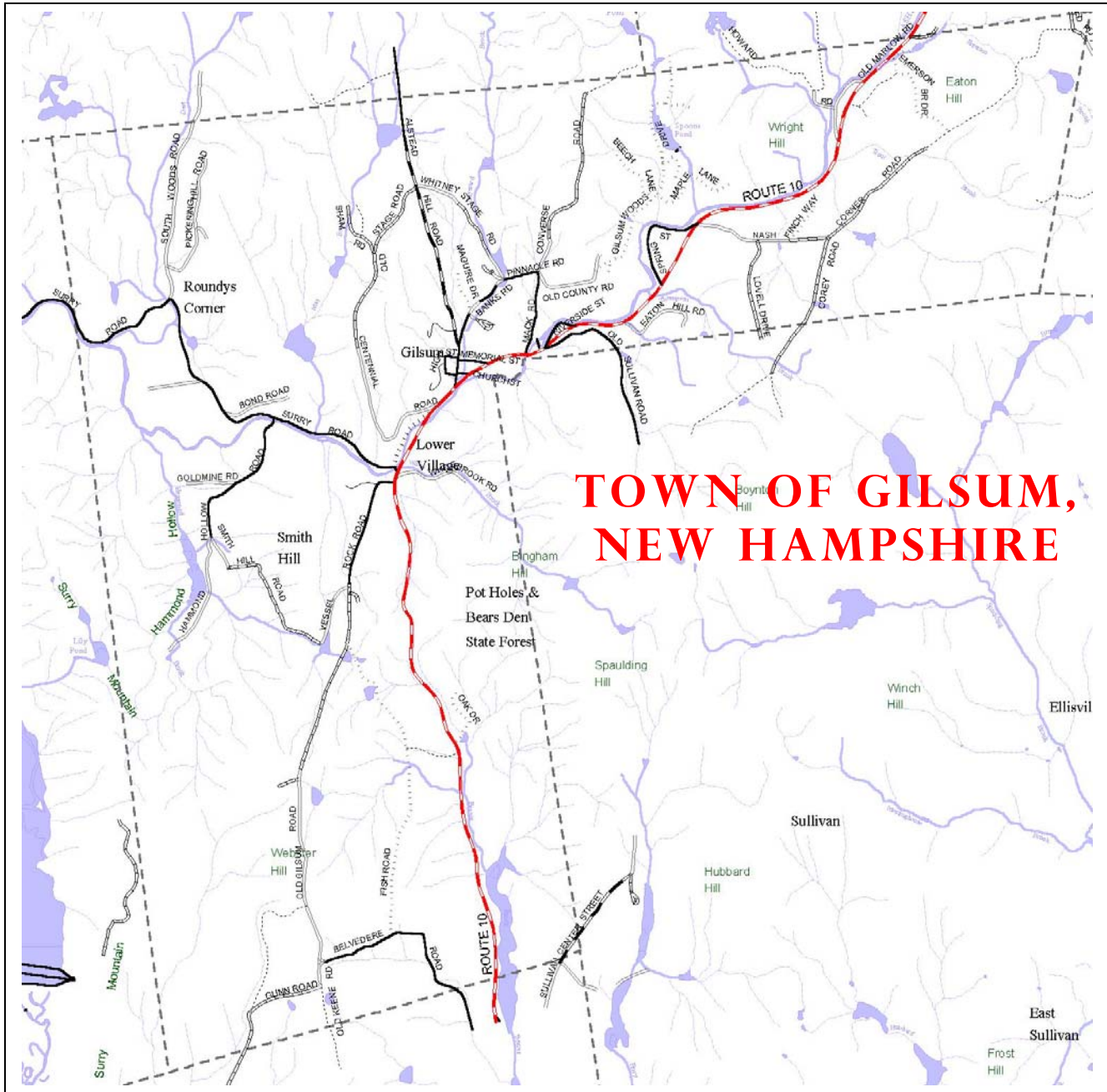


# ZONING ORDINANCE



## TOWN OF GILSUM, NEW HAMPSHIRE

RE-ADOPTED MARCH 14, 1989

Amended: March 12, 1991

March 12, 1996  
March 11, 1997  
March 9, 1999

March 14, 2000  
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# GILSUM ZONING ORDINANCE

An ordinance to promote the health, safety, morals, convenience and general welfare of the community by regulating the use and construction of buildings and premises in the Town of Gilsum, New Hampshire.

## **ARTICLE I – PREAMBLE**

In pursuance of authority conferred by New Hampshire Revised Statutes Annotated (RSA), and for the purpose of promoting the health, safety, morals, prosperity, convenience or general welfare, as well as efficiency and economy in the process of development of the incorporated Town of Gilsum, New Hampshire, by securing safety from fire, panic and other dangers, providing adequate areas between buildings and various rights of way, by preserving the rural charm now attached to our town, the promotion of good civic design and arrangements, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements, and by other means, now therefore the following Ordinance is hereby enacted by the voters of the Town of Gilsum, New Hampshire, in official meeting convened.

