

# TOWN OF BENTON, NEW HAMPSHIRE

## ZONING ORDINANCE

### ARTICLE I PREAMBLE

Section 101 Purposes - The purposes of this Ordinance shall be to promote the health and general welfare; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the public health, safety, and convenience, and forestry activities of the inhabitants of the Town by regulating the uses of land, buildings, and structures therein with a view to encouraging the most appropriate and wise use of land in the municipality; protect the natural and scenic beauty, and other purposes as set forth in the New Hampshire Revised Statutes Annotated (N.H. RSA Sections 672:1 and 674:17).

Section 102 Authority – In pursuance of authority conferred by Title LXIV of New Hampshire Statutes, N.H. RSA Chapters 672 - 677, the following Ordinance is hereby enacted by the voters of the Town of Benton, New Hampshire.

Section 103 Title – This Ordinance shall be known, and may be cited, as the “Town of Benton, N.H. Zoning Ordinance,” hereinafter referred to as “this Ordinance.”

Section 104 Effective Date – This Ordinance shall take effect immediately upon its adoption.

Section 105 Amendments – This Ordinance may be amended in accordance with the provisions of N.H. RSA Section 675:3.

Section 106 Separability – Should any section, subsection, paragraph or part of this Ordinance legally be declared invalid, it shall not affect the validity of the remainder of the Ordinance.

Section 107 Conflicting Provisions – Whenever the regulations made under this Ordinance differ from those prescribed by any statute, ordinance, or other regulation, that provision which imposes the higher standard shall govern.

### ARTICLE II GENERAL PROVISIONS

Section 201 Application – The provisions of this Ordinance shall apply to all land, buildings, or structures in the Town of Benton. No land, building, or structure shall hereafter be used to occupied, and no building or structure shall hereafter be erected, constructed, expanded, or moved unless in conformity with all the regulations specified herein.

Section 202 Remodeling and Repairing – Remodeling or repairing of a structure is permitted when the use of the building or structure is not changed or extended, and it is not enlarged or expanded.

Section 203 Present Uses – Every use being made of land, buildings, or structures in the Town of Benton on the effective date of this Ordinance may be continued, and such uses are not affected by the provisions of Article IV of this Ordinance.

Section 204 Non-conforming Uses –

A. Non-conforming uses permitted by Section 203 may be expanded only upon approval of the Board of Adjustment which shall find such expansion or extension does not create a greater nuisance or detriment.

B. A non-conforming use permitted by Section 203 may be changed to another non-conforming use only upon approval of the Board of Adjustment which shall first find that such use is no more objectionable in character than the old use.

C. Any non-conforming use permitted by Section 203 which has been discontinued for a period of two (2) years shall not thereafter be resumed.

D. A non-conforming use permitted by Section 203 which has been damaged or destroyed by fire, accident, or other causes may be repaired or reconstructed by the owner to its condition prior to such damage or destruction, provided such work is completed within one (1) year after such damage or destruction.

ARTICLE III DEFINITIONS

Section 301 General – Unless otherwise expressly stated, words shall, for the purpose of this Ordinance, have the meaning indicated in Section 302. Words used in the present tense include the future. The singular number includes the plural and the plural the singular. The word “person” includes a partnership, corporation, or other entity. The word “building” includes the word “structure”. The word “shall” is mandatory and not directory.

Section 302 Specific -

A. Dwelling Unit – One of more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with cooking, living, sanitary, and sleeping facilities.

B. Home Occupation – An occupation or profession carried on in a dwelling unit or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; incidental and secondary to the use of the dwelling unit for residential purposes; and which will generate no nuisance, including but necessarily limited to offense noises, vibration, smoke, dust, odors, heat, glare, traffic, or parking.

C. Mobile Home – Mobile home shall mean any prefabricated single dwelling unit so constructed as to permit it to be towed on its own wheels on a public street or highway, suitable for year-round occupancy, and having the same water supply, waste disposal, and electrical

conveniences as immobile homes.

D. Non-conforming Use – The use of land and the use and location of a building or structure at the time this Ordinance became effective which does not conform to the regulations of this Ordinance.

E. Sign – A structure which advertises or which is used as an outdoor display for the advertising of a property, establishment, enterprise, or other matter.

F. Special Exception – A use that would not be appropriate generally or without restriction but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, convenience, and prosperity. Any individual use for which a specific and individual special exception has been granted in accordance with this Ordinance shall be deemed as a permitted use but subject to such terms and conditions as specified by the Board of Adjustment.

G. Substantial Improvement – Any repair, reconstruction, or improvement of any structure, the cost of which equals or exceeds fifty (50) percent of the actual cash value of the structure either before the improvement started or, if the structure has been damaged, and is being restored, before the damage occurred.

