regulations for Licensing and Certifying Substance Abuse Treatment Programs (14-118 CMR Chapter 5), as any the same may be amended from time to time, and to Ordinances and Codes of the Town of Hampden, as the same may be amended from time to time.

4.24.2. Required Setbacks. No Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility and/or Methadone Clinic shall be located within 1,000 feet of the property line upon which the Dispensary and/or Facility and or Methadone Clinic is or are located and the nearest property line of any of the following, which is or are in existence when an application for a Medical Marijuana Registered Dispensary and or Medical Marijuana Cultivation Facility and/or Methadone Clinic is made:

- 4.24.2.1. Preexisting public or private school,
- 4.24.2.2. Preexisting church or other facility for religious worship,
- 4.24.2.3. Preexisting residence or lot located in a Residential A District, Residential B District or Rural District;
- 4.24.2.4. Preexisting licensed daycare facility, or
- 4.24.2.5. Preexisting juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center or program,
- 4.24.2.6. Preexisting athletic field, park, playground or recreation facility.

4.24.3. Maximum Number of Subject Use Within the Town of Hampden. No more than one (1) Medical Marijuana Registered Facility and/or one (1) Marijuana Cultivation Facility and/or one (1) Methadone Clinic shall be located in the Town of Hampden. If both a Medical Marijuana Registered Dispensary and a Medical Marijuana Cultivation Facility are located in Hampden, they shall be located on the same property and shall be under common ownership.

4.24.4. Hours of Operation. A Medical Marijuana Registered Dispensary shall only be open for business between the hours of 8:00 a.m. and 8:00 p.m. daily. A Methadone Clinic shall only be open between the hours of 6:00 a.m. and 8:00 p.m.

4.24.5. Signs and Advertising. Medical Marijuana Registered Dispensary and/or Medical Cultivation Facility and/or Methadone Clinic shall conform to the provisions of Article 4.8 Signs of this Ordinance. In addition thereto, any freestanding or sign attached to building(s) in which the Dispensary and/or Facility is located in shall clearly state that it is a Medical Marijuana Dispensary and/or Medical Cultivation Facility and/or Methadone Clinic. There shall be no signage in any window and/or door, except for the hours of operation and the presence of a security system. In addition, no signage or advertising shall use the word “marijuana” or “cannabis,” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers and/or methadone clinic patients.

4.24.6. Security Requirements for Subject Use. Security measures at a Medical Marijuana Registered Dispensary and /or Medical Marijuana Cultivation Facility and/or Methadone Clinic shall include the following at a very minimum:

- 4.24.6.1. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week to monitor all entrances, along with the interior and exterior of the Dispensary

and/or Facility and/or Clinic, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring on the property;

4.24.6.2. Door and window intrusion, robbery and burglary alarm systems with an audible on-site system and Police Department notification components that are professionally monitored and maintained in good working condition, using hard line traditional telephone communications and cellular communications;

4.24.6.3. A safe affixed to the building in which it is located that is suitable for the storage of all prepared and/or processed marijuana and cash stored overnight in the Dispensary and/or Facility, and a secure storage container for methadone and cash stored overnight in a Clinic;

4.24.6.4. Exterior lighting that illuminates all exterior walls of the licensed Dispensary and/or Facility and/or Clinic; and

4.24.6.5. Deadbolt locks on all exterior doors and locks or bars on any other access point.

All security recordings shall be preserved for thirty (30) days by the management of the licensed Dispensary and/or Facility and/or Clinic. 4.24.7. *Consumption, Ingestion Or Inhalation Of Medical Marijuana.* The consumption, ingestion or inhalation of medical marijuana on or within the property of a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility is prohibited; provided, however, that a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility employee who is a registered patient, as that term is defined in 22 M.R.S.A. Section 2422(12), as the same may be amended from time to time, may consume medical marijuana inside the building(s) on the licensed property, if such consumption occurs via oral consumption and not by smoking. For purposes of this subsection, the term "licensed property" shall include the lot or parcel of the land upon which the Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility are located.

4.24.8. *Visibility Of Activities; Control Of Emissions; Disposal Plan for Subject Use.* Visibility of activities; control of emissions; disposal plan for a Medical Marijuana Registered Facility and/or Medical Marijuana Cultivation Facility and/or Methadone Clinic shall be as follows:

4.24.8.1. All activities of a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility and/or Methadone Clinic, including, without limitation, cultivating, growing, processing, displaying, selling and storage shall be conducted indoors.

4.24.8.2. No marijuana or paraphernalia shall be displayed or kept in a Dispensary or Facility so as to be visible from outside the building (s).

4.24.8.3. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a Dispensary and/or Facility and/or Clinic must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable state and local laws and regulations.

4.24.8.4. Any Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall have in place an operation plan, subject to the approval of Hampden Public Safety, for proper disposal of marijuana related byproducts.

4.24.8.5. Class II Bufferyards in accordance with Article 4.7.4 Screening/Bufferyards shall be provided along each lot line or at least along each line of the developed area of buildings and parking areas.

4.24.9. Limitations of Food Products. No food products shall be sold, prepared, produced or assembled by a Medical Marijuana Registered Dispensary except in compliance with all operation and other requirements of state and local law and regulation, including without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

4.24.10. Compliance With State and Local Law. A Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility and/or Methadone Clinic shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries or methadone clinics, the stricter law or regulation shall control.

ARTICLE 5
ENFORCEMENT
(Amended: 6/ 3/02)

5.1. Administrative Officer - This Ordinance shall be enforced by a Code Enforcement Officer appointed by the Town Manager with confirmation by the Town Council.

5.2. Duties - The Code Enforcement Officer, in enforcing this Ordinance, shall be responsible for establishing reasonable procedures for enforcement, keeping all activities within the jurisdiction of this Ordinance under surveillance, issuing building and/or use permits where applicable, keeping public records of his proceeding and instituting or causing to be instituted any or all actions that might be appropriate for the enforcement of this Ordinance.

5.3. Permits - Application for a building permit and a certificate of compliance shall be made concurrently with the initial application.

5.3.1. Building Permits

5.3.1.1. Building Permit Required - An application shall be submitted to the Code Enforcement Officer for the following activities, and these activities shall not commence in the Town of Hampden without a permit being issued.

1. Construct or alter a structure.
2. Change of exterior dimensions of a existing structure;
3. Construct a sign or change the exterior dimensions of a sign;
4. Reconstruction of a disaster-damaged or disaster-destroyed structure.

5.3.1.2. No building permit shall be issued except in conformity with the provisions of this Ordinance.

5.3.1.3. Within fourteen (14) days of the filing of an application for a building permit, the Code Enforcement Officer shall approve or deny such application or shall refer the applicant to the planning board or the Board of Appeals. The decision shall be in writing and communicated directly to the applicant. In the case of a denial of an application, the decision shall include reasons for such. One (1) copy of the Code Enforcement Officer's decision shall be filed in the municipal office.

