

**SECTION XXXI 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 and a closet.

**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.

The total number of elderly housing units contained in any elderly housing development in the Town of Newton shall not exceed four 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 four percent. (Added March 2007)

- 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 XXVII.
- 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 and a closet.
- VIII. The Planning Board may grant waivers from the standards set forth in this ordinance in its discretion encourage this type of housing development provided that the general purposes of the ordinance are satisfied.

**SECTION XXXII 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 are 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 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 (gallons per day)</u>	<u>Protective Radius (in ft from source of supply)</u>
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