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Newbury Unified Zoning and Subdivision Regulations

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ARTICLE 1 - OVERVIEW

1.1 ENACTMENT AND PROCESS

Whereas the Town of Newbury, Vermont has created a Planning Commission and has adopted and has in effect a municipal plan pursuant to the Vermont Municipal and Regional Planning and Development Act (24 VSA, Chapter 117), hereinafter referred to as the Act, there are hereby established Unified Zoning and Subdivision Regulations, hereinafter referred to as the Regulations, an Administrative Officer (AO) and a Development Review Board (DRB) for the Town of Newbury.

1.1.1 ADMINISTRATIVE OFFICER (AO)

This Officer shall be appointed and charged with the responsibility of carrying out the administration and enforcement of these Regulations, as called for in the Act. An Administrative Officer, who may hold any other office in the municipality other than membership in the DRB, shall be nominated by the Planning Commission and appointed by the Selectboard for a term of three (3) years promptly after the adoption of the first bylaws or when a vacancy exists. The Administrative Officer shall administer these Regulations literally, and shall not have the power to permit any land development which is not in conformance with these Regulations. The Administrative Officer may be removed for cause at any time by the Selectboard after consultation with the Planning Commission.

The Administrative Officer shall keep full records of all documents of their office as a permanent record. All necessary and reasonable expenses shall be paid by the Town of Newbury and the Administrative Officer shall be paid for their work at a rate set by the Selectboard.

1.1.2. DEVELOPMENT REVIEW BOARD (DRB)

The DRB shall consist of not less than three (3) nor more than nine (9) persons, appointed by the Selectboard, pursuant to Section 4460 of the Act. The number and terms of office of its members shall be so fixed by the Selectboard that not more than 1/3 of its members shall be reappointed or replaced during any future calendar year. Vacancies shall be filled by the Selectboard for the un-expired terms. The Newbury DRB shall elect its own officers consisting of a Chairman and Clerk, and adopt rules of procedure pursuant to Section 4461 of the Act.

In addition to those specifically provided for elsewhere in Subchapter 11, Chapter 117, V.S.A. 24, the Newbury DRB has the following powers pursuant to Section 4465:

- a) To hear and decide appeals;
- b) To hear and grant or deny a request for a variance;
- c) To hear and grant or deny a request for a Site Plan, Conditional Use or Subdivision Approval.
- d) To hear and grant or deny a request for a waiver.

1.1.3. GENERAL PROCESS

Several kinds of development are exempted from these Regulations, either as required by state or federal law, or as a decision by the Town. A list of these is found in section 1.9 below. It is advisable to check with the AO and ensure that planned development is truly exempt, and the AO can issue a written decision to that effect if needed. Development, even when exempt from these Regulations,

may require other permits or approvals, and the AO is the local point for referral to these (see section 6.2).

For development that does require a permit, sometimes these can be issued by the AO directly, and at other times approval from the DRB is required before such a permit can be issued. All applications are submitted to the AO and start the process there. See Article 6 for more details on the general process. Since these Regulations are both for zoning and subdivision, a single permit, called a development permit shall be issued for both kinds of development.

1.2 PURPOSE

It is the overall purpose of these Regulations to:

- a) encourage and provide for the appropriate and orderly use and development of all waters, lands and buildings in the Town in a manner which will promote and protect the public health, safety, prosperity, comfort, convenience, and general welfare of its citizens and residents;
- b) protect soil, forests, waters, wildlife, and other natural resources and preserve open land;
- c) encourage a rational pattern of development and settlement, and healthful distribution of population;
- d) protect the public health and environment against all forms of pollution and other hazards, such as explosions, fires and floods;
- e) prevent accidents and the loss of peace and quiet and privacy from the invasion of through traffic, highway congestion, and inadequate parking facilities;
- f) reduce the harm that one land use might have on another;
- g) provide for the improvement of undesirable conditions; and
- h) further the goals, policies and recommendations of the Town Plan and the goals of 24 VSA section 4302.

Purposes for individual districts can be found in section 2.2.

1.3 AMENDMENT OR REPEAL

Any amendment, repeal of sections or revision of the provisions to these Regulations shall be prepared in accordance with the Act.

1.4 EFFECTIVE DATE

These Regulations, or any amendments thereto, shall become effective 21 days after the date of adoption by the Selectboard, or effective immediately upon passage in the case of a vote of the Town by Australian ballot at a regular or special Town Meeting.

1.5 VALIDITY AND SEVERABILITY

If any section or provision of these Regulations is held to be unconstitutional or invalid by a competent court, such decision shall not affect the validity of the Regulations as a whole or any part thereof other than that part held to be invalid.

1.6 STATUS OF PRIOR REGULATIONS

These Regulations, upon taking effect, shall replace in their entirety the Newbury Zoning Regulations and the Newbury Subdivisions Regulations in effect prior to that date.

1.7 AVAILABILITY OF DOCUMENTS

Current copies of the Newbury Town Plan and these Regulations shall be available to the public during normal business hours at the Town Clerk's office.

1.8 APPLICATION OF REGULATIONS

All permits for development under these Regulations shall be issued in conformance with 24 V.S.A. Section 4449. Except as may have been previously approved under prior regulations or exempted under these Regulations, no building or land development, construction, conversion, relocation, or enlargement of any building or structure, sitework incidental to development regulated under these Regulations, or extension of use of land may commence without a permit first being issued by the Administrative Officer.

1.9 DEVELOPMENT EXEMPT FROM A PERMIT

The following structures and uses shall be required to meet the applicable setback standards of these Regulations (unless otherwise specified), but are otherwise exempt from a permit or any other approval under these Regulations. This exemption does not apply to any development within the Flood Hazard Overlay District, within 250 feet of waterbodies in the Shoreland Protection district, and within riparian buffers under section 3.5.

The exempt structures and uses are:

- a) Temporary structures such as storage containers, construction trailers, and event structures, provided that such structures shall not be used for dwelling purposes and are on site for a period of time not to exceed one (1) year.
- b) Fuel or propane storage tanks used for single or two family purposes;
- c) Structures 100 square feet or less in footprint and twelve (12) feet or less in height;
- d) Unenclosed play structures for personal use (such as jungle gyms, swing sets and trampolines).
- e) Normal maintenance and repair to the exterior of an existing structure which does not result in alterations in dimension, or an expansion or change of use;
- f) Interior alterations or repairs to a structure which do not result in an increase in the number of bedrooms or a change in use.
- g) Temporary events (such as public auctions, garage/yard sales, weddings, church suppers, fairs, concerts, festivals, cultural events, trade and antique shows, etc.) not exceeding four (4) consecutive days or more than ten (10) days in a calendar year, provided they are not the principal use of land or structures, and that adequate off-street parking, circulation, and sanitary and trash collection facilities are provided (a public gathering permit from the town and/or state police may be required);
- h) Signs, provided they meet the requirements of section 4.7, including one sign which shall not exceed four (4) square feet per side and shall be limited to identifying a private residence or a

permitted use; affixed or free-standing, on-premise, non-illuminated signs, which sign shall not exceed two (2) square feet per side and shall be limited to the direction, instruction or convenience of the public (i.e. signs identifying restrooms, freight entrances, posted areas, danger areas, etc.); one non-illuminated sign associated with a farm, which sign shall not exceed six (6) square feet per side and shall be limited to the advertising of agricultural products grown on the premises; temporary non-illuminated signs to be maintained for not more than two (2) weeks, which identify temporary events as under part g) above; one portable, non-illuminated temporary "sandwich board" sign associated with an on-premise business with a maximum of six (6) square feet per side which shall be removed when the business or activity is not in operation; and temporary signs under 6 square feet such as realtor or contractor signs.

Signs are not required to meet setback requirements but shall not be placed in the right-of-way unless with a waiver under 3.3.1. See also section 4.7 for additional permitted signs.

- i) Power generation and transmission facilities, and networked telecommunications, which are regulated under 30 V.S.A. Section 248 by the Vermont Public Service Board. The Town however desires that such facilities conform to the policies and objectives specified for such development in the Town Plan and for commercial development within these Regulations.
- j) Fences, berms, manmade earthen structures, stone or retaining walls, any of which are five (5) feet high or less and be placed outside of the right-of-way in the front yard setback. Placement inside of the right-of-way requires a waiver and permit. Placement within side and rear yard setback areas also requires a waiver issued by the AO under 3.3.1 and permit.
- k) Satellite receiving dishes.
- l) Work incidental to the development of non-commercial trails.
- m) Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), operation of a cemetery, clearing for lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an existing approved use. This specifically does not include sitework incidental to construction, or extraction and quarrying activities regulated under Section 6.2. Also, modifications to an existing access onto a state or town road are required under separate authority to have permission from Vtrans or the Town.
- n) Hunting, fishing, and trapping (as specified under 24 V.S.A. Section 2295) on private or public land. This permit exemption does not include the development of hunting, fishing, and trapping facilities such as firing ranges or rod and gun clubs.
- o) Septic installation, modification, or removal if a State Wastewater Permit has been issued and is in effect, or maintenance of such that is exempt from state permitting.
- p) Required agricultural and forestry practices (including the construction of farm structures, operation of riding stables, and processing or sale of agricultural or forestry products primarily produced on the premises) as exempted by 24 V.S.A. Section 4413(d). Notice of construction is required to be given to the AO.

- q) Amateur radio towers less than 50 feet in height and set back at least 150% of their height from lot lines or rights-of-way.
- r) Solar collectors, clotheslines, or other energy devices based on renewable resources for on-site use.
- s) Wind turbines that are not net-metered provided they are less than 100 feet in height at top of rotor, with a blade diameter no greater than 20 feet and set back at least 150% of their height from a lot line or rights-of-way;
- t) The following are each specifically exempted from subdivision review under these Regulations:
 - i. The lease of a portion of a parcel where no regulated structures or uses are to be established.
 - ii. Creation of two lots from any existing lot outside of a five year period from the date of last subdivision involving that land, regardless of owner. However, such lots will still be required to be surveyed, have a state wastewater permit or deed notice in place, and obtain a development permit prior to filing a plat.
 - iii. The recording of plats for the following purposes after receipt of a certificate of exemption from the AO: establishing clear property lines on existing lots where no subdivision is involved; the filing of plats or recording of deeds for lots created by a public highway, public water or railroad; for previous subdivisions that were never platted or the filing of plats due to resurvey; for annexations that combine existing lots in their entirety; and minor adjustments between two adjacent residential parcels where no new lots or accesses are created, all resulting lots are and will be compliant with local regulations, all lots have a state subdivision permit or required deed restriction for the resulting lots, and the resulting lots have their deeds revised and plats filed to reflect their new boundaries.
- u) Leasing of parcels for agricultural or forestry purposes where no permanent roads or structures are established;
- v) The granting of utility rights-of-way or easements;
- w) De minimus structures or uses not specifically mentioned in these Regulations that are incidental and customary to the use on the lot, are consistent with policies of the Town Plan, and so temporary or minimal in their impact on the public that regulation of them is not required to protect health, safety, welfare or environment. Such uses or structures include but are not limited to play equipment, parks, unpaved trails and paths, and seasonal decorations. The AO is empowered to make such determinations when needed, and appeals of these decisions shall be made to the DRB.
- x) The stabilization of a damaged structure to prevent hazards to public health and safety, or to adjoining properties, structures or uses; nor for the timely repair or reconstruction of a damaged structure to the extent of its prior condition and use, provided that such structure is outside the Flood Hazard Overlay, the repair begins within two years of the damage, and there is no change in structural dimensions or a change of use.
- y) A home occupation as defined in section 4.8.

- z) Clearing or pruning of vegetation unless otherwise regulated or required by permit.

1.10 USES PROHIBITED IN ALL DISTRICTS

Under the Vermont Municipal and Regional Planning and Development Act (Title 24 V.S.A. Chapter 117), any use not specifically authorized or exempted under this Zoning Regulation is prohibited.

1.11 INTERPRETATION OF ZONING REGULATIONS

The Administrative Officer shall administer these regulations literally and make determinations when needed on matters of any uncertainty with respect to the interpretation of the terms or provisions of these Regulations. Such determinations may be referred to the DRB by the AO for affirmation, or may be appealed to the DRB in accordance with 24 V.S.A. Section 4465, who shall interpret such terms or provisions. Such interpretations shall be kept on file for use in subsequent proceedings.

