

Chapter 32

ZONING*

*State law reference—Zoning, RSA 674:16 et seq.

ARTICLE I. IN GENERAL

Sec. 32-1. Guidance for the layperson.

(a) *Read the chapter.* To gain an understanding of this community code, it is important to read this chapter. Statements of purpose are included for the chapter as a whole and for many of the sections to help readers understand the intent of the chapter.

(b) *Organization and cross references.* To fully understand this Code, it is important for the reader to understand how the town has organized its land use codes, and how this chapter specifically is organized and cross referenced.

(1) *Municipal Codes.* The town has organized all its ordinances and regulations into a single system. See the table of contents for this Code.

(2) *Organization of the chapter.*

a. *Articles.* This chapter is divided into seven articles. Each article is simply a grouping of related issues or requirements, and readers should identify the article in which an answer is likely to be found. Information about setbacks is found in article III of this chapter (Dimensional Requirements); information about sign height restrictions is found in article IV of this chapter (Signs); and so on.

b. *Sections.* Each article is divided into sections, each of which may be further divided as needed. It is easiest to use the section analysis to locate the first order of sections.

(3) *Cross referencing system.* Within this chapter there are many references to other sections of this chapter. These cross references are provided to help the reader find needed information, and to inform the reader of related provisions. This subsection explains the method of cross referencing to help the unfamiliar reader. The reference for this subsection would be written as follows:

§ 32-1(b)(3)

The symbol "\$" means section. In all cases, the information following the "\$" starts with the section, then the subsections in descending order. Additional levels of hierarchy would be shown as follows:

(Ord. of 2-14-1996, § 1.01)

Sec. 32-2. Purpose.

The general purpose of this chapter is to guide the character of growth, development and change in order to provide for the public health, safety, and general welfare. Throughout this chapter, the town seeks to balance the process of growth, development and change with the need to preserve and enhance those qualities, which make Newmarket a safe and desirable place to live, work and visit. In keeping with this general purpose, the following are specific objectives:

- (1) Lessen vehicle congestion in the streets;
- (2) Secure safety from fires, panic and other dangers;
- (3) Provide adequate sunlight and air circulation;
- (4) Prevent overcrowding of land and avoid undue concentration of population;
- (5) Facilitate adequate provision of public facilities, utilities and services;
- (6) Provide for adequate child day care;
- (7) Assure proper use of natural resources; and

- (8) Implement the policies of the Newmarket Master Plan, including, but not limited to:
 - a. Enhance the built environment and aesthetic qualities of the town;
 - b. Enhance the downtown village area by providing an appropriate mix of uses, improving its appearance, maintaining its traditional New England character, enhancing its pedestrian orientation, and promoting mixed-use mill re-development;
 - c. Promote commercial development, including opportunity for home-based work, to broaden the tax base and employ residents;
 - d. Enhance the quality of life and foster tourism by enhancing the town's natural beauty, ecological integrity, and natural recreational amenities such as the downtown waterfront, Great Bay and the Lamprey River;
 - e. Provide for a variety of quality living arrangements, with emphasis on quality neighborhoods; and
 - f. Protect the sense of community and friendly small-town atmosphere.
- (9) To advance aesthetic values through design and architecture, because the preservation or enhancement of the visual environment may promote prosperity and the general welfare.
 (Editorial note: Amended 06/21/17 to add #9)

(Ord. of 2-14-1996, § 1.02; Ord. of 06-21-17)

Sec. 32-3. Authority.

(a) *Authority.* Authority to adopt the zoning ordinance from which this chapter is derived is granted by the state to the local legislative body by RSA 674:16, and is conditioned by RSA 674:18, which requires that the planning board adopt objectives and land use sections of the Master Plan prior to adoption of said zoning ordinance.

(b) *Resolution.* Pursuant to the grant of authority, and finding that the planning board adopted objectives and a land use section of the Newmarket Master Plan on November 1, 1994, the town council hereby repeals the previous zoning ordinance and adopts the new zoning ordinance, as proposed by the planning board and as set forth in this chapter.

(Ord. of 2-14-1996, § 1.03)

Sec. 32-4. Zoning maps.

There shall be a zoning map for the Town of Newmarket, which sets forth the base zoning district boundaries. The zoning map shall be available for public inspection at the Newmarket town offices in the planning board office. This map shall be used for all interpretations of base zoning district boundaries.

(Ord. of 2-14-1996, § 1.04)

Sec. 32-5. Nonconformity.

This section specifies those rights to which nonconforming uses, structures and lots are entitled.

- (1) *Nonconforming use.* The following control nonconforming uses:
 - a. Any non-conforming use may be continued, except that if any such non-conforming use is abandoned, desisted, either voluntarily or by legal action, or caused to be discontinued, for a period of two (2) years, then any subsequent use of the building, other structures or use of the land shall be required to be in conformity with the provision of these regulations. (Editorial note: Amended 03/01/17)
 - b. Certain districts prohibit single-family residential use, and in such districts, the pre-existing single-family use is nonconforming. To prevent this chapter from being unduly ~~burdensome on a nonconforming single-family residential use, such single family houses~~

shall be permitted to be physically expanded, and accessory structures added or expanded. All other requirements of this chapter shall apply. There shall be no increase in the number of residential units on the lot, and accessory apartments shall be prohibited.

- c. Certain districts prohibit specific business/civic uses (see definition of business/civic), and in such districts these pre-existing uses are nonconforming. To prevent this chapter from being unduly burdensome on these pre-existing, nonconforming uses, the planning board may grant a special use permit for the expansion of these uses under the following conditions:
 - 1. The expansion shall not be greater than 30 percent of the floor area dedicated to the use at the time the use became nonconforming;
 - 2. The lot on which the use exists shall conform to all dimensional requirements of this chapter in existence at the time of application for the special use permit;
 - 3. All expansions of these nonconforming uses shall require site plan review, regardless of the size of the expansion. If the expansion is too small to otherwise qualify for site plan review, the requirements of minor site plan review shall apply.
- (2) *Nonconforming structure.* The following control nonconforming structures:
- a. Where an existing structure violates the setback requirements, horizontal expansion of the structure within the setback may be allowed if granted a special exception by the zoning board of adjustment. The zoning board of adjustment shall grant the special exception only if the following conditions are met:
 - 1. The expanded structure is no closer to the lot line than the existing structure.
 - 2. The expansion is not in the 100-year floodplain.
 - 3. The owner demonstrates that no other expansion, which reasonably fulfills the intended purpose, can be achieved in conformance with this chapter.
 - 4. Sanitary sewage disposal and water supply are provided if needed.
 - 5. The expansion shall not render the lot proportionally less adequate.
 - 6. The expansion does not adversely affect abutting properties, public health, safety or general welfare.
 - b. Portions of structures within a setback may be enclosed or expanded upwards if granted a special exception by the zoning board of adjustment. The zoning board of adjustment shall grant the special exception only if the following conditions are met:
 - 1. If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.
 - 2. If an upward expansion, it shall not exceed the maximum height limitations specified in this chapter.
 - 3. No part of the structure is located within the 100-year floodplain.
 - 4. The expansion shall not render the lot proportionally less adequate.
- (3) *Nonconforming lot.* The following control nonconforming lots:
- a. No action shall be permitted to change the boundary of the lot unless it brings the lot closer to conformance with this chapter and it makes no other aspect of the lot and/or all structures thereon more nonconforming.
 - b. If the water body setbacks of section 32-154 cannot be achieved on an undeveloped pre-existing lot because the lot does not have sufficient depth from the water body, a new structure shall be permitted if granted a special exception by the zoning board of adjustment. The zoning board of adjustment shall grant the special exception only if the following conditions are met:

1. Sanitary water supply and sewage disposal are provided, and if on site, the sewage disposal is located as far from the water body as is feasible or necessary;
2. Non-water body setbacks shall be reduced by up to 75 percent before the water body setback is reduced, ensuring maximum protection of the water body and shoreline;
3. The structure shall not be located within the 100-year floodplain.

(Ord. of 2-14-1996, § 1.05; Ord. of 5-7-1997)

Sec. 32-6. Compliance with other codes.

