

HOW PLANNING BOARD WARRANT ARTICLES ARE SHAPING UP

Re: Changes to 202.12

(Added in *italics* and taken out strike through)

202.12 Adult Establishments. (Adopted 1994)

A. In order to mitigate their harmful effects on neighborhood children and residential neighborhoods, adult bookstores, adult video stores, ~~and~~ adult motion picture theaters, ***adult cabarets, adult arcades and establishments governed by RSA Chapter 314-A, Body Art*** shall not be permitted:

Add to Definitions Appendix A

ADULT ARCADE: Any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT CABARET: A nightclub, bar, restaurant, or similar commercial establishment which regularly features: 1. Persons who appear in a State of Nudity or Semi-Nudity; or 2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or; 3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area".

ADULT ESTABLISHMENT: An adult book store, adult motion picture theater, ***adult cabaret, adult arcade, or adult video store, or establishment governed by RSA Chapter***

314-A, Body Art. (Adopted 1994)

Amendment No. 2009-02

Re: Changes to 505.3

(Added in *italics* and taken out strike through)

505.3 Wireless Telecommunications Facilities District and Map. (Rev. 2003)

The Wireless Telecommunications Facilities District shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows:

Portion of "Perkins Heirs Parcel," west of Grove Road, Conservation Land, Rye Cons. Com. (Adopted 2004)

Note 1. At site TC-3 towers and other telecommunication facilities are prohibited within the 400 ft. ***sanitary*** radius exclusion zone of the ***Rye Water District*** production water wells.

Note 2. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including Bethany Church, provided that such facilities do not exceed 20 feet height above the existing structure. Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with Section 303.

Amendment No. 2009-07

Re: Changes to 901.1

(Added in *italics* and taken out strike through)

SECTION 901 BUILDING PERMIT LIMITATIONS.

901.1 Annual Limitation: The number of building permits for new dwelling

units (hereinafter referred to as "building permits") that are issued in a calendar year by the Town of Rye shall be limited to an amount that is ~~0.75~~ **1.75** percent of the total dwelling units existent in Rye as of December 31 of the prior year. For the purposes of this ordinance the December 31 base of dwelling units shall be determined from the 1990 United States Census, updated with building permit data reported annually to the New Hampshire Office of State Planning. ***For the year 2009, the December 31, 2008 base of dwelling units is _____ and the annual 1.75 percent limitation is _____.*** (Rev. 1995 and 2000)

Re: Changes to 801

(Added in italics and taken out strike through)

SECTION 801 BUILDING PERMITS. (Rev. 1992)

801.1 Building Permits Required: No land shall hereafter be used for building or development, and no building, structure, or subsurface waste disposal system hereafter erected, enlarged or moved in whole or in part for any purpose until a building permit shall have been issued by the Building Inspector showing that the use and development of the land, building, structure or subsurface waste disposal system complies with the provisions of this ordinance. No building, structure or subsurface waste disposal facility shall be altered ~~at a cost of more than \$1,500.00~~ without a building permit showing that the alteration complies with this ordinance. For the purpose of this ordinance such alterations costing less than \$1,500.00 shall not require a building permit **fee**.

Re: Definitions of "Nursing Facility" and "Home for the Elderly"

(Note: New text is ***emboldened and in italics***. Text to be deleted ~~struck through~~)

I. Change the term "nursing home" to "nursing facility" and add "Assisted Living Facility" and delete the words "home for the elderly" and "convalescent or" in the special exception provisions of the Single Residence, General Residence, Business and Commercial Districts.

For Example:

Uses Allowed by Special Exception.

Hospital, ~~convalescent or nursing home~~ ***facility, assisted living facility***, ~~home for the elderly~~, religious or educational institution.

