

ZONING ORDINANCE



TOWN OF KENSINGTON, N.H.

ADOPTED JANUARY 20, 2015

**LAND USE ORDINANCES
KENSINGTON, NH**

TABLE OF CONTENTS

	Page
Article I AUTHORITY and PURPOSE.....	1
Section 1.1 General	1
Section 1.2 Establish Local and Land Use Boards	2
Article II DEFINITIONS	3
Article III ESTABLISHMENT OF DISTRICTS and USES	7
Section 3.1 District of Commercial and Industrial Use	7
Section 3.2 District of Residential and Agricultural Use (RA)	12
Section 3.3 Uses Other than Single Family Dwellings.....	14
Section 3.4 Senior Housing Ordinance	20
Section 3.5 Open Space Subdivision	26
Article IV GENERAL STANDARDS	31
Section 4.1 Signs.....	31
Section 4.2 Driveways and Other Accesses to the Public Way	35
Section 4.3 Miscellaneous Provisions.....	38
Article V SPECIAL USE STANDARDS	40
Section 5.1 Telecommunications Facility.....	40
Section 5.2 Wind Energy Conversion Systems	49
Section 5.3 Flood Plain Management Ordinance.....	51
Article VI NATURAL RESOURCE PROTECTION STANDARDS	60
Section 6.1 Wetland and Hydric Soils Conservation District.....	60
Section 6.2 Steep Slopes District.....	65
Section 6.3 Aquifer Protection District.....	67
Article VII HEALTH STANDARDS	78
Section 7.1 Septic Regulations	78
Article VIII BUILDING ORDINANCE.....	86
Section 8.1 Building Permit.....	86
Article IX AMENDMENTS, CONFLICTS AND PENALTIES, ADMINISTRATION, SEVERABILITY AND EFFECTIVE DATE.....	96
Section 9.1 Amendments	96
Index	

Maps

Soils.....75

Current Lane Use76

Wetlands77



LAND USE ORDINANCES

KENSINGTON, NH

ARTICLE I: AUTHORITY AND PURPOSE

In order to promote the health, safety, prosperity, appearance, convenience, economy and general welfare of the community, the following Ordinance is hereby enacted by the voters of Kensington, New Hampshire. This Ordinance is in accordance with Chapters 672 and 677, New Hampshire Revised Statutes Annotated. (05/12/1959)

SECTION 1.1 GENERAL

The articles of this Ordinance were adopted at Town Meetings, May 12, 1959; March 14, 1961; March 11, 1969; March 9, 1971; March 6, 1973; March 4, 1975; March 8, 1977; March 16, 1979; March 11, 1980; March 12, 1985; March 10, 1987; March 20, 1995; March 11, 1997; May 2, 1996; March 14, 2000; March 13, 2001; March 12, 2002; March 11, 2003; March 9, 2004; March 8, 2005; June 2, 2005; November 1, 2005; March 14, 2006; September 24, 2007; March 11, 2008; March 10, 2009; March 8, 2011; and March 12, 2013., add March 11, 2014

- A. This Ordinance shall take effect upon passage. (05/12/1959)
- B. Any authorized use of land may continue in its present use providing it does not create conditions hazardous to public health or safety as judged by the Selectmen and at least one qualified specialist as specified.
- C. After passage of this ordinance, it shall be the duty of the Board of Selectmen to enforce the provisions herein. (05/12/1959)
- D. Upon the well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of the ordinance. A written warning will be issued by the Selectmen. If, after a reasonable time limit set by the Selectmen, the ordinance is still being violated, the violator shall be subject to a fine not exceeding \$100 for each violation. Each day that the violation is allowed to continue constitutes a separate offence. The total fine cannot exceed \$500. The Board of Selectmen may institute in the name of the town any appropriate action or proceedings to prevent, restrain, correct or abate violations of this ordinance.
- E. This ordinance may be amended by majority vote of any legal Town Meeting at which such amendments are properly presented in accordance with the procedure prescribed by the N.H> RSA Chapter 675 as amended from time to time. (03/11/1969)
- F. The invalidity of any provision of the ordinance shall not affect the validity of any other provision.

SECTION 1.2 ESTABLISH LOCAL LAND USE BOARDS

- A. The Board of Selectmen is authorized to appoint an Inspector of Buildings who shall hold the office for a term of one year. **(03/09/1971)**

- B. To provide for a means of appeal by any property owner a Board of Adjustment shall be created to adjust any grievances. The Selectmen shall appoint to the Board of Adjustment five members conforming in duties to the provisions of Chapter 673, N.H. Revised Statutes Annotated. The Selectmen shall make appointments to fill vacancies occurring on the Board of Adjustment. The members of the Board of Adjustment shall serve without remuneration. **(05/12/1959; 03/12/1985)**

- B. The Planning Board is authorized and empowered to disapprove in its discretion plats showing new streets or the widening thereof, or parks and to authorize the town clerk as the municipal officer to issue on behalf of the Planning Board when appropriate, a certification of its failure to take action on approval or disapproval of plat submitted to it and upon adoption of this article it shall be deemed the duty of the Town Clerk to file with the Registry of Deeds of the County of Rockingham, a certificate or note showing that the said Planning Board has been so authorized giving the date of authorization, as provided in Section 19-20 inclusive. Chapter 674 of the New Hampshire Revised Statutes Annotated. **(03/14/1961)**

ARTICLE II: DEFINITIONS

(Amended 3-11-2014)

Abutter – For the Town of Kensington an abutter shall be any property owner whose property is located in New Hampshire and within two hundred (200) feet of any property line, including across a street or stream, of a land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.

Agricultural use – shall mean land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silvaculture and animal and poultry husbandry.

Aquifer – for the purpose of this Ordinance, aquifer means a geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies.

Billboard – a sign which directs attention to a business, product, activity or service which is not conducted, sold or offered on the premises where such a sign is located.

Boarding or Rooming House – a dwelling in which living space without kitchen facilities is rented to three or more persons with or without meals.

Building – any structure having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons or animals.

Business Signs – a sign which directs attention to a business, profession, service, product, activity or entertainment sold or offered upon the premises where such a sign is located.

Cluster Dwelling – a group of two or more dwelling units sharing a common lot whether or not in a planned unit development.

Commercial – is a business involved in the exchange, buying or selling of commodities and/or services as a merchant for financial profit whether wholesale or retail, exclusive of agricultural products.

Driveway – a single access to and from a public way with separate entrance and exit lanes, except in the case of dwellings in which case a driveway need not have separate entrance and exit lanes unless required as a condition of the building permit.

Dwelling Unit – means a single unit providing complete independent living facilities, eating, cooking and sanitation.

Frontage – means that portion of a property line bordering on a highway street or right-of-way.

Groundwater – all the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

Groundwater Recharge – the infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lake, streams and wetlands.

Hazardous or Toxic Materials – includes but is not limited to volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, pesticides, herbicides, solvents and thinners and such other substances as defined in N.H. Water Supply and Pollution Control Rules, Section Ws 410.01(1), in N.H. Solid Waste Rules He-P 1901.03(v) and in the code of Federal Regulations 40 CFR 261.

Hazardous Waste – solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes which may cause or contribute to an increase in mortality or illness required as a condition of the building permit.

Home Occupation – is a business located in a single dwelling unit which displays or sells stocks of goods, wares, services or merchandise, to the general public including among others; retail stores, shops, salesrooms, professional services and where such use is clearly incidental to the use of the building as a residence.

Industrial – is a business enterprise which employs a labor force to manufacture, process or supply a product for wholesale distribution.

“In-Law” Apartment – a dwelling unit attached to a primary dwelling unit for the purpose of housing an immediate family member with special needs, such as an elderly relative or a handicapped relative.

Junk Yard – an unroofed area where waste materials are bought, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags and bottles. (See also RSA 236:112)

Leachable Wastes – waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

Lot – means a parcel of land at least sufficient in size to meet the minimum requirement for use coverage and area and to provide required yards and other open spaces. An undersized lot is permissible if it passes state standards for soil conditions and substantially meets the requirements here and if in existence at time of passage of this ordinance.

Machinery Junk Yard – any junk or field used as a place of storage in which there is displayed to the public view junk machinery or scrap metal that occupies an area of five hundred (500) square feet or more.

Manufactured Housing – as defined by RSA 674:31-any structure transportable in one or more sections, which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length or when erected on a site is 320 square feet or more and which is built on a permanent chassis

and designed to be used as a dwelling with or without a permanent foundation and connected to the required utilities which include plumbing, heating and electrical heating systems contained therein.

Mining and Excavation Operations – any venture, private or commercial which uses land or any portion of land or slopes for the removing of sand, gravel, rock, soil or construction aggregate from the premises, the purpose of which is primarily financial profit rather than incidental to the lawful construction or alteration of a building or change in landscaping, or part of agricultural activities.

Mining of Land – the removal of geologic materials such as topsoil, sand and gravel, metallic ores or bedrock to be crushed or used as building stone.

Motor Vehicle Junk Yard – any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways or used parts of motor vehicles or old iron, metal, glass, paper, cordage or other waste or discarded for second hand material which has been a part or intended to be a part of any motor vehicle, the sum of which parts or material shall be equal in weight to two or more motor vehicles. Motor vehicles junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cup up the parts thereof. As per RSA 236:112.

Multi-Family Apartment House – means a building or portion thereof containing more than two dwelling units and not classified as a one or two family dwelling.

Non-Conforming – means use of land, building or premises which is not a use permitted by the provisions of this ordinance for the district in which such land, building or premise is situated.

One Family Dwelling – a building containing one dwelling unit.

Parking Space – an area having a width of not less than nine(9) feet and a length of not less than twenty (20) feet for a passenger vehicle and not less than fifteen (15) feet wide and forty (40) feet in length for each truck, tractor trailer combinations or bus exclusive of traffic.

Permanent Resident – means an individual or family using any building continuously as a residence for a period of six months or more.

Qualified Soil Scientist – a person qualified in soil classification and who is recommended or approved by the Rockingham County Conservation District Supervisors.

Recharge Area – the land surface area from which groundwater recharge occurs.

Right-of-Way – means and includes all present and proposed town, state and federal highways and the land on either side of same as covered by statutes to determine the width of the right-of-way.

Road Frontage – the length of the lot bordering on and providing access to a Class V (or Better) highway but excluding limited or restricted access highways, or a street, as defined and as used in Title LXIV, Planning and Zoning, of the Revised Statutes Annotated, shown on a plat approved by

the planning board. Footage requirements as specified by this ordinance shall be continuous. In the case of corner lots, frontage and front lot lines shall mean the dimensions and lines on both intersecting streets.

Scenic Roads – any one of several roads in the Town which, in accordance with RSA 321:157 have been so designated by the townspeople and thereby afforded the protection of RSA 231:138 from any reconstruction with respect thereto.

Septic System Inspector/Test Pit Witness – an agent of the Town responsible for inspecting the plans and installation of all septic systems in the Town as well as being responsible for the viewing of all test pits and percolation tests.

Setback – means the distance between the nearest portion of a structure and a lot or right-of-way line whichever is closer.

Solid Waste – any discarded or abandoned material including refuse, putrescible material, septage or sludge, as defined by New Hampshire Solid Waste Rules He-P 1901.03. Solid waste includes solid, liquid, semi-solid or contain gaseous waste materials resulting from residential, industrial, commercial, mining and agricultural operations.

Structure – anything constructed or erected on or in the ground or in the water or an attachment to something having a fixed location on the ground, such as buildings, permanent or temporary, signs, carports, porches, swimming pools and other building features, including communication towers and antennas, but not including sidewalks, fences, driveways, septic systems, boundary markers, field or garden walls or embankment, retaining walls, land drainage, sediment and erosion control structure. (Added 03/13/2001)

Two-Family Dwelling – means a building containing two dwelling units.

Wood Processing Operation – the process of changing trees or tree length wooden logs into firewood, lumber or other smaller sized wooden materials for resale. This operation is a commercial venture unless 51% of the wood comes from the lot of land upon which the processing occurs or from another property located in Kensington, which is under common ownership with the lot of land upon which the processing occurs. (Added 03/12/2002)

ARTICLE III: ESTABLISHMENT OF DISTRICTS AND USES

SECTION 3.1 DISTRICT OF COMMERCIAL AND INDUSTRIAL USE (Adopted 03/10/1987; Amended 3/12/2001)

3.1.2 PURPOSE, DESCRIPTION AND SPECIFICATIONS OF THE COMMERCIAL and INDUSTRIAL USE DISTRICT

A. Purpose:

These regulations and restrictions are to provide for the orderly development and expansion of industrial and commercial businesses. Any authorized commercial or industrial use of land may continue in its present use, provided that it does not create conditions hazardous to public health or safety and providing said use was permitted by a special exception to the zoning ordinance in place prior to the time the use began on the property or predates the zoning ordinance. Those residential and agricultural uses allowed in Article III, Section 3.2 District of Residential and Agricultural Use are allowed in this District.

B. Commercial District Definition (Amended 3/9/2004, and 03/12/2013)

The Commercial and Industrial Use District (CI District) is outlined on the Official Town Zoning Map and are defined below using 2012 property tax map and parcel numbers. All properties not listed below or depicted on the Official Zoning Map as part of the CI District shall be considered to be located within the Residential and Agricultural Use District (RA District).

1. Description:

The Commercial and Industrial District (CI District) is defined using 20112 Property Tax Map and Parcel numbers for each property located within this district. The following is a list of properties or parts thereof located within said district: Tax Map 3, Lots 12, 13, 13-1, 13-2, 15, 16, 17, 17-1, 17-2, 18, 19, 21, 21-1, 22, 22-1, 22-1-2, 23, 23-1, 24, 25, 26, 27, 28 and 34. The CI district also includes parts of Tax Map 3, Lot 30, closets to Route 150 (Amesbury Road) from the frontage corner property bound at Route 150 (Amesbury Road) and South Road, which runs approximately two hundred and thirty feet (230') west along the property boundary of Tax Map 3, Lot 30, with South Road. From the end of that distance the CI district boundary line extends north to a pin set one hundred and twelve feet (112') from the frontage property boundary on Route 150 (Amesbury Road) between Tax Map 3, Lot 29 and Lot 30, to the back corner property boundary of Tax Map 3, Lot 29 and Lot 30.

3.1.3 USES PERMITTED

- A. Service and professional businesses, including retail shops, stores, personal service shops, research and development businesses and engineering services.
- B. Inns, guest houses, boarding houses and other establishments serving food and beverages.
- C. Funeral homes and mortuaries.
- D. Freight depots and terminals.
- E. Automotive, truck and bus repair shops, provided that there shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of repair or awaiting delivery or in an enclosed structure or required in the operation of the garages or repair shops. There shall be no sale of gasoline and related fuels in this district.
- F. Light Industry, providing that they shall not cause injurious or obnoxious noise, vibration, smoke, gas, fumes, odor, dust, light, radiation, fire hazard or other objectionable conditions.
- G. Storage -- All materials, supplies and equipment except that which is offered for sale on the premises, shall be screened from view from public ways or abutting properties.
- H. Signs permitted after Site Plan Review by the Planning Board and providing:
 - 1. no business sign shall project within the limits of a public highway except when placed by the governmental unit having jurisdiction over such highway or be placed so as to obstruct the view of any highway intersection or so as to endanger traffic.
- I. Excavation operations are permitted as regulated by Chapter Five (5), Public Safety and Welfare Regulations.

3.1.4 USES PROHIBITED

- A. Billboards;
- B. Airports or heliports;
- C. Dumps, junkyards, machinery and motor vehicle junkyards;
- D. The production or storage of hazardous materials;
- E. The storage of explosive materials; and
- F. Any new use of existing buildings or premises following the passage of this ordinance unless in compliance with the conditions herein and approved by the Planning Board by Site Plan Review.

3.1.5 LAND REQUIREMENTS

A. General Requirements – In addition to other requirements in this Ordinance:

1. Determination of soil types shall be made by a Qualified Soil Scientist using high intensity soil information with on-site inspection necessary. Lots containing more than one soil type must be sized based on a weighted average;
2. The Building Inspector shall issue a permit upon the findings by the Planning Board that the proposed location, construction and operation will not injure present and prospective development in the district or the health and welfare of residence in the vicinity.

B. Site Requirements

1. The minimum lot sizes shall be two (2) acres or larger according to soil type. See #10 below.
2. Minimum frontage is two hundred and fifty (250') feet on a Town approved street or State Highway.
3. Minimum front yard setback -- 100 feet from a Town approved street or State Highway to a structure.
4. Minimum side and rear yard setback -- 60 feet to a structure.
5. Maximum height of structure -- 2 stories or 35 feet and the maximum height of the highest door or window shall be thirty-two (32) feet, measured vertically from the bottom of the window or door to the finished grade below. (Amended 03/13/2001)
6. Maximum coverage by structure and parking lots -- 60% of lot area.
7. Minimum driveway width -- 18 feet, except at an intersection, where a pavement radius of 50 feet shall be provided.
8. Maximum grade of driveway shall not exceed 5%.
9. Minimum all season safe site distance at an intersection shall be 200 feet in both directions.
10. Minimum lot sizes for this zone shall be determined by application of the following formula, utilizing specific soil types and slopes as found in the Town of Kensington Subdivision Regulations. In no case will a lot be less than two (2) acres.

$$\text{Required Minimum Lot Size} = \frac{(Q) (RLS)}{2000}$$

Note: Q = gallons of wastewater discharged per day and shall be based on the N.H. Water Supply and Pollution Control Commission standards found in the “Design Standards for Small Public Water Systems”. An engineer may be employed by the Town to determine this amount at the owner’s expense.