As specified in RSA 676:14, whenever the requirements of this chapter differ from the requirements of another existing local code, the provision, which imposes the greater restriction, or higher standard shall be controlling. This same principal shall also apply where local codes differ from state or federal codes.

(Ord. of 2-14-1996, § 1.06)

Sec. 32-7. Saving clause.

If any portion of this chapter is found invalid by a court of competent jurisdiction, this finding shall not invalidate the remainder of this chapter.

(Ord. of 2-14-1996, § 1.07)

Sec. 32-8. Interpretation, administration and enforcement.

The code enforcement officer shall have sole authority to interpret, administer and enforce this chapter. The code enforcement officer shall have at his disposal all legally available means to fulfill these responsibilities. Decisions of the code enforcement officer are appealable to the zoning board of adjustment.

(Ord. of 2-14-1996, § 1.08; Ord. of 5-7-1997)

(Editorial note: Amended 05/07/97 to include last sentence)

Sec. 32-9. Special use permits.

- (a) Pursuant to RSA 674:21,I(i), a provision which permits flexible and discretionary zoning among other innovative land use controls, the town offers certain discretionary authority to the planning board in limited cases where generally stated standards appear inappropriate. Special use permits are provided in the following sections: section 32-45(b)(2) for optional uses in the mills; section 32-45(b)(2)(A) for multifamily residential uses as part of a mixed-use mill redevelopment; section 32-46-A(b)(1) for mixed-use development with three or greater residential units; section 32-45(b)(2)a for self-storage facilities within existing buildings in the mills; section 32-48(b)(2) for optional uses related to the golf course or outdoor recreation; section 32-159(b)(3) for siting telecommunications facilities; and section 32-232(2) for permitting large home-based businesses; section 32-162 for nursing homes with skilled nursing facilities and memory care units within the Skilled Nursing Facility (SNF) Overlay District. (editorial note: Amended 10/18/17)
- (b) Multi-family Housing in the M-2A District pursuant to section 32.46-A(b)(2)(A)-(B)§2.03(B)(2) (a) & (b). A Special Use Permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following Special Use criteria:

- (1) Site suitability.

(A) Site shall have appropriate utilities (water, sewer, stormwater) available to service the project and shall not have a negative impact on environmental resources (wetlands, flood plain).

(B) Adequate off-street parking and loading is provided and ingress/egress is so designed as to cause minimum interference with traffic on abutting streets.

- (2) External Impacts. The proposed project shall not impact adjacent properties (traffic, noise, odors, vibrations, lighting, hours of operation); shall not have an adverse impact on the appropriate and orderly development of the surrounding properties; and buildings (new or existing to be modified) shall be compatible with the established character of surrounding properties; and will not cause a significant decline in property values of adjacent properties.
- (3) Fiscal Impacts. The proposed project will not have a negative fiscal impact or market impact on the Town as shown in the Fiscal Impact and Market Studies required to be completed as described in 32-46-A(b)(2)(A) & (B).

(Ord. of 2-14-1996, § 1.09; Ord. of 8-2-2000)

- (c) Process. As required by RSA 676:4,I, the Planning Board shall process requests for Special Use Permits using the procedures of the Subdivision Regulations. The Board shall grant the Special Use Permit upon finding that the proposal is consistent with the purposes of this Ordinance. Specific criteria may be specified in the text of this Ordinance. In addition to these, if specified, the Board shall review the general purpose of the Ordinance as well as the purpose of the specific section of the Ordinance to make its decision.

Sec. 32-10. Zoning board of adjustment.

This chapter provides for the establishment of the zoning board of adjustment (ZBA) as required per RSA 673:1(IV). With respect to this chapter, the ZBA shall review and decide on appeals from administrative decisions, applications for the special exceptions, applications for variances, and applications for an equitable waiver of dimensional requirements. The town council shall appoint five members and up to five alternate members to the ZBA.

(Editorial note: Amended 05/07/97)

(Ord. of 2-14-1996, § 1.10; Ord. of 5-7-1998)

Sec. 32-11. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory means a structure or use subordinate and customarily incidental to a primary structure or use on the same lot.

Accessory Dwelling Unit means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling it accompanies. Its use is subordinate to the principal dwelling and can be either a studio, a one or two bedroom apartment.

(Editorial Note: Amended 03/01/17)

Accessory shed means a small one-story structure made of metal, wood, plastic or other synthetic material for the storage of items in conjunction with a residential use, which is subordinate and customarily incidental to the primary residential use, and is located on the same lot as the primary use. For purposes of section 32-239, a temporary self-storage facility or trailer, a tent or canvas enclosure, a portable garage, or construction container, is not considered an accessory shed.

(Editorial note: Definition added 12/05/07)

Alternative tower structure means the use of alternative structures such as man-made trees, clock towers, bell steeples, light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and their appurtenances.

(Editorial note: Definition added 05/06/98)

Animal husbandry means agricultural activity which involves animals which produce manure or other wastes which would or could be considered objectionable to the surrounding neighborhood.

Antenna means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, repeater, or any other communications through the sending and/or receiving or electromagnetic waves of any bandwidth.

(Editorial note: Definition added 05/06/98)

Artist live/work space units means single enclosed private units of at least 900 square feet, which provide affordable living/work spaces for artists, writers, musicians, or craft people, in which a minimum of 40 percent of the space is devoted to studio space for creation, display, exhibit and sale of art, with the remainder used for living purposes.

(Editorial note: Definition added 11/19/08)

Automotive repair means a building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted. The dispensing of fluids, including fuels, oil, and antifreeze shall be included in this use.

(Editorial note: Definition added 05/07/97)

Bed and breakfast means a use in which an occupied single family residence also offers for public hire up to three rooms for overnight accommodation, and offers meals prepared in the kitchen of the residence. This use shall be subordinate to the residential use of the structure and lot.

Board means the planning board.

Building official means the officer or other designated authority charged with the administration and enforcement of the building code, or a duly authorized representative.

(Editorial note: Definition added 08/04/10)

Business/civic means all uses, except single-family residential, including manufactured housing; single-family residential, excluding manufactured housing; duplex residential; multifamily residential; and student housing.

(Editorial note: Definition added 05/07/97)

Campground means a plot of ground upon which two or more campsites are located, established, or maintained for occupancy by camping units as temporary living quarters for recreation, education, or vacation purposes. (Editorial note: Definition added 05/07/97)

Child day care means the care and supervision of a child (any person under 18 years of age) away from the child's home and apart from the child's parents. (Also see *Child day care, family*, and *Child day care, family group*, and RSA 170-E:2.)

Child day care, family, means a use equivalent to the state definition of "family day care home." This is a use in an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to six children from one or more unrelated families. The six children shall include any foster children residing in the home and all children who are related to the caregiver except children who are ten years of age or older. In addition to the six children, up to three children attending a full day school program may also be cared for up to five hours per day on school days and all day during school holidays.

Child day care, family group, means a use equivalent to the state definition of "family group day care home." This is a use in an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for seven to twelve children from one or more unrelated families. The twelve children shall include all children related to the caregiver and any foster children residing in the home, except children who are ten years of age or older. In addition to the twelve children, up to five

children attending a full-day school program may also be cared for up to five hours per day on school days and all day during school holidays.

Civic use means land areas and/or structures, publicly or privately owned, which are intended for the use, enjoyment and benefit of the community. Examples include, but are not limited to, the town offices, the post office, the community center, and churches.

Commercial amusement means an establishment engaged in providing amusement or entertainment for a fee or admission charge, and in which the patron is engaged on the premises as an active participant rather than a spectator.

Commercial excavation means a land area, which is used, or has been used, for the commercial taking of earth, including all slopes. (See also RSA 155-E:1)

Conference center means a facility used for conferences and seminars, which may include accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms. If sleeping accommodations are a part of the facility, only 25 percent of the accommodations may be rented by transients at any point in time.

(Editorial note: Definition added 05/07/97)

Country club means land and structures customarily associated with a golf course, comprising a club house, recreational facilities, and other accessory uses, and open to members and their guests or open to the public.

