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**DEFINITIONS** (Added March 2000)

Except where specifically defined herein, the words used in this Ordinance shall carry their customary meaning. The following words are specifically defined.

**ABUTTER:** Abutter means any person whose property adjoins or is directly across the street or stream from the land under consideration by the local land use board. For 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.

**ACCESSORY APARTMENT:** One apartment provided it is located within a single-family dwelling; and is clearly a subordinate part thereof; and has safe and proper means of entrance and exit.

**ACCESSORY BUILDING:** A building whose purpose is subordinate to that of the main building. It may be separate from or attached to the main building. For the purpose of this Ordinance a breezeway, a garage or a carport that is attached directly, or by means of another structure, to the main building shall be regarded as an integral part of the main building. Any accessory structure over 1,200 square feet will require Planning Board approval first. (Amended March 2005)

**ACCESSORY USE:** Any subordinate use of premises which customarily is accepted as a reasonable corollary to the principal use thereof and which is neither injurious nor detrimental to the neighborhood.

**ADULT USE:** A business where more than 25% of the gross revenues, 25% or more of the stock in trade, or 25% or more of the goods or paraphernalia displayed are of a sexually oriented or sexually explicit nature. Such goods and paraphernalia include, but are not limited to sexually explicit books, videos, or devices. Examples of adult uses include, but are not limited to, theaters or mini-motion picture displays where sexually explicit films or videos are shown, nude modeling studios, massage parlors, escort agencies or sexual encounter centers. Businesses where body piercing and tattoos are performed shall be considered adult uses unless completed by a licensed physician in their place of practice.

**AGRICULTURE, FARM, FARMING:** For the purposes of this Ordinance the definition shall reference NH RSA 21:34-a as amended.

**ALTERATION:** Any alteration of a building or a fabricated structure means a change, rearrangement, or addition involving the original structural parts, or significant changes, or additions to the plumbing, gas piping, electrical wiring, ventilation, or heating installations. Such alterations are not to be confused with replacements or repairs.

**ANIMAL FEEDLOT:** A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock.

**AQUIFER:** For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal, private, or public water supplies. (Amended March 2012)

**BEDROOM:** A room with an interior door that is primarily intended for sleeping. (Amended March 2012)

**BUILDING:** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

**BUILDING COVERAGE:** The aggregate or the maximum horizontal cross section area of all buildings on the lot including accessory buildings but excluding cornices, eaves, or gutters projecting not more than thirty (30) inches. Structures less than eighteen (18) inches above ground level shall not be included in calculating building coverage.

**BUILDING INSPECTOR:** The duly appointed building inspector, or any other duly designated agent, as appointed by the Board of Selectmen. Such agent(s) shall possess and be vested with all the rights, authority, responsibility and protections accorded the building inspector within the jurisdiction of his/her appointment by the Selectmen.

**BUILDING HEIGHT:** The vertical distance measured from the average level of the grade at the building line to the highest point of the roof, excluding chimneys, ventilators, silos, and other accessory features required above the roof.

**CERTIFICATE OF OCCUPANCY:** A statement signed by the Building Inspector setting forth either that a building or structure complies with this Ordinance or that a building, structure or parcel of land may lawfully be occupied for specified uses or both.

**CERTIFIED SOIL SCIENTIST.** A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists.

**CONDITIONAL USE:** A use that, because of special requirements or characteristics, may be allowed in a particular zoning district only after review by the Planning Board and granting of conditional use approval imposing such conditions as necessary to make the use compatible with other uses permitted in the same zone or vicinity. (Added March 2005)

**CONDOMINIUM:** Real property, and any interests therein, lawfully submitted to RSA 356-B by the recordation of condominium instruments pursuant to the provisions of RSA 356-B.

**CONTIGUOUS:** Next to, abutting, or touching and having a boundary, or portion thereof, that is coterminous.

**DEMOLITION:** Destruction of a structure or portion thereof or commencement of work with the purpose of completing the same except in conjunction with construction of a permitted addition or alteration. Demolition shall include the cutting away of any wall, partition, portion thereof or the removal or cutting of any structured beam or bearing support affecting the exterior of the structure.

**DEVELOPABLE AREA:** An area of 43,560 square feet or minimum lot size as defined by soil type lot size regulations as adopted by the Town of Newton.

**DUPLEX:** A building designed and/or used for residential purposes and containing two principal dwelling units separated by a common party wall or otherwise structurally attached.

**DWELLING:** A building or portion thereof containing one or more dwelling units, but not including hotels, motels, rooms of a boarding house, clubs, lodges, trailers, or structures solely for transient or overnight occupancy.

**DWELLING UNIT, SINGLE FAMILY:** A detached building designed for or occupied exclusively by one family.

**EASEMENT:** A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation, or another person or entity.

**EXCAVATION:** Excavation means a land area which is used, or has been used, for the commercial taking of earth, including all slopes, pursuant to RSA 155-E:1.

**FAMILY:** Individuals occupying a dwelling unit and living together as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

**FRONTAGE:** The horizontal distance measured along a lot line dividing a lot from a street. Driveways to single rear lots shall not be construed as frontage. In the case of corner lots, frontage and front lot lines shall mean the dimensions and lines on one street.

**GROSS FLOOR AREA:** The sum of the area of the several floors of the buildings as measured by the exterior faces of the walls, but excluding the areas of fire escapes, porches or terraces, and areas such as garages, basements and attics exclusively devoted to uses accessory to the operation of the building. (Amended March 2007)

**HOME BASED BUSINESS:** Any individual business or profession conducted entirely within a dwelling or accessory building which is incidental to the dwelling and which does not change either its character or that of the neighborhood in which it is established and which is conducted by the resident owner of the dwelling, employs not more than two persons outside the immediate family and utilizes an area not to exceed twenty five percent (25%) of the total floor area of finished floor space of the dwelling including the basement and accessory structures. (Added March 2007)

**HOME OCCUPATION:** Any individual business or profession conducted entirely within a dwelling or accessory building which is incidental to the dwelling such that there are no impacts detectable from beyond the property boundaries, no non-resident employees, no increase in traffic generation, no increase in parking, no outside activity or storage of any kind, and no exterior signage. (Amended March 2007)

**JUNK:** Two or more un-inspected motor vehicles no longer intended or in condition for legal use on the public highways; and/or any machinery, scrap metal or other worn, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to some use.

**JUNK YARD:** Any space more than 500 sq. ft. in area, outside a building, used for storage, keeping, processing, salvaging or abandonment of junk.

**KENNEL:** Any premises, site, or portion thereof, where 5 or more dogs, 10 weeks in age or older are bred, raised, trained, or kept for any reason. This definition does not include sites that are accessory to a veterinarian hospital where a licensed veterinarian practices or the SPCA.

**LIGHT INDUSTRY:** Includes all manufacturing and assembly processes carried on completely within a structure, and involving no permanent outside storage of equipment or materials (except as a customary accessory use in connection with the permitted activities within the structure), unless such storage is approved by the Newton Planning Board during the Site Plan Review process. Outdoor storage shall be permitted as an accessory use to a permitted use if it occupies an area of 20 percent or less of the footprint area of the principal building. Otherwise, outdoor storage shall require a special exception. All outdoor storage shall be appropriately screened from view and shall not occupy required open space or required parking areas. Light Industry shall not be interpreted to include any industry, the operations of which shall result in significant objectionable noise, glare, vibration or odor which would constitute a nuisance nor which would adversely affect other private or public properties.

**LOT:** A single parcel of land in the same ownership throughout as shown or defined on a recorded instrument or defined by metes and bounds and having its principal frontage on a street in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for building on such land.

**LOT AREA:** The extent in square feet of the surface of a lot. The lot area shall not include any part of the street upon which the lot fronts or abuts.

**LOT DEPTH:** The mean distance from the frontage line to the rear lot line when measured on a line halfway between the two side lot lines.

**LOT LINES:** The lines bounding a lot, and dividing the lot from other lots, streets or land.

**LOT LINE ADJUSTMENT:** The minor change of boundary lines between two abutting parcels that does not result in the creation of any new building lots.

**LOT OF RECORD:** A lot which is described in a deed which has been lawfully recorded in the Rockingham County Registry of Deeds, prior to the enactment of planning and zoning regulations in Newton (June 10, 1959), or which, if not so deeded, is a lot which is part of a subdivision, the plan of which has been lawfully recorded in such Registry of Deeds.

**LOT WIDTH:** The mean distance between the lot side lines measured on a line which is halfway between the front and rear lot lines.

**MANUFACTURED HOUSING:** The Town of Newton shall adhere to the definitions as prescribed by the State of New Hampshire RSAs 674:31, 31-a, & 32. The definition is as follows:

**674:31: Definition.** As used in this subdivision, “manufactured housing” means 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, 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 pre-site

built housing as defined in RSA 674:31-a.

**674:31-a: Definition; Pre-site Built Housing.** As used in this subdivision, “pre-site built housing” means 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. For the purposes of this subdivision, pre-site built housing shall not include manufactured housing, as defined in RSA 674:31.

**674:32: Manufactured Housing.**

I. Municipalities shall afford reasonable opportunities for the siting of manufactured housing, and a municipality shall not exclude manufactured housing completely from the municipality by regulation, zoning ordinance, or by any other police power. A municipality which adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality, or in manufactured housing parks and subdivisions created for the placement of manufactured housing or individually owned lots in most but not necessarily all, land areas in districts zoned to permit residential uses within the municipality, or in all 3 types of locations. Manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitations and other reasonable controls that conventional single family housing in the same district must meet. No special exception or special permit shall be required for manufactured housing located on individual lots or manufactured housing subdivisions unless such special exception or permit is required by the municipality for single family housing located on individual lots or in subdivisions. Municipalities permitting manufactured housing parks shall afford realistic opportunities for the development and expansion of manufactured housing parks. In order to provide such realistic opportunities, lot size and overall density requirements for manufactured housing parks shall be reasonable.

II. Notwithstanding paragraph I or any law or rule to the contrary, no zoning ordinance or bylaw shall prohibit an owner and occupier of a residence which has been damaged by fire or other disaster from placing a manufactured home on the lot of such residence and residing in such structure while the residence is being rebuilt. The period of such occupancy shall expire in 12 months from the placement of such structure or upon the issuance of a certificate of occupancy, whichever occurs first. Any such manufactured home shall be subject to State and Local requirements relating to water supply and sewerage disposal. A manufactured home that is placed on a lot under this paragraph shall not attain the status of a vested nonconforming use. (Amended March 2005)

MOBILE HOMES: Housing which is assembled off-site, built on a permanent chassis, can travel to the site on its own wheels and retain forever the possibility of being relocated readily to another site. Mobile homes typically are not placed on permanent foundations, but rest on grade or a slab with skirts to conceal the wheels and undercarriage.

MOTEL, HOTEL: A building designed for or used commercially as temporary living quarters for persons who are lodged with or without meals.

MOTOR VEHICLE: Any self-propelled vehicle, including boats. (Added March 2008)

MUNICIPALITY: To mean the Town of Newton.

NON-CONFORMING BUILDING OR STRUCTURE: A lawfully constructed building or structure that does not comply with the use regulations for the zoning district in which it exists, but which complied with all applicable regulations existing at the time of the construction of the building or structure.

NON-CONFORMING LOTS OF RECORD: A lot, properly recorded at the Rockingham County Registry of Deeds, which lawfully existed prior to the adoption, revision, or amendment of this ordinance, but which fails by reason of such adoption, revision, or amendment to conform to the use district in which it is located.

NON-CONFORMING USE (GRANDFATHERED): Any lawful use of buildings, structures, premises, land or parts thereof existing as of the effective date of this Ordinance, or amendment thereto, and not in conformance with the provisions of this Ordinance, shall be considered to be a non-conforming use. (Amended March 2003)

OCCUPANCY: The use of a structure, room or enclosed space designed for human habitation in which individuals congregate for amusement, education or similar purposes, or in which occupants are engaged at labor, where the structure, room or enclosed space is equipped with means of egress, light, and ventilation facilities meeting the requirements of the Town's Building Ordinance.

OPEN SPACE: Land or water area free of all structures, parking, drives, and other uses which preclude attractive landscaping in such area. Open space may be landscaped with lawn, trees, shrubs, or other planting and may include walks and terraces.

PLANNING BOARD: The Planning Board of the Town of Newton.

RECREATIONAL VEHICLE: A vehicle designed to be used for temporary occupancy for travel, recreational or vacation use.

REPAIR: Replacement or mending of parts already existing but in a state of deterioration with equivalent materials and for the purpose of maintaining their quality.

RIGHT-OF-WAY: All town, state and federal highways and the land on either side as covered by statutes to determine the widths of the rights-of-way.

SCHOOL: An institution for instruction of children and/or adults in a formal setting with a prescribed curriculum and certified teachers.

SEASONAL HIGH WATER LEVEL: The average annual high water elevation of a stream, brook or river, including contiguous wetlands and floodplains.

SELF-STORAGE OR WAREHOUSING: A business or use that consists of individual, self contained units, that may or may not vary in size, that are leased or owned for the storage of business equipment, supplies, household goods, or other items.

SETBACK, FRONT: The distance extending across the full width of a lot between the front lot line and the foremost point of the foremost part of the structure. In the case of a corner lot the front setback shall mean the distance measured from both intersecting streets.

SETBACK, REAR: The distance extending across the full width of a lot between the rear lot line and the rearmost point of the rearmost part of the structure nearest the rear lot line.

SETBACK, SIDE: The distance between a side lot line and the nearest point of the nearest part of a structure to it, extending from the required front setback to the required rear setback.

SIGN: Any name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public, and which directs attention to a product, place, activity, person, institution or business. A sign shall include writing, representation or other figure of similar character within a building only when illuminated and located in a window.

SIGN, ATTACHED: A sign which is attached to a building wall and which extends eighteen (18) inches or less from the face of such wall.

SIGN, CONTRACTOR'S: A temporary sign advertising the contractor or development firm actively engaged in developing the site or parcel on which the sign is located.

SIGN, FLASHING: Any sign or signal light with continuously variable illumination, whether achieved electrically or mechanically.

SIGN, FREE STANDING: A sign which is not attached or affixed to a structure or building and which is supported by a pole(s) or other supporting members.

SIGN, PROJECTING: A sign which is attached to a building wall and which extends more than eighteen (18) inches from

the face of such wall.

**SIGN, REAL ESTATE:** A temporary sign used by a real estate organization to advertise the site or parcel on which the sign is located.

**SIGN, SURFACE AREA OF:** The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside the limits of such perimeter which do not form an integral part of the display. For projecting or double-faced signs, only one (1) display space shall be measured in computing total surface area where the sign faces are parallel or where the interior angle formed by the faces is ninety (90) degrees or less.

**SITE PLAN:** A site development plan for non-residential, multi-family (rental units, condominiums and condominium conversions) and expanded home occupation uses drawn to adequate scale on a permanent medium, showing such information about the proposed development, including lot dimensions, size and location of facilities and site conditions, as are required in the Planning Board Site Plan Review Regulations. (Amended March 2012)

**SPECIAL EXCEPTION:** A use allowed by the Zoning Ordinance but under pre-determined conditions and after a public hearing before the Board of Adjustment to determine if the conditions have been met.

**STORY:** That part of a building or structure comprised between a floor and the floor or roof next above it.

**STREET:** A street shall mean a right-of-way which has been dedicated or intended for public travel, or a private way offering the principal means of access to abutting properties.

**STRUCTURE:** Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land. This definition shall include the tank and leaching bed of a septic system (but not the lateral fill extension of a leach field).

**STRUCTURAL ALTERATION:** Any change in the supporting members of a building or structure, such as load bearing walls, columns, beams or girders.

**SUBDIVISION:** The division of a lot, tract, or parcel of land into 2 or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes re-subdivision, and, where appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among several owners shall be deemed a subdivision under this title, per RSA 672:14.

**VARIANCE:** A variance is a waiver or relaxation of particular requirements of an ordinance when strict enforcement would cause undue hardship because of circumstances unique to the property. The Zoning Board of Adjustment is empowered to grant variances.

**WETLAND:** Any area falling within the jurisdictional definitions of Newton Wetland Ordinance. The Town of Newton has adopted the following language of RSA 482:A:2X. “Wetlands” means an area that is inundated or saturated by surface water or groundwater 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. (Amended March 2005)

The Town of Newton has also adopted the following language of RSA 674:55 as further wetlands definition:

**674:55: Wetlands.** Whenever the term “wetlands” whether singular or plural, is used in regulations and ordinances adopted pursuant to this chapter, such term shall be given the meaning in RSA 482-A:2,X and the delineation of wetlands for purposes of such regulation and ordinances shall be as prescribed in rules adopted under RSA 482-A. Nothing in this subdivision shall be construed to limit the powers otherwise granted under this chapter for municipalities to plan land use and enact regulations based on consideration of environmental characteristics, vegetation wildlife habit, open space, drainage, potential for flooding and protection of natural resources, including critical or sensitive areas or resources and groundwater. In the context of such authority, municipalities may define and delineate resources or

environmental characteristics, such as wet soils or areas, and shoreline or buffer areas, in a manner different from the common meaning and delineation of wetlands required herein. (Added March 2005)

YARD: An open space from the ground upward and open to the sky on the same lot with a building or a structure.

YARD, FRONT: A yard extending across the full width of a lot between the street right-of-way line and the nearest point of any building. In the case of a corner lot or waterfront lot, the front yard is the yard bordering the principal street. Front yard dimensions are to be measured from the street where a plan of the street is on file with the Registry of Deeds or in the Town records, or in the absence of such plan, from a line thirty (30) feet from property line, parallel with the center line of the traveled way.

YARD, REAR: A yard extending the full width of the lot along the rear lot line and extending in depth from the nearest point on the rear lot line to the nearest point of the principal building or buildings.

YARD, SIDE: A yard extending from a front yard to the rear yard and from the nearest point of a side lot line to the nearest point of the principal building or buildings.

**ZONING ORDINANCE  
FOR THE  
TOWN OF NEWTON, NH**

**SECTION I PREAMBLE**

The purpose of this bylaw is to promote the health, safety, welfare and convenience of the inhabitants by dividing the town into Zones and regulating the use with a view to encouraging the most appropriate use of land in the town in accordance with provisions of Chapter 31 of the New Hampshire Revised Statutes and any amendments thereto.

**SECTION II AMENDMENT**

This ordinance may from time to time be changed by amendment, addition, or repeal by a Town Meeting in the manner provided by Chapter 31 of the New Hampshire Revised Statutes Annotated.

**SECTION III VALIDITY**

This Ordinance shall supersede any existing town ordinance with which it may be in conflict. If any section, clause, provision, portion, or phrase of this ordinance shall be held to be invalid or unconstitutional by any court of competent authority such holding shall not affect, impair or invalidate any other section or phrase of this ordinance.

**SECTION IV ENFORCEMENT** (Added March 1988)

The Selectmen or their authorized representative shall be responsible for enforcing the provisions of this ordinance.

**SECTION V FINES AND PENALTIES** (Added March 1988)

Any violation of this Ordinance is punishable by a civil fine of not more than \$100 for each day that such violation is found by the court to continue after conviction date or after the date on which the violator receives written notice from the municipality that he is in violation of the ordinance, whichever date is earlier. The provisions of RSA 676:17, II, III, and IV are incorporated as part of this section.

**SECTION VI BOARD OF ADJUSTMENT**

A Board of Adjustment established in accordance with Chapter 31 of the New Hampshire Revised Statutes Annotated shall exercise all the duties and functions granted to it according to Chapter 31.

**SECTION VII ESTABLISHMENT OF ZONES** (Amended March 1977, amended November 1986, amended March 2003, amended March 2011, amended March 2012)

The Town of Newton is hereby divided into zones as follows:

1. Residential A
2. Residential B
3. Residential C
4. Commercial
5. Village District
6. Light Industrial/Commercial

These zones are hereby defined as follows:

1. Residential A – Residential A zone shall be defined as all areas not specifically defined in other zones as indicated in Appendices A, B, C, D, and E of this ordinance.
2. Residential B – The area of the Residential B zone shall be defined as the lots indicated in Appendix B of this ordinance.
3. Residential C – The area of the Residential C zone shall be defined as the lots indicated in Appendix C of

- this ordinance.
4. Commercial – The area of the Commercial zone shall be defined as the lots indicated in Appendix D of this ordinance.
  5. Village District – The area of the Village District zone shall be defined as the lots indicated in Appendix A of this ordinance.
  6. Light Industrial/Commercial – The area of the Light Industrial/Commercial zone shall be defined as the lots indicated in Appendix E of this ordinance.

#### **SECTION VIII PRELIMINARY SUBDIVISION REVIEW** (Added March 2005)

Per RSA 674:35, I, as mandated by the State of N.H.: The Planning Board is authorized to require preliminary subdivision review. The subdivision regulations regarding the requirements of such review are to be prepared and adopted by the Planning Board.

#### **SECTION IX PRELIMINARY SITE PLAN REVIEW** (Added March 2012)

Per State of New Hampshire RSA 674:43, the Planning Board is authorized to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units. The site plan regulations regarding the requirements of such review are to be prepared and adopted by the Planning Board.