RLS: Required lot size from Table 1 of Subdivision Regulations for Kensington plus land area needed for protective radius for a well.

11. Screening and buffering requirements.

- a. where land in this district abuts land in the residential/agricultural district, the width of the screened area shall be at least 50 feet.
- b. the screened area shall abut the lot line and be densely planted with shrubs or trees which are naturally occurring or at least three (3) feet high at the time of planting and are of a type which may be expected to form a year round dense screen at least five (5) feet high within 3 years.

The plant material shall be maintained in a healthy condition. Where, because of intense shade or soil conditions, the planting screen cannot be expected to thrive, a visually solid wooden fence or masonry wall be substituted provided that:

- i. the remaining land required for screening is added to the buffer strip;
- ii. required planting shall take place prior to occupancy or if not possible because of the season of the year, at the next planting season; and
- iii. the buffer area not covered by the screened area shall be covered with ground cover or landscaped.

12. Off street parking space shall be adequate for the proposed use.

- a. parking space requirements for a building which has more than one use shall be computed for each use.
- b. one off street parking space shall be required for each occupant, employee, visitor and patron and shall be limited to motor vehicles and bicycles. The storage of merchandise, motor vehicles for sale or the repair of motor vehicles is prohibited in this area.
- c. require off street parking shall be provided on the same lot with the principle use at such time as any building or structure is erected, externally enlarged or increased in capacity.

13. Soil erosion shall be kept to a minimum by providing satisfactory sediment and run-off water control. This shall meet the design standards and specifications set forth in the current “Erosion and Sediment Control Design Handbook” as adopted by the Rockingham County Conservation District. This shall include but not be limited to the following requirements:

- a. natural vegetation shall be retained wherever possible and protected and supplemented;
 - b. storm drainage systems shall permit unimpeded flow of storm drainage from and off of parking lots and driveways; and
 - c. the proposed site shall accommodate any increased run-off created by changed soil or surface conditions.
- 14. Sewer facilities must provide for the disposal of solid liquid and gaseous waste in compliance with the rules and regulations of the N.H. Water Supply and Pollution Control Commission. No solid, toxic or hazardous waste may be stored in this district.
- 15. Water supply for fire protection is required for any commercial or industrial business that employs more than forty (40) people during any one working shift or has a gross floor space greater than 6500 square feet. This water supply shall be capable of delivering not less than one thousand (1000) gallons of water for a period of not less than one hour the year round. This supply shall be connected to a series of hydrants which will provide for a water supply within one thousand five hundred (1500) feet of each outside wall of the structure or structures.

3.1.6 OTHER USES PERMITTED BY SPECIAL EXCEPTION SUBJECT TO SITE PLAN REVIEW (Amended 03/09/2004)

- A. The Zoning Board of Adjustment will consider special exception applications for uses other than those specifically allowed in this district pursuant to Section 3.1.3 or specifically prohibited in this district pursuant to Section 3.1.4.
- B. Special exceptions shall be granted only if found by the Zoning Board of Adjustment to comply with the following requirements and other applicable cable requirements as set forth in this Ordinance.
 - 1. That the use is so designed, located and proposed to be operated that the public health, safety and welfare and convenience will be protected;
 - 2. That the use will be compatible with adjoining development and the general characteristics of the district where it is to be located;
 - 3. That adequate parking, landscaping and screening (including but not limited to screening of all lighting and signage associated with the proposed use) is provided as required herein;
 - 4. That the applicant for a Special Exception agrees as a condition of the Special Exception to obtain Planning Board approval of the Site Plan prior to applying for a building permit; and
 - 5. That if the application for Special Exception is for the expansion of a non-conforming use, than the granting of such exception will not adversely affect abutting or nearby property values and that the non-conforming use is not hazardous by its nature.

3.1.7 SITE PLAN REVIEW REQUIRED

Site Plan Review by the Planning Board will be required for any landowner in this District who uses the site for commercial or industrial business or on which there is a multi-family dwelling unless such use existed at the time of the original passage of this Article in accordance with Kensington's Site Plan Review Regulations.

SECTION 3.2 DISTRICT OF RESIDENTIAL AND AGRICULTURAL USE – (RA)

3.2.1 GENERAL PURPOSE

These regulations and restrictions are for the purpose of regulating the use of land and the location and construction of buildings in the Town of Kensington, while insuring safety from fires, protection of water and other natural resources and preservation of rural charm.

3.2.2 SPECIFIC REQUIREMENTS OF THE RESIDENTIAL – AGRICULTURAL DISTRICT

A. Restrictions

1. There shall be no more than one single-family dwelling or residence on a lot of record. (03/11/1980)
2. Commercial and industrial uses, mining excavation operations, home occupation, two family dwellings, cluster dwellings and multifamily apartment houses are prohibited in this district except as provided in Section 3.3.
3. Trailer parks and mobile home parks are specifically prohibited in this district.
4. Racetracks or test tracks for motor vehicles whether ovals, drag strips or other configurations are prohibited within this district.
5. All agricultural use is permitted in this zone except as restricted below:
 - a. Kennels and veterinary hospitals are permitted subject to the requirements of the commercial use of land. However, the boarding, breeding, training, treatment or disposing of racing dogs shall not be permitted.
 - b. Mink farms are specifically prohibited.

B. Land Requirements

1. The lot area of any dwelling or residence shall not be less than two (2) acres except that one dwelling may be located on a lot of less than two acres providing this lot has been duly recorded in the County of Rockingham Registry of Deeds at the time of passage of this ordinance. (1959) (Amended 03/08/1997)

2. Every building lot shall have a minimum frontage of two hundred (200') feet abutting upon a publicly maintained street or road, subject to RSA 674:41 II. (03/14/1961) (Amended 03/08/1997; 03/12/2002)
3. Building lots must meet the following requirements based on soil conditions:
 - a. All test pits and percolation tests shall be performed in the presence of a qualified test pit inspector approved by the Selectmen;
 - b. Soil types determine lot sizes according to the requirements of Table #1 of Subdivision Regulations for the Town of Kensington. Determination of soil types shall be made by qualified Soil Scientist using published soil data with on-site inspection as necessary;
 - c. All septic systems must meet the minimum standards imposed by the New Hampshire Water Supply and Pollution Control Commission. After installation, the septic system must also be approved by the test pit inspector before it is covered over;
 - d. No septage, waste or sludge disposal system shall be located in wetland soil as defined by the Town of Kensington Wetland Ordinance. No structure of any kind shall be placed on wetland soil as defined by the Town of Kensington wetland ordinance; and
 - e. The test pit inspector is authorized to consult with a qualified engineer prior to approving the proposed septic system. All fees applicable to this section will be charged to the builder and are payable to the inspector.

C. Site Requirements – there shall be observed the following setbacks in the construction of new structures or in the relocation of existing ones.

1. A structure or addition shall not be located nearer than 25 feet from the property lines of any a butter and not nearer than 50 feet from any structure on an abutter's property.
2. There shall be a minimum depth of 25 feet between the nearest right-of-way and any structure.

D. Building Requirements

1. Every structure including manufactured housing to be used as a dwelling unit shall have a minimum living area of six hundred and fifty (650) square feet. (03/09/1971)
2. Manufactured housing used as a dwelling unit shall be subject to all the land, site and building requirements of any other dwelling unit. These regulations shall not be construed to prohibit permanent residents from storing on their premises unoccupied vacation type trailers or so called camper bodies owned by the and used for bonafide vacation purposes. Trailers used for field office of storage in conjunction with construction projects which meet acceptable sanitary standards may be permitted by the Selectmen for periods of sixty (60) days subject to renewal as required.

3. Structure Height. The maximum height of the highest door or window shall be thirty-two (32) feet, measured vertically from the bottom of the window or door to the finished grade below. (Added 03/13/2001; Amended 03/09/2004)

SECTION 3.3 USES OTHER THAN SINGLE FAMILY DWELLINGS (03/12/1985)
(Amended 03/09/2004)

- A. Special Exceptions – Application for special exception for uses other than single-family dwellings will be made to the Board of Adjustment providing that no use will be permitted if:

1. the use could cause any adverse impacts to health, safety, morals, welfare of the residents of the Town of neighborhood property values;
2. the use is not compatible to the nature and quality of the neighborhood; or
3. the use is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, smoke, nature of the activity or other similar reasons.

For the purposes of any special exception application for business, commercial or industrial ventures, the term “abutter” shall include all owners and/or occupiers of property, any portion of which is within 300 feet of any boundary line of the property proposed for the special exception. All abutters shall be notified by the Board of Adjustment by certified mail at least ten days prior to any public hearing regarding the site. The names and addresses of the abutters shall be supplied by the applicant. In addition to the provisions of this Section 3.3, the Board of Adjustment shall require the applicant to comply with the provisions of Section 3.1, including, but not limited to Section 3.1.6

- B. Special Exception for Business, Commercial or Industrial Ventures

1. Business, commercial or industrial ventures are permitted in this district through a “special exception” as granted by the Board of Adjustment.
2. After permission through “special exception” is granted by the Board of Adjustment, the application will be referred to the Planning Board for site plan review. A permit for intended use must be issued by the Planning Board.
3. Site Plan Review – In addition to the site plan review regulations as adopted by the Planning Board, the following requirements apply:
 - a. the minimum lot size shall be 2 acres with a minimum two hundred fifty (250) feet of frontage on a town approved street;
 - b. there shall be not less than fifty (50) feet setback from a structure or a parking lot to a lot line and not less than one hundred (100) feet setback from the established right-of-way. Grass or beautification shall be present in the buffer area between the right-of-way and a structure or parking lot; and
 - c. any change in the nature of the grounds upon which the original approval was granted requires a re-application and a new public hearing as provided.

4. Signs

For the purpose of this ordinance all signs and billboards are classified as commercial use and shall be permitted only if conformity with Article IV, Section 4.1, Signs. (Amended 03/10/2009)

- a. No billboard not existing at the time of the adoption of this ordinance or during the year preceding this adoption shall be permitted. (03/12/1985)
- b. No sign shall project within the limits of a public highway except when placed by the government unit having jurisdiction over such highway or be placed so as to obstruct the view of any highway intersection or so as to endanger traffic.
- c. No sign, banner or other advertising medium not especially permitted in the foregoing paragraph and no sign over 12 square feet in area may be erected unless the Board of Selectmen shall rule that the same in a given case and location and under the conditions specified in the permit therefore is not injurious, offensive or detrimental to the neighborhood.
- d. Signs may be illuminated by external continuous white lighting only.
- e. Signs shall be limited to an overall height, including supporting structures to 15 feet above ground level.
- f. The following signs are permitted and are unrestricted:
 - i. Signs pertaining to the lease or sale of the land or buildings on which placed.
 - ii. Highway, park or other regulating signs of the Town of State of New Hampshire.
 - iii. Signs of a temporary nature advertising events sponsored by non-profit and civic organizations for the town.

C. Special Exceptions for Home Occupation

- 1. Home products and produce may be bought and sold in this district subject to the following rules and regulations, by "special exception" as granted by the Board of Adjustment.
 - a. Where permitted within a single dwelling unit and only by the person or persons maintaining a dwelling therein who are permanent residents of the Town of Kensington.
 - b. Evidence of use: does not display or create outside the dwelling any evidence of home occupation except a permitted sign not to exceed four (4) square feet in area. (Requires a sign permit)
 - c. Extent of use: does not utilize more than twenty five (25) percent of the gross floor (including basement) area of the dwelling unit.
 - d. Permitted use: such use is clearly incidental and secondary to the use of the dwelling unit for residential purposes and that adequate provisions are made for off street parking.

- e. Persons proposing a home occupation under the above conditions shall apply to the Board of Adjustment for a “special exception”. A public hearing and notification of the abutters shall be made as previously stated.
- f. **Permit required: site plan review** – after obtaining a “special exception” by the Board of Adjustment, persons proposing a home occupation shall apply to the Planning Board for approval of their plan and permission to proceed with the proposed use.
- g. Any change in the nature of the grounds upon which the original approval was granted requires a re-application and a new public hearing as provided. (Adopted 03/1994)

D. Special Exceptions for Two Family Dwelling, Multi-Family Apartment House (Amended 03/14/2000; 03/11/2003)

- 1. Two family dwellings and multi-family apartment houses and cluster development shall be allowed providing that a “special exception” has been granted by the Board of Adjustment after a public hearing and notification of the abutter as previously stated.
- 2. Site plan review – in addition to the site plan review regulations as adopted by the Planning Board, the applicant shall comply with the following:
 - a. All ordinances governing residential buildings in this district;
 - b. The minimum lot size shall be 2 acres for the first dwelling unit plus one acre per unit for each unit thereafter and also in accordance with the minimum lot size and calculations regulations. Minimum frontage shall be 250 feet for the first dwelling unit plus 100 feet for each unit thereafter.
 - c. Off street parking shall be for a minimum of 450 square feet per unit;
 - d. Building shall be limited to the ground level plus one level higher and one level lower;
 - e. All wiring, water, plumbing and septic systems shall meet the state and local requirements; and
 - f. Minimum living area of each dwelling unit shall be at least six-hundred fifty (650) square feet.

E. Special Exceptions for Mining and Excavation Operations (Amended 03/14/2000)

No mining or excavation operation to remove earth materials off site is allowed in this district without a special exception granted by the Board of Adjustment and a duly authorized permit for this use in accordance with Section 10.1, Local Regulation for Excavating and RSA 155:E.

F. Special Exception for “In-Law” Apartment (Adopted 03/14/2000)

“In-Law” apartments are permitted by special exception in the RA Zone subject to the following conditions as well as those general conditions for special exceptions enumerated in Section 3.3.

1. The primary dwelling unit and the in-law apartment must share water and septic facilities, although they may have separate electrical services and separate telecommunications services.
2. The in-law apartment must be attached to the primary dwelling unit.
3. No dwelling unit shall have more than one attached in-law apartment.
4. The owner of the property shall occupy one of the dwelling units as the owner’s primary residence.
5. The occupant(s) of the in-law apartment shall be an immediate family member of the occupant of the primary dwelling unit.
6. The living area of the in-law apartment shall not be more than one-third of the living area of the entire dwelling, nor shall it contain more than one bedroom, nor shall it be less than 350 square feet in heated living space.
7. Prior to any renovations or construction the owner shall provide evidence to the Town Board of Health that septic facilities are adequate for two dwelling units with the number of bedrooms contained herein.
8. The in-law apartment shall conform to all applicable electrical, structural, water and sanitary standards for residential buildings.
9. Two off-street parking spaces must be provided for each unit; two of said four spaces shall be freely accessible.
10. In-law apartments shall be required to have a Certificate of Occupancy before occupancy.
11. A copy of the letter from the Board of Adjustment authorizing the special exception shall be recorded at the Rockingham County Registry of Deeds, indexed under the name of the property owner and evidence thereof shall be presented to the Building Inspector prior to the issuance of a Certificate of Occupancy for said in-law apartment. All such special exceptions will contain a provision which states substantially as follows: “Upon the cessation of occupancy by an immediate family member, the owner hereby acknowledges and purchasers are put on notice, that the apartment is to be used by immediate family members only and may not be occupied by others. The fact of a second dwelling unit having been constructed, with separate kitchen and bathroom facilities, shall not be used as grounds for obtaining a variance to permit the apartment to be rented to other than family members”.

G. Special Exceptions for Multi-Family Housing for the Purpose of Affordable/Workforce Housing per NH RSA 674:58-61 (Adopted 03/10/2009)

1. Multi-family for the purpose of affordable/workforce housing per NH RSA 674:58-61 shall be allowed in the district of commercial and industrial use provided that a “special exception” has been granted by the Board of Adjustment after a public hearing and notification of the abutters as previously stated.
2. Site Plan Review – in addition to the site plan review regulations as adopted by the Planning Board, the applicant shall comply with the following:
 - a. All ordinances governing residential buildings in this district;
 - b. The minimum lot size for Multi-family housing for the purpose of workforce housing shall be 2 acres. Minimum frontage shall be 250 feet;
 - c. A minimum of two off street parking spaces shall be provided for each dwelling unit;
 - d. If not specified in this section, all land requirements, site requirements and building requirements shall conform to those established in Section 3.2.2, Specific Requirements of the Residential-Agricultural District B, C and D.
3. Affordability for the purpose of Affordable/Workforce Multi-family Developments.
 - a. Certification of Income Levels. For the purpose of Affordable/Workforce Multi-Family developments in order to ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of an affordable unit must submit copies of their last three years federal income tax returns and written certification, verifying that their annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance. The tax returns and written certification of income and assets must be submitted to the developer of the housing units or the developer’s agent, prior to the transfer of title. A copy of the tax returns and written certification of income and assets must be submitted to all parties charged with administering and monitoring this ordinance, within 30 days following the transfer of title.
 - b. Assurance of continued affordability. Affordable units offered for sale and approved by the Planning Board as part of a subdivision or site plan and subject to NH RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Kensington. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town of Kensington’s lien is indexed over time at a rate equal to the consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the combination of the housing unit’s fair market value, minus the adjusted lien value and adherence to the definitions of affordable owner-occupied housing contained in this article.