1.12 PRIOR DEVELOPMENT

A permit or approval shall not be required for any development which has lawfully begun, received a permit, or within which a use has been lawfully established, prior to the adoption of these Regulations provided that the construction is substantially completed for its intended use within the expiration date of any permit, or if none, one year from the date of adoption of these Regulations. In the case of subdivision, a subdivision which is lawfully in existence, has lawfully filed a plat prior to adoption of these Regulations, or which has received a permit or approval from the Town or a state subdivision permit shall be considered as prior development and shall not require a new permit unless such previous approvals expire.

1.13 PRECEDENCE

The provisions of these Regulations shall not in any way impair or remove the necessity of compliance with any other applicable local, state or federal laws or regulations. Where these Regulations imposes a greater restriction, however, the provisions of these Regulations shall take precedence.

1.14 WARNING OF DISCLAIMER OF LIABILITY

These Regulations do not imply that land outside the areas of special flood hazard or land uses permitted within other districts will be free from flooding or flood damage. These Regulations shall not create liability on the part of the Town of Newbury or any town official or employee thereof for any flood damages that result from reliance on this Regulation or any administrative decision lawfully made hereunder.

1.15 MORE THAN ONE PRINCIPAL BUILDING PER LOT

No more than one principal building (not including an accessory dwelling unit) may be placed on a lot unless such buildings and any buildings accessory to such principal buildings are positioned such that the lot is able to be subdivided into separate and individual lots, both lots and their respective uses conforming to all applicable provisions of these Regulations, unless a waiver has been received and a permit issued.

1.16 LIMITATIONS

The following uses may be regulated herein only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- a) State- or community-owned and operated institutions and facilities.
- b) Public and private schools and other educational institutions certified by the state department of education.
- c) Churches and other places of worship, convents, and parish houses.
- d) Public and private hospitals.
- e) Regional solid waste management facilities certified under 10 V.S.A. chapter 159.
- f) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

ARTICLE 2 - ZONING DISTRICTS

2.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP

For the purposes stated in the Newbury Town Plan and Section 2.2 of these Regulations, the following land use districts are established within the Town of Newbury:

- Wells River Commercial (WRC)
- Wells River Residential (WRR)
- Newbury Village (NV)
- Hamlet (HAM)
- Rural (R1)
- Rural (R2)
- Rural (R5)
- Conservation and Natural Resource (CD10)
- Mixed Use Commercial (MXU)
- Industrial (IND)
- Shoreland (SH)
- Water Supply Protection Area (WHPA)
- Flood Hazard Overlay (FHO)

The areas and boundaries of the Zoning and Overlay Districts, except the Flood Hazard Overlay District are established as shown on the Official Newbury Zoning Map for the Town of Newbury and made a part of these Regulations, together with all future amendments. The area covered by the Flood Hazard Overlay District are all lands identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations. The map entitled Flood Insurance Rate Map (FIRM), Town of Newbury, Vermont and any revisions thereto, shall be considered the official Flood Hazard Overlay map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of these regulations.

The official Zoning Map shall remain on file with the Town Clerk.

2.2 PURPOSES OF ZONING DISTRICTS

2.2.1 WELLS RIVER COMMERCIAL (WRC) DISTRICT

The purpose of the Wells River Village Area is to provide a location for a dense mix of commercial, civic and residential uses that sustain and improve the vitality of the community's core. Because Wells River Village has municipal sewer and water, density can be high. Uses that are appropriate in this area include commercial (including primary retail), civic, municipal and residential. Commercial uses that

require a large amount of land for storage of materials or products should ideally locate outside the Village Area. Multi-family dwellings are appropriate within the Village Area. The design of development within the village should occur in a way that encourages walkability. The location of buildings should reflect the traditional pattern of a Vermont village, which can be achieved by limiting setbacks from pedestrian areas.

2.2.2 WELLS RIVER RESIDENTIAL (WRR) DISTRICT

The purpose of the WRR is to accomplish a density of rural development that is primarily residential appropriate to the physical limitations imposed by the land and to do so while maintaining residential densities that are compatible with the existing rural character of farms, open fields and woodlands.

2.2.3 NEWBURY VILLAGE (NV) DISTRICT

The purpose of the NV is to encourage a mix of commercial, civic and residential development that is in keeping with the historic pattern of settlement. Newbury Village has municipal water, but no sewer service, and so maximum density is moderate. Uses that are appropriate in this area include small-scale commercial (including primary retail), civic, municipal and residential. Commercial uses with drive thru services or that require a large amount of land for storage of materials or products are not appropriate within the Newbury Village Area.

2.2.4 HAMLET (HAM) DISTRICT

The purpose of the Hamlet District is to allow for small-scale mixed-use development in South Newbury and West Newbury while maintaining the historic pattern of densely populated centers surrounded by open countryside. Density within these Hamlet Areas should be consistent with the historic pattern of development. Uses should remain primarily residential with some appropriately scaled commercial businesses including primary retail.

2.2.5 RURAL 1 (R1) DISTRICT

The purpose of this district is to consist primarily of a mixed pattern of moderate density residential, agricultural, forestry, small service businesses, home businesses and recreation uses along more heavily travelled town roads.

2.2.6 RURAL 2 (R2) DISTRICT

The purpose of this district is to consist primarily of a mixed pattern of lower density residential, agricultural, forestry, small service businesses, home businesses and recreation uses along town roads.

2.2.7 RURAL 5 (R5) DISTRICT

The purpose of this district is to consist primarily of a mixed pattern of low density residential, agricultural, forestry, small service businesses, home businesses and recreation uses along less travelled town roads.

2.2.8 CONSERVATION DISTRICT (CD10)

The purpose of this district is to allow limited low-density development that is primarily agricultural, forestry or residential in nature in a manner that protects forestland and wildlife habitat.

2.2.9 MIXED USE COMMERCIAL (MXU) DISTRICT

The purpose of this land use area is to provide a location for a mix of uses that will benefit from access to Route 5 and Route 302, but not those commercial uses that are principally retail or likely to generate pedestrian traffic and better suited to remain as vital parts of Newbury's villages and hamlets. Due to lack of sewer or water density is only moderate.

2.2.10 INDUSTRIAL (IND) DISTRICT

The primary purpose of this area is to create a location for manufacturing or product-assembly businesses, accommodate expansion of commerce, and to facilitate commercial needs generated from Interstate 91. Services, professional offices, trucking and traveler's services are appropriate within the Industrial Area. Primary retail development is not appropriate within this area.

2.2.11 SHORELAND (SH) DISTRICT

The purpose of this district is to protect the water quality and scenic beauty of Newbury's lakes and ponds while providing for recreational use.

2.2.12 WATER SUPPLY PROTECTION AREA (WSPA)

The purpose of this overlay district is to maintain the quality of public water supplies for the Villages of Newbury and Wells River and to protect the public investment in the water system.

2.2.13 FLOOD HAZARD OVERLAY (FHO)

The purpose of this overlay is to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, and to minimize losses due to floods by:

- a) Restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;
- b) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;
- c) Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair floodplain services or stream corridor equilibrium,
- d) Manage the flood hazard area designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Newbury, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

2.3 DETERMINATION OF DISTRICT BOUNDARIES

If uncertainty exists with respect to the location of boundaries of any District on the Official Zoning Map, the location of such boundary shall be determined by the Administrative Officer as follows:

- a) boundaries indicated as following roads, railroad or utility rights-of-way shall be interpreted to follow the centerlines of such features;
- b) boundaries indicated as following rivers or streams shall be interpreted to follow the channel centerline and shall move with the centerline of such features;

- c) boundaries indicated as following shorelines shall be interpreted as the normal mean water level. In the event of change in the shoreline the boundary shall move with the shoreline;
- d) boundaries indicated as following lot lines shall be interpreted to follow the delineated property boundary as it existed as of the effective date of the zoning map as adopted;
- e) boundaries indicated as parallel or perpendicular to, or extensions of the above features, shall be so interpreted on the ground.

The Administrative Officer shall determine the boundaries of any designated area of special flood hazard by scaling distances off of the latest Flood Insurance Rate Map (FIRM). Any decision of the Administrative Officer may be appealed to the DRB. Prior to making a determination on such an appeal the Board shall consult with the Newbury Planning Commission.

For areas in doubt in the Flood Hazard Overlay where such determination could place the structure outside the special flood hazard area, the burden of proof shall be on the applicant, who shall provide survey or other data sufficient for the AO to determine that the property in question is safe from flooding, or a Letter of Map Amendment (LOMA)/Letter of Map Revision (LOMR) from FEMA, which shall constitute proof. The process may involve the applicant retaining an engineer and/or surveyor to provide the necessary data. Forms to apply to FEMA are available on http://www.fema.gov/plan/prevent/fhm/frm_form.shtm or by calling (617) 832-4761.

While the Administrative Officer/DRB is hereby empowered to determine that an area shown on the map as being in a floodway or area of special flood hazard is incorrect and therefore not subject to these Regulations, this will likely have no effect on any requirements by lenders to purchase flood insurance, nor will it result in result in any official change to the FIRM (only FEMA can change the map).

2.4 LOTS IN MORE THAN ONE DISTRICT

If a lot is located in two or more districts, the portion of land in each district shall be governed by the rules of that district, provided that there is sufficient acreage in such district to allow for a conforming lot. When lots only have a complying portion in one district, the entire lot shall be treated as being in that district. Lots without conforming dimensions in any district will be treated as being entirely in the district with the majority of the lot acreage. In lots within overlay districts, the overlay requirements shall supersede those of the underlying district when more strict.

ARTICLE 3: ZONING DISTRICTS – REQUIREMENTS AND USES

The following lays out the permitted and conditional uses for each district, as well as general dimensional requirements that apply in each district. Permitted uses require only the payment of a filing fee set by the Selectboard and issuance of a zoning permit by the Administrative Officer. Conditional uses require conditional use approval by the DRB prior to the issuance of a zoning permit. Specific requirements of overlays and waivers are then listed. General standards for all uses and specific standards that relate to particular uses can be found in Article 4.

3.1 USES BY DISTRICT

P=Development Permit Required, SP=Site Plan Approval, C= Conditional Use Approval, X=not allowed, E=Exempt
District

Use	WRV	WRR	NV	HAM	R 1,2,5	CD10	MXU	IND	SH	WHPA	FHO
One and Two Unit Dwelling	P	P	P	P	P	P	P	X	P/C	P	X
Accessory Dwelling	P	P	P	P	P	P	P	X	P/C	P	X
Primitive Camp	X	P	X	P	X	P	X	X	P/C	P	X
Home Occupation	P	P	P	P	P	P	P	X	C	P	C
Subdivision	P	P	P	P	P	P	P	P	P	P	P
Home Business	P		P	P	P	P	P	P	X	X	X
Fences and Walls > 5'	C	C	C	C	E	E	C	C	C	E	X
Asst.Living/Daycare	SP	C	SP	C	X	X	C	X	X	X	X
Non-formula Restaurant	SP	X	C	X	C	X	C	X	X	X	X
Non-formula Retail	SP	X	SP	C	X	X	C	X	X	X	X
Professional Office/Clinic	SP	SP	P	C	C	X	C	X	X	X	X
Public Building	C	C	C	C	C	C	C	X	X	X	X
Inn/Multi Unit Dwelling	P	P	P	C	C	X	C	X	X	X	X
Rural Enterprise	X	X	X	X	C	C	C	C	X	X	X
Lodging	SP	X	C	C	X	X	C	X	X	X	X
Outdoor Recreation	X	X	X	X	C	C	C	X	C	C	C
Light Industrial	C	X	C	X	X	X	C	C	X	X	X
Gas Station	SP	X	C	X	X	X	C	C	X	X	X
Repair or Service/Cont. Yard	C	X	C	X	C	X	C	C	X	X	X
Mobile Home Park	X	X	X	X	C	X	C	X	X	X	X
Earth Resource Extraction	X	X	X	X	C	C	X	X	X	X	X
Kennel	X	X	X	X	C	C	C	X	X	X	X
Industrial	X	X	X	X	X	X	X	C	X	X	X
Church	SP	SP	SP	SP	X	X	X	X	X	X	X
Vehicle Sales	SP	X	X	X	X	X	X	SP	X	X	X

3.2 DIMENSIONAL REQUIREMENTS BY DISTRICT

(Overlays are not included here as they have more complex requirements and so have their own sections - 3.4-3.6)

	<u>WRC</u>	<u>WRR</u>	<u>NV</u>	<u>HAM</u>	<u>R1</u>	<u>R2</u>	<u>R5</u>	<u>CNR</u>	<u>MXU</u>	<u>IND</u>	<u>SH</u>
Minimum Lot Area (ac) ‡	.25	.5	.5	1	1	2	5	10	2	2	2
Minimum Lot Frontage (ft)	50	50	50	100	100	200	300	500	150	200	100
Minimum Width/Depth (ft)	50	50	50	100	100	200	300	500	150	200	100
Minimum Front Setback (ft) ‡	25	25	25	50	65	65	65	65	65	65	65
Minimum Side/Rear Setback (ft) ‡	10	10	10	20	25	25	50	50	25	25	10
Maximum Building Height (ft)	40	40	40	40	40	40	40	40	40	40	30
Max. Commercial Footprint (ft ²)	10000	3500	3500	2000	2000	2000	2000	N/A	8000	N/A	2000
Max. Light Industrial Footprint (ft ²)	10000	N/A	8000	N/A	N/A	N/A	N/A	N/A	8000	None	N/A
Max Industrial Footprint (ft ²)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	None	N/A

‡ Some dimensional/size requirements may be reduced by waivers in section 3.3 or altered through the PUD provisions in section 5.7. Setbacks are measured from property lines, except front setbacks are measured from the center of the travelled way.

