Town of Newbury, N.H.
Zoning Ordinance

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Prepared by:
Newbury Planning Board
With assistance from:
Upper Valley Lake Sunapee Regional Planning Commission

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ARTICLE 1. AUTHORITY AND PURPOSE

1.1 Authority

This Ordinance is established pursuant to the authority conferred by Chapters 672 through 677, New Hampshire Revised Statutes Annotated.

1.2 Purpose

The purpose of this Zoning Ordinance is to promote the health, safety, and general welfare of the inhabitants of the Town of Newbury, New Hampshire; to enhance and preserve the value and natural beauty of our lakes, ponds, and natural environment; to conserve the value of buildings and encourage the most appropriate use of land; and to carry out the purposes defined in RSA 672:1 and 674:17 and the Overall Vision of the Newbury Master Plan. It is the intent of the ordinance to allow individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with the accomplishment of these purposes.

ARTICLE 2. DEFINITIONS

2.1 **Abutter**: Any person whose property adjoins, or is directly across a street or stream from the land under consideration by any Newbury land use board. A property owner cannot be his/her own abutter for the purpose of notification. For the purposes of receipt of notification of a hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association. For the purposes of receiving testimony only, and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. The names of all abutters, for purposes of notification, shall be obtained from the Town Tax List as it exists in the Town offices.

2.2 **Accessory Apartment**: A self-contained, isolated dwelling unit incorporated within an existing structure that was originally designed for a single family or as an accessory building. This use shall be clearly subordinate to the use of the existing structure.

2.3 **Accessory Use**: A use which is subordinate or incidental to the main, principal or primary use on the same lot.

2.4 **Affordable Housing**: A housing unit which is (a) a rental unit in which the rent, including heat and utilities, does not exceed 30 percent of the income of a low or moderate income household living therein, or (b) an owner occupied unit, including a condominium, for which the total cost of a monthly mortgage (principal and interest) taxes, insurance, condominium fees, heat and utilities does not exceed 30 percent of a low or moderate income household living therein.

2.5 **Alpine Slide**: A slide or chute constructed on the ground following the natural topography of the land.

2.6 **Alteration**: Any change or rearrangement in the supporting members of an existing building, such as the foundation, bearing walls, columns, beams, or girders, as well as any change in the dimensions or configuration of the roof; means of ingress or egress; or any enlargement to or diminution whether horizontally or vertically.

2.7 **Antenna**: The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.

2.8 **Antenna Array**: A collection of antennas attached to a mount to send and receive radio signals.

2.9 **Aquifer**: A surficial and/or bedrock geologic formation that is sufficiently permeable to store and transmit significant ground water, including but not limited to stratified drift aquifers mapped by the U.S. Geologic Survey.

2.10 **Aquifer Recharge Zone**: Land areas over or adjacent to aquifers which allow precipitation or snow to melt to infiltrate directly into an aquifer formation. Such areas are characterized primarily by moderately to high permeable overlying soils and relatively flat terrain over or higher than the aquifer.

2.11 **Area of Special Flood Hazard**: The land in the floodplain within the Town of Newbury subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.

2.12 **Average Tree Canopy Height**: An average height found by inventorying the height above ground level (AGL) of all trees over twenty (20) feet in height for a defined area.

2.13 **Banner**: A strip of cloth or similar material on which a sign is painted. It may be mounted to a wire, pole, or a building with or without a frame at one or more edges. National flags, state or municipal flags or the official flag of any institution or business shall not be considered banners.

2.14 **Base Flood**: The flood having a one-percent possibility of being equaled or exceeded in any given year.

2.15 **Basement**: Any area of a building having its floor subgrade on all sides.

2.16 **Beacon**: Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate and move.

2.17 **Bed and Breakfast**: Overnight accommodations and a morning meal provided to transients for compensation on a day-to-day basis, in a building or group of buildings with six or fewer guest rooms.

2.18 **Best Management Practice (BMP)**: A proven or accepted structural, non-structural, or vegetative measure the application of which reduces erosion, sediment, or peak storm discharge, or improves the quality of stormwater runoff.

2.19 **Bog**: Bog means a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

2.20 **Building**: Any structure for the shelter, support or enclosure of persons, animals or property having a roof and being permanently located on the land.

2.21 **Building Envelope**: That portion of the lot where construction of buildings and associated structures and services (septic, well) is permitted. The septic system and well are exempt from setback requirements as provided in Section 5.9. The building envelope is determined by omitting from the total lot area those areas where construction is not permitted, including wetlands, setbacks from wetlands, surface waters, setbacks from surface waters, steep slopes, 100 year floodplains, deer wintering areas and the applicable setbacks from property boundaries of the underlying zone district. The area which remains is the building envelope.

2.22 **Building Footprint**: The area of a lot upon which a building stands defined by the shape of the outer edge of the roof line.

2.23 **Building Height**: The vertical distance from the highest grade adjacent to the foundation to the peak of the roof, or wall if it is higher. Unoccupied appurtenant structures such as chimneys, church spires or steeples, cupolas, mechanical equipment, and radio/TV receiving antennas are not included in this definition.

2.24 **Building Marker**: Any sign indicating the name of a building and date and incidental information about its construction.

2.25 **Camouflaged**: A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

2.26 **Carrier**: A Company that provides personal wireless services also sometimes referred to as a provider. For the purposes of this Article, carrier shall include tower service company.

2.27 **Change of Non-conforming Use**: Any change from an existing non-conforming use to any other non-conforming use.

2.28 **Clear-cutting**: Any timber harvesting on a forested site which results in an average residual basal area of less than thirty (30) square feet for each acre of trees over six (6) inches in diameter measured at four and one-half feet above the ground.

2.29 **Cluster Development**: A purely residential subdivision of a tract where, instead of subdividing the entire tract into house lots of conventional size, the same number of dwelling units may be grouped or clustered on a portion of the tract with the remaining land in the tract not developed upon to be reserved for open space.

2.30 **Co-location**: The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

2.31 **Commercial Recreational Facility**: Any establishment whose main purpose is to provide the general public with an amusing or entertaining activity and where tickets are sold or fees are collected for the activity. Typical uses include skating rink, miniature golf course, golf course, arcade, bowling alley, billiard hall, museum, health club, performance theater, court facilities such as tennis, and swimming facilities.

2.32 **Concentrated Commercial Recreational Facility**: Any establishment whose main purpose is to provide the general public with an amusing or entertaining activity characterized by potentially substantial impacts on traffic, the natural environment, and the surrounding neighborhood, and where tickets are sold or fees are collected for the activity. Typical uses include driving range, alpine or water slide, motorized vehicle racing track, amusement ride, stadium, drive-in theater, horse or dog racing track, and shooting range.

2.33 **Construction**: The act or result of combining or assembling materials to form, repair, or improve a permanent structure, edifice, or building. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

2.34 **Contractor's Yard**: Carpenter shop, plumbing, electrical, roofing, contracting or similar service establishment.

2.35 **Cottage Industry**: An accessory use of a dwelling unit or an associated accessory building for an occupation or business activity which results in a product or service. It is an occupation which is carried on by a resident or residents who occupy the dwelling unit and may include no more than two non-occupant employees on the premises. By way of example, occupations such as hairdressers, lawyers and contractor's yards may be

permitted provided they are clearly subordinate to the residential use of the dwelling unit. Equipment and materials shall be either screened or enclosed.

2.36 **Deer Wintering Areas**: Areas where the vegetation and land characteristics support and shelter deer during the winter. These areas will be determined initially by the map of "Deer Wintering Areas" in the most recent Natural Resource Inventory for the Town of Newbury and verified in the field by the Code Enforcement Officer before a building permit is granted. For subdivisions a wildlife biologist shall delineate these areas as part of the subdivision process.

2.37 **Density**: The number of dwelling units per acre.

2.38 **Developable Area**: The area (acreage) of a parcel of land remaining after applying Table 5.1 adjustments to that parcel. The Developable Area becomes the base for calculating permitted residential density for that parcel of land if it is subdivided.

2.39 **Development**: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

2.40 **Disturbed Area**: An area where the natural vegetation has been removed exposing the underlying soil, or vegetation has been covered by fill material.

2.41 **Driving Range**: A practice driving range for golf without the use of nets.

2.42 **Dwelling, Multi-Family**: A structure containing two (2) or more dwelling units, whether in common ownership or owned on a condominium, cooperative, or other similar basis.

2.43 **Dwelling Unit**: One or 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.

2.44 **Environmental Assessment (EA)**: An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

2.45 **Equipment Shelter**: An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

2.46 **Equitable Waiver of Dimensional Requirement**: A waiver for an existing nonconformity in the physical layout of a lot or the siting of buildings.

2.47 **Expansion of Non-conforming Use**: Any increase in the intensity of use as indicated by any of the following: increase in the size of the structure supporting the use, increase in the hours or days of operation, or increase in the land area supporting the use.

2.48 **Facility**: See Personal Wireless Service Facility.

2.49 **Fall Zone**: The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal to twice the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

2.50 **Family**: Family includes:persons legally related by blood, marriage or adoption occupying a single dwelling unit, or no more than five (5) unrelated individuals occupying a single dwelling unit.

2.51 **FEMA**: The Federal Emergency Management Agency.

2.52 **FIRM**: Flood Insurance Rate Map.

2.53 **Flood/Flooding**: A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

2.54 **Flood Insurance Rate Map (FIRM)**: An official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town Newbury.

2.55 **Flood Insurance Study**: An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood related erosion hazards.

2.56 **Floodplain/Flood-Prone Area**: Any land area susceptible to being inundated by water from any source (see definition of "Flood").

2.57 **Flood Proofing**: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

2.58 **Floodway**: See "Regulatory Floodway".

2.59 **Forest Management Plan**: A document written for a specific property which outlines the owner's objectives, describing the existing conditions and value of the forest, and makes recommendations for enhancing the value of the standing timber and optimizing forests. In addition, the plan may make recommendations to achieve other goals such as conservation, improving wildlife habitat by way of patch cuts and stand diversity, constructing roads, and making trails for recreation.

The Forest Management Plan shall be in accordance with the then-current scientifically-based practices recommended by the UNH Cooperative Extension Service, the U.S. Natural Resource Conservation Service, or other government or private, non-profit natural resource conservation management agencies then active.

2.60 **Frontage, Road**: The contiguous length of the lot bordering on and measured parallel to the centerline of a road.

2.61 **Frontage, Shore**: The average of the distances of the actual shoreline footage and a straight line drawn between the property lines, both of which are measured at normal high water.

2.62 **Functionally Dependent Use**: A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking or port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long term storage or related manufacturing facilities.

2.63 **Guyed Tower**: A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

2.64 **Hazardous Waste**: Material that contains any substance that has proven to be harmful to humans, wildlife, or the environment; or is detrimental to the peace and comfort of the community.

2.65 **Height, Building**: See Building Height.

2.66 **Height, Mounting Structure**: The height above ground level from the natural grade of a site to the highest point of a structure used to mount personal wireless service facilities.

2.67 **Highest Adjacent Grade**: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

2.68 **Historic Structure**: Any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

i) By an approved state program as determined by the Secretary of the Interior, or

ii) Directly by the Secretary of the Interior in states without approved programs.

2.69 **Home Occupation**: An accessory use of a dwelling unit or an associated accessory building for an occupation which results in a product or service. It is an occupation which is carried on by a resident or residents who occupy the dwelling unit and which is clearly subordinate to the residential use of the dwelling unit. Any Home Occupation must comply with the following parameters:

a. There are no non-occupant employees on the premises;

b. There are no signs advertising the occupation;

c. All equipment or materials associated with the occupation is enclosed in a building or screened from view; and

d. There is no customer/client traffic.

2.70 **Illuminated by Indirect Method**: Illumination from an external light source with the light source being shaded or shielded from direct view by motorists or abutters.

2.71 **Impact Fee**: A fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the Town of Newbury, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities: public road systems and rights-of-way; municipal office facilities; public school facilities; the town's proportional share of capital facilities of a cooperative or regional school district of which the town is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including public open space.

2.72 **Impervious Surface**: Means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

2.73 **Individual Sewage Disposal System**: Any sewage disposal or treatment system, other than a municipally owned and operated system, which receives either sewage or other wastes or both. Examples include septic tank leach field systems, privies or dry toilets, and incinerator-type toilets such as gas-operated, electric, fossil fuel or any combination thereof.

2.74 **Land Disturbance**: Any man-made change to the ground or soil. Gardening and planting of vegetation is exempt from this definition.

2.75 **Lattice Tower**: A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.

2.76 **Light Industry**: The assembly, manufacture, processing, packaging or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke, electrical interference, toxic emissions, heat and vapor are effectively confined to the premises or disposed of so as to avoid any air pollution and conducted in such a manner that the noise level at the property line will not exceed 80 decibels and objectionable flashing and vibration will not occur.

2.77 **Lot**: A parcel of land occupied or to be occupied by only the principal building or the accessory buildings or uses customarily incidental to it. A lot shall be of sufficient size to meet the minimum zoning requirements for use, coverage and area, and to provide such setbacks and other open spaces as are herein required.

2.78 **Lot of Record**: A piece of land the description of which specifies the boundaries which enclose the area in question. For the purposes of this ordinance, the description shall be taken from the most recent deed or plat recorded in the Merrimack County Registry of Deeds. Such pieces of land may be identified in a deed by terms such as Lot, Parcel or Tract. The assessor's tax map shall not be used to define a lot of record.

a. When a lot of record is crossed by a municipal boundary, the lot of record may be altered by the provisions of RSA 674:53, Land Affected by Municipal Boundaries which is incorporated by reference.

b. When a lot of record is crossed by a public road, the existence of the road shall not create any new lots. Subdivision of the lot shall be governed by the Newbury Land Subdivision Control Regulations.

2.79 **Low and Moderate Income Person/ Family**: A person or family which has a household income of 120 percent or less of the median income, adjusted for family size, of Merrimack County as published annually by the U.S. Department of Housing and Urban Development.

2.80 **Lowest Floor**: The floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

2.81 **Manufactured Home Park or Subdivision**: means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

2.82 **Manufactured Housing**: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing. For floodplain management purposes the term ‘‘manufactured home’’ includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

2.83 **Marsh**: Marsh means a wetland:

a. That is distinguished by the absence of trees and shrubs;

b. Dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and

c. Where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

2.84 **Mast**: A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

2.85 **Mean Sea Level**: The North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

2.86 **Mechanical Timber Harvesting**: Tree removal methods using wheeled and tracked vehicles to trim, fell, delimb, or skid trees. This does not include hand-held tree cutting equipment.

2.87 **Meteorological Tower (met tower)**: 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. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

2.88 **Modification**: Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

2.89 **Monopole**: A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

2.90 **Mount**: The structure or surface upon which antennas are mounted, including the following four types of mounts:

a. Roof-mounted. Mounted on the roof of a building.

b. Side-mounted. Mounted on the side of a building.

c. Ground-mounted. Mounted on the ground.

d. Structure-mounted. Mounted on a structure other than a building.

2.91 **Natural Ground Cover**: Means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the Department of Agriculture, Markets, and Food in accordance with RSA 430:53, III Invasive Species, exotic species as designated by rule of the NH Department of Environmental Services in accordance with RSA 487:24, VII New Hampshire Clean Lakes Program Rulemaking imported organic or stone mulches, or other artificial materials.

2.92 **Natural Woodland Buffer**: Means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.

2.93 **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 that is fed back into the electric distribution system over a billing period.

2.94 **New Construction**: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, New Construction means structures for which the Start of Construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

2.95 **Non-conforming Building**: A building or structure or part thereof not in compliance with the setback, building separation or building height requirements in the district in which it is located.

2.96 **Non-conforming Lot**: Any parcel of land not meeting the lot size, density, frontage or shore frontage requirements of this Ordinance.

2.97 **Non-conforming Structure**: For purposes of the shoreland regulations, means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of the Shoreland Overlay District, including but not limited to the impervious surface limits of RSA 483-B: 9, V (g) Minimum Shoreland Protection Standards.

2.98 **Non-conforming Use**: A use of a building, structure or land legally existing at the time of the adoption of this Ordinance or any amendments thereto, and which does not conform with the use regulations of the district in which it is located.

2.99 **Normal High Water**: See Reference Line.

2.100 **l00-Year Flood**: See Base Flood.

2.101 **Ordinary High Water Mark**: Means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the NH Department of Environmental Services.

2.102 **Overlay District**: An area which is subject to special, additional regulations to protect or be protected as a natural resource.

2.103 **Pennant**: Whether or not containing a message, any plastic, fabric or other material, usually in series, suspended from wire, rope or other material, designed to primarily move in the wind.

2.104 **Permanent Stream**: A perennial or permanent flow of water.

2.105 **Personal Wireless Service Facility**: Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment.

2.106 **Personal Wireless Services**: The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

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

2.108 **Presite Built Housing**: Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing

and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. Presite built housing as defined in this section shall not include manufactured housing.

2.109 **Primary Recharge Zone**: A recharge zone directly over an aquifer formation.

2.110 **Priority Pollutant Scan**: An analysis performed in accordance with test method 8240 of "Test Methods for Evaluating Solid Waste", Volume IB, Laboratory Manual, Physical/Chemical Method, Identified as EPA SW846, dated November 1986.

2.111 **Private Recreational Facility**: Any establishment not open to the general public whose main purpose is to provide its bona fide members and guests with an amusing or entertaining activity. Typical uses include meeting facility, golf course, tennis court and other court games, health club, and bowling alley.

2.112 **Protected Shoreland**: Means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

2.113 **Public Waters**: Means and includes:

a. All fresh water bodies listed in the official list of public waters published by the department pursuant to RSA 271:20, II Published list of Public Waters whether they are great ponds or artificial impoundments.

b. Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15 Rivers Designated for Protection. Stream order shall be determined using the New Hampshire Hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the University of New Hampshire.

2.114 **Radio Frequency (RF) Engineer**: An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

2.115 **Radio Frequency Radiation (RFR)**: The emissions from personal wireless service facilities.

2.116 **Recreational Vehicle**: A vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

2.117 **Reference Line:** Means:

a. For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the NH Department of Environmental Services.

b. For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, and the waterline at full pond as determined by the elevation of the spillway crest.

c. For lakes where dams are owned by the New Hampshire Water Resources Board, information on the level of flowage rights is available from the Board.

d. On Lake Sunapee the normal high water is defined as elevation 1093.15 feet above sea level National Geodetic Vertical Datum of 1929 (NGVD 29) according to the NH Department of Environmental Services Consolidated List of Waterbodies subject to RSA 483-B, Shoreland Water Quality Protection Act,or 10.5 feet on the gauge at the dam in Sunapee Harbor.

e. For rivers, the ordinary high water mark as established by NH Department of Environmental Services.

2.118 **Regulatory Floodway**: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

2.119 **Replacement System**: Means a septic system that is not considered new construction under RSA 485-A: 29-44 Sewage Disposal Systems and rules adopted to implement it.

2.120 **Right-of-Way**: This means and includes all public bodies of water and all town, state and federal highways, road rights-of-way, public or private, and the land on either side of same as covered by statutes to determine the widths of rights-of-way.

2.121 **Sanitary System**: See Individual Sewage Disposal System.

2.122 **Sapling**: Means any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4 1/2 feet above the ground.

2.123 **Secondary Recharge Zone**: A recharge zone characterized by permeable soils up gradient from an aquifer formation.

2.124 **Security Barrier**: A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

2.125 **Separation, Building**: The distance between one building and the closest part of an adjacent building.

2.126 **Separation, Personal Wireless Service Facilities**: The distance between one carrier's array of antennas and another carrier's array of antennas.

2.127 **Septage**: Material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from wastewater treatment works and industrial waste.

2.128 **Septic System**: See Individual Sewage Disposal System.

2.129 **Setback**: The minimum distance from property boundaries, natural features, or the like as identified in this ordinance to the nearest part of a structure, building, or use established by the requirements of this ordinance.

2.130 **Sewage Sludge**: Solid, semi-solid, or liquid residue generated during the treatment of municipal sewage in treatment works. Sewage sludge includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes.

2.131 **Shadow Flicker**: The visible flicker effect when rotating turbine blades of the wind generator cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

2.132 **Shrub**: Means any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.

2.133 **Sign, Animated**: Means any mechanical or electronic changeable-copy sign or any sign which moves or creates the illusion of movement or change of lighting to depict action or create a special effect or scene.

2.134 **Sign, Building**: Any sign attached to or painted on any part of a building, as contrasted to a free-standing sign.

2.135 **Sign, Canopy**: Any sign that is part of or attached to any awning, canopy, or other fabric, plastic or structural protective cover above a door, entrance, window or outdoor service area. A marquee is not a canopy.

2.136 **Sign, Changeable Copy**: A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged manually without altering the face of the surface of the sign. A sign on which the message changes more than one (1) time per day shall be considered an animated sign and not a changeable-copy sign for purposes of this ordinance.

2.137 **Sign, Freestanding**: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

2.138 **Sign, Incidental**: Any sign, generally information, that has a purpose secondary to the use of the lot on which it is located, such as 'no parking', 'entrance', 'loading only', 'telephone', and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

2.139 **Sign, Portable**: Any sign designed to be transported, such as A-frames and sandwich boards, and including signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

2.140 **Sign, Projecting**: Any sign affixed to a building or wall in such a manner that the sign extends more than six (6) inches beyond the surface of such wall of a building or structure.

2.141 **Sign, Roof Mounted**: Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

2.142 **Sign, Wall**: Any sign attached parallel to, but within six (6) inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

2.143 **Sign, Window**: Any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service,

that is placed inside a window or upon the window panes, glass, or translucent material and is visible from the exterior of the window.

2.144 **Skyline**: The line along which the surface of the earth and the sky appear to meet. Also, the outline or silhouette of hills and trees seen against the sky.

2.145 **Small Wind Energy System**: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

2.146 **Special Exception**: A use of land or buildings which may be permitted by the Zoning Board of Adjustment if said Board determines the use to be consistent with the conditions set forth in this ordinance.

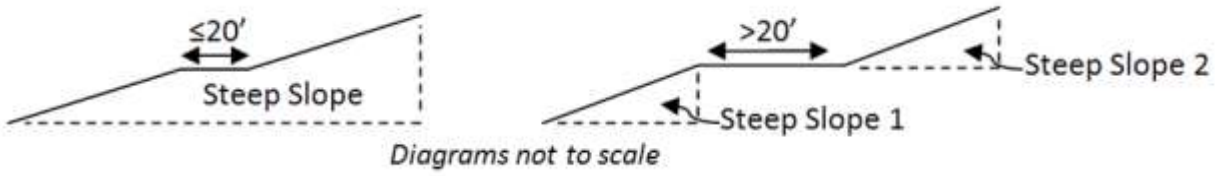
2.147 **Special Flood Hazard Area**: An area having flood, mud slide, and/or flood-related erosion hazards, and shown on a Flood Insurance Rate Map as Zones A or AE. (See - "Area of Special Flood Hazard".)