(Amended:09-18-06)

5.3.1.4. No building permit for a building or structure on any lot shall be issued except to the owner of record thereof, or his authorized agent. The Code Enforcement Officer may require that any application for such a permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, an on site soils survey, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure, and other such information as may be necessary to provide for the execution and enforcement of this Ordinance.

5.3.1.5. Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Code Enforcement Officer.

5.3.1.6. A building permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced within six (6) months of the date on which the permit is granted, or if the

work or change is not substantially completed within two (2) years of the date on which the permit is granted.

5.3.1.7. No building permit, demolition permit, earth moving permit, sign permit or certificate of compliance shall be issued without payment of fees in accordance with the Town of Hampden Fees Ordinance. *(Amended: 11-17-03)*

Any structure on which construction, including but not limited to foundation work, has begun before the issuance of a building permit will be assessed double the above described fees.

5.3.1.8. Building permits for structures to be located on subdivision lots shall not be issued by the Code Enforcement Officer until all improvements, including public utilities (sewer, water and electrical), roads and drainage facilities as approved by the Planning Board and required by town ordinances, are completed to the satisfaction of the Town designated engineering consultant and the road, if any, has been accepted by the Town Council as a town way. *(Amended: 03-01-10)*

5.3.1.9. Wastewater Disposal Permit Required - No building permit shall be issued for any structure or use involving the construction, installation, or alteration of plumbing facilities unless either a subsurface wastewater disposal permit or sewer hook-on permit has been secured by the applicant or his authorized agent in conformance with the State of Maine Subsurface Wastewater Disposal Rules or the Town of Hampden Sewer Ordinance. *(Amended: 03-01-10)*

5.3.2. Certificate of Compliance

5.3.2.1. No building or other structure for which a building permit is required shall be occupied or used until and unless a certificate of compliance has first been obtained from the Code Enforcement Officer and the Building Inspector. In addition, a certificate of compliance shall be required for the following activities undertaken in the Town of Hampden:

1. The change of use of a lot or structure;
2. The resumption of use in a structure which has been abandoned for the continuous period of one year;
3. The establishment of a new use of a lot or structure.

5.3.2.2. A Certificate of Compliance shall be issued only after the work on the building or structure is completed and the site has been stabilized. If a site plan approval has been obtained from the Planning Board then all of the improvements shown on the site plan, including off-site improvements, must be completed in accordance with the approved site plan.

5.3.2.3. It shall be unlawful to use or occupy or permit the use or occupancy of any land, building, structure or part thereof for which a building permit is required until a certificate of compliance is issued therefore by the Code Enforcement Officer and the Building Inspector and endorsed to the effect that the proposed use of the land, building, or structure conforms with the requirements of this Ordinance, any other codes or ordinances of the Town of Hampden, and with applicable state statutes or regulations.

5.3.2.4. After completion of the work permitted by the building permit, the applicant shall notify the Building Inspector, who with the Code Enforcement Officer, shall issue or deny the certificate of compliance within fifteen days. The Code Enforcement Officer and Building Inspector shall issue the certificate of compliance only upon finding that the building, structure, or site and the use or occupancy thereof comply with the provisions of this Ordinance, and of any site plan or subdivision

plan approved by the Planning Board. The Code Enforcement Officer shall maintain a public record of all certificates of compliance which are issued.

5.3.2.5. Certificates of Compliance for structures on subdivision lots may only be granted if the public improvements in accordance with the Planning Board approved Subdivision Plan or if approved in phases the approved phase are completed and associated roads, if any, are accepted by the Town Council.

5.3.2.6. The Code Enforcement Officer may issue one conditional certificate of compliance, valid for no more than six (6) months from the date thereof, upon the request of the permit holder, if in the judgment of the Code Enforcement Officer portion or portions of the structure and site development may be occupied safely. Once the project is completed, the Code Enforcement Officer upon finding that the standards of 5.3.2.3 have been met shall issue a Certificate of Compliance.

5.3.2.7. The Code Enforcement Officer or Building Inspector shall in writing, suspend or revoke a certificate of compliance issued under the provisions of this ordinance if the certificate was issued in error, if the certificate was issued on the basis of incorrect information supplied by the applicant, or where it is determined that the building or structure or portion thereof is in violation of the Town of Hampden Zoning Ordinance.

5.4. Legal Action and Violations - When any violation of any provision of this Ordinance shall be found to exist, the Code Enforcement Officer is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Hampden. However, this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this Ordinance.

5.4.1. Any person, firm, or corporation, being the owner of, or having control of, or the use of, any building or land or part thereof, who violates any of the provisions of this Ordinance shall be guilty of a civil violation and upon conviction thereof shall be fined in accordance with the following:

5.4.1.1. The minimum penalty for starting construction or undertaking a land use activity without a required permit shall be one hundred dollars (\$100.00), and the maximum penalty shall be two thousand five hundred dollars (\$2,500.00); and

5.4.1.2. The minimum penalty for a specific violation shall be one hundred dollars (\$100.00), and the maximum penalty shall be two thousand five hundred dollars (\$2,500.00).

All civil penalties imposed shall enure to the benefit of the Town of Hampden. Each day any violation continues to exist after notification shall constitute a separate offense.

ARTICLE 6
APPEALS
(Amended: 09-18-06)

6.1. Creation and Appointment of the Board of Appeals (Amended: 09-18-06)

6.1.1. Establishment - A Board of Appeals is hereby established in accordance with the state law and the provisions of this Ordinance. The Board of Appeals shall be governed by the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. (Amended: 09-18-06)

6.1.2. Deleted (Amended: 09-18-06)

6.2. Jurisdiction

6.2.1. Administrative Appeals - All administrative appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The Board of Appeals shall hear and decide administrative appeals. An administrative appeal is an appeal: (Amended: 09-18-06)

1. Where it is alleged that there is an error in any order, requirement, decision, or determination by the code enforcement officer or the planning board in the enforcement of this Ordinance. For an alleged error to be reviewed, it must involve a standard which is easily measurable such as a dimensional or numerical standard. A decision of the planning board, based on a judgmental, non-numerical standard, is not a matter for review by the Board of Appeals. If the Board of Appeals finds that the code enforcement officer or the planning board acted wrongly in the administration or enforcement of this Ordinance relative to such dimensional or numerical standards, upon a vote in favor of the appellant of at least five (5) members of the Board of Appeals, the board may order the code enforcement officer or the planning board to modify or reverse their decision. (Amended: 09-18-06)
2. Where it is alleged that the planning board or the code enforcement officer refused to consider certain information or evidence, submitted by the applicant or an interested party, in making its decision. In this case the appellant must prove to the Board of Appeals that the information in question was submitted, that it is germane to the issue under consideration, and that the accused board or officer did not consider the information in making its decision. A vote in favor of the appellant must include a majority vote of the Board of Appeals members present and eligible to vote, provided such vote shall include at least two (2) votes in favor of the appellant. (Amended: 09-18-06)
3. Where there are contradictions or incomplete or inconclusive definitions within this Ordinance which affect the decisions of the planning board or the code enforcement officer in the enforcement of the Ordinance in a specific case. In the case of contradictions, the Board of Appeals shall first resolve the conflict in favor of the property owner and then notify the planning board and the town council of any potential need to amend the Ordinance. In the case of incomplete or inconclusive definition, the Board of Appeals shall clarify the definition based on any of the following consideration: the context in which the word is used in the Ordinance; the legislative intent implicit in the use of the word; definitions given by experts qualified in the field under consideration; other evidence which is germane to the issue but does not involve the specific proposal at hand; and ordinary usage of the word. (Amended: 09-18-06)

