

# **SITE PLAN REVIEW**

## **Chapter 203**

**TOWN**

**of**

**PEMBROKE**

## SITE PLAN REVIEW

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## CHAPTER 203. SITE PLAN REVIEW

**[HISTORY: Adopted by the Planning Board 4-26-1994 by Ord. No. 94-2P. Editor's Note: This ordinance repealed former Ch. 203, Site Plan Review, adopted 8-24-1982. Amendments noted where applicable.] Amended 06-14-2022.**

### GENERAL REFERENCES

Planning Board — See Ch. [30](#).

Zoning — See Ch. [143](#).

Impact fees — See Ch. [200](#).

Subdivision of land — See Ch. [205](#).

### ARTICLE I - General Provisions (§ 203.1 - § 203-7)

#### § 203-1. Authority.

Pursuant to the authority vested in the Planning Board by the Town of Pembroke, New Hampshire; and in accordance with Chapter 674:43 and 674:44, New Hampshire Revised Statutes Annotated, as amended, the Planning Board adopts the following regulations governing site plan reviews within the Town of Pembroke, New Hampshire.

#### § 203-2. Title.

This chapter shall hereafter be known, cited and referred to as the "Site Plan Review Regulations of the Town of Pembroke," hereinafter referred to as "these regulations."

#### § 203-3. Intent.

The site plan review process recognizes that certain types of development and uses, even though generally suitable for a particular zoning district, may adversely affect the town's vested interests and the health, safety and general welfare of the public unless careful consideration is given to certain critical design elements. It is the intent of this chapter to provide a vehicle for review of the nature, size and impacts of proposed developments and changes of use.

#### § 203-4. Purpose.

The purpose of these regulations is to protect the public health, convenience, safety and welfare; to provide for the safe and attractive development of the site; to provide for responsible and desirable growth; to prevent premature and uncoordinated development of land without the adequate provision of public services and facilities; to provide for the harmonious and aesthetically pleasing development of the municipality and its environs; to prevent development which may result in adverse environmental impacts; and to provide for the proper arrangement and coordination of streets within the site in relation to other existing or planned streets.

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### **§ 203-5. Interpretation.**

- A. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.
- B. In matters of judgment or interpretation of the requirements set forth in these regulations, the opinion of the Planning Board shall prevail.

### **§ 203-6. Conflict with public and/or private provisions.**

- A. Public provisions. These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulations, statute or other provision of law. Where any provision of these regulations impose restrictions different from those imposed by any other provision of these regulations or other provision of law, whichever provisions are more restrictive or impose higher standard shall prevail.
- B. Private provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of these regulations shall prevail. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of these regulations, or the determinations of the Planning Board in approving site plan or in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. The Planning Board will consider these provisions in the review of the site plan but will not assume the responsibility of enforcing these provisions.

### **§ 203-7. Severability.**

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

## **ARTICLE II - Word Usage and Definitions (§ 203-8 - § 203-9)**

### **§ 203-8. Word usage.**

For purposes of these regulations, certain numbers, abbreviations, terms and words used herein shall be used, interpreted and defined as set forth in this section.

- A. Unless the context clearly indicates to the contrary, words used in the present tense shall include the future tense; words used in the plural number shall include the singular; words used the singular shall include the plural; the word "herein" shall mean "in these regulations"; the word "regulations" shall mean "these regulations"; the word "shall" or "will" is mandatory; the word "may" is permissive;
- B. A "person" shall include natural persons as well as a corporation, a partnership and/or an incorporated association of persons such as a club; "shall" is always mandatory; "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied";
- C. The terms "plat," "plan," or "development" shall mean a "site plan" and the terms shall be used interchangeably; and
- D. Words not specifically defined herein shall have their common meaning.

### **§ 203-9. Terms defined.**

- A. The following definitions, in addition to the definitions found within the Town of Pembroke's Zoning Ordinance and Subdivision Regulations, **Editor's Note: See Chs. 143 and 205, respectively.** are hereby adopted for the purpose of these regulations.
- B. Terms which may be interchanged with the defined term are noted at the end of the definition.

**AGENT** - An individual or group given the authority by a property owner to act on his/her behalf in presenting a proposal to the Planning Board.

**APPLICANT** - Any person, agent, firm, association, partnership or corporation that makes application to the Planning Board pursuant to the rules of these regulations.

**APPLICATION** - An application for site plan approval, either minor or major.

**BOARD** - The Planning Board of the Town of Pembroke, New Hampshire.

**CAPITAL IMPROVEMENTS PROGRAM** - A timetable or schedule of all future capital improvements to be carried out during a specific period and listed in order of priority, together with cost estimates and the anticipated means and sources of financing each project.

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**CERTIFICATE OF APPROVAL** - Written verification from the town giving the applicant permission to proceed with the construction of their development.

**COMPLETED APPLICATION** - An application as defined by § [203-16](#) or [203-17](#) of these regulations.

**CONTIGUOUS BUILDABLE AREA** - An area which consists of buildable land on a single lot, uninterrupted by nonbuildable area.

**EASEMENT** - The authorization by a property owner for the use by another, and for a specific purpose, of any designated part of the property.

**ENFORCEMENT STAFF** - The staff of the town given the authority to enforce the provisions of these regulations or the conditions of a site plan approval.

**FINANCIAL GUARANTEE** - A form of security used to ensure that public or private improvements are completed by the applicant.

**GRADE** - The slope of a lot, road, street or other public way specified in percentage ("%") terms.

**LOT IMPROVEMENT** - Any building, structure, place, work of art or other object or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment.

**MASTER PLAN** - A comprehensive plan for development of the local community, prepared and adopted by the local Planning Board, pursuant to state law and including any part of such plan separately adopted and any amendment to such plan, or parts thereof.

**OFFICIAL MAP** - The map established by the Planning Board pursuant to law showing the streets, highways, parks and drainage systems and set back lines theretofore laid out, adopted and established by law, and any amendments or additions thereto adopted by the Planning Board as additions thereto resulting from the approval of site plan plats by the Planning Board and the subsequent filing of such approved plats.

**PUBLIC IMPROVEMENT** - Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the local government may ultimately assume the responsibility for maintenance and operation or which may affect an improvement for which local government responsibility is established.

**REGISTERED ENGINEER** - An engineer properly registered and licensed in the State of New Hampshire.

**REGULATIONS** - The Site Plan Review Regulations of the Town of Pembroke.

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**RIGHT-OF-WAY** - A strip of land occupied or intended to be occupied by a street, walkway, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees or other special uses. (Also "easement.")

**SITE PLAN** - A plan of the area of proposed development. (Also "plat," "plan" or "development.")

**SUBDIVISION REGULATIONS** - The Subdivision Regulations of the Town of Pembroke. Editor's Note: See Ch. [205](#), Subdivision of Land.

**TEMPORARY IMPROVEMENT** - Improvements built and maintained by a subdivider during construction of the site plan and prior to a release of a financial guarantee, if any.

**TOWN** - The Town of Pembroke.

**WAIVER** - Permission to depart from the requirements of these regulations.



## **ARTICLE III - Jurisdiction and Site Plan Types (§ 203-10 - § 203-14)**

### **§ 203-10. Jurisdiction.**

These regulations shall apply to all commercial, industrial, multifamily (excluding two-family) and business developments in the Town of Pembroke, including an expansion of those uses or a change in use.

### **§ 203-11. Site plan review types.**

In recognition of the varying complexity of different types of site plans, the Planning Board hereby designates two (2) types of site plan review, minor site plans and major site plans.

### **§ 203-12. Definition of site plan types.**

#### **A. Major site plans.**

- (1) Any new development as outlined under § [203-10](#);
- (2) The expansion of an existing use or structure which results in a ten-percent or more physical expansion and results in an increase in the number of parking spaces required; or
- (3) Involves a change in the use within the use categories as identified within the Zoning Ordinance, **Editor's Note: See Ch. [143](#), Zoning.** which result in changes to the building or site plan.