2.148 **Start of Construction**: Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

2.149 **Steep Slope**: An area with a measured slope of twenty-five percent (25%) or greater, utilizing the following slope measurement criteria:

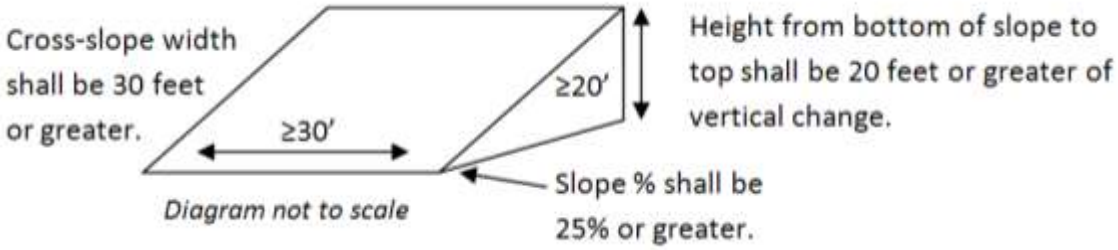
a. Vertical measurement: The vertical elevation change of the steep slope shall be 20 feet or greater. Vertical measurement shall be determined by utilizing five-foot contours, as documented and determined by on-site survey.

If there is more than one area of steep slope of any size in a section of vertical drop determined by the path that water would flow and the horizontal distance between the bottom of one steep slope and the top of the next steep slope is 20 feet or less, then the slope shall be measured from the top of the highest steep slope to the bottom of the lowest steep slope within the boundaries of the property.



b. Horizontal measurement: Horizontal measurement shall be determined by survey or using the scaled measurement on the drawing.

c. Cross-slope width measurement: The cross-slope width (measured along the contour lines) of the steep slope shall be 30 feet or greater.



2.150 **Stormwater Runoff**: The water from precipitation that is not absorbed, evaporated, or otherwise stored within the contributing drainage area.

2.151 **Structure**: Anything constructed with a fixed or temporary location on the ground, or attached to something having a fixed or temporary location on the ground. Items such as swimming pools, sheds, gazebos, garages, docks and boathouses are included in this definition whether prefabricated or site built. Items such as on-site waste disposal systems, water wells, fences, walls, gates, signs, lampposts, mailboxes, flagpoles, children's play sets, well coverings, stairs (not attached to a structure), walkways and uncovered patios are excluded from this definition. Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

2.152 **Substantial Damage**: Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.153 **Substantial Improvement**: Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

2.154 **Swamp**: Swamp means a wetland that is dominated by trees and shrubs.

2.155 **System Height**: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

2.156 **Tower**: The monopole, guyed monopole or lattice structure that supports a wind generator.

2.157 **Tower Height**: The height above grade of the fixed portion of the tower, excluding the wind generator.

2.158 **Tower Service Company**: Any company which owns or leases real estate, and builds and services towers or other structures for lease to personal wireless service companies.

2.159 **Tree**: Means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4 1/2 feet above the ground.

2.160 **Tree Canopy**: The part of the tree crown composed of the upper level of foliage and branches; or the collective branches and foliage of a group of tree crowns.

2.161 **Unaltered State**: Means native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities.

2.162 **Use**: A purpose for which real property is employed. For example, those purposes itemized in ARTICLE 4 and ARTICLE 5, and any other purposes defined by the Zoning Board of Adjustment.

2.163 **Variance**: Such departure from the terms of this Ordinance as the Board of Adjustment, on appeal in specific cases is empowered to authorize under the terms of this Ordinance.

2.164 **Violation**: Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

2.165 **Water Park**: An amusement park consisting of wave pools, water slides elevated above the natural grade of the topography and related recreational facilities.

2.166 **Water Slide**: A slide constructed on the ground following the natural topography of the land with a constant flow of water.

2.167 **Water Surface Elevation**: The height, in relation to the North American Vertical Datum of 1988 (NAVD 88), (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

2.168 **Waterfront Buffer**: Means those protected shorelands located within 50 feet of the reference line.

2.169 **Wetland**: Wetland means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, lakes, ponds, streams, swamps, marshes, bogs and similar areas. See the specific definitions for bog, marsh and swamp.

2.170 **Wetland Buffer**: A strip of land seventy five (75) feet wide adjacent to any wetland as defined in ARTICLE 2.

2.171 **Wind Generator**: 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.

ARTICLE 3. GENERAL PROVISIONS

3.1 Certificate of Zoning Compliance

Permits for the erection, exterior alteration, or moving of any building or structure shall not be issued until application has been made to the Selectmen for a certificate of zoning compliance; such certificate shall be issued in conformity with the provisions of this Ordinance.

3.2 Sanitary Systems

All sanitary systems shall be constructed and maintained in accordance with standards set and enforced by the NH Water Supply and Pollution Control Division of the NH Department of Environmental Services. The erection or alteration of any dwelling or other building which will result in an increase in the number of bedrooms or bathrooms shall require zoning compliance. Before zoning compliance may be issued, the applicant shall supply a certificate of inspection from a qualified sanitary professional certifying that the existing septic system is adequate for the proposed use and that the system meets the current rules of the New Hampshire Water Supply and Pollution Control Division of the NH Department of Environmental Services.

3.3 Measurement of Setback

Setbacks or other dimensional requirements outlined in this Ordinance shall be measured horizontally and not along the lay of the land.

3.4 Exterior Lighting

Exterior lighting shall be installed and operated in such a way that provisions are made in directing the lighting, screening, or other means so that neighboring residential uses and passing motorists are suitably protected from direct glare and intensity of lighting.

3.5 Nuisance Provision

Things that may be dangerous to the public safety or health, obnoxious, disturbing or annoying to the peace and comfort of the community are considered nuisances and therefore prohibited.

3.6 Unsafe Structures

Structures which are determined by the Building Inspector to be unsafe will be fenced within seven (7) days to prevent access and will be razed or repaired within ninety (90) days of notification by the Town.

3.7 Fire or Other Ruins

Owners of land shall not permit fire or other ruins to be left more than ninety (90) days.

3.8 Spreading of Municipal Sewage Sludge

This section regulates the spreading of municipal sewage sludge on lands in the Town. The application procedure, specific performance standards, and testing requirements are set forth. Under no circumstances will sewage sludge, grit, or screenings from incineration or industrial facilities be deemed suitable for land application, nor sewage sludge containing hazardous waste. The Town operates facilities at Blodgetts Landing

and the state operated sewage facilities at Mt. Sunapee State Park are exempt from the provisions of this Article.

3.8.1 Land application of EPA Class B sewage sludge is not permitted in the Shoreland Overlay District, the Wetlands Conservation Overlay District, the Steep Slopes Conservation Overlay District and the Flood Plain Overlay District. Land application of EPA Class B sewage sludge may be permitted only in the Residential District subject to review by the Conservation Commission, approval of a Special Exception by the Zoning Board of Adjustment and after Site Plan Review and Approval by the Planning Board. The applicant for such special exception and site plan review shall submit the following as part of the application materials at least 90 days in advance of taking receipt of the sewage sludge.

3.8.1.1 A complete copy of an Application for Approval of Suitability of Municipal Sludge for Land Application approved by the NH Bureau of Solid Waste Management, Division of Public Health Services, Department of Public Health.

3.8.1.2 A written report containing:

3.8.1.2.1- the name, address, telephone number and permit number of the sludge generating facility;
3.8.1.2.2- the name, address, telephone number and permit number of any and all sewage sludge treatment facilities, if different from the generating facility;
3.8.1.2.3- the name, address, telephone number and permit number of the sewer sludge hauler;
3.8.1.2.4- the name, address, telephone number and permit number of the person(s) treating and/or applying the sewage sludge;
3.8.1.2.5- laboratory reports of all test results;
3.8.1.2.6- the planned delivery date or dates;
3.8.1.2.7- A description of any planned treatment;
3.8.1.2.8- A narrative description of the treatment method used to meet Class B sewage sludge requirements;
3.8.1.2.9- The total surface of the planned application(s);
3.8.1.2.10- The total sewage sludge volume to be applied;
3.8.1.2.11- Previous land application data, including the cumulative site loading to date and the site loading from the previous two (2) years;
3.8.1.2.12- The number of land applications that can be performed without exceeding the cumulative pollutant loading rate set forth in Table 2 of 40CFR503.13; and
3.8.1.2.13- Evidence in writing that the landowner consents to the application of sewage sludge to their land.

3.8.1.3 A site map drawn at a scale appropriate to show all required information and illustrating the following with respect to any area which sewage sludge is to be applied to the land:

3.8.1.3.1- a local map showing the site in relation to abutting tax map parcels and surrounding land use within 1,000 feet of the property;
3.8.1.3.2- the entire property parcel showing all property lines as determined by certified boundary survey;

3.8.1.3.3- public roads, structures whether on or off the property, and any easements or rights-of-way which exist on the property;
3.8.1.3.4- topography with contours not to exceed 5 foot intervals for the entire site and 100 feet beyond property boundaries;
3.8.1.3.5- the most current soil delineations available from Natural Resource Conservation Service;
3.8.1.3.6- all available aquifer mapping on and near the site with well yield descriptions;
3.8.1.3.7- all wetlands, streams, and surface water within 400 feet of the land application area;
3.8.1.3.8- all adjacent wells, including well locations of abutters within 600 feet of the land application area;
3.8.1.3.9- the location and limits of the land application area and any stockpile site:
3.8.1.3.10- all previous land application sites on the property;
3.8.1.3.11- all points of access and on-site haul roads; and
3.8.1.3.12- all buffer zones.

3.8.1.4 A minimum of one comprehensive soil test shall be conducted for each soil type on the land application site. Soil testing shall determine the following parameters: PH; organic matter content of the A horizon; nitrogen, phosphorous, potassium, calcium, and magnesium availability; presence and amount of heavy metals including zinc, copper, nickel, cadmium, cobalt, chromium, lead, arsenic, mercury, selenium, and molybdenum. Additionally, soil test and testing parameters may be requested by the Planning Board and/or the Zoning Board of Adjustment after review of initial test results by the Boards or its designated agent, including, but not limited to:

3.8.1.4.1- polychlorinated biphenyls (PCBs);
3.8.1.4.2- chlorinated pesticides: DDT, deildrin, aldrin, endrin, chlordane, heptachlor, lindane, mirex, kepone, 245-T, 24D;
3.8.1.4.3- chlorinated compounds including dioxin;
3.8.1.4.4- polynuclear aromatic hydrocarbons;
3.8.1.4.5- volatile organic compounds; and
3.8.1.4.6- asbestos.

3.8.2 In addition to the special exception criteria contained in ARTICLE 16 a special exception to all the land application of sewage sludge shall be granted only with the following conditions, which shall be the minimum conditions applicable to such use:

3.8.2.1 Class B sewage sludge suitable for land application shall be limited to sewage from municipal secondary or advanced wastewater facilities meeting at a minimum both Class B pathogen reduction requirements of 40 CFR 503.32a and vector control requirements of 40 CFR 530.33aI before transportation into the Town. Under no circumstances will sewage sludge, grit, or screenings from incineration or industrial facilities be deemed suitable for land application, nor sewage sludge containing hazardous waste.

3.8.2.2 Sludge may be spread only on slopes less than 8% gradient;

3.8.2.3 Sludge may be spread only within the active growing season, generally May 15th to October 1st and from only 7 a.m. to 5 p.m. EDST;

3.8.2.4 Sludge may not be spread on frozen or snow-covered ground, on saturated soils or during excessively wet periods. Soils must be unsaturated to a depth of at least two feet prior to land application;

3.8.2.5 Sludge may not be spread on poorly drained or very poorly drained (hydric) soils;

3.8.2.6 Sludge may not be spread on aquifers or within primary or secondary aquifer recharge zones;

3.8.2.7 Sludge must be lime-stabilized prior to transportation into the Town. The pH of the receiving layer of soil must be raised to 6.0 or greater by lime application prior to spreading of sludge, and increased to 6.5 in the second year after land application. Thereafter the pH of the receiving layer pf soil must be maintained at or above 6.5 in perpetuity.

3.8.2.8 Sludge may not be stockpiled on site or anywhere in the Town for longer than 24 hours. Sludge may be stockpiled only if it is properly contained and covered to prevent airborne dispersal of sludge from the pile, stormwater transport and infiltration, and nuisance odors off-site.

3.8.2.9 Sludge must be completely incorporated into the soil within thirty-two (32) hours of arrival at the site.

3.8.2.10 The following buffer setbacks shall apply at all land application sites:

3.8.2.10.1- three hundred (300) feet from all surface waters including intermittent streams;
3.8.2.10.2- one hundred fifty (150) feet from all public roads, or property boundaries;
3.8.2.10.3- one hundred fifty (150) feet to any jurisdictional wetland as determined by a professional wetland scientist; and
3.8.2.10.4- five hundred (500) feet to any on- or off-site dwelling, any well, or any surface drinking water supply.

3.8.2.11 A long-term site monitoring and management plan shall be filed with the Planning Board and the Board of Selectmen documenting the scope of the land application project. Soil tests at sites to be determined by the Planning Board shall be filed annually with the Board of Selectmen documenting the pH, organic matter (%) and the cation exchange capacity (meq/100g) of the soils. Periodic water quality testing of on-site and adjacent surface waters may also be required by the Planning Board.

3.8.3 Penalties: Any person who violates the provisions of this ordinance regarding the land application of sewage sludge shall be subject to a civil fine of not more than $250 for each day that such violation is found by a court to continue after the conviction date or the date on which the violator receives written notice from the municipality of said violation, whichever is earlier.

3.9 Certificate of Use & Occupancy:

3.9.1 A Certificate of Use & Occupancy must be obtained from the Board of Selectmen, or their designee, for:

3.9.1.1 The use and occupancy of structures requiring a building permit by the Building Regulations.

3.9.1.2 The use and occupancy of any site for which a Site Plan is approved by the Planning Board.

3.9.1.3 The use and occupancy of any site or structures for which any permit or application is required by the Zoning Ordinance after approval by the applicable board.

3.9.2 A Certificate of Use & Occupancy shall not be issued until compliance is demonstrated with the requirements of the Building Regulations, the Zoning Ordinance, the Subdivision Regulations, and Site Plan Review Regulations, including any conditions required by the approving board.

3.9.3 Before a Certificate of Use & Occupancy is approved, all construction and site preparation debris shall be removed and the site left in a neat and tidy condition.

3.9.4 If a site is occupied at the time of Planning Board approval, any previous certificates of use & occupancy shall be revoked.

3.9.5 Temporary Certificate of Use & Occupancy for a Building:

3.9.5.1.1- A Temporary Certificate of Use & Occupancy for a Building may be issued by the Board of Selectmen for a period not to exceed thirty (30) days which may be extended at the discretion of the Board of Selectmen pursuant to RSA 676:12, IV.

3.9.5.1.2- A building may be occupied or used prior to completion if the building is supplied with a potable water source, served by an approved on-site wastewater disposal system and if security is provided to the Town for unfinished building improvements in an amount and form approved by the Board of Selectmen.

3.9.6 Temporary Certificate of Use & Occupancy for a Site:

3.9.6.1 A Temporary Certificate of Use & Occupancy for a site for completion of site improvements and any conditions of board approvals may be issued by the Board of Selectmen or their designee for up to six months after approval by the Planning Board that all of the requirements of the approved Site Plan, including any conditions of approval, have been satisfied or included in the security that must be provided to the Town for unfinished improvements. The security shall be provided in an amount and form approved by the Board of Selectmen.

The date for completion of improvements or conditions of approval may be extended at the discretion of the Board of Selectmen.

ARTICLE 4. BUSINESS DISTRICT

The following provisions shall apply to the Business District.

4.1 District Boundaries

The Business District is that area adjacent to and within 300 feet of both the center of 103B and the following described sections of Route 103.

4.1.1 The Circle Section shall be bounded at one end by the Sunapee town line and bounded at the other end by the easterly boundary of tax map and lot number 7-193,106 (formerly the Hospitality Motel).

4.1.2 The Center Section shall be bounded at one end by the northerly end of Bell Cove Road and bounded at the other end by the northerly end of Old Post Road.

4.1.3 The South Section shall be bounded at one end by the easterly end of Colburn Farm Road and bounded at the other end by the Bradford town line.

4.1.4 Lots partially within the district at the ends of the sections along Route 103 described above shall be considered to be completely within the district.

4.2 Uses Permitted

4.2.1 All residential uses including manufactured housing on individual lots and accessory uses. Multi-family dwellings containing three or more dwelling units are subject to Site Plan Review approval by the Planning Board;

4.2.2 Cluster Development consistent with the requirements of ARTICLE 12. Cluster Developments with multi-family dwellings containing three or more dwelling units are subject to Site Plan Review approval by the Planning Board;

4.2.3 Home Occupations. Home Occupations are not subject to Site Plan Review approval by the Planning Board;

4.2.4 Forestry/timber harvesting;

4.2.5 The following uses are subject to Site Plan Review approval by the Planning Board:

4.2.5.1 Retail trade;

4.2.5.2 Retail services;

4.2.5.3 Offices;

4.2.5.4 Motels, hotels, inns and bed & breakfast establishments;

4.2.5.5 Banks;

4.2.5.6 Marinas;

4.2.5.7 Restaurants;

4.2.5.8 Auto service stations without repair facilities;

4.2.5.9 Veterinarian;

4.2.5.10 Institutional Uses: Uses, such as, but not limited to, churches, day care centers, nursing homes, sanatoriums, convalescent homes, and hospitals;

4.2.5.11 Trailhead and recreational trail parking; and

4.2.5.12 Cottage Industry.

4.3 Uses permitted by Special Exception

The following uses may be permitted by Special Exception by the Zoning Board of Adjustment and are subject to Site Plan Review approval by the Planning Board.

4.3.1 Recreational Camping Park consistent with the requirements of ARTICLE 13;

4.3.2 Contractor's yards;

4.3.3 Wholesale establishments;

4.3.4 Auto repair facilities;

4.3.5 Light industrial uses;

4.3.6 Funeral establishments;

4.3.7 Publishing;

4.3.8 Research and testing laboratory;

4.3.9 Private schools;

4.3.10 Private recreational facilities;

4.3.11 Commercial Recreational Facilities;

4.3.12 Earth excavations subject to approval by the Planning Board under RSA 155:E and not Site Plan Review; and

4.3.13 Other uses.

4.4 Uses Not Permitted

The following uses are not permitted.

4.4.1 Concentrated commercial recreational facilities.

4.5 Frontage Requirement

Each lot shall have a minimum contiguous frontage of two hundred (200) feet per dwelling unit measured parallel to the centerline of the road of a town or State maintained highway, or a subdivision road approved by the Planning Board. Cluster Developments are exempt from this requirement as provided in ARTICLE 12.

4.6 Setback Requirements

Buildings or structures shall be located a minimum of fifteen (15) feet from a side or rear property line and thirty (30) feet from the edge of any adjoining right-of-way as measured with respect to the building footprint or attached structure. Buildings in Cluster Developments are exempt from this paragraph, but are regulated as provided in ARTICLE 12. For the purposes of these setback requirements, the following are exempt from the setback requirements: fences, walls, gates, signs, lampposts, mailboxes, flagpoles, children’s play sets, well coverings, docks, stairs (not attached to a structure), walkways and uncovered patios.

4.6.1 No new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery, whether or not such burial site or burial ground was properly recorded in the deed to the property, except when such construction, excavation, or building is necessary

for the construction of an essential service, as approved by the Board of Selectmen in concurrence with the cemetery trustees. Excavation includes drilling or digging for wells, dry wells, and septic systems.

4.7 Maximum Building Height

Buildings, other than agricultural buildings, shall not exceed thirty-four (34) feet. Appurtenant structures shall not exceed twenty-five (25) feet in height above the building height. No eave or window sill of an occupied space shall be more than thirty (30) feet above the grade adjacent to the foundation directly below it. The grade at that point shall extend out from the foundation sufficiently to support a ladder. (See definition of Building Height.)

4.8 Minimum Lot Size/Density Requirement

The minimum lot size/density for residential development shall follow the requirements set forth in the Residential District (ARTICLE 5).

4.9 Temporary Uses

Uses permitted on a temporary basis include:

4.9.1 A yard sale which is conducted for a period not exceeding three consecutive days and no more than thirty days in a calendar year;

4.9.2 A model home used for the sale of homes or lots in that residential development until that development is sold out. A temporary use permit must be first approved by the Board of Selectmen;

4.9.3 A manufactured home used as a construction office until construction on the site is complete. A temporary use permit must be first approved by the Board of Selectmen;

4.9.4 A manufactured home or camper trailer to be used up to one year for temporary housing during the construction of a permanent residence on the same lot provided an on-site waste disposal system approved by the New Hampshire Water Supply & Pollution Control Division of the NH Department of Environmental Services is available to serve the temporary housing. A temporary use permit must be first approved by the Board of Selectmen;

4.9.5 Any other temporary use may be permitted if a Special Exception is first approved by the Zoning Board of Adjustment.

4.10 Accessory Apartments

It is the specific purpose and intent of allowing accessory apartments on one-family properties in all residential districts to provide the opportunity and encouragement for the development of small rental housing units designed, in particular, to meet the special housing needs of single persons and couples of low and moderate income, both young and old, and of relatives of families presently living in Newbury. Furthermore, it is the purpose and intent of this provision to allow the more efficient use of the Town's existing stock of dwellings and accessory buildings, to provide economic support for present resident families of limited income, and to protect and preserve the rural one-family residential character of the Town. To help achieve these goals and to promote the other objectives of the Zoning Ordinance and the Master Plan, the following specific standards are set forth for such accessory apartment uses:

4.10.1 An owner or owners of a one-family dwelling shall apply to the Zoning Board for a Special Exception for the construction and occupancy of an accessory apartment in their one-family dwelling or in an accessory building, the accessory apartment thus created being hereinafter referred to as an apartment.

4.10.2 There shall be not more than one apartment per lot.

4.10.3 The owner or one of the owners of the one-family lot upon which the apartment is located shall occupy at least one of the dwelling units on the premises as their primary residence.

4.10.4 No apartment or its appurtenant facilities such as kitchen plumbing shall be constructed in a dwelling or accessory building less than five years old.

4.10.5 Accessory apartments shall not be rented on a per diem basis.

4.10.6 The owner shall provide a total of three parking spaces for the two dwelling units. Areas counted as parking spaces include any private garage, carport, or other off-street area available for parking, other than a driveway. However, the Zoning Board may grant such relief from this provision as it deems appropriate.