#### **SECTION X GENERAL PROVISIONS**

1. No junkyard or place for the storage of discarded machinery, vehicles, junk or other scrap materials shall be maintained in any zone. Violations of this ordinance shall be subject to fines and penalties as outlined in RSA 676:17. (Amended March 1986, amended March 1994, amended March 2008)
2. No owner or occupant of land in any zone shall permit fire debris or other ruins to be left but shall remove the same within two (2) years. (Amended March 2012)
3. Any uses that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibrations, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health or safety of the community or that contribute to its disturbance or annoyance are prohibited in any zone.
4. No occupant or owner of land shall have or shall cause to have on their property or permit more than one (1) motor vehicle which is not registered and inspected, unless such vehicle is stored in a legally permitted structure, is stored in a manner consistent with an approved site plan, or is stored in a manner consistent with a legal, non-conforming use. Per RSA 266:1, any vehicle registered shall be inspected not later than 10 days after the registration or transfer of ownership of said vehicle. This shall include vehicles or appurtenances no longer intended for legal use on the highways, or used parts or materials from which, taken together, include in bulk one or more vehicles. Violations of this ordinance shall be subject to fines and penalties as outlined in RSA 676:17. (Amended March 1994, amended March 2003, amended March 2008, amended March 2016)

Exemptions to this article shall be limited to those vehicles used regularly on the premises for day-to-day existence (i.e., farm vehicles) or unless a properly licensed person or persons or corporation for the purpose of selling the same. (Added March 1994)

Owners of vehicles not currently meeting the requirements of this ordinance shall have ninety (90) days from the date of adoption of this ordinance to be in compliance. (Added March 1994)

5. The Board of Selectmen may issue temporary trailer permits in Residential and/or Commercial Zones (not Industrial Zones), only if house is rendered uninhabitable for any reason. Total length of time for all permits shall not exceed nine months. The Board of Selectmen has the authority to revoke subject permit if reason or reasons for issuance have ceased. (Added March 1985)

6. No commercial excavation shall be permitted in any residential zone. Excavation shall be permitted where it is incidental to the lawful construction or alteration of a building or structure, parking lot, way, or driveway. (Added March 1988)
7. All building heights shall be measured according to Current State of New Hampshire Building Code. (Added March 1989, amended March 2007)
8. Church spires or towers of Public Buildings may exceed the height restriction by no more than 40%. (Added March 1989)
9. There shall be no burial of unearthed stumps, demolition or construction materials in any zone in the Town of Newton. (Added March 2001, amended March 2012)
10. With the exception of automotive fueling stations there shall be no storage of bulk fuels for commercial sale within the Town of Newton. (Added March 2003)
11. Any accessory structures as defined in the zoning ordinance over 1,200 square feet are required to receive Planning Board approval prior to issuance of a building permit. (Added March 2005)
12. Building Safety. (Added March 2007)
  - a. The State Building Codes are RSA 155A (International Building Code) and current (Amended March 2020) Saf-C 6000 (State Fire Code). These codes are the statewide minimum requirements, which shall serve as the building code for the Town of Newton.
  - b. All new construction for residential or commercial use, shall be equipped by the owner with approved smoke detectors/carbon monoxide detectors as per current (Amended March 2020) National Fire Protection Assoc. (NFPA) 72 101; RSA 153:10:6; Saf-C 6000 and shall be inspected and approved by the Newton Fire Chief or his/her designee.
  - c. The minimum frost protection measured from the bottom of the foundation footing to finished grade shall be four (4) feet.
  - d. Appendix G of the 2000 International Residential Code shall be the minimum requirements for all pool, spa, hot tub, and barrier fencing for those installations.
  - e. Appendix F of the 2000 International Residential Code shall be the minimum requirements for the provisions of radon systems.
  - f. All construction, demolition, or work covered by the scope and purpose of these codes that is performed without permits shall be subject to \$100 stop work order plus the permit fee. If the work is completed, then the \$100 shall be a non-compliance penalty, plus the fee.
  - g. Continued use of properties or structures that are not in compliance with the zoning ordinance and are not considered to be “grandfathered”, are subject to fines of \$30 per day per violation.
13. As authorized by State of NH RSA 674:33.I-a, Variances granted on or after August 19, 2013 shall be valid only if exercised within two (2) years from the date of final approval. Variances granted before August 19, 2013 shall be valid only if exercised within two (2) years from March 11, 2021. (Amended March 2020)
14. As authorized by State of NH RSA 674:33.IV, Special Exceptions granted on or after August 19, 2013 shall be valid only if exercised within two (2) years from the date of final approval. Special Exceptions granted before August 19, 2013 shall be valid only if exercised within two (2) years from March 11, 2021. (Amended March 2020)

**SECTION XI NON-CONFORMING LOTS, STRUCTURES, AND USES** (Amended March 2000)

## 1. RECONSTRUCTION

Any non-conforming structure which is completely or substantially destroyed by casualty loss may be replaced with a similar structure which has the same building footprint dimensions and meets the setbacks of the previously existing structure. The structure may be rebuilt provided such construction is started within one year of the casualty loss and complete within two years of the casualty loss. The provisions of the Town of Newton Building Code, as amended, shall apply to any reconstruction.

## 2. EXPANSION OF NON-CONFORMING USES

Except as noted below, an expansion of a non-conforming use is prohibited except by variance by the Zoning Board of Appeals.

A variance is not required if the expansion is a natural expansion which does not change the nature of the use, does not make the property proportionately less adequate, and does not have a substantially different impact on the neighborhood.

## 3. EXPANSION OF NON-CONFORMING STRUCTURES

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment, which must find the following factors to exist before issuing such a special exception:

- a. The proposed expansion must intrude no further into any setback area than does the existing structure.
- b. The expansion must have no further adverse impact on the view, light and air of any abutter.
- c. The expansion must not cause property values to deteriorate.
- d. The expansion must not impede existing rights of access or egress.
- e. That portion of the proposed expansion, which will intrude into the setback, must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.
- f. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.
- g. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

## 4. DISCONTINUANCE

In the event that a non-conforming use is voluntarily discontinued for a period of one year, such non-conforming use shall be deemed abandoned and shall not be able to resume without compliance with the zoning ordinance or, alternately, without a variance from the zoning board of adjustment. Voluntary abandonment shall be evidenced by either of the following:

- a. Discontinuance of the occupancy or non-conforming use for twelve consecutive months with no ongoing attempts to sell or lease the property for its non-conforming use or
- b. Failure to resume the non-conforming use within eighteen months, even though there may be ongoing efforts to sell or lease the property for its non-conforming use.

## 5. CONTINUANCE

All non-conforming structures and uses which predate the adoption or amendment of this ordinance may continue in their present use. These uses shall run with the land and may be transferred by sale or lease by present owner to future owners or lessees, subject to the other terms of this Ordinance which limit such non-

conforming uses.

All new uses, changes of uses, expansion of uses or resumption of uses previously discontinued shall not be permitted until the property owner or authorized lessee has first made application to the Town of Newton Code Enforcement Officer for an administrative decision seeking a determination whether a permit is required for such new, change, expansion or resumption of the non-conforming use or non-conforming structure under the terms of this ordinance. If a permit or other application is required, such use may not proceed until such application has been made and processed as required by town regulations and ordinances.

**SECTION XII HOME OCCUPATIONS AND HOME-BASED BUSINESSES** (Added March 1995, amended March 2003, amended March 2007, Amended March 2012)

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for Home Based Businesses in accordance with the restrictions and requirements of this section.

**PURPOSE**

The purpose of allowing home occupations and home-based businesses is to enhance economic opportunities for residents without significantly detracting from the quality of the neighborhoods.

The conduct of business in residential units may be permitted under the provisions of this section. It is the intent of this section to:

1. Ensure the compatibility of home occupations and home based businesses with the uses permitted in the Residential A and B Zones;
2. Maintain and preserve the character of residential neighborhoods;
3. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than commercial use.

**WHERE PERMITTED**

- A) Home Occupation. One home occupation may be permitted in each residential unit in Residential A and B zones.
- B) Home-Based Business. One home-based business may be permitted in each single family residential unit, exclusive of duplexes, condominium units or elderly housing units, in Residential A and B zones, subject to the following:
  - 1) The home-based business is accessory to the residential use.
  - 2) There shall be no outdoor activity or use, including storage and parking of commercial vehicles or trailers exceeding 12,000 GVW, except for the provision of employee parking.
  - 3) The home-based business shall not be such that it requires regular or frequent service by heavy commercial trucks since this would adversely impact the character of the neighborhood.
  - 4) The home-based business shall be registered by conditional use permit and through the filing of an official Town of Newton “Home Based Business” form, both of which are subject to review and approval by the Planning Board.
- C) General.
  - a) Exterior of the building must not create or display any evidence of the home occupation / home based business, except a permitted sign for a home based business. Variation from the residential character and appearance is prohibited. The maximum size sign allowed shall be two square feet.

- b) No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted materials that are improperly used or stored onsite.
- c) Not more than two commercial vehicles may be kept overnight at the premises.
- d) Adequate off-street parking must be provided and used. Provide one parking space per employee.
- e) Home occupation/home-based business must be conducted by the resident of the premises.
- f) There shall be no outside operations, storage, or display of materials or goods.
- g) No process shall be utilized which is hazardous to public health, welfare, or safety.
- h) The home occupation/home-based business must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter.
- i) The home occupation/home-based business shall not involve over-night parking of commercial vehicles or trailers exceeding 12,000 GVW.

#### PERMITTED USES

No more than one home occupation or home-based business (per property) is permitted. Such use shall be clearly incidental and secondary to the residential use of the dwelling unit.

#### APPLICATION PROCEDURE

The classification of an activity as a home occupation or a home based business shall be determined by the Planning Board prior to the commencement of the activity. If the Planning Board determines that the activity is a home occupation, no further Town approval is required. If the Planning Board determines that the activity is a home based business, a conditional use permit shall be obtained in accordance with the procedures set forth in the relevant sections of the Site Plan Review Regulations of the Newton Planning Board. The conditional use permit for a home based business expires upon transfer of ownership of the affected property.

#### ENFORCEMENT

This section shall be administered by the Board of Selectmen. Any person who violates the provisions of this section shall be fined \$100 for each offense. Each day that a violation is continued shall constitute a separate offense. An action may be brought about under this provision after the alleged offender has been given at least seven (7) days notice from the Selectmen by certified mail, return receipt requested, that a violation exists.

#### **SECTION XIII ACCESSORY APARTMENTS** (Added March 2001, amended March 2012)

Pursuant to RSA 674:71 , 674:73 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory apartments in accordance with the restrictions and requirements of this section. To increase housing alternatives while maintaining neighborhood aesthetics and quality, an accessory apartment shall be permitted within all single family dwelling units. Maximum of one (1) accessory apartment per property.

1. The property owner must occupy one (1) of the two (2) units.
2. No more than two (2) bedrooms are permitted in the accessory apartment.
3. Not more than four (4) people shall occupy said apartment.
4. Off street parking sufficient for both units must be provided (space for a minimum of four (4) vehicles).
5. The septic system shall be adequate for both units, per New Hampshire Water Supply and Pollution Control Standards.
6. The accessory apartment must be attached to the primary dwelling unit. Accessory apartments are not permitted in detached accessory structures on the same lot.

7. The accessory apartment shall have convenient and direct access to the primary dwelling unit (a connecting inside door) AND its own separate entrance/exit.
8. Appearance shall remain that of a single-family residence. New entrances for the accessory apartment shall be located on the side or rear of the building.
9. The size of the accessory apartment shall be a maximum of 800 square feet.
10. The primary dwelling unit and the accessory apartment shall share common utilities including well, septic system, heating and electrical service.
11. Design of the accessory apartment shall be such that it would be readily adaptable to conversion into part of the primary dwelling.

#### **SECTION XIV RESIDENTIAL A ZONE USES**

In the Residential A Zone, no building or structure shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:

1. Not more than a one (1) family dwelling.
2. Any lawful municipal, religious, educational and nonprofit recreational purpose.
3. Accessory use on the same lot with and customarily incidental to any of the above permitted uses and not detrimental to a residential neighborhood. The term accessory uses shall include:
  - a. A garage for not more than four (4) automobiles.
  - b. The display and sale by the owner at a roadside stand or otherwise of natural products, the major portion of which is raised in the town. (Amended March 1995, deletion of some uses)
4. Any agricultural use and uses customarily incidental thereto except fur farms and piggeries.
5. Mobile homes shall be permitted as single family dwellings only in subdivisions established for the purpose of mobile home placement on individually owned lots.
  - a. Lot area and location-on-lot requirements for the placement of mobile homes on lots shall be the same as for all other single-family dwellings in Residential Zone A.
  - b. Mobile home structures shall have a minimum first floor area of 720 square feet per dwelling unit and any two-story mobile home shall have a minimum first floor area of 600 square feet.
  - c. The total minimum size for a plotted mobile home subdivision will be twenty (20) acres.
  - d. Before placement of a mobile home on a lot, the lot owner must obtain a Conditional Permit from the Building Inspector. The Conditional permit shall not serve as an Occupancy Permit, but will enable the lot owner to begin placement of the mobile home on the lot. A Conditional ninety (90) day temporary permit shall be issued upon:
    - 1) Delivery to the Building Inspector of an approved (by the NH Water Supply and Pollution Control Division) septic system design.
    - 2) A certification by the manufacturer that the mobile home is either BOCA certified or meets or exceeds the federal standards issued for mobile home construction issued under and pursuant to 24 CFR 201.520, not earlier than twelve (12) months prior to the date such a

temporary permit is issued.

- e. An Occupancy Permit must be obtained prior to the expiration of the ninety (90) day Conditional permit. In the event an Occupancy Permit is not obtained prior to the expiration of the ninety (90) day Conditional Permit, the Selectmen may, any time thereafter, upon thirty (30) days' written notice sent by certified mail, return receipt requested, to the holder of the Conditional Permit, commence action in Rockingham County Superior Court to remove said mobile home from said lot. An Occupancy Permit shall be issued for the mobile home in question upon satisfaction of the following conditions:
- 1) The installation of a cement or cement block enclosed foundation upon which the mobile home rests.
  - 2) Proper anchorage and tie down of the unit to the foundation.
  - 3) Inspection by the Building Inspector, Road Agent, Health Officer, and Fire Chief to ensure proper construction and installation of the foundation, septic disposal system, plumbing and electrical wiring. (Added March 1984, amended March 2012)

#### **SECTION XV RESIDENTIAL A ZONE AREA REGULATIONS**

1. Floor Area: Any one-story building or other habitation, erected, altered, or used for dwelling purposes shall provide a minimum first floor area of 720 square feet and any two-story building or other habitation, erected, altered, or used for dwelling purposes shall provide a minimum first floor area of 600 square feet, provided, however, that the Board of Adjustments may issue a permit for temporary occupancy of a building having less than the above area, such permit to be issued for a period of not more than two (2) years.
2. Lot Area: No building except those as allowed in Section XIV and its accessory buildings may be erected on a lot. Each lot shall have not less than 150 feet continuous frontage on a Class I, II, III, IV, or V Highway (Amended March 1988), and an area of not less than 60,000 square feet (Amended November 1986), based on the Model Subdivision Regulations for Soil Based Lot Size (Copy available through the Rockingham County Conservation District); (Amended March 1995) provided that one dwelling may be erected on a lot having lesser dimension if petitioner can show by recorded deed or plan that said lot existed at the time this bylaw was adopted.

Every lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from the frontage in a continuous line back one hundred (100) feet toward the rear of the lot along the side lot lines. All measurements are to be taken inside of the lot boundary lines. (Amended March 1998, amended March 2003) In a case in which the frontage is curved, such as along a cul-de-sac, the lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from a line tangent to the frontage curve in a continuous line back one hundred (100) feet toward the rear of the lot. (Amended March 2010)

3. Location on Lot: No building or structure, with exception to both tanks and leaching beds of a septic system, which is subject to the permitting requirements set forth in the current State of New Hampshire Building Code, (Amended March 2013) shall be within 65 feet of the centerline of the street. If the lot is a corner lot the 65-foot distance will be calculated from the numbered side of the house. (Amended March 1995) Side and rear setbacks shall be 25 feet from lot lines. Side and rear setbacks may be reduced to not less than five feet (5 ft.) for one (1) accessory storage structure less than 120 square feet in size. (Amended March 2000) Other accessory buildings and structures (i.e. decks of all sizes, storage sheds larger than 120 square feet in size, playhouses, carports, swimming pools, or similar type of construction) shall meet the above mentioned setback requirements. (Amended March 2013)
4. Height Restriction: No building or structure shall be more than two and one half (2 1/2) stories high, nor have a total height greater than 35 feet. (These restrictions do not apply to radio or television receiving antennas.) (Added March 1989, amended March 2003)

#### **SECTION XVI RESIDENTIAL B ZONE USES**

In the Residential B Zone, no building or structure shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:

1. Not more than a two (2) family dwelling.
2. Any lawful municipal, religious, educational and nonprofit recreational purpose.
3. Accessory use on the same lot with and customarily incidental to any of the above permitted uses and not detrimental to a residential neighborhood. The term accessory use shall include:
  - a. A garage for not more than four (4) automobiles.
  - b. The display and sale by the owner at a roadside stand or otherwise of natural products, the major portion of which is raised in the town. (Amended March 1995, deletion of some uses)
4. Any agricultural use and uses customarily incidental thereto, except fur farms and piggeries.
5. Mobile homes, however mounted, shall be prohibited from this district.

#### **SECTION XVII RESIDENTIAL B ZONE AREA REGULATIONS**

1. **Floor Area:** For each dwelling unit, any one-story building or other habitation, erected, altered, or used for dwelling purposes shall provide a minimum first floor area of 720 square feet and any two-story building or other habitation, erected, altered, or used for dwelling purposes shall provide a minimum first floor area of 600 square feet provided however, that the Board of Adjustments may issue a permit for temporary occupancy of a building having less than the above area, such permit to be issued for a period of not more than two (2) years.
2. **Lot Area:** No building except those as allowed in Section XVI and its accessory buildings may be erected on a lot. Each lot shall have not less than 150 feet continuous frontage on a Class I, II, III, IV, or V Highway, (Amended March 1988) and an area of not less than 60,000 square feet, based on the Model Subdivision Regulations for Soil Based Lot Size (Copy available through the Rockingham County Conservation District), for a one (1) family dwelling and 90,000 square feet for a two (2) family dwelling; (Amended November 1986, amended March 1995) provided that one dwelling may be erected on a lot having lesser dimension if petitioner can show by recorded deed or plan that said lot existed at the time this bylaw was adopted.

Every lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from the frontage in a continuous line back one hundred (100) feet toward the rear of the lot along the side lot lines. All measurements are to be taken inside of the lot boundary lines. (Amended March 1998, amended March 2003) In a case in which the frontage is curved, such as along a cul-de-sac, the lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from a line tangent to the frontage curve in a continuous line back one hundred (100) feet toward the rear of the lot. (Amended March 2010)

3. **Location on Lot:** No building or structure, with exception to both tanks and leaching beds of a septic system, which is subject to the permitting requirements set forth in the current State of New Hampshire Building Code, (Amended March 2013) shall be within 65 feet of the centerline of the street. If the lot is a corner lot the 65-foot distance will be calculated from the numbered side of the house. (Amended March 1995) Side and rear setbacks shall be 25 feet from lot lines. Side and rear setbacks may be reduced to not less than five feet (5 ft.) for one (1) accessory storage structure less than 120 square feet in size. (Amended March 2000) Other accessory buildings and structures (i.e. decks of all sizes, storage sheds larger than 120 square feet in size, playhouses, carports, swimming pools, or similar type of construction) shall meet the above mentioned setback requirements. (Amended March 2013)
4. **Height Restrictions:** No building or structure shall be more than two and one half (2 1/2) stories high nor have a total height greater than 35 feet. (These restrictions do not apply to radio or television receiving antennas.) (Added March 1989, amended March 2003)

**SECTION XVIII RESIDENTIAL C ZONE USES**

In the Residential C Zone, no building or structure or premises shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:

1. A mobile home park.
2. Accessory use on the same lot with and customarily incidental to any of the above permitted uses and not detrimental to a residential neighborhood. The term accessory use shall include:
  - a. A central recreational building. (Amended March 1995, deletion of some uses)

**SECTION XIX RESIDENTIAL C ZONE AREA REGULATIONS**

1. Lot Area
  - a. For a mobile home park with both a central sewage treatment facility and central water supply, each lot shall have not less than 100 feet frontage on a street or way and an area not less than 10,000 square feet. The sewage treatment facility and water supply shall comply with all applicable federal and state regulations.
  - b. For a mobile home park without both a central sewage treatment facility and central water supply, each lot shall have not less than 150 feet continuous frontage on a Class I, II, III, IV or V Highway (Amended March 1988) and an area not less than 60,000 square feet. (Amended November 1986)
2. Site plans shall be submitted to the Planning Board for review and approval prior to the commencement of any construction on the property.
3. Height Restriction: No building or structure shall be greater than 15 feet high. (This restriction does not apply to radio or television receiving antennas.) (Added March 1989)

**SECTION XX COMMERCIAL ZONE USES**

In the Commercial Zone, no building or structure or premises shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:

1. Any use permitted in Residential Zones A or B.
2. Retail business or service, except those listed under Section XXI below. (Amended March 1995)
3. The display of not more than 100 square feet of signage providing the sign is not oscillating, flashing or operated with moving parts and providing further that no sign shall be located closer than 50 feet from any Residential Zone. No sign shall be greater than 32 square feet in size. (Amended March 2003)
4. Office building(s). (Added March 1989)

**SECTION XXI COMMERCIAL ZONE AREA REGULATIONS**

1. The side yard shall be 50 feet on a side that abuts any Residential Zone; rear yard, 50 feet where it abuts any Residential Zone; plus adequate provisions for off-street parking, as determined by the Planning Board.
2. Buildings erected for residential purposes and their premises shall conform to the area regulations for the Residential Zones A or B.