## ARTICLE II – GENERAL PROVISIONS

- A. INTENT.** It is the intent of this Ordinance that there be only one principal use per lot.
- B. JUNK YARDS.** No junk yard or place for storage of discarded machinery, or other scrap materials shall be maintained in any district, except Motor Vehicle junk yards which may be permitted as per RSA 236:112-129. The junkyard operator must secure yearly permits as required by RSA 236:122. This permit shall be in accordance with the State Laws of New Hampshire.
- C. DILAPIDATED BUILDINGS.** No owner or occupant of land in any district shall permit dilapidated buildings, buildings damaged by fire or other catastrophe to remain, but must remove, repair or replace such building, bringing it into conformity with all then existing federal, state and local laws within one year.
- D.** Any uses that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibrations, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community or lending to its disturbance or annoyance are prohibited in any district.
- E. SEWAGE DISPOSAL.** All sewage disposal shall be approved by the State of New Hampshire, Water Supply and Pollution Control Division, before any new construction, or additions, expansion or change of use of existing building(s).
- F. DRIVEWAYS.** No driveway shall be constructed without first obtaining a driveway permit from the Board of Selectmen if on a town road, or from the State of New Hampshire if on a state road.
- G. BUILDING PARAMETERS:**
1. The minimum area for primary dwelling units shall be 700 square feet per unit.
  2. No building shall exceed 35 feet in height.
- H. MOBILE HOMES** are permitted only in the Rural Residential District and must meet all the requirements of conventional housing. This includes, but is not limited to, the following:
1. Must be placed on a permanent foundation with wheels and axles removed.
  2. No mobile home may be brought into the Town of Gilsum unless it meets, at a minimum, the most recent standards of the federal Department of Housing and Urban Development.

- I. HOME OCCUPATIONS:** A home occupation will be permitted in all districts if it conforms to all of the following conditions: (Added March 12, 1996)
1. It shall be carried out only by residents of the premises and involve only a service provided or product produced by those residents.
  2. It shall be operated entirely within a principal dwelling unit and/or accessory structure.
  3. It shall be clearly secondary and incidental to the use of the premises as a residence and will not alter the general character of the neighborhood or reduce the value of any surrounding property.
  4. It shall result in no external evidence of the enterprise, except for a sign not to exceed 2' x 2.5' in size, and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, soil, water or air pollution, increases in traffic or in parking requirements, or as a result of other nuisances.
- J. HOME-BASED BUSINESS:** A Home-Based Business is permitted by Special Exception of the Board of Adjustment, subject to the provisions of Article VII, F & G. (Added March 12, 1996)
- K. ACCESSORY APARTMENTS:** To implement recommendations contained within the Population & Housing section of the Master Plan, provisions are hereby adopted that are intended to provide housing opportunities for elderly and/or handicapped persons who need assistance in daily living. One accessory apartment is allowed per single family dwelling by Special Exception in all districts, subject to the conditions of Article VII, F. & H.
- L. CONSERVATION SUBDIVISIONS:** The Planning Board may waive the legal requirement for road frontage and/or lot size in cases where a subdivision is proposed for the sole purpose of granting conservation easements, forest management, or placing any such other protective controls on the land, if:
- the Board's opinion is that meeting the requirements would not be in conflict with the purposes of conservation;
  - no development<sup>1</sup> of any kind is proposed for the land; and
  - the Gilsum Conservation Commission has reviewed the proposal and recommended approval to the Planning Board.

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<sup>1</sup> Development, as it pertains to this paragraph, means no buildings or structures of any kind, whether permanent or temporary, and no activity that would change the land from its natural state except for customary forestry practices.

- M. WIRELESS TELECOMMUNICATIONS FACILITIES:** Wireless Telecommunications Facilities are permitted by Special Exception in all districts provided they can be camouflaged, hidden or disguised, and subject to the provisions of Article VII, H, and Site Plan Review by the Planning Board. (Amended March 13, 2001)
- N.** All uses other than single and two-family dwellings and their accessory uses require Site Plan Review by the Planning Board.
- O. AGRICULTURAL USES:** Pursuant to RSA 674:32-a, b & c, agricultural uses shall be permitted in all districts, subject to compliance with all applicable Best Management Practices for Agriculture and site plan review by the Planning Board.
- P. RECREATIONAL VEHICLES:**
1. Recreational vehicles may be used for their defined purpose on a vacant or occupied lot for up to one month in any calendar year, provided that adequate provisions are made for water supply and sewage disposal.
  2. One recreational vehicle may be stored on a lot provided it has a valid registration and inspection sticker.
  3. Recreational vehicles may not be used for storage or as a dwelling unit, except as noted in Paragraph I above.
- Q. BOX TRAILERS:**
1. When used for temporary construction, box trailers are allowed at the construction site for up to one year. Any extension of this time period is only by permit of the Selectmen.
  2. Under no circumstances are box trailers to be stored or used for permanent storage on any lot.
- R. LOTS DIVIDED BY ZONING BOUNDARY:** Where a district boundary line divides a lot of record at the time such district boundary line is established, the regulations for either district of such lot may extend up to 50 feet into the other district, provided the lot has frontage on a street in the district which is being extended.