4.10.7 Creation of an apartment shall be subject to all other zoning regulations except the Minimum Lot Size/Density Requirement as defined in ARTICLE 4 and ARTICLE 5. The minimum lot size for this use shall be two acres. A building permit shall be required for the purpose of informing the Town of a change in value of the property.

4.10.8 No changes to the external appearance of the dwelling or accessory building shall be made which, in the judgment of the Zoning Board, do not conform to the one-family character of local residences. In addition, the entrance to the apartment shall be from the side or rear of the building, unless it is from inside the formal entrance. A second entrance for handicapped access may be granted by the Zoning Board if no other option is available.

4.10.9 The interior floor area of an apartment within a dwelling shall not be less than three hundred square feet, and not more than eight hundred square feet, but in no case shall it exceed twenty-five percent of the interior floor area of the dwelling building in which it is located, unless, in the opinion of the Zoning Board, a greater or lesser amount of floor area is warranted by the specific circumstances of the particular building. There shall be no more than two bedrooms in an apartment. The above rules shall apply to accessory buildings, except that the interior floor area shall not exceed fifty percent of the floor area of the accessory building, and the apartment use shall be clearly subordinate to principal use of the building. For example, a garage must have space for one or more cars on the ground floor, thus relegating the apartment to the back or the attic.

ARTICLE 5. RESIDENTIAL DISTRICT

5.1 Purpose

The purpose of this Article is to regulate the density, distribution and building envelope of development and construction within the Residential District so as to:

5.1.1 Reinforce the goals of the Town of Newbury Master Plan to preserve its rural character,

5.1.2 Promote construction of housing which maintains and strengthens traditional New England settlement patterns of compact villages surrounded by open, rural landscape,

5.1.3 Promote the economical and effective use of services and resources, including roads and highways, fire protection and police protection,

5.1.4 Preserve natural, scenic and historic resources,

5.1.5 Protect and minimize the fragmentation of natural areas, critical habitat and productive forest, agricultural land and open space. It is the intent of these regulations to limit development density on land where fragile features and critical natural resources are located.

The goal is to balance individual property rights with the protection of the Town's community assets and rural character through appropriate and sensitive land use. Rather than designating multiple zoning districts within the designated Rural Residential District, minimum lot size and maximum density for a site shall be based upon the unique characteristics of the parcel relative to the presence of Steep Slopes, Aquifers, Wet Lands, Flood Plains and Deer Wintering Areas as well as road access and proximity to protected open space.

5.2 District Boundaries

The Residential District is that area lying outside the boundaries of the Business District.

5.3 Uses Permitted

5.3.1 Agricultural Operations;

5.3.2 All residential uses including manufactured housing on individual lots and accessory uses. Multi-family dwellings containing three or more dwelling units are subject to Site Plan Review approval by the Planning Board;

5.3.3 Cluster Development consistent with the requirements of ARTICLE 12. Cluster Developments with multi-family dwellings containing three or more dwelling units are subject to Site Plan Review approval by the Planning Board;

5.3.4 Home Occupations. Home Occupations are not subject to Site Plan Review approval by the Planning Board; and

5.3.5 Forestry/timber harvesting.

5.4 Uses Permitted by Special Exception and Subject to Site Plan Review Approval by the Planning Board

5.4.1 Cottage Industry;

5.4.2 Recreational Camping Park consistent with the requirements of ARTICLE 13;

5.4.3 Institutional Uses: Uses, such as, but not limited to, churches, day care centers, nursing homes, sanatoriums, convalescent homes, and hospitals;

5.4.4 Private recreational facilities;

5.4.5 Commercial Recreational Facilities;

5.4.6 Veterinarian;

5.4.7 Private school;

5.4.8 Earth excavations subject to approval by the Planning Board under RSA 155:E and not Site Plan Review;

5.4.9 Trailhead and recreational trail parking; and

5.4.10 Bed & Breakfast establishment.

5.5 Uses Not Permitted

5.5.1 Concentrated commercial recreational facilities.

5.5.2 Any use not listed in Section 5.3 or Secton 5.4 is not permitted.

5.6 Temporary Uses

5.6.1 A yard sale which is conducted for a period not exceeding three consecutive days and no more than thirty days in a calendar year;

5.6.2 A model home used for the sale of homes or lots in that residential development until that development is sold out. A temporary use permit must be first approved by the Board of Selectmen;

5.6.3 A manufactured home used as a construction office until construction on the site is complete. A temporary use permit must be first approved by the Board of Selectmen;

5.6.4 A manufactured home or camper trailer to be used up to one year for temporary housing during the construction of a permanent residence on the same lot provided an on-site waste disposal system approved by the New Hampshire Water Supply & Pollution Control Division of the NH Department of Environmental Services is available to serve the temporary housing. A temporary use permit must be first approved by the Board of Selectmen; and

5.6.5 A portable sawmill for a maximum of ninety (90) days. A temporary use permit must be first approved by the Board of Selectmen.

5.7 Accessory Apartments

It is the specific purpose and intent of allowing accessory apartments on one-family properties in all residential districts to provide the opportunity and encouragement for the development of small rental housing units designed, in particular, to meet the special housing needs of single persons and couples of low and moderate income, both young and old, and of relatives of families presently living in Newbury. Furthermore, it is the purpose and intent of this provision to allow the more efficient use of the Town's existing stock of dwellings and accessory buildings, to provide economic support for present resident families of limited income, and to protect and preserve the rural one-family residential character of the Town. To help achieve these goals and to promote the other

objectives of the Zoning Ordinance and the Master Plan, the following specific standards are set forth for such accessory apartment uses:

5.7.1 An owner or owners of a one-family dwelling shall apply to the Zoning Board for a Special Exception for the construction and occupancy of an accessory apartment in their one-family dwelling or in an accessory building, the accessory apartment thus created being hereinafter referred to as an apartment.

5.7.2 There shall be not more than one apartment per lot.

5.7.3 The owner or one of the owners of the one-family lot upon which the apartment is located shall occupy at least one of the dwelling units on the premises as their primary residence.

5.7.4 No apartment or its appurtenant facilities such as kitchen plumbing shall be constructed in a dwelling or accessory building less than five years old.

5.7.5 Accessory apartments shall not be rented on a per diem basis.

5.7.6 The owner shall provide a total of three parking spaces for the two dwelling units. Areas counted as parking spaces include any private garage, carport, or other off-street area available for parking, other than a driveway. However, the Zoning Board may grant such relief from this provision as it deems appropriate.

5.7.7 Creation of an apartment shall be subject to all other zoning regulations except the Minimum Lot Size/Density Requirement as defined in ARTICLE 4 and ARTICLE 5. The minimum lot size for this use shall be two acres. A building permit shall be required for the purpose of informing the Town of a change in value of the property.

5.7.8 No changes to the external appearance of the dwelling or accessory building shall be made which, in the judgment of the Zoning Board, do not conform to the one-family character of local residences. In addition, the entrance to the apartment shall be from the side or rear of the building, unless it is from inside the formal entrance. A second entrance for handicapped access may be granted by the Zoning Board if no other option is available.

5.7.9 The interior floor area of an apartment within a dwelling shall not be less than three hundred square feet, and not more than eight hundred square feet, but in no case shall it exceed twenty-five percent of the interior floor area of the dwelling building in which it is located, unless, in the opinion of the Zoning Board, a greater or lesser amount of floor area is warranted by the specific circumstances of the particular building. There shall be no more than two bedrooms in an apartment. The above rules shall apply to accessory buildings, except that the interior floor area shall not exceed fifty percent of the floor area of the accessory building, and the apartment use shall be clearly subordinate to principal use of the building. For example, a garage must have space for one or more cars on the ground floor, thus relegating the apartment to the back or the attic.

5.8 Frontage Requirement

Each lot of two acres or greater shall have a minimum contiguous frontage of two hundred (200) feet per dwelling unit measured parallel to the centerline of a town or State maintained highway or subdivision road approved by the Planning Board. For lots with frontage on the shore of an island, each lot of two acres or greater shall have a minimum

contiguous frontage of two hundred (200) feet per dwelling unit measured parallel to the shore of the island. New lots under two acres shall follow ARTICLE 12.

5.9 Setback Requirements

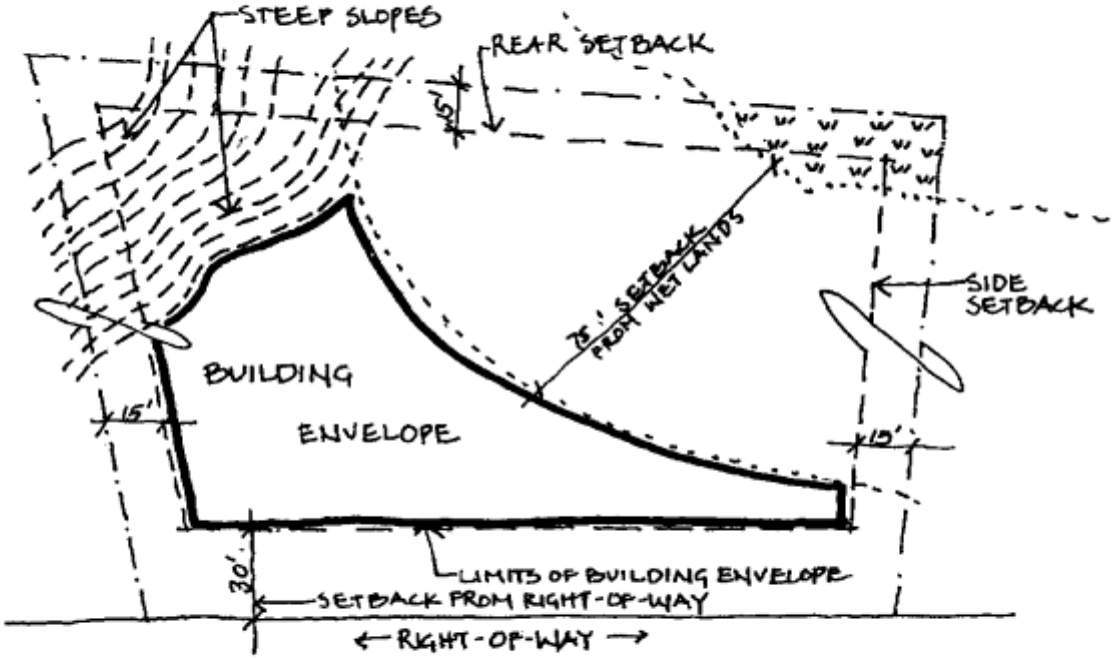
5.9.1 For existing lots and lots that are two acres or greater: From the edge of any adjoining right-of-way as measured with respect to the building footprint or attached structure: thirty (30) feet; from the side or rear property line: fifteen (15) feet. For new lots that are less than two acres: See ARTICLE 12. The following are exempt from the setback requirements: Fences, walls, gates, signs, lampposts, mailboxes, flagpoles, children's play sets, wells and well coverings, septic systems, docks, stairs (not attached to a structure), walkways and uncovered patios.

5.9.2 No new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery, whether or not such burial site or burial ground was properly recorded in the deed to the property, except when such construction, excavation, or building is necessary for the construction of an essential service, as approved by the Board of Selectmen in concurrence with the cemetery trustees. Excavation includes drilling or digging for wells, dry wells, and septic systems.

5.10 Building Envelopes

A plot plan, indicating the allowable building envelope and showing that all structures and site work, including well and septic system, will be within that envelope, except for exemptions from setback requirements, Section 5.9, is required by the Town of Newbury for a permit to build. In the case where new lots are subdivided, the building envelope shall be a minimum of one (1) contiguous acre located by the Newbury Land Subdivision Review Regulations in the subdivision process. Allowable building envelopes shall be determined by subtracting lot setbacks, steep slopes, deer wintering areas, wetlands, surface waters and setbacks from wetlands and surface waters to result in the area where construction is permitted. Additional building envelope restrictions are in place within the Skyline/ Hillside Conservation Overlay District (ARTICLE 18). Construction of site access is permitted across the property setbacks. (See Figure 5.10.1)

Building Envelope Example Diagram (Figure 5.10.1)



5.11 Maximum Building Height

Buildings, other than agricultural buildings, shall not exceed thirty-four (34) feet. Appurtenant structures shall not exceed twenty-five (25) feet in height above the building height. No eave or window sill of an occupied space shall be more than thirty (30) feet above the grade adjacent to the foundation directly below it. The grade at that point shall extend out from the foundation sufficiently to support a ladder. (See definition of Building Height.)

5.12 Minimum Lot Size/Density Requirement

This paragraph applies to the creation of new lots. Any property owner wishing to create new lots by subdividing their land is required to follow the Town of Newbury Land Subdivision Control Regulations. The minimum lot size is determined by Section 5.12.1 below. Allowable Density is determined by three criteria: 1) Minimum Lot Size, 2) Determination of Developable Area, and 3) Maximum Density.

5.12.1 Minimum Lot Size: Minimum lot size shall be 2 acres unless it is part of a Cluster Development. In the case where the lot size of a development is smaller than the dwelling unit per area permitted by the maximum density requirements, the balance of the land in that development shall be designated as open space. This open space may be held as common land, conservation land or be held by a lot that is then not sub-divisible.

5.12.2 Determination of Developable Area: Developable area is the total parcel acreage excluding physical features as described in Table 5.1. The development density shall be calculated based on the total amount of developable area of the entire parcel of land before it is subdivided. The total developable area shall be determined by the formula of Table 5.1.

5.12.3 Maximum Density: The maximum density shall range from one (1) dwelling unit for every two (2) acres to one (1) dwelling unit for every six (6) acres based on the formulas in Tables 5.12.1 and 5.12.2.

5.12.4 Initial Determination of Density: For conceptual density levels, or for estimating the maximum density of a land parcel, follow these steps:

5.12.4.1 Determine the total acreage of the Developable Area (Table 5.12.1).

5.12.4.2 Subtract all existing rights of way and public easements and for future, proposed development subtract 10% allowance for rights-of-way and public easements, unless it can be demonstrated that there will be none within the site.

5.12.4.3 Divide the resulting Developable Area by the Maximum Allowable Density (One unit per two acres adjusted by factors described in Table 5.12.2).

5.12.4.4 The resulting number of units is the estimated maximum density permitted for the development.

Table 5.12.1: Determination of Developable Area (1)

Physical Features on the Parcel (2)	Developable Area Adjustment	Example for 100 Acre Parcel
Slopes in excess of 25%	no allowance	Say 10 acres= 0 allowed, 0 acres
100 year floodplains	no allowance	Say 10 acres= 0 allowed, 0 acres
Wetlands and surface waters (3) (5)	no allowance	Say 20 acres= 0 allowed, 0 acres
Setbacks from wetlands and surface waters (4)	100 % allowance	Say 10 acres= 10 acres developable
Deer wintering areas (6)	50% allowance	Say 10 acres= 5 acres developable
All other land	100% credit	40 acres= 40 acres developable
TOTAL FOR EXAMPLE 100 ACRE PARCEL		55 acres developable

Notes:

(1) Determination of developable area only applies to the proposed creation of new lots or for the determination of density if more than one dwelling unit, other than an accessory apartment, is desired on a lot.

(2) In the instances where two or more features overlap, development allowance will be applied once for the lowest credit available.

(3) See definition of Wetland in ARTICLE 2.

(4) Setbacks from wetlands shall be 75 feet.

(5) Setbacks from surface waters shall be 75 feet. Surface waters are designated in Section 7.3.

(6) Refer to the definition of “Deer Wintering Areas”.

Table 5.12.2: Determination of Development Density (1)

Parcel Location	Den-sity adjust-mnt(2)	1 unit/ 2 acre maximum x density adjustment examples(2)
A. Proposed access road (3)		
State or town paved road	x 1	2x1= 1 unit/2 acres
Gravel Road or Sub-standard paved road	x 1.5	2x1.5= 1 unit/3 acres
B. After adjusting for access, the maximum density shall be adjusted for proximity to protected lands listed below.		
Parcel has shared boundary with State Park land, The Hay Estate, SPNHF and Ausbon Sargent land, Fishersfield Park, and Audubon land	x 2	2 x 2=1 unit/4 acres

(1) The maximum allowable density shall be as adjusted or it shall be one (1) dwelling unit per every six (6) acres of developable area, whichever achieves the higher density.
(2) Density adjustments are cumulative. For example: for a parcel located on a sub-standard paved road (2x1.5=**3**) and contiguous to significant open space (**3**x2=6) the maximum allowable density is one (1) dwelling unit per 6 acres.
(3) Road type is determined by consulting the current list: "Town Road Types" kept in the Town Office. Access roads include all roads required to get from the Safety Services Building to the parcel with the lowest quality road determining the density adjustment.

5.13 Non-Development Subdivision

Where land is sub-divided in lots of 20 acres or greater for non-development purposes including transfer of parcel ownership for forestry, agriculture, recreation and/or open space purposes, the subdivision will not be required to adhere to Section 5.12. If the lot is less than 20 acres and has not followed the requirements of Section 5.12 for determining Minimum Lot Size/Density Requirements, then that land shall have a deed restriction forbidding the development of the parcel in perpetuity.

5.14 Pre-existing Lots

All pre-existing lots are permitted one dwelling unit. That unit and its accessory services (septic, well, driveway access and all accessory structures) must fit within the Building Envelope except for exemptions from setback requirements, Section 5.9 (see Section 5.10).

5.15 Multi-Family Housing

If an owner proposes multifamily housing, other than an accessory apartment, for a single lot, that owner must follow the regulations for Allowable Density as described in Section 5.12 above to determine if additional dwelling units are permitted.

ARTICLE 6. BLODGETT LANDING COTTAGE DISTRICT

6.1 Purpose

The historic development of Blodgett Landing has resulted in a special neighborhood which the Town of Newbury feels should be preserved. The small lots that exist in this area are made viable by an existing sewer system. The purpose of this Article is to allow and encourage property owners to improve their properties within the confines of their existing lots while protecting the quality of the neighborhood, the environment, and the Lake Sunapee watershed.

6.2 Design Guidelines

6.2.1 Building Types: A double dormer and porch front house type with "gingerbread" trim is traditional in this area (See Illustration # 1). Other traditional forms have the gabled, narrow end of the house facing the street (See Illustration # 2). When the widest side of the house faces the street, it should be designed with dormers and porches to provide architectural interest in keeping with the other houses in the district.

6.2.2 Roofs: No roof that is the primary roof of the building should have less than a 6/12 pitch. Double dormers should have the traditional pitch of 20/12. Attached porches and wings may have less pitch.

6.2.3 Existing Buildings: When altering or adding to an existing building, every effort should be made to preserve the existing forms noted above, including gingerbread trim and other historic details.

6.2.4 New Buildings: Design of new buildings should take advantage of existing building types noted and illustrated above to develop structures which will be similar to surrounding houses.

Figure 6.2.1: Design Guidelines, Illustration #1

Illustration # 1

Figure 6.2.2: Design Guidelines, Illustration #2

Illustration # 2

6.3 District Boundaries

The Blodgett Landing Cottage District is comprised of lots with frontage on the following named "private" streets: Maple Way, Indian Road, Lakeside Road and lots with frontage on the following Blodgett Landing named "town" streets: Sunlite Lane, Pine Street, Washington Street, Post Office Street, and Lake Avenue. Lake Avenue is defined as starting to the north at the intersection with Sunlite Lane and running along Lake Sunapee to the intersection with Washington Street and Blodgett Landing Road to the south.

6.4 Uses Permitted

6.4.1 All residential and accessory uses on individual lots including presite built housing, but excluding manufactured housing. All structures must be constructed on permanent foundations; and

6.4.2 Home Occupations. Home Occupations are not subject to Site Plan Review approval by the Planning Board.

6.5 Uses permitted by Special Exception

The following uses may be permitted by Special Exception by the Zoning Board of Adjustment and are subject to Site Plan Review approval by the Planning Board.

6.5.1 Retail trade under 500 s.f. (larger than this is prohibited);

6.5.2 In home Day Care with no more than six (6) children.

6.6 Minimum Lot Size

All lots, as they are platted prior to March 11, 2003, are considered to be grand-fathered and, therefore, meet the lot size requirements of this District. No lot may be sub-divided to create new building lots. When consolidating lots, it is permitted to enlarge, or replace with a new building the footprint of one existing building by up to 30% or a resulting footprint of 1,225 square feet, which ever is larger. Only one dwelling unit per consolidation lot is permitted.

6.7 Frontage Requirement

All lots as they are platted prior to March 11, 2003 are considered to have met the District's frontage requirements. No street or water frontage may be decreased except as provided in Section 6.10.

Table 6.7.1: Lot Dimensional Requirements

Frontage	Notes	Side Setback	Front Setback	Rear Setback	Height	Frontage
Less than 65 feet	1,2,3	4'	See Notes	15'	34'	All existing lots are grandfathered
65 to 75 feet	2,3	6'	15'	15'	34'	All existing lots are grandfathered
75 to 100 feet	2,3	10'	15'	15'	34'	All existing lots are grandfathered
0ver 100 feet	2,3	15'	15'	15'	34'	All existing lots are grandfathered

Notes:
1. The front setback is the average setback of the houses on either side.
2. Parking is allowed in the side yard setback.
3. Parking is allowed either in the front yard setback or the rear yard setback, but not both.

6.8 Setback Requirements

See Table 6.7.1, above. The following are exempt from these setback requirements: fences, walls, gates, signs, lampposts, mailboxes, flagpoles, well coverings, docks, stairs (not attached to a structure), walkways and uncovered patios. Entrance landings and stairs that are on post foundations and not covered or enclosed will be allowed to be constructed within the side yard setback, provided that all fire codes are met. A landing built within the side yard setback shall not exceed 3.5 by 3.5 feet square.

6.9 Maximum Building Height

Buildings shall not exceed thirty-four (34) feet above the highest grade to the peak of the roof and no eave or window sill shall be more than thirty (30) feet above the grade below it.

6.10 Lot Line Adjustments

Lot line adjustments are permitted:

6.10.1 to improve the geometry of lot(s);

6.10.2 to clarify the ownership of a lot or building; or

6.10.3 to allow a building to be completely on a legal owner's lot.

6.10.4 It is not permitted to decrease lot size or frontage without a variance except as in Section 6.10.3, above.

6.11 Temporary Uses

Uses permitted on a temporary basis include:

6.11.1 A yard sale which is conducted for a period not exceeding three consecutive days and no more than thirty days in a calendar year;

6.11.2 A manufactured home or camper trailer to be used up to one year for temporary housing during the construction of a permanent residence on the same lot provided hook-up to the sewer system is available to serve the temporary housing. A temporary use permit must be approved by the Board of Selectmen.

6.12 Accessory Apartments

Due to the limitations of the neighborhood to absorb additional density, Accessory Apartments are not allowed in the Blodgett Landing Cottage District.

