

Temporary Policy Regarding Compliance with Existing Site Plans During Covid-19

1. **Purpose:** Physical distancing requirements associated with the Covid-19 pandemic are having significant impacts on the day-to-day operations of many businesses. The unprecedented spread of pandemic disease and resulting emergency declaration and requirements and recommendations for physical distancing have reduced economic activity, caused the closure of businesses deemed “non-essential” by the State of New Hampshire, and severely curtailed operations of others, including the food service industry. The purpose of this Temporary Policy is to temporarily reduce local regulatory barriers in order to allow affected businesses to operate to the maximum extent permissible by public health circumstances and official guidelines and restrictions issued by the State of New Hampshire.
2. **Authority:** Outdoor restaurant seating or display of merchandise are permitted by both the Northwood Development Ordinance and the Northwood Site Plan Regulations. Any non-residential use requiring site plan approval from the Northwood Planning Board is required to identify the proposed location of all pedestrian circulation, paved areas, structures, landscaping, and signage as described in Section VII – Site Plan Requirements of the Site Plan Regulations; these requirements are interpreted to include identification of areas to be used for outdoor seating and display of merchandise due to the presence of pedestrians patronizing those services and the frequent necessity to pave, grade, and/or place structures and signs in these areas to make them suitable for such use.

For the purpose of enforcement, Town staff has consistently interpreted any outdoor sales and display that are not depicted on the approved site plan to be a violation of that site plan on the grounds that the Planning Board has not had the opportunity to assess the potential impacts those activities may have on the health, safety, and general welfare of the public, the likelihood of those activities to constitute a public nuisance, and the compliance of those activities with the provisions of the Site Plan Regulations and Northwood Development Ordinance. In an enforcement scenario a business would be expected to cease any such activities deemed non-compliant with the approved site plan and file an application with the Planning Board for a site plan amendment. A business would have the right to appeal such an enforcement decision to the Zoning Board of Adjustment within 30 days.

The Planning Board and Zoning Board of Adjustment have not accepted new applications for the months of April or May, and do not anticipate doing so until they are able to hold public hearings in person. This restriction eliminates business’ opportunities for redress by appealing staff administrative decisions or amending their existing site plan, and in the opinion of Town staff, would impose a hardship upon businesses that are currently prevented from operation within the terms of their approved site plans. Since addition of outdoor seating and display areas are not explicitly mentioned in Section IV – Applicability of the Site Plan Regulations as activities requiring updated approval, Town staff asserts that the requirement to update a site plan before undertaking these activities

is, in effect, an administrative decision that has been made by Town staff. Therefore, under emergency circumstances that are not contemplated by the Site Plan Regulations, and that could not have been foreseen by Town staff in the application of prior administrative decisions, Town staff asserts the right to temporarily alter this administrative decision.

3. **Duration:** This policy is intended to operate for the duration of the Covid-19 state of emergency as declared by Governor Sununu on March 13, 2020 and as may be extended, including any required physical distancing restrictions established by emergency order pursuant to that state of emergency. Upon expiration of the state of emergency, the Northwood Board of Selectmen may establish a timeline for the expiration of this policy if a gradual transition to normal operations is deemed necessary or desirable.
4. **Other Policies and Severability:** This policy is intended to clarify the status of Northwood businesses under the Site Plan Regulations and is not intended to exempt businesses from any other federal, state, or local policies enacted for the purpose of public health, safety, or general welfare or to limit the spread of Covid-19. Where this policy is deemed to conflict with any such policies, the more restrictive shall apply. If any portion of this policy is deemed to be invalid, the remainder shall remain in effect to the maximum extent permissible by law.
5. **Exemptions:** This policy is intended to apply only to new outdoor seating or merchandise display areas where pedestrians could be expected to congregate. It is not intended to restrict takeout, delivery, or “curb-side pickup” services that businesses may choose to operate using their existing buildings and parking/circulation areas. Such activities are considered to be compliant with the terms of existing site plan approvals provided they do not extend into the public right-of-way or otherwise disrupt the flow of traffic on a public road. Businesses that receive clearance from the State of New Hampshire to resume operations within an existing building or structure may do so provided they comply with all required state and local policies or precautions necessary to protect public health, safety, and general welfare.
6. **Approved Site Plan Required:** This policy is intended to facilitate the continued operation of existing businesses under evolving federal, state, and local public health guidelines. Businesses that have existing non-conforming rights under the terms of the Northwood Development Ordinance and Site Plan Regulations will be treated the same as businesses with approved site plans under this policy. Specifically, this policy may not be used to authorize the following:
 - a. Change of use or establishment of a new use on a site. For purposes of this regulation, expansion of existing accessory uses or business practices (e.g. a hair salon expanding retail sales of hair products in addition to other services provided) shall not constitute establishment of a new use.
 - b. Construction, installation, conversion, or expansion of a permanent structure in a way typically requiring site plan approval.
 - c. Expansion of any paved area in a manner typically requiring site plan approval.