#### **B. Minor site plans. All site plans which are not major are defined as minor.**

### **§ 203-13. Determination of site plan types.**

At the discretion of the Planning Board, any minor site plan which the Board considers to have the potential for significant impact may be categorized as a major site plan, and required to fulfill the requirements of the major site plan review.

### **§ 203-14. Developments of regional impact.**

#### **A. Standards for regional impact. A development shall be considered to have a regional impact if it meets any one (1) of the following criteria:**

- (1) Proposed site plans where, within five (5) years or less, a total of sixty (60) or more dwelling units would be constructed;
- (2) Proposed site plans where, within five (5) years or less, a total of thirty thousand (30,000) square feet of commercial gross floor area, seventy thousand (70,000)

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square feet of office or medical gross floor area or one hundred twenty thousand (120,000) square feet of industrial gross floor area would be constructed;

- (3) Proposed site plans where, within five (5) years or less, a total of eight (8) or more lots or dwelling units would be constructed within one thousand (1,000) feet of a municipal boundary;
  - (4) Proposed site plans where, within five (5) years or less, a total of four (4) or more lots or dwelling units would be constructed, which abut or involve rivers or perennial (year-round) streams which, within one-half (1/2) river miles downstream, flow across a municipal boundary;
  - (5) Proposed site plans where, within five (5) years or less, a total of four (4) or more lots or dwelling units would be constructed, which abut or involve lakes or great ponds, the high water mark of which lies within one thousand (1,000) feet of a municipal boundary;
  - (6) Proposals before the Planning Board which may reasonably be expected to contribute substantially to air or water pollution, school enrollment, solid waste disposal, demand for water supply or wastewater treatment, street deterioration, traffic safety, or otherwise substantially affect another municipality; **[Amended 1-23-1996 by Ord. No. 96-11]**
  - (7) Proposals before the Planning Board which, in the sole discretion of the Planning Board, are reasonably likely to have a substantial effect on another municipality. **[Amended 1-23-1996 by Ord. No. 96-11]**
- B. If after a review of the application by the Town Planner or by the Board, the application is found to have a regional impact, notice of the meeting when the application will be submitted to the Board shall be sent by certified mail, to all affected municipalities and the Central New Hampshire Regional Planning Commission to the attention of the Executive Director at least fourteen (14) days prior to the date of such meeting.
- C. Within seventy-two (72) hours of reaching a decision regarding the development of regional impact the Planning Board shall send by certified mail to all affected municipalities and the Central New Hampshire Regional Planning Commission copies of the minutes of the meeting at which the decision was made.

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### **ARTICLE IV - Application Procedures (§ 203-15 - § 203-27)**

#### **§ 203-15. Design review phase.**

- A. Prior to the preparation of plans and documents for formal application for approval of a site plan, the applicant may submit an application for design review with the Planning Board pursuant to the following procedures:
  - (1) request for a design review shall be submitted to the town in writing pursuant to the time frame requirements for a regular application;
  - (2) At the time of the request for a design review the applicant shall submit to the Planning Board the following:
    - (a) A complete list of all abutters; and
    - (b) The fees as required under the site plan application for the notification of abutters, and the newspaper ad.
- B. Failure on the part of the applicant to submit these items shall constitute an incomplete application and the Planning Board shall not take any further action.
- C. The public and abutters must be notified as required by RSA 676:4, I(d);
- D. The applicant may address the Board concerning a potential application. The Board or its designee may join the applicant in nonbinding discussions beyond the conceptual or general level involving more specific design and engineering details;
- E. The Board shall not approve or disapprove the proposal or take any other action on the application, except to give general guidance to the applicant;
- F. Statements made by Board members shall not be the basis for disqualifying said members or invalidating any action eventually taken on an application;
- G. The time limits for Board action under RSA 676:4, I(c), shall not apply to design review procedure; and
- H. The Board shall not accept any site plan submission by the applicant under this procedure. A separate site plan application must be submitted consisting of the appropriate documents and fees.

#### **§ 203-16. Minor site plan application requirements.**

An owner of land, or their agent, which is subject to the minor site plan requirements of these regulations, shall file an application with the Planning Board for their review and

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approval pursuant to these regulations. The Planning Board will only consider completed applications. A completed application is one which shall:

- A. Be made on forms available at the Pembroke Town Hall and submitted at least thirty (30) days in advance of the meeting at which the Board will receive the application; **[Amended 8-22-2000 by Ord. No. 00-4]**
- B. Include the application fee which is due and payable upon submission;
- C. Be accompanied by three (3) copies of the site plan and three (3) copies of each other required plan or document; and
- D. Be accompanied by all plans and documents required in Appendix A of these regulations. **Editor's Note: Appendix A is included at the end of this chapter.**

### **§ 203-17. Major site plan application requirements.**

An owner of land, or their agent, which is subject to the major site plan requirements of these regulations, shall file an application with the Planning Board for their review and approval pursuant to these regulations. The Planning Board will only consider completed applications. A completed application is one which shall:

- A. Be made on forms available at Town Hall and submitted at least thirty (30) days in advance of the meeting at which the Board will receive the application;
- B. Include the application fee which is due and payable upon submission;
- C. Be accompanied by three (3) copies of the site plan and three (3) copies of each other required plan or document;
- D. Be accompanied by all plans and documents required in Appendix B of these regulations, **Editor's Note: Appendix B is included at the end of this chapter.** in accordance with design requirements of Articles [V](#) and [VI](#) of these regulations;
- E. Be accompanied by all formal legal instruments where required in these regulations; deeds, easements and irrevocable offers of dedication to the public of all streets, utilities and parks; and
- F. Be accompanied by written assurance from the public utility companies that proposed utilities will be installed in accordance with plans submitted as part of the application.

### **§ 203-18. Application procedures. [Amended 11-24-1998 by Ord. No. 98-7]**

Upon receipt of an application, the Town Planner shall review the application to determine if the application is complete pursuant to § [203-16](#) or [203-17](#) and prepare a

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report for the Planning Board. The Planning Board, at the next regular meeting for which legal notice can be given, shall determine if the application is complete and shall vote upon its acceptance.

- A. Notice. The Planning Board shall notify the abutters, the applicant and the property owner by certified mail, return receipt requested, of the date of the meeting at which the application will be formally received by the Board. Notice will be mailed at least ten (10) days prior to the date of the meeting. The Planning Board shall notify the public at the same time by placing a public hearing notice in a newspaper of local distribution and by posting the notice in a minimum of two locations including Town Hall.
- B. Determination of completeness. The Planning Board shall review the application and determine if sufficient information is available to accept the application for public hearing.
- C. Incomplete applications. An application found to be incomplete shall be subject to the following procedures:
  - (1) Within 72 hours of the Board's determination, the Town Planner shall notify the applicant and property owner in writing of the Board's decision and the reasons for that declaration.
  - (2) An application which is determined to be incomplete may be revised and resubmitted to a subsequent regular meeting of the Board.
- D. Complete application. An application found to be complete shall be subject to the following procedures:
  - (1) The Planning Board shall hold a public hearing on the completed application. Any abutter or any person showing a direct interest in the matter may testify in person or in writing.

### **§ 203-19. Consideration of, and action on, applications.**

- A. Period of consideration. The Board shall have sixty-five (65) days within which to consider and act on the application. The sixty-five (65) day period shall commence upon the date of the regular meeting of the Board on which the application was accepted as complete. **[Amended 11-24-1998 by Ord. No. 98-7]**
- B. Board action. The Planning Board shall approve, modify and approve, or disapprove the application by resolution which shall set forth any conditions by which the approval is subject or state the grounds for disapproval. A copy of the resolution shall be forwarded to the applicant.