6.13 Zoning Compliance for Alteration

All applications for building permits that propose an increase of the building foot print must be accompanied by a survey stamped by a licensed land surveyor showing distances from the existing building and proposed building alterations to the lot lines and indicating allowed setbacks according to Table 6.7.1 above unless the proposed building will be at least ten (10) feet from the allowed setback, in which case the survey will not be required. A certificate of zoning compliance, as outlined in ARTICLE 3, is required for all projects requiring a building permit. Before zoning compliance is issued for any building permit for additional bedrooms, the applicant must supply a letter to the Selectmen from the Blodgett Landing waste disposal system Superintendent/Chief Operator stating that the wastewater system has the capacity to serve the additional wastewater flow. In the case where on-site sewage treatment is available, a certificate of inspection from a New Hampshire registered sub-surface systems designer must be provided certifying that the existing sewage system is adequate for the proposed project. Any new project that will use an on-site sewage disposal system must provide documentation of a state approved sewer system design.

6.14 Alteration and Reconstruction of Non-conforming Buildings

6.14.1 Additions or alterations to a non-conforming building are permitted as long as the building is not made more non-conforming. Refer to ARTICLE 7, Shoreland Overlay District for further restrictions.

6.14.2 Repair and/or maintenance of a non-conforming building is permitted.

6.15 Replacement of Existing Structures

6.15.1 Any structure which must be replaced may be built anywhere on the site as long as it conforms to the setbacks defined in Section 6.8 above.

6.15.2 Replacement of a non-conforming structure in its original location must conform to ARTICLE 15 of this ordinance.

6.16 Erosion Control and Drainage

6.16.1 Erosion control plans, as required by ARTICLE 21, Stormwater Management, are required for all construction within the Blodgett Landing Cottage District.

6.16.2 Effect on Downstream Drainage areas: When a proposed drainage system will add more water or change the characteristics of water flow on the downstream property(s), the applicant for a building permit must obtain a drainage easement from the

downstream property owner(s) before a building permit will be granted. Drainage easements must be indicated on the site plan and stamped by a licensed civil engineer or licensed surveyor as part of the building permit application. Alternatively, the applicant may present a plan for on-site retention or detention of the run-off on their land. The on-site retention / detention facility design must be stamped by a licensed civil engineer.

6.17 Parking

6.17.1 In order to minimize street congestion and increase safety, owners of existing built lots are encouraged to develop parking on their lot. However, parking should not occupy the entire site. Parking should be integrated into the landscape so that plantings are possible. Drive on grass block or other natural material which can be driven on yet provide an attractive alternative to asphalt should be considered. Side yard parking is preferred.

6.17.2 A building cannot be expanded if it will eliminate the opportunity for on-site parking unless the building expansion includes enclosed parking which equals that which was eliminated from the site.

6.17.3 All new dwellings must provide parking for two (2) vehicles on-site. Voluntary replacement dwellings are encouraged to have parking for two (2) vehicles on-site. Enclosed parking is encouraged. Landscaped parking is allowed as an alternative.

6.18 Notification of Abutters

For the purpose of notification required by any Town land use board, Abutters are defined as all property owners within a 200 foot radius of the applicant's lot, except where no construction is proposed, in which case the definition shall be the same as Section 2.1 of this Ordinance.

ARTICLE 7. SHORELAND OVERLAY DISTRICT

7.1 Purpose

All lakes are essentially fragile. In order to protect Newbury lakes, actual use of lake side lots is limited through the establishment of the Shoreland Overlay District.

7.2 Overlay District Regulations

7.2.1 The special regulations of this overlay district are in addition to the regulations of either the Business or the Residential District.

7.3 Shoreland District

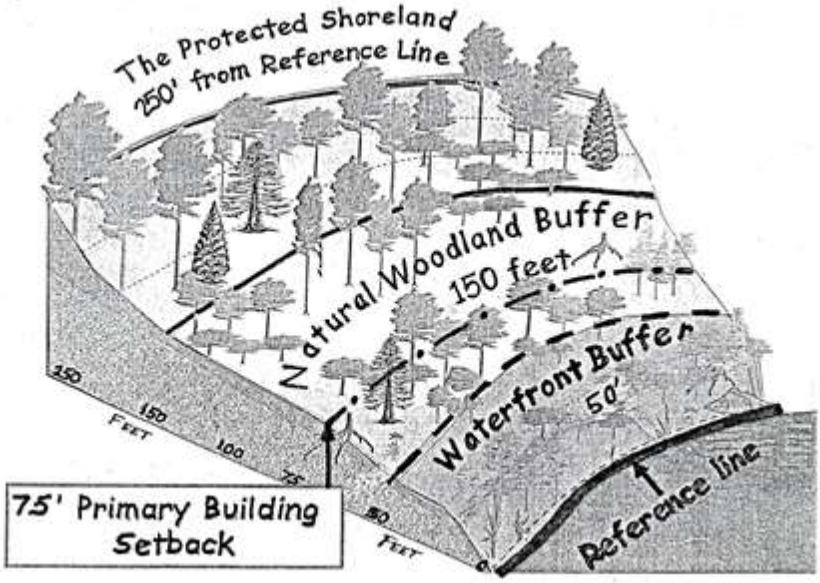
The Shoreland Overlay District extends two hundred-fifty (250) feet inland:

7.3.1 from the reference line (Refer to ARTICLE 2, Definitions) on the following lakes and ponds: Lake Sunapee, Lake Todd, Lake Solitude, Doctors Colony Pond, Chalk Pond, Gillingham (Otter) Pond, Loch Lyndon and Mountain View Lake.

7.3.2 from the shoreline of the following permanent Newbury streams: Andrew Brook, Bartlett Brook, Beal's Brook, Beck Brook, Blodgett Brook, Blodgett Brook South, Blood Brook, Mountain Brook, Chandler Brook, Cunningham Brook, Gillingham Brook, Gunnison Brook, Johnson Brook, Morse's Brook, Newbury Harbor Brook, Pike Brook, Reservoir Brook, Ring Brook, Shaw Brook, West Branch North, West Branch South, Roaring Brook (the northerly stream entering Chalk Pond on its southwest shore), and Bly Brook (the southerly stream entering Chalk Pond on its southwest shore). Ponds in the water courses of these streams are, for the purposes of this ordinance, part of the streams and subject to the same regulation. The locations of these permanent streams are shown on the "Newbury Ponds and Permanent Streams Map" on file in the Newbury Town Office. This map shall be used as the official map to determine the geographic boundaries of permanent streams included in this Shoreland Overlay District.

Please refer to Figure 7.3.1 showing the protected shoreland with setbacks and areas of restricted use.

Figure 7.3.1: Graphic Illustrating the Protected Shoreland



7.4 Site Requirements

7.4.1 Lake/Pond Shore Frontage Requirement: Every new lot shall have lake/pond shore frontage of not less than two hundred (200) feet per dwelling.

7.4.2 Setback from a lake or a permanent stream: Permanent, temporary or portable buildings and structures and septic systems shall be setback a minimum of seventy-five (75) feet from reference line of lakes and from the shoreline of streams except as provided herein. Building setbacks shall be measured with respect to the building footprint or attached structure. The Board of Selectmen, or its designee, may require greater than a seventy-five (75) foot setback for a building and septic system according to the suitability of the shoreland.

7.4.2.1 Stairways and walkways with a maximum width of four (4) feet are permitted within the seventy-five foot (75') setback provided adequate soil erosion control measures are implemented as outlined in Section 7.10.

7.4.2.2 The Lake setbacks within the Blodgett Landing Cottage District shall be no closer to the lake than the average existing setbacks of the contiguous building on either side of the proposed structure.

7.4.3 Tree Cutting Permit Requirement: The Board of Selectmen shall authorize the removal of trees and saplings within the entire Shoreland Overlay District.

7.4.3.1 All applications for tree cutting in the Shoreland Overlay District shall be reviewed by the Conservation Commission and the Code Enforcement Officer. They will then report to the Board of Selectmen for final authorization of the permit as to compliance with this Zoning Ordinance.

7.4.3.2 In the event the applicant does not provide sufficient information or the Board of Selectmen questions the validity of the information provided, the Board may call upon an independent, qualified consultant, at the Applicant’s expense, to review the materials submitted and/or conduct an independent assessment.

7.5 Zoning Compliance for Alteration – Wastewater Disposal

Any alteration of any dwelling or other structure within the Shoreland Overlay District shall require zoning compliance. Before zoning compliance may be issued, the applicant shall supply a certificate of inspection from a qualified sanitary system professional certifying that the existing septic system is adequate for the proposed use and that the system meets the current rules of the New Hampshire Water Supply and Pollution Control Division of the NH Department of Environmental Services. In the Blodgett Landing Cottage District, the applicant must supply a letter from the Board of Selectmen stating that the waste water system has the capacity to handle the additional waste water flow.

7.6 Alteration and Reconstruction of Non-Conforming Buildings

Alteration and reconstruction of an existing non-conforming building situated all or in part within the seventy-five (75) foot setback shall be governed by ARTICLE 15.

7.6.1 The addition of decks to existing dwelling units between the buffer zone and the setback are permitted conditioned on: maintaining a minimum setback of fifty feet (50'), a maximum deck width of twelve feet (12'), maintaining an open deck, utilizing simple foundations such as pier or piling foundations to minimize land disturbance, and implementing adequate soil erosion control measures as outlined in Section 7.10, Erosion Control.

7.7 Waterfront Buffer

7.7.1 The waterfront buffer (Refer to ARTICLE 2, Definitions) shall be those protected shorelands (Refer to ARTICLE 2, Definitions) within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters (Refer to ARTICLE 2, Definitions) while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design. The preservation of natural vegetation on the shoreland is important for the ecological balance of Newbury lakes and ponds, for the protection of water quality, for the preservation of the aesthetic quality of the shoreland and for erosion control.

7.7.2 Within the waterfront buffer all of the following prohibitions and limitations shall apply:

7.7.2.1 No chemicals shall be applied, including pesticides or herbicides of any kind except as allowed under special permit issued by the division of pesticide control of the NH Department of Environmental Services under rules adopted by the pesticide control board under RSA 541-A Administrative Procedure Act, or fertilizers of any kind except those specified in RSA 483-B:9, II(d) Minimum Shoreland Protection Standards.

7.7.2.2 Disturbance to the natural groundcover and soil shall be prohibited to minimize erosion and release of sediments into the adjacent waterbody. The following activities are not permitted unless approved by the Board of Selectmen or their designee,

7.7.2.2.1- Removal of rocks and stumps and their root systems;

7.7.2.2.2- Selective tree cutting methods that result in soil disturbance including, but not limited to, mechanical timber harvesting using equipment mounted on wheeled or tracked vehicles to trim, fell, delimb, or skid trees and timber.

7.7.2.3 Proposals for the above activities shall include soil and ground restoration, stabilization, stormwater and erosion control plans as appropriate to the project.

7.7.2.4 No Natural Ground Cover (Refer to ARTICLE 2, Definitions) shall be removed except as necessary for a 4-foot wide foot path to water as provided under Section 7.7.3.3 , cutting those portions that have grown over 3 feet in height down to 3' and maintaining a minimum height of 3' for the purpose of providing a view, or as specifically approved by the Board of Selectmen, or its designee, pursuant to RSA 482-A Fill & Dredge in Wetlands or 483-B: 11, II Minimum Shoreland Protection Standards

7.7.2.5 Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree (Refer to ARTICLE 2, Definitions) and sapling (Refer to ARTICLE 2, Definitions) score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

7.7.2.5.1- Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score:
1 inch to 6 inches	1 point
Greater than 6 inches and less than12 inches	5 points
Greater than 12 inches	10 points

7.7.2.5.2- Dead, diseased, or unsafe Trees or saplings shall **not** be included in scoring.

7.7.2.5.3- If the total Tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then Trees and saplings may be removed as long as the sum of the scores for the remaining Trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining Trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

7.7.2.5.4- The Board of Selectmen, or its designee, may approve applications pursuant to RSA 482-A Fill & Dredge in Wetlands that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The Board of Selectmen, or its designee, shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the

combined tree and sapling score where the segment does not initially meet the minimum score.

7.7.2.5.5- Dead, diseased, or unsafe trees, limbs, saplings, or shrubs (Refer to ARTICLE 2, Definitions) that pose any imminent hazard to structures or have potential to cause personal injury may be removed regardless of any requirements that pertain to the waterfront buffer under this Article. Such exemption shall not be used to contravene the intent of this law. Owners of lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Existing grass lawns and open areas with either bare ground or weed cover within the fifty (50) foot wide waterfront buffer are encouraged to be converted and replanted with a natural vegetative cover consisting of indigenous species of natural ground cover, shrubs and trees. Conversion to or planting of cleared areas with native species of natural ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of Section 7.12.2.

7.7.2.5.6- A healthy, well-distributed stand of trees, saplings, shrubs and natural ground covers and their living undamaged root systems shall be left in place.

7.7.2.6 Mechanical timber harvesting and stump removal methods in the buffer zone using wheeled and tracked vehicles to trim, fell, delimb, or skid trees are prohibited.

7.7.2.7 Existing stone walls located within the buffer zone shall be retained and not removed.

7.7.2.8 As required by Section 7.10, an erosion and sediment control plan is required for any land disturbance activity within two hundred-fifty (250) feet of a lake or stream.

7.7.2.9 Changes to the natural shoreline shall not be permitted.

7.7.3 Permitted in Waterfront Buffer: Within the Waterfront Buffer the following are permitted:

7.7.3.1 Selective trimming, pruning, and thinning of branches when necessary to protect structures, maintain clearances, and provide views is permitted. Selective trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings. Topping of trees is prohibited.

7.7.3.2 When necessary for the completion of construction activities permitted in accordance with RSA 483-B: 6, Minimum Shoreland Protection Standards a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction.

7.7.3.3 A permanent 4-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

7.7.4 Waterfront Buffer Changes: Other construction in the buffer zone is permitted when necessary for maintenance or repair, the installation of water wells, health, erosion control, or safety. Such construction shall require approval of a Special Exception by the Zoning Board of Adjustment. Work for which a permit has been issued by NH Department of Environmental Services Wetlands Bureau is permitted without approval of

a Special Exception. Land disturbance unrelated to construction shall require approval by the Board of Selectmen of erosion control plans as specified in Section 7.10.

7.7.5 Emergency Replacement of Septic System: The Board of Selectmen may permit emergency replacement of a failed septic system which is located within the waterfront buffer provided the property owner demonstrates to the satisfaction of the Board of Selectmen that a replacement system (Refer to ARTICLE 2, Definitions) cannot be located elsewhere on the lot outside the waterfront buffer and further that the replacement system has been located the maximum feasible distance from the shoreline.

7.8 Natural Woodland Buffer

7.8.1 A natural woodland buffer (Refer to ARTICLE 2, Definitions) shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of Section 7.7. The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

7.8.2 Within the natural woodland buffer of a given lot:

7.8.2.1 Minimum Area in Unaltered State

7.8.2.1.1- For lots with one-half acre or less of land within the natural woodland buffer, the vegetation within at least 25 percent of the area outside the waterfront buffer shall be maintained in an unaltered state (Refer to ARTICLE 2, Definitions). Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.
7.8.2.1.2- For lots with greater than one-half acre of land within the natural woodland buffer, the vegetation within at least 50 percent of the area outside the waterfront buffer, exclusive of impervious surfaces (Refer to ARTICLE 2, Definitions), shall be maintained in an unaltered state. Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased. Owners of lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns within the natural woodland buffer.

7.8.2.2 Dead, diseased, or unsafe trees or tree branches require a permit application for removal. Restoration of affected areas is required in the natural woodland buffer under this Article. Such exemptions shall not be used to contravene the intent of the law.

7.8.2.3 Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

7.8.2.4 Native species planting efforts that are beneficial to wildlife are encouraged.

7.8.2.5 Selective trimming, pruning, and thinning of branches when necessary to protect structures, maintain clearances and views is permitted. Selective trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings. Topping of trees is prohibited.

7.9 Shoreland Rights

7.9.1 Access Rights: Lots within the Shoreland Overlay District shall not be used as common areas for waterfront access or for the purpose of granting deeded rights of access to residents of multiple units and/or non-waterfront properties, regardless of the location of such properties, except as provided herein and subject to Board of Selectmen, or its designee, approval. For the purpose of this section, the term "common area" shall mean an area used by a group of three or more unrelated persons or by an association, club or organization consisting of three or more members.

7.9.2 Creation of Access Rights: Rights to gain waterfront access to a water body by or through a shoreland lot shall be gained only in accordance with Section 7.9.3, Pedestrian Access Easements, to follow, or the standards set forth in Section 7.9.4, Common Areas, below, subject to Planning Board approval of a site plan or as part of a subdivision.

7.9.3 Pedestrian Access Easements: The owner of a shoreland lot may grant a recorded pedestrian access easement to an individual or a family to gain pedestrian access through the shoreland lot to a body of water.

7.9.4 Common Areas: Lots within the Shoreland Overlay District used as common waterfront areas or for the purpose of waterfront access shall:

7.9.4.1 contain a minimum of two (2) acres.

7.9.4.2 have a minimum of two hundred (200) feet of shore frontage for the first dwelling unit or member having a right of use, and an additional thirty (30) feet of shore frontage for each additional dwelling unit or member.

7.9.4.3 contain no building other than toilet and changing facilities.

7.9.4.4 separate boating areas from swimming areas by natural or made dividers and mark the separation.

7.9.4.5 provide parking areas of three hundred (300) square feet per dwelling unit for each dwelling unit located more than 1/4 mile from the shoreland common area. Parking areas shall be setback a minimum of seventy-five (75) feet from reference line. The Planning Board may require greater than a seventy-five foot setback from reference line for parking areas according to the suitability of the shoreland. The parking area shall be screened from the lake or pond.

7.9.4.6 provide toilet facilities approved by the New Hampshire Water Supply and Pollution Control Division of the NH Department of Environmental Services.

7.9.5 Commercial Use of Common Area: Any use of a common area or area of access for business or commercial purposes shall be subject to a special exception as set forth in ARTICLE 16.

7.10 Erosion Control

7.10.1 Plans for Temporary Control: Erosion and sedimentation control plans shall be required for all construction, filling, grading, dredging, and other activities requiring land disturbance, including well drilling, within two hundred-fifty (250) feet of reference line of Newbury lakes and the shores of permanent streams.

7.10.2 Plans for Permanent Control: Erosion and sedimentation control plans shall be required for controlling runoff after construction or activities requiring land disturbance within three hundred (300) feet of reference line of Newbury lakes and the shores of permanent streams. Best management practices shall be used to control runoff from impervious surfaces and other areas such that runoff water from a ten-year storm event will not directly enter the protected water body.

7.10.3 Plan Description and Process: The requirements above are in addition to the general requirements of ARTICLE 21, Stormwater Management.

7.11 Septic Systems for Subdivisions

The subdivision of a parcel of land shall be subject to subdivision approval by the NH Department of Environmental Services under RSA 485-A:29 Sewage Disposal System. Submission and approval of plans & specifications if any portion of the land to be subdivided is within the protected shoreland.

7.12 Impervious Surfaces

7.12.1 Subject to Section 7.12.2, Protected Shoreland, no more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces.

7.12.2 If the impervious surface area will exceed 20 percent, a stormwater management system shall be implemented and maintained which is designed to infiltrate increased stormwater from development occurring after the effective date of this paragraph in accordance with rules established by the NH Department of Environmental Services under RSA 485-A: 17 Terrain Alteration. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) Minimum Shoreland Protection Standards in any segment, then such segment shall be planted, as determined by rule of the NH Department of Environmental Services, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a) Minimum Shoreland Protection Standards.

7.12.3 Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

7.13 Certificate of Zoning Compliance

7.13.1 No person shall commence development, construction, excavation, or filling activities within the protected shoreland without obtaining a Certificate of Zoning Compliance from the Board of Selectmen, or its designee, to ensure compliance with this Article.

7.13.2 Timber harvesting operations shall obtain a permit in accordance with RSA 485-A: 17, IV Terrain Alteration and therefore shall be exempt from the Certificate of Zoning Compliance.

7.13.3 The fee for a Certificate of Zoning Compliance as required in Section 7.13.1 above shall be established by the Board of Selectmen.

ARTICLE 8. WETLANDS CONSERVATION OVERLAY DISTRICT

8.1 Purpose and Intent

The purpose of this Article is to protect the public health, safety, and general welfare by controlling and guiding the use of land areas which are wetlands as defined in ARTICLE 2. It is the intent that this Article shall:

8.1.1 Restrict the development of structures and land uses on naturally occurring wetlands, which will contribute to pollution of surface and ground water by sewage, toxic substances, or sedimentation.

8.1.2 Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection, provide filtration of water flowing into ponds and streams, or augment stream flows that are connected to the ground or surface water supply during dry periods.

8.1.3 Protect unique and unusual natural wetland areas.

8.1.4 Protect wildlife habitats, maintain ecological balance and enhance ecological values such as those cited in RSA 482-A:1.

8.1.5 Prevent unnecessary or excessive expense to the Town for the purpose of clean up or mitigating conditions and maintaining essential services which might be required as a result of misuse or abuse of wetlands.

8.1.6 Encourage those low-intensity uses that can be harmoniously, appropriately, and safely located in the district.

8.1.7 Preserve and enhance those aesthetic values associated with the wetlands of the Town.

8.1.8 Prevent damage to structures and properties caused by inappropriate development in wetlands.

8.2 Overlay District Regulations

The special regulations of this overlay district are in addition to the regulations of the underlying district and any coincident overlay district.

8.3 Wetlands Conservation Overlay District Boundaries

The boundaries of the Wetlands Conservation Overlay District shall include all areas in Newbury that meet the definition of Wetland and Wetland Buffer as defined in ARTICLE 2 including bogs smaller than ten thousand (10,000) square feet. The following are not subject to the provisions of the Wetlands Conservation Overlay District:

8.3.1 Wetlands smaller than ten thousand (10,000) square feet except for bogs of any size; and

8.3.2 Lakes, ponds and streams of the Shoreland Overlay District and the seventy five foot setback therefrom.

8.4 Uses Permitted in a Wetland

Permitted uses are those that will not require the erection or construction of any structure or buildings; will not alter the natural surface configuration by addition of fill or by dredging; and uses that are otherwise permitted by the Zoning Ordinance. Such uses include the following:

8.4.1 Parks and outdoor recreation uses consistent with the purpose and intent of this ordinance;

8.4.2 Wildlife refuges; and

8.4.3 Conservation and open space areas, and nature trails; and

8.4.4 Uses for which a permit has been issued by the Wetlands Bureau of the NH Department of Environmental Services.

8.5 Use Permitted by Special Exception

A Special Exception in the Wetlands Conservation Overlay District may be granted by the Zoning Board of Adjustment for the use outlined below. An applicant will give a copy of the Special Exception application to the Newbury Conservation Commission for review and comment a minimum of fourteen (14) days in advance of a public hearing by the Zoning Board of Adjustment. The following use may be permitted by Special Exception:

8.5.1 Modification or Relocation of a Watercourse

8.5.1.1 In riverine situations, prior to the modification or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the NH Department of Environmental Services and submit copies of such notification to the Zoning Board of Adjustment in addition to the copies required by RSA 483-A:1-b. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Zoning Board of Adjustment, including notice of all scheduled hearings before the Wetlands Board and the Zoning Board of Adjustment.