(Note: New text is ***emboldened and in italics***. Text to be deleted ~~struck through~~)

II. Add the following new definitions to "Appendix A - Definitions."

1. Nursing Facility : A State licensed facility which is primarily engaged in providing 24-hour care for residents needing: (a) skilled nursing care, medical monitoring, and related services; (b) rehabilitation services for the rehabilitation of injured chronically disabled or sick; (c) medication administration or instruction and supervision; or (d) on a regular basis, health-related care and services (above the level of room and board) which can be made available to them only through facilities which provide 24 hour care. See RSA 151-E:2, V.
2. Assisted Living Facility . A State licensed facility which ***combines*** apartment living (including studio apartments) with a variety of support services including meals, assistance with personal care, housekeeping, laundry, social and recreational programs, oversight of residents medication, 24 hour security, onsite staff to respond to emergencies. Some assisted living facilities also offer specialized care for persons with dementia or Alzheimer's Disease. See RSA 151-E:2.I.

Suitable Units

Outdoor Wood-Fired Hydronic Heaters (OWHH) are free standing wood burning devices that heat a liquid (water or antifreeze) which in turn is pumped to a residence or other structure to provide heat. Only units which meet EPA Phase I and Phase II Emission Limits as measured by EPA Method 28 with a "yeararound rating" are permitted. For the year 2009, only Outdoor Wood-Fired Hydronic Heaters (OWHH) certified by the EPA as meeting Phase I emission levels or as meeting Phase II emission levels are acceptable. In the year 2010 and forward, only units certified by the EPA as meeting Phase II levels will be acceptable. Units meeting Phase I emission levels are sometimes referred to as "Orange Tag models" and units meeting Phase II emission levels are referred to as "White Tag models".

Permitted Fuels

The only approved fuel for single fired OWHH is clean wood - either cordwood or wood pellets.

Dual fired

OWHH may use "home heating oil", propane, or natural gas as a starter or alternate fuel.

Setbacks

All OWHH installations, Phase I or Phase II, will have a minimum setback of 100 feet from the nearest property line.

Stack Height

On all units the stack height is at least 2 ft. higher than the peak of the roof of a residence or business not served by the OWHH, if that residence or business is within 300 ft. of the OWHH.

Safety Requirements

All OWHH must have a suitable enclosure or other means that will assure only authorized access, all stacks must have a "spark arrester" or equivalent device, and all pipes to the area served must be buried.

Exceptions

Except for safety requirements, OWHH units designed around the "pellet stove" principle are exempt from the requirements of this section. A "pellet stove" is a pellet-fueled heating device controlled via an automatic controller which combines both the fuel and air into a combustion chamber in order to provide an optimum combustion.

Other Items

Fire Department Permit is required.

The applicant must provide to the Building Inspector an application which must include a notice (per 125-R:8 Notice to Buyers) that the applicant (1) was provided a copy of "Regulations Under RSA 362", (2) a list of approved fuel, and (3) and a statement that they are aware that the municipality has ordinances which may limit the use of OWHH units. In addition, the notice must be signed and dated by the buyer and seller and include (1) name and address of the owner, (2) name and model number of the manufacturer, and (3) the date of manufacture.

PROPOSED ZONING AMENDMENT NO. 2009-5

RE: SMALL WIND ENERGY SYSTEMS

I. Amend the list of Permitted Uses in the Single Residence District (Section 203.1) by adding: Small Wind Energy Systems, pursuant to the requirements of Section 508 of this ordinance.

(Explanation: All other zoning districts permit any use permitted in the SR District, except the Conservation District. Thus, the above will allow such systems in all districts, except the Conservation District.

II. Add the following to the list of uses prohibited by Section 208.4 of the Conservation District: "Small Wind Energy Systems," so that Section 208.4 states: "Prohibited Uses: Commercial, business, industrial and residential uses and ***small wind energy systems*** are prohibited in the Conservation District." [new text underlined, italicized and emboldened].

III. Add the following new section to the zoning ordinance.

SECTION 508 SMALL WIND ENERGY SYSTEMS

508.1 Authority. This ordinance is adopted in accordance with RSA 672:1, as amended by Chapter 357 of the NH Session Laws of 2008, and RSA 674:39, which is effective July 11, 2009.