H. Right of Way – All town, state, and federal highways and private access roads and the land on either side as covered by statutes to determine the width of rights of way. Where the width of the right of way is not established and cannot be determined, the right of way shall be considered to extend twenty-five (25) feet either side of the center of the traveled way.

I. Travel Trailer – A vehicle whose primary intended uses are for camping, vacation, or recreational purposes and which does not have all of the following: running water, sanitary facilities, bath facilities, and toilet.

J. Variance – A variance is a relaxation of the terms of this Ordinance where such variance will not be contrary to the public interest and where, due to conditions peculiar to the property and not the result of actions of the applicant or owner, a literal enforcement of this Ordinance will result in unnecessary or undue hardship. A variance under this Ordinance may be authorized only by the Board of Adjustment.

#### ARTICLE IV REGULATION OF USES

##### Section 401 Permitted Uses –

##### A. Residential Uses Permitted –

1. One residential building per approved lot (Section 601) with up to two dwelling units in the building (e.g. single family dwelling unit with an in-law apartment or a duplex).

2. Farm dwelling units.

3. Accessory uses customarily incidental to the permitted uses. Such accessory uses shall include buildings for housing motor vehicles, equipment, supplies, pets, or animals.

B. Group Services Uses Permitted –

1. Church, parish house, or other religious use.

2. Schools, public and private, including nursery schools.

3. Clinics, hospitals, nursing homes, or rest homes operated by a governmental unit.

4. Community center, hall, lodge, park, or playground operated by a governmental unit or non-profit organization.

5. Fire stations, municipal buildings, and libraries.

6. Public utilities.

7. Cemeteries.

8. Accessory uses customarily incidental to the permitted uses. Such accessory uses shall include buildings for housing motor vehicles, equipment, and supplies.

C. Other Uses Permitted –

1. Agriculture – This use shall include all phases of farming: dairy, pasturage, horticulture, and animal and poultry husbandry.

2. Forestry – The growing and harvesting of forest products is permitted when in compliance with all forest laws.

3. Mining and Excavation – Mining, excavation, or removal of soil, rock, sand or gravel, or similar material may be permitted as a Special Exception by the Board of Adjustment, as provided by Article VIII, Section 804, of this Ordinance. The Board of Adjustment may require that excavated areas be regarded and seeded after the removal of material is completed and may require the posting of a bond with the town treasurer to insure compliance with this provision.

4. Home Occupation – Home occupation as defined in Section 302:b is permitted.

5. Sign – Outdoor advertising is permitted for a place of business, product, or service and for the sale or lease of a lot or building in the Town of Benton.

6. Commercial – Commercial or small business ventures may be permitted by the Planning Board provided the Planning Board determines that:

- A. The proposed site is an appropriate location for such use.
- B. The use will not adversely affect the neighborhood.
- C. The proposed architecture and landscaping will not be detrimental to the general character of the neighborhood.
- D. The use complies with all regulations established by this Ordinance.

7. Public Outdoor Recreation – Public outdoor recreation may be permitted by the Board of Adjustment as a Special Exception as provided by Article VIII, Section 804, of this Ordinance.

## ARTICLE V GENERAL REGULATIONS

Section 501 Water and Sewage – The owner of each building shall provide and maintain his own water and sewer system.

Section 502 Sanitary Requirements – Sanitary systems for buildings shall be constructed and maintained in strict accordance with the laws and regulations of the N.H. State Department of Health and with the rules, regulations, standards, and procedures of the N.H. Water Supply and Pollution Control Commission, N.H. RSA, Chapter 149-E.

Section 503 Floodplain Construction – The floodplain of Oliverian Stream has been tentatively designated a Special Flood Hazard Area by the Federal Insurance Administration, U.S. Department of Housing and Urban Development. The Town of Benton appealed this designation, citing the construction of a flood control dam specifically designed to protect this floodplain from a flood of 100-year magnitude; a final decision on this appeal has not been received.

Whether or not this floodplain is designated a Special Flood Hazard Area susceptible to damage by moving water, the year-round high water table of its soils severely limits the use of this land for other than agricultural purposes. No residential construction or substantial improvement to existing residential structures shall be permitted on soils delineated by the Soil Conservation Service, U.S. Department of Agriculture, as floodplain soils and/or when located within the boundary of any Special Flood Hazard Area designated in the future by the Federal Insurance Administration, U.S. Department of Housing and Urban Development. Accessory buildings for agricultural use may be permitted, and the Board of Adjustment may permit commercial structures as provided by Article VIII, Section 804, of this Ordinance, Special Exceptions. In any future designated Special Flood Hazard Area, new construction or substantial improvement must (a) be designed (or modified) and anchored to prevent floatation, collapse, or lateral movement of the structure, (b) use construction materials and utility equipment that are resistant to flood damage, and (c) use construction methods and practices that

will minimize flood damage.