Cultural use means establishments that document the social and religious structures and intellectual and artistic manifestations that characterize a society and include museums, art galleries, and botanical and zoological gardens of a natural, historic, educational, or cultural interest.

(Editorial note: Definition added 05/06/98)

Education facility means a building or part thereof, which is designed, constructed, or used for education or instruction in any branch of knowledge. The facility may be publicly or privately owned.

FAA is an acronym meaning Federal Aviation Administration.

(Editorial note: Definition added 05/06/98)

FCC is an acronym meaning Federal Communications Commission.

(Editorial note: Definition added 05/06/98)

Forestry and agriculture means establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, performing forest services; or the production, keeping, or maintenance for sale, lease, or personal use of plants and/or animals useful to humans, including, but not limited to: forages and sod crops, grains and seed crops, livestock, bees and apiary products, fruits of all kinds, nuts, berries, and/or flowers.

(Editorial note: Definition added 05/07/97)

Frontage means that portion of the property boundary shared with a road right-of-way meeting the criteria listed in section 32-84(2).

Golf course means a tract of land laid out for at least nine holes for playing the game of golf and improved with trees, greens, fairways, and/or hazards. This shall not include miniature golf or other such commercial amusements.

(Editorial note: Definition added 05/07/97)

Height, when referring to a tower or other structure, means the distance measured from ground level to the highest point on the tower or other structure or appurtenance, even if said highest point is an antenna or other appurtenance.

(Editorial note: Definition added 05/06/98)

Historic district means the Newmarket Historic District established under the authority granted to the town council by RSA 674:46.

Hotel means a facility offering transient lodging accommodations to the general public, with access to rooms through a main lobby and/or common hallways. Such use may provide accessory services such as restaurants, meeting rooms, entertainment, and recreational facilities.

Housing, age-restricted (elderly), means housing designed for and rented, leased or sold specifically to the elderly, specifically housing that qualifies as elderly housing under the Federal Fair Housing Act.

(Editorial note: Definition added 05/07/97)

Housing, student, means dormitory-style housing in which a structure has been divided in a number of separately rented bedrooms with a common bathroom. Other common rooms may include a kitchen, living room, recreation room, etc.

(Editorial note: Definition added 05/07/97)

Indoor recreation means an establishment that provides facilities for aerobic and anaerobic exercise, swimming, playing courts, shooting ranges, or similar indoor activities and facilities.

(Editorial note: Definition added 05/07/97)

Lounge means an establishment where alcoholic drinks may be purchased for on-site consumption. This may include brewpubs which brew beer and other such beverages for sale and consumption on-site only.

Manufactured housing means any structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. This shall not include pre-site built housing as defined in RSA 674:31-a.

Manufacturing means an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins or liquors, but which does not fit the definition of light manufacturing.

Manufacturing, light, means the fabrication, processing, finishing, assembly, packing or treatment of articles or merchandise conducted solely within a totally enclosed structure, and operated in a manner which is not offensive, noxious, detrimental or dangerous to surrounding areas by reason of dust, smoke, fumes, odor, noise, light, or other adverse environmental effect.

Marina means a facility for the storing, servicing, fueling, berthing, and securing of boats, and may also include eating, sleeping and retail facilities for owners, crews and guests.

Medical care facility means a structure not exceeding 7,500 square feet in gross floor area that houses health services providers.

Mixed-use mill redevelopment means a lot, tract, or parcel of land in the M-1 district to be redeveloped as a single entity through the rehabilitation of existing mill buildings and the possible construction of compatible new building for a combination of residential and nonresidential uses as set forth in a master site development plan.

(Editorial note: Definition added 11/19/08)

Nonconforming lot means a lot which does not comply with the dimensional requirements of this chapter.

Nonconforming structure means that portion of a structure that does not comply with the requirements of this chapter.

Nonconforming use means a use that is not permitted in the base zoning district or overlay district in which it is located.

Nonconformity means a use, structure, lot or site improvement, which was lawfully in existence ~~prior to the enactment of the zoning requirement, which would otherwise have prohibited it.~~

Nursing home means an institution or a distinct part of an institution that is licensed or approved to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing body by marriage, blood, or adoption. Generally, these are homes for the infirmed elderly.

Nursing home means an institution or a distinct part of an institution that is licensed or approved to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing body by marriage, blood, or adoption. Generally, these are homes for the infirmed elderly.

(Editorial note: Definition added 05/07/97)

Office means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, computers, and communications equipment. This may include areas for customers to be served, such as the lobby at a bank.

Outdoor recreational facility means a facility that is the primary use of a property and is designed for outdoor recreational activities, but specifically excluding racetracks for motorized vehicles. Examples of outdoor recreational facilities include, but are not limited to, playing fields, tennis courts, running tracks, playgrounds, and swimming pools.

(Editorial note: Definition added 05/07/97)

Out-of-home adult day care means a use similar to child day care, but provided for adults in need of assistance. The care and supervision of an adult (any person 18 years of age or older) in need of assistance while away from that person's home and apart from the person's caregivers.

Place of assembly means a facility which accommodates a gathering of people who are jointly engaged in a singular activity. This shall include, but not be limited to, a church, meeting hall, gymnasium, sports stadium, and auditorium. The facility may be publicly or privately owned.

Pre-existing towers and antennas means any tower or antenna lawfully constructed or permitted prior to the adoption of the ordinance from which this chapter is derived. Additionally, any tower or antenna lawfully constructed in accordance with this chapter that predates an application currently before the board.

(Editorial note: Definition added 05/06/98)

Principal Dwelling Unit means the primary or pre-dominant residential use of a dwelling unit to which a property is or may be devoted and to which all other uses on the premises are subordinate or accessory.

(Editorial note: Definition added 03/01/17)

Research and development means an establishment or other facility for carrying on investigation in the natural, physical, or social sciences, which may include engineering or product development.

(Editorial note: Definition added 05/07/97)

Residence, duplex, means a single structure containing two residential units, neither of which is an accessory apartment.

Residence, multifamily, means a single structure containing three or more residential units, none of which is an accessory apartment.

Residence, single-family, means a detached structure containing one residential unit, with or without permitted accessory apartments.

Residential home-care facility means group residence occupied by people in need of assistance in their daily lives. Such facilities are designed and operated to house people with similar or common needs, such as a facility for frail elderly people, or people recovering from head injuries. Professional supervision and some services such as health monitoring, recreational activities, and transportation may be an integral component of the use.

Residential unit means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single household or family.

Restaurant means an establishment where food and drink are prepared, served and either consumed on site or taken out to consume elsewhere.

Retail means selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. This shall not include yard sales and other such activities which are incidental to a residential use, unless such incidental activities exceed seven days per year.

Self-service storage facility means a structure containing storage spaces of varying sizes leased or rented on individual leases for varying periods of time and specifically for dead storage only, excluding the storage of hazardous or flammable chemicals and explosives.

(Editorial note: Definition added 05/07/97)

Service or *service use* means a commercial use, which primarily provides services to people or businesses. There may be incidental retail or office activity, but the primary commercial activity is service. Examples include, but are not limited to, beauty salons and barbershops.

Setback means the horizontal distance between a structure and the lot boundaries, measured at right angles or radial to the lot boundary.

Sign means any display of lettering, logos, colors, lights, or illumination visible from the property lines, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises. For purposes of this chapter, the term "sign" shall exclude merchandise display; federal, state, county or municipal property of any sort; necessary highway traffic control or parking control devices on public or private rights-of-way; and municipally assigned structure numbers.

Sign, electronic message board means a sign that is capable of displaying words, symbols, figures and images that can be electronically or mechanically changed by remote or automatic means. (Editorial Note: Amended 06/21/17)

Sign height means the measure from undisturbed ground directly under the sign to the top of the message area.

Sign message area means the total area used to display a sign's message, including all lettering, designs, symbols, logos, together with but not including the support framework, bracing and base, provided that these features remain incidental to the sign itself. Where the message area consists of letters, symbols, logos or devices affixed to the surface of a structure, wall, awning or window, the message area shall be measured by a single, continuous, rectangular perimeter drawn to enclose the extreme limits of the sign elements. The message area of one side of a double-faced sign shall be regarded as the total message area of the sign, provided that each of the double faces is parallel to, and attached directly to, the other.

