

# ZONING ORDINANCE

Adopted March 10, 1970

Amended March 13, 1986

Amended March 10, 1998

Amended March 9, 1999

Amended March 11, 2003: Rules of Proportionality

Amended March 14, 2006: Amend Floodplain Dev. Ordinance; Amend Article V, A, 8 and Article XVI regarding Motor Vehicle Race tracks.

Amended March 10, 2009: Amend Article VI, VII And General Provisions section I. to incorporate Comprehensive Shoreland Protection Act.

## Supplement:

Town of Acworth Floodplain Management Ordinance:

Adopted 3/14/00, Amended 3/13/01, 3/9/04, 3/14/06

“The regulations in this ordinance shall overlay and supplement the regulations in the Town’s Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears in conflict with any provisions of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.”

# ZONING ORDINANCE FOR THE TOWN OF ACWORTH, N.H.

## ARTICLE I

### PREAMBLE

In pursuance of authority conferred by the New Hampshire Revised Statutes Annotated 1955, as amended, and for the purpose of promoting the health, safety and general welfare, as well as efficiency and economy in the process of development of the incorporated Town of Acworth, New Hampshire by providing adequate areas between buildings and various rights of way, by the adequate provision of public utilities and other public requirements, and by other means, now, therefore, the following ordinance is hereby enacted by the voters of the Town of Acworth, New Hampshire, on March 10, 1970.

## ARTICLE II

For the purpose of this ordinance, the Town of Acworth is divided into the following districts:

- A. Residential District.
  - 1. Acworth Village
  - 2. South Acworth Village
- B. Rural District.
- C. Crescent Lake District.
- D. Conservation Zone.

## ARTICLE III

### GENERAL PROVISIONS

- A. No owner or occupant of land in any district shall permit fire ruins or other ruins to be left, but within one year shall remove them or refill same to clear ground level or shall repair, rebuild or replace the building or structure.
- B. No use shall be permitted in a manner which would:
  - 1. disturb the reasonable enjoyment of the current and anticipated uses of near-by properties or be adverse to public health or safety by reason of odor, fumes, dust, smoke, vibration, noise, light, glare, traffic, or any other cause;
  - 2. create a fire hazard;
  - 3. create conditions which are disorderly or unsightly and thus detrimental to other properties or to the public;
  - 4. result in the pollution of ground or surface waters;

5. permit toxic or hazardous substances to enter ground or surface waters;
6. result in the pollution of the air including localized air pollution exceeding the state air quality standards;
7. result in soil erosion during or after construction;
8. result in sedimentation of surface waters; or
9. result in unreasonably increased traffic volume, speed, intensity or risk to public safety.

The Board of Selectmen shall have original authority to determine whether any use is in violation of any of the foregoing provisions and to order the removal or abatement of such use so found in violation.

Noise, odors and dust emitted by agricultural uses that were existent as of the date of enactment of this Ordinance are exempt from this provision.

- C. The sanitary systems in and from all dwellings and other buildings shall be constructed and maintained in accordance with the standards set and approved by the N.H. Department of Environmental Services and enforced by the Board of Selectmen. Occupancy of a building with running water connected shall not commence until an approved sanitary system is completed and operable.
- D. Signs shall be permitted no larger than four (4) square feet in the Residential District and Crescent Lake District; twenty (20) square feet in the Rural District. No sign shall be placed in such a position as to endanger traffic on a street by obscuring a clear view or by confusion with official street signs or signals. Every sign permitted hereunder shall be constructed of durable materials and shall be maintained in good condition and repair at all times. No neon, tubular gas, or privately owned flashing electric signs shall be allowed in any district.
- E. Removal of Sand and Gravel.  
The removal of clay, sod, loam, sand or gravel is permitted either for private use or for sale, provided that all excavating, handling, processing and storage facilities shall be removed and the area shall be re-graded or otherwise covered to assure that the premises are left in a safe and slightly condition and protected against erosion. Such removal and regrading or covering shall be done within ninety (90) consecutive days after depletion of the deposit or completion of the work for which the deposit was opened and/or developed as a source of supply, or (b) two-hundred fifty (250) consecutive calendar days after the last use of the deposit of a general source of supply. The removal of material shall comply with the requirements of RSA 155-E and amendments thereto.
- F. Trailers and Mobile Homes.
  1. The use of land for the accommodation of trailers and/or mobile homes, whether on permanent foundations or not, is prohibited except as provided below in this Article. However, any property owner or lessee may accommodate one trailer of a non-paying guest for a period not exceeding ninety (90) days in one year. Further, this Article applies only to trailers and/or mobile homes utilized for residential purposes and is not intended to cover one trailer or one mobile home owned by a resident and stored or parked during periods of non-use on the premises of the owner.