508.2 Purpose. The purpose of this ordinance is to provide for distributed generator/small wind energy systems intended primarily to reduce on-site consumption of utility power in appropriate locations, while minimizing any adverse visual, safety and environmental impacts of a system. Small wind energy systems increase local energy independence, reduce pressure on the local electricity grid and reduce pollutants from traditional forms of energy.

508.3 Definitions. The following definitions shall apply to this section.

Fall zone: The potential fall area for the small wind energy system. It is measured by using 120% of the total height as the radius around the center point of the base of the tower.

Flicker: The moving shadow created by the sun shining on the rotating blades of the wind turbine.

Meteorological tower (met tower): A temporary tower which includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. Met towers are only those towers whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Net metering: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system which is fed back into the electric distribution system over a billing period.

Power grid: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow: The outline created on the surrounding area by the sun shining on the small wind energy system.

Small wind energy system: A wind energy conversion system consisting of: (1) a vertical or horizontal wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 60 kilowatts or less and will be used primarily for onsite consumption, or (2) a horizontal or vertical turbine mounted on a building and associated control or conversion electronics, which has a capacity of 60 kilowatts or less and will be used primarily for onsite consumption.

Tower: The monopole or guyed monopole structure that supports a wind turbine.

Total system height: The vertical distance from grade to the tip of the wind turbine blade when it is at its highest point.

Tower height: The height above grade of the fixed portion of the tower, excluding the wind turbine.

Wind turbine: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

508.4 Permits. The installation or modification of a small wind energy system shall require a Building Permit from the building inspector and a Conditional Use Permit (CUP) from the planning board. The permits shall be applied for simultaneously. The planning board shall prepare a single permit application for this purpose.

A. Required Information. The information required by Section 508.6 shall be submitted with the application.

B. Abutter Notice. The Building Inspector shall comply with the notice requirement of RSA 674:62, which provides abutters with a 30 day comment period prior to issuance of a building permit. The Building Inspector's notice may be mailed concurrently with the planning board's notice of its hearing on the CUP application.

508.5 Conditional Use Permit.

A. Review Process. CUP applications shall be processed in accordance with the Rye Planning Board's procedures for Major Site Developments (i.e. major site plans).

Upon the request of the applicant, the planning board shall grant waivers of its requirements for soils plans, surface water drainage plans and erosion control plans where no purpose would be served by reviewing such plans.

B. Approval of CUP. Prior to approving an application for a CUP, the planning board shall determine that all of the requirements of Section 508.7 are met.

C. Appeal. In accordance with RSA 674:21 and RSA 676:5, III, appeals of planning board decisions on applications for a Conditional Use Permit may be taken to the superior court as provided by RSA 677:15.

508.6 Required Information. Applications for a Building Permit/CUP shall include the following information.

1. A site plan stamped by a professional engineer or land surveyor licensed by the State of New Hampshire showing:

i) Property lines and physical dimensions of the applicant's property.

ii) Location, dimensions, and types of existing major structures on the property.

iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment, including equipment associated with hybrid systems.

iv) Setback requirements.

v) The right-of-way of any public road that is contiguous with the property.

vi) Any overhead utility lines.

vii) Any wetland, marsh, stream, pond, ocean or other water body within the fall zone.

viii) Tree and vegetation cutting at the site.

2. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed), nameplate generation capacity.

3. If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.

4. Tower foundation blueprints or drawings.
5. Tower blueprint or drawings.
6. Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
7. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
8. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
9. List of Abutters.

508.7 Criteria. All small wind energy systems shall comply with the following requirements. The applicant has the burden of providing sufficient information to establish that the criteria are met.

