

ZONING ORDINANCE

FOR THE

LIGHTING PRECINCT

OF

KEARSARGE, NH

As Amended by ballot March 25, 2010

Kearsarge Lighting Precinct
P. O. Box 233
Kearsarge, New Hampshire 03847

**ZONING ORDINANCE
FOR THE
LIGHTING PRECINCT OF KEARSARGE, N.H.**
As Amended by ballot March 25, 2010

An ordinance to promote the healthy, safety, morals, aesthetics, convenience and general welfare of the community by regulating and restricting the use and construction of land and buildings and premises in the Lighting Precinct, Kearsarge, New Hampshire.

**ARTICLE I
Preamble**

In pursuance of authority conferred by N.H. Revised Statutes Annotated 31:60-89. as now amended (see RSA 674:16 et seq.), and for the purpose of promoting the health, safety, morals, prosperity, convenience and general welfare, as well as efficiency and economy in the process of development of the Lighting Precinct by securing from fire, panic and other dangers, providing adequate areas between buildings and various rights-of-way, by preserving the rural charm, aesthetics and natural beauty now associated with our village, by controlling the density of housing and the impact of traffic, by promoting good civil 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 this ordinance has been hereby enacted by the Local Legislative Body of the Lighting Precinct, Kearsarge, New Hampshire, in official meeting convened.

**ARTICLE II
Precinct's Power to Zone**

A. Authority - The Kearsarge Lighting Precinct was granted the power to enact and enforce zoning regulations within its territorial limits by act of the New Hampshire State Legislature on May 29, 1957. The zoning ordinance was instituted by the local legislative body in 1958 and became effective at that time. Amendments to the Zoning Ordinance have been enacted by the local legislative body on several occasions - the amendments becoming effective on the following dates: January 27, 1972, February 13, 1973, May 4, 1976, January 22, 1982, September 26, 1983, December 16, 1986, January 6, 1998 and March 26, 2009.

B. Effective Date - The effective date for any amendment shall be the day on which the amendment was approved by the local legislative body.

C. Amendments - This ordinance may be amended by a majority vote of any legal precinct meeting that meets all of the requirements of RSA 675:3.

Amendments may be proposed by the Commissioners pursuant to their annual review of the ordinance or proposed by voters in the local legislative body pursuant of RSA 675:4 and RSA 675:5.

D. Saving Clause - The invalidity of any provision of this ordinance shall not affect the validity of any other provision hereof.

ARTICLE III District

For the purpose of this ordinance, the entire Lighting Precinct of Kearsarge, New Hampshire, shall be considered as one district, namely, a Residential-Agricultural District located in part within the Towns of Conway and Bartlett. The Ordinances of both the Town and the Precinct must be complied with in order to obtain a building permit from the Kearsarge Lighting Precinct.

ARTICLE IV General Provision

A. No junk-yard or place for the storage of discarded machinery, un-registered vehicles, glass, paper, cordage, refuse or other waste or discarded material shall be maintained in the Precinct. The storage of non-commercial seasonal material and equipment may be maintained, including not more than one (1) unregistered, uninspected vehicle.

B. No owner or occupant of land shall permit ruins from fire or any other causes to be left, but shall remove or rebuild same to ground level within one year and properly re-grade, re-loam and re-seed the site, or the Precinct shall do the same and bill the owner(s) of the property for said work. Nothing hereunder shall prohibit the Precinct from such further action as law or equity permit.

C. The removal of clay, sod, loam, sand, or gravel from the Lighting Precinct is not permitted. If removal and excavation is required for a building construction or site improvement, then the area shall be re-graded, re-loamed, re-seeded or otherwise re-covered to assure that the premises shall be left in slightly condition and protected against erosion.

D. Sanitary Protection

1. No privy, cesspool, septic tank, or sewerage disposal system shall be constructed or maintained unless it is in accordance with standards set and enforced by the New Hampshire Department of Environmental Services (NHDES).