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- C. Issuance of the certificate of approval. Upon receipt of a final approval and endorsement by the Chairman of the Board, the resolution of approval shall become the certificate of approval. The original of the certificate shall be placed on file in the Board's office, one (1) copy shall be provided to the applicant, one (1) copy to the Assessor, and one (1) copy shall be sent to the Code Enforcement Officer.

### **§ 203-20. Conditional approval.**

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

- A. Minor plan changes, whether or not imposed by the Board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment;
- B. Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the Board; or
- C. Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies.

### **§ 203-21. Conditional approval time limit.**

- A. Conditional approvals granted by the Board shall be valid for a period of twelve (12) months from the date of the vote granting the conditional approval.
- B. Failure on the part of the applicant to satisfy all of the conditions imposed by the Board as part of the conditional approval within the twelve-month period shall negate the conditional approval and shall be cause for the Board to deny the application.

### **§ 203-22. Final approval.**

- A. Final approval with public hearing required. Prior to the expiration of the conditional approval as outlined under § [203-21](#), all applications required to have a public hearing prior to final approval shall file with the Planning Board an application for approval of a final plat. The application shall include the following elements:
  - (1) A copy of the final plat application;
  - (2) Three (3) copies of the final plat layout and the plat construction detail sheets, as described in Appendixes A and B of these regulations; **Editor's Note: Appendixes A and B are included at the end of this chapter.**

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- (3) Copies of any and all items the applicant was required to obtain pursuant to the granting of the conditional approval; and
  - (4) copy of an updated abutters list with the appropriate per abutter fee and the newspaper ad fee.
- B. Final approval without public hearing. Once the conditions of approval have been met the Town Planner shall present the Planning Board Chairperson with the Mylar for signature pursuant to § [203-23](#).

### **§ 203-23. Final plat certification; recording; performance and maintenance guaranty. [Amended September 25, 2012]**

- A. The applicant shall submit to the Town Planner five (5) copies (minimum plan size shall be 22"x34") of the final plat layout for the Planning Board Chairperson's signature within thirty (30) days of receipt of final plat approval by the Planning Board. The Chairperson shall sign and date the final plat as approved, specifying any conditions. A member of the Board or designated agent shall file the Notice of Decision and any documents affecting covenants, deed restrictions, etc., with the Merrimack County Registry of Deeds, at the applicant's expense.
- B. The final plat layout, only for a Condominium Site Plan, shall include to requirements of Section A and shall also include a wash-off Mylar which shall be of such size as to be acceptable for filing in the office of the Merrimack County Register of Deeds;
- C. Every final plat application granted approval shall be deemed to be an amendment of or an addition to the Town of Pembroke Official Map and a part thereof. Approval of a final plat application shall not be deemed to constitute or affect an acceptance by the town of the dedication of any street, open space or parks shown upon the final plat layout.

### **§ 203-24. Disapproval.**

If the Board disapproves an application, it shall provide the applicant with written reasons for the disapproval.

### **§ 203-25. Five-year exemption. [Amended 1-23-1996 by Ord. No. 96-12; Amended 08-26-2008, 09-25-12]**

- A. Pursuant to the requirements of RSA 674:39, as amended, every site plan approved by the Planning Board shall be further exempt from any changes in the Site Plan Review Regulations or Zoning Ordinance for a period of five (5) years, provided that active and substantial development has occurred, as defined below in 203-25.D.1, within twelve (12) months of receipt of final approval.

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- B. Pursuant to RSA 674:39-II, as amended, once substantial completion has occurred, defined in 203-25.D.2 below, the rights of the owner or successor in interest shall vest and no subsequent changes in regulations or ordinances, except impact fees, shall operate to affect such improvements.
- C. Failure to have substantially completed improvements of a project as shown on the approved plan within five (5) years shall constitute grounds for revocation of plan approval pursuant to RSA 676:4-a, as amended.
- D. "Active and Substantial Development" and "Substantial Completion" of the Improvements as Shown on the Site Plan Plat.
  - (1) For purposes of these Site Plan Review Regulations, "active and substantial development" shall be defined as:
    - (a) Construction of and/or installation of at least 50% of basic infrastructure to support the development\* in accordance with the approved plans; and
    - (b) Construction and completion of at least 50% of drainage improvements to service the development\*\* in accordance with the approved plans; and
    - (c) All erosion control measures (as specified on the approved plans) must be in place and maintained on the site; and
    - (d) Items a, b, and c shall be reviewed and approved by the Town Highway Department or designated agent.
    - (e) Movement of earth, excavation, or logging of a site without completion of items a, b, c, & d, above, shall not be considered "active and substantial development."
  - (2) For purposes of these Site Plan Review Regulations, "substantial completion of the improvements" shall be defined as:
    - (a) Construction of and/or installation of 100% of basic infrastructure to support the development\* in accordance with the approved plans; and
    - (b) Construction and completion of 100% of drainage improvements to service the development\*\* in accordance with the approved plans; and
    - (c) All erosion control measures (as specified on the approved plans) must be in place and maintained on the site; and
    - (d) Items a, b, and c shall be reviewed and approved by the Town Highway Department or designated agent.
    - (e) Movement of earth, excavation, or logging of a site without completion of items a, b, c, & d, above, shall not be considered "substantial completion."



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- (3) For plans approved in phases, each phase shall be analyzed separately for purposes of establishing whether active and substantial development or substantial completion has occurred unless the Board's approval specifically provides otherwise.
  - (4) For purposes of clarifying Section 203-25.D.1.a, above, \*Basic Infrastructure to support the development shall include all of the following as applicable to the development: at least 1 building foundation wall/footing; paved roadways, access ways (if any) to a minimum of gravel base, etc.; and utilities placed overhead or in underground conduit ready for connection to proposed buildings/structures.
  - (5) For purposes of clarifying Section 203-25.D.1.b, above, \*\*Drainage improvements to service the development shall include all of the following as applicable to the development: detention/retention basins, treatment swales, culverts, pipes, underdrains, catch basins, etc.
- E. The Planning Board has the ability to modify the percentage of each definition up to 15% based upon the individual needs and requirements of each plan. The rationale for each deviation shall be clearly detailed in the Board's minutes.

### **§ 203-26. Multiple Planning Board action.**

If in conjunction with a site plan approval a subdivision of land is required, an application for the subdivision of land shall be filed and shall be processed concurrently with site plan review.

### **§ 203-27. Consideration of, and action on, applications. [Amended 11-24-1998 by Ord. No. 98-7]**

The Board shall have sixty-five (65) days within which to consider and act on the application. The sixty-five (65) days period shall commence upon the date of the regular meeting of the Board on which the application was accepted as complete. The Board at their option may request an extension of the sixty-five (65) day period, for a further sixty-five (65) day period, from the Board of Selectmen.

**ARTICLE V - General Design Standards (§ 203-28 - § 203-40)**

**§ 203-28. General requirements.**

- A. Conformance to applicable laws, rules and regulations. In addition to the requirements established herein, all developments shall comply with the following laws, rules and regulations:
  - (1) All applicable statutory provision [sic] and all rules and regulations promulgated in accordance with such provisions;
  - (2) The zoning and health ordinances, building and housing codes and all other applicable ordinances and regulations of the Town of Pembroke; and
  - (3) The Master Plan, Official Map and Capital Improvements Program of the Town of Pembroke.
- B. Self-imposed restrictions. If the owner places restrictions on any of the land contained in the development greater than those required by the Zoning Ordinance **Editor's Note: See Ch. [143](#), Zoning.** or these regulations, such restriction or reference thereto may be required to be indicated on the site plan, or the Planning Board may require indicated on the site plan, [sic] or the Planning Board may require that restrictive covenants be recorded with the County Registry of Deeds in form to be approved by the Town Attorney.
- C. Specification references.
  - (1) Reference to state highway specifications shall mean Standard Specifications for Road and Bridge Construction of the New Hampshire Department of Transportation, as most recently adopted.
  - (2) Reference to Uniform Traffic Control Devices shall mean the Manual on Uniform Traffic Control Devices, published by the United States Department of Transportation, Federal Highway Administration, as most recently adopted.