The restrictive covenant and lien shall be in a form approved by the Planning Board and shall be in effect for a minimum of 30 years upon Planning Board approval of said affordable units.

- c. Affordable housing rental units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary to hardship or other unusual conditions subject to review by the monitoring agency.
 - d. Documentation of restrictions. Deed restrictions, restrictive covenants or contractual arrangements related to dwelling units established under this Section must be documented on all plans filed with the Town's Planning Board and with the Registry of Deeds.
4. Administration, Compliance and Monitoring for the purpose of Affordable/Workforce Multi-Family.
- a. This Article shall be administered by the Planning Board in the context of Site Plan Review. Any person who applied for approval of a development that is intended to qualify as workforce housing shall file a written statement of such intent as part of the application and shall be subject to the provisions of NH RSA 674:58-61.
 - b. Certificate of Occupancy. No certificate of occupancy shall be issued for an affordable housing unit without written confirmation of the income eligibility of the tenant or buyer of the affordable housing unit and confirmation of the rent or price of the affordable housing unit as documented by an executed lease or purchase and sale agreement.
 - c. Ongoing responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of a monitoring agency of the Planning Board's choice including, but not limited to the New Hampshire Housing Finance Authority. If the Planning Board's choice for monitoring and compliance is the New Hampshire Housing Finance Authority then the owner of said affordable unit shall follow the requirements as set forth in the New Hampshire Housing Finance Authority's Model for Homeownership Affordability Retention Lien as amended.
5. Annual Report. The owner of a project containing affordable units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of affordable units have been maintained in accordance with this Article. Such reports shall be submitted to the monitoring agent or their designee and shall list the contract rent and occupant household incomes of all affordable housing units for the calendar year.

SECTION 3.4 SENIOR HOUSING ORDINANCE (Amended 03/11/2008)

The Kensington Senior Housing District shall be governed by all provisions of the Kensington Zoning Ordinance and the Kensington Subdivision Regulations unless pre-empted by the provisions below.

A. Authority and Purpose. The purpose of this ordinance is to permit the development of affordable housing specifically suited to address the special housing needs of the elderly. It is in the public interest and for the general welfare of the Town to permit the development of such housing throughout the community, in appropriate locations. It is the purpose of this ordinance to encourage housing that will enable the residents of Kensington to continue to live in their community as their housing needs change over time. This ordinance was established in order to meet the goals related to housing set forth in the Kensington Master Plan. Additionally, in implementing this ordinance, Kensington has considered the region's affordable housing need as defined in the Rockingham Planning Commission's Regional Housing Needs Assessment. This ordinance is based on the authority of NH RSA 674:21 I(k), Inclusionary Zoning.

B. Applicability. All permanent resident or occupants shall be at least 62 years of age. Occupant shall mean any person who stays overnight in a unit for more than twenty-one days in any sixty-day period or for more than 30 days in any 12-month period. The over 62 age restriction shall not apply to employed caretakers as defined in this ordinance who stay overnight to provide nursing or physical assistance care to a unit resident in accordance with a medical evaluation, that such care is necessary or to a family member who provides such care or to related family members who are over the age of twenty-one and who have a physical or mental disability as determined by applicable law. No more the one caretaker whether a family member or a employee may stay with the permanent resident.

C. Definitions:

Affordable Owner-Occupied Housing. Housing in which the total cost of mortgage plus principal and interest, mortgage insurance premiums, property taxes, association fees and homeowners insurance does not exceed 30 percent of the maximum allowed income of the purchaser. The calculation of housing costs shall be based on current taxes, a 30-year fixed rate mortgage, a 5 percent down payments and prevailing mortgage rates within the region.

Area Median Income (AMI) is the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which Kensington belongs, as it is established and updated annually by the United States Department of Housing and Urban Development.

Assets – as defined as “Net Family Assets by 24 CFR Part 5, Subpart F and as amended from time to time.

Income – as defined as “Annual Income” by 24 CFR Part 5, Subpart F and as amended from time to time. **The definition of income considers both way income and assets.**

D. Assurance of Continued Affordability. In order to qualify as affordable housing under this ordinance, the developer must make a binding commitment that the affordable housing units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction, restrictive covenant or a contractual arrangement through a local, state or federal

housing authority or other non-profit housing trust or agency. For the 30-year term, the deed restriction, restrictive covenant or contractual arrangement established to meet these criteria must make the following continued affordability commitments:

Affordable housing units offered for sale shall require a lien, granted to the Town of Kensington, to be placed on each affordable unit. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the Consumer Price Index (CPI). Future maximum resale values shall be calculated at the fair market value minus the CPI adjusted lien value. Subsequent sales are not limited based in income targets, but the combination of maintenance of the municipality's lien and adherence to this ordinance's definition of Affordable Owner-Occupied Housing for a period of 30 years.

Note: This definition is required by the NHHFA is the community wishes to have NHHFA Administer their ordinance. Alternate methods for continued affordability exist, such as the Workforce Housing Coalition for the Greater Seacoast's "Affordable Housing Restrictive Covenant and Agreement" which requires limiting equity appreciation to an amount not to exceed 25 percent of the increase of the affordable housing unit's value, as determined by the difference between fair market appraisal at the time of purchase of the property and a fair market appraisal at the time of resale, with such adjustment made by the seller and necessary costs of sale.

- E. Location. Affordable Senior Housing Developments may be located on any parcel, but location must be based on consideration and review by the Planning Board of the following factors:
1. Proximity to municipal fire and safety services including accessibility and consideration of flood-prone access routes.
 2. Proximity of community services. The location of elderly housing developments must be based on a consideration of the proximity of Kensington services and facilities that may meet the special needs of the elderly, including community services, medical offices or services and municipal services. The Planning Board shall take into consideration these factors when reviewing an application for elderly housing.
- F. Affordability and Density Calculation. Any development that provides 20 percent of the units as affordable housing shall be eligible for a density bonus of one unit. Every development seeking approval under this section shall provide the planning board with covenants or deed restrictions that shall provide for the perpetual continuation of the affordability of those units designated as affordable consistent with the provisions of this ordinance. Said easements, covenants or deed restrictions shall be reviewed by a qualified legal counsel on behalf of the town (at the developer's expense) and approved by the Planning Board prior to the issuance of any building/structure permit and prior to plan approval. Longer-term monitoring of affordability of the units must be arranged with a third-party approved by the Planning Board, such as the Housing Partnership or the New

Hampshire Housing Finance Authority. **In no case shall more than ten units plus the bonus unit (for a combined total of eleven allowed units) be built in any single development or project whether on separate lots or contiguous lots. No two developments approved under this ordinance may be contiguous.**

- G. Affordable Housing Definition. Affordable housing shall be defined, for the purposes of this ordinance as housing affordable to households with income up to 90 percent of the Area Median Income. In the event that the potential homebuyer's assets are composed not of income but of other assets, the developer shall develop a standard form to be used for an inventory of assets to be considered in calculating assets equivalent to the 90 percent level above.

This inventory shall be reviewed by town counsel as well as a third party designated and approved by the Planning Board such as New Hampshire Finance Authority, at the developer's expense.

- H. Maximum Percentage of Elderly Housing. The maximum number of units of elderly housing, including both affordable housing as defined above and all other units shall not exceed 5 percent of the total housing stock in the Town of Kensington. When the 5 percent limitation is reached, no additional units may be built until the overall housing stock increases such that the percentage of elderly housing units is less than 5 percent.

- I. Phasing. All elderly housing developments shall include a phasing plan in order to insure the proper installation of infrastructure and to provide for the development of the affordable units concurrently with the market-rate units. No phasing plan shall provide that the affordable units built are the last units to be built in a development. All affordable units must be constructed and completed before the final ten percent of the market rate units are completed and marketed.

- J. Exterior Appearance. The design and site layout of all elderly housing developments shall compliment and harmonize with the rural character of the Town of Kensington, shall maximize the privacy of dwelling unit and shall preserve the natural character of the land.

The exterior appearance of affordable housing units in an elderly housing development shall be made similar to market rate units by the provision of exterior building/structure materials and finishes substantially the same in type and quality. Developers are encouraged to utilize energy star fixtures, appliances and energy efficient building/structure materials to reduce the cost of living in the unit to homebuyer or renter over time. The affordable housing units must be clustered together separate from market rate units but must be dispersed among all units.

- K. Pedestrian Safety and Access. All elderly housing developments shall provide for pedestrian access within the development and to the extent possible, to off-site community facilities and neighborhoods. Pedestrian access must be physically separate from the roadway to ensure safety and provisions to maintain pedestrian ways such as sidewalks or paths must be contained in the homeowner's association documents or rental agreements.

- L. Size. The square footage of living space in any unit shall be limited to a minimum of 750 square feet and a maximum of 1,500 square feet. **Living space shall be defined as any space in the unit which could be used for sleeping, working, dressing, cooking, dining or other normal life activities and shall include unfinished as well as finished space. Hallways, closets, storage space, bathrooms and all other rooms or areas shall be included in the living space. Attic storage spaces with a ceiling height lower than 5 feet as measured from floor to ceiling shall not be included as living space. One-story garages shall not be included as living space. Second floor areas above garages or garage lots that may be converted to living space shall be considered living space.**

No building/structure shall be greater than two stories high. No unit shall contain more than two bedrooms. Units shall be designed to maximize energy conservation to the extent possible, including the use of energy-efficient appliances, windows, insulation and other building/structure envelope statements. Units shall be designed to provide access to emergency notification systems for residents' use. Such systems shall include notification to fire, ambulance and police.

- M. Recreation Area. All developments shall provide areas for active recreation, completed before the final ten percent of the market rate units are completed and marketed, incorporating walking paths, trails or physical fitness facilities suitable to the needs of elderly residents. The recreation area and any required facilities should be completed during the first phase of the development as shown in a phasing plan that must be included as part of the submitted plan set.

- N. Conflict of Laws and Severability. Unless otherwise indicated, all other applicable provisions in the Town of Kensington Zoning Ordinance and subdivision regulations shall also apply to elderly housing developments. Where two conflicting provisions exist, the more restrictive provision shall apply. If any part of this ordinance is found to be invalid, it shall not affect the validity of any other section.

- O. Dimensional Requirements. The base density or starting density in determining how many units will be allowed in a particular development, is one unit per every two acres.

There are no required minimum lot sizes or setbacks, except as described below. **No building/structure shall contain more than four units and no two buildings/structures shall be closer than 35 feet to each other**, reflecting the rural character and community of a range of house sizes and historic buildings/structures in the Town of Kensington.

Each building/structure must have 100 feet of frontage on the internal or new road, if one is created. Each parcel to be developed shall have a minimum frontage of 100 feet on the existing town road. No building/structure may be closer than 100 feet to the property lines and all buildings/structures must be set back at least 100 feet from the existing town road.

All applicable setbacks for septic systems and wells shall apply where such area is located on individual lots; however, the developer may design the community with a state-approved

innovative septic system or community well that is located in recreational areas of the development.

- P. Conservation or Recreation Area. All developments shall contain an area, excluding areas identified as hydric soils to serve as recreational area of conservation area. This area must constitute at least 50 percent of the parcel overall and 30 percent of the total buildable areas of the development, excluding slopes greater than 25 percent. At least 50 percent of the area designated for conservation or recreation must be contiguous. The conservation or recreation must be contiguous. The conservation or recreation area must be marked by appropriate permanent signage and must be accessible via a road or walking trail to the rest of the development.
- Q. Access Routes, Off-site Improvements and Flood Events. In reviewing the proposed location for elderly housing development, the Planning Board shall take into consideration the proposed access routes to the development and shall request the review of the plan by fire and safety officials to determine whether the roads included as the proposed access routes are prone to flooding during a typical 1-year storm event. The developer shall provide off-site improvements if required to do so by the Planning Board as a condition of approval to address flooding issues on main access routes in order to ensure the timely provision of emergency services.

The following table summarizes the key provisions of this ordinance.

Summary of Key Provisions

	Dimensional/numerical Requirements	Other
Location		Proximity to Kensington municipal services and consideration of flood-prone access routes
Affordability	20 percent affordable receives one unit bonus	
Phasing	Elderly housing shall not exceed 5 percent of total housing stock	
	Dimensional/numerical Requirements	Other
Number of units	No more than 11 units in any single development (10 plus one bonus)	
Pedestrian access		Required in all developments
Size of units	750 to 1500 square feet	
Emergency notification systems		Required in every unit
Recreation area		Areas for active recreation, must be completed during first phase of development
Building/structure	No more than four units per building/structure	
Setbacks	35 feet between buildings/structures. 100 feet building/structure setback from any property line. 100 feet building/structure setback from the existing town road.	
Frontage	100 feet frontage on an existing town road for every parcel. 100 feet frontage on internal or new road for every building/structure.	
Wells and septic	Follow Kensington Zoning Ordinance and subdivision regulations.	
Conservation area	50 percent of total parcel and 30 percent of buildable area of parcel, exclude slopes greater than 25 percent. 50 percent of conservation area must be contiguous.	Must be marked by appropriate signage and must be accessible via a road or walking trail to the rest of the development.
Off-site Improvements		May be required as a condition of approval where necessary to ensure safe access for emergency services on flood-prone routes.
Legal Review		Town counsel will review affordability covenants or deed restrictions. Qualification of/assets of potential buyers shall be determined by a third-party designated by the Planning Board.

SECTION 3.5 OPEN SPACE SUBDIVISION (Adopted 03/1998) (H. Adopted 03/2010)

A. Purpose and Objective

The purpose and objective of this section is to allow an alternative approach to subdivision which encourages flexibility in the design of residential development in order to:

1. promote greater efficiency in the use of land;
2. to preserve natural features of the landscape;
3. to discourage development sprawl;
4. to preserve open land, tree cover, recreation areas and scenic vistas;
5. to discourage construction on land with poor site suitability for development; and
6. to encourage forms of development that are in keeping with the existing character of Kensington.

B. Definitions

The following definitions apply specifically to this Section of the Zoning Ordinance:

Open Space Subdivision: A form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks reduced from conventional requirements, provided the density of the tract as a whole shall not be greater than the maximum density allowable utilizing current zoning densities or current subdivision lot size requirements, whichever is more restrictive, with the remaining land area devoted to open public space.

Public Open Space: Land set aside as a result of the open space subdivision. Public open space is not individually owned and is designed and intended for environmental, scenic, or recreational purposes of citizens of Kensington. Public open space may not be further subdivided. Public open space may include, but is not limited to recreation areas and wooded areas. The public open space may not consist of more than 50% land which is listed as not allowed N.A. in the town soil type lot size requirements. For the purpose of calculating public open space requirements for open space subdivision development, public open space shall not include driveways or parking lots.

Undevelopable Land Area: Land which is listed as not allowed on N.A. in the town soil type lot size requirements.

Developable Land Area: The developable land area is the portion of the tract remaining after deducting the undevelopable land area from the total tract area.

Lot, Tract or Parcel: An area, parcel, site, piece of land, or property which is the subject of a development proposal and application under the Open Space Subdivision Ordinance of the Kensington Zoning Ordinance and Land Use Regulations.

Conventional Lot Size and Frontage: Refers to the current requirements imposed by the Town of Kensington Zoning Ordinances using conventional subdivision practices.

C. Where Permitted

Open Space Subdivision as defined in this section shall be permitted in any residentially zoned district within the Town.

D. Permitted Uses

No Open Space Subdivision developments shall include any use other than single family dwellings, accessory structures and incidental recreational uses.

Any well or septic system shall not be located within the designated public open space.

E. Application Procedures & Relationship to Subdivision and Site Plan Regulations

Review Process: An open space subdivision shall be treated as a subdivision for review and public hearing purposes. All open space subdivisions shall follow standard procedures for application and review.

The Planning Board shall give particular consideration to the following criteria:

1. That the proposed development will be consistent with the general purpose, goals, objectives and standards of the town's master plan, zoning ordinance, subdivision regulations, and site plan review regulations;
2. That the proposed development complies with all applicable provisions of the zoning ordinance, subdivision regulations and site plan review regulations unless expressly superseded by this ordinance;
3. That the individual lots, buildings, streets, and parking areas shall be designed and situated to minimize alteration of the natural site features;
4. The suitability of all open space intended for recreation or other specified uses shall be determined by the size, shape, topography, and location for the particular purpose proposed, and shall be accessible to all residents of Kensington; and
5. The proposed open space subdivision will not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities, and other areas related to public health, safety and general welfare.

F. Minimum Development Size

No open space subdivision authorized by this Ordinance shall contain less than ten (10) acres.

G. Development Density

The maximum density of open space subdivision developments is the maximum density which would be allowed utilizing current zoning densities or current subdivision lot size requirements, whichever is more restrictive. Providing that all existing conditions are met and that an overall density of one single family dwelling per two acres is maintained, single family dwellings may be situated such that the lots sized are reduced to a minimum of one acre. All reductions in lot size shall be offset by an equivalent amount of land set aside in common open space, or as may be determined by the Planning Board. All sections of the subdivision regulations or the zoning ordinance which are not superseded by the open space subdivision options shall be applicable.