3. The area of lots used for residential purposes within the Commercial Zone shall not be less than the area required in Residential Zones A or B.
4. Lot Area: Each lot shall have not less than 150 feet (Amended March 1999) contiguous frontage on a on a Class I, II, III, IV, or V Highway (Amended March 1989) and an area not less than 60,000 square feet, based on the Model Subdivision Regulations for Soil Based Lot Size (Copy available through the Rockingham County Conservation District). (Amended March 1995)  
  
Every lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from the frontage in a continuous line back one hundred (100) feet toward the rear of the lot along the side lot lines. All measurements are to be taken inside of the lot boundary lines. (Amended March 1998, amended March 2003) In a case in which the frontage is curved, such as along a cul-de-sac, the lot shall be a minimum of one hundred twenty-five (125) feet wide at all locations measured from a line tangent to the frontage curve in a continuous line back one hundred (100) feet toward the rear of the lot. (Amended March 2010)
5. Location on Lot: No building shall be within 65 feet of the centerline of the street. If the lot is a corner lot the 65 foot distance will be calculated from the numbered side of the house. The side setback located on the unnumbered side of the house shall be 35 feet from the lot line. All other side and rear setbacks would remain the same (25 feet). (Amended March 2003)
6. Site plans shall be submitted to the Planning Board for review and approval prior to the commencement of any construction on the property.
7. No more than 60% of any lot in the Commercial Zone shall be covered. (Added March 1989)
8. Height Restriction: No building or structure shall be more than three (3) stories high, nor have a total height greater than 35 feet. (This restriction does not apply to elevator machinery rooms, air conditioners, heating systems, communication antennas, or radio or television receiving antennas.) (Added March 1989, amended March 2003)

## **SECTION XXII VILLAGE DISTRICT ZONE USES** (Added March 2011)

1. DISTRICT OBJECTIVES
  - a. Provide the opportunity for the integration of limited commercial, professional and service oriented business uses with those existing residential and civic uses situated in the Newton Village District.
  - b. Recognize residential uses will continue to be an integral part of the Newton Village District.
  - c. Create a framework by which a diverse mixture of residential and non-residential uses within the District remains sustainable.
  - d. Encourage a complementary mix of residential and non-residential uses intended to support each other while affording employment opportunities and modest expansion of the Town's tax base.
  - e. Preserve valuable historical, cultural and natural features, which define the rural character of Newton's Village District.
    - 1) Existing structures of historical significance, as may be identified in the Master Plan, should be preserved and reused where possible.
  - f. Ensure permitted non-residential uses are compatible with continued residential uses in the Village District.
2. PERMITTED USES

- a. Single unit dwellings and accessory buildings.
- b. Farms, farm uses and customary farm occupations other than commercial piggeries and mink farms.
- c. Home Occupations and Home Based Businesses, subject to the provisions of Section XII of this Ordinance.
- d. Accessory Apartments, subject to the provisions of Section XIII of this Ordinance.
- e. Elderly Housing, subject to the provisions of Section XXXII of this Ordinance.

The following list is an example of permitted uses subject to Site Plan Review and approval by the Planning Board:

- f. Multiple-unit dwellings.
- g. Retail sales establishments.
- h. Professional offices and studios.
- i. Medical, dental, and other health care facilities.
- j. Financial institutions.
- k. Personal service establishments primarily engaged in providing services involving the care of a person or their personal goods or apparel. These services include, but are not limited to, laundry, linen supply, beauty and barber shops, shoe repair, clothing rental, consignment shops and tailor shops.
- l. Food service establishments.
- m. Social membership clubs.
- n. Inns and Bed & Breakfast establishments.
- o. Places of worship.
- p. Educational and day care facilities.
- q. Congregate care and assisted living facilities.
- r. Governmental uses of land and buildings.
- s. Animal hospitals.

### **SECTION XXIII VILLAGE DISTRICT ZONE AREA REGULATIONS** (Added March 2011)

#### 1. RESTRICTIONS AND SPECIAL PROVISIONS

- a. The areas of the Village District Zones shall be defined as the lots indicated in Appendix A of this ordinance.
- b. The property owner must occupy one of the units unless otherwise approved by the Planning Board.

- c. Dimensional Requirements
  - 1) All buildings shall be setback a minimum of fifteen feet (15') from lot lines other than the front lot line; and shall have a setback of between fifteen feet (15') and thirty feet (30') from the front lot line, except in cases where the average front lot line setback of existing properties within five hundred feet (500') in both directions, along and on the same side of the street is less. In such cases the required minimum front lot line setback may be taken as that average distance.
  - 2) No building height shall exceed 2.5 stories or thirty-five feet (35').
- d. Drive-through service windows are prohibited.
- e. Outdoor storage and/or display of non-agricultural goods, products, materials, and equipment shall be prohibited. Outdoor storage and display may be permitted by the Planning Board with non-residential site plan approval if deemed in keeping with the stated District objectives.
- f. In no case shall the first floor area of any single building exceed six thousand five hundred thirty-four (6,534) square feet.
- g. Two or more permitted uses may be allowed on a single lot or within a single structure. However, in no case shall a non-residential use occur on the same lot as a multi-unit dwelling.
- h. Shared parking facilities and driveways shall be provided and the parking space requirements reduced where shared parking is designed to maximize complimentary uses and it has been demonstrated to the Planning Board that sufficient parking will be available when it is needed.
- i. Existing buildings, with historical significance, as identified in the Newton Master Plan, should be preserved and reused for allowed uses with shared parking and driveways. Shared parking would be located to minimize its visual impact in order to preserve the village character. Existing buildings are not subject to the dimensional requirements set by this District.
- j. Buildings shall be designed and sited to maintain views and vistas.
- k. The Planning Board may require public space or open square for outdoor activities, including ADA accessible pedestrian walkways, are provided as applicable.
- l. The recommended district land use mix in total build out occupiable square footage is 40% retail and service uses, 40% offices and 20% residential. The Planning Board will review each proposal for compliance with the recommended land use mix and the district purpose.
- m. Within fifty feet (50') of a right-of-way, all parking shall be located to the side and/or rear of all existing or proposed buildings.
- n. A change of use to existing principle or accessory structures shall be allowed and shall also comply with all local ordinances and regulations.
- o. No materials defined as hazardous under 49 U.S.C. 5103 will be used or stored on the premise.
- p. Applicants shall demonstrate that historic structures and features are maintained and preserved to the extent possible and reasonable, as determined by the Planning Board.
- q. The Planning Board may create Subdivision and Site Plan Review Regulations to implement the provisions of this Ordinance.

## 2. SPECIAL USE PERMITS FOR NON-CONFORMING STRUCTURES AND LOTS

Pursuant to the authority granted by RSA 674:21, Innovative Land Use Controls, the Planning Board shall be authorized to permit a change of use to property that is non-conforming with respect to dimensional requirements, provided the following criteria are met:

- a. That the proposed use, in the opinion of the Planning Board, can adequately and safely be accommodated on the property.
- b. That adequate landscaping, buffering, and fencing is provided as necessary to minimize impacts on adjoining properties.
- c. That adequate and safe access can be provided to the property.

**SECTION XXIV LIGHT INDUSTRIAL/COMMERCIAL ZONE USES** (Amended March 1986, amended November 1986, amended March 1995)

In this zone, no building or structure or premises shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:

1. The Light Industrial/Commercial Zone(s) is intended for use and development of research laboratories, office buildings, selected light industries, warehousing, service or utility businesses.

Uses permitted subject to Site Plan Approval by the Planning Board.

- a. Any Commercial uses defined in Section XX of Newton Zoning Ordinance not including Residential Use.
- b. Research laboratories with incidental processing or pilot manufacture, but excluding Biological or Chemical Laboratories.
- c. Office buildings.
- d. Any lawful warehousing excluding warehousing of biological chemical materials; service or utility business not in conflict with the public health, safety, convenience or welfare or substantially detrimental or offensive to adjacent zones or destructive of property values, when permitted by the Planning Board.
- e. Light manufacturing enterprises, except biological and chemical manufacturing; provided that such activities will not be offensive, injurious, or noxious because of gas, dirt, sewerage and refuse, vibration, smoke, fumes, dust, odors, danger of fire, or explosion, or other characteristics detrimental or offensive that tend to reduce property values in the same or adjoining districts.
- f. Any customary accessory uses incidental to above, including parking and parking structures, support and maintenance shops, concessions and services located within a principal building with no exterior evidence of such concessions and services, and recreational facilities for the use of employees in Industrial Districts.
- g. Temporary structures provided the permit for such use shall be limited to a term not to exceed ninety (90) days and a bond is posted to ensure removal.
- h. The display of not more than 100 square feet of signage providing the sign is not oscillating, flashing or operated with moving parts and providing further that no sign shall be located closer than 50 feet from any Residential Zone. No sign shall be greater than 32 square feet in size. (Amended March 2004)

Provided however, that before granting a permit for any of the foregoing uses permitted in a Light Industrial/Commercial Zone, the Planning Board shall determine that all of the conditions and requirements of the Site Plan and all its pertaining ordinances are fully complied with.

2. Before any building permit may be granted by the Building Inspector for any buildings, structures or uses in a Light Industrial/Commercial Zone for which approval has been granted by the Planning Board as herein above provided, there shall first be submitted to the Building Inspector such detailed plans as shall evidence that such buildings, structures, and uses conform to the following minimum standards for design, construction, use and operation, and such plans shall be certified as to compliance by the architects or engineers responsible for such plans.
3. Non-Residential Site Plan Final Approval must be obtained from the Newton Planning Board before a building permit is granted. (Amended March 1995, amended March 2012)

**SECTION XXV LIGHT INDUSTRIAL/COMMERCIAL ZONE AREA REGULATIONS** (Amended November 1986)

1. Location on Lot: (Amended March 2004, amended March 2009, amended March 2013)
  - a. Side yard 200 foot structural setback with a minimum 50 foot undisturbed natural buffer when abutting any other zone. Any additional buffer that may be required by the Planning Board up to but not exceeding 1,500 feet for a side yard that abuts any other zone.
  - b. Rear yard 200 foot structural setback with a minimum 50 foot undisturbed natural buffer when abutting any other zone. Any additional buffer that may be required by the Planning Board up to but not exceeding 1,500 feet for a rear yard that abuts any other zone, plus adequate provision for off-street parking as determined by the Planning Board.
  - c. No building shall be set within 75 feet of the centerline of the street nor within 50 feet of any lot line within the Light Industrial/Commercial Zone.

The Planning Board is empowered to reduce the buffer sizes, as justice may require, but may not reduce them below the lot-line set-backs as listed above. (Added March 2009)

2. Site plans shall be submitted to the Planning Board for review and approval prior to the commencement of any construction on the property.
3. No more than 60% of any lot area in the Light Industrial/Commercial Zone shall be covered. (Added March 1989)
4. Height Restriction: No building or structure shall be more than three (3) stories high nor have a total height greater than 35 feet. (This restriction does not apply to elevator machinery rooms, air conditioners, heating systems, communication antennas, or radio and television receiving antennas.) (Added March 1989, amended March 2003)
5. Lot Area: Each lot shall have not less than 150 feet of contiguous frontage on a Class I, II, III, IV, or V highway and an area not less than 60,000 square feet. (Added March 1999)

**SECTION XXVI DEDICATED/SCENIC STREETS** (Added March 2005)

1. AUTHORITY

This Section is enacted in accordance with the provisions of RSA 231:157 and RSA 231:158.

2. PURPOSE

This ordinance seeks to address the need to have dedicated/scenic streets in the Town of Newton.

### 3. SCENIC ROADS: DESIGNATION

Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner. Upon petition of 10 persons who are either voters of the town or who own land which abuts a road mentioned in the petition (even though not voters of the town), the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The Town Clerk shall notify by regular mail within 10 days of the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above. Each town shall maintain and make available to the public a list of all roads or highways or portions thereof within the town which have been designated as scenic roads. Such list shall be kept current by updating not less than annually and shall contain sufficient information to permit ready identification of the location and extent of each scenic road or portion thereof, by reference to a town map or otherwise. The current list of designated scenic roads in Newton as per the Master Plan is as follows:

- a) Gale Village Road
- b) Currierville Road
- c) Maple Avenue
- d) Gould's Hill Road
- e) Heath Street
- f) Bartlett Street
- g) Thornell Road

In Newton, the authority to remove or alter trees and stone walls with prior written consent was transferred from the Planning Board to the Conservation Commission by town vote in 1974.

### 4. EFFECT OF DESIGNATION AS SCENIC ROADS

- I) As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.
- II) Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the State or Municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place, and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.
- III) Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.
- IV) Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or

ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls.

- V) A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protection of trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.
- VI) Any person who violated this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting there from.

## **SECTION XXVII WETLAND ZONING ORDINANCE** (Added March 1980)

### 1. PURPOSE

In the interest of the public health, convenience, safety, and welfare, this regulation is intended to guide the use of wetland areas in order to:

- a. Prevent the town from being required to construct central sewer and water treatment facilities, which will be necessitated by the unwise use of wetland areas and the subsequent pollution of surface and ground waters by septic systems.
- b. Prevent development on wetlands, which will cause the pollution of surface and ground waters.
- c. Encourage environmental diversity by protecting and maintaining existing wetland systems and the vegetation and wildlife habitat supported by such systems.
- d. Preserve natural floodwater storage areas and protect persons and property from the increased danger of flooding which results from inappropriate development on wetlands.
- e. Protect water recharge areas necessary to maintain adequate ground water supply and augment stream flow during dry periods, and;
- f. Encourage uses that can appropriately and safely be located in wetland areas in accordance with the above purposes.

### 2. WETLANDS (Amended March 1992)

- a. Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal conditions do support, a community of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to, swamps, bogs, marshes, ponds, lakes, seasonal streams, brooks, or rivers, as well as soils that are defined as poorly drained or very poorly drained as defined by High Intensity Soil Maps for New Hampshire as prepared by the Society of Soil Scientists of Northern New England.
- b. A qualified soil scientist is a person qualified in soil classification and mapping who is recommended or approved by the New Hampshire State Conservation Committee or the Rockingham County Conservation District.
- c. The location of a wetland boundary in any particular case must be determined by on-site inspection of soil types and vegetation. This data shall be prepared by a qualified soil scientist using the current standards of High Intensity Soil Maps of New Hampshire as prepared by the Society of Soil Scientists of Northern New England.  
Any necessary soil testing procedures shall be conducted at the expense of the landowner or

developer.

**WETLAND:** Any area falling within the jurisdictional definitions of Newton Wetland Ordinance. The Town of Newton has adopted the following language of RSA 482-A:2, X. “Wetlands” means an area that is inundated or saturated by surface water or groundwater 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. (Amended March 2005) The Town of Newton has also adopted the following language of RSA 674:55 as further wetlands definition:

**674:55: Wetlands.** Whenever the term “wetlands” whether singular or plural, is used in regulations and ordinances adopted pursuant to this chapter, such term shall be given the meaning in RSA 482-A:2, X and the delineation of wetlands for purposes of such regulation and ordinances shall be as prescribed in rules adopted under RSA 482-A. Nothing in this subdivision shall be construed to limit the powers otherwise granted under this chapter for municipalities to plan land use and enact regulations based on consideration of environmental characteristics, vegetation wildlife habit, open space, drainage, potential for flooding and protection of natural resources, including critical or sensitive areas or resources and groundwater. In the context of such authority, municipalities may define and delineate resources or environmental characteristics, such as wet soils or areas, and shoreline or buffer areas, in a manner different from the common meaning and delineation of wetlands required herein. (Added March 2005)

### 3. WETLAND BOUNDARIES (Amended March 1992)

Wetland boundaries shall be determined from soil field sheets, which show the results of the on-site inspection of soil types by a qualified soil scientist as referenced in Section 2. The results of the on-site soils investigation will be on file with the Planning Board and Conservation Commission and confirmed by an on-site inspection of the referenced site by the Conservation Commission and the Planning Board.

### 4. APPEALS (Amended March 1992)

In the event that a wetland or wetland boundary is questioned, any person so aggrieved by such, may present evidence to the Planning Board. If the Planning Board accepts such new evidence as valid, the wetland boundary affected will be appropriately adjusted.

### 5. PERMITTED USES

In designated wetland areas, permitted uses are as follows:

- a. Forestry, tree farming, and agriculture.
- b. Water impoundments and well supplies.
- c. Drainage ways such as streams, creeks, or other paths of normal runoff.
- d. Wildlife habitat and development.
- e. Conservation areas, nature trails and other educational and recreations of this ordinance.
- f. Open space in accordance with subdivision regulations and other sections of this ordinance
- g. Any use otherwise permitted by the Town Zoning Ordinance and State and Federal laws that does not involve the erection of a building or that does not alter the surface configuration on the land by the addition of fill or by dredging except as a common treatment associated with a non-residential permitted use as listed above.
- h. The construction of fences, footbridges, catwalks, and wharves only provided:
  1. Said structures are constructed on posts or pilings so as to permit unobstructed flow of water:  
and

2. The natural contour and elevation of the wetland is preserved.
  - i. All plans for such permitted uses of wetlands must be submitted to the Conservation Commission for review and written recommendation prior to conducting such permitted use. Said recommendation shall be addressed by the Planning Board before site plan or subdivision approval.

The Conservation Commission may retain the services of an outside consultant for the purpose of the plan review. Costs of the outside consultant retained by the Conservation Commission for the purposes of the plan review shall be at the expense of the landowner or developer.

## 6. EASEMENTS, RIGHTS-OF-WAY

Streets, roads, and other access ways and utility rights of way or easements may be permitted, provided that:

- a. The street, road, access way or utility right-of-way or easement is essential to the productive use of land not zoned under the provisions of this ordinance.
- b. The street, road, access way or utility right-of-way or easement is so located and constructed as to minimize any detrimental impact of such uses upon the wetland.
- c. Such location and construction be compatible with the intents and purposes of this ordinance.
- d. Approval for such uses may be obtained as part of site plan approval pursuant to RSA 674:43 or the subdivision approval pursuant to RSA 674:35 (Added March 1992)

## 7. CALCULATIONS OF MINIMUM LOT SIZE

- a. Areas designated as poorly drained soils may be utilized to fulfill twenty-five percent (25%) of the minimum lot size required by the Zoning Ordinance and Subdivision Regulations for the district wherein the wetland is located.
- b. Areas designated as very poorly drained soils, pond and lakes, or fresh water marsh may not be utilized to fulfill any of the minimum lot size required by the Zoning Ordinance and Subdivision Regulations for the district wherein the wetland is located.

## 8. OTHER CONDITIONS, BUFFER ZONES (Amended March 1992)

- a. No subsurface wastewater disposal system shall be constructed within a seventy-five foot (75 ft.) horizontal distance from a designated boundary of a wetland or poorly drained soil types.

No wastewater disposal system shall be constructed in or on fill material (legally or illegally placed) that has been placed over a wetland.

There shall be no filling or alteration of subsurface elevations of wetlands, poorly drained or very poorly drained soil to provide for these setback distances.

- b. No building activity requiring a building permit shall be permitted within 50 feet of any poorly or very poorly drained soil except as provided in subsection (c) of this section. (Added March 2000)
- c. Where an existing building within the wetland setback is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within two years of the event causing destruction. The new or rebuilt structure shall not extend further into the wetland or setback than the original foundation. (Added March 2000)
- d. No human waste or animal manure shall be stored or released in a manner, which may adversely

affect wetlands.

#### 9. OTHER PROVISIONS (Added March 1992)

- a. The Building Inspector shall not issue any permit for construction within a wetland, poorly drained or very poorly drained soil area unless such activity conforms with the provisions of this ordinance and pertinent State and Federal regulations.
- b. Any wetlands, poorly drained or very poorly drained soil types altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5.

#### 10. EXCEPTIONS (Added March 1992)

When an existing subsurface wastewater disposal system fails and a new system cannot be designed to meet all of the requirements of Section 8 of this ordinance, the Newton Health Officer may approve a subsurface wastewater disposal system that best meets health requirements and wetland protection requirements but does not necessarily meet all of the buffer requirements of Section 8 of this ordinance. This does not negate the requirement to obtain a State of New Hampshire Water Supply and Pollution Control Division approval.

#### 11. OTHER REQUIRED PERMITS (Added March 1992)

In all cases, prior to alternations, a State Dredge and Fill Permit must be obtained. It may also be necessary to obtain approval from the US Army Corps of Engineers.

- \* Qualified Soil Scientist is a person qualified in soil classification who is recommended or approved by the Rockingham County Conservation District Board of Supervisors.
- \*\* Intermittent streams are those in which surface water does not flow continuously.

### **SECTION XXVIII AQUIFER-WATERSHED PROTECTION ORDINANCE** (Added March 1999, amended March 2004, amended March 2013, amended March 2015)

#### 1. AUTHORITY AND PURPOSE

Pursuant to RSA 674:16-21, the Town of Newton adopts an Aquifer-Watershed Protection District and accompanying regulations in order to protect, preserve, and maintain the quality and quantity of existing and potential groundwater drinking supplies and related groundwater recharge areas within the Town.

#### 2. DEFINITIONS

**Animal Feedlot:** A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock as defined by 40 C.F.R. 122.

**Aquifer:** For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal, private, or public water supplies. (Amended March 2012)

**Dwelling Unit:** A building or portion thereof containing one or more dwelling units, but not including hotels, motels, rooms of a boarding house, clubs, lodges, trailers, or structures solely for transient or overnight occupancy.

