

**TEMPORARY RESIDENTIAL GROWTH LIMITATION AMENDMENT
TO THE ZONING ORDINANCE (ARTICLE 2 IN THE
2002 TOWN MEETING WARRANT)**

I. Intent and Purpose

- A. To promote the development of an economically sound and environmentally stable community which considers and balances regional development needs, in accordance with applicable law, the moratorium adopted by voters at the March 2001 annual town meeting, and the Town of Andover Master Plan.
- B. To insure that growth occurs in an orderly and planned manner, at a rate that can be supported by Town services, while avoiding large year-to-year variations in the development rate.
- C. To relate the timing of residential development to the Town's ability to provide adequate public safety, schools, roads and municipal infrastructure, and human services at the level of quality which the citizens expect and within the Town's citizens' ability to pay through real property taxes.
- D. To preserve and enhance the existing community character and value of property, and to protect the health, safety, convenience, and general welfare of the Town's residents.

II. Exemptions

The following developments are specifically exempt from the planned growth rate and development scheduling provisions of this ordinance:

- A. The enlargement, restoration, or reconstruction of an existing dwelling unit.
- B. "Replacement Dwelling" as defined herein.
- C. Any non-residential construction.

III. Authority

This section is enacted in accordance with N.H. RSA 674:21 and 674:22.

IV. Expiration

This Ordinance shall expire on March 31, 2007, in accordance with the terms of Article VI below, unless sooner terminated as provided herein.

At any time when the population of the Town of Andover shall have fallen during two successive years, the Planning Board shall make recommendations to the next following annual town meeting as to whether this Ordinance should be ended or modified by town meeting vote sooner than the aforesaid March 31, 2007.

The planning board of the Town of Andover is hereby authorized to make such regulations not inconsistent with the terms of this ordinance as it shall find are necessary to enforce the intent and terms hereof.

V. Findings

Based upon information extracted from publications and reports of the United States Census, the New Hampshire Office of State Planning, the Lakes Region Planning Commission, the Andover School District, and offices and agencies of the Town of Andover, and data provided from towns and a city abutting the Town of Andover, the Town of Andover hereby finds that:

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- A. A substantial (13%) increase in the Andover Elementary/Middle School student population occurred in the school year 1999-2000. If continued over a five-year period, such increases will result in insufficient classroom space being available for the Town's children.
- B. Significant capital expenditures are already envisioned in the Capital Improvement Plan adopted by the Andover Planning Board in January 2002. Such capital expenditures are expected to cause significant increases in the local real property tax rate and a requirement that expanded classroom facilities be built would further increase that rate.
- C. The abutting towns of Danbury, Hill, Salisbury, Warner, and Wilmot are experiencing significant development pressure and Andover has now begun to receive preliminary inquiries into large-scale residential development.
- D. Continued uncertainty regarding State and local funding of schools and other local services exists within the State of New Hampshire, complicating both near-term and long-term town planning.
- E. Imminent reductions in federal funding that are expected substantially to increase the need for local funding of welfare.

VI. Growth Limitation

In accordance with applicable New Hampshire law, the Planning Board is hereby charged with:

- A. Enforcing the following limitations upon the number of residential building permits which may be issued in any particular year, and
- B. Requiring phased development of all subdivisions intended for residential development, as both are defined below. To the extent that the Planning Board does not otherwise have such authority under applicable law, it is hereby authorized to adopt such regulations, consistent with this ordinance, as may be required for the equitable application of the provisions of this ordinance.

VII. Residential Building Permit Limitations

- A. In the year of adoption of this ordinance the number of residential building permits issued shall not exceed:
 1. The number of full-time residences (occupied and otherwise) identified in the Year 2000 federal census, which was a total of 862, plus all certificates of occupancy issued since the date of that census up until and including December 31, 2001, multiplied by
 2. The average percentage of growth of Andover and all abutting municipalities between (A) the date of the Year 2000 federal census, as established for all such municipalities at the date of that census by that census and (B) December 31, 2001, as estimated in writing by appropriate authorities of the governments of those municipalities or, in the absence of such information, determined in such manner as the Planning Board shall deem to be most reliable:

SUMMARY: The number of full-time residences at 12/31/2001 multiplied by the average percentage regional growth during the year equals the maximum number of new building permits allowed for the ensuing year.

- B. The Planning Board shall establish that maximum number not later than March 31, 2002. In the year 2002, residential building permits actually issued prior to enactment of this ordinance will be deducted from the number determined under subparagraphs 1 and 2 immediately above and only the remainder can be issued in the year 2002.
1. In each subsequent year after 2002, the number of building permits to be issued will be adjusted to the average regional population change in the preceding year, *i.e.*, the number of new building permits issued will not exceed the number issued in the prior year, proportionally increased or decreased by an amount which reflects the average population growth in the Town of Andover and in the municipalities abutting the Town of Andover, which include Danbury, Franklin, Hill, Salisbury, Warner, and Wilmot, as estimated in writing by appropriate authorities of the governments of those municipalities. For purposes of this Ordinance, average annual population change in this group of municipalities will be calculated on the basis of the aggregate population of all such municipalities at the beginning and ending of the period measured.
 2. The Planning Board will obtain all necessary population information for purposes of subsections 1 and 2 above by February 15th of each year and shall make public its determination of the number of permits to be issued by the last day of February of each such year.
 3. Lots of record existing at the time of adoption of this Ordinance shall be exempt from limitations on the number of building permits allowed to be issued hereunder. Application for a residential building permit for any such "grandfathered" lot must, however, be made on or before the last day of the second month of each year. All building permits issued for such lots of record shall count against the maximum number of building permits that can be issued in any year.
 4. One building permit shall be required for the construction of each dwelling unit. For example, conversion of a single-family dwelling to a two-family dwelling (whether or not such change is permanent) shall require one building permit for the additional dwelling unit.
 5. A minimum of twenty-five per cent (25%) of all annually permitted residential building permits will be reserved for two-lot subdivisions approved by the Planning Board by August 31st of each year. Any permits so reserved and not so allocated may be reallocated on or after September 1st of such year in accordance with the rules herein. (The owners of any such subdivisions approved in August of any year shall be advised of this provision and if they signify an intention to apply for such a building permit then the Building Inspector is authorized to reserve such permits until the end of September, at which point they will be released automatically as above if no application has been made.)
 6. No more than twenty per cent (20%) of the annually permitted building permits shall be issued to any one individual, business entity or group of related individuals and/or business entities in any one year. Applicants shall disclose in their initial submission