A vote in favor of the appellant must include a majority vote of the Board of Appeals members present and eligible to vote provided such vote shall include at least two (2) votes in favor of the appellant. The Board of Appeals shall then report its decision to the appropriate board or officer for

such board or officer to use in the execution of their duty as assigned under this Ordinance. (*Amended: 09-18-06*)

4. Or where it is alleged that a procedural error was made by the planning board or the code enforcement officer in the administration or enforcement of this Ordinance. In this case, if the appellant proves that a procedural error has been made, the Board of Appeals shall remand the case back to the appropriate board or officer and order that the case be reconsidered, following the correct procedure(s). A vote in favor of the appellant must include a majority vote of the Board of Appeals members present and eligible to vote provided such vote shall include at least two (2) votes in favor of the appellant. (*Amended: 09-18-06*)

6.2.2. Variance Appeals - All variance appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The Board of Appeals shall hear and decide variance appeals. A variance from the provisions of the Ordinance may be granted by the Board of Appeals in accordance with the following provisions. (*Amended 6-2-03, 09-18-06*)

6.2.2.1. General Variances. Except as provided in *Articles 6.2.2.2, and 6.2.2.3.* the board may grant a variance from the restrictions imposed by Zoning Ordinance provisions pertaining to height, setback, area, frontage, lot coverage and size of structures or size of yards or open spaces only when a strict application of the Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means that:

1. The land in question cannot yield a reasonable return unless a variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. The granting of a variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

6.2.2.2. Variance from Dimensional Standards. A variance may be granted to reduce the restrictions imposed by Zoning Ordinance provisions pertaining to lot area, lot coverage, and frontage requirements up to ten percent (10%) and setback requirements up to twenty five percent (25%) only when strict application of the Ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist: (*Amended 6-2-03*)

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably adversely affect the natural environment; and
6. The property is not located in whole or in part within shoreland areas as described in *Title 38, section 435.*

As used in this subsection, "practical difficulty" means that the strict application of the Ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

6.2.2.3. Disability Variances. The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under *Title 5 M. R. S. A. '4553*, as amended, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. *(Amended: 09-18-06)*

6.2.2.4. The variance authority of the Board of Appeals is limited to the matters expressly set forth in *Articles 6.2.2.1, 6.2.2.2, and 6.2.2.3*. Establishment of or an expansion of a nonconforming use shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district. *(Amended: 09-18-06)*

6.2.2.5. The Board of Appeals shall grant a variance only by a concurring vote of at least four (4) members and in so doing, may prescribe any conditions and safeguards as are deemed necessary or appropriate by the board for carrying out the intent and purpose of this Ordinance. The board shall not hear within any twelve (12) month period more than one variance application requesting the same, or substantially similar, relief. *(Amended 3-4-99, 09-18-06)*

6.3. Appeal Procedure

6.3.1. In all cases outlined under the provisions of *Article 6.2.1* of this Ordinance, a person aggrieved by the decision of a town board or official shall commence his appeal within thirty (30) days after a decision is made by said board or official. The appeal shall be filed with the Board of Appeals on forms approved by the board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal. *(Amended: 09-18-06)*

6.3.2. Following the filing of an appeal, and before taking action on any appeal, the Board of Appeals shall hold a public hearing on the appeal at the next regularly scheduled meeting which would be held more than twenty (20) days from the date the appeal was filed. The Board of Appeals shall notify the code enforcement officer and the planning board, in advance, of the time and place of the hearing, and shall publish notice of the hearing at least ten (10) days in advance in a newspaper of general circulation in the area. *(Amended: 09-18-06)*

6.3.3. In appeals involving the use of buildings or premises, the Board of Appeals shall notify by mail the appellant and the owners of all property within five hundred (500') feet of the property involved at least ten (10) days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing.

6.3.4. In the case of appeals involving space and bulk regulations or interpretation, the Board of Appeals shall notify by mail the appellant and only the owners of property abutting the property for which an appeal is taken, at least ten (10) days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing thereon. For the purpose of this section, abutting properties shall include properties directly across a street or waterbody from the property for which the appeal is made if such property is located in the Town of Hampden. *(Amended: 09-18-06)*

6.3.5. All variance appeals shall include application fees paid in accordance with the Town of Hampden Fees Ordinance. *(Amended 11-17-03)*

6.3.6. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals. *(Amended: 09-18-06)*

6.3.7. Within thirty-five (35) days of the public hearing, the Board of Appeals shall reach a decision on an appeal at a public meeting and shall inform, in writing, the appellant, the code enforcement officer, the planning board, and town council of its decision and its reasons therefore. *(Amended: 09-18-06)*

6.3.8. Upon notification of the granting of an appeal by the Board of Appeals, the code enforcement officer or the appropriate board or officer of the town shall issue the contested permit in accordance with the conditions of the approval. *(Amended: 09-18-06)*

6.3.9. A variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within one year of the date on which the appeal is granted, and if the work or change is not substantially completed within two (2) years. *(Amended: 09-18-06)*

6.3.10. An appeal may be taken from the decision of the Board of Appeals to the superior court within thirty (30) days after the filing of the written decision with the town office and in accordance with the provisions of rule 80(B) of the Maine Rules of Civil Procedure. *(Amended: 09-18-06)*

6.3.11. A copy of all variances granted by the Board of Appeals for property within shoreland areas shall be submitted to the department of environmental protection. *(Amended: 4-6-87)*

ARTICLE 7 DEFINITIONS

7.1. Construction Language - In this Ordinance, certain terms or words shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied", the word "building" includes the word "structure" and the word "dwelling" includes the word "residence", the word "lot" includes the words "plot" or "parcel". In case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

Terms not defined shall have the customary dictionary meaning.

7.2. Definitions - In this Ordinance the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed:

Accessory use or structure: A use or structure of a nature customarily incidental and subordinate to those of the principal use or structure. For residential uses, accessory structures shall not be used as habitable space. (Amended: 11-18-02)

Accessory structure (mobile home parks) a detached, subordinate structure, the use of which is clearly incidental and related to that of the principal structure or use of the land, and which is located on the same lot as the principal structure or use.