H. Density Bonus

The Planning Board may award a development an additional number of conforming buildable lots as a density bonus, if the required criteria as performance standards are met. Additional density allowances are based on the number of conforming buildable lots achievable under a yield plan baseline. The allowances are cumulative and may be allowed based on the following performance standards:

1. Density Bonus (Affordable Housing): A density bonus of 15% above that indicated by the approved yield plan will be allowed for development that will guarantee:
 - a. 20% of the total number of units proposed within the development (including all units allowed by density bonuses) shall meet the requirements of the definition of affordable/workforce housing per NH RSA 674:58-61 as amended;
 - b. Such designated affordable/workforce housing units shall be incorporated within the development as a whole (not grouped contiguously) and shall match the architectural characteristics of such development;
 - c. Assurance of continued affordability. Affordable units offered for sale and approved by the Planning Board as part of a subdivision or site plan and subject to NH RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Kensington. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town of Kensington's lien is indexed over time at a rate equal to the consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the combination of the housing unit's fair market value, minus the adjusted lien value, and adherence to the definition of affordable owner-occupied housing contained in this article. The restrictive covenant and lien shall be in a form approved by the Planning Board and shall be in effect for a minimum of 30 years upon Planning Board approval of said affordable units.
 - d. Documentation of restrictions. Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this

Article must be set forth on all plans filed with the Town's Planning Board and with the Registry of Deeds.

- e. Certificate of Occupancy. No certificate of occupancy shall be issued for an affordable housing unit without written confirmation acceptable to the monitoring agency of the income eligibility of the tenant or buyer of the affordable housing unit and confirmation of the rent or price of the affordable housing unit as documented by an executed lease or purchase and sale agreement.
 - f. Ongoing responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of a monitoring agency of the Planning Boards choice including, but not limited to, the New Hampshire Housing Finance Authority. If the Planning Boards choice for monitoring and compliance is the New Hampshire Housing Finance Authority then the owner of said affordable units shall follow the requirements as set forth in the New Hampshire Housing Finance Authority's Model for Homeownership Affordability Retention Lien as amended.
- 2. Every development seeking such bonuses shall provide the Planning Board with easements, covenants, or deed restrictions, which shall provide for the perpetual continuation of the performance standards, which are used in the granting of any bonus. Said easements, covenants, or deed restrictions shall be reviewed by qualified legal counsel on behalf of the Town (at the developer's expense) and approved by the Planning Board prior to the issuance of any final approval.
 - 3. Where a final number is greater than 0.5, the density number may be rounded up to the next whole number.

I. Dimensional Requirements

All dwellings within an open space subdivision shall conform to minimum setbacks as specified in the conventional setbacks. Frontages must correspond proportionately to the reduction in lot size. For example, if an open space subdivision is planned for lot sizes of one acre, frontage requirements can be reduced by no more than half of what is required in a conventional subdivision.

An open space subdivision shall have a 50 foot landscape buffer to provide adequate transition between abutting land uses and existing town roads. Whenever possible, natural vegetation shall be retained. No construction with the exception of primary access roads shall be permitted in the buffer, including septic system, parking and collector and service roads.

J. Use and Disposition of Public Open Space

Public open space shall be preserved in perpetuity by restrictive covenant which shall be enforceable by any citizen of Kensington or by the town of Kensington.

Such public open space shall be restricted to recreational uses, such as nature trails, wildlife habitat, community gardens, or conservation lands.

Disposition of Public Open Space: Such public open space within the open space subdivision shall be owned by one of the following:

1. A private, non-profit organization which has as a purpose the preservation of open space through ownership and control provided that the residents of Kensington have access to public open space for recreational uses; for example, the Society for the Protection of New Hampshire Forests, the New Hampshire Audubon Society or the Rockingham Land Trust;
2. A public body which maintains the land as public open space for the benefit of the general public; for example, the town of Kensington; and
3. A private non-profit corporation, association, or other non-profit legal entity established by the applicant for the benefit and enjoyment of the residents of the open space subdivision and over which residents of the open space subdivision have control; for example, a homeowner's association.

The intent is to guarantee the continued use of land for the intended purpose of preserving public open space.

K. Applicability of Zoning and Land Use Regulation to Open Space Subdivision

Residential open space subdivision development shall comply with all applicable provisions of the Kensington Zoning Ordinance and Subdivision Regulations unless expressly superseded by the provision of this Ordinance.

Article IV: GENERAL REGULATIONS

Section 4.1 SIGNS (Adopted 03/10/2009)

A. Purpose

The purpose of this article is to encourage the effective use of signs as a means of communication in the Town while maintaining and enhancing the aesthetic environment.

B. Definitions

These definitions apply only to this article.

Animated sign: Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

Banner: Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one or more edges. National flags, state or municipal flags, or the official flag of any institution or business shall not be considered banners.

Billboard: A sign which directs attention to a business, product, activity or service which is not conducted sold or offered on the premises where such a sign is located.

Building Sign: Any sign attached to any part of a building, as contrasted to a freestanding sign.

Business Sign: A sign which directs attention to a business, profession, service, products, activity or entertainment sold or offered upon the premises where such a sign is located.

Changeable copy sign: A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face of the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign.

Commercial message: Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

Directory sign: Any sign containing the name of a commercial building, commercial complex or industrial development that contains the names of the businesses located in those buildings, complexes, or developments. Advertisements for lease, rent or purchase shall not be allowed on directory signs.

Flag: Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision or other entity.

Freestanding sign: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

Incidental sign: A sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as “no parking”, “entrance”, “towing zone” and other similar directives.

Pennant: Any lightweight plastic, fabric, or other material whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

Political sign: Any sign or poster advertising a person’s or political party’s intent to run for any free election.

Portable sign: Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported by means of wheels; signs converted to “A” or “T” frames; menu and sandwich board signs; balloons used as signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

Real Estate sign: Any sign advertising the sale, lease or rental of any property.

Residential sign: Any sign located in a district zoned for Residential/Agricultural uses that contains no commercial message except advertising for goods or services, legally offered on the premises where the sign is located, if the offering of such goods and service conforms will all requirements of the zoning ordinance.

Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

Temporary sign: Any sign that is used only temporarily and is not permanently mounted.

Wall sign: Any sign attached parallel to, but within six inches of, a wall, painted on a wall surface of, or erected and confined within the limits of an outside wall of a structure, which is supported by such wall, and which displays only one sign surface.

C. Size, Design, Construction And Maintenance

1. The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the back ground of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
2. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point.
3. All signs shall be designed, constructed, and maintained in accordance with the following standards:

- a. All signs shall comply with the latest approved version of the State Building Code and the National Electric Code and shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this ordinance at all times.
- b. Except for flags and temporary signs, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame or structure.

D. Prohibited, Permitted and Non-Conforming Signs

- 1. The following signs are expressly prohibited in all zones:
 - a. Animated signs.
 - b. Banners.
 - c. Pennants.
 - d. Portable signs.
 - e. Off premises signs except for political signs.
 - f. Signs which imitate, and may be confused with, an official traffic control sign or signal, or an emergency or road equipment vehicle.
 - g. Signs which bear or contain statements, words, or picture of obscene, pornographic, or immoral character or which contains advertising matter which is untruthful, or as otherwise prohibited by State Law.
 - h. No advertisement shall be affixed, attached, or displayed upon any object of nature, utility pole, telephone booth, or highway sign per RSA 236:75.
 - i. No sign shall project within the limits of a public highway except when placed by the governmental unit having jurisdiction over such highway or be placed so as to obstruct the view of any highway intersection or so as to endanger traffic.
- 2. The following signs are permitted in all zones and are unrestricted:
 - a. Real Estate sign pertaining to the land of buildings on which placed.
 - b. Highway, park or other regulating signs of the Town or State of New Hampshire.
 - c. Incidental signs.
 - d. Temporary signs advertising events sponsored by nonprofit and civic organizations for the town. Maximum time allowed is 30 days. Sign permit is required. See Section 4.1, E, Sign Permits and Fees.
- 3. The following signs are permitted in the Residential – Agricultural zone with the following restrictions:
 - a. For an agricultural business, they are permitted one or more Business sign(s) totaling 32 square feet of sign face.
 - b. For business, commercial or industrial ventures granted a special exception under Section 3.3 B, they are permitted one (1) Directory sign having a

- maximum of 32 square feet plus one or more Business signs(s) totaling 50 square feet of sign face. Subject to Planning Board Site Plan Review.
- c. For home occupation granted a special exception under Section 3.3 C, they are permitted one (1) Residential sign having a maximum of four (4) square feet of sign face. Subject to Planning Board Site Plan Review.
 - d. Signs may be illuminated by external continuous white lighting only. Sign lighting shall be directed downward onto the sign so to minimize night sky light pollution.
 - e. Signs permitted in this section require a sign permit be issued before erection, installation or modification of any new or existing sign. See Section 4.1, E, Sign Permits and Fees.
4. Signs are permitted in the district of Commercial and Industrial Use with the following restrictions:
- a. Business, commercial or industrial ventures listed under Section 3.1.3, are permitted one (1) Directory sign having a maximum of 32 square feet plus one or more Business sign(s) totaling 50 square feet or sign face. Subject to Planning Board Site Plan Review.
 - b. Signs permitted in this section require a sign permit which must be issued before erection, installation or modification of any new or existing sign. See Section 4.1, E, Sign Permits and Fees.
5. Non-conforming signs are signs that were legally in place and not in violation of any previous sign ordinance prior to the enactment of this ordinance and shall immediately lose its legal non-conforming status when:
- a. The sign is altered in any way that its effect is more intensive and/or obtrusive.
 - b. The sign is relocated.
 - c. The sign has not be repaired or properly maintained within 30 days after written notice to that effect has been given by the Building Inspector or Board of Selectmen.

E. Sign Permits and Fees

- 1. Applications: All applications for sign permits of any kind shall be submitted to the Building Inspector on an application form.
- 2. Drawings: All applications for new signs or modified signs shall be accompanied by a detailed drawing to show the dimensions, design, structure, color and location of each particular sign. On application and permit may include multiple signs on the same lot.
- 3. Fees:
 - a. The sign permit fee will be \$25.00.

- b. Sign permit fees will be waived for Temporary signs.
4. Inspection:

The Building Inspector shall schedule an inspection of all non-Temporary signs at such time as the owner has installed or modified the sign. If the construction is complete and in full compliance with this ordinance, and the building and electrical codes, the Building Inspector shall approve the sign. If the sign is found to be not in compliance with this ordinance or the building or electrical codes, the Building Inspector shall give the owner or applicant notice of the deficiencies and shall allow an additional 10 days for the deficiencies to be corrected. If the deficiencies are not corrected within the 10 day period, the sign permit shall become void.

SECTION 4.2 DRIVEWAYS AND OTHER ACCESSES TO THE PUBLIC WAY **(Amended 03/1998)**

4.2.1 AUTHORITY

Pursuant to the powers granted by NH RSA 236:13 V, the Kensington Planning Board hereby regulates the construction and alteration of driveways within the limits of the right of way of any existing or proposed town road, lane, street or way.

4.2.2 PERMIT REQUIRED (Amended 03/10/2009)

- A. It shall be unlawful to construct, or alter in any way that substantially affects the size, grade or construction of any driveway entrance, exit or approach within the limits of the right of way of any existing or proposed road, lane, street or way that does not conform to the terms and specifications of a written permit issued by the Planning Board.
- B. A written construction permit application must be obtained from and filed with the Town of Kensington Planning Board by the applicant affected by the provisions of Paragraph A.
- C. Before any driveway construction or alteration work is commenced, said permit application shall have been reviewed and pre-approved by the Town Road Agent. His comments and/or recommendations shall be incorporated into any construction permit issued by the Planning Board.
- D. A permit fee of \$100, payable to the Town of Kensington shall be assessed to an applicant and shall be payment to the Road Agent for the Road Agent's services. **(Amended 12/1999)**
- E. No occupancy permit can be obtained prior to the inspection and approval of the completed driveway by the road manager.
- F. Driveways for all dwelling units must be completed at the time of construction of the associated dwelling unit.
- G. Subsequent to the issuance of the occupancy permit, but prior to any future re-paving, installation or replacement of culverts not installed at the time of initial driveway construction, re-grading, or re-sealing, or other major repairs that may alter the slope and

configuration of the driveway, the current landowner must apply for a new permit from the road manager to complete the work to ensure that the work will not alter the original slope and configuration of the driveway and to ensure that the work will not increase stormwater runoff to the associated road or to abutting properties.

- H. For driveways (both access/egress) containing slopes of 8% or greater at any point, the issuance of a driveway permit will require a drainage plan by a New Hampshire licensed engineer to ensure that stormwater runoff will not result in erosion or cause siltation of drainage systems or surface waters, as well as not result in unsafe conditions for emergency vehicle access.
- I. Driveways shall pitch away from all town roads, private roads or state highways for ten feet from the edge of the travelled way at a grade not less than 2% (two percent) and shall be paved prior to the issuance of an occupancy permit, to the edge of the lot line as the binder course is being installed.
- J. All driveway permit applications shall show the exact location of the driveway. If the proposed location ends to be changed during the course of construction, the applicant shall obtain a new permit for the proposed new location.
- K. Any person who violates any provision of this regulation shall be subject to fines and penalties as state in RSA 676:15 et seq.

4.2.3 SUBMISSION OF INFORMATION (Amended 03/10/2009 & 3/13/2013)

- A. All permit applications shall be accompanied by the following information:
 - 1. Driveway location, entrance, exit or approach. The location shall be selected to most adequately protect the safety of the traveling public;
 - 2. Drainage improvements, such as culverts or swales, and any channelization to be installed by the applicant;
 - 3. Proposed grading that adequately protects and promotes highway drainage and permits a safe and controlled approach to the road in all seasons of the year. Driveways shall pitch away from all town roads and private roads, for ten feet at a grade not less than 2%; and
 - 4. All driveway permit applications shall show the exact location of the driveway, and the presents of wetlands per the town's wetland ordinance and or regulations.
 - 5. All permits to be submitted to the town seven or more days before the scheduled Planning Board Meeting. (Amended 3/12/2013)

4.2.4 DRIVEWAYS OTHER THAN SINGLE FAMILY

- A. For access to a commercial or industrial concern, or to a subdivision, all of which for the purposes of this section shall be considered a single parcel of land, even though acquired by more than one conveyance or held by more than one owner.
 - 1. Such permit application shall be accompanied by engineering drawings showing information as set forth in paragraph III.
 - 2. Unless all season safe site distance of 400 feet in both directions along the road can be obtained, the Planning Board shall not permit more than one access to a single parcel of land, and this access shall be at the location which the Road Agent determines to be safest. The Planning Board shall not give final approval for use of any additional access unless it has been proven that the 400 foot all season safe site distance has been provided.
 - 3. For this regulation, all season safe site distance is defined as a line which encounters no visual obstruction between two points, each at a height of 3 feet 9 inches above the pavement and so located as to represent the critical line of sight between the operator of a vehicle using the access and the operator of a vehicle approaching from either direction.

4.2.5 NO CONSTRUCTION PERMIT SHALL ALLOW

- A. A driveway entrance, exit or approach to be constructed more than 50 feet in width, except that a driveway, entrance, exit or approach may be flared beyond a width of 50 feet at its junction with the highway to accommodate the turning radius of vehicles expected to use the particular driveway, entrance, exit or approach.
- B. More than two driveways, entrances, exits or approaches from any one highway to any one parcel of land unless the frontage along that highway exceeds 500 feet.

4.2.6 GENERAL REQUIREMENTS FOR DRIVEWAY INSTALLATION

- A. Storm water and spring melt water shall be planned for and accommodated in a manner acceptable to the Road Agent.
 - 1. Culverts, ditches, drop inlets and related structures shall be installed as necessary.
 - a. Storm water management for commercial and industrial driveways shall be designed according to the same requirements of the Town of Kensington Subdivision Regulations contained in Section 4.11.

4.2.7 COMPLIANCE

- A. Single family driveways shall be constructed to approved design prior to certificate of occupancy issuance.

- B. Driveways other than single family shall be constructed as per approved plans and no bond for such work shall be released before the Road Agent certifies compliance.

SECTION 4.3 MISCELLANEOUS PROVISIONS

4.3.1 OFFICIAL MAPS FOR THE TOWN OF KENSINGTON

General Statement: In accordance with Chapter 674:9-11 of the Revised Statutes Annotated of the State of New Hampshire and in order to conserve and promote the public health, safety, convenience, and general welfare of the residents of the Town of Kensington, the following maps, taken together, comprise Official Maps of the Town of Kensington. These maps are hereby made a part of these Regulations.

4.3.2 SCENIC ROADS (Amended 09/26/2005; 03/10/2009)

Repair maintenance, construction or paving on a designated "Scenic Road", shall not involve or include the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the Planning Board, after a public hearing duly advertised as provided by RSA Chapter 231:157 and 231:158.

The designated Scenic Roads are:

North Road	Wild Pasture Road
Hilliard Road	Moulton Ridge Road
Trundle Bed Lane	Muddy Pond Road
New Boston Road	Stumpfield Road
Highland Road	Osgood Road

4.3.3 REMOVAL OF WATER

The removal of water from ground water or surface water sources in the Town for use outside the Town except for emergencies or public safety purposes is prohibited. (03/13/1979)

4.3.4 MOBILE HOMES (removed 3-12-2014)

4.3.5 GENERAL STATEMENT

The location and boundaries of the Wetlands District are established as shown on the attached map. The Kensington Wetlands District encompasses specific areas mapped and delineated by the United

States Department of Agriculture Soil Conservation Service. This District is shown on a map designated as the "Town of Kensington Wetlands Conservation District." In cases where this District overlies another District regulated by these Ordinances, the more restrictive regulation shall govern.

