

# Town of Newbury, N.H. Zoning Ordinance

## Amendment Proposal

Noticed: December 31, 2015  
Public Hearing: January 13, 2016  
Public Vote: March 8, 2016

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

### Notes:

1. Proposed amendments are highlighted in blue with “~~striketrough~~” for deletions or “underline” for new language.
2. This document presents final proposed amendment language per action of the Planning Board on January 13, 2016.
3. Other administrative changes were made to the Zoning Ordinance including formatting, and numbering, but not substantive.

**TOWN OF NEWBURY, NH**  
**ZONING AMENDMENTS FOR PUBLIC VOTE MARCH 8, 2016**  
**ZONING AMENDMENT NO. 1: BUILDINGS AND STRUCTURES**

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The *Planning Board's Amendment No. 1 to the Zoning Ordinance* proposes to amend and clarify language surrounding buildings, structures, setbacks, and storage containers.

**PROPOSED AMENDMENTS**

**ARTICLE 2. DEFINITIONS**

**AMEND** *existing definitions:*

**2.19 Building:** Any structure for the shelter, support or enclosure of persons, animals or property having a roof and being permanently located on the land. ~~For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.~~

**2.148 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.

**NEW** *definitions:*

**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.

**RATIONALE**

These changes will provide more clarity surrounding structures and buildings to eliminate ambiguity in interpretation of the Zoning Ordinance.

**TOWN OF NEWBURY, NH**  
**ZONING AMENDMENTS FOR PUBLIC VOTE MARCH 8, 2016**  
**ZONING AMENDMENT NO. 2: WATER ELEVATIONS**

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The *Planning Board's Amendment No. 2 to the Zoning Ordinance* proposes to amend and clarify language surrounding regulatory water levels and elevations.

**PROPOSED AMENDMENTS**

**ARTICLE 2. DEFINITIONS**

**AMEND** *existing definitions:*

**2.84 Mean Sea Level:** The ~~National Geodetic Vertical Datum (NGVD) of 1929~~ 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.

**2.97 Normal High Water:** ~~See Reference Line. The limit of the flowage rights in a regulated water body. 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. On Lake Sunapee the normal high water is defined as elevation 1094.15 feet above sea level according to U.S.G.S. data or 11.5 feet on the gauge at the dam in Sunapee harbor. For Lake Sunapee, the normal high water elevation of 1094.15 feet above sea level is defined by the New Hampshire Water Resources Board as the natural mean high water level.~~

**2.115 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 1094.15~~ 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, U.S.G.S. data or 11.5~~ 10.5 feet on the gauge at the dam in Sunapee Harbor. ~~For Lake Sunapee, the normal high water elevation of 1094.15 feet above sea level is defined by the New Hampshire Water Resources Board as the natural mean high water level.~~
- e. For rivers, the ordinary high water mark as established by NH Department of Environmental Services.

**2.165 Water Surface Elevation:** The height, in relation to the ~~National Geodetic Vertical Datum (NGVD) of 1929~~ North American Vertical Datum of 1988 (NAVD 88), (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

**TOWN OF NEWBURY, NH**  
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**ZONING AMENDMENT NO. 2: WATER ELEVATIONS**

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**RATIONALE**

These changes will provide updated information on the regulatory water levels referenced in the Zoning Ordinance to be consistent with the Flood Insurance Rate Map and state laws and environmental regulations. This amendment also specifies how the water levels are measured by the respective agencies.

**TOWN OF NEWBURY, NH**  
**ZONING AMENDMENTS FOR PUBLIC VOTE MARCH 8, 2016**  
**ZONING AMENDMENT NO. 3: SHORELAND OVERLAY DISTRICT**

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The *Planning Board's Amendment No. 3 to the Zoning Ordinance* proposes to amend and clarify language clearing, cutting, and management of trees in the Shoreland Overlay District.

**PROPOSED AMENDMENTS**

**ARTICLE 2. DEFINITIONS**

**NEW definitions:**

**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.

**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.

**ARTICLE 7. SHORELAND OVERLAY DISTRICT**

**AMEND** Section 7.3 (now 7.4 due to administrative re-numbering) Site Requirements with

**NEW SECTION**

**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.**

**AMEND** Section 7.6 (now 7.7 due to administrative re-numbering) Waterfront Buffer

**7.6.2.2 ~~Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the Board of Selectmen.~~**

**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.**

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**ZONING AMENDMENT NO. 3: SHORELAND OVERLAY DISTRICT**

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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 is prohibited.