Agriculture: The production, keeping or maintenance of plants and/or animals including but not limited to: forages and sod crops, grains and seed crops; dairy animals and dairy products; poultry products; livestock; fruits and vegetables; and other plants. Agricultural uses shall include wholesaling, retailing and processing of agricultural products which are customary and accessory to an agricultural use. Agriculture does not include forest management, commercial nurseries and timber harvesting activities. (Amended: 12-18-95)

Alteration: Any change, addition, or modification in construction, or any change in the structural members of a building, such as bearing walls, columns, beams, or girders.

Animals as usual pets: Those animals which by their type, behavior and quantity are suited to be pets in an urban neighborhood and which would not generally be disruptive to neighboring properties. Quantities are limited, with the exception of fish, to no more than five animals of one species or ten animals overall. Such animals would include or be similar to dogs, cats, small mammals such as hamsters and rabbits, hen chickens, pigeons and game hens but not roosters. Such animals would not include wild animals such as raccoons, turkeys and deer. Notwithstanding the foregoing limitation on maximum quantity no more than six hen chickens are permitted because hen chicks as governed by state agricultural regulation are sold in quantities of no less than six. (Amended: 4-19-2010)

Animals other than usual pets: Those animals which by their type, behavior and quantity are not generally suited to be pets in an urban neighborhood and which could be disruptive to neighboring properties but are more suitable on larger lots with buffers from those neighboring property lines. Such animals would include or be similar to horses and ponies and would also include types of animals described in animals as usual pets but in excess of 10 animals up to 15 animals overall, Quantities (like the animals as usual pets) are limited to no more than five animals of one species. Such animals would not include wild animals such as raccoons, turkeys and deer. Notwithstanding the foregoing limitation on maximum quantity no more than six hen chickens are permitted because hen chicks as governed by state agricultural regulation are sold in quantities of no less than six. (Amended: 4-19-2010)

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Arterial street: Route 1A, Kennebec Road, Western Avenue, Route 69 and Coldbrook Road from Route 202 to the Hermon town line.

Attached commercial development: A complex of commercial structures consisting of individual self-contained units which are joined by a common wall, but are accessible only from out-of-doors and not through the interior of other joined units.

Automobile service: Any repair, service, sales, fueling, or washing of automobiles. Including, but not limited to tire stores, muffler shops, carwashes, gasoline sales, oil and lubrication services, tune up shops and new and used auto sales.

Best Management Practices. "Best Management Practices" refers to the document "Maine Erosion and Sediment Control Best Management Practices" published by Bureau of Land and Water Quality, Maine Department of Environmental Protection, March, 2003 and as revised. "Best Management Practices" also means the erosion and sedimentation control practices and strategies contained in that document. *(Amended 12-17-07)*

Bar. Establishment or part of an establishment used primarily for the serving of alcoholic beverages and in which the service of food is incidental to the consumption of such beverages with a gross floor not to exceed 5,000 sq. ft. Bars established in conjunction to restaurant uses, motel/hotel uses and/or their function rooms and other primary uses shall be considered a separate primary use. Bar use is limited to an occupancy cap of 150 persons. Outdoor service or consumption of alcoholic beverages is prohibited. *(Amended: 12-6-04)*

Blasting. The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation. *(Amended 12-17-07)*

Blazed Tree. A tree from which a section of bark has been removed to display a visible spot that can be easily recognized. *(Amended 12-17-07)*

Buffer Strip. An undisturbed area or belt of land that is covered with trees or other vegetation. *(Amended 12-17-07)*

Building height: The vertical distance between the highest point of the roof and the average grade of the ground adjoining the building.

Business or professional office: An enclosed place of business where the primary activity is the collection, manipulation, evaluation, recording and dissemination of information. Office uses may include service businesses whereby there is no storage, sales, service, or repair of goods and products.

Business park - A subdivision of a parcel of land, of twenty or more acres into five or more lots, served by public water and sewer, with master plan approved by the Planning Board under 3.1.2, and intended primarily for commercial and/or industrial development. For the purposes hereof, a parcel of land means all contiguous land in the same ownership. *(Amended 02-20-01)*

Campground: Any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Child Care Center: A building or buildings in which a person or persons maintains or otherwise carries out a program, for any part of the day, providing care and protection for 3 or more children. Child Care Centers, with or without consideration for the services rendered, may be operated as a service business or within a church or community building. *(Amended: 8-22-94)*

Cluster development: A method of land subdivision and development in which the developer is allowed to vary certain site development specifications such as lot size requirements in return for providing more open space and better site design than would result from conventional subdivision and development practices.

Code enforcement officer: A person appointed by the municipal officers to administer and enforce this Ordinance. Reference to the code enforcement officer may be construed to include building inspector, plumbing inspector, electrical inspector and other duties assigned by the town council.

Commercial Nursery: The propagation and sale of woody plants and other customary nursery products. Sale of non agricultural products shall be limited. *(Amended: 12-18-95)*

Commercial Storefront: The first floor of a multi-story structure in which the glass area does not exceed 60% of the street facade measured from the ground elevation to the top of the lintel. In addition no one glass panel shall exceed 50 square feet in area. *(Amended 4-5-99)*

Commercial Use: The use of lands, buildings, or structures, other than "home occupations", as defined, the intent and result of which activity is the production of income from the buying or selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Community building: A building owned by either the municipality RSU22 and/or a nonprofit organization used for either:

1. Community educational, fraternal, cultural and recreational activities such as an auditorium, library, historical building, lodge, indoor swimming, performing arts, etc.
2. Infill uses of community buildings that are low impact non-residential and residential uses, subordinate to the primary use (community building), located within the existing structure, and requiring little or no additional site modifications.

The intent of this definition is to encourage and facilitate the full utilization of buildings that meet the definition of community building. *Amended: 10-29-2012.*

Community facility: Any land area, structure, building, location, equipment or combination thereof, operated for the purpose of providing public services for the residents of the Town of Hampden by the municipality, Hampden Water District, or local United States Post Office.
(Amended 11-20-00 10-21-02)

Conforming use: A use of buildings, structures or land which complies with all applicable provisions of this Ordinance.

Congregate care facility: Residential housing consisting of individual living and sleeping quarters and central dining facilities and within which a congregate housing supportive services program serves primarily elderly occupants which is licensed by the State of Maine.