Section 504 Foundations – All residential, agricultural, and commercial buildings shall be constructed, erected, or expanded on a continuous concrete foundation or slab with adequate frost protection. Permanent foundations are not required for accessory buildings customarily incidental to any use but not for human occupancy. Mobile homes shall be placed on a stand of durable material such as reinforced concrete or well-compacted gravel. The mobile home shall be skirted by material of a permanent nature.

Section 505 Exterior Shell – The exterior shell of a building subject to a building permit must be completed in twelve (12) months from the issuance of the building permit.

Section 506 Floor Space – All residential buildings shall have a minimum of five hundred (500) square feet of first floor living space. All siding shall be of a permanent type and shall generally conform with siding used in the area.

Section 507 Driveways – Construction permits are required for driveways giving access to public rights of way in accordance with N.H. RSA Section 236:13. Driveways giving access to state highways shall conform to the terms and specifications of a written permit issued by the N.H. Commissioner of Transportation. The Benton Planning Board shall issue similar permits for driveways giving access to highways under its jurisdiction.

Section 508 Parking – Sufficient off-street parking shall be provided to allow three hundred (300) square feet for each motor vehicle.

Section 509 Signs – Official town, state, or federal signs shall be exempt from these regulations. No sign shall exceed six (6) square feet in size. It shall be placed so as not to endanger traffic and shall be illuminated only by continuous non-flashing and non-colored light. Two on-premise signs advertising the sale or lease of a lot or building are permitted.

Section 510 Junk Yards – No junk yards will be permitted.

Section 511 Mobile Home Parks – No mobile home parks will be permitted.

Section 512 Travel Trailer – Travel trailers owned by residents of Benton may be parked by the owner on his property but shall not be used as a permanent residence. The parking of travel trailers by non-residents is permitted when used for camping, vacation, or recreational purposes but not on a year-round basis.

Section 513 Temporary Structures – On-site temporary structures used in conjunction with construction work are permitted only during the period construction work is in progress and in no event for longer than six (6) months. This period may be extended by the Board of Adjustment upon application.

Section 514 Ruins – The owner or occupant shall remove or level and bury fire or other

ruins within six (6) months.

Section 515 Test Pits – Any test pit must be filled by the end of the day or an appropriate safety cover installed.

## ARTICLE VI AREA REGULATIONS

Section 601 Lot Size – A modern soils map and the interpretation of each soil’s properties and limitations shall be required for all land proposed for residential and commercial use and may be required for other proposed uses. This information shall be consistent with soils data and interpretations developed by the Soil Conservation Service, U.S. Department of Agriculture, and available from the Grafton County Conservation District. This requirement is in addition to the specific, on-site soils information required for compliance with the provisions of N.H. RSA, Chapter 149-E. The minimum lot size shall be determined by the capability of the underlying soils to support the proposed use in a manner consistent with the purposes of this Ordinance as expressed in Article I, Section 101. To accommodate the differences between soil capabilities that might permit smaller lots and the desired of the citizens for natural beauty, safety, and economy best satisfied by larger lots, the smallest lot permitted shall contain no less than ninety thousand (90,000) square feet. Lots of this size shall be permitted only on soils found to have slight to moderate limitations for both septic tank absorption and the construction of buildings; lots proposed on soils having severe limitations for either of these uses shall be considered as Special Exceptions by the Board of Adjustment as provided by Article VIII, Section 804 of this Ordinance. In making its decision on the required lot size, the Board of Adjustment shall consider the recommendations of the Benton Planning Board and may request engineering data and other relevant information.

Section 602 Frontage – Any lot situated on a town, state, federal, or private right of way shall have a minimum frontage thereon of two hundred (200) feet.

Section 603 Setback – These setbacks do not apply to signs and utility lines.

### A. From right of way and property lines –

Every Structure shall be no less than forty (40) feet from the nearest edge of any right of way and no less than thirty (30) feet from side and rear property lines.

### B. From streams, ponds, and swamps –

Every structure and sanitary system shall be no less than seventy-five (75) feet from any stream, pond, or swamp except Tunnel Stream and Davis Brook where the setback shall be no less than two hundred (200) feet to comply with regulations protecting the Woodsville municipal water supply.

C. From floodplains –

Every structure shall be no less than seventy-five (75) feet from the floodplain boundary as delineated by the Soil Conservation Service, U.S. Department of Agriculture and/or the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

Section 604 Height – No structure erected on any lot shall exceed thirty-five (35) feet in height. This restriction shall not apply to farm buildings.

ARTICLE VII ADMINISTRATION AND ENFORCEMENT

Section 701 Duty – It shall be the duty of the Selectmen and they are hereby given power and authority to administer and enforce the provisions of this Ordinance. The Selectmen may appoint a Zoning Administrator to administer (accept and issue permits and inspect) but not enforce this Ordinance.