**Groundwater:** All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

**Groundwater Recharge:** The infiltration of precipitation through surface soil materials into the groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

**Leachable Wastes:** Waste materials, including solid wastes, sludge and agricultural wastes capable of releasing

contaminants to the surrounding environment.

**Non-Conforming Use:** Nonconforming means use of land, building or premise which is not a use permitted by the provisions of this ordinance for the district in which such land, building or premise is situated.

**Recharge Area:** The land surface area from which groundwater recharge occurs.

**Site Coverage:** That portion of the entire parcel or site, which, through the development of the parcel, is rendered impervious to groundwater infiltration.

**Solid Waste:** Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules He P 1901.03. Solid waste includes solid, liquid, semi-solid, or gaseous waste material.

**Structure:** Anything constructed or erected the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

**Toxic or Hazardous Materials:** Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners, and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section Ws 410.04(1), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

### 3. DISTRICT BOUNDARIES

#### a. Location

1. The Aquifer Protection District is defined as the area shown on the map entitled, Town of Newton Stratified Drift Aquifers and Tax Parcels Map (part of the Rockingham Planning Commission Standard Map Set), located in the Planning Department Office. The Aquifer Protection District is an overlay district, which imposes additional requirements and restrictions to those of the underlying district. This district also delineates and protects recharge areas as well as the aquifers. In all cases, the more restrictive requirement(s) shall apply.
2. The Watershed Protection District is defined as the area which includes the Aquifer Protection District and a small portion of land in the extreme southern portion of the Town of Newton east of Route 108 and not located within the Aquifer Protection District and all areas within 250 feet of Neal Pond Brook. It is further described on Map titled Town of Newton Stratified Drift Aquifers and Tax Parcels Map (part of the Rockingham Planning Commission Standard Map Set), located in the Planning Department Office. The Watershed Protection District is an overlay district which imposes additional requirements and restrictions to those of the underlying district. This district also delineates and protects recharge areas as well as aquifers. In all cases, the more restrictive requirement(s) shall apply.

#### b. Appeals

Where the bounds of an identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of a written appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question.

### 4. USE REGULATIONS

#### a. Minimum Lot Size

The minimum lot size within the Aquifer Protection District for each newly created lot shall be the same as allowed in the underlying zoning district. Larger lot sizes may be required depending on the soil-based lot sizing standards found within the Newton subdivision regulations.

b. Maximum Site Coverage

1. Within the Aquifer Protection District, no more than twenty percent (20%) of a single lot or building site may be rendered impervious to groundwater infiltration. To the maximum extent feasible, all runoff from impervious surfaces shall be recharged to the aquifer on-site. Recharge impoundments shall have vegetative cover for surface treatment and infiltration. Furthermore, the stormwater drainage plan shall provide for the removal of sediment, oil, gasoline, and all other toxic, hazardous and solid waste materials from impervious areas. This runoff may be treated by the use of treatment swales, oil/gas separators or other devices, prior to retention and percolation of the runoff. All such techniques shall be approved by the Planning Board.
2. Maximum impervious site coverage may exceed twenty percent (20%) provided that the following performance standards are met and the plans are approved by the Planning Board or its designated agent:
  - i. The developer shall submit a stormwater drainage plan. Such a plan shall provide for the retention and percolation within the aquifer of all development generated stormwater runoff from a ten (10) year storm event, such that the post-development discharge volume to the aquifer is, at a minimum, equal to the pre-development discharge to the aquifer. Furthermore, the stormwater drainage plan shall provide for treatments required under b, 1.

c. Prohibited Uses

The following uses are prohibited within the Aquifer Protection Zone:

1. On-site disposal, storage, distribution, processing or recycling of toxic or hazardous materials or wastes including, but not limited to, all petroleum-based products, except as in c.2., below.
2. Underground storage tanks except as regulated by the NH Department of Environmental Services, Waste Management Division and only limited to the private needs and use of the site itself, no distribution, storage, or off-site transfer of the materials is permitted. Storage tanks, if completely contained within basements, are permitted.
3. Dumping of snow carried from off-site or storage of snow and ice removal chemicals or salts.
4. Automotive uses including: Cars washes, service and repair shops, junk and salvage yards.
5. Laundry and dry cleaning establishments.
6. Industrial uses which discharge contact type wastes or any other toxic or hazardous waste on site.

d. Permitted Uses

The following activities may be permitted provided they are conducted in accordance within the intent of this Ordinance:

1. Any use permitted by the underlying district of the Zoning Ordinance, except as prohibited

in 4.c.

2. Maintenance, repair of any existing non-conforming use or structure, provided there is no increase in impermeable surface beyond that permitted in accordance with 4.b of this ordinance, further provided that there is no change or expansion in use that presents increased risk to detrimentally affect groundwater quality, nor cause a significant long term reduction in the volume of water.
3. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachables are used according to best management practices as prescribed by the Rockingham County Conservation District, if applicable. All said leachables must be stored under shelter.

e. Special Exception for Lots of Record

Upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure for a permitted use within the Aquifer Protection District on a non-conforming lot provided that all of the following conditions are found to exist:

1. The lot upon which an exception is sought was an official lot of record, as recorded with the Rockingham County Registry of Deeds, prior to the date on which this Section was posted and published in the Town.
2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside of the Aquifer Protection District.
3. No reasonable and economically viable use of the lot can be made without the exception.
4. The design and construction of the proposed use will be consistent with the purpose and intent of this Section.

f. Non-Conforming Uses

Any non-conforming use within the Aquifer Protection District shall comply with all applicable provisions of the Newton Zoning Ordinance (Non-Conforming Uses) except that no expansion shall be permitted.

5. MISCELLANEOUS PROVISIONS

a. Location

Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as, but not limited to, on-site waste disposal systems shall be located outside and down gradient of the Zone to the extent feasible.

6. ADMINISTRATION

a. Application and Interpretation

The provisions of the Aquifer Protection District shall be applied and interpreted by the Planning Board.

b. Enforcement

The Board of Selectmen (or their duly designated agent) shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District.

**SECTION XXIX SHORELAND PROTECTION DISTRICT (OVERLAY)** (Added March 2003)**AUTHORITY**

This Section is enacted in accordance with the provisions of RSA 674:16-17 and RSA 674:20-21.

**I. PURPOSE**

Pursuant to RSA 674:16-21 the Town of Newton hereby adopts the Shoreland Protection District and accompanying regulations in order to protect and promote public health, resource conservation and the general welfare and to:

- a) Protect, maintain and enhance the water quality of ponds, rivers and their tributaries in the Town of Newton, and to ensure their continued availability as a resource and potential use as a public water supply;
- b) Conserve and protect aquatic and terrestrial habitat associated with pond and river areas;
- c) Preserve and enhance those recreational and aesthetic values associated with the natural shoreline and river environment;
- d) Encourage those uses that can be appropriately located adjacent to shorelines.

**II. DISTRICT BOUNDARIES**

The Newton Shoreland Protection District is defined to include all of the following:

- a) The areas of land within 150 feet horizontal distance of the shoreline of Country Pond.
- b) The areas of land within 100 feet horizontal distance of the seasonal high water level of all brooks and streams within the Town which appear on U.S.G.S. 7.5" (scale 1:24000) quadrangle maps for the Town of Newton, as revised.

**III. PERMITTED USES**

The following uses are permitted under this Section:

- a) Any use otherwise permitted by the Zoning Ordinance and by State and Federal laws that does not involve the erection of a structure, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along Country Pond, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline.
- b) Agriculture, including grazing, hay production, truck gardening, and silage production, provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion and stream sedimentation.
- c) Forestry and tree farming to include the construction of access roads for said purpose. Within the Shoreland Protection District the cutting of trees shall be limited to fifty percent (50%) of live trees in a 20-year period.
- d) Wildlife habitat development and management.

- e) Recreational uses consistent with the purpose and intent of this Section.
- f) Conservation areas and nature trails.
- g) Water impoundment and the construction of well water supplies.
- h) Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.
- i) The construction of fences, footbridges, catwalks, and wharves only, provided:
  - 1) Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
  - 2) Structures do not obstruct navigation on tidal creeks;
  - 3) The natural contour of the shoreline is preserved;
  - 4) The Planning Board has reviewed and approved the proposed construction.

**Conflicting Provisions.** In the event that the provisions of the Shoreland Protection District are found to conflict with other provisions of the Newton Zoning and Land Use Ordinance, the more restrictive shall apply.

**Effect on Lot Size.** Areas within the Shoreland Protection District may be considered as part of a minimum lot size normally required by the Zoning Ordinance and Subdivision Regulations of the Town of Newton.

**Special Exception for Lots of Record.** Upon application of the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Shoreland Protection District provided that all of the following conditions are found to exist:

- a) The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town.
- b) The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Shoreland Protection District.
- c) Due to the provisions of the Shoreland Protection District, no reasonable and economically viable use of the lot can be made without the exception.
- d) The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.

#### IV. CONDITIONAL USES

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the construction of roads and other access ways, and for pipelines, power lines, and other transmission lines provided that all of the following conditions are found to exist:

- a) The proposed construction is essential to the productive use of land not within the Shoreland Protection District.
- b) Design and construction methods will be such as to minimize detrimental impact upon the Shoreland Protection District.

- c) The proposed construction design of power lines, pipelines, or other transmission lines includes provisions for restoration of the site as nearly as possible to its original grade and condition.
- d) No alternative route which does not cross a Shoreland Protection District nor has less detrimental impact on the Shoreland Protection District is feasible.
- e) Economic advantage alone is not reason for proposed construction.

Prior to the granting of a Conditional Use Permit under this Section, the applicant shall agree to submit a performance security to the Board of Selectmen. The Security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel to ensure that the construction has been carried out in accordance with the approved design. The Security shall be submitted and approved prior to issuance of any permit authorizing construction.

The Planning Board may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Section. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

### **SECTION XXX FLOODPLAIN DEVELOPMENT ORDINANCE** (Added March 2007, amended March 2009)

This ordinance, adopted pursuant to the authority of RSA 674:16 shall be known as the Town of Newton NH Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Newton, NH Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provisions of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

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 Rockingham, NH”, dated May 17, 2005 or as amended, which are declared to be a part of this Ordinance and are hereby incorporated by reference.

#### Section 1 DEFINITION OF TERMS

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Newton, NH.

1. Area of Special Flood Hazard: is the land in the floodplain within the Town of Newton, NH subject to a 1 percent or greater chance of flooding in any given year. The area is designated on the FIRM as Zones A and AE. (Amended March 2009)
2. Base Flood: means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. Basement: means any area of a building having its floor sub grade on all sides.
4. Building: see Structure.
5. Development: means 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. (Amended March 2009)
6. FEMA: means the Federal Emergency Management Agency.
7. Flood or Flooding: means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters, or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
8. Flood Insurance Rate Map: (FIRM) means the 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 of Newton, NH.
9. Flood Insurance Study: (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards. (Added March 2009)
10. Floodplain or Flood-prone area: means any land area susceptible to being inundated by water from any source (see definition of Flooding).
11. Flood proofing: means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
12. Floodway: see Regulatory Floodway
13. Functionally dependent use: means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and 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.
14. Highest adjacent grade: means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
15. Historic Structure: means 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 historic 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.
16. Lowest Floor: means the lowest 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 buildings' lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
17. Manufactured Home: means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. 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. (Amended March 2009)
18. 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. (Added March 2009)
19. Mean sea level: means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map is referenced.
20. New Construction: means, 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. (Added March 2009)
21. 100-year flood: see base flood
22. Recreational Vehicle is defined as:
- 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.
23. Regulatory floodway: means the channel of a river or other watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation.
24. Special flood hazard area: See- Area of Special Flood Hazard (Amended March 2009)
25. 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.
26. 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 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.
27. 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.
28. Substantial Improvement: means 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:
- a. the appraised value prior to the start of the initial repair or improvement, or
  - b. 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 improvements 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”.

29. 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 Item V, Item VII(2b), or Item VII(3)(4) is presumed to be in violation until such time as the documentation is provided. (Added March 2009)
30. Water surface elevation: means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

## Section 2 PERMITS

All proposed development in any special flood hazard areas shall require a permit.

## Section 3 CONSTRUCTION REQUIREMENTS

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- a. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- b. be constructed with materials resistant to flood damage,
- c. be constructed by methods and practices that minimize flood damages,
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## Section 4 WATER AND SEWER SYSTEMS

Where new or replacement water and 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.

## Section 5 CERTIFICATION

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector:

- a. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

- b. if the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
- c. any certification of flood proofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

#### Section 6 OTHER PERMITS

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from 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.

#### Section 7 WATERCOURSES

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notifications to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau and Zoning Board of Adjustment.
2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Building Inspector 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.”

4. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. (Added March 2009)
5. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted with 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. (Added March 2009)

#### Section 8 SPECIAL FLOOD HAZARD AREAS

1. In Zone A the Building Inspector 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). (Amended March 2009)

2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that: (Amended March 2009)
- a. All new construction or substantial improvement of residential structures has the lowest floor (including basement) elevated to or above the 100-year flood elevation.
  - b. That all new construction or 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:
1. be flood proofed so that below the 100-year flood elevation that structure is watertight with walls substantially impermeable to the passage of water.
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  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;
- c. 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 one hundred (100) year flood elevation; 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. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
1. All recreational vehicles placed on sites within Zones A and AE shall either: (Amended March 2009)
    - a. be on the site for fewer than 180 consecutive days
    - b. be fully licensed and ready for highway use; or
    - c. meet all standards of Section 60.3 (b) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in paragraph (c) (6) of Section 60.3.
  - d. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
    1. The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage,
    2. The area is not a basement,

Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. 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: 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. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

## Section 9

### VARIANCES AND APPEALS

- A. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

- B. If the applicant, upon appeal, requests a variance 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:
1. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  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.
  3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) 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 twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage and (ii) 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.
- D. The community shall:
1. maintain a record of all variance actions, including their justification for their issuance, and
  2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

**SECTION XXXI RESIDENTIAL OPEN SPACE – CLUSTER DEVELOPMENT** (Added March 2003)

This ordinance is adopted by the Town of Newton at the 2003 Town Meeting, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, procedurally under the guidance of 675:1, II and in accordance with RSA 12-K.

**I. PURPOSE**

The intent of this ordinance is to provide a flexible method of residential development that is consistent with principles of sound planning and wise land use that are not specifically permitted in the current zoning ordinance. All developments seeking a conditional use permit shall be administered by the Planning Board to insure that Open Space - Cluster development opportunities do not adversely impact neighboring properties, or the citizens and Town of Newton. The Planning Board shall consider the following purposes and balance them accordingly during review of individual applications:

- A. Maintain and Preserve rural character of the Town of Newton by allowing an alternative residential development option which preserves large areas of open space, provides for visual buffers from existing roads and residential development, and permits farming opportunities on parcels of open space.
- B. Preserve large, contiguous parcels of open space throughout the town and particularly as found in the Newton Master Plan, land determined to be of significant importance for protection and preservation.
- C. Provide for a diversity of housing types, opportunities, and architectural styles.
- D. Encourage road design that will contribute to and enhance a rural atmosphere and maintain minimal safety design.
- E. Provide for connected corridors of open land throughout town for preservation of habitat, environmental resources, and public enjoyment.
- F. As part of an alternative for residential development, to require the clustering of homes in a manner that

includes proximity in physical location while minimizing confusion over issues of property ownership.

## II. CONDITIONAL USE PERMITS

All Open Space-Cluster developments shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approval. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.

## III. APPLICATION PROCEDURE

Applications for conditional use permits for an Open Space - Cluster development shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Newton Planning Board.

## IV. APPROVAL OF APPLICATIONS

Prior to issuance of a building permit, the applicant shall acquire a conditional use permit as well as any other necessary Planning Board approval. A conditional use permit shall be issued only if an Open Space-Cluster development complies with all of the requirements of this section. The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section or of the Newton Master Plan, Zoning Ordinance, or any other federal, state, town resolution, regulation, or law, including but not limited to; a reasonable reduction in allowed density, a reasonable increase in required frontage, setbacks, or any other requirement if necessary to accomplish said objectives. The conditional use permit is meant to provide flexibility, minimize adverse impacts, and allow the Board to participate jointly with the applicant to prepare a development that is consistent with this ordinance, regulations, and the Master Plan for the Town of Newton.

## V. GENERAL

The Open Space-Cluster development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the ordinances that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the Open Space-Cluster development use allowed on any particular tract will be a function of innovative land planning and subdivision design interacting with the special characteristics and limitations of the site.

The following definitions specifically apply to this Section of the Zoning Ordinance:

- a) Common Area: Any parcel or area of land and/or area of water set aside as a result of a cluster plan. The common area is designed for the benefit and enjoyment of the residents of a cluster development. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other noncommercial / nonresidential / non-industrial uses, plus any utility services utilized by the owners of the common area.
- b) Conservation Land: Land given to a public body dedicated to conservation of forests, park land, etc., or to a private conservation trust, with the intent of preserving in its original ecological condition, safeguarding water supplies, or diminishing flood danger.
- c) Mandatory Home Association: A private non-profit corporation, association or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Cluster Development. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board and by the Town

Counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.

- d) Open Space Easement: Land whose development rights have been legally restricted, either by deed or by public purchase of those rights. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and similar provisions. Easements are tied to the title of the land, regardless of its subsequent ownership.
- e) Public Open Land: Land purchased by or given to the Town of Newton for parks, playgrounds, or an undeveloped open space, generally with the intention of making it accessible for public use.
- f) Yield Plan: A conventional layout of roadways and lots in accordance with the dimensional requirements of underlying zoning district.

VI. LOT SIZE AND FRONTAGE

The minimum lot size for an Open Space-Cluster development is 20 acres. The minimum frontage for the development shall be a contiguous 150 feet and of sufficient length to provide safe access for a right-of-way of at least 50 feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Newton. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. After the passage of this ordinance, any parcel that subdivides more than 50% of the frontage away from the parent parcel shall not be eligible for an Open Space - Cluster development for a period of 4 years from the date of the subdivision approval.

VII. BASELINE DENSITY

Development density shall be determined by one of the following two methods to be chosen by the applicant:

- a) Zoning Formula – The following formula shall be used to determine the baseline density:

$$\begin{array}{r}
 \text{Total Parcel Area} \\
 - \text{Unbuildable land} \\
 \hline
 \text{Area Remaining} \\
 \times .9 \text{ (subtract 10\% for roadways)} \\
 \hline
 \text{Net Area} \\
 \text{Net area divided by lot size for zoning district} = \text{Baseline Density}
 \end{array}$$

Example #1:

$$\begin{array}{r}
 100 \text{ acres total} \\
 - 26 \text{ acres Unbuildable land} \\
 \hline
 74 \text{ acres (buildable)} \\
 \times .9 \text{ (street factor)} \\
 \hline
 66.6 \text{ acres net} \\
 66.6 \text{ divided by 2 acres} = 33.3 \text{ (rounded down to 33 units)}
 \end{array}$$

Example #2:

$$\begin{array}{r}
 20 \text{ acres total} \\
 - 3 \text{ acres Unbuildable land} \\
 \hline
 17 \text{ acres (buildable)} \\
 \times .9 \text{ (street factor)} \\
 \hline
 15.3 \text{ acres net} \\
 15.3 \text{ divided by 2 acres} = 7.65 \text{ (rounded up to 8 units)}
 \end{array}$$

For the purposes of this formula “Unbuildable land” shall consist of the following types of land:

- 1) Wetlands as defined elsewhere in this ordinance or if not so defined, as found in state law.
  - 2) Slopes exceeding a grade of 25%, or soils subject to slumping.
  - 3) Floodways and floodway fringe within the 100-year floodplain as shown on official FEMA maps.
- b) Yield Plan - The yield shall be reviewed and approved by the Planning Board in accordance with the following:
- 1) The yield plan shall incorporate soils information sufficient to determine estimated lot sizes by soil type.
  - 2) The yield plan shall incorporate roads and rights-of-way that provide for a layout that corresponds with existing state and federal laws, town ordinances, and subdivision regulations, including but not limited to minimization of wetland crossings, road length requirements, right-of-way widths, and safe sight distance for entrances.
  - 3) The yield plan is meant to be conceptual in nature but must be realistic and not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional layout.
  - 4) In addition to the above, the yield plan shall include, basic topography, wetlands, floodplains, steep slopes (greater than 25%), soils subject to slumping, and contiguous non-wet areas, and other areas of land where it is not feasible to accommodate building sites and individual septic systems.
  - 5) In order to show that the yield plan is reasonably achievable, 20% of the lots, randomly distributed throughout the yield plan, shall indicate one test pit which complies with all local, state, and federal requirements, including but not limited to, depth to estimated seasonal high water table, setbacks to lot lines and structures, and wetland setbacks. These lots shall be selected by the applicant, however, the Planning Board, at its discretion, may seek additional lots for testing if doubts arise.
  - 6) The yield plan shall comply with conventional subdivision standards and shall not require a variance or waiver from the existing ordinances or regulations in order to achieve the layout supporting the proposed density.

#### VIII. DENSITY BONUS

The minimum density bonus, regardless of percentage achieved, shall be one lot. If required criteria are met, the Newton Planning Board may award the development an additional density bonus. The total density bonus awarded to a particular development authorized under this section for innovative protection bonuses shall not exceed 35% of the baseline density. The density bonus shall be applied to the number of lots achievable under the baseline density. Where a final number is greater than .5, the density number may be rounded up to the next whole number. In no event shall the total density bonus awarded exceed the soil based carrying capacity for the entire parcel.