**§ 203-29. Streets and access.**

- A. General requirements. All developments shall make adequate provision for a safe and suitable access to an existing public street or shall make provision for the construction and dedication of a public street in order to obtain safe and suitable access to the development site.
- B. Design standards.
  - (1) Wherever, in the opinion of the Board, safe and satisfactory access cannot be gained from an existing public street, the Board may require the construction and dedication of a public street. All public streets shall be designed and constructed

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in accordance with the standards for public streets contained in the Subdivision Regulations, **Editor's Note: See Ch. 205, Subdivision of Land.** including but not limited to right-of-way width, traveled way width, grade, base, pavement, shoulders, sidewalks, grass strips, street trees, street lights and street signs.

- (2) Wherever an existing public street is substandard with regard to the standards established in the Subdivision Regulations, said street shall be improved in all respects, including the acquisition of additional right-of-way, so that it will conform to the standards set forth for public streets in the Subdivision Regulations.
- (3) Wherever, in the opinion of the Board, traffic generated by a development will adversely impact existing public streets or the intersection of public streets, the Board may require improvements to be made to such streets and intersections in an effort to mitigate such impacts. Said street or intersection shall be improved in accordance with standards established by the Town Engineer. Said improvements shall include but not be limited to the installation of traffic signals, the construction of additional lanes for turning movements and the construction of raised islands or barriers for the purpose of channeling traffic.
- (4) All developments shall provide for a safe and satisfactory access from a public street. Developments shall not, in general, derive access from a primary or secondary arterial street. Where a development borders on an existing arterial street, the Board may require that access from the development to the street be accomplished by means of the construction of a marginal access or service road, parallel to and separated from the arterial with access to the arterial at suitable points, or from an existing side street, or driveway. Where driveway access from a primary or secondary arterial street may be necessary, the Planning Board may require that such lot be served by a combined access drive serving several lots in order to limit possible traffic hazards on such street.

### **§ 203-30. Preservation of natural features and amenities.**

In the development of a site the applicant shall conform to the following general requirements:

- A. Existing features which would add value to residential, commercial or industrial development or to the town as a whole, such as trees, groves, watercourses and falls, beaches, historic spots, vistas and similar irreplaceable assets, shall be preserved in the design of the development. No trees shall be removed from any site nor any change of grade of the land affected until a certificate of approval for the development has been granted.
- B. Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips between residential subdivisions abutting

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commercial or industrial areas. Similar natural features that provide buffers between lots or sections of a development should be preserved to enhance privacy and attractiveness. Provisions for clearing may be made for southerly exposure for solar access to dwellings or buildings. All trees, where required, shall be welled and protected against change of grade.

- C. If the Planning Board finds certain land to be unsuitable for development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health and general welfare of the present or future users of the development, inhabitants of the surrounding area or residents of the town, said land shall not be developed unless adequate methods are formulated by the developer and approved by the Planning Board to solve the problems created by the unsuitable land conditions.
- D. Developments shall use construction methods which cause the least disturbance to the environment possible. No cut trees, timber, debris, junk, rubbish or other waste materials of any kind shall be buried in any land or left or deposited on any lot or street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of a certificate of occupancy. Nor shall any debris be left or deposited in any area of the development at the time of expiration of the performance bond or dedication of public improvements, whichever is sooner.
- E. All discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes shall be properly disposed of and managed. No such items shall be disposed of on site. Further, no such materials shall be discharged or introduced into the Pembroke storm or sanitary sewer system either directly or indirectly. **[Amended 11-10-2020]**

### **§ 203-31. Erosion and sediment control.**

- A. All major site plans, unless otherwise requested by the Board, shall prepare and construct adequate erosion and sediment control measures and shall be based on the best available technology. Such principles, methods and practices necessary for certification are found in the Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire (1987), prepared by the United States Department of Agriculture Soil Conservation Service, as amended, and the Manual for Soil Erosion for Highways, published by the New Hampshire Department of Transportation.
- B. Standards. The design of the site plan and control measures shall comply with the following standards:
  - (1) Striping [sic] of vegetation, regrading or other development shall be done in such a way that will minimize soil erosion;

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- (2) Whenever practical, natural vegetation shall be retained, protected and supplemented;
- (3) The disturbed area shall be kept to a minimum;
- (4) Increased runoff water caused by changed soil and surface conditions during development shall be retained in such a way as to not increase the peak discharge of runoff water occurring on the site before any development begins;
- (5) Sediment in runoff water shall be trapped and retained on the project area; and
- (6) Off-site surface water shall either be diverted around or conducted safely through the project area.

#### **§ 203-32. Energy conservation design.**

To protect community welfare and provide for more efficient use of community facilities, the Planning Board shall consider conservation of energy in the design of developments, to include the following:

- A. Pedestrian and bicycle route safely separated from automobile traffic;
- B. Commuter traffic lanes;
- C. Orientation and design of buildings for southerly solar access and minimum northerly exposure;
- D. Lots to be cleared and graded so that a southerly solar access is provided for. Consideration shall be given to slope, height of nearest trees, structures, fences, walls or other permanent obstacles. The Planning Board may waive south-facing design requirements where an applicant shows a need for solar access and the intent and purpose of these regulations are maintained;
- E. Low Impact Design (LID) and Green Infrastructure. When the opportunity exists, the Planning Board shall encourage project proponents to incorporate LID and/or Green Infrastructure components into the site design. **[Amended 11-10-2020]**

#### **§ 203-33. Flood plain areas.**

The Planning Board may, when it deems it necessary for the health, safety or welfare of the present and future population of the area and necessary to the conservation of water, drainage and sanitary facilities, prohibit the development of any portion of the property which lies within the flood plain of any stream or drainage course. These flood plain areas shall be preserved from any and all destruction or damage resulting from clearing, grading or dumping of earth, waste materials or stumps, except at the discretion of the Planning Board.

**§ 203-34. Special flood hazard areas.**

- A. The Planning Board shall review all proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
- B. All site plans greater than five (5) acres shall include such properties' base flood elevation data.
- C. Sufficient evidence (construction drawings, grading and land treatment plans) shall be submitted so as to allow determination that:
  - (1) All such proposals are consistent with the need to minimize flood damage;
  - (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage; and
  - (3) Adequate drainage is provided so as reduce exposure to flood hazards.

**§ 203-35. Areas of poor drainage.**

The Planning Board may prohibit the development of any portion of the property identified as wetland and may require the preservation and dedication of such. In areas containing poorly drained soils, including areas subject to a fluctuating water table, the Board may require that studies be prepared by a registered engineer relative to the impact of groundwater on the storm drainage system. Depending upon the nature and magnitude of the impacts so identified, the Board may prohibit the development of those portions of the property.

**§ 203-36. Off-street parking.**

All developments shall make adequate provisions for off-street parking. Such facilities shall be designed to ensure the safety and convenience of pedestrian and vehicular movement on and off the site. The design shall also minimize the impact of intrusive elements of parking and loading such as dust, noise and glare upon neighboring properties and land uses. All parking areas shall conform to the following standards:

- A. The design, layout and number of parking spaces, shall conform to the requirements of the Zoning Ordinance **Editor's Note: See Ch. [143](#), Zoning.** and these regulations;
- B. The provision of screening and landscaping shall conform to the requirements of the Zoning Ordinance and these regulations;
- C. Each and every parking space shall have a safe and independent access; and
- D. Provision shall be made on-site for the storage of snow which is removed from the parking and loading areas during the winter months.