### **ARTICLE III - DISTRICTS**

For the purpose of this ordinance the Town of Gilsum is divided into districts as follows:

- A. Village District
- B. Rural Residential District
- C. Industrial/Commercial District
- D. Highway District

- A. VILLAGE DISTRICT:** The purpose of this district is to preserve an historic compact village development pattern that enhances economic and social vitality. Within this district permitted uses may be co-located on one lot or in one building, subject to applicable Site Plan Review procedures. In the Village District, buildings or premises may be erected, placed, altered or used and land may be used for the following purposes only, and in accordance with the following provisions: (Amended March 12, 1996 & March 8, 2005)
1. Single family and two-family dwellings.
  2. Conversion of single family homes to a two-family dwelling by Special Exception of the Board of Adjustment, subject to the conditions of Article VII. E.
  3. Permitted COMMERCIAL/BUSINESS USES in the Village Residential District:
    - a. General Retail Establishments typical of commerce associated with small New England villages.
    - b. Banks, Business and Professional Offices
    - c. Consumer/Personal Services
    - d. Bed & Breakfast Establishments
    - e. Restaurants or other eating places, excluding either drive-thru or fast-food establishments and taverns.
  4. Lot and Yard Requirements:
    - a. minimum size shall be one (1) acre;
    - b. front setback shall be 30 feet;
    - c. side and rear setbacks shall be 20 feet;
    - d. the lot shall have a minimum of 175 feet of frontage.
  5. Grandfathered Lots (Added March 12, 2002)
    1. All lots of record and structures that do not meet the requirements of Paragraph #4 above shall be deemed to be conforming for all permitted uses in the District.
    2. Lots that do not meet the requirements of Paragraph #4 above may be altered, provided that:
      - a. the alteration does not render the lot proportionally less adequate; and
      - b. the proposed lot is consistent overall with other lots in the District
  6. The Village District shall be bound as follows:

Route #10, beginning at the south side of the Vessel Rock Road/White Brook Road junction extending north to Old Sullivan Road; Memorial St., Church St., Tannery St., High St., westerly side of Main St., easterly side of Main St. to the western bank of the Ashuelot River where Mill Brook crosses Banks Road. The Zone shall include all land within 300 feet from the centerline of said road in each direction.

**B. RURAL RESIDENTIAL DISTRICT:** In the Rural Residential District, buildings or premises may be erected, placed, altered or used and land may be used for the following purposes only, and in accordance with the following provisions: (Amended March 12, 1996 and March 13, 2001)

1. Single family and two-family dwellings.
2. Congregate Housing for the Elderly.
3. Earth Excavations
4. Physical Parameters of Lot:
  - a. minimum lot size shall be two (2) acres ;
  - b. front setback shall be 50 feet;
  - c. side and rear setbacks shall be 20 feet;
  - d. the lot shall have a minimum of 175 feet of frontage.
5. The Rural Residential District shall include all areas of Gilsum that are not designated to be in another zone as identified by this ordinance.

**C. INDUSTRIAL/COMMERCIAL ZONE**

1. Physical Parameters of Lot:
  - a. minimum size shall be two (2) acres;
  - b. front setback shall be 50 feet;
  - c. side and rear setbacks shall be 20 feet;
  - d. road frontage shall be at least 175 feet.
  - e. Adequate and safe off-street loading and unloading areas are to be provided.
2. The parcel bounded and described as follows shall be the Industrial Zone:
  - a. A tract of land now containing the Blackstock-Houghton Company, commencing at the south side of the Ashuelot River Bridge on Route 10 at the north end of Gilsum Village, thence south and west on the south bank of the Ashuelot River to the Sullivan-Gilsum Town Line, thence easterly on said town line 225 feet, thence northerly 488 feet to the Old Sullivan Road, thence west on the Old Sullivan road and Route 10 to the point of the beginning.
  - b. A tract of land on the summit of the Mine Road on Alstead Hill, commencing at the south end of a north-south stone wall, and going north on said stone wall by the Mine Road for a distance of 300 feet, more or less, to a stake. Said tract will have a depth, east of the Mine Road, of 200 feet.

**D. HIGHWAY DISTRICT** (Added March 12, 1996 & Amended March 8, 2005)

The purpose of the Highway District is to permit commercial uses in Gilsum without disturbing the rural quality of the town and creating undue traffic problems on town roads. The intent of this district is to channel commercial activity onto the main transportation corridor of the town, which is better suited to this type of development than are the town roads. Within this district permitted uses may be co-located on one lot or in one building, subject to applicable Site Plan Review procedures.