- d. Landscaping, grading, or otherwise altering a site in a way likely to alter the flow of water leaving the site, including alteration of any existing stormwater features or infrastructure.
 - e. Impacts to sensitive areas or overlay districts (e.g. wetlands or steep slopes), or any other activity that would normally require a variance, special exception, or other review and approval by a Town board or other federal, state, or local permitting agency.
 - f. Any other activity which, due to the severity of its impacts, permanence, or inability to revert once installed or commenced, could be interpreted to circumvent the authority of the Planning Board or Zoning Board of Adjustment under the Northwood Development Ordinance, Site Plan Regulations, or Subdivision Regulations.
7. **Application Required:** Any business seeking to establish new outdoor seating or display of merchandise beyond that depicted on their approved site plan must file an application to the Town consisting of the following materials:
- a. An Application for Temporary Outdoor Dining or Display form, which is incorporated under this policy by reference.
 - b. Certification on said application form that the Applicant will comply with all applicable federal, state, and local requirements for business operation, including but not limited to policies for physical distancing of employees and patrons, procedures for sanitizing business facilities, requirements for personal protective equipment and hygiene practices, or other policies in place for the protection of public health, safety, or general welfare.
 - c. A plan or illustration of the area to be converted for outdoor dining or display. Hand drawn plans or drawn alterations to an existing site plan or aerial imagery, such as printouts from the Town’s online GIS or tax maps will be accepted provided they are:
 - i. Legible
 - ii. Generally to scale and/or label important dimensions
 - iii. Show and clearly label the proposed dining/display area in relation to existing structures, parking, and circulation areas. Dining/display areas may be depicted as an outline or “envelope” (e.g. no need to draw individual tables) provided the number of tables or display kiosks is described in the application
 - iv. Show and label any other proposed features necessary to operate the space (e.g. fencing or barriers to separate dining area from parking and circulation, temporary awning for storage of chairs/tables, etc.)

- d. A written description of how the proposed dining or display area will be operated, including discussion of anticipated levels of activity and adequacy of existing parking/circulation on site to accommodate proposed activities
 - e. Restaurants intending to serve alcohol must attach a copy of their existing liquor license and any other documentation required by the State of New Hampshire to permit outdoor service of alcohol. Outdoor alcohol sales must comply with all federal, state, and local requirements for alcohol sales currently in effect unless specifically waived or altered by temporary policies from their respective agencies.
 - f. Any additional materials reasonably requested by Town staff to establish that proposed activities will not pose a threat to public health, safety, or general welfare or be likely to cause a public nuisance.
 - g. Applications may be submitted electronically, by mail, or via any physical dropbox or mailbox the Town may provide for the purpose. Applicants are advised that Town physical distancing procedures currently do not allow for in-person submission of materials, and that electronic submissions are likely to be the fastest method of submission.
8. **Minimum Standards:** All dimensional requirements of the Northwood Zoning Ordinance remain in effect. The following minimum standards for outdoor seating or display of merchandise apply:
- a. Dining or merchandise display shall not occur in required setbacks
 - b. Existing parking requirements in the Site Plan Regulations are determined by the maximum restaurant seating capacity, number of employees on the largest shift, and/or square footage of display area. These requirements will be assessed on a case-by-case basis and may not be appropriate for operations under this Temporary Policy. All proposals for a permit under this Temporary Policy should contain sufficient information to show that the applicant has made adequate provision for parking and circulation of anticipated vehicles, and that anticipated traffic and parking will not pose a threat to public health, safety, or general welfare or cause vehicles to be parked in or back up into a public right-of-way.
 - c. Outdoor dining or display areas that are located within 20 feet of a parking or vehicle circulation area must install some combination of physical and/or visual barriers to ensure the safety of employees and patrons, especially if such parking or circulation areas are to be converted for dining or display. The Town denies all liability for any accident or injury that may occur as a result of outdoor dining and display areas, and businesses are advised to consult their insurance companies to ensure that such activities will be covered by existing policies.
9. **Review Authority:** In the interest of responding quickly to rapidly-changing physical distancing requirements and to provide businesses with maximum flexibility, the Building Inspector/Code Enforcement Officer and/or any other Town official designated

by the Board of Selectmen shall have the authority to review applications and issue permits described by this Temporary Policy.

10. **Inspection.** The Building Inspector/Code Enforcement Officer or other Town official designated by the Board of Selectmen as having authority to review permits may require, at their discretion, a final inspection of the proposed dining or display area to ensure compliance with this policy and all applicable federal, state, and local regulations.
11. **Enforceability.** This Temporary Policy shall have the force of an administrative determination by a Town official and may be enforced as such. Failure to comply with any aspect of this Temporary Policy or misrepresentation of any information provided as part of an application shall be grounds for denial or revocation of a permit. By applying for a temporary permit, applicants certify that they will comply with all applicable federal, state, and local laws, codes, and policies, including physical distancing requirements for staff and patrons. Failure to do so shall be grounds for denial or revocation of a permit.
12. **Permit Alteration and Expiration:** Once issued, a permit for outdoor dining or display shall be valid for the remainder of the calendar year in which it is issued. If this Temporary Policy remains in effect beyond 2020, a new application will need to be filed in subsequent calendar years.

If changes to federal, state, or local policies regarding physical distancing require a business to alter the design or operation of an outdoor dining or display area after issuance of a permit by the Town, that amendment may take place as a “permit by notification”. The business shall submit an updated description and/or plan of the proposed area as necessary prior to making any alterations and may proceed with such alterations unless contacted by Town staff to indicate that more detailed review is required.

All temporary permits issued under this Temporary Policy will expire upon termination of this Temporary Policy by the Board of Selectmen. At that time all business operations shall revert to those permitted by the current approved site plan, or an application for an amended site plan shall be filed with the Planning Board.