2. The Board of Selectmen may approve the temporary use of a trailer or mobile home to be maintained as living quarters by person employed in adjoining construction work or timber harvest or for whom a residence is being built, or as an office, storeroom or shop in connection with the construction work, provided that such use is shown to be a temporary expedient and also that the use will conform to the sanitary protection requirements listed under Section C of this Article.
  3. A mobile home may be maintained as a residence in the Rural District after obtaining a building permit from the Board of Selectmen. Said permit shall be granted only when the Board has been satisfied that the use will conform to the requirements of this Article, Section C, and that the provisions for lot size for each dwelling unit in Article V have been met.
  4. Mobile home parks are acceptable in the Rural District only as a special exception from the Board of Adjustment which shall be issued upon its findings that the proposed park complies with the following requirements and such further terms and conditions as the Board may find proper to impose to protect the public health, safety and general welfare.
    - a. The said park shall be so located as to be screened from view from abutting properties and the public right of way and shall not put an undue traffic burden on the public road to which it has access.
    - b. Prior to the issuance of the permit, the applicant shall place upon file with the Board a certificate of the Town Health Officer that the plans and specifications are, in his opinion, in accordance with the State Laws and Regulations, Regulations of the New Hampshire Department of Environmental Services and Town Ordinances and Regulations pertaining to sanitary and safety arrangements.
    - c. Ten thousand square feet shall be provided for each unit and shall be plainly marked with permanent markers at each corner.
- G. Junk yards and dumps must conform to New Hampshire State Laws as follows:
1. The use of land or buildings for motor vehicle, machinery or scrap metal junk yards is prohibited except that a motor vehicle junk yard may be allowed if licensed and in accordance with the standards set and enforced by RSA 236:91-129 and amendments thereto. Machinery and scrap metal junk yards may be allowed by prior permit from the Board of Selectmen if they meet the same requirements as are in force for a motor vehicle junk yard.
  2. The use of land for disposal of solid waste and refuse as defined in RSA 149-M and amendments thereto and including the provision for approval therefor as required in RSA 149-M.
  3. The selection of a public dumping place maintained or designated by the Board of Selectmen in accordance with RSA 149-M and amendments thereto shall not be affected by this Ordinance.
- H. Any subdivision of land for development shall meet the requirements of Land Subdivision Control Regulations adopted and effective April 28, 1972, and recorded May 1, 1972, Vol. 508 pg. 309, Sullivan County Registry of Deeds, and as amended by the Acworth Planning Board.

- I. Any building or land development project must conform to all state and federal regulations including but not limited to the New Hampshire Comprehensive Shoreland Protection Act, RSA 483-B.

## **ARTICLE IV**

### **RESIDENTIAL DISTRICTS**

#### Preamble.

The purpose of establishing the Residential Districts is to preserve the historic, colonial atmosphere of the villages and to assure those who build houses that they may continue to dwell in the same comfortable surroundings.

#### A. Uses Permitted.

1. Single and two family dwellings with private garages and accessory buildings.
2. Guest homes.
3. Churches and religious institutions, hospitals (excluding animal hospitals), nursing homes, municipal buildings, parks and playgrounds and schools, public or private.
4. Residences may be used to house such customary uses by the owner or tenant as offices for doctors, lawyers, real estate and insurance or other recognized professions or home occupations, except that the number of persons employed at any one location shall not number more than two persons in addition to the owner or tenant.
5. Farm and garden activities are permitted when incidental to primary residential use, and home food and garden produce may be exposed for sale in this district, provided that such use is in no way injurious, obnoxious or offensive to the neighborhood.

#### B. Land Standards.

1. Lot Area.  
The lot area in Residential Districts shall be not less than forty thousand (40,000) square feet, with the frontage of each lot not less than two-hundred (200) feet.
2. Setback Requirements.  
No building or other structure may be erected closer than forty (40) feet to the nearest edge of the abutting right of way, excepting, however, that a building may be erected closer to the abutting right of way if in conformity with the buildings on either side of the property. No building may be erected closer than twenty (20) feet to any side or rear property line.
3. Principal Buildings and Uses.