E. Any use that may produce noxious or injurious odor, dust, smoke, refuse

matter, fumes, noise, vibration or similar condition must be controlled or managed so as to prevent any disturbance to the comfort, peace, enjoyment, health or safety of the community or any of its inhabitants.

F. Travel Trailers, Campers or Recreational Vehicles Containing Living Units.

1. Occupied travel trailers, campers and recreational vehicles containing living units are permitted on a temporary basis for not more than a thirty (30) day period, in any six (6) month period, and they must conform to zoning ordinance setbacks. These units will be considered permanent living units if occupied for more than thirty (30) days, and would be subject to zoning ordinances and required permits.

G. Signs.

1. Home offices permitted herein shall be allowed one (1) advertising sign with a message area not in excess of three square feet;
2. Farm and nursery stands permitted herein shall be allowed one (1) advertising sign with a message area not in excess of ten (10) square feet;
3. One (1) real estate sign identifying property for sale or lease shall be allowed on the lot or building which is for sale or lease and shall have a message area which does not exceed sixteen (16) square feet.
4. Directional signs with a message area not to exceed four (4) square feet to indicate entrance and/or exit driveways shall be allowed on the lot of record.
5. No internally lighted, neon or flashing signs are allowed. No moving signs or signs which give the appearance of motion shall be allowed. No off-premise signs are allowed.

H. Prohibited Uses.

1. Parks for Mobile Homes or Trailers - A park for such use means any single lot of land occupied or designated for occupancy by two or more trailers or mobile homes in use for living purposes. Mobile home or trailer means a single complete and livable prefabricated dwelling unit transported on wheels on its own integral chassis, not requiring a foundation and requiring connection to water, power and sewage disposal systems for proper occupancy.
2. Industrial Operations, except as permitted in V.B.1.c. below. Industry is the gainful activity of producing, distributing and changing the form of raw materials or of assembling components and parts, packaging, warehousing, and transporting finished products. Such production involves the employment of management, labor, machinery and real estate to create tangible products or utility services having value.
3. Tourist Courts, Tourist Cabins and Motels - Meaning any detached or semi-detached buildings and containing sleeping rooms generally with outside entrances and parking space for each room and intended primarily for the accommodation of the automobile traveling public.

I. Grandfather Clause.

1. A lot recorded at the Carroll County Registry of Deeds which conforms to the Kearsarge Lighting Precinct Zoning Ordinance in effect on the date of recording shall be considered a buildable lot. Any improvements made to the lot must conform to the Precinct's Zoning Ordinance in effect at the time of permit application.
2. Non-conforming lots of record which adjoin another lot of record (provided that one of the lots is undeveloped) and which become the property of the same owners shall be considered a single lot subject to the regulations herein.

J. Fences.

1. Fences of any kind are not subject to setback requirements.

**ARTICLE V
Residential-Agricultural District**

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

A. Uses Permitted:

1. Single homes;
2. Duplex homes;
3. Apartment houses;
4. Condominiums;
5. Owner Occupied Boarding, Lodging and Rooming Houses, and Tourist Homes;
6. Owner Occupied Bed & Breakfast Establishment;
7. Farms;
8. Greenhouses & Nurseries;
9. Full Size Golf Courses (not miniature);
10. Public parks and playgrounds;
11. Ski Clubs and Outing Clubs as Special Exceptions only;

B. Criteria for Permitted Uses:

1. Residential Properties:

- a. For **New Construction**, lot size, frontage, setbacks and clearances are as follows:

	Lot Size	Frontage	Front Setback	Side & Rear Setback
Single Homes	2 Acres	250'	80'	25'
Duplex Homes	2 Acres/Unit	200'/Unit	80'	50'
Apartment Houses	2 Acres/Unit	200'/Unit	80'	50'
Condominiums	2 Acres/Unit	200'/Unit	80'	50'
Tourist Homes	2 Acres	250'	80'	25'
Boarding Houses	2 Acres	250'	80'	25'
Lodging Houses	2 Acres	250'	80'	25'
Rooming Houses	2 Acres	250'	80'	25'
B&B (not more Than 5 bedrooms)	2 Acres	250'	80'	25'
B&B (more than 5 bedrooms)	2 Acres	250'	80'	50'