Article V: SPECIAL USE REGULATIONS

SECTION 5.1 TELECOMMUNICATIONS FACILITY (Adopted 03/13/2001)

5.1.2 AUTHORITY

This ordinance is adopted by the Town of Kensington on March 13, 2001, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II.

5.1.3 PURPOSE AND GOALS

This Ordinance is enacted in order to establish general guidelines for the siting of telecommunications towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of Kensington to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.
- B. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property and prosperity through protection of property values.
- C. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques and siting possibilities beyond the political jurisdiction of the Town.
- D. Permit the construction of new towers only where all other reasonable opportunities have been exhausted and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- E. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Kensington.
- F. Provide constant maintenance and safety inspections for any and all facilities.
- G. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for Kensington to remove these abandoned towers to protect the citizens from imminent harm and danger.
- H. Provide for the removal or upgrade of facilities that are technologically outdated.

5.1.4 DEFINITIONS

Alternative tower structure - innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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

FAA - an acronym that shall mean the Federal Aviation Administration.

FCC - an acronym that shall mean the Federal Communications Commission.

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

Planning Board or Board - shall mean the Town of Kensington Planning Board as the regulator of this ordinance.

Pre-existing towers and antennas - shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance.

Telecommunication Facilities - shall mean any structure, antenna, tower, or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCS), and common carrier wireless exchange access services.

Tower - shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

5.1.5 SITING STANDARDS

A. General

The uses listed in this section are deemed to be permitted uses that may require further review under this ordinance in accordance with Section 5.1.8- CONDITIONAL USE PERMITS. However, all such uses must comply with other applicable ordinances and regulations of Kensington (including Site Plan Review). The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in Kensington.

1. Principal or Secondary Use.

Subject to this ordinance, an applicant who successfully obtains permission to site a tower under this ordinance as a secondary use to a permitted use may construct

telecommunications facilities in addition to the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an “accessory use”.

2. Use District

	New Tower Construction ^[1]	Co-location on Pre-existing Tower ^[2]	Co-location on Existing Structure ^[3]
Commercial District	PCU	P	P
Wetland District	X	X	X
Residential/Agricultural District	X	P	PCU

P = Permitted Use without Conditional Use Permit

PCU = Permitted Use with Conditional Use Permit

X = Prohibited

B. Height Requirements

These requirements and limitations shall preempt all other height limitations as required by the Kensington Zoning Ordinance and shall apply only to telecommunications facilities. These height requirements may be waived through the Conditional Use Permit process only if the intent of the Ordinance is preserved (e.g. where a 200' tower would not increase adverse impacts but provide a greater opportunity for co-location) in accordance with 5.1.9 Waivers.

	New Tower Construction ¹	Co-location on Pre-existing Tower ²	Co-location on Existing Structure ³
Commercial District	180'	Current Height +15%	Current Height +30'
Wetland District	N/A	N/A	N/A
Residential/Agricultural District	N/A	Current Height	Current Height +30'

^[1] An Antenna may be located on a tower, newly constructed, under this Ordinance.

^[2] An Antenna may be located on a pre-existing tower, constructed prior to the adoption of this Ordinance.

^[3] An antenna may be located on other existing structures with certain limitations (See § IV,B).

5.1.6 APPLICABILITY

A. Public Property

Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance, except that uses are only permitted in the zones and areas as delineated in 5.1.5 A-2. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance.

B. Amateur Radio; Receive-Only Antennas

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by the federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

C. Essential Services & Public Utilities

Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

5.1.7 CONSTRUCTION PERFORMANCE REQUIREMENTS

A. Aesthetic and Lighting

The guidelines in this subsection (A), shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements, in accordance with 5.1.9 Waivers, only if it determines that the goals of this ordinance are served thereby.

1. Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

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

B. Federal Requirements

All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agenda. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with 5.1.11, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

C. Building Codes-Safety Standards

To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with 5.1.11, of the tower or antenna, as abandoned, at the owners expense through execution of the posted security.

D. Additional Requirements for Telecommunications Facilities

These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

1. Setbacks and Separation
 - a. Tower, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
 - b. Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
2. Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.
3. Landscaping

- a. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.
- b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

5.1.8 CONDITIONAL USE PERMITS

A. General

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

B. Issuance of Conditional Use Permits

In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

1. Procedure on application

The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations, RSA 676:4, and shall notify the local/regional office of the FAA, and owners of private airstrips/helipads.

2. Decisions

Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

3. Factors Considered in Granting Decisions

- a. Height of proposed tower or other structure.
- b. Proximity of tower to residential development or zones.
- c. Nature of uses on adjacent and nearby properties.
- d. Surrounding topography.
- e. Surrounding tree coverage and foliage.
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

- g. Proposed ingresses and egresses to the site.
- h. Availability of suitable existing towers and other structures as discussed in 5.1.8 C, 3.
- i. Visual impacts on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- j. Availability of alternative tower structures and alternative siting locations.
- k. Impact of tower on airstrip/helipad flight patterns.

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

- 1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
- 2. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.
- 3. Each applicant for an antenna and or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

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

- a. Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
- b. Substantial Evidence that existing towers are not sufficient height to meet the applicant's engineering requirements, and why.

- c. Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d. Substantial Evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - e. Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - f. Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
4. The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of Kensington, and grounds for a Denial.
 5. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with 676:4, I(g).

5.1.9 WAIVERS

A. General

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

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Kensington Zoning Ordinance, Kensington Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.

4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

Topography and other Site features;

- a. Availability of alternative site locations;
- b. Geographic location of property;
- c. Size/magnitude of project being evaluated and availability of co-location.

B. Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure 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 with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.

5.1.10 BONDING AND SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with 5.1.11, all security shall be maintained for the life of the tower. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

5.1.11 REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment.

A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the towers. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

5.1.12 ENFORCEMENT

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised States Annotated and Kensington Zoning Ordinance. Any person in violation of this section of the ordinance shall be subject to punishment in accordance with referenced provisions.

5.1.13 SAVING CLAUSE

Where any provision of this ordinance is found to be unenforceable it shall be considered savable and shall not be construed to invalidate the remainder of the ordinance.

SECTION 5.2 WIND ENERGY CONVERSION SYSTEMS (Adopted 03/11/2008)

5.2.1 INTENT

In order to balance the need for clean, renewable energy resources and the necessity to protect the public health, safety and welfare of the community, the town of Kensington, NH, finds these regulations are necessary to ensure that wind energy conversion systems are appropriately designed and safely sited and installed.

This ordinance establishes the regulations and criteria which allow compatible accessory uses to be located within the various land use districts. Unless otherwise provided, all accessory uses are subject to the same regulations as the sponsoring primary use.

5.2.2 DEFINITIONS

Residential Wind Energy Systems: A wind energy conversion system consisting of a wind turbine, tower and associated control or conversion electronics, which has a rated capacity of not more than 10 kW and which is intended to primarily reduce on site consumption of utility power. A system is considered a residential wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

Tower: The vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

5.2.3 REGULATIONS

Residential wind energy systems shall be a permitted use in all zoning classification where structures of any sort are allowed; subject to certain requirements as set forth below:

Tower Height: For property sizes between ½ acre and two acres the tower height shall be limited to 40 feet, but not greater than 20 feet above any established, adjacent tree line. For property sizes of two acres or more, the tower height shall be limited to 100 feet and not greater than 20 feet above any established, adjacent tree line.

Clearance of Blade: No portion of the residential wind energy system shall extend within twenty feet of the ground. No blades may extend over parking areas, driveways, or sidewalks.

Setback: No attached part of the wind energy system structure, including guy wire anchors, may extend closer than ten feet to the property boundaries of the installation site. Set backs for the system tower shall be no closer to the property line than 25 feet. The ‘Drop-Zone’ of the tower and turbine should also take into account, building/structure setbacks of adjacent properties, so as not to potentially fall into existing or future buildings/structures on adjacent properties.

Automatic Over-speed Controls: All wind energy conversion systems shall be equipped with manual (electronic or mechanical) and automatic over speed controls to limit the blade rotation speed to within the design limits of the residential wind energy system.

Sound: Residential wind energy systems shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling at time of system installation. The level; however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

Approved Wind Turbines: Residential wind turbines must be approved under an Emerging Technology program such as the California Energy Commission, IEC or any other small wind certification program recognized by the American Wind Energy Association (AWEA) of the U.S. Department of Energy. Non-certified residential wind turbines must submit a description of the safety features of the turbine prepared by a registered mechanical engineer.

Compliance with Uniform Building Code: Building permit applications for residential wind systems shall be accompanied by standard drawings of the wind turbine structure, including tower, base and footings. An engineering analysis of the tower showing compliance with the Uniform Building Code and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer. Wet stamps shall not be required.

Compliance with FAA Regulations: Residential wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

Compliance with National Electrical Code: Building permit applications for residential wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of the installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.

Utility Notification: No residential wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer’s intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

SECTION 5.3 FLOOD PLAIN MANAGEMENT ORDINANCE (Adopted 03/11/2014)

5.3.1 PURPOSE

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

5.3.2 ESTABLISHMENT

- A. This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Kensington Floodplain Management Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Kensington Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law.
- B. 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 Rockingham County, NH" dated May 17, 2005 together with the associated Flood Insurance Rate Maps dated May 17, 2005, which are declared to be a part of this ordinance and are hereby incorporated by reference.

5.3.3 GREATER RESTRICTION

If any provision of this ordinance differs or appears in conflict with any other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

5.3.4 SEVERABILITY

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

5.3.5 ENFORCEMENT

It shall be the duty of the Building Inspector to enforce and administer the provisions of this Ordinance in accordance with RSA 676.

5.3.6 PERMITS

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

5.3.7 OTHER PERMITS

The Building Inspector 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.

5.3.8 CERTIFICATION

- A. For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:
 - 1. The as-built elevation of the lowest floor (including basement) and include whether or not such structures contain a basement.
 - 2. If the structure has been floodproofed, the as-built elevation to which the structure was floodproofed.
 - 3. Any certification of floodproofing.
- B. The Building Inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

5.3.9 CONSTRUCTION REQUIREMENTS

- A. The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.
- B. All new construction or substantial improvements in a special flood hazard area shall:
 - 1. 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,
 - 2. be constructed with materials resistant to flood damage,
 - 3. be constructed by methods and practices that minimize flood damages, and
 - 4. 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.

5.3.10 WATER AND SEWER SYSTEMS

- A. 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 Building Inspector 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.
- B. On-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

5.3.11 BASE FLOOD ELEVATION DETERMINATION

- A. In Zone A, the Building Inspector shall obtain, review, and reasonably utilize any base 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).
- B. In Zone A where a base flood elevation is not known, the base flood elevation shall be at least 2 feet above the highest adjacent grade.

5.3.12 STRUCTURES

The base flood elevation determined by the Building Inspector in Section 11 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 base flood elevation.
- B. All new construction or substantial improvements of non-residential structures must meet one of the following requirements.
 - 1. The lowest floor (including basement) shall be elevated to or above the base flood elevation; or
 - 2. Together with attendant utility and sanitary facilities, shall:
 - a. be floodproofed at least one foot above the base flood elevation so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. 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 base 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. 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:
 - 1. the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
 - 2. the area is not a basement; and
 - 3. 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.

5.3.13 RECREATIONAL VEHICLES

- A. All recreational vehicles placed on sites within Zone A shall either:
 - 1. be on the site for fewer than 180 consecutive days;
 - 2. be fully licensed and ready for highway use; or,
 - 3. meet all standards of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section 12.
- B. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

5.3.14 WATERCOURSES

- A. 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 Building Inspector, 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 Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.

- B. The applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources. If floodway data is available, all development located in Zone A shall 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."

5.3.15 VARIANCES AND APPEALS

- A. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5. [In communities with no comprehensive zoning a special Board of Adjustment appointed by the Board of Selectmen.]
- B. 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:
 - 1. The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
 - 2. 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
 - 3. The variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that:
 - 1. 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
 - 2. 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.
- D. The community shall:
 - 1. maintain a record of all variance actions, including their justification for their issuance; and

2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

5.3.16 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 Kensington.

Base flood means the flood having a one-percent possibility of being equaled or exceeded in any given year.

Base Flood Elevation means the computed elevation to which floodwater is anticipated to rise during the base flood.

Basement means any area of a building having its floor subgrade on all sides.

Building - see "structure".

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.

FEMA means the Federal Emergency Management Agency.

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.

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.

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.

Floodplain or Flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

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.

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.

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.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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.

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.

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.

Mean sea level means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced.

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.

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.

Special flood hazard area means the land in the floodplain within the Town of Kensington subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zones A, A0, AE on the FIRM.

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.

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.

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.

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.
- i) 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".

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

Article VI: NATURAL RESOURCE PROTECTION REGULATIONS

Section 6.1 WETLAND AND HYDRIC SOILS CONSERVATION DISTRICT (Amended 03/08/2005)

6.1.1 PURPOSE

The general purpose of this District is for regulation of wetlands and hydric soils in Kensington in such a manner as to preserve the Town's water resources for the benefit of public health, safety and general welfare. Correlated purposes are:

- A. To preserve wetland areas for their natural productivity, wildlife habitat, recreational and scenic enjoyment, and to encourage uses that will enhance these values.
- B. To preserve natural wetland areas which provide flood protection, nutrient absorption and augmentation of stream flows during dry periods.
- C. To prevent the development of structures of other land uses on naturally occurring wetland areas that would contribute to surface and groundwater pollution or reduce surface and groundwater supplies.
- D. To prevent unnecessary or excessive expense to the Town in providing and maintaining obligated services which arise because of the inappropriate use of wetland areas.

6.1.2 DEFINITION AND DESIGNATION (Amended 03/1998)

- A. The Kensington Wetlands and Hydric Soils Conservation District encompasses specific areas mapped and delineated by the Natural Resources Conservation Service formerly known as United States Department of Agriculture (U.S.D.A.) Soil Conservation Service. This District is shown on a map designated as the "Town of Kensington Wetlands and Hydric Soils Conservation District".

The areas encompassed are:

- Marshes, bogs
- Swamps
- Ponds
- Streams

Hydric A - Very Poorly Drained Soils

Generally, are those soil areas in which the water table is at or on the surface of the ground for more than nine months of the year. Criteria to determine soil classification are defined in Site Specific Soil Mapping Standards for New Hampshire and Vermont, SSSNE Special Publication #3, June 1997.

Hydric B - Poorly Drained Soils

Generally, are those soil areas in which the water table rises to within six inches of the ground surface for six to nine months of the year. Criteria to determine soil classification are defined in Site Specific Soil Mapping Standards for New Hampshire and Vermont, SSSNE Special Publication #3, June 1997.

Wetland area boundaries indicated on the Wetland and Hydric Soils Conservation District map are based on soil survey field work conducted during 1978. This work was done in cooperation with the Rockingham County Conservation District by staff scientists of the Natural Resources Conservation Service. Copies of this work in total are on

file with the Kensington Planning Board, Conservation Commission, and Town Clerk, as well as the District Office of the Natural Resources Conservation Service.

This map is considered a guide only. Any questions as to the precise location of a wetland boundary in any particular case must be determined by on site inspection of soil types. This data will be prepared by a certified soil scientist using the standards of high intensity soil maps for New Hampshire or in accordance with Site Specific Soil Maps for New Hampshire and Vermont as accepted by the Society of Soil Scientists of Northern New England.

- B. In cases where areas designated by the Wetlands and Hydric Soils Conservation District are regulated by the Land Use Ordinance and Subdivision Control Regulations, the more restrictive regulations shall govern.
- C. Pursuant to RSA 482-A:2.X, "wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adopted for life in saturated soil conditions. (Added 03/08/2005)

Is there a 6.1.3?

6.1.4 PERMITTED USES (Amended 03/1998)

A. For areas with Hydric B soils:

- 1. General: Any use that does not involve the erection of a permanent residential, commercial or industrial structure and that does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use. A permitted use must be consistent with the purposes and intent of Section 6.1.1. Permitted uses include, but are not limited to:
 - a. Agriculture;
 - b. Forestry and tree farming;
 - c. Construction of well water supplies;
 - d. Drainage ways, to include streams, creeks or other paths of natural runoff as well as common agricultural land drainage;
 - e. Wildlife habitat development and management;
 - f. Parks and recreation;
 - g. Conservation areas and nature trails; and
 - h. Open space as permitted or required by subdivision regulations.

B. For Hydric A soils and/or marshes, swamps, ponds, bogs, and streams:

- 1. General: Such uses as specified by Section A for Hydric B soils shall be permitted except that no alteration of the surface configuration of the land by filling will be allowed, even if the proposed use is a common treatment associated with a permitted use. No erection of a structure will be permitted.

6.1.5 PROHIBITED USES (Amended 03/1998)

- A. Waste disposal systems;
- B. Septage waste or sludge disposal;
- C. Storage of gasoline, fuel oil or other hazardous materials;
- D. Landfills or dumps;
- E. Commercial excavation; and
- F. Road salt stockpiles.