1. Permitted Uses. Within the Highway District buildings or structures may be erected, placed, altered or used and land may be used for the following purposes only, and in accordance with the following provisions:
  - a. All principal uses permitted in the Village District
  - b. Wholesale Establishments
  - c. Automobile or Equipment Sales & Service
  - d. Light Industrial Uses
  - e. Self-storage Facilities
  - f. Publishing, Printing, Bookbinding
  - g. Gasoline Station, Repair Garage
  - h. Nursing Homes, Health Care Facilities, Congregate Housing for the Elderly
  - i. Earth Excavation Operations
2. Physical Parameter of Lot:
  - a. The minimum lot size shall be two (2) acres.
  - b. The lot shall have a minimum of 200 feet of frontage.
3. Yard Requirements:
  - a. No structure or parking area shall be located closer than 50 feet from the edge of the highway right-of-way, nor closer than 20 feet from side and rear property lines.
  - b. Where a new non-residential use abuts a property with an existing residential use, the side and rear setbacks shall be 35 feet. Twenty (20) feet of this setback area, as measured inward from the property line, shall be maintained as a vegetative buffer strip or visual screen, as approved by the Planning Board during Site Plan Review. Within this buffer strip there will be no parking or storage areas, driveways, signs, lighting fixtures, or principal or accessory structures.
4. The amount of lot coverage, consisting of all buildings, structures and parking facilities, shall be no more than 50% of the total lot size.
5. The District encompasses all land on both sides of Route 10 that has both frontage and access from Route 10, measured inward from the Highway right-of-way to a distance of 1,000 feet, excluding the Village Residential District.

## **ARTICLE IV - SIGNS**

ADOPTED MARCH 11, 2003

### **A. PURPOSE**

The purpose of this section is to ensure that the needs of businesses and individuals to communicate with the public are balanced against the responsibility of the Town to ensure that signs and associated lighting do not interfere with safe and efficient movement of traffic. Restrictions on type, location and size of signs protect the public from hazardous and distracting displays and create an attractive environment that is conducive to business, industry, and tourism.

### **B. APPLICABILITY**

1. The provisions of this section apply to any new signs for commercial, industrial and governmental uses, such as stores, professional and medical offices, home occupations, manufacturing operations, and any other permitted uses.
2. Signs legally existing as of the adoption of this section are exempted from the provisions of this section. Nonconforming signs are allowed to be repaired, maintained, and/or replaced with new materials provided the use or locations do not conflict with these provisions. Any sign proposed to be moved, replaced, expanded or structurally altered shall be considered a new sign and must conform to the provisions of this section.

### **C. PERMITS**

1. A permit from the Selectmen or their designee is required before any new sign can be erected or placed in Gilsum, according to the permit application procedure as set forth in Paragraph H.
2. Certain signs do not require a permit, but are nevertheless subject to the provisions of this section, as described in Paragraphs D and E.

### **D. GENERAL PROVISIONS**

1. No sign shall be located so that it creates a traffic hazard. No privately owned sign may be located in the right-of-way area of any street or road.
2. Any sign that advertises or identifies products, businesses, services or activities which are no longer sold or available at the premises shall be removed within 60 days after notice by the Selectmen.
3. All signs should be of professional quality and must be constructed of good material, neatly lettered, and maintained in good condition and repair.
4. All temporary signs shall be removed promptly after the purpose for which the sign was erected has concluded. Temporary signs may not be illuminated.

**E. SIGNS NOT REQUIRING A PERMIT**

1. Premises Identification Sign, not to exceed 10 square feet.
2. Temporary construction and real estate signs (e.g., "FOR SALE" or "FOR RENT"); signs advertising educational, charitable, or public events; and political signs, not to exceed 6 square feet.
3. Temporary signs advertising garage/tag sales, not to exceed 4 square feet.
4. Traffic control signs on private property.
5. Signs on service station fuel pumps identifying the name and type of fuel and price thereof.
6. Window signs, provided that their aggregate display surface does not cover more than 50% of the window or door on which they are placed.
7. Directional Signs.
8. Signs notifying that property is posted against trespassing, hunting, etc.
9. Government Signs.
10. Signs required by governmental agencies.

**F. SIGNS PROHIBITED IN ALL DISTRICTS**

1. Advertising Billboards.
2. Signs on utility poles, trees, and fences.
3. Roof signs.
4. Internally-illuminated signs.
5. Portable signs.
6. Any sign that obstructs free ingress to or egress from a fire escape, door, window or other required exit.
7. Any flashing, moving or animated signs, or any signs consisting of pennants, ribbons, or streamers.
8. Pennants, banners, spinners and streamers or balloons.
  - a. Pennants, etc. that advertise grand openings are exempted, by a permit that specifies the time period for the special occasion use.
  - b. Banners containing the word "Open" are exempted, shall be no greater than 15 square feet in size, and may be displayed only during business hours.

**G. REQUIREMENTS FOR SIGNS SUBJECT TO PERMIT APPLICATION**

**I. Standards**

- I. Lighted Signs:
  - a. Externally lighted signs only are permitted, and must be shielded. The direction of lighting shall be directly focused on the sign and shall not leave the property nor affect the safe vision of operators of vehicles moving within the premises or on any adjacent street.
  - b. Signs may only be lighted between the hours of 7:00 AM and 11:00 PM, or during hours of operation.
2. Wall signs shall not (a) extend above the top of the wall on which they are mounted, (b) project more than 10 inches from the wall, (c) extend beyond the left and right extremities of the wall.
3. Projecting signs shall not (a) project more than 5 feet beyond the structure to which they are attached in the direction of the street, (b) be closer than 2 feet to the face of the street curb, (c) be less than 8 feet above grade level, (d) have a vertical dimension greater than 6 feet.
4. Off-Premise signs are only allowed when the use being advertised is not visible from the premises on which the sign is proposed to be placed. Off-premise signs shall not exceed 6 square feet in area, *nor* be illuminated, *nor* obstruct views or create any traffic hazard.