- b. Regulations governing conversion of an existing structure to any of the above uses are set forth in Article VI.
- c. Owner occupied residential properties may be used **by the owner** as their office if they are a doctor, veterinarian, engineer, architect, lawyer, real estate or insurance salesperson. Owner occupied residential properties may also be used for home occupations such as hairdressing, dress making, manufacture of craft or art products for sale, or growing produce or flowers for sale. In connection with the above permitted activities, not more than two persons other than the owner, spouse and their children may be employed at any one location.
- d. All residential properties that offer sleeping accommodations to transient or permanent guests shall be owner occupied and operated.
- e. Newly constructed buildings shall have no more than six living units and provide off-street parking at a rate of two spaces per unit.
- f. For duplex homes, apartment houses and condominiums, a density of one living unit per 2 acres shall be determined by subtracting from the total acreage available the following:
 - (1) Public and/or private rights-of-way;
 - (2) Wetlands as defined by NHDES, very poorly drained soils;
 - (3) Exposed ledges;
 - (4) Slopes with a grade of 25% or greater;
 - (5) Bodies of water or water courses which exist and generally run 210 days or more in a given year, including a buffer of 50 feet to either side of thus determined water course or around a standing body of water.

The net acreage so determined shall be divided by two to determine the number of living units that may be placed on the lot.

- g. Manufactured Housing is permitted for single family homes and is subject to all regulations governing single homes.
- h. Clustered Housing. In order to encourage the preservation of open space and to promote a more efficient use of the land through the use of smaller networks of utilities and roads, multiple residential structures may be built on a single parcel of land, provided that:
 - (1) The net residential density of the clustered residential development shall not exceed one residential unit per two acres;
 - (2) All structures, primary or accessory, must be constructed a minimum of fifty feet from any other structure, on or off the property, which is not owned by same owner(s);
 - (3) No more than two single family dwellings may be located off of a private driveway. If the construction of roads is necessary to service the cluster development, the road standards of the Town of Bartlett, if the road is located in said Bartlett, or the Town of Conway, if the road is located in said Conway, shall be applicable, respectively.

1. Farms and Farming Activities:

- a. Farms for the production of forestry products, food crops or flowers shall be at least two acres in size and shall have a frontage of at least 50 feet. Non-residential buildings located thereon shall set back at least 80 feet from the centerline of the traveled portion of the roadway and at least 50 feet from any other property lines. Fertilizers, sprays and equipment must be stored in appropriate shelters.
- b. Farms for livestock shall be at least five acres in size and shall have a frontage of at least 250 feet. Setbacks shall be the same as above. The property shall be adequately fenced. Stables, pens and coops shall be maintained and operated in a manner to avoid odors, sounds or products offensive to the neighborhood. Food supplies, medicinal needs and excreta shall be kept in suitable sheltered spaces. Commercial riding accessories such as tie bars, corrals (or riding rings) and jumping barricades shall be no closer than 50 feet to any property line.
- c. No livestock for personal use or pleasure may be kept on residential property unless adequate shelter is provided and the animals are maintained without unreasonable offense to neighbors.

3. Greenhouses and Nurseries:

- a. The criteria set forth in Article V paragraph B. 2.a. shall apply.
- b. Small greenhouses attached to residential properties for non-commercial use are permitted, provided they meet the minimum setback requirements set forth in Article V.B.1.

4. Full-Sized Golf Courses (9-Hole minimum):

The right-of-way to a golf course shall be at least 50 feet wide, and shall connect with a public right-of-way.

ARTICLE VI
Nonconforming Uses and Structures

A. Any nonconforming use of land or structure (other than uses specified in B. below) may continue in their present use except that any nonconforming use or structure may not be:

1. Changed to another nonconforming use;
2. Re-established after abandonment, except to a use conforming to this ordinance;
3. Allowed to be added onto or expanded in any way to increase the nonconformity.