Sign, freestanding, means a self-supporting sign not attached to any building, wall or fence, but in a fixed location. This does not include movable signs.

Sign, movable, means a sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

Sign, neon/LED style is used in the colloquial sense, to indicate the type of sign generally made with shaped glass tubes filled with gas (typically a noble gas such as neon or argon) which radiate colored light when an electric current is added. For purposes of this chapter, a neon sign is not considered an internally illuminated sign, but is defined separately. An LED (light-emitting diode) style sign is one that utilizes a two lead semiconductor light source, which emits light when activated.

(Editorial Note: Amended 06/21/17 to add LED definition)

Sign, off-site, means a sign, which is not located on the lot to which its message refers.

Sign, off-site commercial, means a sign with a commercial message relating to a commercial activity not conducted on the lot on which the sign is located.

Sign, projecting, means a sign which is affixed to the wall of a building and which extends more than 12 inches beyond the surface to which it is affixed.

Sign, wall, means a sign affixed to the wall of a building or to an awning, provided the sign does not extend more than 12 inches beyond the surface to which it is attached.

Sign, window, means a window, or portion thereof, on which sign message is displayed, whether by permanent or temporary attachment, but exclusive of merchandise display.

Special exception means a process by which the zoning board of adjustment alters the standard provisions of this chapter in a manner specified in this chapter, and only when conditions specified in this chapter apply.

Storage means the depositing, stockpiling, or safekeeping of items, goods, or materials not used on a regular basis. (Editorial note: Definition added 12/05/07)

Structure means anything constructed or erected, on or in the ground, or an attachment to something having a fixed location on the ground, including: permanent or temporary buildings; carports; porches; and other building features including stacks and antennas. This definition shall not include sidewalks, fences, driveways, septic systems, utility poles or lines, boundary markers, flagpoles, or retaining walls.

Structure height means the vertical distance from the lowest point of finish grade at the base of the structure to the highest point of the structure, but excluding chimneys, lightning rods and other such appurtenances.

Studio means the workshop of an artist, sculptor, photographer, or craftsperson.

Telecommunications facilities means any structure, antenna, tower, or other device which provides commercial mobile wireless services, cellular telephone services, specialized mobile radio communications (SMR), enhanced specialized mobile radio (ESMR), and personal communications service (PCS), paging services, and common carrier wireless exchange access services or similar services marketed to the general public or commercial user. (Editorial note: Definition added 05/06/98)

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term "tower" also includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

(Editorial note: Definition added 05/06/98)

Warehouse means a structure or space used primarily for the storage of goods and materials.

Wholesale means selling merchandise to retailers; to industrial, commercial, institutional or professional business users; or to other wholesalers.

(Ord. of 2-14-1996, § 1.11; Ord. of 5-7-1997; Ord. of 5-6-1998; Ord. of 12-5-2007; Ord. of 11-19-2008; Ord. No. 2008/09-3, 6-1-2009; Ord. No. 2009-10-01, 7-20-2009; Ord. of 8-4-2010; Ord of 06-21-2017)

Sec. 32-12. Site plan review authority.

The planning board, in accordance with RSA 674:43, is empowered to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multifamily dwelling units, whether or not such development includes subdivision or re-subdivision of the site.

- (1) It shall be the duty of the town clerk to file with the Rockingham County Register of Deeds a certificate of notice showing that the planning board has been so authorized, and giving the date of such authorization.

- (2) This authority was originally granted to the board on November 7, 1984, and was re-affirmed in the 1991 town Charter, and is re-affirmed on the date of adoption of the ordinance from which this chapter is derived.

(Ord. of 2-14-1996, § 1.12)

Sec. 32-13. Lots split by zoning district boundaries.

Where an existing lot of record falls into more than one zoning district, the following shall apply:

- (1) For lots which are large enough to be subdivided, the provisions of each district shall be applied separately to each portion of the lot.
- (2) For lots which are not large enough to be subdivided, the provisions of the district which comprises the largest share of the lot shall apply to the entire lot.

(Ord. of 2-14-1996, § 1.13)

Secs. 32-14--32-44. Reserved.

ARTICLE II. BASE ZONING DISTRICTS

Sec. 32-45. M-1 district.

(a) *Purpose.* The purpose of this district shall be to provide for the ongoing use of the mill buildings in the downtown. It is recognized that the abandonment of these buildings would be a detriment to the community, and especially to the village and waterfront areas. It is also recognized that proper use and redevelopment within this district must be directed to enhance the quality of the village, protect the important historic resources within the district, and enhance the downtown Lamprey River waterfront.

(b) *Permitted uses.*

(1) *Permitted by right.* Uses permitted by right are listed in the table of permitted uses in section 32-56.

(2) *Special use permit.* Uses other than those specified in the table of permitted uses in section 32-56 may be allowed if granted a special use permit by the planning board. The granting of such permit shall require the board to find that the proposed use is consistent with the purposes of this district, is suitable for the location proposed, and would not cause significant adverse impacts.

a. Self-storage facilities may be approved by the planning board if granted a special use permit. Special use permits for self-storage facilities shall only be granted if they are located entirely within an existing building; and if granted site plan review approval. (Editorial note: Amended 08/02/00).

b. Mixed-use redevelopments are permitted in the M-1 district by special use permit. Pursuant to the authority of RSA 674:21 and section 32-9, the planning board is granted discretionary authority to grant a special use permit for mixed-use mill redevelopment on parcels in the M-1 district, provided there is compliance with this section. (Editorial note: Subsection amended 11/19/08)

1. *Purpose.* The purpose is to allow for a mixture of commercial and residential uses in order to promote redevelopment of the historic mills in the M-1 Downtown Mill District. Such uses are intended to be complementary so as to provide an integrated approach to development based on a master site development plan; to be fiscally beneficial to the town; to provide efficient use of public services; and to make opportunities for commercial, public and multifamily residential dwelling units, all to enhance the quality of the downtown, the riverfront and the historic nature of the district.

2. *Permitted uses.* The uses, which are permitted by right in a mixed-use mill redevelopment, are in accordance with the table of permitted uses in section 32-56.
3. *Special use permit restrictions.* Mixed-use mill redevelopments shall be limited to:
 - (i) Projects involving the rehabilitation and/or reconstruction of existing mill structures. Special use permits issued under this section are not intended for the wholesale demolition of existing buildings and construction of new primary structures. Construction of accessory structures, such as decks, porches, and patios, is permitted. New building construction, including additions, required to replace the square footage of existing buildings deemed economically unsuitable for rehabilitation due to the extent of structure deterioration is also allowed.
 - (ii) Projects where no more than 70 percent of the existing developable gross floor building area shall be used for residential use and no less than 30 percent of the existing developable gross floor area is to be dedicated to nonresidential use including commercial, retail, office, governmental, cultural, and other uses, in accordance with the table of permitted uses in section 32-56. An increase in residential square footage is allowed by the planning board through the issuance of bonuses as set forth in subsection (b)(2)b.6 of this section.
 - (iii) The mixed-use mill redevelopment shall include a minimum of five percent artist live/work space units. Up to 40 percent of the finished square footage of such units may be allocated for nonresidential use.
4. *Master site development plan required.* As part of the application for a special use permit, the applicant shall prepare an overall master site development plan. This is a conceptual plan, drawn to scale, which graphically depicts the project. It is not intended to be a fully engineered drawing. At minimum, the plan shall include:
 - (i) The type, location, intensity, amount and percent of gross developable building area dedicated to various residential and nonresidential uses.
 - (ii) The calculations showing how the number of dwelling units was derived and the allocation of gross developable building area to residential and nonresidential uses.
 - (iii) Provisions for utilities, access roads, sidewalks, parking, and private and public ways.
 - (iv) Areas proposed for public and private open space.
 - (v) Any buildings, or portion thereof, to be removed, the footprint of said buildings to remain and any replacement structures and new additions to be built, as well as their corresponding square footage and lot coverage.
 - (vi) A phasing plan, if the project will be developed in more than one phase. Information on subsequent phases must be detailed enough to allow the planning board to fully evaluate the impacts and proposed mitigation measures of both the current phase and the full build out of the project.
 - (vii) A justification of density bonuses, if any, which will be incorporated into the overall design. This shall include a description of amenities being proposed in order to obtain density bonuses (e.g., interior public community and cultural space, public open space, historic preservation treatment, and qualifying energy conservation technologies).
5. *Impact criteria for granting a special use permit.* The impacts of the mixed-use mill redevelopment will be evaluated in conjunction with the special use permit process, rather than the site plan approval process. In order to obtain a special use permit

from the planning board, the applicant must demonstrate to the satisfaction of the planning board the following criteria are met:

- (i) The proposed mixed-use mill redevelopment shall not create undue hazards or unreasonable expenditures of public funds, and that the public health and safety will be maintained during and following development.
- (ii) The proposed mixed-use mill redevelopment shall generate a net positive fiscal impact for the town. The planning board may require the preparation and review of a fiscal impact assessment to demonstrate compliance with this requirement.
- (iii) The proposed mixed-use mill redevelopment shall include provisions, satisfactory to the planning board, to insure that current and future municipal service capacity for police, fire, public works, water, sewer, general government, recreation, school services and facilities will not be adversely affected by the development. The planning board may require the preparation and review of a report on municipal service capacity to demonstrate compliance with this requirement.
- (iv) The proposed mixed-use mill redevelopment shall not create an undue hazard or nuisance for vehicle or pedestrian traffic; shall include adequate provisions for safe and efficient traffic access, circulation and parking; and shall promote safe pedestrian and public transportation linkages between the site and Main Street to maximum practical extent. The planning board may require the preparation and review of a traffic impact assessment, as well as an on- and off-site improvement plan for pedestrian and traffic safety, including, but not limited to, traffic calming measures, pedestrian bridges and crosswalks, and other mitigation to demonstrate a safe and efficient vehicular and pedestrian plan.
- (v) Adequate and appropriate public utilities and infrastructure (water, sewer, storm water management, parking, and other) shall be available or provided to support the proposed mixed-use mill redevelopment. The planning board may require the preparation of a public utility and infrastructure report to demonstrate compliance with this requirement.
- (vi) The proposed mixed-use mill redevelopment shall not result in unreasonable impacts to adjoining properties or uses, by way of light, noise, pollution, visual blight, odor, vibration or other nuisance. The planning board may require the preparation and review of environmental studies, as it may deem necessary to meet this criteria.

The planning board may waive the requirement that any or all of these studies be submitted if, in its discretion, it determines that the studies are not necessary for the board to make an informed decision. The planning board may engage the services of various professionals to assist it in the evaluation of any studies it may require. The applicant shall pay all costs associated with the independent review of such studies. In order to keep the approval process from being burdensome on the applicant, demonstration by the applicant of compliance with article V of this chapter shall give just cause for the planning board to grant a waiver of any duplicative site plan review regulations, provided there have been no material changes in any conditions, and/or material revisions, to the applicant's approved master site development plan, which may give cause for further special studies or technical assistance required by the planning board.

6. *Dimensional requirements.* In general, mixed-use mill redevelopments are governed by the dimensional requirements of article III of this chapter and the dimensions table, with the exception of section 32-86 and the stated requirement for maximum

residential density. The maximum residential density for residential units which are proposed as part of a mixed-use mill redevelopment in the M-1 district shall be based upon the total developable gross square footage of the buildings to be rehabilitated and/or reconstructed. The base permitted residential area is a maximum of 70 percent of said total. The number of permitted residential dwelling units shall be calculated by dividing the base permitted residential area by 1,300. Density bonuses, permitting an additional number of units and an additional percentage of the total gross developable area of the buildings to be devoted to residential use, may be granted by the planning board for mixed-use mill redevelopment projects, as follows:

- (i) An additional bonus of up to six percent for units and residential square footage shall be granted by the planning board if the applicant provides at least two percent of the gross developable building area for interior public community and cultural space.
- (ii) An additional bonus of up to six percent for units and residential square footage shall be granted by the planning board if the applicant provides exterior public open space, such as a courtyard, park, formal urban space, and fishing or waterfront viewing pier, together with landscaping and pedestrian-oriented amenities which integrate the mill redevelopment with the Main Street, current and planned public river walk construction and adjacent public spaces and private properties.
- (iii) An additional bonus of four percent for units and residential square footage shall be granted by the planning board if the building is rehabilitated in accordance with the Secretary of the Interior's Standards for Historic Rehabilitation.
- (iv) An additional bonus of up to four percent for units and residential square footage shall be granted by the planning board if construction is U.S. Green Building Council LEED (Leadership in Energy and Environmental Design) certifiable as demonstrated by a completed LEED checklist/scorecard.

7. *General requirements.*

- (i) The special use permits shall apply only to a specific project as proposed at the time of approval. Changes to the proposed project must be approved by the planning board as amendments to the special use permit.
- (ii) All understandings reached between the applicant and the planning board shall be outlined in a legally binding development agreement.
- (iii) Special use permits shall be valid for two years from the date of approval. Should active and substantial construction not have begun within two years, the permit shall be null and void. The planning board may, at its sole discretion, grant an extension of this two-year period.
- (iv) Unless specifically stated otherwise herein, an application for a special use permit is subject to the application, submission, public hearing, notice, and administrative requirements of RSA 676:4(I) and this chapter and the subdivision regulations set forth in Appendix A to this Code.
- (v) If requested by the applicant, the planning board may waive any of the requirements for mixed-use mill redevelopments provided the board makes a finding that the purpose and intent of this section will be fulfilled despite the grant of the waiver.
- (vi) Off-site parking associated within the mixed-use mill redevelopment shall be allowed within the M-1, M-2, M-2A, or B-1 zoning districts, provided it is

located within 500 feet of the proposed site, regardless of whether the corresponding zoning district and this chapter prohibits any use which is being applied for pursuant to this section. The planning board may increase this distance to 1,000 feet where parking is intended for employees rather than residents and customers.

(Ord. of 2-14-1996, § 2.01; Ord. of 8-2-2000; Ord. of 11-19-2008)

Sec. 32-46. M-2 district.

(a) *Purpose.* The purpose of this district shall be to protect and enhance the commercial, social, civic and residential functions of the downtown village area. It is recognized that the village is an important place of business and of social interaction. Controls are intended to enhance the village by providing for relatively high density, a mix of uses, public access to the Lamprey River, and design compatible with the pedestrian scale and historic nature of the area.

(b) *Permitted uses.*

(1) Uses permitted by right are listed in the table of permitted uses in section 32-56.

(2) The following uses may be permitted by special exception, provided that they meet the accompanying standards:

a. *Multifamily residential.* The following conditions shall apply:

1. Preparation and acceptance by the zoning board of adjustment of a fiscal impact statement which, in addition to analyzing general impacts, assesses school impacts in particular; and
2. Preparation and acceptance by the zoning board of adjustment of a market analysis which demonstrates the feasibility of added multifamily housing in a community which already has an over-abundance of multifamily housing, sufficient to ensure reasonable expectation of ongoing occupancy of units to support maintenance and upkeep of the property.

(c) *Design standards.* The following design standards shall apply in this district and are intended to enhance the pedestrian environment and to protect and enhance overall character of the village:

(1) *Building orientation.* To ensure that the village area retains its pedestrian orientation, all new buildings shall face the primary street on which the lots fronts. Further, the primary pedestrian access shall be located on the front of the building.

(2) *Outdoor seating.* Restaurants, with or without lounge use, may have outdoor seating. Site plan review approval shall indicate the total number of seats permitted for the use, and shall designate the area in which seats can be located outdoors. This outdoor seating option is not available to lounge-only uses or to social clubs.

(3) *Outdoor merchandise display and sales.* Outdoor display and sales of merchandise is permitted in areas designated on an approved site plan.