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### **§ 203-37. Signs.**

Signs are intended for the identification of the use of the site on which they are located. Signs shall not obscure or obstruct architectural features of a building on which they are located nor shall signs be a hazard or nuisance by virtue of their location or illumination. All signs shall conform to the following:

- A. Sign size, type, location, height and illumination shall conform to the requirements of the Zoning Ordinance; **Editor's Note: See Ch. [143](#), Zoning.** and
- B. The applicant shall submit a complete sign package with their application for site plan review. The package shall show the types of, locations of and design standards for all proposed signs.

### **§ 203-38. Landscaping.**

All developments shall make adequate provision for landscaping on the site. The design, types, location and number of trees and shrubs, shall be approved by the Board. The applicant shall submit a landscape plan showing all the proposed landscaping.

### **§ 203-39. Contiguous buildable area.**

In addition to the minimum lot size there shall be a minimum contiguous buildable area on each lot which shall equal or exceed seventy percent (70%) of the minimum lot area for that district.

### **§ 203-40. General.**

Whenever the proposal contains improvements to or new construction of private or public facilities beyond the limits of the applicants tract of land, the applicant shall consider areas of improvements or construction to be a part of the site plan and all pertinent requirements of these regulations shall apply.

**ARTICLE VI - Design Standards and Requirements for Utilities (§ 203-41 - § 203-44)**

**§ 203-41. Storm water drainage.**

A. General requirements. All developments shall make adequate provisions for storm water disposal facilities which shall be designed by a registered engineer.

B. Required improvements.

(1) Municipal storm sewers. Developments within five hundred (500) feet of an existing municipal storm sewer shall be required to connect to that system. Where municipal storm sewers are not available at the time of the application, but said storm sewer will become available in the future because of inclusion in the Capital Improvements Program, the Planning Board may require the applicant to install a municipal storm sewer system, ready for connection to the municipal system at the time of its expansion.

(2) Storm water drainage system. Where municipal storm sewers are not required under § [203-41B\(1\)](#), a system shall be required to be designed and constructed to carry away all surface drainage.

C. Design standards.

(1) Municipal storm sewer systems. Storm water runoff shall be carried away in a subsurface, piped storm sewer system. Such drainage facilities shall be located in the road right-of-way where feasible and shall be constructed in accordance with the standards and specifications of the Town of Pembroke. When located in the right-of-way, storm sewers shall be located in accordance with the standard street cross-section as contained in the Subdivision Regulations. **Editor's Note: See Ch. [205](#), Subdivision of Land.** Where topography or other conditions make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements at least thirty (30) feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. Drainage easements shall be carried from the road to a natural watercourse or other drainage facilities.

(2) Storm water system. When public storm sewers are not required, subsurface water runoff shall be carried away in a system of swales, drainage ways, culverts and channels to a natural watercourse or to other drainage facilities. Where a development is traversed by a watercourse, a drainage easement or drainage right-of-way conforming substantially to the lines of such watercourse and of such width and construction or both as will be adequate for the purpose shall be conveyed to the town. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow. The applicant shall dedicate, either in fee or



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by drainage or conservation easement, land on both sides of the existing watercourse to a distance to be determined by the Planning Board.

- (3) Accommodation of upstream drainage areas. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the development, assuming conditions of maximum potential watershed development permitted by the Zoning Ordinance. **Editor's Note: See Ch. [143](#), Zoning.**

- (4) Effect on downstream drainage areas. When a proposed drainage system will carry water across land outside the development, appropriate drainage rights must be secured and indicated on the site plan. Where it is anticipated that the additional runoff incident to the development will overload an existing downstream drainage facility, the Planning Board may withhold approval of the development until provision has been made for the improvement of said condition. Alternatively, upon recommendation from the Town Engineer, the Board may approve on-site retention or detention facilities to prevent the overloading of existing downstream facilities.

- (5) Soil Conservation Service Method.

- (a) Drainage shall be designated by the use of the Soil Conservation Service Method or other approved method. The rainfall frequency to be used with this formula shall be as follows:

10-year frequency for residential areas

25-year frequency for commercial or industrial areas

50-year frequency for flood protection areas

- (b) Design calculations for predeveloped and post-development conditions including a narrative of said conditions shall be submitted. Also required will be defaulted hydraulic calculations for open channels, closed pipes and detention basins where applicable.

- (6) Structures and materials. Storm drains, culverts and related installations, including catch basins and drop inlets, shall be installed within and throughout the subdivision as necessary. All storm drainage structures and materials shall meet the standards set forth in Standard Specifications for Road and Bridge Construction, New Hampshire Department of Transportation. All pipes, except underdrains, shall have a minimum diameter of fifteen (15) inches and shall have a minimum depth of two (2) feet of cover below subgrade over all pipes, including underdrains.

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- (7) Erosion protection. Sod, paving or stone shall be provided in ditches where soil or velocity conditions warrant protection from erosion as determined by the Board of Selectmen, or their designated agent. In addition, water bars or diversion ditches may be required as determined by the Board of Selectmen, or their designated agent.
- (8) For projects subject to the requirements of Pembroke Zoning Ordinance Section 143-70 Municipal Separate Storm Sewer System (MS4) District, as-built drawings shall be submitted prior to the issuance of a Certificate of Occupancy (CO). The as-built drawings must depict all onsite controls designed to manage the stormwater associated with the completed site (post-construction stormwater management). **[Amended 06-14-2022]**

### **§ 203-42. Water supply.**

A. General requirements. All developments shall make adequate provision for a supply of potable water for domestic consumption and a water supply for fire protection purposes. All water supply systems and facilities shall be designed by a registered engineer.

#### **B. Required improvements.**

- (1) Municipal water system. A municipal water system shall be required if available within five hundred (500) feet of the premises or as otherwise determined by the Board. Where a municipal water system is not available at the time of the application, but said water system will become available in the future because of inclusion in the Capital Improvements Program, the Planning Board may require the applicant to install a municipal water system, ready for connection to the municipal system at the time of its expansion.
- (2) Nonmunicipal water supply. Where a municipal water system is not required under § [203-42B\(1\)](#), water supply shall be provided through a private well on individual lots or by a private central system. The Planning Board may require the design of said central system to be reviewed and approved by the Pembroke Water Department.

#### **C. Design standards.**

- (1) Municipal water system. The applicant shall install facilities for the supply and distribution of water, including fire protection capabilities, in a manner prescribed by the construction standards and specifications of the Town of Pembroke. The design shall be approved by the Town of Pembroke Water Department. Water mains shall be located within street rights-of-way unless topography dictates otherwise. When located in the right-of-way, water mains and appurtenant facilities shall be located in accordance with the standard street cross-section as contained in the Subdivision Regulations. **Editor's Note: See Ch. [205](#), [Subdivision of Land](#).** When water mains are located in easements across private

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property, said easements shall be unobstructed in perpetuity, shall be thirty (30) feet in width and shall provide satisfactory access to a street.

- (2) Nonmunicipal water supply. Where municipal water supply is not required, the Planning Board may approve the provision of water through either of the following methods:

- (a) Individual private wells, the location of which shall comply with all standards of the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division (WSPCD); or
- (b) private central water system, serving two (2) or more lots or users, which shall conform to and meet all standards set for community water services as established by the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division, even though the WSPCD may not invoke jurisdiction in all cases.

#### **§ 203-43. Sanitary sewage disposal.**

Editor's Note: See also Ch. [130](#), Sewers.

- A. General requirements. All developments shall make adequate provisions for sanitary sewage disposal facilities which shall be designed by a registered engineer.