**II. Number and Dimensional Requirements**

- I. Allowable number of signs per lot:
  - a. For Individual Establishments, one (1) freestanding sign and one (1) building sign per lot except when a premise is located on a corner lot and has public entrances on more than one public way, one (1) additional sign may be erected.
  - b. For Multiple-Use Establishments, one common directory sign on the lot not to exceed 20 square feet, and one building sign per establishment except when a premise is located on a corner lot and has public entrances on more than one public way, one (1) additional sign may be erected.
2. No sign shall be located closer than 15 feet to any side or rear property line.
3. The total square footages set forth in Table I for each district shall be considered the maximum allowable area for signs on each lot (except when a common directory sign is used).
  - a. Height is measured from grade level to the highest part of the structure.

- b. The square footage as read in the following table is to be considered a maximum allowable; for example, a property could have the two signs equaling the total allowed for the district, but if only one sign were used, it must be no larger than the table specifies.
- c. For double-sided signs, square footage is measured on only one side of the sign.

**TABLE I:  
SIZE AND HEIGHT REQUIREMENTS FOR SIGNS BY ZONING DISTRICT**

ZONING DISTRICT	FREESTANDING SIGN		BUILDING SIGN SQUARE FOOTAGE	TOTAL PERMITTED SQ. FEET
	SQUARE FOOTAGE	HEIGHT		
VILLAGE	12 sq.ft.	10 feet	18 sq.ft.	30
RURAL RESIDENTIAL	6 sq.ft.	6 feet	6 sq.ft.	12
HIGHWAY	16 sq.ft.	10 feet	20 sq.ft.	36
INDUSTRIAL/COMMERCIAL	16 sq.ft.	10 feet	20 sq.ft.	36

In all districts, signs for home occupations and home-based businesses are permitted, but may not exceed 2' x 2.5'.

**H. PERMIT APPLICATION PROCEDURE**

All applications for signs shall be submitted on forms provided by the Selectmen, and shall contain at a minimum, the following information.

- 1. The location of the proposed sign, by street name, tax map and lot number.
- 2. The name and address of the sign owner and the owner of the premises where the sign is proposed to be located, if other than the sign owner.
- 3. A drawing showing the proposed construction, method of installation or support, colors, dimensions, location of the sign on the site, and method of illumination, if any.
- 4. The Selectmen, or their designee, shall review the application and render a written decision within 14 days of receipt of the application.
- 5. In the case of a permit denial, the applicant may appeal to the Board of Adjustment.

**I. DEFINITIONS**

- 1. **Animated Sign:** A sign that uses movement or change of lighting to depict action or create a special effect or scene.
- 2. **Banner:** A sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one or more edges.
- 3. **Building Sign:** A sign attached to any part of a building, as contrasted to a freestanding sign; it may be either a wall or projecting sign.
- 4. **Directional Sign:** A sign that directs the traveling public to specific buildings or locations.

5. **Freestanding Sign:** A sign not attached in any way to any part of a building, which is freestanding on a pole, on the ground, or on a permanent structure designed to support the sign.
6. **Government Sign:** A sign erected and maintained by the Town of Gilsum, the State of New Hampshire or the Federal Government on any land, building, or structure used by such agencies for public health and safety purposes.
7. **Illuminated Sign:** A sign that has character, letters, figures, designs, or outlines illuminated by electric lights or luminous tubes with these light's sources being either internal or external.
8. **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", "no trespassing," etc.
9. **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.
10. **Political Sign:** A sign that advertises or promotes a political organization, a political issue, or the candidacy of any individual for an elected local, county, state, or national office.
11. **Portable Sign:** A sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to: signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; and vehicles parked and visible from the public right-of-way that are used for advertising purposes.
12. **Premises Identification Sign:** A sign that identifies a building by name and/or number.
13. **Projecting Sign:** A sign that projects from, and is supported by, a wall, porch or any other part of a building.
14. **Sign:** Any structure or object that is used to identify, advertise or attract attention to any place, enterprise, profession or activity and which is intended to be seen from the off the premises or from a parking area.
15. **Sign Area:** The total area of the sign face, including any framing surrounding the sign face. The area of the supports, posts, poles and braces or other supporting structure shall not be included as part of the sign area. On dual-faced signs only the area of one sign face (the largest face) shall be used in calculating the total sign area. When individual letters are mounted separately on the surface of a building wall, the spaces between the letters shall be included in calculating the area of the sign. When signs are constructed of separate parts, such as separate boards attached to a post or hung together by hooks, the space between the boards shall be included in calculating the total sign area.
16. **Temporary Signs:** Signs that are permitted for short-term use, such as special events, etc., and are required to be removed as soon as the occasion necessitating the sign is concluded.
17. **Wall Sign:** A sign that is attached directly to, or painted on, a building wall.

## **ARTICLE V - PARKING**

The following are minimums for various types of occupations (parking space per enclosed building area).