3.3 WAIVERS

Waivers from the otherwise needed dimensional requirements of these Regulations are allowed per this section. Waivers cannot be granted on types of use.

3.3.1 WAIVERS BY AO

In all districts, waivers for setbacks may be granted by the Administrative Officer, without a hearing by the DRB, for:

- a) Reductions in setbacks as necessary to allow for disability access provided that the waiver will be the minimum necessary to provide relief and will be to the side and rear unless no reasonable alternative exists.
- b) Placement of fences, stone walls, or signs within the State or Town right-of-way, provided these are authorized by the Vermont Agency of Transportation or Selectboard; and
- c) Placement of fences, berms, or stone walls, within side or rear yard setbacks, provided these are authorized by the abutting landowner.

3.3.2 WAIVERS BY DRB

In all districts, waivers under this section for alterations in setbacks, buffers and lot sizes may be granted by the Development Review Board using the conditional use approval notice and hearing process. Before granting a waiver the Development Review Board shall make the written findings for each review criteria including the rationale for each finding.

Waivers may be granted by the DRB so long as they do not result in a greater than 50% decrease in any dimensional requirement, provided that no development shall encroach on the public right of way and is at least 10 feet from the edge of travelled way, and they are found to satisfy criteria a) and at least one other criteria (b-d):

- a) The proposed development conforms to the Town Plan and existing development patterns of the district;
- b) The proposed development will cluster development and more effectively preserve open land, forestland, or protect water quality or natural areas;
- c) The proposal will result in permanently affordable housing units;
- d) The proposed development will provide for energy conservation and renewable energy structures.

In the R5 and Conservation and Natural Resources Districts only, lot size can be waived down to as low as 1 acre by the DRB as long as the total resulting density of the development that would have been permitted otherwise does not increase. Undeveloped lands used in the density calculation will be precluded from future development by a permit condition.

In the WRC District only, setbacks to lot lines may be waived by the DRB to zero (0) feet with the agreement of the affected adjacent owners and upon a finding that public safety is maintained.

In all districts, locating of more than once principal structure per lot may be allowed by the DRB by waiver if the placement of the structures would not be subdividable in a compliant manner, provided the lot contains the required area for each principal structure, all setbacks are met, the fire department approves the building layout, and that the proposed development will cluster development and more effectively preserve open land, forestland, or protect water quality or natural areas. This process is similar to a PUD but only affects building location.

In granting a waiver, the Development Review Board can require landscaping and screening in order to compensate for less setbacks or a smaller lot.

3.4 SHORELAND OVERLAY DISTRICT PROVISIONS

This overlay district includes all land within 750 feet from the normal mean water mark of Round Pond, Harriman Pond, Hall's Lake, Long Pond and Tenney Pond (Hanson Pond). In addition to the regulations for the underlying district, within 250 feet of such waterbodies the Vermont Lakeshore Protection Rules apply and a state permit is also required for all development, including ground disturbance and clearing/pruning of live vegetation, other than routine maintenance.

Clearing of live woody vegetation on lands extending 50 feet inland from the shoreline is prohibited without a permit from the AO. Such permit shall limit clearing to establishing an access to the lake no wider than six (6) feet, trimming of branches or removal of trees, provided canopy closure is maintained and parking and structures (excepting boathouses and piers) are screened as viewed from the lake.

Structures, except boathouses and piers, shall be set back at least 100 feet from the lakeshore.

All permitted uses in section 3.1 within 250 feet of mean high water are conditional uses.

3.5 WATER SUPPLY PROTECTION AREA OVERLAY REQUIREMENTS

Notwithstanding any conflicting provisions of these Regulations, no land development shall be permitted in the overlay that involves the use or application of pesticides; that involves or typically requires the installation, maintenance, or operation of a sewer disposal system; or that stores, processes or generates hazardous materials or hazardous waste. In the interest of maintaining acceptable water quality standards for public water supply, no installation of underground structures shall be permitted within the district.

Renovation or improvements to existing septic systems shall be permitted subject to review and approval by the Development Review Board, and other involved agencies. Any fuel tanks must be stored above ground and have approved containment vessels, replacement of a tank will require compliance with this standard. Any existing industrial or commercial operation must meet federal and state standards. Forestry or agricultural operations are prohibited unless the operator provides certification that such operations are in compliance with required state standards. Cutting of trees or ground disturbance not associated with forestry or agricultural operations requires conditional use approval and a permit. Prior to granting its approval, the Development Review Board shall find that the operation will not result in undue soil erosion or pollution to the waters feeding the reservoirs, infiltration systems, wells or other parts of the public water system.

Construction and improvements to the roads within the district shall be permitted subject to conditional use approval and a finding by the Development Review Board that the construction and use of the roadway will not result in undue soil erosion or water pollution.

For any permit or approval under these regulations, the AO shall provide due notice to the Village of Newbury Water Commission and Village Trustees or the Village of Wells River Water Commission and Village Trustees, as appropriate.

3.6 FLOOD HAZARD OVERLAY USES

3.6.1 PROHIBITED DEVELOPMENT

The following are prohibited within the overlay:

- a) New principal residential or non-residential structures (including the placement of manufactured homes);
- b) Storage of materials or junk yards;
- c) New net fill except as necessary to elevate existing principal structures above the base flood elevation;
- d) Accessory structures in the floodway;
- e) Critical facilities; and,
- f) All development not exempted, permitted, or conditionally permitted.

3.6.2 PERMITTED DEVELOPMENT

For the purposes of review under these Regulations, the following development activities in the special flood hazard overlay area, where outside of the floodway and meeting the Development Standards in Section 4.1(k) and 5.1, require only a zoning permit from the AO:

- a) Non-substantial improvements (see definition) that do not increase the footprint;
- b) Development related to existing permitted on-site septic or water supply systems;
- c) Building utilities;
- d) At-grade parking; and,
- e) Recreational vehicles that fully licensed and ready for highway use.

3.6.3 CONDITIONAL USES

All other uses are as allowed in the underlying district, except they are conditional in the overlay. In addition, the following are conditional uses in this overlay:

- a) Non-substantial improvements (see definition) that increase the footprint
- b) Fill to elevate existing structures
- c) Channel management activities
- d) Bridges and culverts
- e) At-grade parking in the floodway
- f) Grading
- g) New septic or water supply systems
- h) Substantial improvement;

In addition to meeting the general standards in 4.1(e), these uses must also meet the standards in section 5.1.

3.6.4 STATE REFERRAL

All applications for proposed development in the overlay district shall be sent by the Administrative Officer to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section for comment in accordance with 24 V.S.A. § 4424. For any permit application involving the alteration or relocation of a watercourse, the Administrative Officer shall notify adjacent communities, the Administrator of the National Flood Insurance Program, and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section.

A permit application may not be acted upon by the AO earlier than the receipt of comments or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. Applications requiring a conditional use hearing, shall not have such hearings warned until the receipt of comments or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

3.6.5 ADDITIONAL STANDARDS

Specific general and conditional use standards apply in the overlay and are found in sections 4.1(f) and 5.1.

3.7 ADAPTIVE REUSES

The reuse of existing, older large structures is beneficial to the community, provided that the reuse is not injurious to others. For structures that are at least 10 years old, but that are larger or different in some other aspect from permitted structures in the district, in all districts except the FH, SH or WSP the DRB is authorized to allow as conditional uses a use that would not otherwise be permitted in that district. Such a use must pass the conditional use approval process.

3.8 MIXED USES/UNUSUAL USE

When applying for a development, the AO shall determine the appropriate use category within which the project falls. This determination is appealable to the DRB. The AO shall use the above category(ies) in making this determination. A mixed use (a combination of principal uses within a single structure) is allowed, provided that the uses are permissible in the district, and all other applicable standards are met for all uses. For a proposed use that is a single enterprise that covers a blend of categories, the ZA will determine which is the principal use category and treat the application under that category.

ARTICLE 4 - GENERAL STANDARDS

4.1 GENERAL STANDARDS FOR ALL DEVELOPMENT

a) **Minimum Tall Structure Setbacks:**

Any freestanding or guyed structure other than a building (e.g. radio tower, windmill, etc.) shall be no closer to property lines than 150% of its height.

b) **Maximum Height:**

No structure or part thereof, except farm buildings, antennae, chimneys, cupolas, steeples or similar roof structures; windmills; or telecommunications towers shall exceed forty (40) feet above average adjacent finished grade, except within the Lakeshore District where the maximum shall be thirty (30) feet. No structure of any kind may exceed 100 feet above grade.

c) **Conditional Use Lighting:**

All outdoor lighting for new development requiring conditional use approval and a permit shall be directed or shaded so that it does not directly illuminate beyond the site boundary lines.

d) **Wetlands:**

No permit for development that involves filling, excavating, or altering a wetland and its buffer designated or regulated by the State of Vermont shall be issued without prior review and wetlands approval by the Agency of Natural Resources.

e) **Streambanks:**

Outside of the village districts, no land disturbance is allowed within a riparian buffer extending 35 horizontal feet from the top of bank of all second order streams except for agricultural and forestry practices, road and driveway crossings, permitted septic repairs, utility crossings, crossings by recreational trails, removal of invasive species, stream restoration projects in accordance with a plan approved by the Vermont Agency of Natural Resources, and maintenance of existing structures. Vegetation within the riparian buffer may be pruned and dead or hazard trees removed as long as the overall forest canopy is maintained. Stumps shall not be removed. All work below top of bank on all streams requires a State Stream Alteration Permit. Unless otherwise stated in these Regulations, all structures shall be set back at least twenty five (25) feet horizontal from the shoreline of lakes and ponds and from the top of bank from streams inside of the village districts, and in all other districts (50) feet from the top of bank from streams for residential structures and one hundred (100) feet from the top of bank from streams for commercial structures.

f) **Within the Flood Hazard Overlay, all development shall be:**

1. Reasonably safe from flooding and result in No Adverse Impact (loss of flood storage or increase in the potential for flood damage);
2. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
3. Constructed with materials resistant to flood damage;
4. Constructed by methods and practices that minimize flood damage;

5. 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;
6. Adequately drained to reduce exposure to flood hazards;
7. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and
8. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

g) Commercial Buffers

Except within the villages or hamlets, commercial or industrial structures shall be at least 50 feet from lot lines that abut residential uses. A strip of not less than ten (10) feet from lot lines shall be maintained only for a fence or trees or shrubs to lessen visual and noise impacts on adjacent uses. Additional screening or setbacks maybe required in the conditional use or site plan approval processes.