With subdivision approval from the Planning Board, a second dwelling or other principal use or principal building may be constructed on a lot provided that the lot area and lot frontage are twice the minimum required for the district. Otherwise, only one principal building or use will be permitted per lot.

C. Boundaries of Residential Districts.

1. Acworth Village.

Starting to the north side of the highway leading from Acworth Village to Charlestown and 36 rods northwest of the residence of Royal Drews; then north 89 degrees east 292 rods to the highway leading from Acworth Village to Crescent Lake, then following the same course across the highway 24 rods to a stone wall; then south 3 degrees east along the stone wall 192 rods to a point on the property of the Town of Acworth; then south 89 degrees west 316 rods to the corner of a stone wall on the property of Julius Christie; then north 3 degrees west 192 rods to the point of beginning.

2. South Acworth Village.

Starting at the northwest corner of the McKean bridge located on Highway 123A; then south 89 degrees west 352 rods to the west side of Beryl Mountain Road at the intersection of said road with the road leading to the Beryl Mountain Mine; then north 3 degrees west 227 rods to a stone wall located on the property of F.H. McCracken; then north 89 degrees east along the stone wall 352 rods to a point on the land of T.E. Hanifin; then south three degrees east 227 rods to the point of beginning.

## ARTICLE V

### RURAL DISTRICT

Preamble.

The purpose for establishing a Rural District is to provide ample area for pursuit of agriculture, including, but not limited, to dairy farming, poultry raising and forest products. Within this district in Acworth it is expected that residential living will be enjoyed on what were once farms of large acreage.

A. Uses Permitted.

A building or other structure may be erected, altered or used, and a lot may be used or occupied only for the following purposes and in accordance with the following provisions:

1. Any use permitted within the Residential District.
2. Usual and ordinary agricultural activities.
3. Agricultural buildings located at least one-hundred (100) feet from any Residential District or Crescent Lake District boundary line.
4. Roadside stands for the sale of agricultural products raised on the premises.
5. Stables and riding academies.
6. Plant nurseries and greenhouses.
7. Veterinary Hospitals and Boarding Kennels.
8. Outdoor recreational facilities **with the exception of motor vehicle race tracks.** (Bold added by Town Meeting vote March 14, 2006; See Article XVI for definition.)
9. Cottage Industry, in which the principal owner, residing on the premises, employs no more than five full time persons. (The activity must comply with Sect. B.2.).

B. Land Standards.

1. Lot Area.

The lot area of the Rural District shall be not less than three (3) acres and every lot shall have a minimum frontage of three hundred (300) feet.

2. Setback Requirements.

No building or other structure shall be erected closer than forty (40) feet to the nearest edge of the abutting right of way nor closer than fifty (50) feet to any side or rear property line.

3. Principal Buildings and Uses.

With subdivision approval from the Planning Board, a second dwelling or other principal use or principal building may be constructed on a lot provided that the lot area and lot frontage are twice the minimum required for the district. Otherwise, only one principal building or use will be permitted per lot.

C. Boundaries of Rural District.

The Rural District shall comprise all lands in the Town not specifically allotted to the Residential or Crescent Lake Districts .

D. Lot Size Averaging.

In the Rural District, the Planning Board may approve reduced lot sizes, frontage requirements, and/or setbacks in accordance with the following provisions:

1. Objectives.

Lot Size Averaging permits flexibility in subdivision design to promote the most appropriate use of land and the protection of productive agricultural or forest land, scenic views, historic sites, shorelines, wetlands, important habitat areas, or other resources of importance to the community, in accordance with the objectives of the Master Plan.

2. Applicability.

The minimum acreage for a lot size averaging subdivision plan shall be ten (10) acres.

3. Density.

The total number of lots approved will be determined based on the number which would be otherwise approved under an economically feasible conventional subdivision plan. This must be demonstrated by the subdivider with the submission of a plan showing lots meeting the usual minimum standards for the District and accounting for development limitations such as steep slopes, wetlands, septic suitability, available water supply, access, and compliance with the Acworth Subdivision Regulations. The area to be used for road right-of-way or other utility rights-of-way or other areas not incorporated in individual lots shall be excluded from the acreage figure used in the density calculation. A ten percent (10%) density bonus will be permitted for subdivisions which result in the permanent protection of twenty (20) acres or more.