8.5.1.2 The applicant shall submit to the Zoning Board of Adjustment certification provided by a registered professional engineer assuring that the flood carrying capacity of a modified or relocated watercourse can and will be maintained.

8.6 Wetland Buffer

The seventy five foot buffer around each wetland has been put in place to protect the wetland from siltation and pollution. The buffer shall be maintained in its natural vegetative state. Earth disturbance, except as permitted below, and chemicals of any sort are not permitted in the buffer.

8.7 Uses Permitted in a Wetland Buffer

Literal enforcement of use restrictions within the wetland buffer may interfere with reasonable use of the property. In such cases the Planning Board may allow a use by issuing a conditional use permit.

8.7.1 Authority to Issue Conditional Use Permits: The Planning Board shall have the sole authority to issue conditional use permits pursuant to RSA 674:21. In addition the

Planning Board shall have the authority to adopt regulations to implement the provisions of this section.

8.7.2 Uses Which May be Considered: Road, driveway, ditch, culvert, well, utility crossing, or such other use deemed by the Planning Board to have minimal impact on the wetland and wetland buffer.

8.7.3 Permit Required: A conditional use permit from the Planning Board is required for any development (See ARTICLE 2) in the wetland buffer.

8.7.4 Priority: A conditional use permit for impacting the wetland buffer shall be obtained from the Planning Board before applying to the Wetlands Bureau of the NH Department of Environmental Services for a wetlands permit if a permit is required for development in the associated wetland.

8.7.5 Standards: Prior to issuing a permit, the Planning Board shall be convinced that:

8.7.5.1 the use cannot be implemented outside the wetland buffer,

8.7.5.2 the location in the wetland buffer will cause the least impact, and

8.7.5.3 the method of implementation will minimize the impact to the wetland buffer.

8.7.6 Administration: The procedure for considering conditional use permits shall be as follows:

8.7.6.1 Application for a conditional use permit shall be made on a form provided by the Planning Board.

8.7.6.2 A notice shall be sent by certified mail to each abutter not less than ten days before the scheduled hearing.

8.7.6.3 Permit applications considered during subdivision or site plan review hearings shall be noticed concurrently with the subdivision or site plan review notices.

8.7.6.4 The Planning Board may request review and comment from the Conservation Commission.

8.7.6.5 The Planning Board may attach conditions to the permit as to location and method of implementation.

8.8 Effect on Lot Size/Density Calculation

If part of a lot lies within a wetland, 0% of that wetland shall be counted in the calculation of effective lot size or density. Wetland buffers shall count 100% toward the calculation of effective lot size or density. Effective lot size shall be calculated by deducting 100% of the area in wetlands to result in the developable area for the parcel, presuming that there are no other site constraints such as flood plains, steep slopes, aquifers and deer wintering areas. The resulting area must follow the Lot Size/Density requirements of ARTICLE 4 or ARTICLE 5 depending on the District in which it falls.

For example, the effective lot size is calculated as follows for a 5.5 acre parcel containing 2.5 acres of wetland, 1 acre in the setback from wetlands and 2 acres not in wetland:

*	0% of the area in wetland (0% of 2.5 ac.)	= 0 acres
*	100% of the area in the setback (100% of 1 ac.)	= 1 acre
*	Area not in wetlands or setbacks from the wetlands	= + 2 acre
*	Effective Lot Size or developable area	= 3 acres

ARTICLE 9. STEEP SLOPES CONSERVATION OVERLAY DISTRICT

9.1 Purpose

The purpose of the Steep Slopes Conservation Overlay District is to limit the intensity of development on steep slopes in order to manage the intensity of use which can be harmoniously, appropriately and safely located on steep slopes; protect surface waters from sedimentation, turbidity, runoff of storm water and effluent from sewage disposal systems; and maintain ecological balance.

9.2 Overlay District Regulations

The special regulations of this overlay district are in addition to the regulations of the underlying zoning District.

9.3 Steep Slope Overlay District Boundaries

The Steep Slopes Conservation Overlay District comprises all areas with a steep slope. See definition of Steep Slope in ARTICLE 2.

9.4 Development on Steep Slopes

Development is not permitted on steep slopes except as provided in ARTICLE 11, Mt. Sunapee Recreation District.

9.5 Effect on Lot Size/Density Calculation

If part of a lot lies within the Steep Slopes Conservation Overlay District, zero percent (0%) of such part shall be counted in the calculation of effective lot size. Effective lot size shall be calculated as follows: determine the area on steep slope and determine the area not on steep slope. The area not on steep slope is the effective lot size or developable area. The result must meet the Lot Size/Density requirements of the underlying district zone in which it is located.

For example, the effective lot size is calculated as follows for a 4 acre parcel containing 2 acres of steep slope and 2 acres not in steep slope:

*	0% of the area in steep slope (0% of 2 ac.)	= 0 acres
*	Area not in steep slope	= +2 acres
*	Effective Lot Size	= 2 acres

9.6 Clear-cutting

Clear-cutting as defined in this ordinance within the Steep Slopes Conservation Overlay District is prohibited except as provided in ARTICLE 11, Mt. Sunapee Recreation District, and with the following exception: Clear-cutting is permitted as a forestry practice to correct a serious disease, insect damage, or blowdown condition provided that the need for such action is certified by a licensed, professional forester and provided that it is carried out in accordance with an approved forest management plan and supervised by a licensed, professional forester. The forest management plan shall specify the logging techniques to be used, erosion control measures to be used, and shall require appropriate reforestation. The forest management plan must be approved by the Selectmen after review and comment by the Conservation Commission prior to the commencement of any clear-cutting.

ARTICLE 10. FLOOD PLAIN OVERLAY DISTRICT

10.1 Flood Plain Overlay District Boundaries

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Merrimack, NH" dated April 19, 2010, or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010, or as amended, which are declared to be part of this ordinance and are herby incorporated by reference.

10.2 Overlay District Regulations

The special regulations of this overlay district are in addition to the regulations of either the Business or the Residential District.

10.3 Proposed Development

There shall be no new development in flood plains. Modification of existing non-conforming uses shall require a permit. See definition of "Development" in ARTICLE 2.

10.4 Permit Applications

The Code Enforcement Officer shall review all building permit applications for modifications or substantial improvements (meaning any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred) to a non-conforming use to determine whether the building site will be reasonably safe from flooding.

10.4.1 If a proposed building site is in a location that has a flood hazard, any substantial improvement (including prefabricated and manufactured homes) must:

10.4.1.1 be designed (or modified) and anchored to prevent floatation, collapse, or lateral movement of the structure;

10.4.1.2 use construction materials and utility equipment that are resistant to flood damage;

10.4.1.3 use construction methods and practices that will minimize flood damage; and

10.4.1.4 electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed so as to prevent water from entering or accumulating within the components during conditions of flooding.

10.4.2 Where new or replacement water or sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

10.5 Public Inspection

The Code Enforcement Officer shall maintain for public inspection and furnish upon request, any certification of flood-proofing and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been flood-proofed, the elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.

10.6 Receipt of Permits

The Code Enforcement Officer shall review proposed developments to assure that all necessary permits have been applied for and/or received from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334. It shall be the responsibility of the applicant to certify these assurances to the Code Enforcement Officer.

10.7 100 Year Flood Data

10.7.1 In special flood hazard areas the Code Enforcement Officer shall determine the 100-year flood elevation in the following order of precedence according to the data available:

10.7.1.1 In Zones AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

10.7.1.2 In A zones, the Code Enforcement Officer shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

10.7.2 The Code Enforcement Officer's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that:

10.7.2.1 All substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.

10.7.2.2 All substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

10.7.2.2.1- be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
10.7.2.2.2- have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
10.7.2.2.3- be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

10.7.3 For all substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

10.7.3.1 the enclosed area is unfinished or flood resistant, useable solely for the parking of vehicles, building access or storage;

10.7.3.2 the area is not a basement; and

10.7.3.3 shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwater.

10.7.4 Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

10.7.4.1 A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

10.7.4.2 The bottom of all openings shall be no higher than one foot above grade; and

10.7.4.3 Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

10.8 Manufactured Homes

All manufactured homes to be placed or substantially- improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors.

Specific requirements shall be that:

10.8.1 over-the-top ties be provided at each of the four corners with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long shall require one additional tie per side;

10.8.2 frame ties be provided at each corner with five additional ties per side at intermediate points and manufactured homes less than 50 feet long shall require four additional ties per side;

10.8.3 all components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and

10.8.4 any additions to the manufactured home shall be similarly anchored.

10.9 Watercourses

10.9.1 In riverine situations, prior to the modification or relocation of a watercourse, the applicant for such authorization shall abide by applicable state and federal regulations in addition to the requirements of this Zoning Ordinance, regardless of scope, scale, or need for the proposed project.

10.9.2 The applicant shall submit to the Code Enforcement Officer, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

10.9.3 The Code Enforcement Officer shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

> "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

10.9.4 Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

10.10 Recreational Vehicles

10.10.1 Recreational vehicles placed on sites within Zones A and AE shall either:

10.10.1.1 be on the site for fewer than 180 consecutive days;

10.10.1.2 be fully licensed and ready for highway use; or

10.10.1.3 meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph (c) (6) of Section 60.3.

10.10.2 Section 60.3 (b) (1) states that the community shall require permits for all proposed construction and other developments including the placement of manufactured homes, within Zones A and AE of the community's FHBM or the FIRM.

10.10.3 Section 60.3 (c) (6) states that the community shall require that manufactured homes that are placed or substantially improved within Zones A and AE on the community's FIRM on sites:

10.10.3.1 outside of a manufactured home park or subdivision;

10.10.3.2 in a new manufactured home park or subdivision;

10.10.3.3 in an expansion to an existing manufactured home park or subdivision; or

10.10.3.4 in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse and lateral movement.

10.11 Effect on Lot Size/Density Calculation

If part of a lot lies within the Flood Plain Overlay District, zero percent (0%) of such part that is in the flood plain shall be counted in the calculation of effective lot size. Effective lot size shall be calculated as follows: Determine the area in the flood plain. Subtract this from the total area of the lot. This will result in the developable area for the parcel presuming that there are no other site constraints such as wetlands, setbacks from

wetlands, aquifers and deer wintering areas. The result must meet the Lot Size/Density requirements of the underlying district zone in which it is located.

For example, the effective lot size is calculated as follows for a 4 acre parcel containing 2 acres of land in flood plains and 2 acres not in flood plains:

*	0% of the area in flood plains (0% of 2 acres)	= 0 acres
*	Area not in flood plains	= +2 acres
*	Effective Lot Size	= 2 acres

ARTICLE 11. MT. SUNAPEE RECREATION DISTRICT

11.1 Purpose

The purpose of the Mt. Sunapee Recreation District is to accommodate the needs of year-round recreation uses within the leasehold area of the Mt. Sunapee Resort. More specifically, the purpose of this district is to:

11.1.1 provide for the base facilities necessary to operate the ski mountain;

11.1.2 encourage the use of the facilities and site for year-round recreational and cultural uses and activities; and

11.1.3 allow for commercial uses accessory to these principal uses.

11.2 District Boundaries

The boundaries of the Mt. Sunapee Recreation District are defined as the area for the Mt. Sunapee Resort leased from the NH Department of Resources and Economic Development (DRED) as referenced in the lease signed on April 30, 1998 and effective on July 1, 1998.

11.3 Uses Permitted and Subject to Site Plan Review by the Planning Board

11.3.1 Chair and surface lifts, and gondolas;

11.3.2 Alpine and Cross-country ski trails; hiking, biking and snowshoe trails;

11.3.3 Base lodge facilities to accommodate lift ticket sales; ski & bicycle repair, rental, sales and accessories; ski & bicycle lockers/employee locker rooms; ski school and ski patrol facilities; restaurant/lounge/banquet facilities/snack bar sales; meeting facilities; offices and facilities ancillary to the Mt. Sunapee Resort including recreational, cultural, and educational programs;

11.3.4 Summit lodge and operational facilities or other structures;

11.3.5 Ski racing facilities;

11.3.6 Snow making facilities;

11.3.7 Outdoor ski & bicycle storage facilities;

11.3.8 In-line skating and skateboard park;

11.3.9 Recreational uses and facilities including, but not limited to, parks, playgrounds, play fields, tennis and volley ball courts, swimming pools, and ice rinks;

11.3.10 Special community events;

11.3.11 Day care centers/nurseries for recreational activities and day camps;

11.3.12 Temporary structures/tents to accommodate cultural, recreational educational or commercial uses;

11.3.13 Accessory buildings for maintenance equipment, water treatment and storage, and other storage needs accessory to the principal recreational uses;

11.3.14 Public utility and public service structures and service; and wastewater treatment facilities and potable water wells; and

11.3.15 Modifications to the existing Telecommunications Tower & Facilities.

11.4 Uses Permitted by Special Exception and Subject to Site Plan Review by the Planning Board

11.4.1 Toboggan, Luge, and Bobsled Runs; and Alpine Slides;

11.4.2 Equestrian Facilities;

11.4.3 Water Slides;

11.4.4 Miniature Golf and Golf Driving Range; and

11.4.5 Other structures or uses ancillary to the operation of the principal recreational uses.

11.5 Prohibited uses within the Mt. Sunapee Recreation District

11.5.1 Water Slides elevated above natural grade and Water Parks;

11.5.2 Golf Course & Associated Facilities;

11.5.3 Motorized Dirt Bike and/or Motor Cross Tracks;

11.5.4 New Telecommunication Towers and Facilities;

11.5.5 Any Residential Uses; and

11.5.6 ATV Trails & Tracks.

11.6 Maximum Building Height

11.6.1 Summit Lodge & Structures: The Summit Lodge and other structures located at the summit of the mountain shall not exceed thirty (30) feet above the highest grade to the peak of the roof or structure.

11.6.2 Base Lodge & Structures: To achieve greater architectural variety, up to 25% of the roof lines in a structure located at the base of the mountain may be up to fifty (50) feet provided that all of the following conditions are met:

11.6.2.1 no window sill of habitable space shall be more than thirty feet (30 ft.) above the grade below it;

11.6.2.2 the setback for the structure from all lease hold boundary lines is equal to or greater than two times the height of the building measured from the lowest grade on the perimeter of the structure to the highest peak of the roof.

11.7 Steep Slopes and Clear-Cutting Exceptions for Trails

The Planning Board may grant approval for continuation of clear-cutting for maintenance, development of new trails or widening of existing trails if the applicant demonstrates to the satisfaction of the Planning Board through the Site Plan Review process that: 1) the slopes shall be stabilized both in the short-term during construction and for the long-term after construction to minimize soil erosion and thereby minimize the potential negative impact on downstream water resources; 2) new or expanded trails will not damage old growth forests; and 3) erosion and sedimentation control plans shall be prepared and designed in accordance with the standards and specifications outlined in the *New Hampshire Stormwater Manual*, as amended, and appropriate reference material identified by the NH Department of Environmental Services.

ARTICLE 12. CLUSTER DEVELOPMENT

12.1 Purpose

The purpose of this Article is to promote the appropriate use of land and a more economic provision of street and utility networks, to protect environmentally sensitive areas and to encourage the preservation and recreational use of open space in harmony with natural terrain, scenic qualities, and outstanding land and historic features of a development parcel. Under the provision of this Article, this is accomplished by concentrating development in one or more areas of a land parcel while maintaining the remainder of the land unbuilt and reserved as permanently protected open space. ARTICLE 12 permits development that is more dense than the Residential District two acre minimum, as well as various housing types such as multi-family housing, duplexes, and attached and detached single family housing. "Cluster Development" is not intended to suggest a development pattern but foster creativity and flexibility in designing the parcel. Site layouts and platting should be patterned on New England tradition. Traditionally, New England houses were sited in close proximity to work or services in order to minimize travel in winter and other times when road conditions were poor. Where dense settlement occurred, a community was fostered. In modern settings, services include open space, streets and utilities. A common open space can be similar to the "green" and included a children's playground, picnic area and other recreational activities for the developed community. Other types of open space can offer hiking and ski trails, access to water and views, etc. Every effort should be made to relate the cluster development parcel to the natural and manmade resources on contiguous parcels, connecting them where possible.

12.2 Incentive to Cluster Development

The following incentives are set forth to encourage Cluster Development. Incentives are cumulative.

12.2.1 A density bonus of up to 10% of the permitted overall density may be allowed in the Districts in which Cluster Development is permitted in instances where not less than 60% of the total acreage of a parcel is set aside as open space. In the calculation of this bonus, a fraction can be rounded to the next highest whole number.

12.2.2 A density bonus of 10% of the permitted overall density may be allowed in instances where not less than 10% of the total number of dwelling units created are affordable housing units as defined in ARTICLE 2. In the calculation of this bonus, a fraction can be rounded to the next highest whole number.

12.3 Standards

The following standards shall be met by all Cluster Developments:

12.3.1 The Cluster Development shall be an effective and unified treatment of the development possibilities on the site, and the development plan shall make appropriate provision, where applicable, for the protection of: wetlands, surface waters and setbacks from same; steep slopes, flood plains, aquifers, prominent knolls and ridgelines; wildlife habitat and natural areas such as deer wintering areas; historic and cultural resources; farm land; forest resources; scenic areas and other unique features.

12.3.2 Permitted Uses: Residential uses including single and two family dwellings and multi-family dwellings.

12.3.3 Minimum Lot Size: The minimum lot size of each dwelling unit within the Cluster Development shall be determined by the Planning Board based upon the character of the land involved, the type of housing proposed and the need for adequate on-site sewage disposal, as determined by the standards of the NH Water Supply and Pollution Control Division of the NH Department of Environmental Services and the subdivision regulations.

12.3.4 Number of Dwelling Units: The total number of dwelling units to the acre shall remain at the same overall density as required in the zoning district. Area computations shall not include road right of ways, public or private, and shall take into account the provisions of the Wetlands Conservation Overlay District and the Steep Slopes Conservation Overlay District.

12.3.5 Open Space or Common Land: A minimum of 40% of a development parcel must be set aside as common land. It shall be permanently protected using a conservation easement as open space or common land for the purposes of recreation, conservation, park or public easement forestry or agriculture. The open space or common land or any portion of it shall be held, managed and maintained by the developer until it is owned in one or more of the following ways:

12.3.5.1 By a homeowner's association, set up by the developer and made a part of the deed or agreement for each lot or dwelling unit;

12.3.5.2 By the Town, subject to acceptance at Town meeting;

12.3.5.3 By the developer, as appropriate, for areas such as golf courses and outdoor recreational areas.

12.3.6 Management of Open Space: All agreements, deed restrictions, organizational provisions for a homeowner's association and any other method of management of the common land shall be established prior to approval.

12.3.7 Access to Common Open Land: Each dwelling unit shall have reasonable access to the common open land, but need not front directly on such land.

12.3.8 Visibility of Open Space: The open space of a Cluster Development shall be visible from a Town or state road wherever possible. Also, the development should not be seen from a major road or lake wherever possible.

12.3.9 Community Water or Sewer Systems: Where a community water and/or sewer disposal system located on common land is proposed, legal responsibility for ownership and maintenance must be established as part of the approval process.

12.3.10 Perimeter Setback: A structure may be located closer than one hundred (100) feet to the perimeter only with approval of the Planning Board.

12.3.11 Building Separations: Buildings shall be separated by a minimum of thirty (30) feet.

12.3.12 Frontage and Setback Requirements: The minimum frontage and setback requirements within a Cluster Development shall be determined by the Planning Board based on the type of housing proposed and maintaining adequate access and separations for fire protection purposes.

12.3.13 Misc. Provisions: The plan shall provide for the convenience and safety of vehicular and pedestrian movement on the site and for adequate location of driveways in relation to street traffic. Conformance with maximum building height and parking standards shall be required.

12.4 Procedure

Subdivision approval by the Newbury Planning Board is required for all Cluster Developments. A Cluster Development proposal shall be processed concurrently with the required subdivision application.

12.5 Review Criteria

12.5.1 Approval of the Cluster Development would result in a more desirable environment than would be possible through a conventional subdivision which strictly conforms with the requirements of the Zoning Ordinance.

12.5.2 The proposed Cluster Development will harmoniously integrate into the surrounding neighborhood in such a way that the visual qualities between existing land use(s) and the Cluster Development are complementary.

12.5.3 The location, size, nature and topography of the open areas make them suitable for use as common areas for park, recreational purposes, conservation purposes, buffer areas and /or agricultural purposes.

12.5.4 The proposed Cluster Development plan will develop the property in harmony with the natural environment by concentrating the development on those parts of the property which have the least natural limitations to accommodate development and by protecting those parts of the property which are most environmentally sensitive such as wetlands, flood plains, aquifers, steep slopes, ridge tops, stream banks and lake shores.

12.5.5 The Cluster Development shall conform with the standards outlined in Section 12.3 above.

12.5.6 The Cluster Development proposal complies with all requirements of the Subdivision Regulations and all requirements of the Zoning Ordinance not addressed in Section 12.3 above.

ARTICLE 13. RECREATIONAL CAMPING PARK

13.1 Recreational Camping Park

Trailers (RV's) and campers used as seasonal homes shall be restricted to recreational camping parks which may be located in either the Business or Residential District provided such park is first approved as a Special Exception by the Zoning Board of Adjustment, receives Site Plan Review approval by the Planning Board and meets the following requirements:

13.1.1 Lot size: Each unit space shall be not less than 40 feet by 80 feet excluding roadways.

13.1.2 Utilities: Each unit space shall be provided with electric, water, and sewerage hook-ups or dumping facilities.

13.1.3 Garbage/Refuse: All garbage and/or refuse shall be collected and disposed of at an approved facility.

13.1.4 Disposal: No garbage, refuse, or sewerage shall be disposed on the site except at appropriate facilities.

13.1.5 Disposal System Plot Plan: The applicant must supply a subsurface disposal system plot plan by a N.H. Water Supply and Pollution Control Division licensed designer demonstrating that site conditions and land area are adequate for the installation of a sewage disposal system.

13.1.6 Location Outside Flood Hazard Areas: A recreational camping park shall not be permitted within any area designated as a flood hazard area by the Federal Emergency Management Agency on its Flood Insurance Rate Map for the Town of Newbury, dated April 2, 1986.