Restaurant	-	one per 100 square feet
Offices	-	one per 200 square feet
Manufacturing	-	one per 1,000 square feet
Warehouses	-	one per 3,000 square feet

**ARTICLE VI – NONCONFORMING PRE-EXISTING USES**  
(Amended March 12, 1996)

Any lawful use of land or buildings or parts thereof at the time of the adoption of this ordinance may be continued indefinitely, although such use does not conform to the provisions of this ordinance, subject to the conditions listed below.

**A. Non-Conforming Uses**

1. When any existing non-conforming use of land or buildings has been discontinued for one year, the land and buildings shall thereafter be used only in conformity with this ordinance.
2. A non-conforming use may not be changed to another non-conforming use. If a non-conforming use is superseded by a conforming use, the non-conforming use may not thereafter be resumed.
3. A non-conforming use may not be substantially expanded or enlarged; natural but limited, expansion may be allowed under some circumstances.

**B. Non-Conforming Structures**

1. When any non-conforming structure has been destroyed or damaged by fire or other casualty, it may be rebuilt or replaced to be used for the same purpose as the one prior to the casualty, provided that the cubic contents of the original structure are not exceeded, and that it occur within 12 months of the casualty.
2. A non-conforming structure may be altered or expanded by Special Exception, provided that the alteration or expansion does not encroach any more into the non-conforming direction than the existing structure. Expansion in a conforming direction is permitted.

**C. Non-Conforming Lots of Record (Grandfather Clause)**

In any district, a vacant lot which was a lawful lot of record as of the effective date of this ordinance may be developed for the uses permitted in that district, even though the lot does not conform to the area or frontage<sup>2</sup> requirements of this ordinance. The applicable district requirements for yard setbacks and state septic system requirements shall still apply.

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<sup>2</sup> Meaning that the lot does not have the specified distance (e.g., 200 feet) of legal frontage.

## ARTICLE VII – BOARD OF ADJUSTMENT

- A. CREATION:** A Board of Adjustment is hereby created and shall have the terms and power hereby conferred upon the Board of Adjustment by the provisions of New Hampshire Revised Statutes Annotated, Chapters 672-677, 1983 and as may be amended. The Board of Adjustment members and alternate members are to be selected by appointment by the Selectmen.
- B. ADOPTION OF RULES:** The Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions of this ordinance, and the provisions of Chapters 672-677, New Hampshire Revised Statutes Annotated, 1983, and as may be amended.
- C. APPEALS FROM ADMINISTRATIVE DECISION:** The Board of Adjustment may hear and decide a case where it is alleged there is error in any order, requirement, decision, or determination made by the Selectmen or their agent in the enforcement of this ordinance. Appeals to the Board of Adjustment may be taken by any person aggrieved of by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer.
- D. EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** When a lot or structure is found to be in violation of a physical layout or dimensional requirement imposed by the zoning ordinance, the Board of Adjustment shall, upon application by the property owner, and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the Board makes all of the findings as spelled out in RSA 674:33-a.
- E. VARIANCES:** The Board of Adjustment shall authorize upon appeal in specific cases a variance from the terms of this ordinance as will not be contrary to the public interest if, owing to special conditions of the land, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. The Board shall grant a variance provided all of the following conditions are satisfied:
1. No diminution in the value of surrounding properties would be suffered.
  2. Granting the permit would be of benefit to the public interest.
  3. Denial of the permit would result in unnecessary hardship to the owner seeking it. For the purposes of this section, “unnecessary hardship” means:
    - a. that the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;
    - b. that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property; and

- c. that the variance would not injure the public or private rights of other.
- 4. By granting the permit, substantial justice would be done.
- 5. The use must not be contrary to the spirit of the ordinance.

**F. SPECIAL EXCEPTIONS:** The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the ordinance and shall be in accordance with the general or specific rules contained in this ordinance. The Board, in acting on an application, shall take into consideration the following criteria:

- 1. The proposed use shall be designated as a special exception use in the district.
- 2. The proposed site is an appropriate location for the use. Among factors the Board will consider are: topography; soils; water resources; road access and locations of driveways; condition of existing structures; and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.
- 3. The proposed use will not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would limit the use of neighborhood property by causing such problems as excessive noise, traffic, dust, fumes, glare, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.
- 4. The lot must be of a size, configuration, slope and soil type that the proposed use is able to comply with all requirements of the Gilsum Zoning Ordinance.
- 5. No hazardous waste shall be disposed of on the property, and provision for the disposition of all waste shall be made without jeopardy, financial or otherwise, to the Town of Gilsum.
- 6. Traffic generated by the proposed use must not present a hazard to the neighborhood for either vehicles or pedestrians.
- 7. In all cases where a proposed project requiring Site Plan Review is located next to an existing residential use, buffering shall be provided within the setback areas, of a type and amount deemed appropriate by the Planning Board during Site Plan Review.
- 8. The Board of Adjustment will request a recommendation from the Planning Board, the Conservation Commission and the Health Officer concerning the proposed use.

**G. HOME-BASED BUSINESS** (Added March 12, 1996)

- 1. A home-based business shall be carried out by residents of the premises and not more than three (3) employees who are not residents of the premises.