4.2 ABANDONMENT AND DISCONTINUANCE

4.2.1 ABANDONED STRUCTURES

Structures which are not substantially complete within two (2) years of the issuance of a permit, deemed uninhabitable by the Health Officer, deemed a fire danger by the Fire Chief, or which, due to deterioration or disrepair (but not damage), or lack any major structural element customary to that building type, such as a roof, windows, water supply, etc., shall be considered abandoned for the purposes of these Regulations. For such structures, the owner shall be notified in writing via certified mail by the AO that the structure in question has been deemed abandoned and that they either must either:

- a) apply for a development permit in order to undertake any use or construction, and thereby confirm the intent not to abandon the structure; or
- b) fence and sign the property to prevent access, and then as soon as practical remove all materials from the site, restore the site to a normal grade, and establish ground cover sufficient to prevent erosion.

4.2.2 DISCONTINUED USES

Any non-residential use that ceases operations entirely for more than two consecutive years shall be deemed discontinued by the AO under these Regulations and the owner notified via certified mail of this decision in writing. However, upon a request for deferral by the owner and a written finding by the AO that the property has been maintained and the owner has been actively pursuing reestablishment of the use, use may cease for up to two additional consecutive years before the use is deemed discontinued.

Reinstatement of a discontinued use shall require a permit. A discontinued non-conforming use shall follow the procedure in Section 4.4.

4.3 ACCESSORY STRUCTURES

Except as exempted, accessory structures customary and incidental to the principal use are allowed and will follow the permitting process and standards of the principal use. For example, a garage for a house where the house only requires a zoning permit, also only requires a zoning permit. A storage shed for a conditional use also requires a conditional use approval prior to permitting.

4.4 NON-CONFORMING USES AND NON-COMPLYING STRUCTURES

4.4.1 APPLICABILITY

The following provisions shall apply to all lawfully existing structures and uses which do not conform to the requirements set forth in these Regulations and to all buildings and uses that in the future do not conform by reason of any subsequent amendment to these Regulations.

4.4.2 STANDARDS FOR CHANGES TO NON-CONFORMING USES/STRUCTURES

Any non-conforming use, structures or land (nonconformity) may be continued indefinitely except under the conditions specified below.

- a) A non-conforming structure may not be moved, enlarged, altered, or extended in such a way that it increases the degree of nonconformance nor shall any external evidence of such use be increased. Routine maintenance is permitted.
- b) A non-conforming use shall not be changed to another non-conforming use without first receiving conditional use approval from the DRB, and then only to a use which, in the opinion of the Board, is of the same or of a more restricted nature.
- c) A non-conforming use shall not be reestablished if such use has been discontinued under 4.2.2 or has been changed to, or replaced by, a conforming use.
- d) A non-conforming structure shall not be reconstructed or restored after damage from any cause, unless such work is substantially complete within two years of such damage. The DRB may grant a one-year extension for situations beyond the applicant's control.

4.5 EXISTING SMALL LOTS

Any legal lot not meeting minimum dimensions at the time of adoption of these Regulations and in individual and separate and non-affiliated ownership from surrounding properties may be developed for the purposes permitted in the District in which it is located, if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet. If this cannot be done in compliance, then a variance or waiver may be needed.

If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this section. However, such lot shall not be deemed merged and may be separately conveyed, if:

- a) The lots are conveyed in their preexisting, nonconforming configuration; and
- b) each lot has a water supply and wastewater disposal system; and
- c) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and

- d) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner (1) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner; (2) so that a potable water supply is contaminated or rendered not potable; (3) that presents a threat to human health; or (4) that presents a serious threat to the environment.

If, subsequent to separate conveyance, as authorized in the paragraph above, a wastewater system fails, the owner shall be required to obtain from the Secretary of the Vermont Department of Natural Resources a wastewater permit or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

4.6 REQUIRED FRONTAGE ON, OR ACCESS TO, PUBLIC ROADS OR WATERS

No land development may be permitted on lots which do not have either frontage on a public road, public waters, or access to such a road or waters by means of a permanent easement or right-of-way at least fifty feet in width.

4.7 GENERAL RESTRICTIONS ON ALL PERMITTED SIGNS

All signs other than those specified as exempt under Section 1.9h shall require a permit from the Administrative Officer. Signs, including exempt signs, shall conform to the requirements listed below:

- a) No sign shall prevent a clear and unobstructed view of official signs or vehicular traffic.
- b) No sign shall be lit outside of one-half hour before and after open hours of the associated business.
- c) No sign shall be lit in any of the Rural districts.
- d) Indirectly illuminated signs may be lighted with constant lighting provided the lighting shall not be directed at neighboring properties or public ways and the intensity of sign lighting shall not adversely affect the neighborhood or streets and highways, especially the drivers of vehicles.
- e) No sign shall contain string lighting, pennants, moving parts or similar attention gathering devices. No sign shall be illuminated by a neon, flashing, moving, or intermittent light.
- f) No sign shall be erected, attached, or maintained upon any tree or drawn or painted on any rock or other natural feature or upon any utility pole or town sign post.
- g) No sign shall be erected which is not on the lot where the activity served by the sign is located.
- h) The height of a sign shall not be more than ten (10) feet above grade level in Rural Districts and twenty (20) feet in other districts.
- i) The face of a sign shall not exceed: 16 square feet in the Newbury Village District, 32 square feet in the Wells River Village, Mixed Use or Industrial Districts. Signs in other districts are not allowed above the exempt sizes.
- j) No sign may be so designed, erected, illuminated, operated or maintained and be in such a location that it conflicts with or detracts from the effectiveness of an official traffic signal or sign, or constitutes a menace to traffic safety.

4.8 HOME OCCUPATIONS

These Regulations provide the right of any resident to use an area less than 50% of the finished floor area of the principal dwelling for a home occupation without the issuance of a permit where:

- a) The use is entirely within the dwelling and/or accessory structure;
- b) The occupation is conducted at the site solely by the occupants of the dwelling, but may have off-site employees;
- c) There is no outside display of stock or merchandise and no outdoor storage of equipment or supplies; and
- d) There are no retail sales of on-site stock unless such is assembled or produced on the premises (e.g. crafts), is in a used condition (antiques, etc.), or is incidental and commonly associated with a home occupation that is a service use, such as plumbing supplies for a plumber, hair care products for a hairdresser, etc.

4.9 HOME BASED BUSINESSES

A Home Based Business must meet the requirements of a Home Occupation, except it may have up to four site-based employees who do not live at the residence and may have outdoor storage in the rear yard outside of setbacks. Home Based Businesses require a development permit by the AO following conditional use approval. In addition to the conditional use standards, the applicant must demonstrate that the business activity does not alter the essential character of the neighborhood with regard to traffic, hours of operation, noise, odor, or lighting. Permits shall require at least one parking space per employee and one parking space per 400 square feet of business floor space.

4.10 GENERAL CONDITIONAL USE APPROVAL STANDARDS

Conditional Uses are uses that may fit in with the purposes of a district, depending on their particulars and under certain conditions. To grant approval the DRB must find that the proposed development will not create an undue adverse effect on the following:

- a) The capacity of existing or planned community services or facilities. The DRB shall consider the demand for community services and facilities resulting from the proposed development in relation to the available capacity of such services and facilities including, but not limited to, schools, emergency services, transit services and road maintenance. Conditions may be imposed to ensure that demand does not exceed available capacity.
- b) The character of the area as defined by the purposes in applicable zoning districts in these Regulations and specific policies and standards in the Newbury Town Plan. Conditions may be imposed to ensure project compatibility with these purposes and policies.
- c) Traffic on roads and highways in the vicinity. The Board shall consider the potential impact of traffic projected to result from the proposed development in relation to the condition, capacity, safety, and function of affected roads and associated infrastructure (e.g., bridges, culverts). Conditions may be imposed to ensure that the condition, capacity, safety, and function of roads and associated infrastructure are maintained over the long-term, and that delivery and operations do not create safety hazards.
- d) Bylaws and ordinances in effect. The Board shall consider whether the proposed development complies with all bylaws and ordinances in effect at the time of application. Conditions may be imposed or incorporated to ensure compliance with municipal bylaws and ordinances.

- e) The utilization of renewable resources. The Board shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources, including access to, direct use or future availability of such resources. Development may not adversely affect the use of renewable energy, principally by blocking solar access to adjacent properties. Conditions may be imposed to ensure long-term access, use and availability of such resources.

In addition:

- f) Parking must be provided outside of the traveled portion of the public road for all residents, customers, delivery/service vehicles and all vehicles used in the business; and the parked vehicles must not create traffic safety or visibility concerns. A parking space shall consist of 200 square feet (10 ft. by 20 ft.) of level, readily accessible ground. For any public or commercial uses that caters to the public, reasonable parking will be required so that full occupancy or maximum expected use will not create an unsafe condition. Needed parking may propose to use public spaces, be provided on site, or be shared with private adjacent properties if hours/days of use are such that spaces may be reasonably expected to be available. All drives and parking areas shall be surfaced with hard, durable material; be properly drained so as not to create flow into roads or neighboring properties; and be at least 10 feet from lot lines, except in the village districts.
- g) Non-residential primary or accessory structures will be evaluated as to their mass and scale to ensure that they resemble the general size, style and shape of other similar structures in the district.
- h) Landscaping, screening or the retention of vegetation may be required to minimize development's visual effect from public roads or adjoining properties.
- i) Drainage must control storm water run-off, prevent erosion and protect neighboring land and roads from undue impacts. No increase is allowed in off-site storm water run-off in terms of volume or peak discharge, nor any discharge of any hazardous substances. Sites creating more than half an acre of impervious surface will be required to submit an engineered stormwater plan. Sites disturbing more than an acre and/or creating an acre of impervious surface require a state stormwater permit in addition to local permits.
- j) The DRB may also require specialized studies, if needed to adequately review technical issues, at a reasonable cost payable by the applicant.
- k) Emergency vehicle access shall be satisfactory to town emergency services.
- l) Refuse collection areas and provisions for snow removal shall be sufficient for the use.
- m) Noise levels may not impair adjacent uses.
- n) Dust/Smoke and Odor - No visible dust/smoke or discernable objectionable odor beyond the property line is permitted, excepting as is incidental and customary to residences, farms or permitted occasional burning.
- o) Vibration - Continuing vibration which is readily discernable without instruments on adjacent property is prohibited

4.11 CERTIFICATE OF COMPLIANCE

All permits in the Flood Hazard, Water Supply Protection and Shoreline Overlays are required to obtain a certificate of compliance from the AO prior to the use or occupation of a building or site. A certificate of compliance may also be required as part of subdivision or conditional use approval at the

discretion of the DRB. When a developer believes all permit conditions have been met, they shall apply to the AO for a certificate, who shall issue or deny such a request within 30 days.

4.12 SITE PLAN STANDARDS

Uses subject to Site Plan approval are assumed to be appropriate for the district, and hence this approval process is solely meant to ensure it fits safely in the district and does not adversely affect other properties. A hearing and Site Plan approval is needed prior to the granting of a development permit. Site plan reviews shall use standards c, f, g, h, l, and k above.

ARTICLE 5: SPECIAL STANDARDS

5.1 SPECIAL REQUIREMENTS IN THE FLOOD HAZARD OVERLAY

Unlike other areas in town, there are very few exemptions in the overlay. Permits are required for all development, including new construction, replacement of damaged structures, improvements to existing buildings and structures, filling, grading, excavation, and similar developments.

5.1.1 RECORDS

The Administrative Officer shall maintain a record of:

- a) All permits issued and denied for development in areas of special flood hazard;
- b) The as-built elevation certificate (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings;
- c) The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed, when applicable;
- d) All floodproofing certifications required under these Regulations; and
- e) All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

5.1.2 DRB

Upon receiving an application, the AO or DRB shall, prior to holding a hearing (when required) and rendering a decision thereon, obtain from the applicant:

- a) Base flood elevation data for all subdivisions and other proposed new developments;
- b) The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures;
- c) Where flood proofing is used in lieu of elevation, the elevation, in relation to mean sea level, to which any structure or substantial improvement has been flood proofed;
- d) Certification from a registered professional engineer or architect that the flood proofed structure meets the flood proofing criteria in Section 3.6.6 of these Regulations; and
- e) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
- f) Where available, base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations.
- g) In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, base flood elevations and floodway data provided by FEMA or available from State or Federal agencies or other sources, or developed by the applicant, shall be obtained by the applicant and utilized to administer and enforce these regulations.

5.1.3 OTHER PERMITS

The DRB shall specifically require that all permits for development in the Flood Hazard Overlay District provide receipt of all necessary permits from those government agencies from which approval is required by Federal, State or Municipal law prior to the issuance of a certificate of compliance.