- all such related individuals and/or related business entities that have applied for such building permits within the year preceding the date on which the applicant's submission is made. Failure to make such disclosure shall invalidate an applicant's application and it may not be resubmitted for a period of one (1) year.
7. No more than twenty per cent (20%) of the annually permitted building permits shall be issued for any single subdivision or re-subdivision of land.
 8. Eligibility for building permits (which phrase shall not denote nor connote any right to the issuance of a building permit) shall require, in addition to other provisions of this Ordinance, either
 - a. The recording of a plan in the Merrimack County Registry of Deeds, or
 - b. The existence of a lot of record recorded in the Merrimack County Registry of Deeds.
 9. Building permits within each category of applicants hereunder (so-called "grandfathered" lots, two-lot subdivisions, large subdivisions, subdivisions of land in related ownership) will be issued in the order in which completed applications for such permits were received. Building permit applications received in any single year in excess of the limits established herein shall be carried forward to the next and following years in the order in which received.
 10. Building permits shall be regarded as personal to the owner of the land at the time a completed application is received and shall not devolve to any subsequent owner of that land unless a building foundation shall be substantially complete at the time of transfer of title to that land.
 11. The board of selectmen of the Town of Andover is hereby specifically authorized and encouraged to set such fees for the Town building inspector as may be appropriate to compensate for the additional time required of such official for the application of this ordinance.

VIII Phased development

- A. Phasing for different subdivision sizes:
 1. The Planning Board may require the phasing of a development for a period of up to five (5) years for a project which is proposed to have more than five (5) but not over ten (10) units or lots.
 2. Phasing over a period of five (5) years will be required for a project, which is proposed to have more than ten (10) but not more than twenty (20) units or lots.
 3. For a project larger than twenty (20) units or lots, the Planning Board may require a period of phasing longer than five (5) years, based on the size of the project and the potential impact of the number or type of units on the municipal services of the Town. The Planning Board shall make appropriate findings of fact to substantiate the need for phasing.
- B. Once a phasing plan has been approved by the Planning Board, the project shall not be affected by any permit limitations subsequently enacted, provided that the developer secures building permits for and

begins substantial construction on the project on the units in any yearly phase. In the event that substantial construction is not undertaken in any yearly phase, then the vesting of that phase shall be forfeited.

- C. Notwithstanding any expiration of this ordinance, phasing required of subdivisions approved prior to that expiry shall continue to be required unless the subdivision's developer shall demonstrate by a preponderance of evidence that waiver by the planning board of previously-required phasing for that development will not unduly strain the resources of the Town.

IX. Applicability Effect and Definitions

This ordinance shall be effective immediately upon adoption by town meeting. Beginning on the effective date of this ordinance (March 12, 2002), no new building permit for a new dwelling unit or units shall be issued except in accordance with this ordinance.

The provisions of this ordinance shall expire on March 31, 2007. At the end of each calendar year the Planning Board is to conduct a review against specific criteria and then set new limits, if necessary, on or before each March 1st thereafter. However, by a vote of town meeting before March 31, 2007, the provisions of this ordinance may be extended for an additional five years in order to continue municipal comprehensive planning studies necessary to promote orderly growth. In the event such action is taken by town meeting prior to March 31, 2007 these provisions shall not be construed to have elapsed on such date.

X. Definitions

For the purpose of this ordinance, the following terms shall have the following meanings:

1. "Development" shall mean a single parcel or set of contiguous parcels of land held in a private ownership, single corporation, separate corporations, common ownerships, and/or trust, at any time on or after the date of adoption of this ordinance, for which one or more building permits will be sought.
2. "Replacement dwelling" shall mean a dwelling, which replaces one destroyed or substantially damaged by fire, natural disasters, or acts of war or terrorism, or replacing one voluntarily razed by its owner.

XI. Development Scheduling

This section shall apply to the following types of development, which would result in the creation of dwelling units: (a) final subdivision plans, and (b) use variances.

Dwelling units shall be considered as part of a single development, for purposes of limitation under this ordinance, if located on either a single parcel or on a set of contiguous parcels of land held in common or related ownership at any time on or after the adoption date of this ordinance.

XII. Procedures for Development Schedules

In order to facilitate and review, the developer shall submit a written proposed development schedule to the planning board as part of any application for a preliminary or final subdivision approval.

The developer shall submit a written proposed development schedule as part of any application to the board of adjustment for a use variance. If a use variance is requested, the board of adjustment shall promptly furnish to the planning board a complete copy of all documents received as part of that application.

The planning board shall approve a development schedule, which is consistent with the provisions of this ordinance and applicable subdivision regulations.

XIII. Separability

The provisions of this ordinance are hereby declared separable and if any provision shall be held invalid or unconstitutional, it shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this ordinance.

XIV. Incorporation in Zoning Ordinance

This ordinance shall be incorporated into the present zoning ordinance of the Town of Andover as an amendment thereto and the provisions above shall be appropriately renumbered.



Photo by Paul Fenton