7.7.3.1 ~~Normal~~ Selective trimming, pruning, and thinning of branches ~~to the extent~~ when necessary to protect structures, maintain clearances, and provide views are 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.

**AMEND** *Section 7.7 (now 7.8 due to administrative re-numbering) Natural Woodland Buffer*

7.8.2.2 Dead, diseased, or unsafe, trees, ~~limbs, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to~~ 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.

**NEW**

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.

**RATIONALE**

These amendments address recurring issues associated with tree clearing and maintenance practices in the Shoreland Overlay District that can cause degraded water quality in the adjacent water body and have negative impacts on waterfront aesthetics. The proposed language enhances existing regulations and procedures intended to maintain public health, welfare, and quality of life.

**TOWN OF NEWBURY, NH**  
**ZONING AMENDMENTS FOR PUBLIC VOTE MARCH 8, 2016**  
**ZONING AMENDMENT NO. 4: ADMINISTRATIVE CHANGES**

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The *Planning Board's Amendment No. 4 to the Zoning Ordinance* proposes to amend and clarify language to make it consistent with State and Federal regulations and add permitted uses.

**PROPOSED AMENDMENTS**

**ARTICLE 2. DEFINITIONS**

**DELETE** *existing definitions:*

**Variance, Area:** ~~Permission to relax one or more of the incidental limitations to a permitted use such as setback, frontage, height and lot size.~~

**Variance, Use:** ~~Permission to undertake a use of land that the zoning ordinance prohibits.~~

**ARTICLE 4. BUSINESS DISTRICT**

**ADD** to Section 4.2 *Uses Permitted and subject to Site Plan Review approval by the Planning Board*

Trailhead and recreational trail parking

**ARTICLE 5. RESIDENTIAL DISTRICT**

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

Trailhead and recreational trail parking

**ARTICLE 8. WETLANDS CONSERVATION OVERLAY DISTRICT**

**AMEND** Section 8.2 (now 8.3 due to administrative re-numbering) *Wetlands conservation Overlay District Boundaries*

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

**ARTICLE 10. FLOOD PLAIN OVERLAY DISTRICT**

**AMEND** Section 10.8 (now 10.9 due to administrative re-numbering ) *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. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the NH Department of Environmental Services and submit copies of such notification to the Code Enforcement Officer, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer, including notice of all scheduled hearings before the Wetlands Bureau.~~

**ARTICLE 17. PERSONAL WIRELESS SERVICE FACILITIES**

**AMEND** Section 17.4 *Use Regulations:*

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**ZONING AMENDMENT NO. 4: ADMINISTRATIVE CHANGES**

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17.4.1 Existing Tower Structures: Subject to the issuance of a building permit ~~that includes review by the Planning Board, which review shall be limited to issues relating to access, bonding, and security for removal, structural integrity and appropriate camouflage of such siting~~, 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.

**RATIONALE**

The deleted definitions remove “use” and “area” variance, which are no longer used in variance review. The addition of, “Trailhead and recreational trail parking,” to the Business and Recreational Districts seek to clarify allowance of the use as allowed. Changes to Sections 8.2 and 10.8 clarify intent of the Zoning Ordinance. Removing Planning Board review from the requirements to permit personal wireless services facilities on existing towers makes the Zoning Ordinance compliant with Federal Communications Commission regulations.

**TOWN OF NEWBURY, NH**  
**ZONING AMENDMENTS FOR PUBLIC VOTE MARCH 8, 2016**  
**ZONING AMENDMENT NO. 5: BLODGETT LANDING COTTAGE DISTRICT**

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The *Planning Board's Amendment No. 5 to the Zoning Ordinance* proposes to amend the boundary description of the Blodgett Landing Cottage District.

**PROPOSED AMENDMENTS**

**ARTICLE 6. BLODGETT LANDING COTTAGE DISTRICT**

**AMEND** *Section 6.3 District Boundaries*

~~The Blodgett Landing Cottage District comprises that area served by the Blodgett Landing sewer system as of the date of acceptance of this Article (March 11, 2003) and is bordered by properties with street frontage on Maple Way to the north, Pine Street to the east, Blodgett Landing Road to the south, and Lake Sunapee to the west as shown on the District Map. The District Map can be viewed in the Selectmen's Office or it can be purchased in the Town Office.~~

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.

**RATIONALE**

The proposed new Blodgett Landing Cottage District boundary description provides more clarity regarding lots within the district.