5.1.4 FLOODWAY STANDARDS

Very limited development is allowed in the floodway as this is a dangerous area subject to flooding and erosive force. New encroachments or development above grade are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:

- a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
- b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from flood scour.

5.1.5 SPECIAL FLOOD HAZARD AREAS STANDARDS

- a) In Zones A, AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
- b) Existing residential structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, and this must be documented, in as-built condition, with a FEMA Elevation Certificate. Elevating to two feet or more above base flood elevation is not required, but is advisable and may significantly reduce insurance rates.
- c) Existing non-residential structures to be substantially improved shall meet the standards for residential structures or have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that at least two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood proofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
- d) Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.
- e) Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall be solely used for parking of vehicles, storage, or building access, and such a

condition shall clearly be stated on any permits; and, they shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls 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 foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- f) A small accessory structure of 150 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the general standards. (Such structures may not be able to get insurance or may have higher rates.)
- g) Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- h) Sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- i) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- j) The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability.
- k) Bridges and culverts, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources where applicable.
- l) Subdivisions must be accessible by dry land access above the base flood elevation.
- m) Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

5.1.6 ANNUAL REPORT

The Administrative Officer shall submit to the Flood Insurance Administrator an Annual Report with respect to the administration and enforcement of these Regulations. A copy of the Annual Report shall be submitted to the Vermont Department of Environmental Conservation.

5.3 EXTRACTION OF SOIL, SAND, ROCK AND GRAVEL

The commercial extraction of gravel, sand, soil, or rock, or a substantial change from an existing operation shall require Conditional Use Approval from the DRB. In the approval of proposed projects, in addition to other standards set forth in these Regulations, all sites shall meet the following:

- a) All sites shall be required to submit a site rehabilitation plan showing eventual excavation and expected final slopes.
- b) Topsoil shall remain on site sufficient to cover excavated areas once reclaimed.

- c) The removal of all material shall be conducted so as to result in the improvement of the land, having due regard to the contours in the vicinity such as leveling slopes and removing hills. The creating of pits or steep slopes shall not be permitted, unless provisions are made to re-grade such pit.
- d) Portions of the operation that are fully excavated shall be shall be graded smooth and left in a neat condition. Cut slopes, spoil banks, or pits shall not be allowed to remain. Final slopes shall have top soil and shall be fertilized, mulched and re-seeded so as to establish a firm cover of grass or other vegetation sufficient to prevent erosion, except clean ledge need not be reclaimed.
- e) All surface drainage affected by excavation operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street or private property.
- f) No excavation, or stock piling of materials may occur within one hundred feet of any public road or property line.
- g) No operation of power-activated sorting/crushing/grinding machinery or equipment may be located within two hundred feet of any public road or property line, and all such machinery shall be equipped with satisfactory dust control devices.
- h) Blasting may be allowed up to no more than ten times per year upon a finding by the DRB that impacts are appropriate in the district. Blasting shall be no less than 100 feet from property lines and at such distances as certified by a blasting professional to not create safety or vibration impacts to adjacent properties.
- i) Hours of operation shall generally be limited to 6 am to 6 pm Monday through Saturday and no crushing machinery may operate outside of 7 am to 5 pm, except under emergency conditions. These limits may be altered by the DRB upon a finding that the particular situation of the site and its operation would not create unreasonable noise or trucking impacts.
- j) Cut faces shall be no closer to property lines than is required for a final slope not exceeding 1:2 (50%) with a final top of slope no closer than 50 feet from property lines.
- k) The DRB may require that all working faces and excavation slopes in excess of 1:1 (100%) be adequately fenced.
- l) The DRB may require from the owner, for the benefit of the Town, a performance bond issued by a bonding or surety company approved by the Board of Selectmen, or by the owner with security acceptable to Board of Selectmen, in an amount sufficient to cover the full cost of rehabilitation of the site as is estimated by the DRB. In determining such costs, the DRB reserves the right to engage the services of civil engineer or other qualified expert to evaluate the proposed plan. All costs incidental to these services shall be paid by the applicant to the Town, if required by the DRB. Such bond or other security shall provide for and secure the public interest, and ensure the completion of the site rehabilitation plans as approved by the DRB within a reasonable time following closure of the operation.

5.4 KENNEL STANDARDS

As part of conditional use review, kennels may be required to install fencing, landscaping, have increased setbacks and other measures to minimize off site impacts to adjacent properties. At a

minimum, no structure or outside area used by animals shall be closer than 100 feet to any property line or surface water. An annual inspection by a licensed veterinarian or humane society official certifying that the site is in compliance with standards may be required.

5.6 SUBDIVISION STANDARDS

The following standards shall apply to all subdivisions not exempted under section 1.9(t). Standards a-q below may not be waived. Standards r-v may only be waived by the DRB pursuant to the requirements of Section 6.6.3.

- a) All subdivided lots must have approved access, which may be shared, onto town or state highways, or a legal right-of-way no less than 50 feet in width to a shared private road or drive that provides entry and egress from a town road or state highway. The creation of landlocked parcels is not allowed. Access permits must be obtained from the Selectboard for access onto a town road, or from the Vermont Agency of Transportation for access onto a state highway, and such access must be obtained from the Selectboard and/or the Vermont Agency of Transportation prior to approval of a subdivision and/or construction of any roads or driveways. Access to any lots within a subdivision shall be limited to a single shared access point onto the Town or State Highway, unless public safety is better served by two accesses or topography precludes single access. Any additional subsequent subdivision shall be restricted by permit to the existing access point(s) as approved for the initial subdivision. Access points shall be onto existing side roads and not onto State or higher volume Town highways unless the applicant demonstrates there is no reasonable alternative.
- b) Any subdivided lot created under these Regulations must contain the minimum lot size and dimensions unless waived.
- c) All lots resulting from a subdivision must be surveyed by a licensed land surveyor prior to final approval, however for lots where a resulting large lot is clearly well in excess of required size, the DRB may waive survey requirements.
- d) All subdivisions shall be limited to such uses as are stated by the applicant in the subdivision application. A change to a use not specified in the application without a new or amended permit is a violation. Where no uses are stated, then no residential or non-residential uses shall be allowed without issuance of a new permit. This provision shall be in the permit for all resulting lots.
- e) All land to be subdivided shall be, in the judgment of the DRB, of such a character that it can be used for the intended purposes without danger to public health or safety, or damage to the environment.
- f) Subdivisions shall be designed in reasonable conformity with existing topography to minimize grading, to reduce cuts and fills, and to retain, insofar as reasonable, natural contours, land cover, and soil. The DRB may require a program of landscaping, soil stabilization and the establishment of appropriate, permanent vegetative cover following excavation or grading.
- g) No new slopes may be created with a grade greater than 1:3. Disturbance of steep slopes (over 25%) shall be minimized. Subdivisions on slopes greater than 25% may require a licensed

professional engineer to certify that they do not pose a landslide or erosion risk.

- h) Land shall not be subdivided so that any lot consists of land designated as flood hazard areas or characterized by poor drainage, steep slopes, or subject to other hazardous conditions to the point where the lot is not buildable, unless building has been restricted on the lot by easement.
- i) Subdivisions shall avoid irregularly shaped lots (e.g., curves, jogs, dog-legs, etc.) and no lot may be more than five times longer than the narrowest dimension, unless warranted due to natural/topographic constraints, or to minimize the fragmentation of natural, scenic or cultural features.
- j) The proposed development may not place an unreasonable burden on the ability of the Town to provide municipal or governmental services and facilities.
- k) The proposed development may not cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.
- l) Adequate provision of water supply shall be made for fire protection satisfactory to the Fire Department, and if required, shall be designed in consultation with a licensed professional engineer, and may include a system of hydrants or ponds built to generally accepted standards.
- m) Drainage shall not adversely affect any abutting properties, roads, and drainage systems within or outside the subdivision site. The DRB may require the developer to submit a report from a licensed professional engineer assessing the impact of drainage created by the subdivision.
- n) For lots which will require on-site sewage systems or potable water, state permits will be required prior to review. For lots without designed systems and intended to have no buildings, the required deed notice in the Vermont Environmental Protection Rules shall be a condition of final plat approval and the notice shall be legibly printed on the plat itself.
- o) Private road construction must satisfy the requirements of the Town Highway Policy and Road and Bridge Standards. Driveways may not exceed 18% grade. If the subdivision is on an existing private road, or will cause the creation of a private road, improvements to the existing road or right-of-way may be required for public safety and emergency access.
- p) The subdivision shall reasonably minimize impacts to historic structures, stone walls, mature trees, and critical wildlife habitat or corridors.
- q) When subdivisions contain prime or statewide agricultural land or large blocks (>50 acres) of contiguous forest, adequate provision shall be made for their preservation for future use by minimizing intrusions into forests or fields. Cutting plans may be required to retain mature trees if such are used as screening.
- r) When site conditions allow, subdivisions shall be laid out to promote energy efficiency and conservation by affording buildings sufficient solar access and southern orientation.
- s) Stormwater on subdivisions resulting in 3 or more lots shall be handled by an erosion control plan prepared by a licensed professional engineer for the subdivision for control of erosion, sediment and stormwater runoff during and following development. Subdivisions that will result in an acre of new impervious surface when fully built, including all new roads and structures, require a state operational stormwater permit. Subdivisions that will disturb more

than an acre of ground require a state stormwater construction permit.

- t) Electric, telephone and cable distribution systems shall be placed underground when crossing large open areas when reasonable. The developer shall coordinate subdivision design with the utility companies to ensure adequate and suitable areas for installation. All utilities shall follow the road right-of-way unless the DRB approves alternative plans based upon a review and demonstration of necessity.
- u) Adequate provision must be made for pedestrian traffic in terms of safety, convenience, and access to destination points. Sidewalks or paths, or rights-of-way for such in the future may be required.
- v) Any proposed outdoor site lighting for pedestrian and vehicular safety shall keep lighting confined to the property, to avoid glare, skyglow, and visual disturbance.

5.7 PLANNED UNIT DEVELOPMENT (PUD)

To encourage innovation in design and layout and to enable more efficient use of land, the Development Review Board through the review and approval of a PUD may allow a greater density of land use in any section of a parcel if it is offset by a lesser concentration in any other section, or if it is offset by an appropriate reservation of common open space on the remaining land by a grant of easement or by a covenant to the municipality.

The PUD approval of will include approval of both a subdivision plat and a site plan by the DRB, and is required before a permit may be issued. The plans must show the location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces, and all other physical features, accompanied by a statement setting forth the nature of all proposed modifications of these Regulations.

An application for a planned unit development shall be filed jointly by the owners of all the property in the plan and reviewed by the DRB in at least one public hearing, preceded by public notice. Hearings processes and decisions shall be done in the same manner as conditional use approval.

5.7.1 STANDARDS

- a) The proposed development must be designed to create an environment of stable and desirable character that is in harmony with the density and type of adjacent land uses.
- b) If the application of this procedure results in lands available for park, recreation, open space, or other similar uses, the Development Review Board, as a condition of its approval, may establish conditions as to ownership, use and maintenance of these lands in order to assure the preservation of these lands for their intended use(s).
- c) The number of dwelling units shall not exceed one hundred twenty five percent of the total number which could be permitted if the land were subdivided into buildable lots in conformance with the zoning regulations for the district(s) in which the development is situated.
- d) If lots or densities are to be created which will not be in conformance with the zoning regulations for the district(s) in which the development is situated, it must be demonstrated

that adequate conditions and methods exist, or will be made, for the treatment of sewage and the provision of a safe supply of drinking water prior to approval of a plan by the Development Review Board.

- e) Permitted uses shall be those uses permitted in the district(s) within which the Planned Unit Development is proposed.
- f) Areas for off-street parking adequate for the proposed occupancy must be provided.
- g) In reviewing and evaluating a Planned Unit Development proposal, the DRB, in addition to finding that the foregoing requirements are met, shall consider the following:
 - The objectives and policies set forth in the Town Plan.
 - The location, arrangement, and size of lots, recreation areas, school sites, and other reservation of open spaces.
 - The location, width and grade of roads and streets, and the arrangement of parking spaces.
 - The relationship and compatibility between residential and nonresidential uses.
 - The densities proposed for the entire area.
 - Other features that affect the orderly and harmonious development of the land.