6.1.6 SPECIAL PROVISIONS (Amended 03/1998)

- A. Hydric B soils may be used to fulfill all but the 30,000 square feet of any building lot minimum acreage requirement provided that the non-hydric soils area is sufficient in size and configuration to accommodate all required utilities, as determined by the Town of Kensington Test Pit Inspector. (Amended 03/08/2005)
- B. No Hydric A soils or bodies of water may be used to satisfy minimum lot size.
- C. No structure of any kind shall be constructed within 100 feet of Hydric A soils with the exception of structures no greater than 400 square feet.
- D. No structure of any kind shall be constructed within 50 feet of Hydric B soils with the exception of structures no greater than 400 square feet.
- E. Where an existing structure within the hydric soils setback area is destroyed or in need of extensive repair, it may be rebuilt provided that such re-building is completed within two years of the event causing destruction. The new or re-built structure shall not extend further into the wetland or wetland setback area than the original footprint. (Amended 03/08/2005)
- F. Structures and uses existing at the time of the adoption of this Ordinance may be continued provided that such use shall not be expanded to further encroach upon the wetlands and hydric soils or hydric soils setback areas. (Amended 03/08/2005)
- G. Existing natural vegetation in both the hydric soil A and B setback areas must be retained in a buffer setback area not less than twenty-five feet wide. Applicants may removed dead or diseased trees within this area, unless such trees have already fallen, but must retain all other existing trees or other vegetation and must ensure that this area is not cleared or mowed but is maintained as a natural buffer and is clearly marked by plastic discs mounts on trees or by visible stakes or monuments with markers or inscriptions bearing the words, "hydric soils setback area: do not mow or clear". (Added 03/08/2005)

6.1.7 SPECIAL EXCEPTIONS (Amended 03/1998)

- A. Special exceptions may be granted by the Board of Adjustment for the following uses within the hydric soils setback areas specified in Section 6.1.6 C and D and, if necessary, within the Wetlands and Hydric Soils Conservation District, if it can be shown that such use will not conflict with the purposes and intent of Section 6.1.1. Proper evidence to this effect shall be submitted in writing to the Board of Adjustment. (Amended 03/08/2005)
1. Streets, roads, and other access ways and utility right-of-way easements. If such location is essential to the productive use of land not so zoned, and so constructed as to minimize any detrimental impact of such use upon the Wetland and Hydric Soils Conservation District and the hydric soils setback areas specified in Section 6.1.6 C and D. (Amended 03/08/2005)
 2. The construction of wharfs, footbridges, catwalks, fences, water impoundments and beaches. The Building Inspector shall ensure that all construction conforms to standard construction requirements.
 3. On vacant lots of record. The construction of new structures within the hydric soils setback areas specified in Section 6.1.6 C and D or within the Wetlands and Hydric Soils Conservation District; provided the structure is placed and designated to minimize the impacts on wetlands and hydric soils. (Amended 03/08/2005)
- B. The Kensington Conservation Commission shall submit their comments on the anticipated environmental effects to these uses on the area proposed for such use, which will be used by the Board of Adjustment in its decision. If deemed necessary by the Board of Adjustment, the Rockingham County Conservation District shall be consulted, at the applicant's expense, to review and comment on the anticipated environmental effects of the proposal.
- C. All necessary state permits and approvals required by State Statutes shall be obtained prior to local special exceptions being granted.

6.1.8 PROCEDURE FOR REVIEW

A. Building Permits for Individual Lots: (Amended 03/1998)

1. Lots of Record -- The Building Inspector shall check the location of proposed construction relative to the Wetlands and Hydric Soils Conservation District to ensure compliance with Section 6.1. Wetland information from the Wetland and Hydric Soils Conservation District map or on site inspection as referenced in Section 6.1.2 and shall be submitted to and reviewed by the Building Inspector. The person applying for a building permit shall gather necessary information.
2. New Lots -- The Building Inspector shall rely on the review of the Test Pit Inspector, as required by Section 6.1.6.

B. Subdivision Proposals:

Upon receiving a subdivision proposal, the Planning Board shall check the location of all proposed new lots relative to the Wetlands and Hydric Soils Conservation District to ensure compliance to the Article. The Town of Kensington Test Pit Inspector shall include, as part of his site information, whether the special provisions of Section 6.1 have been met.

6.1.9 PROCEDURE FOR APPEAL OF WETLAND CLASSIFICATION (Amended 03/1998)

In the event that an area is alleged to be incorrectly designated on the Wetland and Hydric Soils Conservation District Map, the person or persons aggrieved by such designations, or the Planning Board or Test Pit Inspector, may call upon the services of a certified soil scientist to examine the area in question and report on the actual location of the Wetland area. Such investigation shall be undertaken at the expense of the person or persons so aggrieved.

SECTION 6.2 STEEP SLOPES DISTRICT (Adopted 03/08/2011)

6.2.1 PURPOSE

The purpose of this ordinance is to prevent unwise and unsafe land use on slopes in excess of twenty percent (20%) in order to reduce damage to surface water bodies from the consequences of excessive and improper construction activities, erosion, stormwater runoff, or effluent from sewage disposal systems, and to preserve the natural topography, drainage patterns, vegetative cover, scenic views, wildlife habitats, as well as to protect unique natural areas. The purpose of this ordinance is also to prevent difficult and unsafe street construction, and expensive street maintenance.

6.2.2 DELINEATION OF REGULATED LANDS

The Steep Slope Conservation District shall comprise all lands in the Town of Kensington with a slope of twenty percent (20%) or greater. The Steep Slope Conservation District (the “District”) is an overlay to the requirements of the underlying zoning district. Slopes subject to this ordinance shall be field delineated on a site-specific basis.

This ordinance shall apply to any application for a building permit, a site plan development, or a subdivision which requires or proposes disturbance to land with a slope of twenty percent (20%) or greater.

6.2.3 AUTHORITY AND ADMINISTRATION

The provisions of this Article are authorized by RSA 674:16, Grant of Power; RSA 674:17, Purposes of Zoning Ordinance; 674:21, I (j), Environmental Characteristics Zoning.

The Building Inspector and/or Planning Board shall not approve any building permit, site plan, or subdivision subject to the terms of this article unless the Planning Board has issued a Conditional Use Permit.

All costs pertaining to the consideration of an application under this ordinance, including but not limited to consultants fees, on-site inspections, environmental impact studies, notification of interested persons, and other costs shall be borne by the applicant and paid prior to the Planning Board’s signature of the approved plans or a Building inspector granting of a building permit.

6.2.4 DEFINITIONS

The following definitions are applicable only to this article of the Kensington Zoning and Land Use Ordinance.

Sedimentation: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity and into surface waters or wetlands.

Site Disturbance- Any activity that alters the land surface or removes the vegetative cover from the land surface.

Slope- The degree of deviation of a surface, from the horizontal, measured over a distance; usually expressed in percent as the change in elevation (known as “rise”) over a certain horizontal distance (known as “run”).

Steep Slope- Slopes having a grade of twenty percent (20%) or greater based on two foot contours analyzed over ten foot vertical intervals prior to cut and fill as measured perpendicular to the slope.

6.2.5 DESCRIPTION OF STEEP SLOPES DISTRICT

The Steep Slope District includes all areas of Kensington with slopes twenty percent (20%) or greater. The slope of the natural terrain shall be determinative of whether or not land is within the district.

6.2.6 PERMITTED USES

- A. Forestry and tree farming using best management practices in order to protect streams from damage and to prevent sedimentation.
- B. Wildlife refuges, conservation areas and nature trails.
- C. Open Space and outdoor recreation.
- D. Agriculture which utilizes Best Management Practices (BMPs)

6.2.7 PROHIBITED USES

No buildings, structures, driveways, or roads shall be permitted in the Steep Slopes District unless permitted as prescribed in 11.8 below.

6.2.8 CONDITIONAL USE PERMIT

A conditional use permit may be granted by the planning board for residential and non residential development on a pre-existing lot of record as of March 2011 that causes less than 7,000 square feet of site disturbance on steep slopes if:

- A. The proposed use is consistent with the intent of the ordinance and following receipt of a review and recommendation of the conservation commission and any other professional expertise deemed necessary by the board;
- B. The applicant must demonstrate that no practicable alternatives exist to the proposal under consideration, and that all measures have been taken to minimize the impact that construction activities will have upon the district.

SECTION 6.3 AQUIFER PROTECTION (Adopted 03/12/2013)

6.3.1 AUTHORITY AND PURPOSE

Pursuant to RSA 674:16-21, the Town of Kensington hereby adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within a known aquifer identified by the United States Geological Survey. The objectives of the aquifer protection district are:

- to protect the public health and general welfare of the citizens of Kensington;
- to prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifer;
- to promote future growth and development of the Town, in accordance with the Master Plan, by ensuring the future availability of public and private water supplies;
- to encourage uses that can appropriately and safely be located in the aquifer recharge areas;
- to acknowledge that groundwater is a natural resource which must not be wasted or contaminated and that groundwater resources are necessary to promote health and general welfare;
- to protect animal and plant habitats and wetland ecosystems.

6.3.2 DISTRICT BOUNDARIES

A. Location

The Aquifer Protection District for Kensington is delineated as part of two USGS Aquifer study areas. The reference publications are, Geohydrology and Water Quality of Stratified-Aquifers in the Exeter, Lamprey and Oyster River Basins, Southeastern New Hampshire, 1990 and Geohydrology and Water Quality of Stratified-Aquifers in the Lower Merrimack and Coastal River Basins, Southeastern New Hampshire, 1992. Each publication includes a map which defines the aquifer area by identifying the aquifer transmissivity. The respective maps are titled “Saturated Thickness and Transmissivity of Stratified Drift in the Exeter, Lamprey and Oyster River Basins, Southeastern New Hampshire” and “Stratified Thickness, Transmissivity and Materials of Stratified Drift Aquifers in the Lower Merrimack and Coastal River Basins, Southeastern New Hampshire”.

The Aquifer Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying, base district zoning. In all cases, the more restrictive requirement(s) shall apply.

The Aquifer Protection District is represented on the map “Aquifer Protection District, Kensington, NH” prepared in December, 2011.

Said map(s) is hereby adopted as part of the Official Zoning Map of the Town of Kensington.

B. Recharge Areas

For the purpose of this Ordinance, the primary recharge area for the identified aquifer is considered to be co-terminus with that aquifer.

C. Appeals

Where the bounds of the identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report and determine the proper location and extent of the aquifer and recharge area relative to the property in question. The aquifer delineation shall be modified by such determination subject to review and approval by the Planning Board.

6.3.3 USE REGULATIONS

A. Hydrogeologic Study

For development proposals within the Aquifer Protection District, a hydrogeologic study shall be required for the following:

1. Subdivisions of eight (8) lots or greater;
2. Any septic system or series of septic systems designed for 2,400 gallons per day or greater contained within one lot;
3. Water development projects that withdraw more than 20,000 gallons per day from a particular site or property.

For residential subdivisions of eight (8) lots or less and for non-residential projects with proposed water usage of less than 20,000 gallons per day from a particular site or property, the Planning Board shall determine, on a case-by-case basis, the need for a hydrogeologic study. Particularly sensitive sites may include areas that have septic systems in close proximity to wells or may contain excessively drained soils or steep slopes.

- B. Hydrogeologic studies shall be performed by a qualified hydrogeologist registered in the State of New Hampshire. This study shall be sufficiently detailed to demonstrate to the satisfaction of the Planning Board that the development will not engender adverse short or long-term impacts to water quality and availability for approvable land uses on land drawing upon the same groundwater source; upon adjacent or nearby water wells; upon animal and plant habitat; and upon wetland ecosystems. All hydrogeologic studies shall include at least the following:

1. Soil borings (to evaluate soil stratigraphy) and multi level monitoring wells (to evaluate groundwater flow directions);

2. Cumulative impact nitrogen loading analysis employing a saturation build-out model. The analysis shall include verification that the development will not cause the nitrate-nitrogen (NO₃-N) concentration in groundwater beyond the site to exceed 5 mg/l;
3. Permeability testing;
4. Water quality sampling analysis;
5. Water table contours and groundwater flow direction;
6. Water budget analysis for watershed in which development is located that accounts for natural and anthropogenic recharge and discharge and storage capacity;
7. Additional analysis/testing required by the Planning Board on a case-by-case basis.

C. Maximum Lot Coverage

1. Within the Aquifer Protection District, no more than 20% of the area of a residential lot may be rendered impervious to groundwater infiltration.
2. Within the Aquifer Protection District, the portion of the area of a Commercial/Industrial lot that may be rendered impervious to groundwater infiltration shall be determined by the transmissivity of that lot in accordance with the following:

ALLOWABLE COVERAGE, %, IN COMMERCIAL/INDUSTRIAL ZONE

<u>Transmissivity</u>	<u>Coverage</u>
In ft ² / day	in %
Less than 500	60
500-1,000	55
1,000-2,000	45
More than 2,000	35

3. Within the Aquifer Protection District, where impervious areas exceed 35% of the total lot area, facilities will be provided to collect surface water from impervious areas and route same to non-impervious areas to allow for infiltration of this drainage. These facilities will be maintained free of debris, silt, etc., to ensure proper operation.

The design of the collection system must ensure that, at a minimum, the runoff from impervious areas in excess of 35% of total lot area be infiltrated to recharge groundwater.

D. Septic System Design Installation

In addition to meeting all local and state septic system siting requirements, all new wastewater disposal systems installed in the Aquifer Protection District shall be designed by

a Professional Engineer licensed in New Hampshire with experience in sanitary engineering who is also a New Hampshire licensed designer of subsurface wastewater disposal systems.

The PE shall meet on-site with the installer before construction is begun to review the proposed construction schedule and sequencing and to insure the installer understands all aspects of the plan.

The Septic System Inspector and Test Pit Witness shall inspect the installation of each new system prior to covering and shall certify that the system has been installed as designed.

Septic systems are to be constructed in accordance with the most recent edition of the "Guide for the Design, Operation and Maintenance of Small Sewage Disposal Systems" as published by the New Hampshire Water Supply and Pollution Control Division (WSPCD).

However, the following more stringent requirements shall apply to all septic system construction:

1. At least 24 inches of natural permeable soil above the seasonal high water table.
2. No less than five (5) feet of natural soil above bedrock.
3. There will be at least three feet of natural permeable soil above any impermeable subsoil.
4. There will be no filling of wetlands allowed to provide the minimum distance of septic to wetlands.
5. Standards for fill material: Fill material consisting of organic soils or other organic materials such as tree stumps, sawdust, wood chips and bark, even with a soil matrix, shall not be used.

The in-place fill should have less than 15% organic soil by volume.

The in-place fill should not contain more than 25% by volume of cobbles (6 inch diameter).

The in-place fill should not contain more than 15% by weight of clay size (0.002mm and smaller) particles.

The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.

6. Replacement systems with no expansion in original design capacity shall be reviewed and permitted by the Septic System Inspector/Test Pit Witness in conjunction with the Town's Health Officer and Board of Selectmen. Upon application to the Septic System Inspector/Test Pit

Witness (in cooperation with the Health Officer and Board of Selectmen) has the authority to waive the general requirements of this section and may grant a special

permit to construct a sewage disposal system provided the following provisions are met:

- a. The proposed system entails no expansion of use and is a replacement of the system previously occupying the lot.
- b. The previous system shall be discontinued. Only the proposed system shall be used once initial function is established.
- c. The design of the system shall comply with New Hampshire State WSPCD rules in effect at the time of approval, including waiver of these rules by the State permitting authority.

E. Prohibited Uses

The following uses are prohibited in the Aquifer Protection Zone except where permitted to continue as a non-conforming use. Such uses shall include, but not be limited to:

1. Disposal of solid waste (as defined by NH RSA 149-M) other than brush or stumps generated on the property on which they are to be disposed.
2. Storage and disposal of hazardous waste.
3. Disposal of liquid or leachable wastes except that from one or two-family residential subsurface disposal systems or as otherwise permitted as a conditional use.
4. Subsurface storage of petroleum and other refined petroleum products.
5. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
6. Outdoor storage road sale or other de-icing chemicals.
7. Dumping of snow containing de-icing chemicals brought from outside the district.
8. Dry cleaning establishments.
9. Automotive service and repair shops, junk and salvage yards.
10. Laundry and car wash establishments not served by a central municipal sewer.
11. All on-site handling, disposal, storage, processing or recycling of hazardous or toxic materials.

F. Permitted uses

The following activities may be permitted provided they are conducted in accordance with the purposes and intent of this Ordinance:

1. Any use permitted by Articles 8 and 9 of the Town of Kensington Zoning Ordinance, except as prohibited in 6.3.3.E of this Article.
2. Activities designed for conservation of soil, water, plants and wildlife.
3. Outdoor recreation, nature, study, boating, fishing and hunting where otherwise legally permitted.
4. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
5. Foot, bicycle and/or horse paths and bridges.
6. Maintenance, repair of any existing structure, provided there is no increase in impermeable surface above the limit established in Section 6.3.3.C of this Article.
7. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, manure and other leachables are used appropriately at levels that will not cause groundwater contamination and are stored under shelter.

G. Conditional Uses

The following uses, if allowed in the underlying zoning district, are permitted only after a Conditional Use Permit is granted by the Kensington Planning Board.