B. Required improvements.

- (1) Municipal sanitary sewers. Municipal sanitary sewers shall be required if available within five hundred (500) feet of the premises or as otherwise determined by the Board. Where municipal sanitary sewers are not available at the time of application, but said sanitary sewers will become available in the future because of inclusion in the Capital Improvements Program, the Planning Board may require the applicant to install a municipal sanitary sewer system, ready for connection to the municipal system at the time of its expansion.
- (2) Nonmunicipal sanitary sewage disposal. Where a municipal sanitary sewer system is not required under § [203-43B\(1\)](#), sanitary sewage disposal shall be provided by a central sewage system.
- (3) During Construction. Temporary sanitary facilities (e.g. porta-potties) shall be provided for workforce during construction of all developments falling under the jurisdiction of these Regulations. Such facilities shall be maintained and emptied in accordance with manufacturers specifications during the entire life of the project. **[Amended 11-10-2020]**

C. Design standards.

- (1) Municipal sanitary sewers. The applicant shall install sanitary sewer facilities to serve each lot or dwelling unit in a manner prescribed by the construction standards and specifications of the Town of Pembroke. The design shall be

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approved by the Town of Pembroke Sewer Commission. **Editor's Note: See Ch. 130, Art. II, Board of Sewer Commissioners.** Sanitary sewers shall be located within street rights-of-way unless topography dictates otherwise. When located in the right-of-way, sewers shall be located in accordance with the standard street cross sections as contained in the Subdivision Regulations. **Editor's Note: See Ch. 205, Subdivision of Land.** When sewers are located in easements across private property, said easements shall be unobstructed in perpetuity, shall be thirty (30) feet in width and shall provide satisfactory access to a street.

- (2) Nonmunicipal sanitary sewage disposal. Where municipal sanitary sewers are not required, the Planning Board may approve the provision of sewage disposal through either of the following methods:
  - (a) Individual disposal systems, the design and location of which shall be approved by the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division. Said systems shall be located on private property, no closer than seventy-five (75) feet to a watercourse, a water body, a wetland or a well that is being used as a source of water supply and shall not be located within the required setback for that district; or
  - (b) private central sewerage system, the design and location of which shall be approved by the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division. Maintenance and operating costs of said system shall be assessed against the development. The Planning Board may require the design of said central system to be reviewed and approved by the Pembroke Sewer Department.

#### **§ 203-44. Nonmunicipal utilities.**

All developments shall make adequate provision for nonmunicipal utilities as may be necessary and appropriate for the development. The applicant is responsible for all coordination with the utility companies to assure that nonmunicipal utilities are installed in accordance with plans provided to the Board pursuant to these regulations.

**ARTICLE VII - Financial Guarantees and Inspection Procedures (§ 203-45 - § 203-49.2)**

**§ 203-45. Financial guarantee and maintenance requirements.**

**A. Financial guarantees.**

- (1) The Planning Board shall require that the applicant post a bond or satisfactory surety at the time of application for site plan approval in an amount estimated by the Town Engineer and approved by the Planning Board as sufficient to secure to the Town of Pembroke the satisfactory construction, installation and dedication of the required municipal improvements delineated in the construction plans of Appendix B; **Editor's Note: Appendix B is included at the end of this chapter.** and
- (2) Such financial guarantee shall comply with all statutory requirements and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of execution as set forth in these regulations. Such financial guarantee shall also be approved by the Board of Selectmen as to the amount, surety and conditions.
- (3) The time stipulated by the Planning Board for completion of the required improvements shall be stated in the terms of the guarantee and shall not exceed two (2) years from the date of final approval. Upon showing of difficulty, the Planning Board may extend the completion date as set forth in such assurance for one (1) additional year. **[Added 11-24-1998 by Ord. No. 98-7]**

**B. Temporary improvements.** The applicant shall build and pay for all costs of temporary improvements required by the Planning Board and shall maintain same for a period specified by the Planning Board. Prior to the construction of any temporary facility or improvement, the developer shall file with the Board of Selectmen a separate suitable financial guarantee for temporary facilities. The guarantee shall ensure that the temporary facilities will be properly constructed, maintained and removed. **[Amended 7-26-2011 by Ord. No. 11-1]**

**C. Costs of improvements.** All improvements required by the Planning Board shall be made by the applicant, at their expense, without reimbursement by the town, unless otherwise negotiated with the Board of Selectmen.

**D. Failure to complete improvement.** When a financial guarantee has been posted and required improvements have not been installed within the terms of such financial guarantee, the Board of Selectmen may thereupon declare the financial guarantee to be in default and require that all improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

**E.** If the town has reason to suspect that a financial guarantee will not be renewed by the issuing agency, or that the issuing agency will not be in a position to renew the financial guarantee prior to the completion of the improvements, the town reserves

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the right to declare the financial guarantee to be in default and shall call the financial guarantee.

- F. Failure to renew financial guarantee. Failure by the applicant to obtain or renew a financial guarantee of sufficient size to cover the cost of the improvements shall constitute grounds for the revocation of the approval. All financial guarantees shall be renewed and a copy submitted to the town a minimum of thirty (30) days prior to the expiration of that guarantee. **[Amended 7-26-2011 by Ord. No. 11-1]**
- G. Acceptance of dedication offers. Acceptance of formal offers of dedication of streets, public areas, easements and parks shall be by ordinance of the town. The approval by the Planning Board of a plan shall not be deemed to constitute or imply the acceptance by the Board of Selectmen or the town of any street, right-of-way, easement or park shown on said plan. The Planning Board may require said plan to be endorsed with appropriate notes to this effect.
- H. Post Construction Performance Guarantee. The applicant shall submit to the Town a Post Construction Performance Guarantee in the form of a performance bond, cash bond, or an irrevocable letter of credit in an amount to be considered adequate by the Town Planner and Town Engineer. Such Guarantee shall be in effect for a period of one year. The beginning date of the one year period shall be the date of the vote by the Board of Selectmen to accept the improvements as well as the Post Construction Performance Guarantee, and to specifically begin the time period. The Guarantee amount shall remain unchanged for the entire one year period. **[Added 11-24-1998 by Ord. No. 98-7; amended 8-24-1999 by Ord. No. 99-3]**

The purpose of this Guarantee is to provide funds to repair or reconstruct subdivision roads which have become damaged due to latent defects or other unexpected events. The Town Engineer shall determine if a repair or reconstruction procedure is required.

### **§ 203-46. Inspection of improvements.**

- A. General procedure. The Board of Selectmen, or their designated agent, shall provide for the inspection of required improvements during the construction of the development and certify their satisfactory completion. Whenever the cost of improvements is covered by a financial guarantee, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.
- B. Fees. Whenever a proposed site plan will involve street construction, the installation of drainage structures or other required improvements, the costs incurred by the town in having the work inspected shall be borne by the applicant. Prior to receiving final approval of the site plan, the applicant shall deposit with the Treasurer of the town a sum of two percent (2%) of the estimated cost of construction of the required

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improvements as estimated by the Selectmen or their designated agent. The deposit shall be held in a special escrow account by the Treasurer for the purpose of paying the Selectmen or their designated agent to make the necessary inspection. The unused portion shall be returned to the applicant upon final acceptance of the improvements. If the inspection cost exceeds the deposit, the applicant must pay that amount to the Treasurer prior to final acceptance of the improvements and prior to the release of any bond, letter of credit, money or other financial security deposited under this chapter.