B. There shall be no conversion of use unless the resulting use or ownership otherwise conforms to all requirements of this ordinance; this to include without limitation of the foregoing conversions to apartments, accompanied by a fee simple interest, lease, license or other interest. All conversions shall require a Building Permit.

ARTICLE VII
Enforcement

A. It shall be the duty of the Precinct Commissioners, and they are hereby given power and authority, to enforce the provisions of this ordinance and to expend such funds as may be raised and appropriated by the precinct for legal and other expenses.

B. It is unlawful to erect any structure or relocate any structure or expand the footprint of any structure, including accessory structures, without first obtaining a Precinct Building Permit. When filing an application for a building permit with the Commissioners, a non-refundable fee (to be established by the Kearsarge Lighting Precinct Board of Commissioners) shall be paid to the Precinct.

C. The Precinct Commissioners shall provide the Building Permit forms and the forms for application therefore. They shall promulgate instructions governing the application for the issue of Building Permits, and shall issue any and all Building Permits requested when the proposed structure is in accordance with the provisions of this ordinance. A Building Permit shall be valid for one year from the date of issue, and applicant agrees to complete the structure permitted within the said one year period subject to penalty as hereinafter set forth. The Precinct hereby adopts the provisions of RSA 676:12

and may withhold a building permit if, after publication of first notice of proposed changes to the zoning ordinance, it appears that the proposed structure will be affected by the proposed change.

D. Although a permit may be required by either the Town of Bartlett or the Town of Conway, no permit shall be required from the Kearsarge Lighting Precinct for repairing or internally remodeling any structure if the use or footprint of the structure is not thereby changed.

E. The Precinct Commissioners may reasonably enter into or upon any structure under construction during daylight hours without notice to the owner or builder.

ARTICLE VIII

Board of Adjustment

A. The Board of Adjustment shall consist of five members, one of whom shall be elected at each annual Precinct Meeting for a term of five years, and three alternates who shall be elected for a term of one year. The Moderator shall make appointments to fill vacancies occurring on the Board of Adjustment until the next annual Precinct Meeting. The members of the Board of Adjustment shall live within the Precinct and serve without remuneration. The Board shall exercise the powers granted to it by RSA 674:33 and RSA 677, and all other laws of NH. The Board's power to grant special exceptions is limited to the conversion of an existing structure to a permitted use or to an Outing or Ski Club, the criteria for which are as follows:

1. There shall be no significant change to the structure or to the appearance of the structure being converted.
2. The provision of small window balconies, entrance stoops, dormers, access stairs or fire escapes shall not be considered as significant structural changes, but they shall not increase any existing nonconformity in the structure.
3. Adequate off-street parking must be provided for all vehicles of persons using or serving the facility.
4. Fire escapes must be provided from every floor on which public sleeping rooms are located.
5. All applicable Town and State adopted building and life safety codes shall be complied with.

B. If a variance or special exception is authorized, the Board shall notify the Commissioners of the details of such authorization.

ARTICLE IX Penalties

A. The Commissioners are authorized by law to impose penalties for violations of requirements of the Zoning Ordinance. A civil penalty in an amount set forth in RSA 676:17 may be assessed by the Commissioners, together with costs and reasonable attorney's fees. Said penalty shall begin on the day written notice to the owner or builder specifying the violations is received, and will run until all violations have been corrected. The Commissioners shall have the right to withhold the issuance of a building permit until all civil penalties, including costs and reasonable attorney's fees, due from the applicant have been paid. Unpaid penalties may become a lien on the entire property committed to the Precinct's Tax Collector (Town of Conway or Bartlett Tax Collector) who shall collect the same with the same rights and remedies as in the collection of taxes as provided under NH Statute, including, but not limited to, RSA ch 80, by the Commissioners.

ARTICLE X Definitions

Abandonment: An intentional action to abandon or relinquish the use of a property in which some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use.

Accessory Building or Structure: A building or structure subordinate to the main building on a lot used for purposes customarily incidental to those of the main building.

Apartment: Shall mean the same as "unit" hereinafter defined.