#### IX. DEVELOPMENT YIELD

The total yield for residential Open Space-Cluster development shall be determined by baseline density plus all density bonuses. The resulting number multiplied by a factor of four (4) shall indicate the number of bedrooms allowed. In no event shall the total density exceed the soil based carrying capacity for the entire parcel.

#### X. STANDARDS FOR APPROVAL

All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

- a) The permit is in compliance with this ordinance and is in the public interest.
- b) There will be no greater diminution of neighboring property values than would be created under any other use or development permitted in the underlying zone.
- c) That there are no existing violations of the Newton zoning ordinance on the subject property.
- d) That the character of the area shall not be adversely affected. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area.
  - 1) Consistency of architecture, except for single-family detached development, determined through analysis of the following:
    - Roof pitches;
    - Siding types;
    - Architectural styles of residential structures;
    - Proportional aspects of facades, building locations on lots;
  - 2) Transportation, determined through analysis of the following:
    - Access for safety vehicles onto the site, within the site, and to individual houses;
    - Capacity of nearby and affected intersections, and transportation corridors;
    - Cost for municipality to maintain roadways.
    - Layout, width, and construction of roadways on the site.
  - 3) Protection of natural resources, determined through analysis of the following:
    - Protection of environmentally sensitive areas, including but not limited to, wetlands, shoreland buffers, wildlife corridors, significant groundwater resources, etc.;
    - Maintenance of viewsheds and other visually appealing aspects of the site;
  - 4) Protection of cultural resources, determined through analysis of the following:
    - Establishment of new and protecting existing trailways for travel;
    - Protection of historic buildings or significant historical landscapes;
    - Establishment, protection and promotion for agricultural uses of the site.
- e) That granting the permit will not result in undue municipal expense.
- f) That the proposed development will be constructed in a manner compatible with the spirit and intent of the Newton Master Plan and Zoning Ordinance.
- g) That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. Mitigation of these impacts by the developer can be properly considered in granting of a conditional use permit.

#### XI. OTHER REGULATIONS APPLICABLE

The Planning Board may adopt sections of the Subdivision Regulations not pre-empted by this ordinance which shall apply to the Open Space - Cluster Development, including the right to waive such regulations. Where not specifically pre-empted by the provisions of this ordinance the requirement that is more restrictive shall apply. The Planning Board shall determine if pre-emption is intended by the provisions of this ordinance, and/or what requirement that is to apply, is more restrictive.

All units shall be built in accordance with applicable federal, state and local building codes.

## XII. MINIMUM OPEN SPACE REQUIREMENTS

The minimum percentage of land that shall be designated as open-space shall be as specified below:

- a) A minimum of forty percent (40%) of the total tract area, after deducting the following kinds of unbuildable:
  - 1) Wetlands as defined elsewhere in this ordinance or if not so defined, as found in state law.
  - 2) Slopes exceeding a grade of 25%, or soils subject to slumping.
  - 3) Land under permanent easement prohibiting future development (including easements for drainage, access and utilities).
  - 4) Floodways and floodway fringe within the 100-year floodplain as shown on official FEMA maps.
- b) A minimum of 25% of the total required open space land must be useable uplands and reasonably available for recreational purposes, provided however, that no more than 50% shall be utilized for such purpose in order to preserve a reasonable proportion of natural area on the site.
- c) No portion of public utility easements, of any kind, may be considered part of the minimum required open space.
- d) Open Space Layout. Open space land shall be designated as undivided parcels to facilitate easement monitoring, enforcement, maintenance, and to promote appropriate management by a single entity according to approved land management standards.
- e) As part of the application an open space plan shall be submitted showing clear delineation of parcels of open space land that is not to be developed. The open space plan shall be recorded at the Registry of Deeds and shall indicate that development is restricted from the open space in perpetuity.
- f) The minimum required open space land shall be placed in undivided preserves that equal or exceed 3 acres. All parcels between 3 and ten acres shall have a length to width ratio equal to or less than 4:1; except such areas specifically designated and constructed as village greens, ball fields, upland buffers to wetlands, water bodies or water courses, or trail links. Areas less in size or dimensional requirements may be considered common land left open, but shall not be included in the minimum required open space calculation.
- g) Open space shall be directly accessible to the largest practicable number of lots within the development.
- h) Safe and convenient pedestrian access to open space shall be provided from all lots not adjoining the open space
- i) Such land shall be preserved in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plat. Such restriction shall be reviewed by Town Counsel and approved by the Planning Board.
- j) The open space and/or common area within a cluster development shall be owned by and bound by one or more of the following:
  - 1) Mandatory Homeowners Association, which may use it for common recreational facilities or may designate it as Open Space, or may grant a public body an Open Space Easement.
  - 2) A public body which shall use it as Conservation Land or Public Open Land.

- 3) Such designation must be made prior to approval of the subdivision application by the Planning Board; such lands shall be held in such type of legal entity as the Planning Board deems appropriate.

### XIII. DENSITY BONUS

- a) Where the proposed Open Space Cluster plan shows 50% or more of the total parcel as open space protected as such in perpetuity, the development may be awarded a density bonus of up to 10%.
- b) Public Access Bonus - Where the public is granted access to the open space, the development may be awarded a density bonus of up to 10%. The nature of public access required to trigger this bonus is pedestrian traffic. The instrument granting access, acceptable to the Planning Board, may reasonably restrict the use of motorized vehicles.
- c) Agricultural Lands and Use Bonus - Where the development protects agriculturally valuable lands and provides permission for their use as such in perpetuity, the development may be awarded a density bonus of up to 10%. The Planning Board shall, on a case-by-case basis, determine the bonus percentage by considering the size of the project and the number of acres of farmland preserved. The open space portion preserved for agricultural use must amount to a minimum of 50% of the minimum required open space. The instrument granting use, acceptable to the Planning Board, may reasonably restrict the type or intensity of farming to occur to prevent nuisances.
- d) Additional Protection Bonus - Where the development is able to protect unique characteristics, including and limited to the following:
  - 1) Viewsheds, which are lands or corridors of land that contribute to the visual landscape of the town, including items such as open fields containing stonewalls, mature stands of trees, visible water bodies and their natural buffers.
  - 2) Historically significant buildings and landscapes, identified as such in the Master Plan, that include buildings and associated uses that are maintained and visually separated from the developed portion of the cluster development. Structures or landscapes not identified as such through the Master Plan may be determined by sufficient evidence presented to the Planning Board during review of the cluster development. Such evidence may include Heritage Commission comment, listing or eligibility for listing on the National Register of Historic Landmarks, or other qualified statements of historic value.
  - 3) Valuable wildlife and environmental areas that are otherwise buildable land, proven as such through an environmental resource inventory by a qualified wildlife biologist specializing in either flora or fauna. Reports by a wetlands or soil scientist shall not satisfy this criteria.
  - 4) Linking open space parcels or trail corridors through the site with existing trails or open space networks. The beginning of such a network or trailway may be considered as linking where reasonable opportunity is present for establishing through corridors into neighboring parcels and provided that Conservation Commission comment is in favor of this location.

If the development protects one or more of the above it may be awarded a density bonus of up to 10%. The development must provide for the protection of these resources in perpetuity and trail corridor protection must allow for reasonable public access.

- (e) Density bonus for frontage lots. Where a development is proposed such that a potential lot with the required legal frontage, on a roadway existing at the time of application within the Town of Newton, for the underlying zone has been preserved in a natural condition, the Open Space-Cluster development shall receive an additional bonus of one (1) lot.

### XIV. GENERAL REQUIREMENTS

- A. Uses – Only residential uses shall be permitted in the Cluster - Open Space Developments.
1. Single-family detached homes are permitted.
  2. Multi-family units shall be permitted up to a unit count of 4 per building or structure. These are units that are structurally joined and share walls with no yard between units.
- B. Frontage – The following frontage requirements shall apply.
1. Each single-family lot or unit shall have 50' of frontage on interior roadways.
  2. Duplex units, sharing a common wall shall have 75' of frontage.
  3. Multi-family unit structures, sharing a common wall shall have 100' of frontage for three (3) unit structures and 125' of frontage for four (4) unit structures.
- C. Setbacks – The following setbacks shall apply to all residential structures within the development.
1. Setbacks from exterior property lines of the entire parcel shall be 50' for single-family detached units, with an additional 15' per unit for multi-unit structures (e.g. 4 unit attached = 110').
  2. 30' setback from the edge of pavement for roadways within, and part of, the development.
  3. 35' structural separation for all single family unit structures within the development.
  4. 50' structural setback for multi-family units from all other structures.
  5. 10' structural setback from all lot lines.
- D. All developments shall contain some form of lot delineation or lines that designate a reasonable amount of land attributable to each particular structure.
- E. Utilities – All utilities serving the development shall be underground.
- F. Parking – Off-street parking shall be provided for two (2) cars per unit plus a minimum of a one-car garage for each unit.
- G. Sidewalks – The Planning Board may require sidewalks if deemed appropriate for the proposed development.

## XV. LEGAL REVIEW

The legal review of the proposed development shall be conducted under the conditions delineated herein:

- a) Any condominium agreements, deed restrictions, organizational provisions for a Homeowner's Association, or any legal entities providing for ownership of individual dwelling units and a sharing of certain utilities, open space, common areas, and auxiliary facilities and structures, must be approved in writing by the Planning Board and by Town Counsel and any other municipal, county, or state agency, body, commission or department required by law to assure the same.
- b) The developer will submit a suitable legal instrument which to the satisfaction of the Board and/or Town Counsel will assure that such open space and/or common land will continue to be used for conservation, park or recreation, and shall not be disposed of by sale or otherwise except to any organization established for the purpose of owning and maintaining such open space.

- c) Such developer shall also provide for adequate maintenance of such area set aside for conservation, park, or recreation. Such developer shall provide for the insertion in all deeds, in a form approved by the Planning Board and/or the Town Counsel any and all safeguards and conditions suitable to carry out the purposes of these regulations.
- d) Such legal instruments shall also provide that the Town of Newton, its agents, servants, and employees, may, without liability, enter upon such land held for conservation, park or recreation and remove, or cause to be removed, any object, or condition which may be deemed to be a nuisance or in the nature of a nuisance.

#### XVI. EXPIRATION

Any Conditional Use Permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest in accordance with the approved plat within 12 months after the date of approval.

As part of its approval of a plat or plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or building" for purposes of fulfilling this paragraph. In such cases, a new application for a Conditional Use Permit must be completed.

- XVII. Strict adherence to these provisions shall not be construed as establishing a legal right to a conditional use permit for a cluster development. Those who wish to pursue their development rights to a certain use or development of land should consider developing their land with the permitted, conventional subdivision approaches, or through the variance procedure as provided for by New Hampshire law.

#### XVIII. CONDITIONS

The Planning Board may impose higher standards than allowed by this Section when they determine that because of special site and land conditions, an adverse impact would be created by allowing development to be built to the standards delineated in this Section.

Dwelling units approved under this ordinance shall be subject to any applicable impact fees per the Newton Zoning Ordinance.

### **SECTION XXXII ELDERLY HOUSING (OVERLAY)** (Added March 2003)

#### AUTHORITY

In accordance with RSA 674:21 c, f, h and k, this ordinance is adopted to permit the establishment and construction of elderly housing in Newton. Consistent with the provisions of RSA 674:21, the Planning Board is hereby authorized to grant a conditional use permit for elderly housing in accordance with the provisions of this ordinance.

#### PURPOSE

This ordinance seeks to address the housing needs of the elderly and to encourage the development of such housing to meet the needs of persons who have lived in Newton and who would like to continue to reside in Town, but who are no longer able or interested in residing in and maintaining a conventional residence. The ordinance encourages the development of elderly housing by permitting such housing to be developed at a unit density and with a certain amount of planning flexibility that is greater than that permitted for conventional single family housing development.

The Townspeople recognize that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants and consistent with the provisions of state and federal law that permit housing units to be restricted by age.

#### I. DEFINITIONS

- a. Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.
- b. Bedroom: A room with an interior door that is primarily intended for sleeping. (Amended March 2012)

## II. GENERAL STANDARDS

All elderly housing developments shall conform to the following standards:

- a. Elderly housing developments shall be permitted only in the Residential zoning district. All elderly housing developments shall contain a minimum of 20 acres and shall have at least one hundred fifty feet (150') of frontage on a public road.
- b. The total number of elderly housing units in the Town of Newton shall not exceed ten percent of the total dwelling units then existing in the Town of Newton. The number of existing elderly housing units shall not be included in the calculation of this ten percent. (Amended March 2007)

The maximum allowable number of bedrooms allowed on a site is four bedrooms per acre of upland.

- c. Dwelling units shall be specifically designed to provide housing for elderly residents. Units shall have a maximum of two bedrooms, may not exceed thirty-five feet (35') in height, and may be either one or two stories. Buildings shall be separated by a minimum space of thirty-five feet. No building shall exceed 10,000 square feet in footprint. No individual unit shall exceed 1,500 square feet of living space, and no single-family building shall exceed 1,500 square feet in footprint. A maximum of six units shall be allowed per building.
- d. Adequate on site space shall be provided for off-street parking for two vehicles per dwelling unit.
- e. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.
- f. Except as noted in the proviso contained in this sub-paragraph, all such elderly housing developments shall comply in all respects with the Town of Newton's Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations – except however, that elderly housing units shall not be subject to school impact fees per Newton Zoning Ordinance section XXXVI.
- g. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least 55 years of age.  
The over 55 age restriction shall not apply to employed caretakers as defined in this ordinance as a person who stays overnight to provide nursing or physical assistance care to a unit resident in accordance with a medical evaluation that such care is necessary or to a family member who provides such care. No more than one caretaker whether a family member or an employee may stay with the permanent resident. (Added March 2009)
- h. The design and site layout of all such elderly housing developments shall compliment and harmonize with the rural character of the Town of Newton, shall maximize the privacy of dwelling units and preserve the natural character of the land.

- i. All such elderly housing development shall make provision for pedestrian access within the development and, to the extent possible, to off-site community facilities.
- j. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible.
- k. The perimeter of all such elderly housing developments shall be treated with a landscaped buffer zone of a minimum of twenty-five feet (25') which may consist in whole or in part of existing natural growth.
- l. The Planning Board may require that all roads within the development shall be privately owned and built according to Town standards.
- m. The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.
- n. The applicant shall demonstrate that all units have been designed to meet the needs and accessibility requirements of the elderly as reflected in the HUD's Fair Housing Accessibility Guidelines.

All units shall be built in accordance with applicable federal, state and local building codes.

### III. COMMON LAND/OPEN SPACE

In every Elderly Housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all Elderly Housing developments shall be no less than 25% of the buildable area of the development. Buildable area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), water bodies, and slopes greater than 25%.

- a. Use of Common Land. Such common land shall be restricted to open space recreational uses such as park, swimming pool, tennis courts, golf course, or conservation. While the setbacks, front, rear, and side, are considered part of the common land, none of the above uses shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land.
- b. Access to Open space/common land. Such common land shall have suitable access to a road, or walking trail, within the development.
- c. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the Elderly Housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
  - i. The continued use of land for the intended purposes.
  - ii. Continuity of proper maintenance for those portions of the development requiring maintenance.
  - iii. The availability of funds required for such maintenance.
  - iv. Recovery for loss sustained as a result of casualty, condemnation or otherwise.
  - v. Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the Elderly Housing development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

- IV. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Home Owner's Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Home Owner's Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants that the Association will at all times be in compliance with Newton's ordinances governing elderly housing, as amended.

The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing Occupants shall be provided to the Board of Selectmen. Upon any change in ownership or tenancy, the age of any new Occupants shall be given to the Board of Selectmen within thirty (30) days of tenancy/ownership changes.

- V. The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Newton; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Ordinance, as well as, with the requirement of Newton's Zoning Ordinance and Subdivision and Site Plan Regulations.
- VI. Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunction relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted there under, without the prior written approval of the Planning Board.
- VII. The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing Regulations:
- Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.
  - Bedroom: A room with an interior door that is primarily intended for sleeping. (Amended March 2012)
- VIII. The Planning Board may grant waivers from the standards set forth in this ordinance in its discretion to encourage this type of housing development provided that the general purposes of the ordinance are satisfied.

### **SECTION XXXIII CONDOMINIUM CONVERSIONS** (Added March 2007)

#### 1. PURPOSE

The purpose of this article is to provide regulations for the conversion of any existing structure to condominium ownership in any zoning district in the Town of Newton. Such conversion shall require Planning Board approval of a special use permit in accordance with RSA 356B:5 following a public hearing noticed per RSA 675:5. Approval shall be granted only if all the following conditions are met:

- A. A complete set of site plans and floor plans, as well as a complete set of all condominium documents must be filed with the Planning Board. The plan shall show the location of all utilities on the site, and shall indicate the location of all water connections and the shutoff valve for each unit. The Planning Board shall establish a schedule of fees for its review and may promulgate regulations related to carrying out its authority under this ordinance.
- B. The septic system standards of the NH Water Supply and Pollution Control Division existing as of the date of the request for condominium conversion must be met or exceeded by all systems used by the units associated with the condominium conversion, and a certificate to that effect must be filed with the Planning Board based on review of Town records by the Building Inspector and onsite inspection of systems by a professional engineer, and, a soil scientist if the existing system is undersized under current WSPCD standards.
- C. Drinking water supplies from groundwater shall be protected by restricting land use and prohibiting all activity, including but not limited to the maintenance of any sewer, sewage or waste disposal system, detrimental to water quality and quantity, within the protective radii based upon the average daily demand on the system as follows:

<u>System Demand</u> (gallons per day)	<u>Protective Radius</u> (in ft from source of supply)
400	85
800	125
1200	150
1600	175
2000	200

- D. The responsibility for maintenance, operation, replacement and protection of the water supply and sewage disposal systems shall be clearly established as that of the Declarant or Association of unit owners or, in default of such obligation by the Declarant or Association, then by the individual owners subject to reimbursement from the Association or the Declarant as the case may be, and a statement to this effect shall appear in the condominium Declaration. The deed to each condominium unit shall be subject to the declaration containing these restrictions. In the case of an Association of land owners, a copy of the Articles of Association shall be submitted to the Board.
- E. The Declaration and the Articles of Association shall specify that in no event shall the Town have any obligation for maintenance, operation, replacement or protection of the water supply and sewage disposal systems. If for any reason the Town is required to undertake any such obligation, it shall be held harmless and fully and completely indemnified for all cost and expense, including reasonable attorney’s fees incurred. The obligations to hold harmless and indemnify shall be joint and several on the part of each unit owner not the Association. The Town shall be entitled to a lien for its protection which shall attach and may be enforced in the manner of the lien for condominium assessments described in RSA 356-B or its successors.
- F. The off-street parking requirements of the Town of Newton existing as of the date of the request for condominium conversion must be met.
- G. The proposed conversion to condominium ownership shall not adversely affect surrounding properties.
- H. The proposed conversion to condominium ownership must be found to be in the public interest.
- I. The individual commercial or residential units which are the subject of an application for a

special permit for condominium must, at the time of the application for condominium conversion, exist as legal units pursuant to the land use and building ordinances of the Town of Newton. The burden shall be on the petitioner to demonstrate that the units sought to be converted conformed to said ordinance now or in the case of a valid nonconforming use at the time of their construction.

#### Checklist for Condominium Conversion

1. Complete set of site plans and floor plans, as well as a complete set of all condominium documents
2. Certificate showing that the septic system standards of the NH Water Supply and Pollution Control Division have been met or exceeded by all systems used by the units associated with the condominium conversion
3. Drinking water supplies from groundwater protected by restricting land use and prohibiting all activity, including but not limited to the maintenance of any sewer, sewage or waste disposal system, detrimental to water quality and quantity, within the protective radii based upon the average daily demand on the system
4. Responsibility for maintenance, operation, replacement and protection of the water supply and sewage disposal systems shall be clearly established
5. Off-street parking requirements met
6. Proposed conversion to condominium ownership shall not adversely affect surrounding properties
7. Proposed conversion to condominium ownership must be found to be in the public interest
8. The individual commercial or residential units must, at the time of the application for condominium conversion, exist as legal units

#### **SECTION XXXIV ACCESS MANAGEMENT** (Added March 2007)

##### I. AUTHORITY

These regulations are adopted pursuant to the authority granted in New Hampshire Revised Statutes Annotated (RSA) 674:35, and procedurally under the guidance of 675:6.

##### II. PURPOSE

These Access Management Regulations are adopted for the purposes of promoting traffic safety and efficiency, maintaining proper traffic capacity and traffic flow, reducing vehicular collision frequency, minimizing the future expenditure of public revenues, and improving the design and location of access connections to county and township roads while at the same time providing necessary and reasonable ingress and egress to properties along those roads.

The Newton Planning Board finds and determines that these regulations establish the minimum standards necessary to properly manage access to arterial and town roads in the Town of Newton and to carry out the purpose and intent of RSA 674:35.

##### III. IMPLEMENTATION AND ADMINISTRATION

The effective date of these regulations is March 13, 2007. The Newton Planning Board is responsible for implementing and administering these regulations.

##### IV. APPLICABILITY

- A. These regulations shall apply to all access connections constructed on or after the effective date of these regulations designed or intended for motor vehicle, bicycle, equestrian or pedestrian use to arterial or town

roads. They shall also apply to all existing access connections for the purposes described in this Article whenever the land use or the access classifications of such existing access connections change or whenever the existing access is upgraded by reconstruction, relocation, modification, or expansion.

- B. These regulations do not apply to the original approval of extant platted subdivisions governed by the Town of Newton Subdivision Regulations.
- C. Scenic Road: Streets and roads formally designated by the Town of Newton as a Scenic Road are subject to all applicable provisions these regulations in addition to the requirements the Scenic Road statute.