### C. Inspection schedule.

(1) The Board of Selectmen, or their designated agent, shall provide for the inspection of required improvements during the construction stage and shall certify their satisfactory completion. During the construction stage of any new street for town acceptance, the developer, or his agent, must notify the Selectmen at least two (2) business days in advance before starting the following phases of construction:

- (a) Inspection No. 1: Layout of roadway, layout of wetlands.
- (b) Inspection No. 2: After clearing, stumping and grubbing and placement of erosion control measures and prior to placing of any fill materials of base gravel; inspection of any drainage facilities may occur at this time also.
- (c) Inspection No. 3: Prior to the placement of fill for any utility. All utilities are to be installed prior to binder course. **[Amended 1-23-1996 by Ord. No. 96-13; 8-24-1999 by Ord. No. 99-3]**
- (d) Inspection No. 4: Drainage piping and buried utilities and trench backfilling.
- (e) Inspection No. 5: Subgrade and slope work.
- (f) Inspection No. 6: Gravel grade and compaction.
- (g) Inspection No. 7: Crushed gravel and compaction.
- (h) Inspection No. 8: Final ditchwork, slope work, landscaping and erosion control.
- (i) Inspection No. 9: Headwall inspection.
- (j) Inspection No. 10: Binder course.
- (k) Inspection No. 11: Wearing course.
- (l) Inspection No. 12: Remaining work.

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- (m) Inspection No. 13: Final walk through. Preparation of punch list.
- (n) Inspection No. 14: Follow up.
- (2) Any reductions in the number of inspections must be approved by the Planning Board in consultation with the Town Engineer. **[Amended 1-23-1996 by Ord. No. 96-13]**
- (3) The testing schedule and methods of all materials shall be approved by the Town Engineer.
- (4) The Town Engineer may require additional inspections of the improvements based on the construction methods used, time of year or other variables. **[Added 1-23-1996 by Ord. No. 96-13]**
- D. Acceptance procedure. Upon satisfactory completion of Inspections Nos. 1 through 14, the developer shall request that the Town Engineer and Road Agent recommend acceptance of the improvements to the Board of Selectmen as outlined in § [203-47B](#). **[Amended 8-24-1999 by Ord. No. 99-3]**
- E. If, upon inspection, any of the required improvements have not been constructed in accordance with the Planning Board's construction standards and specifications, the developer shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a performance bond, the bonding company and the developer shall be severally and jointly liable for completing the improvements according to specifications. Any costs incurred by the town as a result of the inspection procedures shall be borne by the developer and failure to pay such costs may result in the calling of the financial guarantee by the town.

### **§ 203-47. Release or reduction of financial guarantee.**

- A. Reduction of financial guarantee. A financial guarantee may be reduced upon actual dedication of public improvements and then only to the ratio that the public improvement dedicated bears to the total public improvements for the development. In no event shall a financial guarantee be reduced below twenty-five percent (25%) of the principal amount until the entire project has been completed.
- B. Certificate of satisfactory completion. The Board of Selectmen and Planning Board will not accept final dedication of required improvements, nor release a financial guarantee, until the Board of Selectmen, or their designated agent, has submitted a certificate stating that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the Board of Selectmen, or their designated agent, through submission of detailed "as built" plans of the development, indicating locations, dimensions, materials and other information required by the Planning Board, that the layout of the line and grade of all public improvements and lot monuments is in accordance with the construction plans for



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the improvements to a tract of land and that a title has been furnished to and approved by the Planning Board stating that the improvements are ready for dedication to the Town of Pembroke and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the town may thereafter accept the improvements for dedication in accordance with the established procedure.

### **§ 203-48. Maintenance of improvements. [Amended 8-24-1999 by Ord. No. 99-3]**

Where roadways in subdivisions under construction have not yet been accepted by the Town, but will be accepted by the Town upon completion of the roadway construction, the Town of Pembroke shall provide the following municipal services to the affected residents:

- A. Residential trash and garbage pick up: subject to § [133-2](#) of the Code of the Town of Pembroke. This residential trash does not include leaves, brush, construction material, old furniture, etc.
- B. Winter roadway maintenance: This roadway maintenance shall include snow plowing, roadway sanding and salting. The developer shall pay a fee to the town for this service, calculated at the rate to be determined by the Town Engineer and Road Agent. This fee is to be paid to the town by November 1 of each year.

### **§ 203-49. Off-site improvement agreements.**

All projects involving the construction of off-site improvements shall be subject to the execution of an off-site improvement agreement. The agreement shall stipulate:

- A. The party responsible for the off-site improvements;
- B. The cost of the improvements and the type of financial guarantee to be used to assure the completion of the improvements; and
- C. A description of the off-site improvements.

### **§ 203-49.1. Issuance of Building Permits and Certificates of Occupancy. [Added 11-24-1998 by Ord. No. 98-7]**

- A. No building permits for a minor site plan shall be issued prior to the plan being endorsed by the Planning Board Chairman and no building permits for a major site plan shall be issued prior to the filing of the endorsed plan with the Merrimack County Registry of Deeds. **[Amended 7-26-2011 by Ord. No. 11-1]**
- B. In addition to the Building Code requirements, the following site improvements, conditions and commitments from the developer shall be in effect prior to the issuance of certificates of occupancy: **[Amended 8-24-1999 by Ord. No. 99-3]**

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- (1) The base course of pavement shall be constructed in accordance with town specifications.
- (2) All driveway aprons shall be constructed to the limit of the town right-of-way.
- (3) All sidewalks shall be constructed as required and shall terminate in ADA compliant handicapped ramps.
- (4) All services shall be stubbed to the edge of the town right-of-way.
- (5) The site drainage system shall be constructed and functioning as designed.
- (6) Temporary and permanent erosion control measures for the affected area of the site must be constructed as specified on the approved construction plans or as ordered by the town's Engineer.
- (7) It is the intent of the town to have the subdivision roadway constructed with permanent curbing (where required) and base course prior to the winter maintenance season. The required length of curbing shall be the distance of the affected subdivision road requiring curbing (including both sides of the road) to the furthest lot for which a certificate of occupancy is requested. Prior to the issuance of any certificates of occupancy, the developer shall construct the permanent curbing (where required) and full width of base course hot bituminous pavement or make a cast "curbing" deposit to the town equal to \$50.00 per linear foot of subdivision roadway requiring curbing (as described above). At the time the permanent curbing shall be constructed and approved by the town's agent, the equivalent value of "curbing" deposit monies shall be refunded. In the event that the required permanent curbing is not constructed by September 1, the town shall use the "curbing" funds to construct the required permanent or temporary curbing.

Note: No gaps in the curbing, except for drives shall be permitted.

- (8) The developer must provide a paved temporary turn around for snow plow trucks. The turn around design and location must be approved by the Town Engineer.
- (9) The right-of-way of the affected subdivision roadway shall be clear of construction materials, debris, contractor's equipment, and storage trailers. Also, the side slopes shall be rough graded to within one foot of finished grade, all side road drainage ditches constructed substantially to grade and functioning as designed.
- (10) Catch basin grates and public or private utility frames/grates shall be constructed so as not to extend above the base course pavement.

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- (11) The required regulatory and warning signs shall be constructed by the developer.
- (12) All proposed site improvements as shown on the approved plan; including, but not limited to, landscaping, parking lot paving and striping, etcetera. **[Added 7-26-2011 by Ord. No. 11-1]**

### **§ 203-49.2. Certificates of Occupancy with Incomplete Site Plan Improvements for Both Minor and Major Site Plans. [Amended 7-26-2011 by Ord. No. 11-1]**

- A. In the event that the applicant is entitled to a Certificate of Occupancy under the Pembroke Building Code, except for work that cannot or will not be completed because of weather-related or other reasons (for example, landscaping and paving postponed due to cold weather or the applicant wishing to occupy a building without landscaping or signage), then the applicant shall post a financial guarantee in an amount equal to 125% of the cost of completing the work required. The Town Planner may deny request for a Certificate of Occupancy if he/she determines that the work could have been completed within the usual construction season. Such denial may be appealed by the applicant to the Planning Board, which shall either affirm or reverse the decision of the Town Planner.
- B. The amount of the financial guarantee shall be determined by Town Engineer as being 125% of an amount sufficient to complete the unfinished improvements. The duration of the guarantee shall be determined by the Town Planner. Appeals to the amount and duration of the financial guarantee shall be made to the Pembroke Planning Board.
- C. The financial guarantee shall be released when the Town Planner is satisfied that the applicant has complied with all requirements set forth in the Notice of Decision.