ARTICLE 6: PERMITS AND APPROVAL PROCESSES

6.1 PRE-APPLICATION AND APPLICATION

Potential applicants are encouraged to discuss their project with the Administrative Officer prior to application in order to fully understand the requirements of this regulation and the permit process. The purpose of such a pre-application meeting is to familiarize the applicant with the requirements of these Regulations, answer basic questions of procedure, and acquaint the applicant with likely submittal requirements according to the general concept the applicant is considering. No written decision will be issued and no comments by either the applicant or the AO are binding.

All applications requiring a development permit and any other prerequisite approval under these Regulations shall be submitted to the Administrative Officer on forms approved by the DRB, and accompanied by the applicable fee as set by the Selectboard. Applications without appropriate fees will be denied. Fees are non-refundable and are for application and do not guarantee issuance of a permit.

6.2 PERMIT COORDINATION

The Administrative Officer shall inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the Vermont Agency of Natural Resources in order to assure timely action on any related State and/or federal permits. Note that this will not change the applicant's sole obligation to identify, apply for, and obtain relevant State/federal permits. The AO shall also coordinate any local permits/approvals that may be needed.

No development permit shall be issued by the Town of Newbury, for a structure for human occupation/use that requires a water and wastewater permit, until a wastewater disposal permit has been received and approved by the State.

6.3 TIME FOR ACTION ON A PERMIT

The Administrative Officer will take action on any application within 30 days of receipt, either by determination that the application is incomplete, denial, approval, or referral to the DRB. Applications that cannot be approved in conformance with this regulation shall be denied.

If the Administrative Officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to DRB, a permit shall be deemed issued on the 31st day.

If the AO deems any permit incomplete, the applicant shall be given a period not to exceed 90 days to supply the required information. If the applicant fails to do so the application shall be denied and the application fee forfeited.

6.4 DEVELOPMENT PERMITS

6.4.1 EFFECTIVE DATE

A development permit is authorization to undertake certain actions. No development permit issued shall take effect until 15 days from the time of issuance and the time for appeal has passed, or in the event that a notice of appeal is properly filed, no such Development Permit shall take effect until final adjudication of that appeal. A permit that is complied with remains in effect indefinitely and 'runs with the land', meaning it stays valid regardless of owner.

6.4.2 NOTICE OF PERMIT

- a) Each development permit issued under this section shall contain a statement of the period of time within which an appeal may be taken and shall require prompt posting of a Notice of Permit poster provided by the Administrative Officer within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal has passed.
- b) Within three days following the issuance of a permit, the Administrative Officer shall:
 1. Deliver a copy of the permit to the listers of the Town; and
 2. Post a copy of the permit in at least one public place in the Town until the expiration of 15 days from the date of issuance of the permit.

6.4.3 RECORDING REQUIREMENTS

Within 30 days after a development permit has been issued or within 30 days of the issuance of any notice of violation, the Administrative Officer shall:

- a) Deliver the original or a legible copy of the permit, Conditional Use Approval, Waiver, Site Plan Approval, or Variance, Notice of Violation, or notice of same in the form set forth in subsection 1154 (c) of 24 V.S.A. to the Town Clerk for recording as provided in subsection 1154 (a); and
- b) File a copy of that Permit in the Town offices in a location where all land use permits shall be kept.

The Town Clerk may charge the applicant for the cost of the recording fees as required by law. Such records shall be open to inspection.

When the development permit involves a subdivision, within 180 days of the date of receipt of final subdivision approval under Section 6.6, the subdivider shall obtain the required signatures and file a signed and certified mylar plat in the Newbury land records in accordance with the requirements of 27 V.S.A. Chapter 17, and provide two (2) paper copies and one (1) digital copy of the recorded plat to the Administrative Officer. No plats may be recorded except in conformation with these Regulations.

The approved plat shall:

- a) Shall be 18"x24", or a multiple thereof;
- b) have a margin of 1.5" outside of the border lines on the top side for binding and a margin of 0.5 " outside the border lines along all other sides;
- c) be signed by the AO,
- d) In cases when the subdivision has the state required deed notice instead of state approved septic design, a notice shall also be reproduced on the plat in at least 12 point font as follows

“Notice to Owner/Buyer: Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be improved.”

- e) carry the following information and endorsement on the original to be filed in the Newbury Land Records.

INSERT SAMPLE



6.4.4 PERMIT EXPIRATION DATES AND EXTENSIONS

If the zoning permit authorizes only a change or establishment of a use of any building or other structure, or in the use of land, the change in use must occur prior to the two-year expiration date of the permit, or it shall become null and void.

If the development permit authorizes construction (construction, reconstruction, conversion, relocation, alteration or enlargement of any building or structure), said construction activity must be begun within two years and substantially completed by the end of the third year or the permit shall become null and void.

If the development permit authorizes a subdivision, then the final signed plat must be filed within 180 days of approval or it shall be null and void.

The expiration of a development permit under this subsection shall include the expiration of all associated town approvals under these regulations, and at its expiration, any land development on the lot related to the permit must cease. If construction authorized by a permit is not substantially completed within the time authorized above, the permit shall expire and the landowner must reapply and comply with the Regulations then in effect.

Permits that have been fully complied with shall not expire and shall run with the land.

6.5 SITE PLAN/CONDITIONAL USE APPROVAL PROCESSES

In any district certain uses may only receive a development permit by the AO following approval of the Development Review Board. General and specific standards to which each site plan and conditional use must conform are prescribed in these Regulations. In cases where both approvals apply, the site plan standards shall be treated as additional conditional use standards and one joint process applied.

The DRB shall grant approval if and only if, after public notice and public hearing, the Board determines that the proposed use will conform to such standards. In granting approvals, the Board may attach reasonable conditions and safeguards as are necessary to implement these Regulations.

For all relevant criteria applicable to the requested use, the applicant has the burden of proof. This means that the applicant must persuade the DRB that the use complies with these Regulations. This can be by written or oral testimony provided by the applicant at the hearing. The applicant shall

provide sufficient evidence that all relevant criteria have been met even if no party actually opposes that project. Evidence must be credible and clear enough for the Board to be able make written findings that ensure the public health, safety, and welfare.

6.5.1 APPLICABILITY

No permit shall be approved by the Administrative Officer for any use or structure that requires site plan and/or conditional use approval until the DRB grants such approval in accordance with these Regulations and the following standards and procedures.

6.5.2 APPLICATION REQUIREMENTS

An applicant for site plan and/or conditional use review shall submit one (1) original and one (1) complete copy of an application.

6.6 SUBDIVISION REVIEW

6.6.1 APPLICABILITY.

In accordance with the Act [§4418], whenever any subdivision of land regulated herein is proposed, unless exempted in section 1.9, subdivision approval by the Development Review Board is required prior to:

- a) the sale, transfer of ownership or lease of any portion of a parcel of land,
- b) the issuance of a development permit for the creation of a lot, or
- c) filing a subdivision plat in the land records of the town, except as exempted.

Such approval shall be granted by the Board only in accordance with the procedures and standards set forth below.

6.6.2 SUBDIVISION APPLICATION REQUIREMENTS

An applicant for subdivision approval shall submit one (1) original and one (1) complete copy of an application which provides the following information to the DRB:

- a) Names and addresses of the property owner(s) of record, the applicant if different from the property owners, and the person(s) or firm preparing the application and plan;
- b) Names and addresses of all abutting property owners. (The Town of Newbury is responsible for notifying abutters; the landowner is responsible for providing the names and addresses of the abutters to the town.);
- c) A site plan, drawn to scale, which shows the following:
 - 1. names and addresses of all abutting property owners;
 - 2. north arrow, scale and application date;
 - 3. existing and proposed property boundaries, easements and rights-of way;
 - 4. existing site features, to include prominent topographic features and areas of steep slope (25% or greater); surface waters, wetlands and associated buffers;

5. designated floodplain and source protection areas; land use and land cover; and critical habitat areas and historic sites;
 6. existing and proposed structures, including building footprints, building elevations depicting general design features, walls and fence lines, utilities, roads, driveways, parking and loading areas;
 7. existing and proposed traffic and pedestrian circulation patterns, including accesses onto or connections with adjoining properties, public roads and public waters, and associated sidewalks, pathways or trails serving the proposed development;
 8. water supply and wastewater disposal design details; and
 9. proposed grading, drainage, landscaping, screening, signs, and/or lighting details.
- d) Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development; and
- e) Any additional information deemed necessary to determine project conformance with the provisions of these Regulations (e.g., site plan prepared by licensed engineer or surveyor; erosion control, storm water management plans; traffic, fiscal or visual impact analyses).

6.6.3 SUBDIVISION NULLIFICATIONS/MODIFICATIONS

As part of the subdivision review and approval process, the Development Review Board may elect to nullify or modify, subject to appropriate conditions, the provisions of application or review procedures, and submittal and development requirements. The Board shall only grant such nullifications/modifications upon a determination that the individual circumstances of the lot(s), proposed uses (if provided) and surrounding area do not require such submittals or standards in order to fulfill the purposes of these bylaws and to protect the public health, safety and general welfare. The Board may require such conditions as will in its judgment secure the objectives of the requirements nullified or modified. Such nullifications/modifications and their justification shall be in writing and included in the permit file. The request for a nullification/modification shall be made by the applicant, and it shall be the responsibility of the applicant to provide sufficient information to justify it and to enable the Development Review Board to reach a decision.

6.6.4 PERFORMANCE BONDING

In accordance with the Act [§4464(b)(2),(6)], for any subdivision which requires the construction of roads or other public improvements, the Development Review Board may require that the subdivider post a performance bond or comparable surety satisfactory to the Selectboard or its designee to cover the cost and to ensure completion of specified improvements, and their maintenance for two (2) years following completion, in accordance with the conditions of approval. Such bond or surety must be approved by the Selectboard prior to final plan approval. The term of the bond or surety may be fixed by the Development Review Board for a maximum period of three (3) years, within which all improvements must be completed. The term of such bond or surety, by mutual consent of Board and subdivider, may be extended for an additional period not to exceed (3) three years. No plat may be signed unless all required bonds have been put in place.

6.6.5 PHASING

At the time that the Development Review Board grants approval it may require the subdivision to be divided into two or more phases to ensure project conformity with the town plan and capital budget and program in effect to ensure the orderly development of the plat and/or to avoid overburdening municipal facilities and services.

6.6.6 EFFECT OF FINAL PLAN APPROVAL

The approval by the Development Review Board of a final subdivision plan and associated plat shall not be construed to constitute acceptance by the municipality of any street, easement, utility, park, recreation area, or other open space shown on the final plat. Acceptance of such dedications by the subdivider may be accomplished only by a formal resolution of the Selectboard, in accordance with town road policies and state law.

6.6.7 CERTIFICATE OF COMPLIANCE

The Development Review Board may also require, as a condition of subdivision approval, that a certificate of compliance be obtained under section 4.11 to ensure that required improvements have been installed in accordance with the conditions of subdivision approval prior to sale of lots or to any further land development on the lots. The satisfactory completion of any improvements shall be determined by the Administrative Officer.

Where a certificate of compliance has been required by the Board, the Administrative Officer shall not issue a development permit for any development on a subdivided lot within the subdivision until the certificate has been issued.

6.7 HEARINGS AND DECISIONS

6.7.1 HEARINGS

Upon a determination by the Administrative Officer that an application is complete and is of a type requiring a public hearing, the AO shall notice a public hearing on the development. Hearings, unless continuations, shall have at least 15 days' notice describing the date, place and purpose of the hearing. Such a notice shall be posted in at least 3 public places in town, in the newspaper of record, and within view from the nearest public right of way to the property; as well as by written notification to all abutting property owners, regardless of highways.

The purpose of the hearing is for the DRB to fully understand the proposal and how it addresses all requirements of these regulations, waive or vary requirements under 6.2, review all special studies, identify significant issues or concerns associated with the proposal, establish all potential interested persons, provide abutters and other persons an opportunity to comment on the proposal, and provide the Board with sufficient information to base its approval, approval with conditions or denial. The DRB shall take such testimony as will enable them to reach a decision supported by findings of fact, including continuing or closing the initial hearing pending the submittal of further information, and reconvening when such information is ready. If the Board decides any additional information is needed from any party, it shall continue the hearing process until it is ready to proceed to a decision.