Customary Rural Businesses: Shall be limited to the following uses: Retail Sales & Service; products produced on-site such as art work, pottery, quilts, needle work, baked goods and wooden furniture, antiques, farm & logging supply, feed and grain store, tack shop, grocery and convenience store, hunting & fishing supplies, taxidermy, sporting and camping equipment, Places of Assembly; diners and roadside cafes where no drive thru service is provided (not to exceed 30 seats), bed & breakfast inns (not to exceed 10 guest rooms). *(Amended: 12-2-96)*

Dance hall. Establishment or part of an establishment used primarily for the serving of alcoholic beverages and in which the service of food is incidental to the consumption of such beverages. Dance hall established in

conjunction to restaurant uses, motel/hotel uses and/or their function rooms shall be considered as a separate primary use. Outdoor service or consumption of alcoholic beverages is prohibited. *(Amended: 12-6-04)*

Day Care Facility: A dwelling in which a person or persons residing on the premises provides or maintains a regular program for consideration, for any part of the day, providing care and protection for four to twelve children. *(Amended: 8-22-94)*

Deck: A platform, without a roof or walls, either freestanding or attached to another structure, that may or may not have railings or access to the ground. *(Amended: 11-18-02)*

District: A specified portion of the municipality, delineated on the official zoning map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Disturbed area: Disturbed area is clearing, filling, grading and excavation. Disturbed area does not include routine maintenance, but does include redevelopment and new impervious areas. Routine maintenance, as it relates to disturbed area, is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving an impervious gravel surface while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered disturbed area. *(Amended 12-17-07)*

Drive thru business: Any establishment which offers drive thru service via a window, automated teller machine (ATM) or other means whereby the driver of the automobile does not have to exit the vehicle.

Dwelling: A fixed structure, containing one or more dwelling units.

Dwelling unit: A room or group of rooms designed and equipped exclusively for use as living quarters for one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes but shall not include trailer or recreational vehicles.

Earth: Topsoil, sand, gravel, clay, peat, rock or other minerals.

Elderly: For use in elderly housing and congregate care facilities. A residential development whereby eighty (80%) percent of the occupants have attained sixty-two (62) years of age or are fifty-five (55) years old and are receiving some type of disability income. In the case of double occupancy of a unit, only one (1) resident is required to meet the age or disability requirement. Documentation shall be provided to demonstrate that the proposed project will meet the criteria of this definition.

Enclosed recreation centers: Any building used to accommodate the gathering, seating, or entertainment of ten (10) or more people for the purpose of active recreation, including but not limited to, roller rinks, bowling alleys, arcades, and racquet clubs.

Essential services: The construction of gas, electrical, communication facilities; steam, fuel or water distribution systems; collection, supply or disposal systems. For the purposes of this definition, a disposal system shall not be construed to include a solid waste disposal facility. Such systems may include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but shall include buildings which are necessary for furnishing of such services. Structures such as high voltage transmission towers and microwave relay towers, which are used more in transmission of utility products than in their distribution, shall be considered buildings necessary for essential services rather than essential service components. In order to qualify as an essential service, the service must be provided by a regulated public utility, or a cable company that has a franchise agreement with the Town of Hampden. *(Amended: 12-16-99)*

Excavation. Any digging, mining, or removal of borrow, topsoil, loam, rock, sand, gravel, clay, silt, or other similar non-metallic earth materials whether alone or in combination. (Amended 12-17-07)

Expansion of an existing excavation: An increase in the excavation, pit, quarry, and or stockpile as regulated in Article 4.23 which is clearly beyond the horizontal distance of any previously permitted or legally constituted area by a factor of 21,780 square feet. (Amended 12-17-07)

Expansion of a structure: An increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

Expansion of use: The addition of months to a use's operating season; the use of more floor area or ground area; the increase in the volume or height of a use, including but not limited to the storage or disposal of materials of any kind; or the extraction of additional material such as gravel excavation. (*Amended 6-19-95)

Family: Shall mean an individual occupying a single dwelling unit, or a group of two or more persons occupying a single dwelling unit and living together as a single housekeeping unit, including the sharing of common living, sleeping, cooking and eating facilities. When occupancy of a dwelling unit is by a group of two or more persons, the group of persons occupying the dwelling must either be:

- a. Related by blood, adoption, domestic partnership, or marriage; or
- b. Comprised of two persons who are not related by blood, domestic partnership, adoption or marriage, and any children related to either or both of them by blood, adoption or marriage;
- c. Comprised of persons, whether or not related to each other by blood, domestic partnership, adoption or marriage, but not to exceed four unrelated persons. Family shall not include a group of unrelated persons occupying a boarding home, rooming house, hotel/motel, tourist home or inn.
- d. A Community Living Arrangement as defined by Title 30-A, Section 4357-A.

Note: For the purposes hereof, the number of unrelated persons occupying a dwelling unit shall be calculated as follows: Any persons related by blood, adoption or marriage plus one unrelated person shall be considered to constitute a total of two unrelated persons, and each additional unrelated person shall be added to determine the total number of unrelated persons occupying the dwelling unit. By way of example, two or more related persons occupying a dwelling unit combined with two unrelated persons occupying the dwelling unit yields a total of three unrelated persons occupying the dwelling unit. (Amended 08-15-2011)

Filling: Depositing or dumping any matter on or into the ground or water.

Freshwater wetland: For the purposes of shoreland zoning; freshwater swamps, marshes, bogs and other similar areas which are; ten (10) or more contiguous acres; or of less than ten (10) acres and adjacent to a surface water body, excluding any river, stream or brook such that in its natural state, the combined surface area is in excess of ten (10) acres; and inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Further, the freshwater wetlands regulated by the provisions of shoreland zoning shall be indicated on the Freshwater Wetland Map prepared by the Maine Geological Survey in 1983 and as amended (the upland edge of these wetlands need to be field verified).

Frontage, road: The continuous horizontal distance on a street or road, as defined by Article 7.2, between the intersection of the side lot lines with the front lot line. An abandoned/ discontinued road is not considered accepted road frontage. For a lot to meet minimum road frontage requirements for establishment of uses under the requirements of Article 3 of this Ordinance, the lot width must equal at least the minimum road frontage required (in the applicable district) for the continuous distance from the front lot line to the front setback line. (Amended: 6-3-02)

Frontage, shore: The horizontal distance, measured in a straight line, between the intersections of the side lot lines with the shoreline at normal high-water elevation.

Functionally water-dependent uses: Those uses which require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. These uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependant upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

Grade: In relation to buildings, the average of the finished ground level at the center of each wall of a building.

Gravel Pit. An excavation for removal, processing, or storage of borrow, topsoil, loam, gravel, rock, sand, clay, silt, or other similar non-metallic earth materials whether alone or in combination. *(Amended 12-17-07)*

Group development: Two (2) or more primary uses or structures on one (1) lot/parcel.

Hazardous waste: Any waste as defined by *Title 38 MRSA, Section 1303(5)*, as amended, or by United States Environmental Protection Agency rules.

Home Day Care: A dwelling in which a person or persons residing on the premises provides or maintains a regular program for consideration, for any part of the day, providing care and protection for up to three children. *(Amended: 8-22-94)*

Home occupation: The subordinate use of a dwelling unit or structure accessory to a dwelling unit for gainful employment involving the manufacture, provision or sale of goods and/or services.

Hotel: A building with rooms for rent to permanent or transient guests who, to reach their rooms, must pass through an attended lobby. A hotel differs from a lodging or rooming house in its character which is not residential in that it usually is a larger building expressly built for its purpose.