## SITE PLAN REVIEW

### ARTICLE VIII - Administrative Provisions (§ 203-50 - § 203-64)

#### § 203-50. Amendments.

These regulations may be amended, changed, altered, added to or rescinded from time to time whenever this action is deemed necessary or advisable by the Planning Board, but not until public hearing on the proposed amendment, change, alteration or rescission and a statement, signed by the Chair or Vice Chair of the Planning Board, indicating any variations thus authorized from such regulations as were previously filed, shall be transmitted to the Town Clerk.

#### § 203-51. Fee schedule for site plan review. [Amended 9-23-2003 by Ord. No. 03-06-PB; Amended 06-22-2010, 09-25-2012; Amended 5/5/14 Board of Selectmen]

- A. The following fee schedule is hereby established for minor and major site plan review:

Application & Review Fees	Fee Per Unit
Multifamily	\$100 per new or redeveloped unit
New Commercial/Industrial/Business	\$100 per 1,000 sf gross floor area
New Developed Area (No Buildings)	\$25 per 1,000 sf gross developed area
Reuse of Existing Commercial/Industrial/Business or Developed Area	\$150 flat fee
Wireless Co-Location	\$100 per project
New Wireless Tower	\$500 per project
Administration Fees	Fee Per Unit
Certified Notices of Hearing	\$10 per address
Certified Notices of Decision	\$10 per applicant
Recording Fee for Plans	\$50 per sheet(Condominium Plans only)
Recording Fee for Plans (for each additional attempt)	\$25 per sheet (Condominium Plans only)

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Recording Fee for Documents	\$25 per document (includes Town easements, etc)
Newspaper Legal Notice	\$120 minimum per notice, subject to adjustment based upon actual cost via legal escrow account
<b>Engineering &amp; Legal Escrow Fees</b>	<b>Fee Per Unit</b>
Minor Site Plan	\$200 per project (Engineering estimate will determine remaining fee. Application will not be accepted as complete without entire fee.)
Major Site Plan	\$500 per project (Engineering estimate will determine remaining fee. Application will not be accepted as complete without entire fee.)

<b>State LCHIP Surcharge</b>	<b>Fee Per Unit</b>
Any Recorded Plan Set	\$25 per plan set (make check out to Merrimack County Registry of Deeds)

- B. All expenses incurred by the Town of Pembroke in processing an application for Board action shall be borne by the applicant. All fees must be paid by the applicant at the time of filing the application with the designated agent of the Board. Failure to pay all these expenses and fees as specified will be valid grounds for refusal to accept the application as complete or for disapproval of the application.
- C. State LCHIP Surcharge-LCHIP fees shall be submitted when final plans and Mylars are submitted for signature. No plans will be signed if LCHIP fees have not been paid in full. **[Added September 25,2012]**

### **§ 203-52. Planning Board application form.**

The Planning Board shall adopt a site plan application form which shall be considered a part of these regulations.

### **§ 203-53. Special investigations.**

The Planning Board, at it's [sic] discretion, may either request an applicant to prepare special studies of public facilities and utilities, natural resources, environmental quality issues or fiscal and economic impacts at the applicant's expense, or contract with a consultant to perform these studies at the applicant's expense.

**§ 203-54. Review of applications.**

In the review of applications, the Planning Board may contract with consultants to review all or portions of any application, an environmental impact statement or any special study requested by the Planning Board. This review shall be at the applicant's expense.

**§ 203-55. Enforcement.**

The Town Planner and Code Enforcement Officer are charged with ensuring that the development is constructed as approved by the Planning Board. Minor variations of the plan may be approved by the enforcement staff depending on the complexity of the change. All other variations to the site plan will require the applicant to return to the Planning Board for an approval of those changes.

**§ 203-56. Civil enforcement.**

Appropriate actions and proceedings may be taken by law or in equity to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises and these remedies shall be in addition to the penalties as set forth below.

**§ 203-57. Violations and penalties.**

The town adopts the provisions of RSA 676:17 in the enforcement of any violations of these regulations. Any person, corporation or other entity who fails to comply with or violates any of these regulations shall be subject to a fine not to exceed the maximum provided for in RSA 676:17. A separate offense shall be deemed to have occurred on each day that a violation exists or a condition prohibited hereunder shall continue to exist.

**§ 203-58. Appeals. [Amended 1-23-1996 by Ord. No. 96-14]**

- A. Pursuant to the requirements of RSA 676:5 (III) a decision made by the Planning Board based solely upon the Zoning Ordinance **Editor's Note: See Ch. [143](#), Zoning.** may be appealed to the Zoning Board of Adjustment.
- B. All other decisions made by the Planning Board may be appealed to the Superior Court as provided by New Hampshire RSA 677:15, as amended.

**§ 203-59. Waivers.**

- A. General. Where the Planning Board finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations or the purposes of this section [sic] may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations so that substantial justice may be done and the public interest secured, provided that such waiver shall not have the effect of nullifying the intent and purpose of these regulations.

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- B. Conditions. In approving waivers, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.
- C. Procedures. A petition for any such waiver shall be submitted in writing by the applicant at the time when the application is filed for the consideration of the Planning Board. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the petitioner.

### **§ 203-60. Plan revocation.**

Failure on the part of the applicant to adhere to any conditions of approvals, construction contrary to what was approved by the Planning Board or other conditions as outlined in RSA 676:4-a (I) shall constitute grounds for the invocation of RSA 676:4-a and the revocation of the site plan approval.

### **§ 203-61. Consent to Board inspection.**

By filing an application, the applicant consents to the inspection of the property by Board members and/or agents of the Board at reasonable times and in a reasonable manner.

### **§ 203-62. Prohibited actions.**

Once an application for site plan has been submitted to the Planning Board the applicant shall not undertake any of the following actions until the applicant has received final approval:

- A. Transfer of lots in unapproved subdivisions. The sale of or transfer of any land, before a final plat of said site plan in question has been approved by the Planning Board and recorded with the County Registry of Deeds shall be prohibited and subject to the provisions and penalties of New Hampshire state law.
- B. Building permit. No building permit shall be issued for the construction of any building or structure located on a lot or plat subdivided or sold in violation of the provisions of these regulations.
- C. Preapproval construction prohibited. No person, corporation or other entity shall do any of the following acts on any land in the Town of Pembroke until a final plat of that land has been submitted to and approved by the Planning Board and recorded with the County Registry of Deeds:
  - (1) Cut any trees or vegetation on any land proposed or intended for use as a site plan;

## SITE PLAN REVIEW

- (2) Remove any stumps, topsoil or other materials from any land proposed or intended for use as a site plan;
- (3) Bury any stumps, topsoil or other yielding material on any land proposed or intended for use as a site plan;
- (4) Level or otherwise change the grade of any land proposed or intended for use as a site plan;
- (5) Construct any street to service a proposed or intended site plan; or
- (6) Install any utilities to service a proposed or intended site plan.

### **§ 203-63. Certain representations deemed conditions.**

Representations made at a public hearing or material submitted to the Board by an applicant for a site plan approval, concerning features of proposed buildings, structures, parking or use which are subject to regulation, shall be deemed as to be conditions of approval.

### **§ 203-64. Saving provision.**

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the town under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm or corporation, by lawful action of the town except as shall be expressly provided for in these regulations.

Attachments:

[203a Minor Site Plan](#)  
[203b Major Site Plan](#)

5/5/14