As part of this continuance the Board shall set a time by which such additional information is due. Failure to produce needed information by the applicant may result in denial.

When sufficient testimony has been taken for the Board to address each general and specific standard that applies to that use in that district, the DRB shall close the final hearing and deliberate. Deliberations may be done in private and will lead to a written decision.

6.7.2 DECISIONS

Within 45 days of the date of adjournment of the final public hearing, the Development Review Board shall issue a written decision, with any conditions, approving, or disapproving the application. Decisions shall contain findings of fact and conclusions on each relevant standard, any conditions, and provisions for appeal. Action by the Board shall be taken by a concurrence of at least a majority of the members of the Board.

Failure to act within this 45-day period shall be deemed approval on the 46th day. Decisions shall be promptly communicated to the AO, applicants, and all interested parties.

Where the approval is the final step prior to issuing the development permit, the AO shall promptly issue the development permit upon receipt of the approval unless appealed.

6.8 APPEALS AND VARIANCES

6.8.1 APPEALS AND APPEAL PROCEDURES

Pursuant to Section 4465, an Interested Person may appeal any decision or act taken by the AO, or any failure to act, under these Regulations, by filing a notice of appeal with the Clerk of DRB. Such notice of appeal must be filed within 15 days of the date of such decision or act, and a copy of the notice of an appeal shall be filed with such officer. A publicly warned hearing on the appeal shall take place within 60 days of the filing and conducted per section 4468 of the Act.

Appeals of DRB decisions shall be made to the Environmental Court within 30 days of the decision per section 4471 of the Act.

6.8.2 VARIANCES

The DRB shall grant a variance from the provisions of these Regulations, and render a decision in favor of the appellant, if and only if, all the following facts are found to be true and such findings are specified in its decision:

- a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of these Regulations in the neighborhood or district in which the property is located;
- b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Regulations and

that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

- c) That such unnecessary hardship has not been created by the applicant;
- d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of these regulations and of the plan.
- f) In the case of development in the Flood Hazard Overlay, any variance issued in the Special Flood Hazard Area shall comply with 44 CFR Section 60.6 and § 4424 (E), will not increase flood heights, and will inform the applicant in writing over the signature of a the AO that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

In rendering a decision in favor of an appellant, under these Regulations, the DRB may attach such conditions to the variance as it may consider necessary and appropriate under the circumstances to implement the purposes of these Regulations and the Town Plan.

6.9 VIOLATIONS AND ENFORCEMENT

6.9.1 PENALTIES

The following penalty system shall apply:

- a) Whoever violates any provision of these Regulations after they have been adopted, shall be fined not more than \$100 (one hundred dollars) for each offense. Each day that a violation continues shall constitute a separate offense.
- b) No action may be brought under these Regulations unless the alleged offender has had at least seven (7) days' notice, by return receipt, certified mail, that a violation exists. If the violation is not remedied within 7 days of notice, or appealed, the Administrative Officer shall file a copy of the notice of alleged violation in the municipal land use permit files, with the Town Clerk for filing in the land records, and shall also mail a copy to the alleged violator.

In cases of violations within the FHO, the notice shall also state that the violation may result in the loss of flood insurance and be sent to the state NFIP Coordinator and the Administrator of the National Flood Insurance Program as well. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The notice shall consist of: the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, a clear statement that the public body making the declaration has authority to do so and a citation to that authority, evidence that the property owner has been provided notice of the violation and the prospective denial of

insurance, and a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

- c) All fines collected for the violation of these Regulations shall be paid over to the Town of Newbury.

6.9.2 ENFORCEMENT

The AO shall institute in the name of the town any appropriate action to prevent, restrain, correct or abate a violation. If court action is needed, then the town may pursue enforcement through the Environmental Court or the Judicial Bureau as allowed in sections 4452-4454 of the Act. The imposition of a penalty shall not bar resort to other administrative or legal remedies or methods for preventing or correcting the violation or offense that the Administrative Officer is authorized to use under Section 4452.

ARTICLE 7: DEFINITIONS

7.1 GENERAL

All words and terms used in these Regulations shall have their customary and normal meanings except as defined in Section 8.2.

7.2. SPECIFIC

Abutting - Lots which have a common boundary or edge.

Accessory Fuel Pump - A facility accessory and subordinate to a commercial use for the retail sale of vehicular fuels. No more than two gasoline, one diesel, or one propane pump are allowed on the lot. No service facilities, such as for oil changes or repair work, are allowed.

Accessory Single-family Dwelling Unit - (see "*Dwelling*")

Accessory Use or Structure - A use or structure that is customarily incidental and subordinate to the principal use or structure on the same lot.

Adequate Capacity - Capacity for wireless telephony is considered to be "adequate" if the grade of service ("GOS") is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the personal wireless services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the covering area.

Adequate Coverage - Coverage for wireless telephony is "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that most of the time, transceivers property installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

Advertising Sign - A structure which advertises or which is used as an outdoor display for the advertising of a property, establishment, enterprise or other matter. This does not include highway directional or warning signs.

Affiliate - When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest. When used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

Alternative Design Tower Structure - Artificial trees, clock towers, bell steeples, light poles, silos and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also Stealth Facility).

Ambient Sound Levels - Includes all sound sources in an area including the sound(s) in question.

Ancillary Dwelling Unit - (see “Dwelling”)

Ancillary Food Take Out Window Service - An accessory use to a restaurant where food is ordered and dispensed to customers from a window.

Antenna - A device for transmitting and/or receiving electromagnetic waves, which is attached to a tower or other structure.

Antenna Height - The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Antenna Support Structure - Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

Applicant - A person who applies for a telecommunications facility siting. An applicant can be the telecommunications service provider with the owner's written permission (or other legally designated representative) or the owner of the property.

Area of Shallow Flooding - A designated AO or AH zone on a Town's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard - The land in the floodplain within a Town subject to a one percent or greater chance of flooding in a given year. Also known as special flood hazard area.

Assisted Living Facility - Designed for and used by the elderly, a multi-family housing facility consisting of individual living units or apartments and common facilities such as recreational or medical facilities. Includes large group home.

Available Space - The space on a tower or structure to which antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

Background Sound Level - Includes all sound sources in the area except the specific source(s) in question.

Base Flood - The flood having a one (1%) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) - The height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

Base Station - The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

Basement - Any area of the building having its floor subgraded (below ground level).

Building - A type of structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or chattel. (See also Structure)

Building Line - A line running along each side of a building and extending to the property lines.

Bulletin 65 - Published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radio frequency radiation levels and methods to determine compliance.

Bylaws - Zoning regulations, subdivision regulations, or the official zoning map.

Cell Site - A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s), and parking, and may include other uses associated with and ancillary to cellular communications transmission.

Cellular Service - A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.

Cellular Telecommunications - A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

Cellular Telecommunications Facility - Consists of the equipment and structures at a particular site involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer, which connects the mobile unit with the land-based telephone lines.

Channel - The segment of the radiation spectrum to or from an antenna, which carries one signal. An antenna may radiate on many channels simultaneously.

Church - A building, structure, or use of land primarily intended for conducting of organized public religious services or associated activities.

Co-location - Locating wireless communications equipment from more than one provider on a single site.

Commercial - Any building, structure, or land which is used for business or service and is conducted for financial gain, but excluding a home occupation, home business, industrial or light industrial.

Commercial Garage - Any building, premises, and land in which or upon which a business, service, or industry involving the maintenance, servicing, or repair of vehicles is conducted or rendered for commercial purposes, but not including home occupations, or home businesses.

Common Carrier - An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated rates.

Communication Equipment Shelter - A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions.

Communication Tower - A guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

Communications Facility - A land facility supporting antennas and/or microwave dishes that sends and/or receives radio frequency signals. Communications facilities may include structures, towers or accessory buildings.

Community Association or Club Facility - A building, structure, or use of land intended for recreational, social, or cultural activities, owned by a local community group or non-profit organization.

Contractors' Yards –Storage yards operated by a contractor for storage of large equipment, vehicles, or other materials commonly used in the individual contractor's type of business; storage of scrap materials for repair and maintenance of contractor's own equipment; and buildings or structures for uses such as offices and repair facilities. Includes associated office space if compliant as a home business.

dBm - Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

Daycare – a licensed facility serving more than 6 full-time children or 10 children in total. A facility that serves 6 or less full-time children and 10 or less part-time children is considered a single family home.

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

Directional Antenna - An antenna or array of antennas designed to concentrate a radio signal in a particular area.

Dish Antenna - A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

Drive-In Eating Places - A building where drive-up service is offered or where food and drink is prepared or offered for sale and consumption on or off the premises, but outside of the building.

Dwelling - A building or portion thereof, designed, constructed or used as separate living quarters for one family, and which includes facilities for food preparation, sleeping, and sanitary facilities and the right of the resident to use a minor portion of the structure as a home occupation.

Dwelling, Accessory Single-family Unit - A dwelling unit in an attached or detached building which is secondary or subordinate to a primary single family dwelling on the same lot and which does not exceed 1,500 square feet of living area, or 50% of the living area of the primary single family, dwelling and meets with the dimensional requirements of these Regulations.

Dwelling, Ancillary Unit - An apartment in a commercial building where the resident is the operator of the business (i.e. general store).

Dwelling, Multi-Unit - A building designed for, or occupied solely as, a dwelling of either three (3) or (4) households living independently of each other.

Dwelling, Single-family Unit - A building designed for or occupied solely as a dwelling by one household. For the purposes of this regulation, the term also includes a residential care group home serving not more than 8 persons, or a licensed or registered home child care facility serving no more than six full-time and 4 part-time children.

Dwelling Two-family Unit - A building designed for or occupied solely as a dwelling by two households living independently of each other.

Earth Resource Extraction - The commercial mining, excavation, quarrying or processing of sand, gravel or stone.

Educational, Recreational, or Philanthropic Building or Facility - A building or facility owned by a municipality, or similar governmental unit or a non-profit corporation for educational, recreational, or philanthropic purposes.

Existing manufactured home park or subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FAA - Federal Aeronautics Administration

Facility - A structure and/or building or system of same providing the means by which something can be done.

Facility Site - A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

Family - One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit.

Far Right of Way Edge - The edge of public road R.O.W. away from the sound to be measured as opposed to the near edge of the R.O.W. which is along the property in question.

Farming - (A) The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or (B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or (C) the operation of greenhouses; or (D) the production of maple syrup; or (E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or (F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

Farm Structure - For the purposes of this Bylaw, “farm structure” means a building or structure for housing livestock, raising plants, or carrying out other practices associated with agricultural or farming practices, including a silo, as “farming” is defined in section 6001 (22) of Title 10, but excludes a dwelling for human habitation.

FCC - Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

Fence - A structure serving as an enclosure, a barrier, or a boundary, usually made of posts or stakes joined together by boards, wire, or rails.

FIA - Federal Insurance Administration

FHBM - The Flood Hazard Boundary Map means an official map of the Town, issued by the FIA, where the boundaries of the flood and mudslide (i.e., mudflow related to erosion) areas having special hazards have been designated as zones A, M and/or E.

Filling - The placement 10 or more yards of fill on a lot.

FIRM - The Flood Insurance Rate Map, an official map of a community, on which the Administrator has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood - (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood Insurance Rate Map – See FIRM.

Flood Insurance Study - An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood proofing - Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source (see definition of “flood”).

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

Footprint – The area covered by a building and attached structures, as measured from the edges of roofs, decks, stairs, etc., but not including at-grade patios. Maximum footprint is per structure.

Frequency - The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

Frontage - That portion of a lot which is adjacent and parallel to a public road or street.

Gas Station – A building with pumps for the sale of gasoline or other motor fuel. Vehicle service and retail of a type customary at “mini mart” type establishments is allowed.

GHz - Gigahertz, or one billion hertz.

Habitable Space - Space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable space.

Hazardous Material - All petroleum and toxic, corrosive or other chemicals and related sludge included in any of the following:

(A) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;

(B) petroleum, including crude oil or any fraction thereof; or

(C) hazardous wastes, as determined under subdivision (9) of this section;

(D) “Hazardous material” does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state and local laws and regulations and according to manufacturer's instructions.

(E) “Hazardous material” does not include livestock wastes.

Hazardous Waste - Any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including, but not limited to those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary of the Vermont Agency of Natural Resources may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state.