4. **Dimensions.**  
The minimum lot size, frontage and setbacks shall be determined by the Planning Board based on the character of the land and neighborhood, the adequacy of the soils to support on-site wastewater disposal and wells, safety of access and traffic circulation, and other issues relating to the future use and enjoyment of the property. In no case will lots smaller than one acre be permitted. The setbacks from abutting properties not part of the application shall not be reduced. Front setbacks may be reduced only when on an internal subdivision road approved by the Planning Board as part of the subdivision application. When frontage requirements are reduced, the Planning Board may require shared driveways.
  
5. **Permanently Protected Area.**  
Permanent protection from further development shall be provided for an area equal to or exceeding the sum of the areas by which individual lots are reduced below the minimum normally required for the District. The Lot Size Averaging plan will concentrate development away from the most important resource areas and from those areas of the property which are most environmentally sensitive. The permanently protected portion of the lot shall be of sufficient size and configuration to accomplish the objectives of the Lot Size Averaging provisions. Further subdivision, or use for other than noncommercial outdoor recreation, conservation, agriculture or forestry shall be prohibited. The Planning Board may allow wells and waterlines if in accordance with the objectives of the lot size averaging provisions.
  
6. **Management of Permanently Protected Area.**  
Pursuant to RSA 674:21-a, Planning Board approval of a final Lot Size Averaging subdivision plan shall result in the creation of a conservation restriction incorporating the conditions of approval, including the maximum number of lots and the location, size and permissible uses of the land area which is to remain undeveloped. By mutual agreement of the Planning Board and subdivider, the conservation restriction may take the form of a conservation easement to the Town or private conservation group, or other instrument approved by the Planning Board. If the undeveloped area is to be held in common, all covenants, deed restrictions, organizational provisions for a homeowner's association or equivalent, and any other agreements regarding the method of ownership, management or maintenance of the protected area shall be established prior to Planning Board approval of the subdivision plan.

**ARTICLE VI  
CRESCENT LAKE DISTRICT**

Preamble: The purpose of establishing a District for Crescent Lake is to maintain healthy and safe conditions, to protect property values, to conserve and protect the natural beauty and scenic qualities of the Lake, to prevent water pollution, to protect fish, bird and wildlife habitats and wetlands, to maintain water quality and to assure Lake users and property owners of the continuing benefits of a healthy Lake.

A. Uses permitted:

1. Single and two-family dwellings, with private garages and accessory buildings.

2. Guest homes.
3. Residences may be used to house such customary uses by the owner or tenant as offices for doctors, lawyers, real estate and insurance or other recognized professions or home occupations, except that the number of persons employed at any one location shall not number more than two persons in addition to the owner or tenant.
4. Farm and garden activities are permitted when incidental to residential use, and home food and garden produce may be exposed for sale in this district, provided that such use is in no way injurious, obnoxious or offensive to the neighborhood.
5. Outdoor recreation consistent with the purpose and provisions of the District, including foot, bicycle and snowmobile paths.
6. Conservation of water, plants and wildlife.

B. Land Standards.

1. Lot Area - The lot area shall not be less than forty thousand (40,000) square feet, with the frontage of each lot not less than two hundred (200) feet.
2. Setback Requirements - Where permitted, no building or other structure may be erected closer than forty (40) feet to the nearest edge of the abutting right of way, excepting, however, that a building may be erected closer to the abutting right of way if in conformity with the buildings on either side of the property. No building or structure may be erected closer than twenty (20) feet to any side or rear property line. Buildings and structures should be sited to minimize impact on habitat and watershed. New buildings or structures shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.
3. Height Limit - No building or structure shall exceed thirty-five (35) feet in height as measured from the average ground level around the structure to the highest point on the roof, excluding chimneys.
4. Except where B 1, 2 and 3 above impose more stringent standards, the standards of the New Hampshire Comprehensive Shoreland Protection Act, RSA 483-B:9 Minimum Shoreland Protection Standards, shall govern the land standards of the Crescent Lake District including, but not limited to, natural woodland buffers, subsurface waste disposal systems and fertilizer usage.
5. Local permits shall be required pursuant to Article XI, in addition to any State permit requirement under RSA 483-B. However, any variance or waiver granted by the Commissioner of Environmental Services under RSA 483-B:9, V(i) shall be deemed sufficient for purposes of this Ordinance, without granting of any parallel relief by the Acworth Board of Adjustment.