2. It shall be clearly secondary and incidental to the residential use of the property and will not alter the general character of the neighborhood or reduce the value of any surrounding property.
3. It shall result in no external evidence of the enterprise, except for a sign not to exceed 2' x 2.5' in size; nor shall it have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, soil, water or air pollution, increases in traffic or in parking requirements, or other nuisances.
4. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from the roads and surrounding properties by natural or structural means to such an extent and in such a manner as may be specifically required and approved by the Board of Adjustment.
5. The residence or accessory buildings shall not provide window displays or other characteristics or features normally associated with commercial use.
6. There shall be no change in the exterior appearance of the residence or other structures on the property as a result of the use, unless specifically approved by the Board.

**H. ACCESSORY APARTMENTS** (Added March 9, 1999)

1. Only one accessory apartment is permitted per single family dwelling, which must be owner-occupied by a permanent resident of Gilsum.
2. Either the primary residence or the accessory apartment must be occupied by a person in need of daily living assistance, either by virtue of age or handicap.
3. The accessory apartment must have a minimum of 320 square feet of floor area; the maximum may be no more than 500 square feet. The original dwelling may not be reduced to less than 700 square feet through the addition of the accessory apartment.
4. Water and sewage disposal systems must be connected to the primary dwelling unit.
5. Parking shall be accommodated, off-street if possible, for all residents.
6. An accessory apartment may be part of the principal dwelling, or another structure on the property, such as a barn or garage.
7. The addition of an accessory apartment may not result in any exterior change to the residential character of the neighborhood or property.

**I. WIRELESS COMMUNICATION FACILITIES** (Added March 11, 1997)

1. Since the visual impact of wireless communication facilities can transcend town lines, communities that may be visually affected shall be formally notified of applications for such proposed facilities as projects having regional impact.

2. The applicant must make every reasonable effort to cause the facility to have the least possible visual impact on the town at large, including demonstration of realistic analysis of multiple sites and the need for the proposed height.
3. The height of any tower shall not exceed the surrounding vegetation by more than a factor of two (2). No tower shall be lighted in any way.
4. Any wireless communication facility shall be designed to accommodate multiple providers of communication services and will only be approved under the condition that the primary developer of the facility will make the facility available upon reasonable terms by lease or other legal instrument to other competing providers of these services.
5. Any alteration of the original permitted use and device configuration of the facility will require a new Special Exception and approval of a revised Site Plan.
6. The Board of Adjustment may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposed wireless communication facility and testimony of the applicants or their agents relating thereto.

**J. Appeals:** Appeals to the Board may be taken in accordance with RSA 677:1-4.

## **ARTICLE VIII – ADMINISTRATION AND ENFORCEMENT**

- A.** It shall be the duty of the Board of Selectmen, and the Board is hereby given power and authority to enforce the provisions of the ordinance.
  
- B.** It shall be unlawful to erect, use or occupy any structure, alter the size of any existing structure, remove or demolish any existing structure or relocate any structure in any district within the Town of Gilsum without first obtaining a permit from the Board of Selectmen or their agent. Exempted from this requirement are: (1) structures less than 100 square feet in area that serve as an accessory building to an existing use; (2) repair work that does not exceed \$2,000 of labor and material where the building is neither enlarged nor altered and the purpose for which the building is used is not changed.
  
- C.** There shall be an Inspector of Buildings who shall administer the provisions of this ordinance. The Building Inspector shall not issue a permit unless the application is in accordance with federal, state and local law, including the provisions of this ordinance and the Town of Gilsum's building regulations.
  
- D.** Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

### **ARTICLE IX - AMENDMENTS**

This ordinance may be amended by a majority vote of any legal town meeting when such amendment is published in the warrant calling for the meeting, or when such amendment has received a public hearing, which hearing has been advertised and given a legal fifteen day notice, in accordance with Chapter 675, N.H. Revised Statutes Annotated.

### **ARTICLE X - PENALTY**

Any violation of this ordinance is punishable by a civil fine for each day that such violation is found by a court to continue after the conviction date, or after the date on which the violator receives written notice from the Town of Gilsum that he is in violation of such ordinance, whichever date is earlier.

### **ARTICLE XI - SAVINGS CLAUSE**

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

### **ARTICLE XII - WHEN EFFECTIVE**

This ordinance shall take effect upon its passage.