13.2 Occupancy of Trailers and Campers

Occupancy of trailers and campers outside of recreational camping parks for longer than thirty (30) days per calendar year is prohibited except as permitted under Temporary Uses in ARTICLE 4 and ARTICLE 5.

ARTICLE 14. SIGNS

14.1 Purpose

The purpose of this Article is to protect the public safety and general welfare by controlling and guiding the use of signs in Newbury. It is the intent that this Article shall:

14.1.1 Encourage the effective use of signs as a means of communication in the town;

14.1.2 Maintain and enhance the aesthetic environment and thereby attract sources of economic development and growth;

14.1.3 Improve pedestrian and traffic safety;

14.1.4 Minimize the possible adverse effect of signs on nearby public and private property, and

14.1.5 Enable the fair and consistent enforcement of these sign restrictions.

14.2 Signs Not Allowed

No sign shall be permitted except as allowed in this Article. The following signs are specifically not allowed: animated, beacon, pennant, inflatable, those that are attached to trees and utility poles, those that are illuminated from inside, and those that feature exposed bulbs, plasma tubes such as neon, or light-emitting diodes.

Any sign installed or placed on public property, including a road right-of-way, except in conformance with the requirements of this ordinance, shall be forfeited to the town and subject to confiscation. In addition to other remedies hereunder, the town shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign.

14.3 Signs Exempt from Regulation

14.3.1 Building markers, occupant identification, incidental signs, and flags which do not carry a commercial message;

14.3.2 All signs erected by governments and their agencies;

14.3.3 All signs erected by public utilities regarding poles, lines, pipes, and facilities;

14.3.4 Emergency warning signs erected by public utilities or by contractors doing authorized or permitted work within the public-right-of-way;

14.3.5 Traffic control signs on private property, such as Entrance, Exit, Stop, Yield, and similar signs, the face of which carry no commercial message, and

14.3.6 Forestry/conservation signs for forestry uses, tree farms, conservation/preservation projects, and wildlife preserves.

14.4 Signs Allowed

Signs shall be allowed on private property in the town in accordance with Table 14.4.1.

Except as exempted in this Article, signs shall be limited to those which advertise goods, services, or products manufactured or offered for sale on the premises.

Table 14.4.1 Signs by Sign Type and Zoning District

Sign Type	Zoning Residential	Business
Permanent		
Freestanding	A (a)	P
Building Mounted	N	P
Projected	N	P
Wall	N	P
Roof	N	P
Window	N	P
Canopy	N	P
Temporary		
Portable (A-frame, etc.)	P	P
Banner	N	P
Window	N	P
Real Estate		
On-premises	A	A
Off-premises	P	P
Signs with Changeable Copy	N	P

(a) No commercial message allowed on sign, except for a commercial message drawing attention to an activity legally offered on the premises.

KEY TO TABLE 14.4.1

A Allowed without sign permit
P Allowed only with sign permit
N Not allowed

14.5 Sign Specification

Signs allowed or permitted in Section 14.4 shall conform to the limits in Tables 14.5.1 and 14.5.2.

14.5.1 The sum of the area of all permanent and temporary signs, wherever located on the lot, shall not exceed the maximum area for all signs as specified in Table 14.5.1.

14.5.2 Individual signs shall not exceed the maximum size, minimum setback, and maximum number of signs per type as shown in Table 14.5.2.

Table 14.5.1 Maximum Total Sign Area Per Lot

Sign Type	Zoning District Residential	Business
Maximum Area for all Signs (sq.ft.)	8	100

Table 14.5.2 Number, Dimension, and Location of Individual Signs by Zoning District

Sign Type		Zoning District Residential	Business
Permanent Freestanding			
	Area (sq.ft.)	6	32
	Height (feet)	5	12
	Setback (feet) (a)	5	5
	Number per lot	1	1
Building Mounted			
Wall			
	Area (sq.ft.)	N/A	(b)
	Number per lot	N/A	1
Projecting			
	Area (sq.ft.)	N/A	(f)
	Number per lot	N/A	1
Roof			
	Area (sq.ft.)	N/A	32
	Number per lot	N/A	1
Window			
	Area (sq.ft.)	N/A	(c)
	Number per lot	N/A	1
Canopy			
	Area (sq.ft.)	N/A	(d)
	Number per lot	N/A	1
Temporary			
Portable (A-frame, etc.)			
	Area (sq.ft.)	6	16
	Height (feet)	5	5
	Setback (feet) (a)	5	5
	Number per lot	1	2
Banner			
	Area (sq.ft.)	N/A	32
	Number per lot	N/A	1
Window			
	Area (sq.ft.)	N/A	(c)
	Number per lot	N/A	1
Real Estate			
On-premises			
	Area (sq.ft.)	6	6
	Number per lot	1	1
Off-premises			
	Area (sq.ft.)	6	6
	Number per lot	(e)	(e)

KEY TO TABLE 14.5.2 N/A Not Applicable

(a) In addition to the setback requirements in this Table, signs shall be located such that there is at every street intersection a clear view between heights of three (3) feet and ten (10) feet in a triangle formed by the corner and points on the curb thirty (30) feet from the intersection or entranceway.
(b) Five (5) percent of building wall area or 32 square feet, whichever is greater.
(c) Twenty-five percent (25%) of window area.
(d) Twenty-five percent (25%) of vertical surface of canopy.
(e) As determined by the Board of Selectmen.
(f) Maximum area of twenty-four (24) square feet and not projecting more than eighteen (18) inches from surface of the wall or structure.

14.5.3 Calculation of Sign Area.

14.5.3.1 Permanent, freestanding and roof mounted: Back-to-back signs shall be counted as one. Two signs joined at one side and having an interior angle greater than zero shall be deemed to be two signs. The area to be measured shall be that part which carries the commercial or other message and clearly is not part of the supporting structure.

14.5.3.2 Permanent, wall mounted and window: When the background of the message is the same as the building or window, the area to be measured shall be a rectangle which includes the message and any associated graphics. When the background of the message is distinguishable from the wall or window, the area to be measured shall be the area of the background.

14.5.3.3 Permanent, projecting: The area to be measured shall be that part which carries the commercial or other message and clearly is no part of the supporting structure.

14.5.3.4 Permanent, canopy: The area to be measured shall be a rectangle which includes the message and any associated graphics.

14.5.3.5 Temporary, portable, and real estate: Back-to-back signs and signs attached at the top, such as A-frames, shall be counted as one. The area to be measured shall be that part which carries the commercial or other message and clearly is not part of the supporting structure.

14.5.3.6 Temporary, banner: The area to be measured shall be the area of the cloth or other material.

14.5.3.7 Temporary, window: The area to be measured shall be the area of any message and/or graphic behind the window exclusive of any supporting structure.

14.5.4 Calculation of Sign Height:

The height of a sign shall be computed as the distance from the normal grade to the top of the highest attached component of the sign or supporting structure. Normal grade shall be construed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot be reasonably determined, sign height shall be computed on the assumption that

the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest road.

14.6 Permits for Permanent Signs

When a permit is required, the landowner or business owner shall apply for a permit by submitting an application to the Code Enforcement Officer. Applications are available at the town office or online at the town's website. A completed application shall include supporting material as required in this section and the appropriate permit fee.

Supporting materials shall consist of the following:

14.6.1 A site drawing or sketch which shows the following:

14.6.1.1 Size and location of buildings to scale.

14.6.1.2 Road frontage and right-of-way to scale.

14.6.1.3 Location or proposed location of the sign or signs.

14.6.1.4 A north-pointing arrow.

14.6.1.5 Name and address of business or property owner.

14.6.1.6 Tax map and lot number.

14.6.1.7 Scale.

14.6.1.8 Date of the drawing.

14.6.2 A three-view drawing of each roof-mounted or freestanding sign with its supporting structure which shows the following:

14.6.2.1 The dimensions of the sign.

14.6.2.2 The dimensions of the supporting structure.

14.6.2.3 The type of material used for each part.

14.6.2.4 A sketch or drawing of the sign content.

14.6.3 A single-view drawing of each building wall or permanent window sign which shows the following:

14.6.3.1 The dimensions of the sign and the dimensions of the wall or window.

14.6.3.2 The type of material used for each part.

14.6.3.3 A sketch or drawing of the sign content.

14.7 Design Standards for Permanent Signs

The following standards shall govern the design and construction of permanent signs.

14.7.1 Signs and supporting structures shall be constructed of permanent and durable materials able to withstand variable changes in weather conditions.

14.7.2 Signs shall not obscure the sight lines of vehicles entering onto public roads.

14.7.3 The supporting structure for freestanding and roof-mounted signs shall be clearly subordinate to the sign in size and shape.

14.7.4 Signs shall be illuminated by the indirect method only.

14.7.5 The light source shall be shaded or shielded from direct view by motorists or abutters.

14.8 Permits for Temporary Signs

When a permit is required, the landowner or business owner shall apply for a permit by submitting an application to the Code Enforcement Officer. Applications are available at the town office or online at the town's website. A completed application shall include supporting material as required in this section and the appropriate permit fee. One application and permit may include multiple signs on the same lot. Permits for temporary signs shall be valid for a period of six (6) months from the date of issuance, except for real estate signs (see Section 14.9).

Supporting materials shall consist of the following:

14.8.1 Type of sign from list in Table 14.4.1; provide a photo if available or a sketch.

14.8.2 Proposed location of the sign; provide a sketch or mark up a photo.

14.8.3 Requested duration.

14.9 Off-Premises Real Estate Signs

The following procedures shall govern the application for, and issuance of, all off-premises real estate sign permits.

14.9.1 All applications for off-premises real estate sign permits shall follow the procedures set forth for temporary signs in Section 14.8

14.9.2 The number of off-premises signs related to each lot shall be determined by the Board of Selectmen.

14.9.3 Real estate signs shall be removed within two (2) weeks after the sale of the property is closed or within one (1) week after the real estate listing expires.

14.9.4 Real estate open house and associated directional signs are allowed without permit up to three (3) days prior to and one (1) day after the open house.

14.10 Permits for Sign Modification

Existing signs, which are permitted or would require a permit, that are to be modified or reconstructed shall require a permit as outlined in Sections 14.6 or 14.8. Modification shall include any changes to the dimensions of the sign or the supporting structure, change in materials, change in lighting, or change in location.

14.11 Administration

The Code Enforcement Officer (CEO) shall be responsible for the administrative aspects of sign permitting.

14.11.1 Upon receipt of an application, the CEO shall review the application for completeness and compliance with the regulations. If the application fails any of these requirements, the CEO shall work with the applicant to bring the application into compliance.

14.11.2 Upon completion of the review, the CEO shall forward the application to the Board of Selectmen or its designee for conditional approval. The applicant shall be

notified that the application has been conditional approved and that construction can begin.

14.11.3 The final approval shall be conditioned on a satisfactory inspection by the CEO of the sign after its construction and installation.

14.11.4 Upon inspection and a finding that the sign is in compliance with the application and the regulations, the CEO shall attach an official stamp or sticker of the Board of Selectmen, which shows the number of the permit and the date of issuance. The CEO shall photograph the sign or signs and place a print in the property file for future use. The CEO shall issue the permit to the applicant.

14.12 Sign Maintenance

Every sign, whether allowed or permitted, shall be maintained in a neat, tidy, and safe condition. For example, signs and their supporting structures shall not be allow to deteriorate to the point where paint or any other covering is peeling, or where one part of the sign or structure has become disconnected from another.

14.13 Existing Signs, Permits, and Terms

A sign that would be allowed under this ordinance with a sign permit, but which was in existence of date of enactment and which was constructed and installed in accordance with the ordinances and other applicable laws in effect prior to this amendment to the sign ordinance, shall be allowed without a new sign permit under this ordinance until the sign is modified or abandoned. Also see Section 14.10, Permits for Sign Modification.

ARTICLE 15. NON-CONFORMING USE, NON-CONFORMING BUILDING AND NON-CONFORMING LOT

15.1 Non-conforming Use

Any non-conforming use may be continued indefinitely subject to the following limitations:

15.1.1 Resumption after Discontinuance: When a non-conforming use of land, structures or buildings has been discontinued for one year, then the land, structures and buildings shall be used thereafter only in conformity with this Ordinance.

15.1.2 Change or Expansion: Any change in, or expansion of, an existing non-conforming use shall require Board of Adjustment approval of a Special Exception. For a Special Exception to be approved, a petitioner must prove to the satisfaction of the Board of Adjustment that the proposed change in, or expansion of, the existing non-conforming use will not be more harmful or detrimental than the existing non-conforming use in addition to meeting the findings of fact and conditions for granting a Special Exception as outlined in ARTICLE 16.

15.1.3 Superseded by Conforming Use: If a non-conforming use is superseded by a conforming use, then it shall thereafter conform with the use regulations of this Ordinance, and the non-conforming use may not thereafter be resumed.

15.1.4 Restoration, Reconstruction and/or Replacement: Nothing herein shall prevent the substantial restoration, reconstruction and/or replacement within two years of a building or structure housing a non-conforming use destroyed in whole or in part by fire or other natural disaster so long as this use does not result in a new increased violation.

15.2 Non-conforming Building

Any non-conforming building may be continued indefinitely and may be repaired or remodeled subject to the following limitations:

15.2.1 Alterations and/or Expansions: Alteration and/or expansion of an existing non-conforming building which does not conform with the dimensional controls for building height, setback requirement, or building separation requirements is permitted as long as the alteration and/or expansion does not make the building more non-conforming; i.e., the alteration and/or expansion must be constructed within the approved height limitations, setbacks and building separation requirements of the district in which it is constructed, including the overlay district requirements which may apply to that location.

15.2.2 Restoration, Reconstruction and/or Replacement: Nothing herein shall prevent the substantial restoration, reconstruction and/or replacement in the same location and building footprint within two years from the date a non-conforming building or structure is destroyed in whole or part by fire or natural disaster, or is demolished, so long as the resulting building does not create a new increased violation.

15.3 Non-conforming Lot

A non-conforming lot may be developed for the uses permitted in the district in which it is located provided that the use proposed for such lot will comply with all health and sanitary regulations for water and sewage systems as required by the State and Town and provided that it complies with all other requirements of this Ordinance or amendments

thereto other than the non-conforming aspect of the lot. The forgoing notwithstanding, a lot without frontage on a town maintained road or a private road approved by the Planning Board may not be developed.

15.3.1 In addition to the above requirements, a non-conforming lot located in the Shoreland Overlay District shall comply with the current regulations of the New Hampshire Water Supply and Pollution Control Division of the NH Department of Environmental Services without waivers as of the date of application for a building permit.

ARTICLE 16. BOARD OF ADJUSTMENT

16.1 Authorization

The Zoning Board of Adjustment shall be authorized and established in accordance with the laws of the State of New Hampshire, Chapter 673 & 674, Revised Statutes Annotated and amendments thereto.

16.2 Powers

The Zoning Board of Adjustment shall have the powers provided by RSA 674:33 or as amended which include the powers to hear and decide administrative appeals, special exceptions, variances and equitable waivers of dimensional requirement.

16.3 Public Notice Requirements

Notice of a public hearing by the Zoning Board of Adjustment shall comply with the requirements as provided in RSA 676:7 or as amended.

16.4 Appeals to the Zoning Board of Adjustment

If it is alleged that an error has been made, any aggrieved person, officer, department, board or bureau of the Town affected by the decision of the administrative officer may appeal to the Board. Such appeals must occur within thirty (30) days of the administrative decision by filing with the Board a notice of appeal specifying the grounds for appeal. Work may not continue during an appeal unless the administrative officer states that work stoppage will cause imminent peril to life and property.

16.5 Administrative Appeal

To grant an administrative appeal, the Board must apply the strict letter of the law. It must find the administrative officer correctly or incorrectly interpreted a particular provision of the ordinance. If it finds that the Ordinance was properly interpreted, it cannot grant relief (unless a request has been made for a variance or special exception) even if it feels relief might be in order. The Board may reverse, or reaffirm, completely or in part, any administrative decision from which an appeal is sought.

16.6 Special Exception-Findings of Fact

The Board may, on an appeal, grant a special exception as specified in this Ordinance, if ALL the following facts are found by the Board:

16.6.1 The use is specifically allowed as a special exception under the terms of the Ordinance.

16.6.2 Appropriate and adequate facilities will be provided for the proper operation of the proposed use.

16.6.3 The proposed use will comply with the applicable regulations of the district in which it is located.

16.7 Special Exceptions-General Conditions

For the purpose of this Ordinance, the following are established as general conditions, ALL of which are to be met upon the grant of any special exception. Additional conditions may be imposed as defined elsewhere in the ordinance as to the uses

concerned or as may be imposed by the Planning Board if the use needs Site Plan Review approval.

16.7.1 That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation or undue violation of the character of the neighborhood;

16.7.2 That the use will not be injurious, noxious, or offensive and thus detrimental to the neighborhood;

16.7.3 That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions;

16.7.4 The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the proposed use and the location of the site with respect to the existing or future street giving access to it, shall be such that it will be in harmony with the neighborhood. The location nature and height of buildings, walls, and fences will not discourage the appropriate development and use of the adjacent land and buildings or impair the value thereof. In this regard, the Board may impose the following safeguards in addition to the applicable requirements of this Ordinance, including, but not limited to the following:

16.7.4.1 Front, side or rear setbacks greater than the minimum requirements of this Ordinance;

16.7.4.2 Screening of parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting or other devices;

16.7.4.3 Footprint or lot coverage;

16.7.4.4 Modification of the exterior features or appearance of the building;

16.7.4.5 Limitation of size, number of occupants, method or time of operation or extent of facilities;

16.7.4.6 Regulation of number, design, and location of drives or other traffic features;

16.7.4.7 Off street parking or loading spaces beyond the minimum requirements; or

16.7.4.8 Control of the number, size, and location of lighting and signs.

16.7.5 Operations in connection with such a use shall not be more objectionable to nearby properties by reason of noise, fumes, odor, or vibration, than would be the operation of any permitted uses in this district which are not subject to special exception procedures.

16.8 Variance

The Board may, on an appeal, grant a variance from the provisions of this Ordinance, if ALL the facts specified below are found by the Board. RSA 674:33 I(b), if amended, will replace these criteria until this Ordinance can be amended.

16.8.1 The variance will not be contrary to the public interest.

16.8.2 Literal enforcement of the provisions of this Ordinance would result in an unnecessary hardship.

16.8.2.1 For the purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area;

16.8.2.1.1- No fair or substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision to the property; and
16.8.2.1.2- The proposed use is a reasonable one.

16.8.2.2 If the criteria in Section 16.8.2.1 are not established, an “unnecessary hardship” will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in Section 16.8.2.1 above shall apply whether the provision in the Ordinance from which a variance is sought is restriction on use, a dimensional or other limitation on a permitted use, or any other requirement in the ordinance.

16.8.3 The spirit of the ordinance is observed.

16.8.4 Substantial justice is done.

16.8.5 The value of surrounding properties are not to be diminished.

16.8.6 If the applicant, upon appeal, requests a variance to the floodplain regulations, as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

16.8.6.1 that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;

16.8.6.2 that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and

16.8.6.3 that the variance is the minimum necessary, considering the flood hazard, to afford relief.

16.8.7 The Zoning Board of Adjustment shall notify the applicant in writing that:

16.8.7.1 the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and

16.8.7.2 such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

16.9 Equitable Waiver of Dimensional Requirement

16.9.1 When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver of dimensional requirement, if and only if the Board makes all of the following findings.

16.9.1.1 That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation has been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

16.9.1.2 That the violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

16.9.1.3 That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible uses of any such property;

16.9.1.4 That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be granted.

16.9.2 In lieu of the findings required by the Board under the first two subparagraphs above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

16.9.3 Waivers shall be granted only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. The fact that a waiver is available under certain circumstances does not alter the principal that owners of land should understand all land use requirements. In addition, this ordinance does not impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or compliance of property inspected by them.

16.10 Action by the Board

After a public hearing, the Board may grant the application, deny the application or refer the application back to the applicant for modification.

16.10.1 An action taken by the Board to deny an application for a variance or special exception must be accompanied by a written statement as to how the variance or special exception fails to fulfill the requirements and conditions specified above.

16.10.2 The Board may impose such conditions and restrictions as deemed necessary to meet the objectives of this Ordinance on any permit for a variance or special exception granted under the terms of this Ordinance.

16.10.3 If denied, the Board shall issue a final written decision on an application. This decision shall be filed in the Town Office within seventy-two (72) hours after the decision has been made. If the application is denied, all of the reasons for denial shall be indicated in the denial letter and the record.

16.10.4 If any application is denied, then there must be a material change of circumstances affecting the merits of the application or the application be for a use that materially differs in nature and degree from its predecessor in order for the Board of Adjustment to consider a new application.

16.11 Rehearings

A rehearing of a decision of the Zoning Board of Adjustment may be sought if the petitioner wishes to call to the attention of the Board any errors that it may have made so as to allow the Board to correct those errors. A rehearing must be requested within thirty (30) days of the decision of the Board (RSA 677:2). Any party to the action or proceeding, or any person directly affected thereby, or the Selectmen, may apply for a rehearing. Upon the filing of a motion for a rehearing, the Board shall within thirty (30) days either grant or deny the order of the original application or suspend that order or decision pending further consideration (RSA 677:3).

ARTICLE 17. PERSONAL WIRELESS SERVICE FACILITIES

17.1 Purpose and Intent

It is the express purpose of this Article to permit carriers to locate personal wireless service facilities within particular areas of the Town of Newbury consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town. Compatibility with the visual features of Newbury is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed personal wireless service facility. This Article enables the review of the locating and siting of personal wireless service facilities by the Town of Newbury so as to eliminate or mitigate the visual and environmental impacts of personal wireless service facilities. This Article is structured to encourage carriers to locate on existing buildings and structures whenever possible. New ground mounted personal wireless facilities are permitted, but only when the use of existing structures and buildings is found to be infeasible. Co-location is encouraged for all personal wireless service facility applications and the review of a personal wireless facility shall be on the basis of the site being built using all positions on the mount.

17.2 Applicability

The use of land and structures for personal wireless service facilities proposed to be located on property owned by the Town of Newbury, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier shall be subject to site plan review and the terms of this Article.

17.3 District Regulations

17.3.1 Location - Personal wireless service facilities shall be permitted in all Zoning Districts. Applicants seeking approval for personal wireless service facilities shall first evaluate existing structures for the siting of personal wireless service facilities. Only after finding that there are no suitable existing structures pursuant to Section 17.3.3 herein, shall a provider propose a new ground mounted facility.

17.3.2 Existing Structures: Policy - Personal Wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.

17.3.3 Existing Structures: Burden of Proof - The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent applicable:

17.3.3.1 The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.

17.3.3.2 The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post office shall be provided for each owner of existing structures that was contacted.

17.3.3.3 If the applicant claims that a structure is not capable of physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.