## V. DEFINITIONS

- A. Access Classification: A classification system that defines driveways according to their purpose and use:
  - 1. Minimum Volume (MV) driveway
    - a) field drive – provides access to agriculture lands and principally used by farm equipment
    - b) utility drive – provides access to public utility facilities
  - 2. Very Low Volume (VLV) driveway
    - a) farm drive – provides access to farm buildings, including single home
    - b) single family residence drive
    - c) single family common access drive serving four or fewer residences
    - d) multi-family residence drive serving four or fewer residential units
    - e) customary home occupations
    - f) walking, jogging, biking or equestrian trails
  - 3. Low Volume (LV) driveway
    - a) less than 100 trip ends in the peak hour
  - 4. Medium Volume (MV) driveway
    - a) 100 or more but less than 200 trip ends in the peak hour
  - 5. High Volume (HV) driveway
    - a) 200 or more trip ends in the peak hour
- B. Access Connection: Any connection to a road or street which permits access to or from the road or street by vehicles, equipment, cars, trucks, buses, motorcycles, bicycles, pedestrians, or horses or other animals, for the purpose of crossing the road or street or accessing the road or street. An access connection may be a road, street, driveway, or trail.
- C. Driveway: An access connection other than from another public road or street.
- D. Road Classification: A system for roadway hierarchy used to determine the appropriate degree of access management regulation in order to promote public safety and congestion prevention. For the purpose of these regulations, all roads on the State and Town road systems shall be placed in one of the following functional classifications: Principal Arterial, Minor Arterial, Collector, Subcollector, Local (Access) Streets. The classifications of state and town roads within the Town of Newton are identified in the Town of Newton Subdivision Regulations and Site Plan Review Regulations, which is subject to annual review and reclassification by the Planning Board.
- E. Stopping Sight Distance (SSD): The distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the roadway becomes visible.
- F. Subdivision Regulations: The Town of Newton Subdivision Regulations as enacted and amended by the Newton Planning Board.

- G. Technical Design Standards: The most recent publication of technical design standards as authorized by the Town of Newton Subdivision Regulations and Site Plan Review Regulations.
- H. Definitions by Reference: Definitions of the Newton Zoning Ordinance, the Newton Subdivision Regulations, and the Newton Site Review Regulations are incorporated by reference into these regulations to the extent not inconsistent with the above definitions.

#### VI. PRELIMINARY ACCESS APPROVAL

- A. In conjunction with any subdivision or site plan approval, the Planning Board shall issue a preliminary access approval. The preliminary access approval will indicate those locations along the lot for which access is acceptable and in conformance with these regulations.
- B. Prior to the issuance of a building permit for any parcel of land which is not subject to a subdivision or site plan approval, the Road Agent shall, upon written request, issue a preliminary access approval. The preliminary access approval will indicate those locations along the lot for which access is acceptable and in conformance with these regulations. The preliminary access approval shall be issued within seven (7) working days following submission of all the information required by these regulations.
- C. For preliminary access approval or for access permit issuance when no preliminary access approval was required, the Road Agent may require any or all of the following information be shown by a registered engineer or surveyor on either a survey plat or other accurate drawing:
  - 1. Distances from the side property lines to the nearest adjacent driveways and their use.
  - 2. Location of any driveways across from the property and their use.
  - 3. Location of any driveways on the property and their use.
  - 4. Available sight distance (SSD) and required sight distance (SSD).
  - 5. Required driveway spacing.
  - 6. Location of proposed driveways, if known.
  - 7. Other information as required by the Road Agent.

#### VII. ACCESS PERMITS

- A. Prior to the construction of a driveway, the Road Agent shall issue an access permit. The permit will be for access at a location for which a preliminary access approval was previously granted or at a location that is otherwise in conformance with these regulations. In those situations where no preliminary access approval was issued, the Road Agent may require submission of the Preliminary Access Approval information.
- B. Permits issued may include interim or temporary permits and shall prescribe the permitted uses and any limitations or conditions of the permit as well as the access classification. New permits are required whenever the land use or the access classifications of existing driveways change or whenever existing driveways are upgraded, including widening.
- C. For Minimum Volume and Very Low Volume driveways, access permits shall be issued with the building permit or within seven (7) working days following submission of all information required by these regulations.
- D. For all other driveway classifications, access permits shall be issued within thirty (30) working days following submission of all information required by these regulations.
- E. Any access permit which is not approved and issued or is not disapproved within the above time frames shall be deemed approved and shall be issued in accordance with the information submitted.
- F. An access permit fee as established by the Board of Selectmen to cover the cost of administering these regulations shall accompany the access permit application.
- G. Access permits shall expire if the driveway is not constructed within one (1) year of the date of access permit issuance

- H. Where required, a New Hampshire Department of Transportation (NHDOT) Driveway Permit must be approved in addition to a local access permit. Issuance of an NHDOT Driveway Permit does not supersede the requirements specified herein and does not presuppose entitlement of a local access permit.

### VIII. VARIANCES AND APPEALS

- A. Variances may be granted by the Zoning Board of Adjustment for all classes of driveways. Variances are appropriate if not contrary to the public interest where, owing to special conditions, a literal enforcement of the regulations will result in unnecessary hardship, and such that the spirit of the regulations will be observed and substantial justice done.
- B. In the granting of variances in accordance with the standards on paragraph A, the Board of Appeals may consider the following:
1. Whether not granting the variance would deny all reasonable access.
  2. Whether granting the variance would endanger the public safety.
  3. Whether the hardship was self-created.
  4. Whether granting the variance would hinder traffic safety or the proper operation of the public road.
  5. Whether granting the variance would be consistent with the purpose of these regulations.
  6. Whether all feasible access options except granting a variance have been considered.
- C. The applicants for variances may provide evidence of unique or special conditions that make the strict application of these regulations impractical or impossible. Such evidence may include:
1. Indirect or restricted access cannot be obtained.
  2. No engineering or construction solutions can be applied to mitigate the condition.
  3. No alternative access is available.
- D. All applications for appeals or variances shall be file in accordance with the Town of Newton Zoning Ordinance. Appeals shall be filed within thirty (30) days of the Planning Board/Road Agent’s decision.

### IX. ENFORCEMENT

- A. If any driveway is installed contrary to these regulations, the Code Enforcement Officer shall notify the property owner in writing. The notification shall identify the problem with the driveway and establish a 15 day period for the property owner to correct the problem. If the problem is not corrected within 15 days, the town may block the access at the point that it enters a public road right-of-way.
- B. In addition, whoever violates any provision of these regulations shall be fined upon conviction not more than five hundred dollars for each offense. Each day of violation is a separate offense.

### X. STANDARDS

- A. The arrangement, character, extent, width, grade, and location of all access connections shall conform with these regulations and shall be considered in their relation to existing and planned roads, streets and driveways, topographical conditions, and public convenience and safety and the proposed uses of the land to be served by such access connections.
1. The requirements of these regulations vary depending on the road classification as defined herein.
  2. The provisions of any existing or future Access Management Plan prepared for a specific road or portion of a road shall apply. The applicable requirements of the Subdivision Regulations and the Technical Design Standards shall also apply.
  3. General
    - a) All driveways or driveway upgrades shall meet or exceed the requirements of these regulations. The location of all access connections shall permit adequate horizontal and vertical sight distance as specified in the Technical Design Standards based on the stopping sight distance for the legal speed limit at the location of the driveway.

- b) Common access driveways and/or cross access or through access easements may be required and are permitted to satisfy the requirements of these regulations. Proposed common access driveways and/or cross access or through access easements shall be in accordance with the Common Access Drive Regulations in the Technical Design Standards.
  - c) Existing driveways that do not conform with these regulations shall be considered nonconforming driveways and shall be brought into conformance with these regulations under the following conditions:
    - (1) When new access permits are requested;
    - (2) When driveway upgrades are proposed;
    - (3) When significant increases in trip generation are planned for the driveway;
    - (4) If the use served by the nonconforming driveway discontinues for a consecutive period of 2 years; or
    - (5) When there is a change of use of the property access.
  - d) To the greatest extent possible developments shall incorporate unified access and circulation systems. Where a proposed development abuts to and connects, through internal circulation, to an existing subdivision or development which has access to a Collector or Local Road, the proposed development shall, when necessary, upgrade the intersection at the Collector or Local Road and the existing subdivision's or development's access to the Collector or Local Road.
  - e) When a new driveway or driveway upgrade is permitted, the property owner(s) shall eliminate all pre-existing non-conforming driveways upon completion of the new driveway or driveway upgrade as required by the Planning Board. No new driveways or driveway upgrades shall be permitted for parcels or contiguously-owned parcels where access rights have been previously extinguished or acquired by a governmental body.
  - f) The Planning Board shall require a Traffic Impact Study for any Medium Volume or High Volume driveway and may require a Traffic Impact Study for any Low Volume driveway. The Traffic Impact Study shall be prepared in accordance with the requirements of the Technical Design Standards and the Planning Board.
4. Number, Spacing and Width of Access Points
- a) Number of Access Points
    - (1) Minimum Volume Driveways
      - (a) New driveways or driveway upgrades shall be located no closer than 495 feet from an existing or proposed driveway serving the same parcel or serving contiguously-owned parcels.
    - (2) Very Low Volume Driveways
      - (a) Along Principal Arterials: No new driveways or driveway upgrades shall be permitted along a Principal Arterial from parcels or contiguously-owned parcels where access is available or can be made available from a lower classification road or street or from a common access driveway. No more than one driveway shall be permitted per parcel or per contiguously-owned parcels.
      - (b) Along Minor Arterial Roads: No new driveways or driveway upgrades shall be permitted along a Minor Collector Road from parcels or contiguously-owned parcels where access is available or can be made available from a lower classification road or street. No more than one driveway shall be permitted per parcel or per contiguously-owned parcels.
      - (c) Along Collectors and Subcollectors: No more than one driveway or driveway upgrade shall be permitted per parcel or per contiguously owned parcels.

- (d) Along Local Streets: No more than one driveway or driveway upgrade shall be permitted per parcel or per contiguously-owned parcels.
- (3) Low, Medium and High Volume Driveways
  - (a) No more than one driveway shall be permitted per parcel or per contiguously-owned parcels.
- b) Driveway Access Spacing
  - (1) Driveway access spacing shall be measured from the edge of the proposed driveway pavement to the nearest edge of the roadway of the adjacent or opposite driveway or street.
  - (2) Minimum Volume Driveways
    - (a) New driveways or driveway upgrades shall be located no closer than 25 feet from an existing or proposed driveway and no closer than 80 feet from an existing or proposed road or street.
  - (3) Very Low Volume Driveways
    - (a) Along Principal Arterials: Where new driveways or driveway upgrades along Principal Arterial are permitted, they shall be located no closer than 495 feet from an existing or proposed driveway or from an existing or proposed road or street.
    - (b) Along Minor Arterial Roads: Where new driveways or driveway upgrades along a Minor Collector Road are permitted, they shall be located no closer than 360 feet from an existing or proposed driveway or from an existing or proposed road or street.
    - (c) Along Collectors and Subcollectors: New driveways or driveway upgrades shall be located no closer than 40 feet from an existing or proposed driveway or no closer than 120 feet from an existing or proposed road or street.
    - (d) Along Local Streets: New driveways or driveway upgrades shall be located no closer than 25 feet from an existing or proposed driveway or no closer than 80 feet from an existing or proposed road or street.
  - (4) Low, Medium and High Volume Driveways
    - (a) No more than one driveway shall be permitted per parcel or per contiguously-owned parcels.
    - (b) If the centerline of an opposite drive is less than fifteen feet (15') from the centerline of the proposed drive, the drives form an intersection and the minimum spacing requirements shall apply for the closest drive.
    - (c) Opposite-right driveways shall be located no closer than the minimum requirements of Table 1A. Additional opposite right spacing over and above that set forth in Table 1A may be required if the Planning Board determines that there is insufficient left turn queue storage or weave maneuver area between the opposite right driveway and proposed driveway. This determination shall be made under peak traffic conditions. Desirable spacing will be required except where minimum spacing may be allowed in older developments with insufficient frontage.

Table 1A. Opposite Right (Downstream) Driveway Spacing		
Roadway Classification	Minimum Spacing (Feet)	Desirable Spacing (Feet)

Major Arterial	300	400
Minor Arterial	225	350
Collector & Subcollector	175	300
Local Street	125	250

- (d) A minimum of one hundred twenty-five (125') shall be required between opposite-left driveways for all roadway classifications.
- (e) Same-side adjacent driveways shall be located no closer than the minimum requirements of Table 1B. Desirable spacing will be required except where minimum spacing may be allowed in older developments with insufficient frontage.

Table 1B. Same-side Adjacent Driveway Spacing		
Roadway Classification	Minimum Spacing (Feet)	Desirable Spacing (Feet)
Major Arterial	275	350
Minor Arterial	230	300
Collector	185	235
Local Street	150	190

c) Signalized Access Driveway Spacing

- (1) Along Principal Arterials: For new driveways or driveway upgrades that will warrant traffic signals, the spacing from the nearest existing or proposed signalized intersection shall be no closer than 2640 feet or from the nearest existing or proposed unsignalized intersection shall be no closer than 1320 feet.
- (2) Along Minor Arterials: For new driveways or driveway upgrades that will warrant traffic signals, the spacing from the nearest existing or proposed signalized intersection shall be no closer than 1760 feet or from the nearest existing or proposed unsignalized road or street intersection shall be no closer than 880 feet.
- (3) Along Local Roads: For new driveways or driveway upgrades that will warrant traffic signals, the spacing from the nearest existing or proposed signalized intersection shall be no closer than 1320 feet or from the nearest existing or proposed unsignalized road or street intersection shall be no closer than 660 feet.

d) Driveway Approach Width

- (1) Commercial/Industrial: The maximum width of a driveway approach for a two-way driveway shall not exceed thirty-six feet (36') including two-foot (2') shoulders. The minimum width of a driveway approach for two-way driveway shall not be less than twenty-four feet (24') including two-foot (2') shoulders.
- (2) Residential: The maximum width of a driveway approach shall not exceed fifteen feet (15'). The minimum width of a driveway approach shall not be less than ten feet (10'). The combined width of two driveways for residential circular drives shall not exceed twenty-eight feet (28').

5. Turning Radii

- a) Turning Radii. The principal users of the roadway shall be considered when determining the inside turning radii. The inside turning radii shall vary between a minimum of fifteen feet

(15’) and a maximum of thirty feet (30’) and meet the minimum and maximum requirements of Table 2A.

Table 2A. Inside Turning Radii		
Land Use	Minimum Inside Turning Radii (feet)	Maximum Inside Turning Radii (feet)
Residential Only	15	20
Commercial/Industrial Only	20	30
Mixed Uses	15	30

6. Corner Clearance

- a) No driveway approach may be located closer to the corner than indicated in Table 3A. The measurement shall be taken from the intersection of property lines at the corner to the nearest edge of the proposed driveway pavement. When these requirements cannot be met due to lack of frontage, the nearest edge of the proposed driveway pavement shall be located as far as possible from the intersection of property lines at the corner.

Table 3A. Distance of Driveway Approach from Corner	
Speed (mph)	Distance from Corner (feet)
30	325
35	425
40	525
45	630
50	750
55	875

7. Throat Length

- a) Driveway Throat Length. Driveway throat length shall be measured from the edge of the property line to the furthest end of the driveway. A minimum driveway throat length of twenty-five feet (25’) for collector streets, forty feet (40’) for minor arterials, and fifty-five feet (55’) for principal arterials shall be required. The purpose of the driveway throat length is to allow for traffic entering the site to be stored on site in order to avoid a queue of traffic on the roadway causing delays and a potentially hazardous situation.

8. Shared Access

- a) Shared Access. Shared driveways are encouraged and may be required between adjacent lots that front on arterial and collector streets. In such cases, a joint access easement between the property owners may be required. The location and dimensions of said easement shall be determined by the Planning Board.
- b) Shared Parking Provision. Parking provision for any combination of uses on the same site shall consider the opportunity for combined visits (i.e. one parking space in front of a gas

station pump may count as one parking space for both the convenience store and the gas station in a combined gas station/convenience store development). Shared parking arrangements with adjoining non-residential developments or other uses on site are encouraged. Off-site shared parking shall be protected with a shared parking easement agreement which shall be reviewed and approved by the Planning Board and recorded with the approved site plan.

- c) Parking shall be located within six hundred feet (600') of the principal use and connected to the principal use by a five foot (5') wide pedestrian path.
- d) Parking shall not be permitted in any required setback or between the principal structure and a public street, including corner lots. Parking shall be located to the side or rear of the principal structure. The Planning Board may waive this requirement in situations where lot configuration or use renders such parking lot location impractical, however, effort shall be made to locate parking to the side or rear of buildings.

9. Alignment of Access Points

- a) Intersection Alignment. If a proposed driveway cannot meet the requirements of Section 4, above, then the proposed driveway shall be aligned directly opposite an existing or proposed opposite driveway and the configuration shall be treated as a four-way intersection.
- b) Angle of Driveway Approach. The angle of driveway approach shall be approximately ninety (90) degrees for two-way driveways and between sixty (60) degrees and ninety (90) degrees for one-way driveways.

10. Sight Distance

- a) All season safe sight distance is defined as a line which encounters no visual obstruction between two (2) points, each at a height of three feet nine inches (3'-9") above the pavement, and ten feet (10') back from the road pavement as to represent the critical line of sight between the operator of a vehicle using the access and the operator of a vehicle approaching from either direction.
- b) Safe sight distance shall be compatible with the maximum speed limit posted on the roadway as indicated in Table 6A.

Table 6A. All-Season Safe Sight Distance						
Speed Limit (mph)	All Season Safe Sight Distance (feet)					
	Downgrades			Upgrades		
	3%	6%	9%+	3%	6%	9%+
25	158	165	173	147	143	140
30	205	215	227	200	184	179
35	257	271	287	237	229	222
40	315	333	354	289	278	269
45	378	400	427	344	331	320
50	446	474	507	405	388	375
55	520	553	593	469	450	433

- c) To prevent hardships to owners of small parcels of land or special land uses, exceptions to the all season safe sight distance requirements should be allowed for individual homes, agricultural land, public works land, highway department land and temporary accesses for vehicles such as construction vehicles, gravel trucks and log trucks. The road shall then be properly signed for "Blind Drive" or "Trucks Entering."

## 11. Bicycle and Pedestrian Provision

- a) **General Provisions.** The site plan shall provide for a system of pedestrian and/or bicycle paths appropriate to the type and scale of development. This system shall connect the major building entrances/exits, parking areas and any existing sidewalks within or adjacent to the project. The pedestrian and/or bicycle network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall also be designed to link the project with residential, recreational, commercial facilities, schools, bus stops and existing bicycle or pedestrian facilities in the neighborhood. When deemed appropriate, connections with amenities such as parks or open space on or adjacent to the site may be required.
- b) **Pedestrian Paths.** A minimum five foot (5') wide pedestrian path shall be provided throughout the site, connecting adjacent streets, sidewalks and parking area(s) to the entrances of all principal structures. Pedestrian paths shall be marked by accent strips of brick, concrete block or textured paving materials to define pedestrian walkways and crosswalks. Pedestrian paths may be incorporated with accessible routes as required by the Americans with Disabilities Act, as amended. Guidelines for sidewalk construction features are as follows (guidelines may be modified to meet site specific situations with Planning Board approval):
  - (1) **Accessibility.** Sidewalk corridors shall be easily accessible to all users, whatever their level of ability and comply with all Americans with Disability Act (ADA) standards.
  - (2) **Adequate Travel Width.** The sidewalk shall be a minimum of five feet (5') wide.
  - (3) **Continuity.** The walking route along a sidewalk corridor shall be obvious, shall connect destinations and shall not require pedestrians to travel out of their way unnecessarily.
  - (4) **Landscaping.** Plantings and street trees in the sidewalk corridor shall create a desirable environment and shall contribute to the psychological and visual comfort of sidewalk users.
  - (5) **Social Space.** Sidewalk corridors shall provide places for people to interact. There shall be places for standing and sitting.
  - (6) **Quality of Place.** Sidewalk corridors shall contribute to the character of neighborhoods and business districts and strengthen their identity. Rural pathways/trails or mixed use trails shall be considered as alternatives where appropriate.
- c) **Bicycle Facilities.** Separate bicycle facilities may be required by the Planning Board if deemed appropriate. Bicycle facilities may be provided in the form of a separate off-street path or onstreet marked bicycle lanes. Bicycle facilities may be combined with pedestrian facilities. Bicycle facilities shall be designed in accordance with AASHTO, *Guide for the Development of Bicycle Facilities*, 1999, as amended.

## 12. Transit Provisions

- a) **Mass Transit Facilities.** Mass transit facilities shall be incorporated within all major site plans that could generate high volumes of transit use. Transit routes, access points, bus pull-out facilities and shelter locations shall be addressed along major roadways within and on the perimeter of such projects. Transit facilities shall be provided in a manner to make transit an attractive mode of travel for both employees and patrons. Shelters shall be located next to significant clusters of buildings, and shall be provide protection from prevailing winds and inclement weather. A five foot (5') wide pedestrian path shall connect the bus shelter to the principal structure(s) in the development.
- b) **Bus Pull-Out Facilities.** Bus pull-out facilities shall be incorporated into all mass transit projects located along a collector or arterial roadway. A clear separation shall be provided between the pull-out facilities and vehicular traffic and parking lots or parking structures. Pull-out facilities shall not obstruct traffic flow when buses discharge passengers.