1. Industrial and commercial uses not otherwise prohibited in Section 6.3.3.D of this Article.
2. Sand and gravel excavation and other mining which is proposed to be carried out within eight (8) vertical feet of the seasonal high water table and provided that periodic inspections are made by the Planning Board or its agent to determine compliance.

The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following conditions are met:

1. the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
2. the proposed use will not cause a significant reduction in either the short or long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;
3. the proposed use will discharge no waste water on site in excess of one thousand (1,000) gallons per day and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;
4. the proposed use complies with all other applicable sections of this Article;

5. a hydro-geologic study shall be submitted as required in Section 6.3.3.B if this Article.

The Planning Board may require that the applicant provide data or reports prepared by a qualified hydro-geologist to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board shall engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria.

6.3.4 SPECIAL EXCEPTION FOR LOTS OF RECORD

The Zoning Board of Adjustment may grant special exceptions to the Aquifer Protection Ordinance for the erection of a structure on non-conforming lots.

6.3.5 DESIGN AND OPERATIONS GUIDELINES

Where applicable the following design and operation guidelines shall be observed within the Aquifer Protection District:

- A. Nitrate loading. In those portion of the Aquifer Protection District where the aquifer has a saturated thickness of twenty (20) feet or greater and a transmissivity greater than 1,000 feet square per day, no development shall cause the nitrate-nitrogen (NO₃-N) concentration to exceed 5 mg/l in the groundwater beyond the site.
- B. Safeguards. Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- C. Location. Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as on-site waste disposal systems shall be located outside the zone to the extent feasible.
- D. Drainage. All runoff from impervious surfaces shall be recharged on the site and diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- E. Inspection. All conditional uses granted under 6.3.3.G of this Article shall be subject to twice-annual inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted. A fee for inspection shall be charged to the owner according to a fee schedule determined by the Selectmen.

6.3.6 NON-CONFORMING USES

Any non-conforming use may continue and may be maintained repaired and improved, unless such use is determined to be an imminent hazard to public health and safety. No non-conforming use may be changed to another non-conforming use or renewed after it has been discontinued for a period of two years or more.

Soils Map

Current Land Use Map

Wetlands Map

Article VII: HEALTH REGULATIONS

Section 7.1 SEPTIC REGULATIONS (Adopted 04/17/1989) (Amended 05/1994 and 03/20/1995)

A. Authority –

Pursuant to chapter 147, section 1 of the New Hampshire Revised Statutes annotated, the Town of Kensington Board of Health hereby adopts and requires the following as regulations to assure properly designed and located subsurface wastewater disposal systems.

B. Definitions –

Soil Classification - shall be defined as the soil types on a parcel of land identified by a qualified soil scientist, utilizing the current standards and criteria of high intensity soil mapping.

Receiving soil layer - shall be defined as the natural soil above any soil restrictive layers, bedrock, or a seasonal high water table which receives, filters and provides final disposal of the effluent from a leaching facility.

Seasonal high water table - is defined as the average elevation of seasonal high water table levels over a period of years, as evidenced by soil coloration and presence of soil mottling. Seasonal high water table levels shall be determined by test pit observations.

Septic reserve area - is defined as that portion of a lot containing a land area of twice the square footage requirements necessitated by state regulation for leach system sizing, reserved exclusively for the location and operation of a septic system, and the duplicate area for replacement.

Expansion of use - is defined as an increased flow of wastewater into a septic system created by:

- an increased number of bedrooms in a dwelling unit
- an increase in the number of employees in a commercial use
- an increase in floor area or increased number of seats in public assembly buildings any other physical changes in any building resulting in increased wastewater flows.

Subsurface wastewater disposal system/septic system - are interchangeable terms defining an underground wastewater treatment system including tanks, lines, and other appurtenant structures designed to convey wastewater from a residence or building to the ground for purification.

C. Procedures –

1. Any owner of land or buildings proposing to construct or have constructed a septic system or to expand the use of an existing septic system shall submit to the Board of Health an approval for subsurface disposal system location from the Town Engineer.
2. No subsurface disposal system in Kensington shall be constructed or its use expanded until all criteria contained herein have been satisfied and approval granted by the

Town and, when applicable, the Subsurface Disposal Division of the State of New Hampshire, Department of Environmental Services.

3. Applicants for new systems shall submit four (4) sets of plans for local review, at a scale acceptable to the Subsurface Disposal Division, with local Board of Health approval required prior to State submission. No construction shall commence until the plans submitted as hereafter required have been approved by the Board of Health and **reviewed** by the Town Engineer. **(Amended 08/04/2003)**
4. Applicants for expansion or alterations of existing systems or for assessments of existing systems shall submit single copies at a reasonable scale. No expansion or alteration shall commence until plans have been approved.

The only exception to the above shall be systems which are repaired or replaced "in kind" which shall be allowed to commence without submission of plans or approval. In kind repairs or replacements shall be limited to the strict definitions contained in Part Ws 1002.01 (d) (1)-(9) of the State of N.H. Subdivision and Individual Sewage System Design Rules, chapter Ws 1000.

D. General Standards

1. Test Pits
 - a. Shall be dug in the land area proposed as the leaching portion of the septic system;
 - b. Shall be logged to verify that the suitability requirements for septic system location have been met;
 - c. Shall be performed at the applicant's expense with his/her agent and the Town Engineer viewing and recording the results;
 - d. Shall be the basis on which elevation of the septic system is determined;
 - e. Shall be dug to a depth determined by site conditions, with detailed log information generated for the upper five feet;
 - f. Shall be located and identified on all plans submitted to any Board or Commission and shall be referenced to an established benchmark on the site to verify actual location during inspections; and
 - g. Shall be witnessed by the individual responsible for the septic system design. **(Adopted 05/1994)**
2. Percolation Tests
 - a. Shall be conducted at a minimum of 10 feet from the test pit to assure it is conducted in undisturbed soil; and
 - b. Percolation rates shall be the basis on which the leaching area size is determined.
3. Design Factors

- a. Soils - In addition to minimum State regulations, the required septic reserve areas and all components of the subsurface wastewater disposal system must:
 - i. Be located at least seventy-five feet from any locally designated wetland, or any drainage group 5 or 6 soil identified by subdivision required soil classification;
 - ii. Be located in a soil area which has a naturally occurring seasonal high water table level of at least 18 inches below the natural ground surface. This requirement shall supersede State mandated levels cited in Ws 1015.01 (a) of the State of N.H. Subdivision and Individual Sewage System Design Rules;
 - iii. Be designed based on an assessment of soil properties representing the most restrictive found in the leaching portion of the proposed septic system. The number of test pits required may vary based on soil and slope characteristics, and shall be determined by the Town Engineer;
 - iv. Be designed based on percolation information derived from tests conducted in the receiving layer of the soil cited in Section D-2;
 - v. Be designed on average seasonal high water table levels as logged by the Town Engineer unless section G-2 applies; and
 - vi. Be designed based on a four foot minimum separation between the bed bottom and average seasonal high water table levels. Slope averaging shall not be allowed. (Adopted 05/1994)
 - b. Subsurface drainage - Surface water runoff, including runoff from driveways, roofs, foundation drains, landscaped areas or any other source shall not be directed toward or over the septic system.
 - c. Setbacks - No component of any septic system shall be located or constructed less than 35 feet from a property line, easement, or right of way.
 - d. Leach system replacement site - An area of land equal in size and configuration, and contiguous to the proposed leaching system must be reserved for the future replacement of the leaching system. Such reserve area must be shown to meet the requirements of section D-2a.
 - e. No well water supply line shall be crossed by any component of the septic system.
4. Establishment of a benchmark
- a. A permanent marker must be located and identified on the site, and the septic system must be designed and installed with reference to this benchmark.
 - b. The benchmark must be located so as to be readily visible during site inspections and must be protected from damage by site work or grading. The benchmark must be shown on all plans submitted for local review.
5. Removal of topsoil

Topsoil, unless otherwise required, shall be removed from the area into which the septic system will be installed.

6. Fill Specifications

Fill required to raise the subgrade of a septic system must meet all applicable state requirements for composition and depths.

7. Expansion of use

Any activity resulting in increased wastewater flows into a septic system shall be permitted only after the adequacy of the existing system to accommodate such expansion of use has been verified, or until plans for increasing the size and components, or relocating the septic system to accommodate such use have been approved by the Town Engineer, and reviewed by the Board of Health. It shall be the responsibility of the Building Inspector to require that applicants provide necessary information with building permit applications.

E. Plans

1. New Systems

Prior to, and in addition to any and all septic system plans submitted to the Subsurface Division of the Department of Environmental Services, an applicant shall submit plans and drawings to the Town Engineer with the following information:

- a. Owner/applicant name and address
 - i. Septic system designer name, license number and address
 - ii. Septic system installer name, license number and address
- b. Map references
 - i. Locus map
 - ii. Town tax map and lot number
 - iii. In recent subdivisions, subdivision name and lot number
 - iv. Street name and number
 - v. Area of lot
- c. Soil classification of the septic system area with notation of source.
- d. Test pit information including the following:
 - i. Location
 - ii. Consistency/inconsistency with soil classification
 - iii. Soil texture, consistence and colors
 - iv. Presence of restrictive or impermeable soil horizons and notes of ledge
 - v. Depth to seasonal high water table and notes of observed water
 - vi. Depths and thicknesses of all information and of all soil horizons to a depth determined by the Health Officer.

- e. Contour information at two foot intervals and ground elevations in the proposed septic system area and surrounding the system in all directions to a maximum distance of 100 feet. Information shall be provided for pre and post construction conditions, and shall extend beyond property lines if necessary. A listing of all waivers or variances to Town regulations must be placed on the plans or where none are required, noted as, "No Town waivers required". (Amended 12/04/2006)
- f. Location and limits of the septic reserve area, which include the entire septic system and leach system replacement area.
- g. Data and calculations used to determine leach area sizing and verification of compliance with Ws 1007.01, Ws 1007.02 and Ws 1015.05 of the State's Sewage System Design Rules.
- h. Typical cross section of the leaching system with a profile of the entire system showing elevations of system components, including outlet from the building serviced.
- i. Notation of a permanent benchmark.
- j. Percolation test results, including location, depth of test and rate.
- k. Location of all existing and any proposed buildings.
- l. Location of existing trees within 20 feet of the septic system.
- m. Location of well and water lines.
- n. Soil classification of land within 100 feet of the septic system and location of any water bodies, hydric soils, flowing waters and ledge outcroppings.
- o. Location of existing and proposed culverts, drains or drainage easements within 100 feet of the proposed septic system. If none, plans must so state.
- p. Driveway location and location of any right of way.

2. Assessment of existing septic systems.

Use capacity of existing septic system shall be based on:

- a. Current wastewater flows
 - i. residential - number of bedrooms at a rate of 150 gallons per day per bedroom.
 - ii. commercial/industrial - gallons/day wastewater flow volumes as defined by Ws 1007.02 of the State's Sewage System Design Rules.
- b. Leaching facilities
 - i. size and location on lot
 - ii. components, including existing drywells and any modifications to the system made in place
 - iii. age of system and date of initial installation
 - iv. plans or specifications from original designer / installer
 - iv. conformance to current requirements.
- c. Percolation test results, including location, depth of test and rate.
- d. Seasonal high water table levels.

3. Expansion of use-feasibility

Assessment of the feasibility for expansion of an existing septic systems use, or the requirement for improvements shall be based on the information generated by section 2 above and the following data:

- a. Proposed increase in wastewater flows
 - i. residential - increase in number of bedrooms
 - ii. commercial/industrial - increases in flows.
- b. Leaching area required by current State regulations.
- c. Elevation requirements necessitated by current regulations cited in section E 1-G of these regulations.

4. Required improvements to septic systems.

If, based on the analysis required in section E-3, a septic system requires improvements such improvements shall meet all applicable State and local requirements, and be reviewed and approved by the local Board of Health and Town Engineer, as required by section C of these regulations.

F. Inspections

1. Test Pits

a. New Systems

Test pits shall be conducted prior to plan submission for all new septic systems. Test pit information shall be the binding information used for septic system designs.

b. Expansion of use

When expansion of use involves construction of a new or separate leaching system, test pits shall be required.

2. Percolation Tests

Percolation tests shall be conducted at the same time as test pits, and are to be conducted for all septic approvals, whether new or for expansion or assessment purposes.

3. Compliance Inspection

- a. New systems or replaced leach systems.
 - i. topsoil removal - Health Officer shall verify topsoil removal prior to subgrade preparation
 - ii. subgrade preparation - the Health Officer shall view the subgrade of a septic system prior to stone being placed to assess elevations and uniformity of material
 - iii. system compliance inspection - Health Officer shall be notified prior to backfilling the system to assess:
 - a) that the distribution box is level
 - b) that pipes, chambers, or other leaching system components are appropriate
 - c) that the system contains all the components shown on approved plans
 - d) that required slopes are installed as designed
 - e) that the system is located in the design area, at the correct depth, utilizing permanent benchmark criteria
 - f) that the benchmark is affixed and permanent.

4. Noncompliance

If, after inspection, the Health Officer has cause to believe that the septic system is not installed as designed, or notes any other inconsistency, the Board of Health shall issue and order pursuant to the provisions of R.S.A. 147.10.

G. Conflicts

1. Test pit results

When an applicant and the Health Officer differ, or cannot agree on test pit information, an independent qualified soil scientist shall be required by the Board of Health to provide information which will be binding on both the applicant and the Town. Costs of such resolution shall be borne by the applicant.

2. Seasonal high water table levels

Conflicts concerning seasonal high water table level determination shall be resolved based on morphologic data and on site observations by a qualified soil scientist, at the applicant's expense.

3. In cases where Town requirements and State requirements differ, the more stringent rule shall apply.

H. Fees

1. Test pit/Percolation tests and compliance inspections shall be conducted at current rate which shall be prepaid. (Amended 03/20/1995; 08/04/2003)

2. Plan review shall be conducted at current rate. (Amended 08/04/2003)

I. Waivers

Where expansion of use requires modifications to septic systems which are on existing lots not meeting the criteria contained herein, an applicant shall have the right to request a waiver be granted by the Board of Health. The Board shall grant such waiver as it deems appropriate if, after advice from proper expert witnesses it can be demonstrated that:

1. Such waivers will not jeopardize public health.
2. Such waiver will comply substantially with the provisions contained herein.
3. Such waiver is the choice of last resort of an applicant.

J. Violations

1. New Construction

Any applicant who violates the provisions of these regulations shall be subject to penalties as established by State Statute.

2. Expansion of use

Any applicant who fails to make required changes to a septic system necessitated by expansion of use shall:

- a. be penalized in accordance with the provisions of N.H. R.S.A. 147; and
- b. not be issued any certificate of occupancy nor be allowed to continue present usage until such modifications as required are implemented.

K. SAVING CLAUSE

If any court of law holds any part or provision of these regulations or application thereof to be invalid, such judgment shall be confined to the part, provision or application directly involved in controversy and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other applicants for septic system design and location permits.

Article VIII: BUILDING ORDINANCE

SECTION 8.1 BUILDING PERMIT (03/09/1971; 03/16/1978) (Amended 03/1994; 03/1997; 03/13/2001)

A building permit for new structures, remodeling, or manufactured buildings is required to promote the health, safety, convenience and general welfare of the community.

A. A permit is required for:

1. A new structure, remodeling, or manufactured building when the value exceeds \$2,000. The value shall be based on labor costs - (including the value of self-provided labor), material costs, and other costs, excluding land;
2. The demolition of a structure; and
3. A free standing structure exceeding 120 square feet, as measured from outside.

B. A permit is not required for:

1. Non-structural changes that do not meet the criteria defined for Section A1 listed above, such as siding, roofing, and/or same size window replacement; and
2. Routine maintenance.

8.1.2 BUILDING PERMIT FEE

A. Building permit fees shall be assessed by the Building Inspector at the time of the building permit application.

1. In process construction may require re-evaluation by the Building Inspector.

B. All such fees shall be collected by the Kensington Town Offices prior to building permit issuance.

C. The division of building permit fees shall be determined by the Board of Selectmen. **(Amended 3-11-2014)**

Is there a 8.1.3?

8.1.4 BUILDING PERMIT APPLICATIONS

A. Building permit applications are available at the Kensington Town Office.

B. Building permit applications may include the following requirements:

1. Planning Board approval (if necessary) and shall include site review/subdivision agreements;
2. Zoning Board of Adjustment approval;
3. Conservation Commission review;
4. Building fee submission;
5. Building plans and specifications (Bldg. Insp. use);
6. State & Kensington septic system approval;
7. NH DOT or Kensington driveway approval;
8. Wetland permit (if applicable);
9. Name of builder and/or self construction; and
10. Type of construction (interior and exterior).

C. Building Permit Plot Plan (submitted with application):

1. Plot plan shall be 1"=40' or less;
2. Shall show property lines;
3. Shall show setback requirements; and
4. Shall show hydric soils

D. The attached building permit application shall be completed and returned to the Town Office for building permit issuance.

8.1.5 ELECTRICAL WIRING

Electrical wiring installed in any new building or during any reconstruction, alteration, or remodeling of any building shall conform to and comply with the regulations and amendments of the National Board of Fire Underwriters, and regulations known as the National Electric Code. (03/09/1971)

8.1.6 FOUNDATIONS

The space beneath all structures used as dwellings shall be completely enclosed by solid peripheral foundations of cement, brick, stone or other acceptable masonry which conforms with practices, except for mobile homes, which accepted building will be subject to the regulations set forth in the following paragraphs. The foundation plans of all dwellings must be approved on an official permit by the building inspector before construction begins.