A. Setbacks.

1. A small wind energy system mounted on a tower shall be set back a distance equal to 120% of the total system height from:
 - Any public road right-of-way, unless written permission is granted by the governmental entity with jurisdiction over the road.
 - Any overhead utility lines.
 - All property lines, unless the affected land owner provides written permission through a recorded easement allowing the small wind energy system's fall zone to overlap with the abutting property.
 - Any travel way, including but not limited to driveways, parking lots, nature trails or sidewalks.
 - Wetlands, marshes, streams, ponds, the ocean and water bodies.
2. Small wind energy systems shall meet all yard setbacks for the zoning district in which the system is located.
3. The setback shall be measured to the center of the tower's base.
4. Guy wires used to support the tower are exempt from all setback requirements, but shall be located on the same lot as the tower.

B. Tower .

1. Lattice towers are prohibited.
2. Tower height shall not exceed 140 feet.
3. The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the wind turbine.
4. In reviewing the proposed height in an application for a CUP, the planning board may consider the "rule of thumb" that the bottom of rotor blades should be at least 30 feet above any obstruction within 300 feet. The planning board may also consider that increased tower height may yield high returns on power production.

C. Building Mounted Systems. Building mounted small wind energy systems may be located only on those parts of a building which comply with yard setback requirements.

1. The application of a CUP/Building Permit shall include the certification of a structural engineer licensed by the State of New Hampshire that the building will safely support the small energy wind system.
2. The total height of a building mounted system shall be the minimum

height necessary to supply the annual power consumption of the premises. The applicant has the burden of providing sufficient technical information to establish that this requirement is met. In no case shall the total height exceed twice the height of the building.

D. Sound Level. The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the property line, except during short-term events such as severe wind storms and utility outages.

E. Shadowing/Flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. The applicant has the burden of proving that there will not be significant shadow flicker impacts. Significant shadow flicker is more than 30 hours per year on an occupied building. Potential shadow flicker shall be addressed either through siting or mitigation measures.

F. Signs. All signs, both temporary and permanent, are prohibited on the small wind energy system, except as follows: (1) manufacturer's or installer's identification on the wind turbine; and (2) appropriate warning signs.

G. Code Compliance. The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code and the Rye Building Code.

H. Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration including but not limited to 14 C.F.R. part

77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424. Evidence of compliance or non-applicability shall be submitted with the application.

I. Visual Impacts. It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access the wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the wind resources.

1. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, turbine design or appearance, buffering, and screening of ground mounted electrical and control equipment.

2. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. The owner shall be responsible for maintaining the color of the small wind energy system over time.

3. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

4. All electrical conduits shall be underground.

5. Towers will be landscaped with a buffer of plant material that effectively screens the view of the tower compound from adjacent residential properties.

I. Utility Connections. If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

J. Access. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

K. Approved Wind Turbines. The manufacturer and model of the wind turbine to be used in the proposed small wind energy system must be approved by the California Energy Commission or the New York State Energy Research and Development Authority; or, when approval lists become available, by the Small Wind Certification

Council or the State of New Hampshire.

L. Clearing. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

508.8 Abandonment.

A. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

B. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Building Inspector. "Physically remove" shall include, but not be limited to, removal of the wind turbine and tower and related above grade structures and restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the afterconditions.

C. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Building Inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Building Inspector shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.

D. If the owner fails to respond to the Notice of Abandonment or if after review

by the Building Inspector it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind turbine and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system, the town shall have the authority to it pursuant to the process set forth in RSA 676:17-a.

E. The Planning Board may require the applicant for a CUP to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the time of construction to cover costs of the removal in the event the town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism to accommodate the rate of inflation over 15 years.

508.9 Meteorological (Met) Towers. The construction of a met tower for the purpose of collecting data to develop a small wind energy system, shall abide with the following requirements;

A. The construction, installation or modification of a met tower shall require a building permit and shall conform to all applicable sections of the NH State Building Code and the Rye Building Code. The information required by Section 508.6 shall be submitted with the application for a building permit.

B. Met towers shall be permitted on a temporary basis not to exceed 18 months.

C. Met towers shall comply with all requirements of Section 508.7.

1. A conditional use permit is not required to construct, install or modify a met tower.