(4) *Awnings.* Awnings over doors and windows along streets are encouraged to enhance the pedestrian environment. A minimum clearance of seven feet shall be required where the awning projects over a public sidewalk, and awnings shall not be subject to the setback requirements and may have ten percent of their area covered with a commercial message.

(5) *Drive-through facilities.* Drive-through facilities shall be prohibited in this district because the intent is to encourage pedestrian-oriented design in the village and to encourage the vehicle-oriented businesses to locate in other districts.

(6) *On-site parking.* On-site parking shall not be allowed between the front of the primary structure and the street.

(Ord. of 2-14-1996, § 2.02)

32-46A. M-2A DISTRICT. (Editorial note: Section adopted 08/07/13)

(a) Purpose. The purpose of this district shall be to protect, enhance, and expand the commercial, social, civic and residential functions of the downtown village area. It is recognized that the village is an important place of business and of social interaction. Controls are intended to enhance the village by providing for relatively high density, a mix of uses, public access to the Lamprey River, and design compatible with the pedestrian scale and historic nature of the town.

(b) Permitted Uses.

(1) Uses permitted by right are listed in the table of permitted uses in section 32-56.

(2) The following uses may be permitted by Special Use Permit issued by the Planning Board: Multi-family residential and mixed-use development with three or greater residential units. (Editorial note: Amended 08/07/13)

The granting of such permits shall require the Planning Board to find the proposed use is consistent with the purpose of this district, is suitable for the location proposed, would not cause significant adverse impact, and meets the conditions as set forth below:

- a. The Planning Board shall require a Fiscal Impact Study be completed by a consultant selected by the town, paid for by the applicant, that shows the multi-family residential or mixed use project with 3 units or more residential units will not have a negative fiscal impact on the town.
- b. The Planning Board shall require a Market Analysis be completed by a consultant selected by the town, paid for by the applicant, that demonstrates the or mixed use project with 3 units or more residential units will not have a negative impact on the town's housing market. (Editorial note: Amended 08/07/13)
- c. The project shall have at least two (2) on-site parking spaces per residential unit.
- d. Multi-family residential use, with no commercial use within the building, shall be limited to no greater than four (4) residential units within a single building.
- e. No residential units shall be located in the street level space if the building has frontage on North Main Street, Main Street, South Main Street, or Exeter Road.
- f. Multi-family residential condominium unit in this zone shall not exceed 1,200 square feet and not have more than 2 bedrooms. Residential apartments in this zone shall not exceed 1,000 square feet and not have more than 2 bedrooms.

(c) Waivers to road setback, side/rear setback, and structure height. Reduction in these dimensional controls may be permitted by Special Use Permit issued by the Planning Board. The granting of such permit shall require the Planning Board to find that the proposed use is consistent with the purpose of the district, is suitable for the location proposed, would not cause significant adverse impacts, and the proposed setback and structure height is consistent with the applicable setbacks and/or structure height of existing building(s) located on adjacent lots.

Sec. 32-47. M-3 district.

(a) Purpose. The purpose of the M-3 district shall be to provide additional area for the development of professional office space and health care related uses which are compatible with the existing nature and character of this predominantly residential neighborhood, to be accomplished to the extent possible through the re-use of existing buildings in the district.

(b) *Permitted uses.*

- (1) Uses permitted by right are listed in the table of permitted uses in section 32-56.
- (2) The following uses may be permitted by special exception, provided that they meet the accompanying standards:
 - a. Medical care facility, office, light manufacturing, place of assembly, or out-of-home adult day care. The following conditions shall apply:
 1. The existing residential structure shall be re-used with only minor exterior changes, or where a new structure must be constructed, the new structure shall be designed and constructed in a manner which is compatible with the scale, design and site arrangement of the surrounding neighborhood.
 2. Re-use of the structures may be required in whole or in part as determined feasible by the zoning board of adjustment.

(Ord. of 2-14-1996, § 2.03)

Sec. 32-48. M-4 district.

(a) *Purpose.* The purpose of the M-4 district shall be to provide for the ongoing use of the golf course and to facilitate adjacent commercial and residential development related to the golf course use.

(b) *Permitted uses.*

- (1) Uses permitted by right are listed in the table of permitted uses in section 32-56.
- (2) Special use permit. Uses other than those specified in the table of permitted uses in section 32-56 may be allowed if granted a special use permit by the planning board. The granting of such permit shall require the board to find that the proposed use is consistent with the purposes of this district and is related to golf or outdoor recreation, is suitable for the location proposed, and would not cause significant adverse impacts.

(Ord. of 2-14-1996, § 2.04)

Sec. 32-49. B-1 district.

(a) *Purpose.* The purpose of the B-1 district shall be to provide areas suitable for businesses, which serve the community and/or people passing through town on Route 108. It is further intended that these businesses be segregated from residential uses to prevent conflict and undue impact on residents by business development.

(b) *Permitted uses.* Uses permitted by right are listed in the table of permitted uses in section 32-56. For lots in this district, which have access solely from New Road, a single-family use, which may be manufactured housing, shall also be a permitted use.

(c) *Design standards.* The following design standards shall apply in this district, and are intended to protect and enhance the aesthetic qualities and character of the district:

- (1) *Structure re-use.* It is the intent of the town that existing structures, which enhance the character of the neighborhood, be re-used. This may be required to the extent feasible by the planning board during the site plan review process.
- (2) *Outdoor seating.* Restaurants and/or lounges may move tables and seats outdoors as weather permits. Site plan approval shall limit total seating, and outdoor seating shall be restricted to areas designated for this purpose on the site plan.
- (3) *Outdoor merchandise display and sales.* Outdoor display and sales of merchandise is permitted in areas designated on an approved site plan.

(Ord. of 2-14-1996, § 2.05)

Sec. 32-50. B-2 district.

(a) *Purpose.* The purpose of the B-2 district shall be to provide a large area available for commercial, business and industrial development within the town to broaden the tax base and provide for employment opportunities for residents of the town and region. This district shall provide for these uses and shall exclude residential uses. This protects residents from undue impact, reduces possible sources of conflict and resulting delay for applicants, and reserves this area for the long term commercial, business and industrial development desired by the town.

(b) *Permitted uses.*

- (1) Uses permitted by right are listed in the table of permitted uses in section 32-56.
- (2) The following uses may be permitted by special exception, provided that they meet the accompanying standards:
 - a. *Support uses.* This shall include other uses that are subordinate to and serve the primary uses within this district. The final determination of the types of uses shall be made by the zoning board of adjustment, but shall include at a minimum day care, restaurant, dry cleaning, and business and/or personal services. The intent is to provide for the basic needs of the people working in this district without generating excessive amounts of traffic outside of the district. The following conditions shall apply:
 1. The support uses shall not occupy more than ten percent of the land area of the district.
 2. The support uses are reasonably expected to provide service to employees, customers and businesses within this district to a greater extent than they will generate new trips from other districts. (Editorial note: Subsection (a) & [1] & [2] amended 05/06/98)

(Ord. of 2-14-1996, § 2.06)

Sec. 32-51. B-3 district. (Editorial note: Section adopted 05/07/03)

(a) *Purpose.* The purpose of the B-3 district shall be to provide a large area available for commercial, business and industrial development within the town to broaden the tax base and provide for employment opportunities for residents of the town and the region. This district shall provide for these uses and shall exclude residential uses as principal uses. This protects residents from undue impact, reduces possible sources of conflict and resulting delay for applicants, and reserves this area for the long term commercial, business and industrial development desired by the town. This development pattern will provide for areas in the outer areas of town with adequate access underutilized for residential uses.

(b) *Permitted uses.*

- (1) Uses permitted by right are listed in the table of permitted uses in section 32-56.

(c) *Flexible use development.* In accordance with RSA 674:21, the planning board shall have sole authority to approve a flexible use development by conditional use permit. The intent of this permit is to provide for additional use opportunities that may not be listed within the table of permitted uses in section 32-56 but can be shown to be consistent with the purpose of the district. The following criteria shall be used in conjunction with the requirements of this chapter for granting a conditional use permit:

- (1) The permit is in the public interest.
- (2) There will be no greater diminution of neighboring property values than would be created under any other use permitted in the zone.
- (3) There are no existing violations of state or federal law and/or this chapter or regulations on the subject property.
- (4) The character of the area shall not be adversely affected as determined by consideration of the projects effect on:

a. Architecture.