A. Foundation Standards for Mobile Homes

All mobile homes housing sited in Kensington will be placed on pads or on foundations which meet the following standards and, whether on pads or foundations, shall be skirted.

1. Pads. Pads shall be constructed as follows:
 - a. Dimensions: The dimensions of the pad shall be at least two (2) feet more than the mobile home in any direction;
 - b. Excavation: The area of the pad shall be cleared of all organic material and topsoil down to a level of 15 inches or to mineral soil, whichever is deeper;

- c. Fill: The entire area of the pad shall be filled with crushed rock, well compacted in two layers, the last of which shall not be more than six inches deep; and
 - d. Grade: The pad shall have a grade of at least half of one percent and not greater than one percent for drainage. All water shall be carried at least 25 feet away from the pad.
- 2. Post foundations. Foundations used over pads may be of the following types:
 - a. Cantilevered floors
 - i. Wooden or concrete posts set in holes four to six feet apart along the parallel main stringers. The hole should be at least four feet deep with a poured concrete pad six inches deep at the bottom. The posts should be at least eight inches in diameter at their narrowest point. Wooden posts shall be pressure treated to resist moisture.
 - ii. Concrete block posts of four blocks each, set five feet apart along the main stringers. The blocks shall be twelve by twelve by sixteen inches in size.
 - b. Perimeter-supported floors

Wooden or concrete posts at all four corners and every six to eight feet around the perimeter. The posts shall be deployed in the same manner as in Section 2.a.i. above.
- 3. Full foundations. Where the home has perimeter supported floors, a full foundation may be constructed. In that case, no pad is required, and the foundation shall meet the standards for foundations elsewhere in this ordinance.
- 4. Skirting. The entire perimeter of the mobile home foundation shall be closed in by a standard skirting. Care should be taken that access panels be provided in sufficient number and convenient places so that maintenance of sewer and water hook-ups and foundation posts may be performed.
- 5. Running gear and tow bar. All equipment associated with the movement of the home on the highway will be closed in by the skirting or removed where such closing in will not completely cover and disguise the purpose of the equipment.
- 6. Additions. Additions to the main structure shall follow the same foundation procedures as outlined in sections 1-4 above.
- 7. Non-conforming mobile homes. A mobile home which is at present non-conforming may not be moved to another site without first complying with this ordinance. A mobile home which is at present non-conforming may not be replaced for any reason with another mobile home without first complying with this ordinance.

8.1.7 CERTIFICATE OF OCCUPANCY REQUIRED

No building hereafter erected, altered substantially in its use or extent, or relocated shall be used or occupied, and no change shall be made of the use of any building or of any parcel of land, unless a Certificate of Occupancy, signed by the Building Inspector, has been granted to the owner or occupant of such land or building. Such certificate shall not be granted unless the proposed use of land and building and all accessory uses comply in all respects with this Article, and no use shall be made of such land or building that is not authorized by such Certificate of Occupancy. Applications for Certificates of Occupancy shall be filed coincident with the application for building permits and shall be issued or refused in writing for cause within ten (10) days after alteration of such buildings has been completed. Failure of the Building Inspector to act within ten (10) days of receipt of said notification shall be deemed to constitute approval of the application for a Certificate of Occupancy. Buildings accessory to dwellings when completed at the same time shall not require a separate Certificate of Occupancy. The Certificate of Occupancy shall be posted by the owner or occupant of the property for a period of not less than ten (10) days after issuance. Pending the issuance of a regular certificate, a temporary certificate may be issued for a period not exceeding six (6) months during the completion or alterations or during partial occupancy of a building pending its completion. No temporary certificate shall be issued prior to its completion if the building fails to conform to the provisions of the Building Code and the State Laws to such a degree as to render it unsafe for the occupancy proposed.

8.1.8 BUILDING CODE FOR METAL CHIMNEYS (SMOKESTACKS) (Adopted 03/14/1989)

A. GENERAL REQUIREMENTS

1. Single-wall metal chimneys or unlisted metal chimneys shall not be used inside one- and two-family dwellings.
2. Metal chimneys shall be constructed of steel or cast iron. Sheet steel shall have a thickness not less than that indicated in Table A-2.

Table A-2

Minimum Thickness of Sheet Steel Chimneys

Mfgr. Std. Gage No.	Min. Thickness in. (mm)	Area in ² (m ²)	Equiv. Round Diam. in. (mm)
16	0.053 (1.35)	Up to 154 (.0994)	up to 14 (356)
14	0.067 (1.70)	155 to 201 (.0999 to .1296)	over 14 to 16 (356 to 406)
12	0.093 (2.36)	202 to 254 (.1303 to .1638)	over 16 to 18 (406 to 457)
10	0.123 (3.12)	Larger than 254 (.1638)	over 18 (457)

Note: Regardless of minimums of this table, the thickness of sheet metal shall be adequate to meet the requirements of 8.1.8 A (3).

3. Metal chimneys shall be properly riveted, welded or bolted, securely supported and constructed in accordance with good engineering practice as necessary for the following.
 - a. Strength to resist stresses due to steady or gusting wind loads.
 - b. Adequate anchoring, bracing, and inherent strength to withstand seismic and wind-induced vibrational stresses.
 - c. Proper material thickness for durability considering fuel analysis.
 - d. Security against leakage of flue gases under positive pressure.
 - e. Allowance for thermal expansion of breeching and vertical sections.
4. Metal chimneys shall not be used inside of ventilating ducts.

Exception: When such ducts are constructed and installed as required by this standard for chimneys and the ventilating ducts are used solely for exhaust of air from the room or space in which the appliance served by the metal chimney is located.
5. Metal chimneys shall have sufficient clearance from buildings and structures to avoid heating combustible material to a temperature in excess of 90 degrees F (50 degrees C) above ambient and to permit inspection and maintenance operations on the chimney. They shall be located or shielded to avoid danger of burns to persons.
6. Metal chimneys shall be supported on properly designed foundations of masonry or reinforced portland or refractory cement concrete or on non-combustible material having a fire resistance rating of not less than 3 hrs.; provided such supports are

independent of the building construction and the load is transferred to the ground. A metal chimney may be supported also at intervals by the building structure, in which case expansion joints shall be provided at each support level. All joints shall be liquid tight or of a design such that liquid will drain to the interior of the chimney.

7. Metal chimneys serving residential-type or low heat appliances and producing flue gases having a temperature below 350 degrees F (165.5 degrees C) at the entrance to the chimney at full load or partial load shall be lined with acid and condensate resistant metal or refractory material, or constructed of suitable stainless steel, or otherwise protected so as to minimize or prevent condensation and corrosion damage.

B. Metal Chimneys For Residential-Type Or Low Heat Appliances

1. Termination (Height). Metal chimneys for residential type or low heat appliance shall extend at least 3 ft. (.92m) above the highest point where they pass through the roof of a building and at least 2 ft. (.61m) higher than any portion of a building within 10 ft. (3.1m).

Exception: The outlet of a metal chimney for residential-type and low heat appliances equipped with an exhaust may terminate at a location not less than 3 ft. (.92m) from an adjacent building or building opening and at least 10 ft. (3.1m) above grade or walkways.

In any case, the outlet shall be so arranged that the flue gasses are not directed so as to jeopardize people, overheat combustible structures, or enter building openings in the vicinity of the outlet.

2. Clearances.

a. Exterior.

- i. Exterior metal chimneys used only for residential-type or low heat appliances as defined in Table 1-2(a) shall have a clearance of not less than 6 in. (152.4mm) from a wall of wood frame construction and from any combustible material. Table 1-2(a).
- ii. Exterior metal chimneys over 18 in. (457mm) in diameter shall have a clearance of not less than 4 in. (102mm) from a building wall of other than wood frame construction.
- iii. Exterior metal chimneys 18 in. (457mm) or less in diameter shall have a clearance of not less than 2 in. (51mm) from a building wall of other than wood frame construction.
- iv. A metal chimney erected on the exterior of a building shall not be installed nearer than 24 in. (610mm) to any door or window or to any walkway.

Exception: The distance may be less than 24 in. (610 mm) when the chimney is insulated in an approved manner to avoid danger of burns to persons.

b. Interior

- i. Where a metal chimney extends through any story of a building above that in which the appliances connected to the chimney are installed, it shall be enclosed in such upper stories, within a continuous enclosure constructed of noncombustible materials.

The enclosure shall comply with the following:

- a) The enclosure shall extend from the ceiling of the appliance room to or through the roof so as to maintain the integrity of the fire separations required by the applicable building code provisions.
- b) The enclosure walls shall have a fire resistance rating of not less than 1 hr. if the building is less than 4 stories in height.
- c) Enclosure walls shall have a fire resistance rating of not less than 2 hrs. if the building is 4 stories or more in height.
- d) The enclosure shall provide a space on all sides of the chimney sufficient to permit inspection and repair but in no case shall it be less than 12 in. (305mm).
- e) The enclosing walls shall be without openings.

Exception: Doorways equipped with approved selfclosing fire doors may be installed at various floor levels for inspection purposes.

- ii. Where a metal chimney serving only residential type or low heat appliance as defined in Table 1-2(a) is located in the same story of a building as that in which the appliance connected thereto are located, it shall have a clearance of not less than 18 in. (457mm) from a wall of wood frame construction and from any combustible material.
- iii. Interior metal chimneys over 18 in. (457mm) in diameter shall have a clearance of not less than 4 in. (102mm) from a building wall of other than wood frame construction.
- v. Interior metal chimneys 18 in. (457mm) or less in diameter shall have a clearance of not less than 2 in. (51mm) from a building wall of other than wood frame construction.
- v. Where a metal chimney serving only residential type or low heat appliance as defined in Table 1-2(a) passes through a roof constructed of combustible material, it shall be guarded by a ventilating thimble of galvanized steel or approved corrosion resistant metal, extending not less than 9 in. (229mm) below and 9 in. (229mm) above the roof construction, and of a size to provide not less than 6 in. (152mm) clearance on all sides of the chimney.

Exception: In lieu of the above requirement, the combustible material in the roof construction may be cut away so as to provide not less than 18 in. (457-mm) clearance on all sides of the chimney, with any material used to close up such opening entirely noncombustible.

C. Metal Chimneys For Medium Heat Appliances

1. Construction. Metal chimneys serving medium heat appliances as defined in Table 1-2(a) shall be lined with medium-duty fire brick (ASTM C64, Type F) or the equivalent laid in fireclay mortar (ASTM C105, medium duty), or the equivalent.
 - a. The lining shall be at least 2 in. (64mm) thick for chimneys having a diameter or greatest cross-section dimension of 18 in. (457mm) or less.
 - b. The lining shall have a thickness of not less than 4 in. (114mm) laid on a full width bed for chimneys having a diameter or greater cross section dimension greater than 18 in. (457mm).
 - c. The lining shall start 2 ft. (.61mm) or more below the lowest chimney connector entrance and shall extend to a height of at least 25 ft. (7.6m) above the highest chimney connector entrance. Chimneys terminating 25 ft. (7.6m) or less above a chimney connector entrance shall be lined to the top.
2. Termination (Height). Metal chimneys for medium heat appliances shall extend not less than 10 ft. (3.1m) higher than any portion of any building within 25 ft. (7.6m).
3. Clearances.
 - a. Exterior.
 - i. Exterior metal chimneys used for medium heat appliances as defined in Table 1-2(a) shall have a clearance of not less than 24 in. (610mm) from a wall of wood frame construction and from any combustible material.
 - ii. Exterior metal chimneys over 18 in. (457mm) in diameter shall have a clearance of not less than 4 in. (102mm) from a building wall of other than wood frame construction.
 - iii. A metal chimney erected on the exterior of a building shall not be installed nearer than 24 in. (610mm) to any door or window or to any walkway.

Exception: The distance may be less than 24 in. (610mm) when the chimney is insulated or shielded in an approved manner to avoid danger of burns to persons.
 - b. Interior
 - i. Where a metal chimney extends through any story of a building above than in which the appliance connected to the chimney are installed, it shall be enclosed in such upper stories, within a continuous enclosure constructed of noncombustible materials.

The enclosure shall comply with the following:

- a) The enclosure shall extend from the ceiling of the appliance room to or through the roof so as to maintain the integrity of the fire separations required by the applicable building code provisions.
- b) The enclosure walls shall have a fire resistance rating of not less than 1 hr. if the building is less than 4 stories in height.
- c) The enclosure walls shall have a fire resistance rating of not less than 2 hrs. if the building is 4 stories or more in height.
- d) The enclosing walls shall provide a space on all sides of the chimney to permit inspection and repair, but in no case shall it be less than 12 in. (305mm).
- e) The enclosing walls shall be without openings.

Exception: Doorways equipped with unproved selfclosing 1 hr. fire doors may be installed at various floor levels for inspection purposes.

- ii. Where a metal chimney serving a medium heat appliance as defined in Table 1-2(a) passes through a roof constructed of combustible material, it shall be guarded by a ventilating thimble of galvanized steel or approved corrosion resistant metal, extending not less than 9 in. (229mm) below and 9 in. (229mm) above the roof construction, and of a size to provide not less than 18 in. (457mm) clearance on all sides of the chimney.
- iii. Where a metal chimney serving medium heat appliances defined in Table 1-2(a) is located in the same story of a building as that in which the appliances connected are located, it shall have a clearance of not less than 36 in. (914mm) from a wall of wood frame construction and from any combustible material.
- iv. Interior metal chimneys over 18 in. (457mm) in diameter shall have a clearance of not less than 4 in. (102mm) from a building wall of other than wood frame construction.
- v. Interior metal chimneys 18 in. (457mm) or less in diameter shall have a clearance of not less than 2 in. (51mm) from a building wall of other than wood frame construction.

D. Metal Chimneys For High Heat Appliances

1. Construction. Metal chimneys for high heat appliances as defined in Table 1-2(a) shall be lined with high-duty fire brick (ASTM C64, Type A) or the equivalent, not less than 4" in. (114mm) thick laid on a full width bed in refractory mortar (ASTM C105, high duty) or the equivalent.
 - a. The lining shall start 2 ft. (.61m) or more below the lowest chimney connector entrance and shall extend to a height of at least 25 ft. (7.6m) above the highest chimney connector entrance. Chimneys terminating 25 ft. (7.6m) or less above a chimney connector entrance shall be lined to the top.
2. Termination (Height). Metal chimneys for high heat appliances shall extend not less than 20 ft. (6.1m) higher than any portion of any building within 50 ft. (15.3m).

- E. Clearance from Combustible Material. Metal chimneys for high heat appliances shall have sufficient clearance from buildings and structures to avoid heating combustible material to a temperature in excess of 90 degrees F (50 degrees C) rise above ambient and to permit inspection and maintenance operations on the chimney. They shall be located or shielded to avoid danger of burns to persons.

ARTICLE IX: AMENDMENTS, CONFLICTS AND PENALTIES, ADMINISTRATION, SEVERABILITY AND EFFECTIVE DATE

(Adopted 3/12/2013)

SECTION 9.1 AMENDMENTS

This Ordinance may be amended by a majority vote of any legal Town Meeting when such amendment has received a final public hearing by the legislative body, which hearing has been advertised and given a legal notice; or when such amendment has received a preliminary public hearing and has been published in its entirety in the warrant calling for the meeting.

9.1.2 CONFLICT AND PENALTIES

A. Conflicting Sections

Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance or other regulation, that provision which imposes the greater restriction or the higher standard shall govern.

B. Penalties

Any violation of this Ordinance shall be punishable as stated in RSA 676:17, IV, as it may be amended. Additionally, in the event the Town is required to seek injunctive relief to enforce any provision of this Ordinance, the Town shall seek the imposition of all costs and attorney's fees in pursuing such action from any violator of this Ordinance unless in the judgment of the Selectmen the violation was inadvertent or otherwise excusable. Additionally, in the event that any person shall fail to obtain any permit required under this Ordinance or any other land use regulation of the Town of Kensington, including but not limited to, the Town's Building Ordinance, The Planning Board's Site Plan Review, Subdivision and Excavation Regulations, the Requirements for Siting Septic Systems Ordinance and the Regulations re: Driveways and other Accesses to Town Roads, any and all permit or application fees shall be trebled unless the appropriate enforcing body shall find that the failure to obtain the permit was inadvertent or otherwise excusable. The purpose of this provision is to insure that the Town recovers the costs associated with the administrative enforcement of its land use regulations.

9.1.3 ADMINISTRATION

General: The provisions of the Kensington Zoning Ordinance shall be administered by the following:

- A. Building Inspector for building permits;
- B. Planning Board for subdivision, site plan review and conditional use approval; and

- C. Zoning Board of Adjustment for special exception approval and any variances granted from the ordinance.

9.1.4 ENFORCEMENT

The Board of Selectmen shall be responsible for the enforcement of the provisions and conditions of the Town of Kensington Zoning Ordinance and any permits that are granted from the above town land use boards.

9.1.5 SEVERABILITY

If any section, clause, provision or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provisions or portion of this ordinance.

9.1.6 EFFECTIVE DATE

This Ordinance and amendments, shall take effect upon its passage.