Apartment House: A multi-unit residential building of three or more units owned by a single person or entity and the units of which are rented or leased to individuals who occupy the units.

Boarding House, Lodging House and Rooming House: Any single unit with not more than four bedrooms committed to accommodations for a price for sleeping or living purposes, provided the same is occupied and operated by the owner.

Condominium: A building or group of buildings, in which dwelling units are owned individually, and the structure, common areas, and facilities are owned by all of the owners on a proportional, undivided basis, and as defined in RSA: 356-B.3.

Frontage: The length of a lot bordering on a public or private road right-of-way.

Home Produce and Products: Shall include everything of an agricultural nature grown, produced, conditioned or otherwise carried on the property of the resident. Also, such articles as are manufactured or altered by members of the household of the bona fide resident of any property.

Lot of Record: Land designated as a separate and distinct parcel and described in a legally recorded deed filed with the Registry of Deeds, Carroll County, New Hampshire.

Nonconforming Use: A use of any property or building which does not conform to the use regulations of this zoning ordinance.

Owner Operated: A business which is occupied and operated by the owner; an individual person or persons. Nothing shall prohibit incorporation of any designated facility hereunder provided the owners of more than 50% of the controlled stock of said corporation (or the persons controlling more than 50% of the entity whether by trust or other fictional person) personally occupy the premises and serve the corporation of such facility.

Recreational Vehicles, Travel Trailers and Campers: Vehicles designed for highway use and which provide compact living facilities for those traveling.

Right-of-way: Publicly or privately owned land reserved for the location of roads, streets or highways. The width of the right-of-way is usually described in the deed of conveyance or shown on a development or construction plan involving a particular right-of-way. The boundary lines of the right-of-way are to be deemed the frontage lines of the abutting property.

Road: A public or private way designated for purposes of vehicular travel or vehicular and pedestrian travel, including the entire area within the right-of-way, avenues, boulevards, highways, streets, and all other ways.

Setback: The minimum distance by which structures are required to be set forth from the specified lot line, measured at right angles or radial thereto. Setbacks from a right-of-way shall be measured from the center line of the traveled portion of the roadway.

Sign: Any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure on any land or any other structure, or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surfaces; provided, however, that signs placed or erected by the Precinct, Town, State or Federal Government for the purpose of showing street names or traffic directions or regulations on for other municipal or governmental purposes shall not be included herein.

Ski Club and Outing Club: Any building or portion thereof where lodging is offered to cooperative membership, and/or transient guests for compensation or for free and in which there are more than five (5) sleeping rooms with no cooking appliances in any individual sleeping room or apartment.

Special Exception: A use permitted upon demonstrating that such use in a specified location will comply with all of the conditions and standards for the location or operation of the use as specified in this ordinance and as approved by the Zoning Board of Adjustment.

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, including buildings, permanent or temporary; signs; carports; porches; and other building features, including stacks and antennas, but not including sidewalks; fences; driveways; septic systems; utility poles; boundary markers and field and garden walls or embankment retaining walls. Structure also includes swimming pools and tennis courts.

Tourist Home: Any place consisting of a room or group of rooms located on one premise where transient accommodations of sleeping or living purposes are provided for a price.

Unit: A combination of total living space which shall have kitchen facilities, bath and bedrooms to accommodate an integrated group of people.

Variance: The Authorization by the Zoning Board of Adjustment to construct on or use a particular parcel in a manner that is not permitted by this zoning ordinance. The Zoning Board's authority to grant variances is limited by the criteria for the granting of variances as set forth in NHRSA 674:33, I(b), and as interpreted by the Courts. To obtain a variance, an applicant must satisfy each of the five requirements:

1. No diminution of 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;
4. By granting the permit substantial justice would have been done;
5. The use must not be contrary to the spirit of the Ordinance. Gelinas v. Portsmouth, 97 NI-I 248, 1952.

Vehicle: A self-propelled device used for transportation of people or goods over land surfaces and typically licensed as a motor vehicle.

Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions, does

support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas. (Definition as described by NH Code of Administrative Rules, Wt.101.79)