17.3.4 Ground Mounted Facilities: Policy - If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping, and placement within trees.

17.4 Use Regulations

A personal wireless service facility shall require a building permit in all cases and may be permitted, subject to site plan review, as follows:

17.4.1 Existing Tower Structures: Subject to the issuance of a building permit, carriers may locate a personal wireless service facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article, or on any personal wireless service facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.

17.4.2 Reconstruction of Existing Tower Structures: An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two hundred (200) feet to exceed two hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.

17.4.3 Existing Structures: Subject to the provisions of this Article and except as otherwise permitted under Section 17.4.1, a carrier may locate a personal wireless service facility on an existing structure, building, utility tower or pole, or water tower. For the purpose of this section, new structures that are conforming to all other district zoning requirements shall be considered as existing structures.

17.4.4 Ground Mounted Facility: A personal wireless service facility involving construction of a ground mount shall require site plan review and be subject to the provisions of this Article.

17.5 Dimensional Requirements

17.5.1 Personal wireless service facilities shall comply with the following requirements:

17.5.1.1 Height, Maximum: In no case shall a personal wireless service facility exceed two hundred (200) feet in height.

17.5.1.2 Height Increase, Existing Structures and Utility Poles: Carriers that locate new personal wireless service facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet, or 40 feet at the discretion of the planning board, if the additional height will not cause visual impact as defined in Section 17.6. This increase in height shall only be permitted once for each structure.

17.5.1.3 Height Increase, Other Existing Structures and Buildings: For any structures not identified in the paragraph above, the height of a structure shall not be increased by more than fifteen (15) feet with the addition of a personal wireless service facility, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a personal wireless service facility on a building that is legally nonconforming with respect to height, provided that the provisions of this Article are met.

17.5.1.4 Height, Ground-Mounted Facilities: Ground-mounted personal wireless service facilities shall not project higher than (20) twenty feet above the average tree canopy height within one hundred and fifty (150) feet of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.

17.5.1.5 Setbacks: All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.

17.5.1.6 Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review.

17.5.1.7 Fall Zone for Non-Ground Mounts: In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing nonconforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities.

17.6 Performance and Design Standards

17.6.1 Visibility

17.6.1.1 Visual impacts are measured on the basis of:

17.6.1.1.1- Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within their proposed surroundings.
17.6.1.1.2- New visible elements proposed on a contrasting background.
17.6.1.1.3- Different colors and textures proposed against a contrasting background.
17.6.1.1.4- Use of materials that are foreign to the existing built environment.

17.6.1.2 Enhancements are measured on the basis of:

17.6.1.2.1- Conservation of opportunities to maintain community scale; e.g., buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
17.6.1.2.2- Amount and type of landscaping and/or natural vegetation.
17.6.1.2.3- Preservation of view corridors, vistas, and viewsheds.
17.6.1.2.4- Continuation of existing colors, textures, and materials.

17.6.1.3 17.6.1.3 Visibility focuses on:

17.6.1.3.1- Eliminating or mitigating visual impact.
17.6.1.3.2- Protecting, continuing, and enhancing the existing environment.

17.6.1.4 Camouflage for Facilities on Existing Buildings or Structures – Roof Mounts: When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

17.6.1.5 Camouflage for Facilities on Existing Buildings or Structures – Side Mounts: Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

17.6.1.6 Camouflage for Ground Mounted Facilities: All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

17.6.2 Color - To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings.

17.6.3 Equipment Shelters - Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:

17.6.3.1 Equipment shelters shall be located in underground vaults; or

17.6.3.2 Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or

17.6.3.3 Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or

17.6.3.4 If mounted on a rooftop, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

17.6.4 Lighting, Signage, and Security:

17.6.4.1 Lighting: The mounts of personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot-candles.

17.6.4.2 Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the ARTICLE 14.

17.6.4.3 Security Barrier: The Planning Board shall have final authority on whether a ground mounted personal wireless service facilities should be surrounded by a security barrier.

17.6.5 Historic Buildings and Districts:

17.6.5.1 Any personal wireless service facility located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.

17.6.5.2 Any modification made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.

17.6.5.3 Personal wireless service facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.

17.6.5.4 Personal wireless service facilities located in the Newbury Village Historic District shall comply with the provisions of the Historic District Commission.

17.6.6 Scenic Landscapes and Vistas - Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth as per Section 17.6.1.6 .

17.6.7 Driveways – If available, existing entrances and driveways to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new

entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a personal wireless service facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.

17.6.8 Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.

17.6.9 Ground and Roof Mounts - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 17.4.2.

17.6.10 Hazardous Waste - No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

17.6.11 Noise - Personal wireless service facilities shall not generate noise in excess of that permitted under the Newbury Nuisance Provision in ARTICLE 3.

17.6.12 Radio Frequency Radiation (RFR) Standards - All equipment proposed for a personal wireless service facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

17.7 Monitoring and Maintenance

17.7.1 Maintenance - The owner of the facility shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

17.7.2 Monitoring - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Newbury may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provides them the opportunity to accompany the Town representatives when the measurements are conducted.

17.7.3 Security for Removal - Recognizing the hazardous situation presented by abandoned and unmonitored personal wireless service facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned personal wireless service facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 17.8.2. The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in New Hampshire every five (5) years from the date of the

Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

17.8 Abandonment or Discontinuation of Use

17.8.1 Notification - At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

17.8.2 Removal - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

17.8.2.1 Removal of antennas, mount, equipment shelters and security barriers from the subject property.

17.8.2.2 Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

17.8.2.3 Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

17.8.3 Failure to Remove - If the owner of the facility does not remove the facility upon an order from the Board of Selectmen, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

ARTICLE 18. SKYLINE/HILLSIDE CONSERVATION OVERLAY DISTRICT

18.1 Purpose and Objectives

The principal scenic qualities in Newbury, as viewed from public highways and waters, are the views of its lakes and hills. The ridges and hillsides of Newbury are some of Newbury's principal scenic resources and they contribute significantly to Newbury's rural character and, as such, preservation and conservation of Newbury's skylines and hillsides are essential. The people of the town have identified preservation of scenic values to be of primary importance.

The Primary objective of the Skyline/Hillside Conservation Overlay District is to protect the scenic and rural character of the town, and require that development be carried out so as to be visually unobtrusive and environmentally sound to the greatest extent possible, while permitting the landowner to exercise his property rights.

18.2 Overlay District Regulations

The special regulations of this overlay district are in addition to the regulations of either the Business or the Residential District.

18.3 Skyline/Hillside Conservation Overlay District Boundary

The boundaries of the district are defined as follows (Refer to the U.S.G.S. Topographical Maps):

18.3.1 Baker Hill from an elevation of 384 meters (1260 feet) to the summit,

18.3.2 Hill No. 513 from an elevation of 450 meters to the summit,

18.3.3 Sunset Hill and Bly Hill from an elevation of 450 meters to the summit,

18.3.4 Unnamed Hill northeast of the Old Province Road-Cheney Road intersection from an elevation of 372 meters (1220 feet) to the summit,

18.3.5 Area south of Bly Hill Road (Old Province Road) from an elevation of 390 meters to various summits,

18.3.6 Mt. Sunapee from an elevation of 450 meters to the summit, outside of the state park,

18.3.7 Hill No. 474 (Bear Hill) from an elevation of 420 meters to the summit,

18.3.8 Poor Farm Hill from an elevation of 305 meters (1000 feet) to the summit,

18.3.9 Bald Sunapee from an elevation of 510 meters to the summit,

18.3.10 Wright Hill from an elevation of 275 meters (900 feet) to the highest elevation within Newbury.

18.4 General

Clear-cutting of forested land in the district is prohibited, except as permitted in this Article. Existing non-conforming clear-cut areas that are allowed to grow to the clear-cutting minimum shall not be clear cut again except as provided below. (See definition of "Clear-cutting")

18.5 Forestry

Clear-cutting as a forestry practice is permitted as follows:

18.5.1 Clearing patch cuts of up to five (5) acres in size in the undeveloped areas of this district for improving wildlife habitat is permitted provided they are stumped and planted to grass and provided that they do not alter the sky line. Such patch cuts shall be part of a forest management plan and supervised by a licensed, professional forester.

A cutting plan shall be drawn up which specifies the logging techniques and erosion control measures to be used. The cutting plan shall be submitted to and approved by the Selectmen after review and comment by the Conservation Commission prior to the commencement of any clear-cutting.

18.5.2 To correct a serious disease, insect damage, or blowdown condition provided that the need for such action is certified by a licensed, professional forester and provided that it is carried out in accordance with a cutting plan and supervised by a licensed, professional forester.

A cutting plan shall be drawn up which specifies the pruning and logging techniques and erosion control measures to be used. The cutting plan shall be submitted to, and shall include reforestation. The cutting plan shall be submitted to and approved by the Selectmen after review and comment by the Conservation Commission prior to any clean-up or restoration effort.

18.5.3 Areas clear-cut under this section shall not be developed until they have been reforested to the clear-cutting minimum. (See definition of "Clear-cutting")

18.6 Farming

Clear-cutting for farming is permitted as follows:

18.6.1 Clearing farm land in the undeveloped areas of this district for agricultural operations is permitted provided they are stumped and adequate soil erosion controls put in place and soils improvements are made. Such farming clear cuts shall be part of an agricultural management plan and shall include practices and technologies recommended by UNH Cooperative Extension Service, U.S. Natural Resources Conservation Service, or other government or private, non-profit natural resource conservation and management agencies then active. The agricultural management plan must be approved by the Selectmen after review and comment by the Conservation Commission prior to the commencement of any clear-cutting.

18.6.2 One residence for the owners, occupants, or employees engaged in farming operations on the parcel of land and necessary farm out buildings may be constructed on the site, provided they meet all the requirements of this ordinance. Every effort shall be made to retain mature trees around the residence and out buildings and in the buffer areas between properties.

18.6.3 Areas clear-cut under this section shall not be subdivided or further developed until they have been reforested to the clear-cutting minimum. (See definition of "Clear-cutting")

18.7 Building Site and Subdivision Development

A plan detailing any proposed cutting shall be submitted with all subdivision applications, building permit applications, and site plan review applications. Clear-cutting for building envelopes, views, road, driveways, and utility easements is permitted as follows providing no structure shall intrude into the skyline and no tree cutting shall alter the skyline as seen from any public road or water body beyond those bordering the lot.

18.7.1 Building Envelope: The building envelope permitted in this district is a rectangle with an up-slope boundary forty (40) feet or less from the building, side boundaries forty (40) feet or less from each side of the building, and a down-slope boundary twenty-five (25) feet or less from the building. Accessory structures shall be built within the building envelope or in a clearing no greater than twenty (20) feet around the structure. (See Diagram 1)

18.7.2 Down slope buffer area: In order to develop a view, trees and natural shrubbery may be removed beyond the down-slope boundary of the building envelope by either alternative as follows:

18.7.2.1 Trees may be removed beyond the building envelope until the tops of the trees remaining are at or above the level of the downslope building envelope for a width of clear cutting not to exceed twenty-five (25) feet and extending outward therefrom at an angle of forty-five (45) degrees or less on both sides. The twenty-five foot opening may be at any point along the down-slope boundary. (See Diagram 2)

18.7.2.2 Smaller trees and fifty percent of the standing trees larger than six (6) inches in diameter measured four and one half (4 ½) feet above the ground may be removed beyond the down slope building envelope for the full width of the building plus twenty-five (25) feet on each side and down hill until the tops of the trees remaining are at or above the level of the first floor. (See Diagram 3)

18.7.3 Roadways and Utilities: In the development of roads and/or clearing of utility easements, removal of trees shall be only to the extent essential for construction. Such roads and easements shall follow natural contours to the maximum extent possible to reduce or minimize earth work and avoid wide clear areas.

18.7.4 Perimeter Buffer Area: In subdivisions and in the development of building lots, a minimum buffer area of thirty (30) feet wide between the building envelope and property lines shall remain undisturbed except for driveways and utility lines. The specific intent of this paragraph is that there shall be no continuous strip clearing along contiguous lots.

18.7.5 Trimming and Pruning: Trimming and pruning to enhance growth, provide clearances necessary for utility services, is permitted, as is the removal of dead, diseased, or unsafe trees.

Figure 18.7.1: Building Envelope (Section 18.7.1)

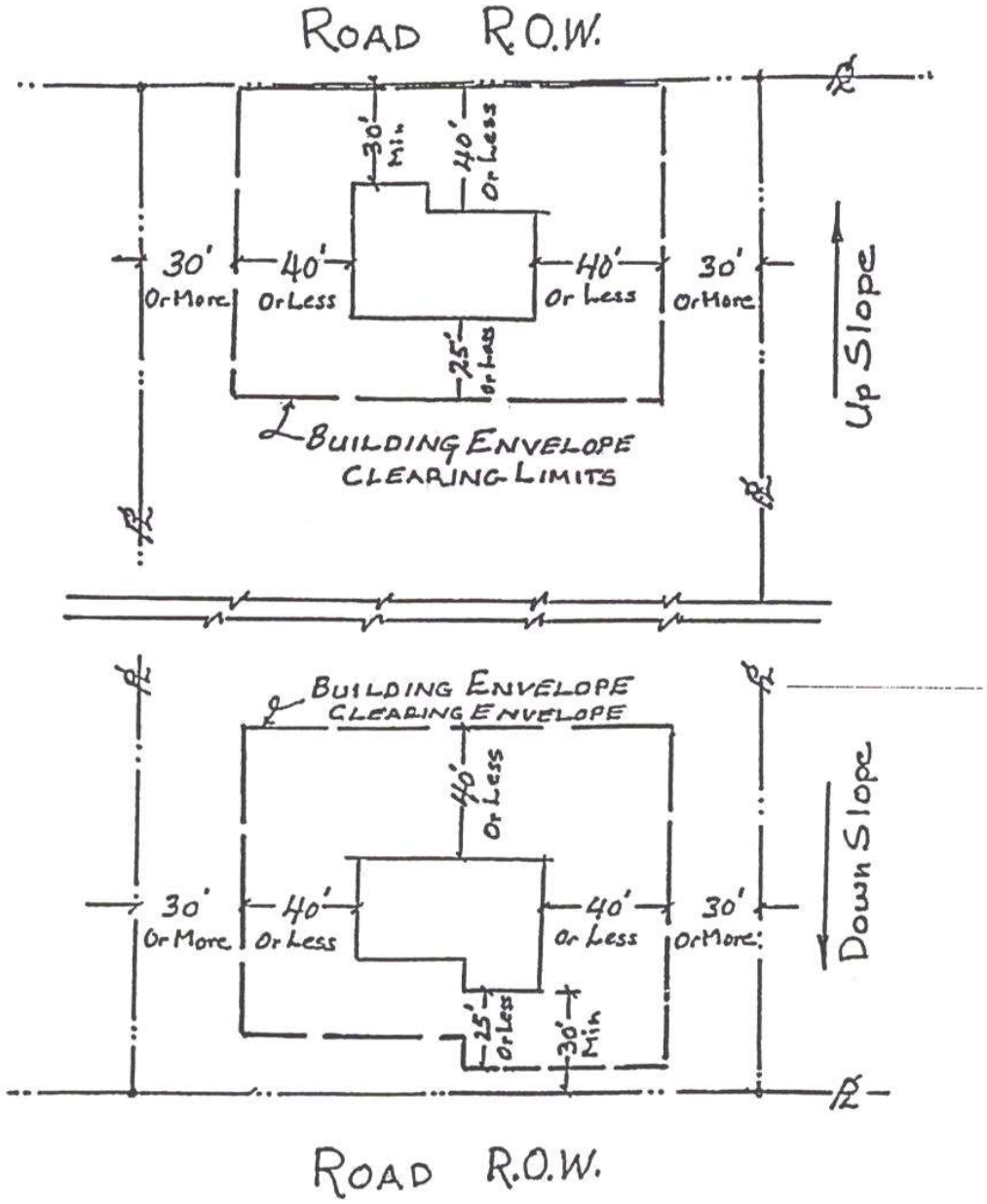


Figure 18.7.2: Clearing Limits (Section 18.7.2.1

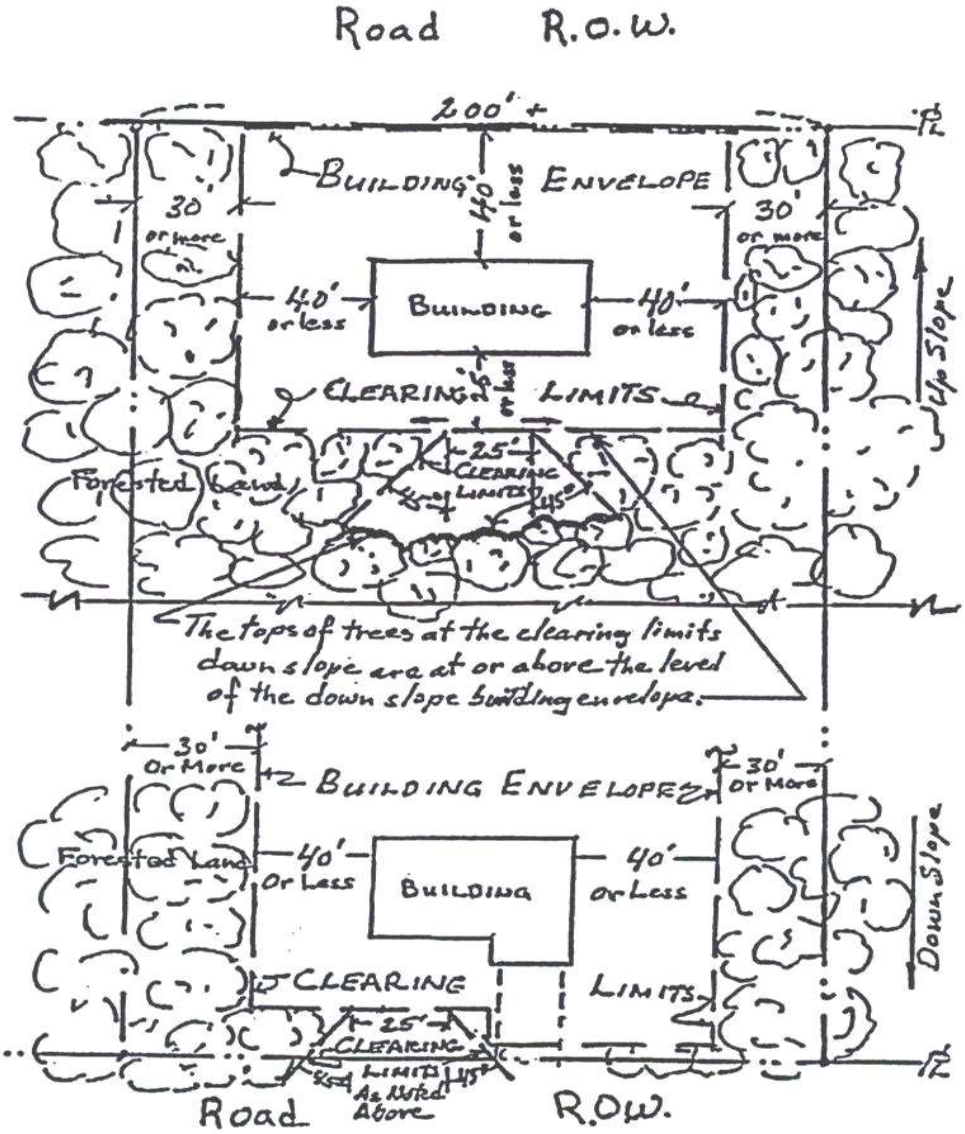
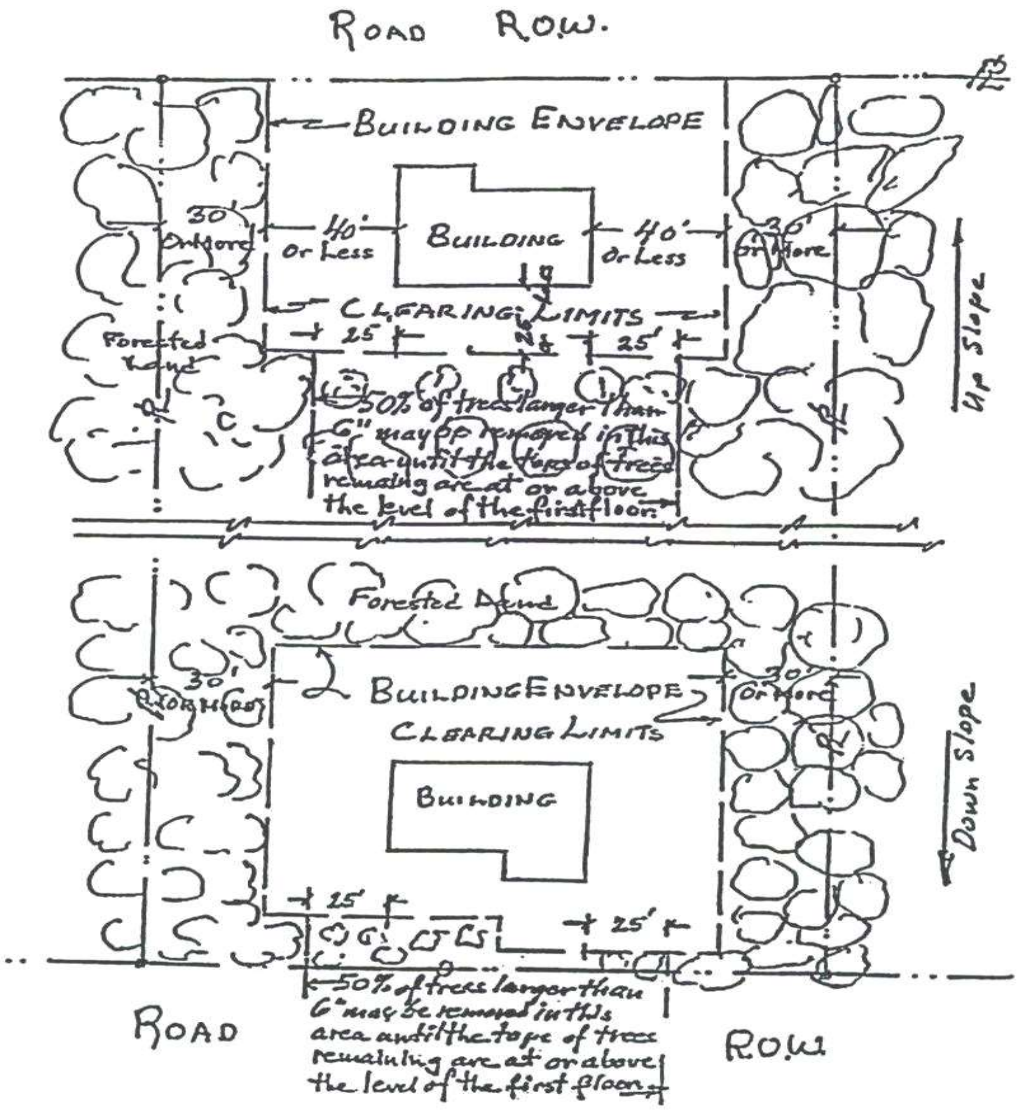


Figure 18.7.3: Clearing Limits (Section 18.7.2.2



18.8 Existing Lots of Record

In the case of existing lots where the lot size, configuration, topography, drainage, or site characteristics prevent compliance with the provisions of this Article, the owner may be granted a Special Exception to the building envelope and/or buffer areas provided they can clearly demonstrate there are no practical alternatives to the siting of the structures and site development to meet these provisions and the resulting relief most clearly satisfies these provisions and the intent of this Article.