6. Fertilizer Usage - No fertilizer, except limestone, shall be used within twenty-five (25) feet of the high water mark of Crescent Lake. Twenty-five feet beyond the high water mark, only low phosphate, slow release nitrogen fertilizer or limestone may be used on lawns or areas with grass.
- C. Boundaries: All property north of a line two hundred (200) feet south of the southern edge of the Crescent Lake Road right of way, Highway No. 51

## **ARTICLE VII CONSERVATION ZONE**

### Preamble.

The purpose of the Conservation Zone is to preserve and protect the Town's surface waters by permitting only those uses which can be harmoniously, appropriately and safely located adjacent to surface waters with due regard to water quality and other values.

### A. Uses Permitted.

Permitted uses are those which do not involve the erection or construction of any buildings or other structures, do not alter the natural surface configuration by the addition of fill or by excavation or dredging or other means. Such uses include:

1. residential uses, such as lawns, gardens or play areas;
2. agriculture using best management practices to protect surface water from damage from soil erosion or otherwise;
3. forestry, tree farming and nurseries using best management practices to protect surface water from damage from soil erosion or otherwise;
4. parks and outdoor recreation consistent with the purpose and provisions of the zone;
5. foot, bicycle or bridle paths; and
6. conservation of water, plants and/or wildlife.

### B. Special Exceptions.

Special Exceptions may be granted by the Board of Adjustment for undertaking the following uses in the Conservation Zone provided the use complies with the purpose of the Conservation Zone; an erosion and sedimentation control plan is submitted demonstrating the proposed use will not impair water quality during or after construction; and the Board provides for and considers written review of the proposal by the Conservation Commission.

1. Wells and waterlines.
2. Water impoundments, if the Board of Adjustment finds that the impoundment will not unreasonably interfere with the functioning of natural systems or that the environmental benefits of the impoundment outweigh the adverse impacts.
3. Non-commercial, non-residential water dependent uses, such as docks, boathouses and access points. Such uses shall be located and constructed so as to cause the least practicable damage to the surface water.
4. Road crossings of water courses, access ways and rights of way for overhead transmission lines if located and constructed so as to cause the least reasonably practicable damage to the surface water and only if there is no feasible alternative location.

- C. Boundaries of Conservation Zone.  
Except for the shore lands of Crescent Lake, which shall be regulated pursuant to Article VI Crescent Lake District, the Conservation Zone shall be an overlay zone including all stream banks and shores of all natural ponds and lakes to a distance of one hundred feet from the maximum high water level.

## **ARTICLE VIII**

### **SITE PLAN REVIEW**

Non-Residential Site Plan Review Regulations were adopted by the Acworth Planning Board on December 15, 1982.

Any Non-Residential or Multifamily uses should be submitted to the Planning Board for Site Plan Review.

## **ARTICLE IX**

### **NONCONFORMING LOTS, USES, BUILDINGS**

- A. Nonconforming Lots.

Lots in existence at the time of passage of this Ordinance with less frontage and/or area than otherwise required by this Ordinance may be built upon provided that the building or structure is in compliance with all other provisions of this Ordinance including setback requirements.

- B. Nonconforming Uses.

1. Any lawful nonconforming use may be expanded or changed as a Special Exception provided that all other zoning requirements are met and the Board of Adjustment finds the expansion or change:
  - a. is not substantial;
  - b. will not render the premises or property less adequate;
  - c. will not be less compatible with existing or future uses of neighboring properties;
  - d. will not have a more adverse affect on the character of the area;
  - e. will not result in an increase in intensity considering such matters as traffic generated, number of employees, number of shifts, noise, odor, glare, vibration, dust or smoke.
2. If a nonconforming use is superseded by a permitted use or a use permitted by special exception, it shall thereafter conform to the regulations of the district and the nonconforming use shall not be resumed.
3. When any existing nonconforming use of land or buildings has been discontinued for two consecutive years, the land and buildings shall thereafter be used only in conformity with this Ordinance

- C. Nonconforming Buildings and Structures.