Industrial park: An area zoned Industrial Park District, or an area where two (2) or more industrial uses are grouped together on the same lot, or an area designed to serve two (2) or more industrial uses on the same lot.

Individual private campsite: An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include, but not be limited to, gravel pads, parking areas, fire places, or tent platforms.

Institutional building: A building or group of buildings used to provide a public service and operated by a Federal, State or local government, public or private utility, public or private school or college, tax-exempt organization, and/or a place of religious assembly. Examples include: public agency, public safety and emergency services, essential and utility services, cultural, service and religious facilities, public/private health facilities or other similar uses. *(Amended 03-01-10)*

Lagoon: An artificial enlargement of a waterbody, primarily by means of dredging and excavation.

Lodging or rooming house: A building of residential character usually in a neighborhood; usually a converted large dwelling, several rooms of which are rented to guests usually staying more than two (2) weeks.

Lot: A parcel of land of at least sufficient size to meet the minimum zoning district dimensional requirements and to provide such yards and other open space as required by any local ordinance. Such lot shall have frontage, as defined in this ordinance, and may consist of:

- a. A single parcel of land.
- b. A portion of a parcel of land.
- c. Any combination of parcels and portions of parcels of land.
- d. A parcel of land described by metes and bounds, provided that in no case of division or combination shall any residue lot or parcel be created which does not meet the requirements of this ordinance.
(Amended 7-14-03)

Lot area: The total horizontal area within the lot lines.

Lot, corner: A lot with at least two (2) contiguous sides abutting upon streets.

Lot, coverage: The percentage of the lot covered by all buildings.

Lot, interior: Any lot other than a corner lot.

Lot lines: The lines bounding a lot as defined below:

Front lot line: On an interior lot, the line separating the lot from the street. On a corner or through lot, the line separating the lot from either street.

Rear lot line: The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10') feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

Side lot line: Any lot line other than the front lot line or rear lot line.

Lot of record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the Penobscot County Register of Deeds.

Lot width: The horizontal distance between the side lot lines, measured at the setback line.

Manufactured housing: "Manufactured housing" means a structural unit or units designed for occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this Act, two (2) types of manufactured housing are included. They are:

a. *Certified manufactured home.* These include:

- 1) *Certified mobile home.* Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the HUD standard, meaning structures transportable in one or more sections, which in the traveling mode, are fourteen (14') body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban

Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 United States Code 5401 et seq.; also included are:

- 2) *Modular homes*: Those units which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and Title 10, chapter 957, and rules adopted under that chapter, meaning structures transportable in one (1) or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein.
- b. *Non-certified mobile homes*: Those units constructed prior to June 15, 1976, meaning structures, transportable in one (1) or more sections, which are eight (8') body feet or more in width and are thirty-two (32') body feet or more in length, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein.
- c. *Other manufactured homes*: All manufactured homes which are neither certified manufactured homes nor non-certified mobile homes.

Marijuana: Marijuana shall have the definition set forth in Title 17-A M.R.S.A. Section 1101(1) and the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122, Section 1.15), as the same may be amended from time to time. (Amended 03-07-11)

Marina: A shorefront commercial facility with provisions for one (1) or more of the following: boat storage, boat launching, or the sale of supplies and services for watercraft and their equipment and accessories.

Maximum Gross Density: The total number of units divided by the gross area of the parcel(s) to be developed, including open space to be set aside.

Medical Marijuana Registered Dispensary: Medical Marijuana Registered Dispensary means a not-for-profit entity as defined under Title 22 M.R.S.A. Section 2422 and registered pursuant to Title 22 M.R.S.A. Section 2428 and to Section 6 of the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122) that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the Dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients. Any Medical Marijuana Registered Dispensary shall be further defined in, and shall adhere to, the laws of the State of Maine and to the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), as the same may be amended from time to time. (Amended 03-07-11)

Medical Marijuana Cultivation Facility: Medical Marijuana Cultivation Facility means a building owned or operated by a not-for-profit entity registered pursuant to the laws of the State of Maine and to Section 6 of the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122) that is used for the cultivation or storage of marijuana for the Medical Marijuana Registered Dispensary licensed by the State of Maine for Penquis District 6. Any Marijuana Cultivation Facility shall be further defined in, and shall adhere to, the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), as the same may be amended from time to time. (Amended 03-07-11)

Methadone Clinic – Methadone Clinic is a clinic which has been established for the dispensing of methadone (Dolophine) to those who abuse heroin and other opiates. The focus of these clinics is the elimination or reduction of opiate usage by putting the patient on methadone. (Amended 03-07-11)

Microcell Wireless Telecommunications Facilities see Wireless Telecommunications Facilities, Microcell:

Mineral Extraction: For the purpose of shoreland zoning, any operation which, within any twelve (12) month period, removes more than one hundred (100) cubic yards of soil, loam, gravel, clay, bedrock, peat or other similar material from its natural location to be processed or transported to another location.

Mobile home: For the purpose of this ordinance mobile home shall have the same meaning as manufactured home.

Mobile home lot: means a minimum area of land on which an individual mobile home may be situated within a mobile home park and which is reserved for use by the occupants of that home. Lots shall be designated on the mobile home park plan.

Mobile home park: means a parcel of land under unified ownership approved by the municipality for the placement of 3 or more manufactured homes.

Mobile home stand: that part of an individual mobile home lot which has been constructed and reserved for the placement of a mobile home.

Motel: A hotel in which the guest can reach the rooms from the parking lot without passing through an attended lobby.

Multi-family structure: A building containing more than one (1) but less than eleven (11) dwelling units.

Multi-family structure, attached: A residential structure consisting of individual self contained dwelling units which are joined by a common wall, but are accessible only from out of doors and not through the interior of other joined units. Multi-family attached structures shall have building facades which are broken either by structural elements or actual breaks in facade alignment.

Multi-unit development: Any building or buildings developed with a common scheme which includes multi-family structures or a mobile home park as defined by this ordinance.

Nonconforming building or use: A building, structure, use of land, or portion thereof, existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.

Normal high-water line: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

Nursing home: A facility which provides nursing care and medical services prescribed by or performed under the general direction of persons licensed to practice medicine. Nursing home shall include both skilled care and intermediate care facilities licensed by the State of Maine. For the purpose of this Ordinance, convalescent home shall mean the same as nursing home.

Open Space Ratio: A ratio of open space to gross lot area. To calculate, divide the land area of open space set aside by the gross site area.

$$\frac{\text{OPEN SPACE AREA}}{\text{GROSS AREA}}$$

Open space & Recreation Area: (mobile home parks) an unoccupied space exclusive of parking, drives, and structures, set aside for the purpose of passive and/or active recreation.

Open space use: A use involving none of the following: a principal structure; earth-moving activity; the removal or destruction of vegetative cover, spawning grounds of fish, aquatic life, bird or other wildlife habitat.