Section 702 Permits Required – Building permits shall be obtained from the Selectmen and/or Zoning Administrator before:

A. Any action is taken to erect, construct, move, or expand any structure or building.

B. Any action is taken due to a favorable decision of the Board of Adjustment for an application for a Special Exception or a Variance.

A building permit shall be valid for one year from the date of issuance; a new application shall be required if construction has not begun or has not been completed after one year.

Section 703 Applications – Two copies of an application shall be submitted and shall include plans showing the shape, dimensions, area, and location of the lot involved; of any building or structure to be erected, constructed, moved, or expanded and the distance of such building or structure from lot lines and waterways; and any private driveway entering upon a right of way. Proof shall be submitted that all approvals required for individual sewage disposal systems and driveways have been obtained. The Board may also request additional information to evaluate the application.

The Board of Selectman, Planning Board and Board of Adjustment shall set and require application filing fees to be submitted as a precondition to acting on applications for building permits, driveway permits, special use exemptions, variances and appeals. Additional fees may be accessed to enable such Boards to hire professional assistance (engineers, hydrologists, soil scientists, etc.) to help evaluate applications.

Section 704 Issuance – A building permit shall be issued or denied within thirty-five (35) days of its receipt by the Selectmen and/or Zoning Administrator and, if denied, shall clearly state the reason for denial. Compliance with all applicable provisions of this Ordinance is required before issuance of this permit by the Selectmen and/or Zoning



Administrator.

Section 705 Transferability – No permit issued under the provisions of Article VII shall be transferable.

Section 706 Legal Actions – The Selectmen are authorized to institute or cause to be instituted in the name of the Town, any and all actions, legal or equitable, that be necessary or appropriate for the enforcement of this Ordinance.

Section 707 Private Enforcement – Section 706 shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this Ordinance.

Section 708 Penalties – Any person who violates any provisions of this Ordinance shall be subject to a fine of not more than \$20.00 for each day such violation shall exist.

#### ARTICLE VIII BOARD OF ADJUSTMENT

Section 801 Creation – A Board of Adjustment, having five members, is hereby created in accordance with, and shall have the terms and powers hereby conferred upon a Board of Adjustment, by the provisions of N.H. RSA Chapters 673-677. The first Board of five members shall be appointed by the Selectmen as soon as possible after the effective date of this Ordinance. Thereafter, one replacing member shall be appointed by the Board of Selectmen for a term of three years.

Section 802 Adoption of Rules - The Board of Adjustment shall adopt rules to govern its proceedings.

Section 803 Appeals –The Board of Adjustment has the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Ordinance.

Section 804 Special Exemption –Board of Adjustment has the power and is required to hear and decide applications for Special Exemption uses as provided for in this Ordinance. The Board shall consider the recommendations of the Benton Planning Board for each Special Exemption use and may in appropriate cases and subject to appropriate conditions and safeguards as determined by the Board, authorize the Selectmen and/or Zoning Administrator to issue a permit for such Special Exemption use. Before application is approved, the Board shall determine that:

- A. The proposed site is an appropriate location for such use.
- B. The use will not adversely affect the neighborhood.
- C. The proposed architecture and landscaping will not be detrimental to the general character of the neighborhood.

D. The use complies with all regulations established by this Ordinance.

Section 805 Variance – As defined by Chapter 31, Section 72:III, N.H. RSA, the Board of Adjustment has the power to authorize a variance from the terms of this Ordinance only where it finds that all the conditions listed below apply. The Board of Adjustment shall consider the recommendations of the Benton Planning Board for each proposed Variance. If a Variance is authorized, the Board of Adjustment shall notify the Selectmen and/or Zoning Administrator of the details of such authorization.

A. There are special circumstances or conditions applying to the land or structure for which a Variance from the terms of this Ordinance is sought which are peculiar to such land or structure, and the literal application of the requirements of this Ordinance will deprive the owner of such property a reasonable use of it and impose upon such owner a hardship not shared by the owners of another property in the same area.

B. The specific Variance is granted as the minimum Variance that will grant the reasonable relief to the owner and is necessary for the reasonable use of the land or structure.

C. The granting of the Variance will be in harmony with the general purpose and intent of this Ordinance and with the convenience, welfare, and character of the area within which it is proposed, and will not be injurious or otherwise detrimental to the public welfare.

D. The use proposed is a permitted use.

Section 806 Request Basis – A request cannot be taken to or granted by the Board of Adjustment for both a Special Exemption and a Variance at the same time, or concurrently, for the same case, use, structure, or lot.

Last Revised at March 12, 2019 Annual Town Meeting