Nonconforming buildings or structures may not be altered or expanded in any way which is not in full compliance with this Ordinance except as provided herein:

If an existing building or structure is in nonconformance by reason of encroachment into a required setback or conservation zone, alterations or additions within the required setback or conservation zone may be allowed by special exception provided the Board of Adjustment finds that the alteration or addition:

1. can not reasonably be located in a manner which would be in compliance with the regulations;
2. will not result in an increased nonconformity by reason of increased encroachment into the required setback or conservation zone;
3. will not create or further unsafe conditions; and
4. will not impair the existing or future use or enjoyment of neighboring property.

D. Additional Requirements in Conservation Zone.

Additional requirements for obtaining special exceptions for changes, alterations, or expansions of nonconforming uses or buildings within the Conservation Zone are as follows:

1. the proposal complies with the purposes and provisions of the Conservation Zone to the fullest extent practicable;
2. an erosion and sedimentation control plan is submitted demonstrating that the change, alteration or expansion will not impair water quality during or after construction;
3. sewage loading to the Conservation Zone will not be increased; and
4. the Board of Adjustment shall provide for and consider written review by the Conservation Commission.

## ARTICLE X

### BOARD OF ADJUSTMENT

Within thirty (30) days after the adoption of this Ordinance, and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to a Board of Adjustment of five (5) members, and (per Town Meeting vote March 14, 2006) two (2) alternates, conforming in duties to the provisions of RSA 674:33 and amendments thereto. The term of an appointed member shall be three (3) years. The initial terms of members first appointed to the Board of Adjustment shall be staggered so that no more than two appointments occur annually except when required to fill vacancies. (RSA 673:5,II).

This Board shall act with full powers granted said Board by RSA 674:33 and 674:33-a and any other powers assigned to it by statute, ordinance or vote of Town Meeting. Such powers include the following:

- A. **Administrative Appeal.**  
The Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made in the administration or enforcement of this Ordinance. The Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from, and to that end shall have all the powers of the official from whom the appeal is taken.
- B. **Variances.**  
The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, if, owing to extraordinary conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done.
- C. **Special Exceptions.**  
In appropriate cases and subject to appropriate conditions and safeguards, the Board may permit special exceptions to the terms of this Ordinance. All special exceptions shall be made in harmony with the general purpose and intent of this Ordinance and shall be in accordance with the general and specific rules contained in this Ordinance.
- D. **Developments of Regional Impact.**  
Upon receipt of an application for a variance or special exception, the Board of Adjustment shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.

Upon determination that a proposed development has a potential regional impact, the Board shall afford the Upper Valley Lake Sunapee Regional Planning Commission and the affected municipalities the status of abutters for the limited purpose of providing notice and giving testimony.

Within 72 hours of reaching a decision regarding a development of regional impact, the Board shall by certified mail, furnish the Regional Planning Commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. At least 14 days prior to public hearing, the Board shall notify, by certified mail, all affected municipalities and the Regional Planning Commission of the time, date, and place of the hearing and their right to testify concerning the development.

## **ARTICLE XI**

### **ENFORCEMENT**

- A. It shall be the duty of the Board of Selectmen, and the Board is hereby given power and authority, to enforce the provisions of this Ordinance.
- B. After passage of this Ordinance, it shall be unlawful to erect or relocate any dwelling, building or structure or alter the bulk of any dwelling, building or structure without first obtaining a permit from the Board of Selectmen.
- C. The Board of Selectmen shall issue any and all permits requested when the building or structure or land use for which the permit is sought will be in accordance with the provisions of this Ordinance, or in accordance with any variance or special exception granted by the Board of Adjustment.
- D. No permit shall be required for remodeling where the purpose for which the building is to be used is not changed, or where the exterior walls of the building are not to be altered.
- E. Upon any well-founded information that this Ordinance is being violated, the Board of Selectmen shall take immediate steps to enforce the provisions of the Ordinance by seeking an injunction in the Superior Court or any other appropriate action.

## **ARTICLE XII AMENDMENTS**

This Ordinance may be amended by a majority vote of any legal Town Meeting in accordance with the procedures provided by RSA 675 and amendments thereto.