- b. Transportation.
 - c. Scale of lot coverage.
 - d. Scale of building size.
 - e. Consistency of uses in the immediate area.
- (5) The granting the permit will not result in undue municipal expense. Applicants shall be required to offset such expenses or the permit will be denied.
 - (6) The proposed use will be developed in a manner consistent with the spirit and intent of this chapter and the Newmarket Master Plan.
 - (7) The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
 - (8) The following impacts resulting from the granting of the permits have been mitigated to the extent practical:
 - a. Noise.
 - b. Light.
 - c. Transportation.
 - d. Visual effects.
 - (9) Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the town.
 - (10) All developments shall have frontage on an existing or proposed Class V town.

(Ord. of 2-14-1996, § 2.07; Ord. of 5-7-2003)

Sec. 32-52. R-1 district. (Editorial note: district boundary revised 05/07/03)

(a) *Purpose.* The purpose of the R-1 district shall be to provide for the protection of the rural, unspoiled character and open spaces of the outlying areas on the eastern and western sides of town, while accommodating development of high quality residential neighborhoods with low overall density.

(b) *Permitted uses.*

- (1) Uses permitted by right are listed in the table of permitted uses in section 32-56.
- (2) The following uses may be permitted by special exception, provided that they meet the accompanying standards:
 - a. *Neighborhood convenience store.* The town desires to provide for a few small neighborhood convenience stores in the rural neighborhoods in town to serve the residents of those areas. The intent is to reduce the need for people to drive long distances for convenience products, and to prevent traffic congestion and parking problems in the village. The intent has nothing to do with employment or economic development, so design and use are strictly controlled to protect the rural character of the district. The following conditions shall apply:
 1. The lot complies with all dimensional requirements of this chapter.
 2. All retail activity shall be conducted indoors. There shall be no outdoor product display or sales.
 3. Because the use shall be relative inconspicuous, a wall sign shall be permitted in addition to all other signage otherwise permitted in the district. The message area of the wall sign shall not exceed 12 square feet and shall not be illuminated.
 4. The use shall be limited to not more than 1,000 square feet of gross floor area, including all storage and other space associated with the use.

5. The products sold shall generally be of the type sold at convenience stores, intended for the consumption of area residents. Take-out foods may be a part of the use, but shall not be the exclusive or dominant product.
6. The sale of gasoline, diesel, or other fuels shall be prohibited.
7. Site plan review approval shall be required.
8. The neighborhood convenience store shall be permitted on the same lot as a single-family residence. It may be located in the same structure or in a separate structure.

(Ord. of 2-14-1996, § 2.08)

Sec. 32-53. R-2 district.

(a) *Purpose.* The purpose of the R-2 district shall be to provide for an area of transition between the low-density R-1 residential district and the more intensively developed districts in and around the village area. It is intended that high quality neighborhoods with a greater density and greater mix of uses than would be permitted in the R-1 residential district shall be accommodated.

(b) *Permitted uses.* Uses permitted by right are listed in the table of permitted uses in section 32-56.

(Ord. of 2-14-1996, § 2.09)

Sec. 32-54. R-3 district.

(a) *Purpose.* The purpose of the R-3 district shall be to provide for an area of transition between the low-density R-1 residential district and the more intensively developed districts in and around the village area. It is intended that quality neighborhoods with a greater density and greater mix of uses than would be permitted in the R-1 residential district shall be accommodated. This district permits multifamily residential use and is located in two areas with high concentrations of existing multifamily residential structures.

(b) *Permitted uses.* Uses permitted by right are listed in the table of permitted uses in section 32-56.

(Ord. of 2-14-1996, § 2.10)

Sec. 32-55. R-4 district.

(a) *Purpose.* The R-4 district accommodates the high-density residential neighborhood immediately adjacent to the village area. Because of the generally small lot sizes and steep, narrow roads serving these areas, the mix of uses is strongly controlled. High density is still permitted because it predominates the existing land use pattern.

(b) *Permitted uses.* Uses permitted by right are listed in the table of permitted uses in section 32-56.

(Ord. of 2-14-1996, § 2.11)

TABLE OF PERMITTED USES – Uses checked are permitted by right												
USE	M1	M2	M2	M3	M4	B1	B2	B3	R1	R2	R3	R4
Single family res. including									X	X	X	X
Single family residential excluding manufactured housing		X	X	X	X							
Duplex residential		X	X								X	X
Multi-family residential	X 3		X6, 7								X	
Mixed use development	X7	X7	X6, 7	X7	X7							
Age-restricted housing (elderly)	X	X	X	X					1	1	1	
Residential home care facility				X								
Nursing home		X	X							X	X	
Day care (any size)	X	X	X	X	X	X						
Family group child day care									X			
Family child day care										X	X	
Bed & breakfast		X	X	X	X				X	X	X	X
Hotel	X	X	X		X	X	X	X				
Conference center	X				X		X	X				
Indoor and/or outdoor recreation		X	X		X	X	X	X	X			
Golf course					X				X			
Country club					X		X		X			
Health club	X	X	X			X	X	X				
Marina	X	X	X									
Retail	X	X	X			X	X	X				
Office	X	X	X			X	X					
Studio	X	X	X	X	X	X						
Service	X	X	X			X						
Restaurant	X 4	X	X		X	X						
Lounge	X	X	X		X	X						
Wholesale	X	X	X			X	X	X				
Warehouse	X						X	X				
Light manufacturing	X 5	X	X			X	X	X				
Manufacturing							X	X				
Research & development	X 5		X			X	X	X				
Automotive repair			X			X						

Commercial amusement		X	X			X						
Civic use	X	X	X			X						
Cultural use	X	X	X			X						
USE	M1	M2	M2	M3	M4	B1	B2	B3	R1	R2	R3	R4
Place of assembly	X	X	X			X						
Education facility	X	X	X			X		X				
Commercial excavation							X		X	X	X	
Forestry & agriculture, including									X	X		
Forestry & agriculture, excluding				X	X	X					X	
Fraternal organization			X			X		X				
Flexible use development								2				
Office complex			X			X		X				

1. See section 32-236 Affordable Elderly Housing for individual district limitations and requirements.
2. See B3 district for requirements for conditional use permit. (Editorial note: Amended: 03/03/04).
3. See M-1 district for requirements for special use permit allowing multi-family residential use only as part of a mixed use mill redevelopment, 32-45(B)(2).
4. No drive-through restaurants are allowed.
5. Only light manufacturing and research and development uses, limiting the hours of operation to between 7 a.m. and 7 p.m.
6. See M-2A district requirements for special use permit allowing multi-family residential and mixed-use development involving three or greater residential units in section 32-46A M-2A District (B)(2).
7. See section 32-233 for requirements.

Editorial note: Amended 05/07/97 Added “self-service storage facility” to B1
Added “outdoor recreational facility” to R1

Editorial note: Amended 05/06/98 Removed “forestry & agriculture, including animal husbandry”
from B2
R2 Added “forestry & agriculture, including animal husbandry” to
Added “indoor and/or outdoor recreational facility”, “health
club”, “retail” to B2

Editorial note: Amended 08/02/00 Removed “commercial excavation” from B1
Removed “self-service storage facilities” from B1

Editorial note: Amended 05/07/03 Added column for B3 District to include permitted uses “office
complex”, “hotel”, “conference center”, “indoor/outdoor
recreational facility”, “health club”, “retail”, “wholesale”,
“warehouse”, “light manufacturing”, “manufacturing”, “research
& development”, “education facility”, “fraternal organization”,
“flexible use development”

Editorial note: Amended 03/03/04	<ul style="list-style-type: none"> Removed “campground” from all districts Added “golf course” to R1 Added “country club” to R1 Removed “excavation” from M4 Added “health club” to B2 Added “recreation facility” to B2
Editorial note: Amended 11/19/08	<ul style="list-style-type: none"> Added “multi-family use” to M1 & Footnote 3 Removed “student housing” from M1 Removed “nursing home” from M1 Removed “commercial amusement” from M1 Added Footnote 4 Added Footnote 5
Editorial note: Amended 08/07/13 uses allowed in the M2 District	<ul style="list-style-type: none"> Added column for the M2A District and included all the permitted Added “research & development” to M2A Added “civic use” to B1 Added “fraternal organization” to M2A & B1 Added “office complex” to M2A & B1 Made “multi-family residential” a use permitted by Special Use Permit in M2A, pursuant to Section 2.03(B)(2) Removed “student housing” from the Table Added “commercial amusement” to B1 Added “automotive repair” to M2A Added “mixed use development” to the Table, permitted in M1, Added Footnote 6 & 7
M2, M2A, M3 & M4	

Secs. 32-57--32-83. Reserved.