### ARTICLE XIII – DEFINITIONS

- A.** For the purposes of administration and enforcement, these rules shall apply:
- The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
  - Words used in the present tense shall include the future, and words used in the singular shall include the plural, unless the context clearly indicates the contrary.
  - The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind.
- B.** The following definitions shall be uniformly applicable to all land use regulations in the Town of Gilsum:
1. **ACCESSORY APARTMENT.** An independent living facility with provisions for complete housekeeping, incidental and secondary to the primary residence. *(Added March 9, 1999)*
  2. **AGRICULTURE.** All operations involved with the growing of crops, the raising of animals, and any activities associated with marketing the products, and as further defined in RSA 21:34-a. *(Added March 9, 2004)*
  3. **BOX TRAILERS.** Any trailer or similar container without motor power designed for carrying property wholly in its own structure and for being drawn by or placed upon some mode of transportation, including so-called “Sea Boxes” and the like. *(Added March 9, 2004)*
  4. **BUILDING.** A structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property.
  5. **BUILDING, HEIGHT.** The vertical distance measured from the average level of the lot grade to the highest point of the roof, excluding chimneys, ventilators, tanks and other accessory features required above the roof. Also excluded are: towers, spires, domes and similar ornamental features, if not used for living purposes; barns, silos, and other farm buildings and structures required for agricultural purposes; and towers for transmission and communications lines, radio towers, fire towers, water towers and airplane beacons.
  6. **COMMERCIAL USE.** An occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee. *(Added March 9, 2004)*
  7. **CONGREGATE HOUSING FOR THE ELDERLY:** A living arrangement in one principal building that permits related or unrelated elderly (55 and over) persons to live as one household. Certain social/health care services may be made available to the residents, but this shall not include part- or full-time nursing care. *(Added March 9, 1999)*
  8. **CONSUMER/PERSONAL SERVICES:** Such activities include barber and beauty shops; laundry and dry cleaning; undertaking and funeral establishments; small appliance repair; computer sales and service; health and fitness centers. *(Added March 12, 1996)*

9. **DEEDED RIGHT-OF-WAY.** A strip of land over which legal right of passage has been granted.
10. **DIRECTIONAL SIGNS.** Provide information to reach a specific destination.
11. **DWELLING UNIT.** One or more rooms designed and intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the structure.
12. **DWELLING, SINGLE FAMILY.** A building containing one dwelling unit.
13. **DWELLING, TWO-FAMILY.** A structure containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units. Each unit is considered to be a primary dwelling unit.
14. **FRONTAGE.** That portion of a lot bordering on a Class V or better road, or a road that appears on a subdivision plat approved by the Planning Board. Subdivision approval does not replace a Town Meeting vote or a decision by the Selectmen to lay out a road pursuant to RSA 231:22-a. In case of lots bordering on more than one road, the boundary on only one road may be used to meet the minimum requirements for frontage.
15. **GENERAL RETAIL ESTABLISHMENTS:** Establishments engaged in the selling of merchandise for personal or household consumption, including farm and garden supplies, clothing, personal and household articles, furniture, antiques, florists, greenhouses and nurseries. *(Added March 12, 1996)*
16. **HIGHWAY RIGHT-OF-WAY** shall mean the width from one extreme edge to the opposite edge of highway easement of a State or Town road. This is usually considerably wider than the traveled portion of the highway.
17. **HOME OCCUPATION:** An activity carried out for gain by the residents of a dwelling conducted as an accessory use of the primary residential use.
18. **HOME-BASED BUSINESS:** A business that is either conducted at the homesite, or away from the homesite, as in the case of contractors who work offsite but might store materials or equipment on the property.
19. **INDUSTRY.** A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials. *(Added March 9, 2004)*
20. **INDUSTRY, LIGHT.** A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including but not limited to: processing, fabrication, assembly, treatment, packaging, incidental storage or sales and distribution. *(Added March 9, 2004)*
21. **JUNK.** Any old metals, old bottles, cloth waste, paper waste, old rubber products, plastic parts, more than one unregistered or uninspected motor vehicles or camper/trailer, or any other secondhand or discarded articles, the accumulation of which is detrimental or injurious to the neighborhood. *(Amended March 9, 2004)*

22. **LOT.** A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon.
23. **MOBILE HOME.** As used in this ordinance, "mobile home" shall mean manufactured housing, as defined in 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 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 when connected to required utilities, which include plumbing, heating and electrical heating systems contained herein."
24. **NON-CONFORMING BUILDING/USE/LAND.** The use of any building, structure or land existing at the time of enactment of this Ordinance, or any amendments thereto, which does not conform in whole or in part to the provisions of the Ordinance or its amendments.
25. **NURSING HOME/HEALTH CARE FACILITY.** An extended or intermediate care facility licensed or approved by the State of New Hampshire to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. *(Added March 12, 1996)*
26. **PERMANENT FOUNDATION.** The construction necessary to provide adequate support of any structure, consisting of materials impervious to rotting. Such foundations must extend four feet below grade level. An Alaskan slab may be used in lieu of below-grade footing provided building erected thereon has no physical connection with a building on a below-grade foundation.
27. **PERMANENT RESIDENT.** Means an individual or family using any building continuously as a residence for a period of six months or more.
28. **RECREATIONAL VEHICLE.** A portable structure without permanent foundation, which can be towed, hauled or driven, and is designed as temporary living accommodations for recreational, camping and travel use; includes but is not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.
29. **SETBACK.** The minimum distance between the nearest portion of a building (including porches, decks, steps or other such portions of the building), and a lot line, right-of-way line, or a street line, whichever is closest.
30. **TOURIST HOME.** Any building consisting of a room or group of rooms located in one building where overnight accommodations for sleeping and eating are available for a price.
31. **WIRELESS COMMUNICATION FACILITIES.** Any towers, poles, antennas, accessways, or other structures intended for use in connection with transmission or reception of radio or television signals, or any other electromagnetic spectrum-based transmission/reception. *(Added March 11, 1997)*