## **ARTICLE XIII PENALTY**

Every person, firm or corporation violating any of the provisions of this Ordinance shall be subject to the penalties as provided by law in RSA Chapter 676 and amendments thereto, and the Town shall be entitled to enforce this Ordinance by any of the remedies described in RSA 676 and amendments thereto.

## **ARTICLE XIV SAVING CLAUSE**

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision.

## **ARTICLE XV EFFECTIVE DATE**

This Ordinance shall take effect upon its passage.

## ARTICLE XVI

### DEFINITIONS

- A. **Accessory Building** means a building subordinate to the main building on the lot and used for purposes customarily incidental to those of the main building.
- B. **Building** means any structure for the shelter, support or enclosure of persons, animals or property of any kind.
- C. **Frontage** means the length of a lot bordering on a public or approved subdivision right of way. Where a lot has frontage on more than one right of way, the frontage shall be on that road which has the greatest length, unless otherwise designated by the owner.
- D. **Guest Home** means any place consisting of a room or groups of rooms located in a residence where accommodations for sleeping or living purposes are provided for a price.
- E. **Home Products, Products and Crafts** mean and include everything of an agricultural nature grown, produced, conditioned or otherwise processed on the property of the resident, also such articles as are manufactured or altered by members of the household of a bona fide resident of any property.
- F. **Lot of Record** means land designated as a separate and distinct parcel in a legally recorded deed or plan filed in the records of Sullivan County, New Hampshire.
- G. **Mobile Home** means a unit similar to a trailer equipped with running water and sanitary facilities, bath facilities and toilet.
- H. **Mobile Home Park** means the land on which two or more mobile homes are parked and occupied for living purposes, regardless of whether or not a charge is made for such accommodations.
- I. **Motor Vehicle Race Track:** An off-highway site or facility, or portion thereof, whose use includes, at any time, the engagement of motor vehicles of any description, as defined in RSA 259:60, in any type of Competition as to speed or performance, with or without spectators, or which includes the operation of any type of motor vehicle in excess of any speed legally permitted on public highways in the State. Notwithstanding RSA Chapter 287-G, the term 'motor vehicle race track' includes any private driving and exhibition facility which meets the above definition. (This definition added by Town Meeting vote March 14, 2006.)
- J. **Nonconforming Use** means the use of any building, structure or land which does not conform to the use regulations of the district in which it is located.
- K. **Planning Board** is a Board of seven (7) members elected and whose function, among other duties, is the study of and preparation of the Zoning Ordinance and any amendments thereto.

- L. **Right of way** means and includes all town, state and federal highways, rights of way dedicated to public use and the land on either side of same as covered by statutes to determine the widths of the rights of way. As applied to frontage and setback requirements, a right of way shall also include that of a street approved by the Planning Board as part of a subdivision.
- M. **Sign** means a structure, building wall or other outdoor surface or any device used for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, or to display, identify and publicize the name or product or service to any person.
- N. **Structure** means anything constructed or erected with a fixed location on the ground, or attached to something with a fixed location on the ground. Examples include a swimming pool, pier, billboard, tennis court, gazebo, antenna over 20 feet high or over 36 inches in diameter. It shall not include a fence or a minor installation such as a mailbox, flagpole, lamppost, doghouse, or well covering.
- O. **Trailer** means any vehicle or similar portable structure used and intended to be used as an office, shop or dwelling having no foundation other than wheels, jacks or skirting, and having none of the following: running water, sanitary facilities, bath facilities and toilet.

**AMENDMENT TO THE TOWN OF ACWORTH ZONING ORDINANCE: March 11, 2003**

**RULES OF PROPORTIONALITY**

Where an existing parcel of land lies partially in both the rural and residential districts and it is to be subdivided the following rule of proportionality can be applied. The acreage required to create a new subdivided conforming parcel of land shall be such that the following mathematical formula is satisfied:

$$\frac{\text{Lot acreage in residential district}}{1 \text{ (acre)}} + \frac{\text{Lot acreage in rural district}}{3 \text{ (acre)}} = \text{or } > 1$$

In words, the existing lot acreage in the residential district divided by the minimum required lot size in the residential district (one acre) plus the existing lot acreage in the rural district divided by the minimum required lot size (three acres) in the rural district must be equal to or greater than one (1).