Operator. The owner or operator of an excavation. (Amended 12-17-07)

Outdoor recreation: Any use of land to accommodate the gathering, seating, or entertainment, of ten (10) or more people for the purpose of recreation where the activity is not enclosed within a building.

Parking space: An area exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles designed in accordance with the standards contained in *Article 4.7.5* of this Ordinance.

Place of assembly: Any building or use of land to accommodate the gathering, seating or entertainment of ten (10) or more people, including but not limited to banquet halls, movie theaters, auction halls, museums, galleries, lodges, discotheques and enclosed recreation centers, but excluding churches, hotels and motels.

Pond: For the purpose of shoreland zoning, Hammond Pond, Ben Annis Pond, Hermon Pond and Patten Pond.

Premises: One (1) or more lots which are in the same ownership and are contiguous or separated only by a road or waterbody, including all buildings, structures and improvements.

Preschool: A service business whereby an instructional program is provided for compensation to three (3) or more children between the ages of one (1) and five (5) years.

Principal building: The primary use to which the premises is devoted, and the main purpose for which the premises exists.

Processing: For industrial uses, including but not limited to: treating, converting, filtering, screening, coating, heating, separating, refining or otherwise altering the initial state, form, or substance of materials and the collection, sorting, or handling, but not the on-site disposal, of solid waste. (Amended: 6-19-95)

Protected Natural Resource. As defined in 38 MRSA Section 480-B Subsection 8. (Amended 12-17-07)

Public schools: Any facility operated by the Town of Hampden or Maine School Administrative District 22 for the purpose of education and its related accessory support functions. (Amended: 1-21-97)

Public utility: Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.

Public Works Projects. A project for the Town, other municipal entity, or the State of Maine including, but not limited to, the Maine Department of Transportation. (Amended 12-17-07)

Quarry. An excavation for the extraction of rock. (Amended 12-17-07)

Reclamation. The rehabilitation of an area of land affected by excavation or mining. (Amended 12-17-07)

Restaurant, take-out. Establishment engaged in the preparation of food, beverage and confection to be consumed primarily off-premises with a gross floor area not to exceed 2,000 sq. ft. Seating not to exceed 16 seats. Typical uses include bakery, delicatessen, sandwich shop, ice cream shop, pizza shop, and donut shop. Delivery is permitted. Service or consumption of alcoholic beverages on-site is prohibited however, beer and wine may be sold from a cooler for take-out consumption. (Amended: 12-6-04)

Restaurant, small. Establishment engaged in the preparation of food, beverage and confection to be

consumed primarily on-premises with a gross floor not to exceed 2,000 sq. ft. Typical uses include diners, cafes, coffee houses, and small restaurants. Incidental take-out or delivery is permitted. Alcoholic beverages may be served to diners. *(Amended: 12-6-04)*

Restaurant, sit-down. Establishment engaged in the preparation of food and beverage to be consumed on the premises at tables and wait persons take orders and serve diners. Only incidental take-out or delivery is permitted. Alcoholic beverages may be served to diners. *(Amended: 12-6-04)*

Restaurant, fast-food. Establishment engaged in the preparation of food, beverage and or confections and purveying it in a self-serve or semi-self serve basis. Service is primarily from a walk-up counter or vehicular drive-through window. Food is served in disposable packaging. Food may be consumed on or off premise or in automobile. Service or consumption of alcoholic beverages is prohibited. *(Amended: 12-6-04)*

Restaurant, outdoor dining. An outside area designated for dining with tables and or seating in conjunction with a take-out, small, sit-down or fast-food restaurant. This area may be a porch, roof, deck, patio, sidewalk, yard, or other area and may be enclosed on one or more sides with or without a solid roof cover. *(Amended: 12-6-04)*

Retail sales: The sale or rental of merchandise to the general public. Retail sales shall be limited to merchandise typically kept in stock on the premises. Retail sales shall allow accessory service unless prohibited elsewhere in this Ordinance.

River: For the purpose of shoreland zoning; Penobscot River and the Souadabscook Stream, West Branch of the Souadabscook from Brown Brook.

Road or street: Shall mean a right-of-way in the Town of Hampden intended for motorized traffic which is either:

- a. owned, established and maintained by the Town of Hampden, the County of Penobscot, or the State of Maine, or
- b. is shown on a plan of a subdivision which has been duly approved by the Hampden Planning Board and recorded in the Penobscot County Registry of Deeds and has not been vacated as a result of 23 M.R.S.A. § 3032, 23 M.R.S.A. § 3031, 23 M.R.S.A. § 3027, or 23 M.R.S.A. § 3027-A.
(Amended: 6-3-02)

Rock. A hard non-metallic material that requires cutting, blasting, or similar methods of forced extraction. *(Amended 12-17-07)*

Screening: Is either:

- a. a hedge or buffer strip at least five (5') feet wide consisting of densely planted shrubs or trees, at least four (4') feet in height at the time of planting, and eventually reaching a mature height of at least six (6') feet, or
- b. a wall or fence at least six (6') feet in height, but not exceeding eight (8') feet, which provides an effective visual barrier.

Service building: a building within a mobile home park which provides shelter for people or equipment which is exclusively used in the operation of the park or for the sole use of the residents of the park. Service buildings shall not contain retail sales or service businesses except for the sale or rental of units located within the park. Allowable structures: including but not limited to, community buildings, recreational halls, equipment storage buildings, common laundry facilities and management offices.

Service business: Any business or establishment which provides a service for hire by others, conducted through the application of some specialized knowledge, training, skill or talent, or through the employ of physical exertion or other effort in the performance of some special action or work. A service business shall include any establishment engaged in the fields of finance, insurance or real estate and any establishment providing professional, personal, or business services; a service business shall not include automobile service, outdoor recreation, manufacturing use, or a hotel or motel, but may include rooming houses, boarding homes, tourist homes, and bed and breakfast establishments with six (6) or fewer rooms.

Setback: The minimum horizontal distance from a lot line to the nearest part of a structure.

Setback from water: The minimum horizontal distance from the normal high-water elevation to the nearest part of a structure.

Shielding: For purposes of an excavation, pit, quarry, and or stockpile as regulated in *Article 4.9 and Article 4.23* shielding shall mean isolation from view. Such visual isolation may require mechanisms such as planting of screening or fences within or inside of the natural buffer strips or setback areas. (*Amended 12-17-07*)

Shopping center: An area where three (3) or more businesses are grouped together on the same lot and use common, off-street parking.

Shoreland area: All land area within two hundred fifty (250') feet horizontal distance of the normal high-water line of the following water bodies: Ben Annis Pond, Hammond Pond, Hermon Pond, Patten Pond, Penobscot River, Souadabscook Stream and West Branch Souadabscook Stream; and all land area within one hundred (100') feet horizontal distance of the normal high-water line of the following waterbodies: Brown Brook (from West Branch Souadabscook Stream to Maine Route No. 69) and Reed Brook (from Main Road to Bangor and Aroostook track); and all land area within two hundred fifty (250') feet of the upland edge of a coastal or freshwater wetland.