Hertz (Hz) - One hertz is the frequency of an electric or magnetic field, which reverses polarity once each second, or one cycle per second.

Historic Structure - Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a State inventory of

historic places in states with historic preservation programs which have been approved by the Secretary of Interior; (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 Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

Home Business - A business owned and operated by the resident of the land upon which the business operates. See Sections 4.9 and 4.10 for further information.

Home Occupation - An accessory use of a service, trade, or artisan character conducted within a dwelling by residents thereof which is clearly secondary to the use of the dwelling for living purposes that meets with the characteristics under Section 4.8 of these Regulations.

Hospital - An institution providing primary health services and medical or surgical care to patients.

Household - All the people, whether related or not, who occupy a housing unit as their place of residence.

Industrial - The processing, assembly, distribution, or packaging of natural or man-made materials or products where such activity generally results in off-site impacts, such as noise, and where such activity and storage of materials or products are typically not fully enclosed inside a building or screened from the abutting properties. Examples: junk yards; rail and truck terminals; concrete, asphalt or brick plants; bulk storage and distribution facilities; solid waste facilities; foundry; power plant, sawmill, slaughterhouse and biofuels/wood pellet production.

Inn - A building with up to 10 overnight lodging units that may also serve meals. Includes Bed and Breakfast.

Interested Person - Interested persons are those persons who, under Title 24 V.S.A. Chapter 117, have the right to appeal an act or decision made by the Newbury Administrative Officer, Planning Commission, or Zoning DRB. Interested persons must participate in a hearing in order to protect their right to appeal the decision. Interested Persons include:

- 1) A person owning title to property affected by a by-law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- 2) The municipality in which the plan or a by-law of which is at issue in an appeal brought under this chapter or any municipality which adjoins such municipality.
- 3) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or by-law of that municipality.
- 4) Any ten persons who may be any combination of voters or real property owners within Newbury who, by signed petition to the DRB of Newbury the plan or a by-law of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes or terms of the plan or by-

law of Newbury. This petition to the DRB must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

- 5) Any department and administrative subdivision of the State of Vermont owning property or any interest in property within Newbury, and the Agency of Development and Community Affairs of the State of Vermont.

Kennel - An establishment in which house pets are housed, bred, boarded, trained, or sold for commercial purposes.

L - Sound levels measured in decibels on a meter which meets the American National Standard Specification for Type 0, 1, or 2 Sound Level Meters S1.4-1983 or latest version thereof. Fast time-averaging and A-frequency weighting are to be used unless others are specified.

Land Development - The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

Large Group Home – A state-licenses residential care serving more than 8 individuals who have a handicap or disability as defined in 9 VSA section 4501. Group homes with 8 or less individuals are treated as a single family home.

Light Industrial – The manufacture, fabrication, assembly, distribution or packaging of natural or man-made products where such activity takes place inside of a building and results in minimal off-site impacts other than traffic. Examples: cabinetry or woodworking shop, food processing, electronics high-tech manufacturing or assembly, machine shop, sewing, printing, research and testing laboratory, warehousing, and similar uses.

Location - References to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be references to true North.

Lodging - A building or buildings providing temporary public lodging. Includes, motels, hotels and campgrounds.

Lot - A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law; to be used, developed or built upon as a unit, which is not divided by a public highway as defined by 19 V.S.A., Section 1 or surface waters with a drainage area greater than 10 square miles.

Lot Area - Total area within the property lines excluding any part thereof lying within the boundaries of a public street, actual or proposed and within the municipal boundaries.

Lot Line Adjustment - The subdivision of a parcel incidental to title transfers, between non-affiliated owners, for the purpose of establishing a clear property line. Setback requirements apply to existing structures.

Lot Depth - The average distance measured perpendicularly from the front lot line to the back lot line.

Lot Width - The average distance measured between the side lot lines parallel to the front lot line.

Lowest Floor - 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 building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3

Manufactured home - 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. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufacturing, Light - Woodworking shops, craft shops, printing shops, repair and service facilities and other similar businesses and industries.

Maximum Height - Vertical distance measured from the lowest point of the average proposed finish grade at the edge of the structure to the highest point of the roof.

Mean Sea Level - For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a Town's Flood Insurance Rate Map are referenced.

Merchandise - Things bought and/or sold; goods, commodities and wares.

MHz - Megahertz, or one million hertz.

Micro-Cell - A low power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

Microwave Antenna - A dish-like antenna manufactured in many sized and shapes used to link communication sites together by wireless transmission of voice or data.

Preexisting Towers and Antennas - Any tower or antenna for which a permit has been issued prior to the effective date of these regulations.

Mobile Home Park - The use of land for the placement of mobile homes as defined in VSA 10 Chapter 153 Section 6201(C)(2).

Monitoring - The measurement, by the use of instruments in the field, or radio frequency exposure from telecommunications facilities, towers, antennas or repeaters.

Monopole - A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below grade foundations.

Multi-unit Dwelling (*see "Dwelling"*)

Municipal Building and Facility - A building or facility owned by the Town of Newbury, or similar municipal entity for the purpose of providing local public services including the following uses, schools, town hall, town offices, public library, police station, fire houses, town garages, parks, cemeteries, parking areas, and solid waste disposal or transfer stations.

New Construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of

construction" commenced on or after the effective date of a floodplain management regulation adopted by the Town of Newbury and includes any subsequent improvements to such structures.

New manufactured home park or subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

Non-Conforming Structure - A structure or part thereof not in compliance with the zoning regulations covering building bulk, dimensions, height, area, setbacks, off-street parking or loading requirements, where such structure existed and conformed to all applicable laws, ordinances and regulations prior to the enactment of these zoning regulations or amendments hereto.

Non-Conforming Use - A use which lawfully occupied a structure or land at the effective date of these zoning regulations or amendments thereto and that does not conform to the use regulations of the District in which it is located.

Non-formula - the use may or may not be a franchised business but it may not have a common formula exterior design and signage may not be internally lit and must comply with other sign limits.

Non-Permanent Structure - A structure or vehicle not hooked up to septic or water which can be dismantled or removed from the lot. Motor vehicles and farm equipment are not considered structures provided that the only land use for same is parking or storage.

Nursing Home Facility - An extended or intermediate care facility licensed or approved by the State to provide full-time maintenance, personal, convalescent and/or nursing care to individuals who are unable to care for themselves.

Omnidirectional Antenna - An antenna that is equally effective in all direction and whose size varies with the frequency and gain for which it is designed.

Parking Space - An area 12 feet wide and 20 feet long designated for parking one motor vehicle

Permitted Use - A use requiring a permit.

Person - An individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.

Personal Communications Services (PCS) - Digital wireless telephone technology using higher frequency spectrum than cellular.

Personal Wireless Services - Commercial mobile services, unlicensed wireless exchange access services. These services include cellular services, personal communication services, specialized mobile radio services, and paging services.

Primitive Camp - A camp on its own individual lot, that is not intended or designed for permanent occupancy with no interior plumbing consisting of more than a sink for water, that is used for no more than a total of sixty (60) days per year.

Professional Office - An office where a business of a service nature is provided.

Property Line - A line of record bounding a lot that divides it from an abutting lot or from a public or private street.

Public Building – A building or facility meant for general use of the public or government owned, such as school, town office, civic center, recreation building, library, emergency service station, etc. Includes a building or structure owned or leased by a municipality, county, state or federal agency that is used for governmental purposes.

Public Utility Building or Facility - A building or facility owned or operated by an agency or corporation under public franchise or certificate for the purpose of providing a public service including electricity and communications.

Radiated-Signal Propagation Studies or Coverage Plots - Computer generated estimates of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining a need and whether the telecommunications equipment will provide adequate coverage for that site.

Recreational Use or Structure - A place designed and equipped for the conduct of recreational activities of a non-commercial nature, including tennis courts, swimming pools, ponds, riding rinks and indoor arenas.

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

Rental of Single-Family and Two-Family Dwellings - Occupancy of any dwelling or dwelling unit permitted under these ordinances may at any time be the property owner(s) or their tenant(s), regardless of length of stay. The total number of occupants is limited to that number approved under zoning or septic permits for each dwelling or dwelling unit.

Repair or Service – A business whose principal activity is the providing of a service on or off site, including repair. Examples include but are not limited to automotive, appliance or small engine repair; construction trades, cable companies, landscapers, etc. Such a principal use may include secondary retail.

Repeater - A small receiver/relay transmitter and antenna or relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

Restaurant - An establishment where food and drink is prepared and served to patrons at tables or at counters within the principal building.

Retail – A business primarily to sell goods or articles individually or in small quantities directly to the consumer. Does not include restaurants, gas station, rural enterprise, vehicle sales, or home occupation or business.

Road or Street - A road, highway or street open and available to public use and meaning the entire width of the right-of-way.

Roof and/or Building Mount Facility - A facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

Rural Enterprise - A commercial use based on processing of natural products typically produced in the area. Includes sawmill, slaughterhouse, food processing, and biofuels/wood pellet production.

Sanitary Sewage Facilities - All sewage disposal facilities including inside and outside sewage lines, septic tanks, and leach fields.

Scenic View - A scenic view is a wide angle or panoramic field of sight and may include natural and/or man-made structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a far-away object, such as a mountain, or to a nearby object.

Schools or Colleges - Any building, structure, or use of land which is designed, and constructed for education or instruction in any branch of knowledge and operated by an institution authorized by the State.

Seasonal Dwelling Unit - (see *“Dwelling”*)

Secondary Retail – Secondary retail is not considered a retail use under these Regulations. Secondary retail includes sale of related goods customary to the principal use and clearly subordinate in terms of scale or dollar value to the principal use. For example a plumbing business as a service may also sell plumbing parts, hair salon hair care products, manufacturer’s showroom, restaurant in a hotel, etc. Secondary retail shall be included in applications for approval and reviewed under the principal use.

Self-supporting Tower - A communications tower that is constructed without guy wires.

Setback - The minimum distance between any part of any structure and (1) the center line of a public road or public right-of-way road, (2) any property line, or (3) public waters

Sign - Any structure, display, device, or representation designed or used to call attention to any thing, person, business, activity, or place visible from any public road or vehicular right-of-way. A sign does not include the flag, pennant, or insignia of the nation, state, or Town, official announcements or similar signs of government. See Section 6.5.

Single-Family Dwelling Unit - (see *“Dwelling”*)

Special Flood Hazard Area - (also Area of Special Flood Hazard) The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Spectrum - Relating to any transmissions or reception of electromagnetic waves.

Start of Construction - This includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition 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 a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, 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 not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

Stealth Facility - Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings. (See also Alternative Design Tower Structure).

Street Line - The line dividing the street and the lot. Where width of street is not established or cannot be determined, the street line shall be twenty-five (25) feet from the center of the street.

Structurally Able - The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

Structure - A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land. *For floodplain management purposes means*, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure, for flood insurance purposes, means:* (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

Substantial Damage - 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.

Substantial Improvement - Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure

before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Summer Camp - A seasonal recreational facility operated for a profit for adults, families, or children.

System - The communications transmission system operated by a telecommunications service provider in the town of Newbury or in the region.

Telecommunications Facility - All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity.

Telecommunications Provider - An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Temporary Wireless Communication Facility - Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference.

Tower - A vertical structure for antenna(s) that provide telecommunications services

Trail facilities – Actual trails and associated minor structures including kiosks, unpaved parking areas, lean tos, etc.

Two-family Dwelling Unit - (*see "Dwelling"*)

Vehicle Sales - A business whose primary function is the sale of cars, trucks, snowmobiles or boats. Includes ancillary repairs and secondary retail.

Vermont Law - Vermont Municipal and Regional Planning and Development Act, Title 24 Vermont Statutes Annotated Chapter 117, with additional associated sections including Act 250 and the Downtown Development Act.

Veterinary Hospital - An institution providing health services to animals suffering from illness including related facilities such as laboratories and boarding facilities.

View Corridor - A three-dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

Violation - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation

certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

Wall - An architectural partition with a height and length greater than its thickness that is used to divide or enclose an area or to support another structure. A retaining wall is a wall that is built to resist lateral pressure (especially a wall built to prevent the advance of a mass of earth).

Whip antenna - A vertical antenna that normally transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape, narrow (less than 6 inches in diameter) and long (often measure 18 inches or more).