In the case where the frontage for an existing parcel lies all in one district, and a subdivided parcel is established by the above rules of proportionality, the frontage requirements for that district where the frontage exists shall apply to the newly created subdivided parcel. In the case where the existing parcel frontage lies in more than one district, the rule of proportionality shall apply to the newly created parcel which spans both districts. The following mathematical formula must be satisfied:

$$\frac{\text{Frontage in residential district}}{200 \text{ (feet)}} + \frac{\text{Frontage in rural district}}{300 \text{ (feet)}} = \text{or } > 1$$

TOWN OF ACWORTH  
FLOODPLAIN MANAGEMENT  
ORDINANCE

Adopted March 14, 2000  
Amended March 13, 2001  
Amended March 9, 2004  
Amended March 14, 2006

**New Hampshire Model Floodplain Management Ordinance  
For Communities with Special Flood Hazard Areas  
Meets the Minimum Requirements of Section 60.3(b)  
of the National Flood Insurance Program Regulations**

**SECTION I - PURPOSE**

Certain areas of the Town of Acworth, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Acworth, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

This Ordinance establishes a permit system and review procedure for development activities in the designated flood hazard areas of the Town of Acworth, New Hampshire.

**SECTION II - ESTABLISHMENT**

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Acworth's Floodplain Management Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Acworth's Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Sullivan, NH" dated May 23, 2006, or as amended, together with the associated Flood Insurance Rate Maps, dated May 23, 2006, or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

**SECTION III - PERMITS**

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

**SECTION IV – CONSTRUCTION REQUIREMENTS**

The Board of Selectmen shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- a. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

- b. be constructed with materials resistant to flood damage,
- c. be constructed by methods and practices that minimize flood damages,
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## **SECTION V – WATER AND SEWER SYSTEMS**

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Board of Selectmen with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

## **SECTION VI – CERTIFICATION**

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Board of Selectmen:

- a. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. if the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- c. any certification of floodproofing.

The Board of Selectmen shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

## **SECTION VII – OTHER PERMITS**

The Board of Selectmen shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

## **SECTION VIII - WATERCOURSES**

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Board of Selectmen, in addition to the copies required by the RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Board of Selectmen, including notice of all scheduled hearings before the Wetlands Bureau.

2. The applicant shall submit to the Board of Selectmen certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Board of Selectmen shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

## **SECTION IX – SPECIAL FLOOD HAZARD AREAS**

1. In Zone A the Board of Selectmen shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site plan approvals).
2. The Board of Selectmen's 100-year flood elevation determination will be used as criteria for requiring in Zone A that:
  - a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.
  - b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
    - (i) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
  - c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 100-year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
  - d. All recreational vehicles placed on sites within Zone A shall either:

- (i) be on the site for fewer than 180 consecutive days;
- (ii) be fully licensed and ready for highway use; or,
- (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

- (i) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

- (ii) the area is not a basement; and

(iii) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

## **SECTION X - VARIANCES**

1. Any order, requirement, decision or determination of the Board of Selectmen made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
  - a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - b. if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  - c. the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - a. the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

- b. such construction below the base flood level increases risks to life and property.

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

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

## **SECTION XI - DEFINITIONS**

The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Acworth.

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Acworth subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the FIRM.
2. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. "Basement" means any area of a building having its floor subgrade on all sides.
4. "Building" - see "structure".
5. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operation or storage of equipment or materials.
6. "FEMA " means the Federal Emergency Management Agency.
7. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. the overflow of inland or tidal waters, or
  - b. the unusual and rapid accumulation or runoff of surface waters from any source.
8. "Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
9. "Flood Insurance Study" (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.
10. "Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
11. "Flood proofing" means any combination of structural and non-structural additions, changes,

or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

12. "Floodway" - see "Regulatory Floodway".
13. "Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.
14. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
15. "Historic Structure" means any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - (i) by an approved state program as determined by the Secretary of the Interior, or
    - (ii) directly by the Secretary of the Interior in states without approved programs.
16. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

17. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

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

18. "Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced.

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

20. "100-year flood" - see "base flood"

21. "Recreational Vehicle" is defined as:

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

22. "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

23. "Special flood hazard area" - see "Area of Special Flood Hazard"

24. "Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

25. "Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of

temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

26. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

27. "Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:

- a. the appraised value prior to the start of the initial repair or improvement, or
- b. in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

28. "Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

29. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.