Sign: Structure, device, letter, word, model, banner, pennant, insignia, flag, or other representation which is used as or is in the nature of advertisement, announcement, or direction. The area of a sign is the area of the geometric shape exemplified by a square, rectangle, triangle, circle, etc., encompassing all lettering, wording, design, symbols, together with the background which is not a normal color of the building. An inconspicuous support exemplified by a slim post is not part of the sign. Both sides of freestanding signs, pole signs and projecting signs may be used for advertisement, announcement, or direction. Limitation of sign size refers to the structure of the sign, not to the surface.

Detached or freestanding sign: Shall mean a sign that is not attached to any building or structure and is portable and self-supporting.

Industrial park sign: A pole sign or a projecting sign directing the public to an industrial park. Such sign may identify the name of the industrial park and the name of uses, services, or businesses located on the premises but shall not describe goods or brand or trade name except in instances where the brand name and company are identical. Such sign shall be a maximum of fifty (50) square feet.

Pole sign: Shall mean any sign which is supported by structures or supports in or upon the ground and independent of support from any building.

Projecting sign: Shall mean any sign, other than a wall sign, affixed to any building or wall whose leading edge extends beyond such building or wall by more than twelve (12") inches.

Roof sign: Shall mean any sign erected or constructed wholly upon and over the roof of any building and supported solely on the roof structure.

Shopping center sign: A pole or a projecting sign directing the public to a shopping center. Such sign may identify the name of the shopping center and the name of shops or stores located in the shopping center. In addition, the sign may contain information about the shopping center of a general nature, such as its hours of operation. However, it shall not describe goods or brand or trade name except in instances where the brand name and business name are identical.

Silt or clay. A material that consists of particles of such size that forty-five (45) percent or more of the fraction of those particles able to pass through a three (3) inch sieve pass through the United States Standard Number 200 sieve, or a material that exhibits similar erosion potential, difficulty of stabilization, or runoff based upon gradation, plasticity, permeability, or other relevant criteria. (Amended 12-17-07)

Skirting: Shall mean the enclosure of the area below the unit with aluminum or vinyl, exterior grade plywood, chipboard, or matched boards on a wooden frame or masonry. Interior grade plywood, particle board or plastic or tarpaper are not acceptable materials.

Snack bar. Accessory use of a business, industry, school, or community use in which food, beverage and confection is offered or sold to guests, members, customers, or patrons and may include a refreshment stand in a school or park but such use is strictly incidental and subordinate to the primary use. On-premises cooking and preparation of food shall be limited to hot and cold beverages, confections such as cookies, donuts and ice cream, pre-packaged foods to be heated in a microwave oven, and hot dogs from a steam tray. Alcoholic beverages shall not be served or consumed on-site. (Amended: 12-6-04)

Solid waste: Useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example and not by limitation, rubbish, garbage, scrap materials, junk refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

Solid waste disposal: The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

Solid waste facility: Any land area, structure, location, equipment or combination of them, used for handling solid waste.

Special exception use permit: Deleted. (Amended 12-17-07)

Stockpile(s). “Stockpile(s)” means area(s) where either man-made or natural materials are being piled up temporarily, either undercover or exposed to the elements, for future processing and or distribution. These piles are only for materials that are necessary for uses which have been approved by the Planning Board. (Amended 12-17-07)

Stormwater: Stormwater shall mean storm water runoff, snow melt runoff, and surface runoff and drainage. “Stormwater” has the same meaning as “storm water”. (Amended 12-17-07)

Structure: Anything constructed or erected, except a fence or boundary wall, the use of which requires location on the ground or attachment to something on the ground.

Swimming pool: An outdoor body of water enclosed in an artificial receptacle or other container, whether in or above the ground, used or intended to be used for swimming or bathing and designed for a water depth of twenty-four (24") inches or more.

Tavern, Neighborhood. Establishment or part of an establishment used primarily for the serving of alcoholic beverages and in which the service of food is incidental to the consumption of such beverages with a gross floor not to exceed 2,000 sq. ft. and less than fifty seats. Outdoor service or consumption of alcoholic beverages is prohibited. (Amended: 12-6-04)

Topsoil. The top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of

such a layer in uncultivated soils. (Amended 12-17-07)

Tourist home: A lodging or rooming house whose guests customarily remain less than two (2) weeks.

Travel trailer: A vehicle designed to be moved on wheels and intended as a temporary dwelling for travel, recreation, and vacation use. This term shall also include campers, recreational vehicles, and other similar short term devices.

Trailer park: A plot of ground on which two (2) or more trailers, occupied for dwelling or sleeping purposes, are located.

Tributary Stream: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material of bedrock, and which flows to a water or wetland as defined. The term stream does not include "stream" previously defined and only pertains to tributary streams within the shoreland zone.

Use: The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

Wireless Telecommunications Facilities: The term >wireless telecommunications facilities=as used in this ordinance means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, un-licensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, personal communications service (PCS) or pager services. (Amended: 10-01-01)

Wireless Telecommunications Facilities, Microcell: The term microcell wireless telecommunications facilities as used in this ordinance means any antenna, other device which provides cellular phone services, personal communications service (PCS) or pager services. Microcell wireless telecommunication facilities shall be co-located on water towers including the tank surfaces in a manner that minimizes and mitigates any adverse impacts upon affected properties, streetscapes, and vistas through careful design, siting, screening, landscaping, and innovative camouflaging techniques shall be considered accessory to a water tower use. Such microcell antennas and supporting electrical and mechanical equipment located on a water tower shall be surface mounted wherever feasible so as to blend in with the contour and color. Antennas and equipment mounted on top of a water tower shall not extend more than 20 feet above the principal structure. (Amended: 2-7-05)

Working Excavation. The area of extraction, including side slopes, of an excavation for borrow, topsoil, loam, gravel, rock, sand, clay, silt, or other similar non-metallic earth materials whether alone or in combination. The area of a "working excavation" does not include areas for stockpiles, permanent fixed structures such as an office building, permanent processing facility, or fixed fuel storage. (Amended 12-17-07)

Yard: The area of land on a lot not occupied by the principal building.

Yard, front: The area of land between the front lot line and the nearest part of the principal building.

Yard, other: An unoccupied space between any structure and any property line which is not a street yard.

Yard, rear: The area of land between the rear lot line and the nearest part of the principal building.

Yard, side: The area of land between the side lot line and the nearest part of the principal building.

Yard, street: An unoccupied space between a public or private street right of way or proposed public street right of way and any structure. For the purpose of this definition, right of way shall include only rights of

way for the passage of motorized vehicles and not right of ways for power transmission lines, fuel pipelines, or other. *(Amended: 07-05-83, 09-19-83, 10-07-85, 03-16-87, 08-03-87, 12-21-87, 04-04-88, 01-03-89, 11-05-90, 06-03-91, 11-18-91, 05-04-92)*