## 13. Roundabouts

- a) Roundabouts. Roundabouts as defined in FHWA, *Roundabouts: An Informational Guide*, June 2000, as amended, may be used as an alternative to traditional three or four-way intersections where traffic conditions allow.

## XI. ADOPTION

These regulations are adopted by resolution of the Newton Planning Board after public hearings were held on November 28, 2006 and January 8, 2007.

## **SECTION XXXV COMMERCIAL ARCHITECTURE** (Added March 2007)

### I. STATUTORY AUTHORIZATION

- A. RSA Title LXIV, Chapters 674:16, Grant of Power
- B. 674:21, Innovative Land Use Controls

### II. PURPOSES AND APPLICABILITY

#### A. General Purposes

1. To preserve and enhance the rural, small town character of Newton through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of New England and to create and clearly delineate public and private spaces to enhance the quality of life and aesthetic quality of both the residents of the development and the town as a whole;
2. To promote traditional village building and site development patterns with an interconnected pattern of streets, alleys, and lanes, which provides for safe and efficient vehicular travel at a scale consistent with the small, rural village setting, and which provides for the connection of those streets to existing and future developments;
3. To protect environmental resources and to preserve scenic vistas, agricultural areas, and unique natural features of the landscape;
4. To provide for pedestrian and bicycle travel throughout the development through the creation of sidewalks, paths, and bicycle paths;
5. To promote the use of neighborhood greens, pocket parks, landscaped streets, and access to greenspace to provide space for recreation and social activity, and to provide visual enjoyment;
6. To provide a mix of housing styles, types, and sizes, to accommodate households of all ages, sizes, and incomes;
7. To provide buildings for civic assembly and neighborhood activities that promote the development of social networks and community and provide a visual focal point for the village subdivision; and
8. To promote the management of growth and the implementation of innovative land use controls consistent with RSA 674 in order to protect environmental resources, control sprawl, reduce traffic congestion, and enhance the sense of community of new developments and redeveloped areas.

#### B. Applicability

1. The standards in this section are applicable within the Commercial District(s), whose location and boundaries have been selected to be consistent with policies in the Master Plan.
2. The standards in this section are also applicable to any proposed change of use or expansion of use for commercial properties outside of the Commercial District(s).

III. COMMERCIAL DESIGN STANDARDS

A. Architectural Design Standards

1. General. The following architectural design standards shall apply to all structures.
2. Buildings.

a) **Scale and Style.** Buildings shall generally relate in scale and design features to the surrounding buildings, showing respect for the local context, except however, where existing development does not represent a consistent architectural style or does not incorporate a building design that reflects the rural character and architecture of New England towns, buildings should instead be designed to improve the overall streetscape, relying on the design standards set forth in this ordinance.



**Figure 1. Scale and Style**

- b) As a general rule, buildings shall reflect a continuity of treatment obtained by maintaining the building scale or by subtly graduation changes, by maintaining small front setbacks, by continuous use of front porches on residential buildings, by maintaining cornice lines in buildings of the same height, by extending horizontal lines of fenestration, and by echoing architectural styles, details, design themes, building materials, and colors used in surrounding buildings where such buildings represent the rural character and architecture of New England towns.
- c) **Corner Lots.** Buildings on corner lots shall be considered significant structures, given that they have at least two front facades visibly exposed to the street. If deemed appropriate by the planning board in its design review, such buildings may be designed with additional height and architectural embellishments, such as corner towers, steeples, or other features to emphasize their location and serve as a visual focal point for the area.



**Figure 2. Corner Lots**

d) **Walls and Planes.** Buildings shall avoid long, monotonous uninterrupted walls or roof planes. Offsets including projections, recesses, and changes in floor level shall be used in order to add architectural interest and variety, and to relieve the visual effect of a

simple, long wall. Similarly, roof-line offsets shall be provided, in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. Flat roofs should be avoided in favor of pitched roofs.

- e) Buildings with more than one façade facing a public street or internal open space shall be required to provide multiple front façade treatments.
- f) The architectural treatment of the front façade shall be continued, in its major features, around all visibly exposed sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors, and details. Bland wall or service area treatment of side and or rear elevations visible from the public viewshed is discouraged.
- g) Base Course and Cornice. All visibly exposed sides of a building shall have an articulated base course and cornice. The base course shall align with either the kickplate or sill level of the first story. The cornice shall terminate or cap the top of a building wall, may project horizontally from the vertical building wall plane, and may be ornamented with moldings, brackets, and other details. The middle section of a building

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**Figure 4. Cornice and Base**

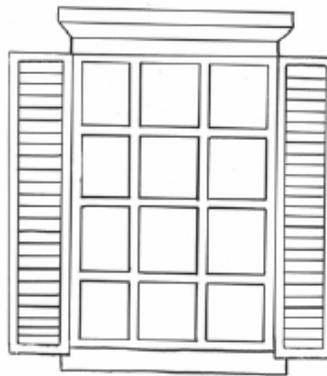
ly divided at the floor, lintel, or sill levels with belt or string course.

- h) Roofs. Gable roofs with a minimum pitch of 9/12 should be used to the greatest extent possible. Where hipped roofs are used, it is recommended that the minimum pitch be 6/12. Both gable and hipped roofs should provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall. Flat roofs should be avoided on one-story buildings, but may be used on buildings with a minimum of two stories, provided that all visibly exposed walls shall have an articulated cornice which projects horizontally from the vertical building wall plane. Other roof types should be appropriate to the building’s architecture. Mansard roofs are generally discouraged, particularly on buildings less than three stories in height. Architectural embellishments that add visual interest to roofs, such as dormers, belvederes, masonry chimneys, cupolas, clock towers, and other similar elements are encouraged.



**Figure 5. Roofs**

- i) Windows/fenestration. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building, and appropriate to a rural New England setting. Windows shall be vertically proportioned wherever possible. To the extent possible, upper story windows shall be vertically aligned with the location of windows and doors on the ground level, including storefront or display windows. Blank, windowless walls are discouraged. Storefronts are an integral part of building and shall be integrally designed with the upper floors to be compatible with the overall façade character. Ground floor retail, service, and restaurant uses should have large pane display windows, framed by the surrounding wall, and shall not exceed 75 percent of the total ground level façade area.

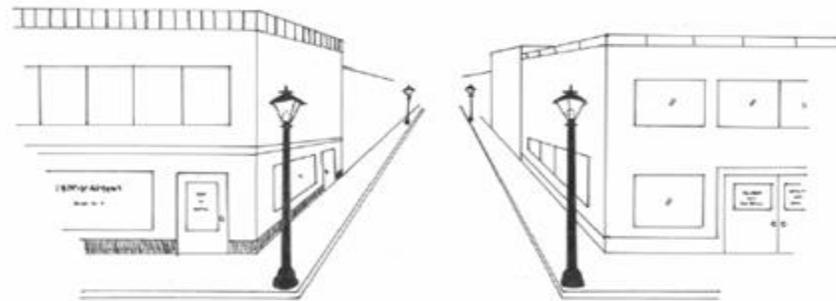


**Figure 6. Windows**

- j) Entrances. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, balustrades, and others, where appropriate. Any such element utilized shall be consistent with the style, materials, colors, and details of the building as a whole, as shall the doors. Awnings are permitted where they compliment the building’s architectural style.
- k) Light fixtures. Light fixtures attached to the exterior of a building shall be architecturally compatible with the style, materials, colors, and details of the building and shall comply with local building codes. The type of light source used on the exterior of buildings, signs, parking areas, pedestrian walkways, and other areas of a site, and the

light quality produced, shall be the same or compatible. Facades shall be lit from the exterior, and, as a general rule, lights should be concealed through shielding or recessed behind architectural features. The use of low-pressure sodium, fluorescent, or mercury vapor lighting either attached to buildings or to light the exterior of buildings shall be prohibited. Mounting brackets and associated hardware should be inconspicuous.

- l) **Lighting.** Street lights shall be decorative and shall blend with the architectural style of the community. Along all commercial or mixed-use streets, parking areas, sidewalks, walkways, courtyards, community greens, and interior open spaces, decorative light posts shall be provided at regular intervals. Posts shall be spaced at no greater than 80 feet on center on both sides of a commercial or main street. Light posts should be at least ten feet high. In parking areas, post heights may extend to a maximum of sixteen feet. Wall-mounted light design shall be incorporated into the street lighting design.



**Figure 7. Street lights**

- m) **Air conditioners and other fixtures.** All air conditioning units, HVAC systems, exhaust pipes or stacks, elevator housing, dumpsters, propane/fuel tanks, transformers, satellite dishes, and other telecommunications receiving devices shall be thoroughly screened from view from the public right-of-way and from adjacent properties by using walls, fencing, roof elements, or landscaping. In no case will chain-link fencing be permitted for screening.
- n) **Fire escapes.** Fire escapes shall not be permitted on a building's front façade. In buildings requiring a second means of egress pursuant to the local building codes, internal stairs or other routes of egress shall be used.
- o) **Security.** Solid metal security gates or solid roll-down metal windows shall not be permitted. Link or grill type security devices shall be permitted only if installed from the inside, within the window or door frames. Security grilles shall be recessed and concealed during normal business hours.

## B. Signs

1. **General.** All signs within a new development must conform to the following requirements. All signs within a development must be consistent with the overall design of the development, and shall be constructed of wood, granite, painted cast metal, bronze, brass, or other material consistent with the materials used in the building's façade or fixtures. Plastic panel rear-lighted signs are not permitted. Billboards are not permitted. Signs employing mercury vapor, low pressure and high-pressure sodium, and metal halide lighting are not permitted. (Amended March, 2016)
2. **Design.** Unique and interesting designs are encouraged in the lettering and graphics of each sign. Signs may be attached to the building and project outward from the wall so long as the sign does not project outward from the wall to which it is attached more than eighteen inches. Projecting signs must be no larger than four square feet. Projecting signs must be at least ten feet above the ground. Signs attached to the front façade shall not exceed the dimensions of the façade.

3. Height. The maximum permitted height of signs is fifteen feet above the front sidewalk elevation, and shall not extend above the base of the second floor windowsill, parapet, eave, or building façade.
4. Freestanding signs shall only be permitted where the business is not attached to any other buildings. All freestanding signs must be no larger than 32 square feet. (Amended March, 2016)
5. Signs that list more than one business shall not be permitted except in instances where a building contains multiple businesses or offices that are not distinguishable from the street.
6. Street address numbers shall be clearly marked in any new development and included in the design of the front façade or signage of individual buildings.
7. Company logos that contain bright or garish colors or designs shall be muted to harmonize with the overall color scheme and design of the development.

#### C. Landscaping

1. All developments must contain a landscaping plan that lists the location, species, and suitability of plant species to the site.
2. Existing trees and other features of the land shall be protected in the development of the site to the greatest extent feasible.
3. Where merited, trees shall be planted to enhance public spaces, open spaces, and streetscapes. The Planning Board will meet with the developer's landscape architect to review the landscape plan and suggest any appropriate landscaping improvements to the site to enhance the development consistent with the landscape requirements mentioned elsewhere in this ordinance.

#### D. Parking

1. All parking for commercial areas must be on-street or in the rear of buildings.
2. Rear parking areas shall be landscaped with a line of low shrubs or suitable foliage every two rows of spaces.

Drawings within this ordinance provided by David West and Jill Robinson, Rockingham Planning Commission

### **SECTION XXXVI IMPACT FEE ORDINANCE FOR PUBLIC SCHOOL FACILITIES** (Added March 2000, amended March 2005)

#### A. APPLICABILITY OF ARTICLE

The Town of Newton has developed a methodology for the assessment of impact fees for a proportionate share of the public school capital facilities of the Sanborn Regional School District. On the basis of this methodology, new development in Newton shall be assessed a public school impact fee that represents its proportional share of demand on the capital facilities of the District. The following regulations shall govern the assessment of impact fees for public school facilities in order to accommodate increased demand on the capacity of these facilities due to new development. These regulations are authorized by RSA 674:21, V, and other pertinent state law, as an innovative land use control. The administration of these regulations shall be the responsibility of the Board of Selectmen.

#### B. FINDINGS

In review of its school enrollment growth and the public school capacity available to Newton from the Sanborn Regional School District of which it is a member, the Town of Newton hereby finds that:

1. Each type of new residential development in Newton, with the exception of those having lawfully restricted occupancy that will exclude school age children, will create a need for the construction, equipping, or expansion of the public capital facilities of the Sanborn Regional School District to provide adequate public education for Newton pupils.

2. Recent and anticipated growth rates in public enrollment and associated improvement and renovation costs would necessitate an excessive expenditure of public funds in order to maintain adequate school facility standards and to promote and protect the public health, safety, and welfare.
3. The assessment of impact fees is one of the methods available to ensure that public expenditures are not excessive and that new development will bear a proportionate share of the cost of public school capital facility costs necessary to accommodate such development.
4. The Sanborn Regional School District, of which the Town of Newton is a member, provides an efficient and effective means for the towns of the District to provide educational services to the citizens of the District.
5. The impact fee methodology entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended) prepared for the Town of Newton, represents a reasonable, rational and proportional method for the assessment of growth-related school facility costs of the District. Based on this methodology, school impact fees will not exceed the costs of:
  - a. Providing additional public capital facilities necessitated by new residential development in Newton; and/or
  - b. Compensating the Sanborn Regional School District for school facility capacity that it provided in anticipation of new residential growth and development in Newton.
6. An impact fee ordinance for school capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Newton.

#### C. DEFINITIONS

1. District – The Sanborn Regional School District, of which Newton is a member municipality.
2. Fee-payer – The applicant for the issuance of a building permit which could create new development.
3. New Development – An activity which results in
  - a. The creation of a new dwelling unit or units; or
  - b. The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units.

#### D. ASSESSMENT OF IMPACT FEES (Amended March 2005)

1. Impact fees shall be assessed to new development to compensate the Town of Newton for the proportional share of the capital facility costs of the District generated by new development in Newton, including public school facilities to be constructed, or which were constructed in anticipation of new development.
2. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.
3. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for the issuance of a building permit.
4. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use. However, the Board of Selectmen may negotiate an alternative schedule for collection with the fee payer.

5. The Board of Selectmen and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees. If an alternate schedule of payment is established, the Board of Selectmen may require the applicant 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.
6. No Certificate of Occupancy shall be issued for new development which is subject to impact fee assessment until the fee is paid in full.
7. Any person may request a full or partial waiver of school facility impact fees for the number of residential units that are lawfully restricted to occupancy by senior citizens age 62 or over, or to households with at least one person age 55 and over, as applicable, where such units are maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. School impact fees may, in the discretion of the Board of selectmen, be waived for such units within a complying development where the units are restricted by age for a period of at least 20 years.
8. A person may request a full or partial waiver of school facility impact fees from the Board of Selectmen for any residential units which have been approved for construction prior to the effective date of this article if the same are determined to be entitled to the four year exemption provided by RSA 674:39, to the extent that exemption is available pursuant to that statute. This waiver shall not be applicable to residential units in phases of a phased residential development project where active and substantial development, building and construction has not yet occurred in the phase in which those units are to be constructed.
9. Prior to acting on a request for waiver of impact fees under the provisions of paragraphs 3 or 4 of this section, the Board of Selectmen shall submit a copy of the waiver to the Planning Board for its review and comment, and the Planning Board shall set forth its comments in writing. In the process of its review, the Board of Selectmen shall set forth in writing its findings on the Planning Board's comments to the extent that such comments are not directly incorporated into the decision on the request for a waiver.

#### E. COMPUTATION OF IMPACT FEE

1. The amount of each impact fee shall be assessed in accordance with a report entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended), prepared for the Town of Newton and as adopted for the purposes of impact fee assessment by the Board of Selectmen.
2. In case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessment for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Ordinance.

#### F. APPEALS

1. If a fee-payer elects to appeal the amount of the impact fee, the appeal shall be made to the Zoning Board of Adjustment. In support of such appeal, the fee-payer shall prepare and submit to the Zoning Board of Adjustment an independent fee calculation or other relevant study for the new development activity which is proposed. The independent study by the fee-payer shall set forth the specific reasons for departing from the adopted schedules and methodologies of the Town. The Board of Adjustment shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the fee-payer.
2. The decision of the Zoning Board of Adjustment may be appealed to the Superior Court as provided by RSA 677:2-14.

#### G. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into a separate impact fee account for public school facilities. This impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue to the General Fund.
2. The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Article for each building permit so affected for a period of at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
3. Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Sanborn Regional School District for the cost of public school capital improvements made by the District in anticipation of the needs for which the impact fee was collected.
4. In the event that bonds or similar debt instruments have been or will be issued by the District for the funding of capacity-related improvements to public schools, impact fees may be transferred to the District to pay debt service on such bonds or similar debt instruments.
5. At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving a particular account of all impact fee transactions during the year.

#### H. REFUND OF FEES PAID

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:
  - a. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
  - b. The District has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate any of the non-impact fee share of related capital improvement costs thereby permitting the capital improvement or capital improvement program for which the impact fee was collected to be commenced. If any capital improvement or capital improvement program for which an impact fee has been collected has been commenced either prior to, or within six years from the date of final collection of an impact fee, that impact fee shall be deemed to be encumbered and legally bound to be spent for said capital improvement or capital improvement program and shall not be refunded, even if it is not fully expended within the six year period.
2. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

#### I. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this article does not restrict the Town or the Planning Board from requiring other payments from the fee-payer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

#### J. PREMATURE AND SCATTERED DEVELOPMENT

Nothing in this article shall be construed so as to limit the existing authority of the Newton Planning Board to deny proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Newton Zoning Ordinance, or the Newton Planning Board Site Plan Review Regulations or

Subdivision Regulations, or which may otherwise be lawfully denied.

K. REVIEW AND CHANGE IN METHOD OF ASSESSMENT (Amended March 2005)

The Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended) and the associated fee schedule shall be reviewed periodically by the Board of Selectmen. Such review shall take place not more than five years from the initial adoption of this ordinance, nor more frequently than annually. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be reviewed by the Planning Board prior to its final consideration by the Board of Selectmen. The review by the Board of Selectmen may result in recommended adjustments to the methodology and related fees based on the most recent data as may be available. The replacement or amendment of the impact fee methodology shall not be effective until it shall have been the subject of a public hearing before the Board of selectmen, noticed in accordance with RSA 675:7.

**SECTION XXXVII PERSONAL WIRELESS SERVICE FACILITIES** (Added March 2002, amended March 2015)

I. AUTHORITY

This ordinance is adopted by the Town of Newton at the 2002 Town Meeting, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, procedurally under the guidance of 675:1, II and in accordance with RSA 12-K.

II. PURPOSE AND GOALS

This Ordinance is enacted in order to effectuate the following goals and standards in permitting the siting of Personal Wireless Services Facilities (PWSF) in accordance with federal and state law:

- (a) To facilitate the review and approval of personal wireless services facilities by the Town's Planning Board in keeping with the Town's existing ordinances and established development patterns, including the size and spacing of structures and open spaces. This ordinance is intended to be applied in conjunction with other ordinances and regulations adopted by the Town, including historic district ordinances, site plan review regulations and other local ordinances designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development.
- (b) Preserve the authority of Newton to regulate and to provide for reasonable opportunity for the siting of PWSF.
- (c) Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values. To minimize the visual and environmental impacts of personal wireless services facilities by avoiding the deployment of PWSF's that service substantially the same service area.
- (d) Encourage, where technically feasible, co-location and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- (e) Permit the construction of new PWSF only where all other reasonable opportunities for co-location have been exhausted.
- (f) Require the configuration of PWSF in a way that minimizes the adverse visual impact of the facilities and antennas.
- (g) Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Newton.

- (h) Provide constant maintenance and safety inspections for any and all facilities.
- (i) Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town of Newton to remove these abandoned towers to protect the citizens from imminent harm and danger.
- (j) Provide for the removal or upgrade of facilities that are technologically outdated.
- (k) The regulation of personal wireless services facilities is consistent with the purpose of the Newton Master Plan to further the conservation and preservation of developed, natural and undeveloped areas, wildlife, flora and habitats for endangered species; the preservation and protection of the natural resources of Newton; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.

### III. APPLICABILITY

#### (a) Public Property

Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance and provided that the facility will be at least partially available for public purpose.

#### (b) Amateur Radio; and/or Receive-Only Antennas

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

Modification of existing amateur radio facilities for commercial use shall require full town review in accordance with this ordinance.

#### (c) Essential Services & Public Utilities

PWSF shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Sitting for PWSF is a use of land, and is addressed by this ordinance.

#### (d) This ordinance shall not apply to PWSF that fall under limitations of RSA 12-K.

### IV. DEFINITIONS

- (a) Above Ground Level (AGL): A measurement of height from the natural grade of a site to the highest point of a structure.
- (b) Alternative tower structure: Innovative sitting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- (c) Antenna: The surface from which wireless radio signals are sent and received by a personal wireless service facility.

- (d) Average tree canopy height: Means the average height found by inventorying the height above ground level of all trees over a specified height within a specified radius.
- (e) Carrier: Means a person that provides personal wireless services.
- (f) Co-location: The placement or installation of new PWSFs on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. “Co-location” does not include a “substantial modification.”
- (g) Elevation: The measurement of height above sea level.
- (h) Environmental Assessment (EA): An EA is the 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.
- (i) Equipment shelter: Means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.
- (j) FAA: An acronym that shall mean the Federal Aviation Administration.
- (k) FCC: An acronym that shall mean the Federal Communications Commission.
- (l) Fall Zone: The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- (m) Functionally Equivalent Services: Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
- (n) Guyed Tower: A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- (o) Height: Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- (p) Lattice Tower: A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- (q) Licensed Carrier: A company authorized by the FCC to construct and operate a commercial mobile radio services system.
- (r) Modification: The replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification.
- (s) Monopole: The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.
- (t) Mount: The structure or surface upon which antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding utility poles.
- (u) Omni directional (whip) antenna: A thin rod that beams and receives a signal in all directions.