ARTICLE 19. IMPACT FEES

19.1 Purpose

The purpose of impact fees is to allocate a share of town capital costs to the developers and new residents who would bring about quantifiable increases in capital expenditures because of their subdivision, building construction, or development plans. In addition, it is intended that the imposition of impact fees will help to prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services.

19.2 Authority to Assess Impact Fees

The Planning Board shall have the sole authority to assess impact fees pursuant to RSA 674:21. In addition the Planning Board shall have the authority to adopt regulations to implement the provisions of this Article.

19.3 Impact Fee Calculation

The amount of any impact fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

19.4 Impact Fee Administration

19.4.1 Each impact fee shall be accounted for separately, and shall be segregated from the Town's general fund. Fee money may be spent only upon order of the Board of Selectmen, and shall be used solely for the capital improvements made in anticipation of the needs for which the fee was collected.

19.4.2 Assessment and Collection:

19.4.2.1 Impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development.

19.4.2.2 Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of assessed impact fees.

19.4.2.3 Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy; provided however, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit.

19.4.3 The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule for payment of impact fees.

19.5 Impact Fee Time Limits

Any portion of an impact fee assessed under this Article which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded to the assessed party, with any accrued interest, within six (6) years from the date of payment. Whenever the calculation of the impact fee has been predicated upon some portion of capital improvement costs being borne by the Town, a refund shall be made upon the failure of the Town Meeting to appropriate the Town's share of the capital improvement costs within six (6) years from the date of payment.

19.6 Applicability

This Article shall not be deemed to affect the existing authority of the Planning Board over subdivisions and site plans, including, but not limited to the authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, 11(a).

ARTICLE 20. AQUIFER PROTECTION OVERLAY DISTRICT

20.1 Purpose

The purpose of the Aquifer Protection Overlay District is to protect future ground water sources from potential contaminants and human intervention that might limit recharge. The intent of this Overlay District is to provide for the overall health and safety to the public by preserving and maintaining existing aquifers. The Aquifer Protection Overlay District is a zoning overlay district that imposes additional requirements and restrictions to those of the underlying district zone.

20.2 Aquifer Protection Overlay District Boundaries

20.2.1 The extent of the Aquifer Protection Overlay District shall be the outermost edge of the superficial extent of all aquifer deposits presently designated as stratified drift aquifer, as mapped by US Geological Surveys, and the NH Department of Environmental Services, designated in the Water Resources Map of the most recent Natural Resource Inventory for the Town of Newbury.

20.2.2 Disputed Designated Boundaries: When the actual Aquifer Protection Overlay District boundary is in dispute, the landowner shall consult a professional geologist, hydrologist, or other professional to determine more accurately the boundary of the Aquifer Protection Overlay District. It is the obligation of the landowner to prove that they are not in an area of stratified drift aquifer. The Planning Board will make the final decision as to whether the disputed property is in the Aquifer Protection Overlay District or not.

20.3 Prohibited Uses

The following uses are not permitted in the Aquifer Overlay Protection District:

20.3.1 All handling, disposal, storage, processing or recycling of hazardous or toxic materials;

20.3.2 Disposal of solid waste. Brush and stumps may be disposed of only if generated from clearing land and are buried on the same site from which they were cleared. When buried they must be at least 4 feet above the existing water table;

20.3.3 Disposal of liquid or leachable wastes, except from single or multi-family residential subsurface disposal systems, or approved commercial or industrial systems which discharge human waste only;

20.3.4 Dumping of snow containing de-icing chemicals brought from outside the Aquifer Protection Overlay District;

20.3.5 Storage of road salt or salted sand except in enclosed, covered storage constructed in accordance with the standards of the U.S. Environmental Protection Agency (EPA);

20.3.6 Subsurface storage of petroleum and other refined petroleum products, except as regulated by the New Hampshire Water Supply and Pollution Control Division. The placement of residential underground storage tanks for petroleum and other refined petroleum products shall be allowed only in conformance with New Hampshire Water

Supply and Pollution Control Division underground storage tank guidelines for commercial uses;

20.3.7 Automotive service and repair shops, filling stations, car washes and junk and salvage yards;

20.3.8 Industrial uses which discharge contact type process waters on site;

20.3.9 Commercial animal feedlots;

20.3.10 Mining of land and Excavation of sand or gravel,

20.3.11 Septage lagoons.

20.3.12 Lawns in excess of one half (½) acre per every two acres.

20.4 Permitted Uses

The following uses may be permitted in the Aquifer Protection Overlay District:

20.4.1 Residential development

20.4.2 Farming, gardening, nursery, forestry, harvesting, and grazing provided that fertilizers, herbicides, pesticides, manure, and other leachables are used appropriately and not stored outdoors in accordance with the following;

20.4.2.1 The cultivation and harvesting of crops shall be performed in accordance with the recognized soil conservation practices of the Merrimack County Conservation District and agricultural practices as regulated by the State of New Hampshire;

20.4.2.2 Forestry or tree farming shall be performed in accordance with recognized management practices in order to protect the aquifer from contamination or damage as may be regulated by the Division of Forests and Lands of the NH Dept. of Resources and Economic Development.

20.5 Uses Permitted by Special Exception

20.5.1 Industrial and commercial uses, in the appropriate district, which discharge no non-human wastes on site and human wastes only in approved septic systems.

20.6 Performance Standards

All subdivision proposals and other proposed new developments within the Aquifer Protection Overlay District shall be reviewed by the Planning Board and shall conform to the provisions of this ordinance, the Subdivision and Site Plan Review Regulations of the Town of Newbury and the following:

20.6.1 All such proposals are consistent with the need to protect groundwater of the Town of Newbury and adjacent communities;

20.6.2 All sanitary sewer systems are designed to minimize or eliminate leakage or discharges from the system into the groundwater;

20.6.3 On site disposal systems are located so as to avoid or minimize groundwater contamination;

20.6.4 All surface storm water generated by development is kept on-site and handled in such a manner as to allow the water to infiltrate into the ground before leaving the site.

20.6.5 Streets, roads, and parking areas are constructed so that the need for direct application of road salt is minimized for winter safety, and so that run-off from such uses is channeled to avoid or minimize groundwater contamination.

20.7 Non-conforming Uses

20.7.1 Non- conforming uses at the time of adoption of this Article may continue as existing in accordance with ARTICLE 15 of this Ordinance except if they pose a direct hazard to the aquifer such as introducing hazardous substances into the aquifer or threatening the recharge of the aquifer. In this case the Selectmen shall issue an immediate cease and desist order to stop the offending activity.

ARTICLE 21. STORMWATER MANAGEMENT

21.1 Purpose and Intent

The purpose of this Article is to protect the public health, safety, and general welfare by regulating and guiding the management of stormwater impacted by the development of land in Newbury. It is the intent that this Article shall:

21.1.1 Prevent or reduce non-point source pollution which results from development.

21.1.2 Encourage the use of practices which will enhance ground water recharge and decrease surface water flows.

21.1.3 Reduce the velocity of stormwater flows throughout the watershed

21.1.4 Prevent off-site stormwater impacts from development.

21.1.5 Minimize the impact of development on existing hydrology and water quality by controlling runoff and soil erosion and sedimentation resulting from site construction and development.

21.1.6 Support adequate drinking water supplies by facilitating ground water recharge.

21.1.7 Protect town and state roads as well as private driveways from erosion and destruction caused by rain and snow-melt peak water flows.

21.1.8 Protect dams and associated impoundment structures from peak rain and snow-melt water flows.

21.1.9 Protect water bodies and wetlands from siltation and pollution caused by stormwater runoff.

21.2 Authority

The provisions of this Article are adopted pursuant to RSA 674:16, Grant of Power; RSA 674:17, Purposes of Zoning Ordinance; and RSA 674:21, Innovative Land Use Controls.

21.3 Applicability

The requirements of this Article shall apply to the owner of any tract of land being developed where any of the following conditions are proposed:

21.3.1 Erosion control is required under Section 7.10 for land under the jurisdiction of the Shoreland Overlay District.

21.3.2 A stormwater management system is required under Section 7.12 for land under the jurisdiction of the Shoreland Overlay District.

21.3.3 The slope of the land before or after development is 15% or greater and the area to be disturbed is 1000 square feet or greater.

21.3.4 The slope of the land is less than 15%, and the area to be disturbed is 1000 square feet or greater, and the disturbed area is 20 feet or less from the top of a slope of 15% or greater.

21.3.5 All slopes shall be measured over a horizontal run of 50 feet.

21.4 Landowner's Responsibilities

Under New Hampshire law, the land owner is responsible for compliance with local land use regulations. Contractors and vendors are responsible only for complying with the codes and licenses of their specialties. In this Article, actions required of the owner may be performed by others, but the owner must ensure compliance by the contractor.

21.4.1 The owner shall submit an application as specified in Section 21.5 to the Board of Selectmen or their agent for any work which meets the criteria above.

21.4.2 The owner shall be responsible for erecting temporary erosion control measures before construction or development begins.

21.4.3 The owner shall be responsible for erecting permanent stormwater management measures if impervious surfaces are added or if the terrain is altered.

21.4.4 The owner shall comply with all the plans submitted and approved by the Board of Selectmen or their agent.

21.4.5 The owner shall notify the Code Enforcement Officer after the temporary erosion control measures are in place and before work begins that the work is ready for inspection.

21.4.6 The owner shall notify the Code Enforcement Officer after work is complete that the work is ready for inspection.

21.4.7 The owner, and subsequent owners, shall be responsible for maintaining the temporary and permanent stormwater management measures in accordance with both the schedule and plan as submitted and approved.

21.5 Application Requirements

Application shall be made on an application form provided by the Board of Selectmen or their agent. A complete application shall consist of the following:

21.5.1 A completed application form.

21.5.2 A site drawing of existing and proposed conditions drawn to the scale of 1"=20' or an alternative scale acceptable to the Board of Selectmen or their agent. The following information shall be included:

21.5.2.1 A title block in the lower right-hand corner containing the tax map and lot numbers, the name and address of the owner of record, the name and address of the surveyor or engineer, date of last revision, and scale.

21.5.2.2 A location map, shown as an inset on the Site Plan, that shows the site in relation to major roads, bodies of water, and other landmarks of the town.

21.5.2.3 True north point, graphic scale.

21.5.2.4 Property lines

21.5.2.5 Easements.

21.5.2.6 The location, shape, and size of all existing structures, utilities, roads and paved areas.

21.5.2.7 Existing and proposed grades with topographic contours at intervals not exceeding two (2) feet.

21.5.2.8 The location of all existing on-site surface water, wetlands and drainage patterns.

21.5.2.9 The location of the existing boundaries of the watershed that serves the work site, both on-site and off-site, as determined from USGS topographic mapping.

21.5.2.10 Delineate existing wooded and open space areas in the proposed plan.

21.5.2.11 Soils information shall be determined from a National Cooperative Soil Survey (NCSS) soil series map. This information shall be used for design purposes or for determining highly erodible soils.

21.5.2.12 The location and type of best management practices for the temporary erosion and sediment controls.

21.5.2.13 The location and type of permanent stormwater management measures.

21.5.2.14 Show areas of soil disturbance.

21.5.3 A narrative section shall include a discussion of each measure, its purpose, construction sequence, installation timing, and timing of soil disturbance.

21.5.4 A schedule for the ongoing inspection and maintenance by the landowner of all permanent stormwater management measures after completion of construction.

21.6 Temporary Erosion and Sedimentation Controls

21.6.1 Temporary erosion and sedimentation control plans shall be prepared and designed in accordance with the standards and specifications outlined in the Stormwater Manual (See Section 21.7.1).

21.6.2 Appropriate temporary erosion and sedimentation control measures shall be installed prior to soil disturbance.

21.6.3 Temporary erosion and sedimentation control measures shall be inspected by the Code Enforcement Officer prior to the commencement of work.

21.7 Design Standards for Permanent Stormwater Management and Erosion Control

The following standards shall be applied in planning for permanent stormwater management and erosion control:

21.7.1 The term Stormwater Manual refers to: *New Hampshire Stormwater Manual*, December 2008, as amended.

21.7.2 Best management practices (BMPs – See Stormwater Manual) shall be used to control runoff from impervious surfaces and other areas such that runoff water from a ten-year storm event will not directly enter water bodies, streams or wetlands. All measures in the plan shall meet as a minimum the standards and specifications set forth in the Stormwater Manual a copy of which is available in the code enforcement office.

21.7.3 The area of disturbance shall be kept to a minimum. Disturbed areas remaining idle for more than 7 days shall be stabilized.

21.7.4 Sediment in runoff water shall be trapped and retained within the project area using Best Management Practice measures.

21.7.5 Off-site surface water and runoff from undisturbed areas shall be diverted away from disturbed areas where feasible or carried through the project area without picking up pollution or sediment. Integrity of downstream drainage systems shall be maintained. A

permit from Wetlands Bureau of the NH Department of Environmental Services may be required for this activity.

21.7.6 Measures shall be taken to control the post-development peak rate of runoff so that it does not exceed pre-development runoff specified in the design criteria of the Stormwater Manual (See Section 21.7.1) by using techniques such as level spreaders and infiltration basins .

21.7.7 Priority shall be given to preserving natural drainage systems including perennial and intermittent streams, wetlands, swales, and drainage ditches for conveyance of runoff leaving the project area. Such natural drainage systems shall not be altered and shall be protected from excessive volume and velocity of flow.

21.7.8 All temporary erosion and sedimentation control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within 7 days.

21.7.9 Soil compaction shall be minimized by using the smallest (lightest) equipment possible and minimizing travel over areas that will be revegetated or used to infiltrate stormwater (e.g., bioretention areas). In no case shall excavation equipment be placed in any portion of an infiltration area during construction.

21.7.10 No ground disturbed as a result of site construction and development shall be left as exposed bare soil. All areas exposed by construction, with the exception of the finished structure and pavement footprints, shall be scarified and aerated to the depth of compaction, and covered with a minimum of 4 inches of non-compacted topsoil. A minimum of 6 inches of non-compacted topsoil is recommended for lawns. All topsoil shall be planted with a combination of living vegetation such as grass, groundcovers, trees, shrubs, and other landscaping materials (mulch, loose rock, gravel, and stone). Bark mulch, three inches thick, can be applied to cover exposed soils.

21.8 Implementation Guidelines for Permanent Control

21.8.1 The preferred approach to handling stormwater from impervious surfaces is to break up the collection of the stormwater into small areas, as opposed to concentrating runoff from many or large such surfaces. Collection of runoff with impervious surfaces segregated into small collection areas can allow for the stormwater to be dispersed with elements such as level spreaders, or as sheet flow into naturally wooded or vegetated areas within the property. The purpose of this approach is to reduce the volume and velocity of flow in any given area.

21.8.2 The use of nontraditional and/or nonstructural stormwater management measures, such as Low Impact Development (LID) approaches, which include site design approaches to reduce runoff rates, volumes, and pollutant loads, are preferred and shall be implemented to the maximum extent practical. Such techniques include, but are not limited to, minimization and/or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; reforestation or enhancement of natural areas such as riparian areas, wetlands, and forests; and use of practices that intercept, treat, and infiltrate runoff from developed areas disturbed throughout the site; e.g., bioretention, infiltration dividers or islands, planters, and rain gardens.

21.8.3 Site development should follow the natural contours of the landscape to the maximum extent possible to minimize grading.

21.8.4 Cut and fill should be minimized, with the maximum height of any fill or depth of any cut area, as measured from the natural grade, not greater than 10 feet and preferably limited to 4 to 6 feet.

21.8.5 Natural vegetation should be retained, protected or supplemented. The stripping of vegetation should be limited to the extent necessary and done in a manner that minimizes soil erosion.

21.8.6 Refer to the Stormwater Guide for further information.

21.9 Administration

21.9.1 The Board of Selectmen and/or their agent shall review and approve or deny all plans before issuing a building permit or before the start of any earth disturbance and shall require the applicant to post a bond or other security in an amount commensurate with the cost of remediation to assure conformance with approved plans.

21.9.2 The security shall not be released until the Board of Selectmen and/or their agent has certified completion of the required improvements in accordance with the plan.

21.9.3 The Board of Selectmen and/or their agent may request the Conservation Commission to review the plan and make recommendations.

21.9.4 The Code Enforcement Officer shall inspect temporary erosion and sedimentation control measures for compliance with the plan before the commencement of work.

21.9.5 The Code Enforcement Officer shall inspect permanent stormwater measures for compliance with the plan when the work is complete.

21.9.6 The Board of Selectmen or their agent may require routine inspections to verify on-going maintenance of water quality protection measures.

21.9.7 The Board of Selectmen may contract with such consultants as it deems necessary to assess the application and establish fees for the administration of this ordinance. Approval of an application as described above shall be construed as granting a permit. The fee schedule established by the Board of Selectmen shall defray the cost of administration, review of applications, inspections and enforcement.

21.9.8 Failure of temporary erosion and siltation control measures or permanent stormwater management measures shall be considered a violation of this ordinance and may be prosecuted under ARTICLE 23.

ARTICLE 22. SMALL WIND ENERGY SYSTEMS ORDINANCE

22.1 Purpose

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66 and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

22.2 Procedure for Review

22.2.1 Building Permit: Small wind energy systems and meteorological towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Board of Selectmen, or its designee. A building permit shall be required for any physical modification to an existing small wind energy system. Meteorological towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued. Small wind energy systems that are in operation prior to the enactment of this ordinance are required to comply with this ordinance only when the system is physically modified.

22.2.2 Application: Applications submitted to the code enforcement officer shall contain a site plan with the following information:

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

22.2.2.2 Location, dimensions, and types of existing major structures on and within 200 feet of the property.

22.2.2.3 Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.

22.2.2.4 Tower and Tower foundation blueprints or drawings stamped by an engineer.

22.2.2.5 Setback requirements as outlined in this ordinance.

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

22.2.2.7 Any overhead utility lines.

22.2.2.8 Certification by the manufacturer or NH licensed engineer of the required Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity, and a sound level analysis prepared by the wind generator manufacturer or qualified engineer.

22.2.2.9 Small wind energy systems that will be connected to the power grid shall include a copy of the application for the interconnection with their electric utility provider.

22.2.2.10 Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.

22.2.2.11 List of abutters to the applicant's property.

22.2.2.12 The limits of clearing the natural vegetation shall be identified on the site plan.

22.2.3 Abutter and Regional Notification: In accordance with RSA 674:66, the code enforcement officer shall notify all abutters by certified mail and the board of selectmen upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comment to the local governing body and the code enforcement officer prior to the issuance of the building permit. The code enforcement officer shall review the application for regional impacts. If the proposal is determined to have potential regional impacts, the code enforcement officer shall follow the procedures set forth in RSA 36:57, IV.

A Development of Regional Impact could reasonably be expected to potentially impact a neighboring town because of such factors as, but not limited to, the following:

22.2.3.1 Proximity to the borders of a neighboring municipality;

22.2.3.2 The potential visual impacts created by the project location, the system height and the topography from the abutting town(s); and

22.2.3.3 Access to the small energy wind system site provided through an abutting town.

22.3 Standards

The code enforcement officer shall evaluate the application for compliance with the following standards:

22.3.1 Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number in the chart below by the system height and be measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirement Number			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

22.3.1.1 Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

22.3.1.2 Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

22.3.2 Tower Height: The maximum tower height shall be the minimum height necessary for the system to function at its rated capacity over the estimated lifespan of the device, as certified by either the Small Wind Energy System manufacturer or, if hired, an engineer licensed in the state of New Hampshire. In no situation shall the tower height exceed 150 feet.

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

22.3.4 Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in shadow flicker impacts on an occupied building on an abutting property.

22.3.5 Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for one small manufacturer identification or appropriate warning signs.

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

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

22.3.7.1 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 and wind generator design or appearance.

22.3.7.2 The color of the small wind energy system shall be a non-reflective, unobtrusive color that blends in with the surrounding environment.

22.3.7.3 A small wind energy system shall not be artificially lit.

22.3.8 Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, when available.

22.3.9 Utility Connection: 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.

22.3.10 Access: The tower shall be designed and installed so as not to 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.

22.3.11 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.

22.4 Abandonment

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

22.4.2 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 code enforcement officer. "Physically remove" shall include, but not be limited to:

22.4.2.1 Removal of the wind generator and tower and related above-grade structures.

22.4.2.2 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 its same condition at initiation of abandonment.

22.4.3 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 code enforcement officer 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. After review of the information provided by the owner, the code enforcement officer shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the code enforcement officer shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

22.4.4 If the owner fails to respond to the Notice of Abandonment or if, after review by the code enforcement officer, 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 generator 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 after the Notice of Abandonment procedure, the Board of Selectmen, or its designee, may pursue legal action to have the small wind energy system removed at the owner's expense.

22.5 Violation

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance, or a small wind energy system if it is determined by the Board of Selectmen, or its designee, to be a hazard to the public health, safety and/or welfare. Physical alterations that do not materially alter the size or type of small wind energy system after adoption of this ordinance are exempt from this ordinance.

22.6 Penalties

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties provided in ARTICLE 23 Enforcement.

ARTICLE 23. ENFORCEMENT

23.1 Enforcement, Fines, Penalties and Injunctive Relief

This ordinance shall be enforced by the Board of Selectmen as provided by RSA 676:15, 676:17, 676:17-a and 676:17-b.

ARTICLE 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

This Ordinance may be amended in accordance with the requirements and procedures established in Chapter 675 NH Revised Statutes Annotated and amendments thereto.

24.2 Conflict with Other Regulations

If any section of this Ordinance is more restrictive with respect to the use of structures or land than other statute, ordinance, regulation, rule, easement, or agreement, the provisions of the more restrictive shall apply.

24.3 Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance.

24.4 Effective Date

This Ordinance and any amendments thereto shall take effect on the date of adoption.

EFFECTIVE MAY 11, 1970
(Revised June 4, 1971)
(Revised April 1, 1972
(Revised March 6, 1973)
(Revised March 5, 1974)
(Revised March 8, 1977)
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