- (v) Panel Antenna: A flat surface antenna usually developed in multiples.
- (w) Personal Wireless Service Facility or PWSF or facility: means any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services.
- (x) Personal Wireless Services: Means any wireless telecommunications services, and commercial mobile services including cellular telephone services, personal communications services, and mobile and radio paging services as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332 (c)(7)(C)(i).
- (y) Planning Board or Board: Shall mean the Town of Newton Planning Board and the regulator of this ordinance.
- (z) Preexisting towers and antennas: Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.
- (aa) Radio frequency radiation: Means the emissions from personal wireless service facilities.
- (bb) Security Barrier: A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass.
- (cc) Separation: The distance between one carrier's array of antennas and another carrier's array.
- (dd) Stealth Application: Means, for a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles. Also means, for a personal wireless service facility one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. (Stealth application is often referred to as “camouflaged” technology.)
- (ee) Substantial Modification: The mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:
  1. Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
  2. Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
  3. Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
  4. Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.
- (ff) Telecommunications Facilities: Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.
- (gg) Tower: Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or

monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

## V. CONDITIONAL USE PERMITS

- a) All proposals considered for development under the Personal Wireless Facilities Ordinance shall obtain a Conditional Use Permit from the Planning Board, unless exempt under RSA 12-K. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.
- b) All applicable standards in this ordinance must be met and/or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.
- c) Possible decisions rendered by the Planning Board include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

## VI. SITING STANDARDS

### (a) Use Regulations

A personal wireless service facility shall require a conditional use permit, unless exempt under RSA 12-K, and may be permitted as follows:

- 1) A personal wireless service facility involving construction of one or more ground or building (roof or side) mounts shall require a Conditional Use Permit and may locate in all zoning districts within the Town.
- 2) A personal wireless service facility that exceeds the height restrictions of Section VI (d) may be permitted by Conditional Use Permit in a designated Wireless Service Overlay District as defined by Newton Zoning Map as areas designated as Commercial and Light Industrial/Commercial.
- 3) Principal or Secondary Use: An applicant who successfully obtains permission to site under this ordinance as a second and permitted use may construct PWSF in addition to the existing permitted use. PWSF may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with local development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. PWSF that are constructed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory use".

### (b) Location

Applicants seeking approval for personal wireless services facilities shall comply with the following:

- 1) If feasible, personal wireless services facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and

electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

- 2) The applicant proposing to build a new tower shall submit an agreement with the Town that maximizes allowance of co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs (prevailing rates) to other telecommunications providers. Failure to provide such an agreement is evidence that the applicant's proposed facility will not integrate with the overall telecommunications facility planning of Newton, and grounds for a Denial.
- 3) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this and any other information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with 676:4 I (g).
- 4) If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless services 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.
- 5) The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or conditional use permit.

(c) Height Requirements

- 1) Height, General: Regardless of the type of mount, personal wireless services facilities shall be no higher than ten feet above the average height of buildings or trees within 300 feet of the proposed facility. In addition, the height of a personal wireless service facility shall not exceed by more than ten feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- 2) Height, Ground-Mounted Facilities: Ground-mounted personal wireless services facilities shall not project higher than ten feet above the average building height or, if there are no buildings within 300 feet, these facilities shall not project higher than ten feet above the average tree canopy height, measured from average ground level (AGL). If there are no buildings within 300 feet of the proposed site of the facility, all ground-mounted personal wireless services facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.
- 3) Height, Side- and Roof-Mounted Facilities: Side- and roof-mounted personal wireless services facilities shall not project more than ten feet above the height of an existing building nor project more than ten feet above the height limit of the zoning district within which the facility is located. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- 4) Height, Existing Structures: New antennas located on any of the following structures existing on the effective date of this ordinance shall be exempt from the height restrictions of this ordinance provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles.

- 5) Height, Existing Structures, (Utility): New antennas located on any of the following existing structures shall be exempt from the height restrictions of this ordinance provided that there is no more than a twenty foot (20') increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures. This exemption shall not apply in historic districts.
  - 6) Height, Wireless Facility Overlay Districts: Where the town establishes Wireless Facility Overlay Districts (as designated on the town zoning map), personal wireless services facilities of up to 150 feet in height may be permitted by Conditional Use Permit. Monopoles are the preferred type of mount for such taller structures. Such structures shall comply with all setback and Conditional Use Permit regulations set forth in this Ordinance.
- (d) Setbacks
- 1) All personal wireless services facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
  - 2) In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone."
  - 3) 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 non-conforming structures, personal wireless services facilities and their equipment shelters shall not increase any non-conformities.
  - 4) Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
  - 5) In reviewing a Conditional Use Permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance of the zoning district, if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

## VII. DESIGN STANDARDS

Visibility/Camouflage: Personal wireless services facilities shall be camouflaged as follows:

- (a) Camouflage by Existing Buildings or Structures
  - 1) 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 the facility within or behind existing 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.
  - 2) Personal wireless services facilities which are side mounted shall blend with the existing building's architecture and shall be painted or shielded with material which is consistent with the design features and materials of the building.
- (b) Camouflage by Vegetation

If personal wireless services facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and under story

vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless services facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

(c) Color

- 1) Personal wireless services facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly attached thereto.
- 2) To the extent that any personal wireless services facilities extend above the height of the vegetation immediately surrounding it, they shall be painted in a color determined best to blend in with the natural surroundings and/or background.

(d) Equipment Shelters

- 1) Equipment shelters shall be located in underground vaults; or
- 2) Equipment shelters shall be designed consistent with architectural styles and materials per the town's site plan review regulations.
- 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.

(e) Lighting and Signage

- 1) Personal wireless services 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. There shall be total cutoff of all light at the property lines of the parcel to be developed.
- 2) 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 Town's sign regulations.
- 3) All ground mounted personal wireless services facilities shall be surrounded by a security barrier.

(f) Historic Buildings and Districts

- 1) Any personal wireless services facilities located on or within an historic structure, as designated by the town, shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
- 2) Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
- 3) Personal wireless services facilities within an historic district 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 within the district.

(g) Scenic Landscapes and Vistas

- 1) Any personal wireless service facility that is located within 300 feet of a scenic vista, scenic

landscape or scenic road, as designated by the town shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic vista, scenic landscape or scenic road, the height regulations described elsewhere in this ordinance will apply.

(h) Environmental Standards

- 1) Personal wireless services facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
- 2) 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 110% of the volume of the hazardous materials stored or used on the site.
- 3) Ground-mounted equipment for personal wireless services facilities shall not generate noise in excess of 50 db at the property line.
- 4) Roof-mounted or side-mounted equipment for personal wireless services facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.
- 5) Back-up power generation equipment may exceed the required decibel levels if necessary to maintain power to the PWSF during temporary power outages.

(i) Safety Standards

- 1) All equipment proposed for a personal wireless service facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines)
- 2) Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.
- 3) To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower or antenna as abandoned, in accordance with Section XII at the owners expense through execution of the posted security.

(j) Modifications

A substantial modification, as defined by RSA 12-K, of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a Conditional Use Permit when the following events apply:

- a. The applicant and/or co-applicant wants to alter the terms of the Conditional Use Permit by changing the personal wireless service facility in one or more of the following ways:
  1. Change in the number of facilities permitted on the site;
  2. Change in technology used for the personal wireless service facility.

- b. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

(k) Reconstruction or Replacement of Existing Towers and Monopoles

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Ordinance may be reconstructed, altered, extended or replaced on the same site by Conditional Use Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than twenty (20) feet.

VIII. STATE REQUIREMENTS (RSA 12-K)

All wireless carriers or their appointed agents doing business, or seeking to do business, in the Town of Newton shall:

- (a) Be allowed to construct new ground-mounted PWSF, provided that these PWSF comply with municipal regulations for maximum height or maximum allowed height above the average tree canopy height, subject to any exceptions, waivers, or variances allowed or granted by the Town.
- (b) Comply with all applicable state and municipal land use regulations.
- (c) Comply with all federal, state and municipal statutes, rules and regulations, including federal radio frequency radiation emission regulations and the National Environmental Policy Act of 1969, as amended.
- (d) Provide information at the time of application to construct an externally visible PWSF to the town of Newton and to the NH Office of State Planning, as follows:
  - 1) A copy of their license from the Federal Communications Commission (FCC) proving that they are eligible to deploy their systems in this geographical area and that this deployment falls under the jurisdiction of the federal Telecommunications Act of 1996; or a copy of their contract with a person with such a license, and a copy of that license.
  - 2) Detailed maps showing all of the current externally visible tower and monopole PWSF locations in the state within a 20 mile radius of the proposed externally visible PWSF, both active and inactive.
  - 3) Site descriptions for each of the above locations showing the antenna height and diameter, and showing all externally visible structures.
  - 4) A description of why less visually intrusive alternatives for this facility were not proposed.
- (e) A wireless carrier seeking approval to deploy a wireless communication facility shall be required to pay reasonable fees, including regional notification costs, imposed by the municipality in accordance with RSA 676:4, I (g).
- (f) Regional Notification: Any municipality or state authority or agency which receives an application to construct a PWSF which may be visible from any other New Hampshire municipality within a 20 mile radius shall provide written notification of such application and pending action to such other municipality within the 20 mile radius.

The applicant shall be responsible for determining the towns within the 20-mile radius for purposes of notification and shall provide the Planning Board with a list of these towns along with their mailing addresses.

This notification shall include sending a letter to the governing body of the municipality within the 20 mile radius detailing the pending action on the application and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within the 20 mile radius, stating the specifics of the application, the pending action, and the date of the next public hearing on the application. Such notice shall be published not less than 10 days nor more than 21 days prior to the public hearing date.

Municipalities within the 20 mile radius and their residents shall be allowed to comment at any public hearing related to the application. Regional notification and comments from other municipalities or their residents shall not be construed to imply legal standing to challenge any decision.

#### IX. FEDERAL REQUIREMENTS

- (a) All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna as abandoned, in accordance with Section XII, at the owner's expense through the execution of the posted security.
- (b) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.

#### X. WAIVERS

- (a) General

Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with this ordinance or the purposes herein may be served to a greater extent by an alternative proposal, it may approve waivers to the ordinance.

The purpose of granting waivers under provisions of this ordinance shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Newton Zoning Ordinance (other than the terms of this ordinance), Newton Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of the ordinance.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting

of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

- a. Topography and other site features
- b. Availability of alternative site locations
- c. Geographic location of property
- d. Size/magnitude of project being evaluated and availability of co-location.

(b) Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

(c) Procedures

A petition for any such waiver shall be submitted in writing by the applicant. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

XI. APPEALS UNDER THIS SECTION

A party aggrieved by a decision under this ordinance may appeal such decision to the New Hampshire Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

XII. BONDING AND SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with Section XIII, all security will be required to be maintained by the Town for the life of the tower. Bonding and surety shall be consistent with the provision in the subdivision or site plan review regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

XIII. REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

XIV. SEVERABILITY

The invalidity of any provision of any section of this ordinance shall not affect the validity of any other provision, of this ordinance, nor of the zoning ordinance as a whole.

**SECTION XXXVIII SMALL WIND ENERGY SYSTEMS** (Added March 2009)

A. PURPOSE

This small wind energy systems ordinance is enacted in accordance with RSA 674:21, Innovative Land Use Controls, and the purposes outlined in RSA 672:1-III-a and RSA 674:13-I(j). The purpose of this ordinance is to accommodate distributed generation/small wind energy systems in appropriate locations, while minimizing any adverse visual, safety and environmental impacts of the system. 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.

## B. DEFINITIONS

Fall zone: The potential fall area for the small wind energy system. It is measured by using 110% of the total height as the radius around the center point of the base of the tower.

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

Meteorological tower (met tower): Includes the tower, base plate, anchors, guy wires and hardware, 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.

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

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

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

Small wind energy system: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 60 kilowatts or less and will be used primarily for onsite consumption.

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

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

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

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

## C. APPLICABILITY

1. **Small Wind Energy System**: Small wind energy systems shall be permitted under a conditional use permit as an innovative land use control pursuant to RSA 674:21 in all zoning districts where structures of any sort are allowed.
2. **Approval**: No small wind energy system shall be erected, constructed, installed or modified without first receiving a conditional use permit from the Planning Board, as outlined in section D. All small wind energy systems installed prior to the enactment of this ordinance are exempt from the conditions herein.

## D. PROCEDURE FOR REVIEW

1. **Conditional Use Permit**: In accordance with RSA 674:21, a small wind energy system shall be subject to receiving a conditional use permit prior to installation or modification thereof. The issuance of a conditional use permit shall abide with the following requirements:
  - a. **Building Permit**: A building permit shall be required for the installation or modification of a small wind energy system.
  - b. **Site Plan Review**: Prior to issuance of a building permit, a site plan shall be submitted to the

Planning Board for review. The applicant shall follow the procedural requirements of the site plan review regulations, RSA 674:62- Regional Notification for Small Wind Energy Systems and RSA 676:4- Board's Procedures on Plats. The site plan shall include the following:

- i) Property lines and physical dimensions of the applicant's property.
  - ii) Location, dimensions, and types of existing major structures on the property.
  - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment
  - iv) Setback requirements as outlined in this ordinance.
  - v) The right-of-way of any public road that is contiguous with the property.
  - vi) Any overhead utility lines.
  - vii) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed).
  - viii) If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
  - ix) Tower foundation blueprints or drawings.
  - x) Tower blueprint or drawings.
  - xi) Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
  - xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code (usually provided by the manufacturer).
  - xiii) Estimated costs of physically removing the small wind energy system to comply with surety standards.
  - xiv) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xv) The site plan must be stamped by a professional engineer licensed to practice in the state of New Hampshire.
2. Meteorological (Met) Towers: The construction of a met tower for the purpose of collecting data to develop a small wind energy system, shall abide with the following requirements;
- a. The construction, installation or modification of a met tower shall require a building permit and shall conform to all applicable sections of the state building code.
  - b. Met towers shall be permitted on a temporary basis not to exceed 3 years.
  - c. Met towers shall adhere to the small wind energy system standards.
  - d. A conditional use permit is not required to construct, install or modify a met tower. Prior to the issuance of a building permit, the building inspector shall ensure the met tower complies with the small wind energy system standards.

**E. CONDITIONAL USE PERMIT STANDARDS**

1. Through the conditional use permit review process, the small wind energy system shall be evaluated for compliance to the following standards:
  - a. Setbacks:
    - i) Small wind energy system shall be set back a distance equal to 110% of the total height from:
      - A) Any public road right-of-way, unless written permission is granted by the governmental entity with jurisdiction over the road.
      - B) Any overhead utility lines.
      - C) All property lines, unless the affected land owner provides written permission through a recorded easement allowing the small wind energy system's fall zone to overlap with the abutting property.
      - D) Any travel ways to include but not be limited to driveways, parking lots, nature trails or sidewalks.
    - ii) If an abutting landowner disapproves of the proposed small wind energy system, the said system shall be set back a distance equal to 220% of the total height from all property lines.
    - iii) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
    - iv) The setback shall be measured to the center of the tower's base.
    - v) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
  - b. Tower:
    - i) Wind turbines may only be attached to freestanding or guy wired monopole towers. Lattice towers are explicitly prohibited.
    - ii) The tower height shall not exceed 150 feet.
    - iii) The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the wind turbine.
  - c. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the property line, except during short-term events such as severe wind storms and utility outages.
  - d. Shadowing/Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadowing or flicker impacts. The applicant has the burden of proving that this

effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.

- e. Signs:
  - i) All signs, both temporary and permanent, are prohibited on the small wind energy system, except as follows:
    - A) Manufacturer's or installer's identification on the wind turbine.
    - B) Appropriate warning signs and placards.
- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424. Evidence of compliance or non-applicability shall be submitted with the application.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access the wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the wind resources.
  - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, turbine design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground.
  - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment.
  - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i. 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.
- j. Access:
  - i) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - ii) The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
- k. Approved Wind Turbines: The manufacturer and model of the wind turbine 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, if available.
- l. Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise

prescribed by applicable laws, regulations, and ordinances.

#### F. ABANDONMENT

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Building Inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
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 Building Inspector. “Physically remove” shall include, but not be limited to:
  - a. Removal of the wind turbine and tower and related above grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after-conditions.
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 Building Inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Building Inspector shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
4. If the owner fails to respond to the Notice of Abandonment or if after review by the Building Inspector it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind turbine and tower at the owner’s sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the town shall have the authority to enter the subject property and physically remove the small wind energy system.
5. The Planning Board may require the applicant to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the time of construction to cover costs of the removal in the event the town must remove the facility. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism to accommodate the rate of inflation over 15 years.

#### G. 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 with any condition contained in the site plan review issued pursuant to this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt.

#### H. 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 as allowed by NH Revised Statutes Annotated Chapter 676.

#### I. WAIVER PROVISIONS

The Planning Board may waive any portion of this ordinance in such cases where, in the opinion of the Planning Board, strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of this ordinance.



**APPENDIX A**Village District Zone  
Parcel ListNewton Junction

## Map 6

- Block 2; Lot 4
- Block 4; Lots 1, 2, 3
- Block 5; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11-1
- Block 6; Lots 1, 2, 3, 4, 5
- Block 9; Lots 28, 29, 30, 31, 32, 33, 34, 35, 36
- Block 14; Lots 1, 2, 3, 4, 5, 6, 7, 9, 10
- Block 15; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

Rowe's Corner

## Map 10

- Block 2; Lots 19-1, 19-2, 20, 21, 22
- Block 3; Lots 4, 4-1
- Block 4; Lots 1, 2
- Block 5; Lots 5, 6, 7, 8
- Block 7; Lots 14, 15, 16, 17
- Block 10; Lots 14, 15, 16, 17, 18, 19

Central Main Street

## Map 11

- Block 5; Lots 16, 17, 18, 19, 20, 22, 23
- Block 6; Lots 1, 2, 3, 4, 5, 6, 7, 8
- Block 7; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 25
- Block 8; Lots 1, 2
- Block 10; Lots 12, 13

**APPENDIX B**

Residential B Zone  
Parcel List

Heath Street  
Map 4

- Block 6; Lots 2, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 3, 3-9, 3-10, 3-11 3-12, 3-13, 3-14, 3-15, 3-16, 3-17, 3-18

Whittier Street and Pond Street  
Map 5

- Block 5; Lots 10-1, 10-2, 10-3, 10-4, 10-5, 10-6

**APPENDIX C**

Residential C Zone  
Parcel List

Crane Crossing Road  
Map 7

- Block 2; Lot 1

**APPENDIX D**Commercial Zone  
Parcel ListAmesbury Road  
Map 10

- Block 7; Lots 18, 19, 20, 20-1

Central Main Street  
Map 11

- Block 5; Lots 24, 24-1, 24-2
- Block 7; Lot 15

South Main Street  
Map 12

- Block 1; Lot 11 (Amended March 2020)
- Block 2; Lot 13
- Block 2; Lot 15  
The portion of the lot that lies between the gas line easement and South Main Street or lies within 1000 feet of South Main Street (whichever is less) is within the Commercial Zone. The remainder of the lot is within the Residential A Zone.
- Block 2; Lot 16
- Block 2; Lot 17  
The portion of the lot that lies between the gas line easement and South Main Street is within the Commercial Zone. The remainder of the lot is within the Residential A Zone.
- Block 2; Lot 18
- Block 4; Lots 1, 1-10, 2
- Block 6; Lots 1, 2
- Block 6; Lot 3  
The portion of the lot that lies within 500 feet of South Main Street is within the Commercial Zone. The remainder of the lot is within the Residential A Zone.
- Block 6; Lot 11

South Main Street  
Map 13

- Block 2; Lot 15  
The portion of the lot that lies within 1000 feet of South Main Street or lies between the gas line easement and South Main Street (whichever is less) is within the Commercial Zone. The remainder of the lot is within the Residential A Zone.
- Block 2; Lots 24, 24-T
- Block 5; Lots 1-1, 2, 2-1, 3

South Main Street near town line  
Map 14

- Block 1; Lots 24, 25, 26, 28

**APPENDIX E**

Light Industrial / Commercial Zone  
Parcel List

**Railroad tracks, Pond Street, and Bartlett Street**

Map 5

- Block 2; Lot 1
  - Block 5; Lot 13
- The portion of the lot that lies within 500 feet of the railroad tracks is within the Light Industrial / Commercial Zone. The remainder of the lot is within the Residential A Zone.

**Railroad tracks, Whittier Street, and Bartlett Street**

Map 6

- Block 12; Lot 3 and 3-1
  - Block 13; Lot 2
- Buffer Zone: A buffer zone shall run along Whittier Street a depth of 75 feet, with areas for egress and ingress approved by the Planning Board. The buffer area will continue to run along the Town Cemetery land Northwesterly for 400 feet to a point; thence running Southwesterly 200 feet at a depth of 100 feet. The buffer zone shall consist of trees to screen the area from sight and noise.

**Southern end of railroad tracks**

Map 8

- Block 1; Lots 1, 1-1, 2, 3, 4, 5, 5-1

**South Main Street near town line**

Map 14

- Block 1; Lots 27, 27-A, 27-B, 27-C, 27-1, 27-2, 27-3, 27-4