ARTICLE III. DIMENSIONAL REQUIREMENTS

Sec. 32-84. Road frontage.

All new lots are required to meet the road frontage requirements of this section.

- (1) *Purpose.* Road frontage requirements address several policy issues. First, frontage is required to ensure safe access to each property by the property owner, emergency service vehicles, delivery vehicles, and guests. Second, longer frontage requirements can be one component of a system to help protect the capacity of arterial roads by reducing the number of lots along that road, thus reducing the number of curb cuts and resulting traffic conflict points. This contributes to the goal of lessening vehicle congestion in the streets. Third, frontage requirements affect the spacing of buildings, thus impacting neighborhood character, ensuring adequate sunlight and air circulation, preventing overcrowding of land and undue concentration of population, and securing safety from fires and other dangers.
- (2) All lots shall front on:
 - a. A state or town road with a classification of Class I, II or V, as defined in RSA 229:5;
 - b. A private road, either: constructed to town standards as required by the subdivision regulations of the planning board at the time the lots were created; or for which adequate financial security has been posted to ensure proper construction; or
 - c. A Class VI road proposed to be improved to current town standards and for which adequate financial security has been posted with the town to ensure completion of the improvements.
- (3) *Length of frontage.* The minimum length of frontage in each district is specified in the dimensions table.
- (4) *Open space design.* The provisions of article VI of this chapter permit reduction of certain road frontage standards.

(Ord. of 2-14-1996, § 3.01)

Sec. 32-85. Lot size.

All new lots are required to meet the lot size requirements of this section.

- (1) *Purpose.* Lot size requirements are an important component in addressing many of the general purposes of this chapter, including lessening vehicle congestion in the streets, securing safety from fires and other dangers, providing adequate sunlight and air circulation, preventing overcrowding of land and avoiding undue concentration of population, enhancing pedestrian travel, contributing to community character and quality neighborhoods.
- (2) *Minimum lot size.* The minimum lot size in each district is specified in the dimensions table. Note additional requirements in sections 32-153, 32-155, and 32-157.
- (3) *Open space design.* The provisions of article VI of this chapter permit reduction of certain lot size standards.

(Ord. of 2-14-1996, § 3.02)

Sec. 32-86. Residential density.

Residential density shall not exceed the requirements of this section. Residential density is measured by the number of residential units per acre.

- (1) *Purpose.* Control of residential density is an important component in addressing many of the general purposes of this chapter, including lessening vehicle congestion in the streets, preventing overcrowding of land, avoiding undue concentration of population, facilitating

adequate provision of public facilities, utilities and services, assuring proper use of natural resources, and contributing to community character and quality neighborhoods.

- (2) *Maximum residential density.* The maximum residential density in each district is specified in the dimensions table.
- (3) *Open space design.* The provisions of article VI of this chapter do not permit an increase of residential density. The standards for residential density shall apply regardless of the pattern of development.

(Ord. of 2-14-1996, § 3.03)

Sec. 32-87. Setbacks.

Structures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section.

- (1) *Purpose.* Control of setbacks is important for a variety of reasons. The proximity of a structure to a road affects the character of the neighborhood, encourages or discourages pedestrian activity, and may block site distance for cars at an intersection or driveway. The proximity of a structure to abutting lots affects fire safety, the provision of adequate sunlight and air circulation for this and neighboring lots and structures, and the availability of space for site amenities such as landscaping, driveways and so forth. In this chapter, maximum setbacks are required in certain instances. While the minimum is applied in most communities, the maximum setback is still unusual and warrants further explanation. The maximum setback is applied in the village area, where it is highly desirable to site the buildings close to the sidewalks and streets. The resulting built environment provides for a visually consistent streetscape, and enhances the pedestrian character of the village by forcing the buildings to be close to the sidewalks and preventing on-site parking in front of the buildings.
- (2) *Structure setbacks.* Minimum and maximum setbacks from roads and other property boundaries are specified in the dimensions table. Maximum setbacks shall not apply to accessory structures.
- (3) *Open space design.* The provisions of article VI of this chapter may permit reduction of certain setback standards.
- (4) *Special exceptions.*
 - a. The zoning board of adjustment can relax the maximum setback in the M-2 district to a maximum of 25 feet by granting a special exception when the following condition is met:
 1. The area within the front setback will be used for outdoor restaurant seating, retail display, or other active use associated with the permitted use. In no case shall parking be permitted within the front setback.
 - b. In cases where the setback requirements have changed since a subdivision was approved, and where the current requirements are more restrictive than those in effect at the time of the subdivision approval, the zoning board of adjustment may reduce the current setback requirement to that permitted at the time of the subdivision approval by granting of a special exception. The zoning board of adjustment shall grant a special exception when the following conditions are met:
 1. Application of the current setback standards would render the lot unbuildable; or
 2. The zoning board of adjustment determines that the former setback requirements are sufficient to secure the purposes of this section.

(Ord. of 2-14-1996, § 3.04)

Sec. 32-88. Structure height.

Structure heights shall not be less than the minimum nor more than the maximum requirements set forth in this section.

- (1) *Purpose.* Control of structure height is important for a variety of reasons. Structure height is related to fire safety and the fire department's ability to protect public safety. However, there are other important issues beyond the immediate safety issue. Structure height strongly affects the character of the neighborhood and the allowance of adequate sunlight and air circulation. It is a critical control of intensity of use, especially for nonresidential uses. In this chapter, both minimum and maximum structure heights are required in certain instances. While the maximum is applied in many communities, the minimum requirement is unusual and warrants further explanation. The minimum height requirement is applied in the M-2 district, where it is highly desirable to maintain a relatively consistent visual facade of tall buildings along the village streets. Most buildings will have multiple stories, providing lower rent commercial or residential space over the more desirable street level space. Other buildings, especially those which serve a civic function such as churches, are suitably tall even without the multiple stories, so there is no restriction on the number of stories.
- (2) *Structure height.* Both minimum and maximum structure heights are specified in the dimensions table. Maximum structure height shall apply to all structures, but minimum structure height shall apply only to primary structures and not to accessory structures.
- (3) *Open space design.* The provisions of article VI of this chapter do not permit alteration of structure height requirements. The standards for structure height shall apply regardless of the pattern of development.
- (4) *Special exception.* The zoning board of adjustment can relax the maximum structure height limit to a maximum of 60 feet by granting a special exception when the following conditions are met:
 - a. The proposed structure, which exceeds the height limit, must exceed the height limit to fulfill its unique purpose, such as an agricultural silo, church steeple, or a communications antenna.
 - b. There shall be no occupied floor space above the standard height limit.

(Ord. of 2-14-1996, § 3.05)

Sec. 32-89. Dimensions table.

The following dimensional requirements shall apply:

Dimensions Table

The following dimensional requirements

Requirement	Measure	M-1	M-2	M-2A	M-3	M-4	B-1	B-2	B-3	R-1	R-2	R-3	R-4
Minimum Road	feet	75	50	50	75	150	150	150	150	200	100	100	50
Minimum Lot Size	acres	¼	¼	¼	½	1	½	1	2	2	½	½	¼
Maximum Residential Density	units/acre	20	6	6	2	1	2	1	-	½	2	2	4
Minimum Road	feet	10	5	5	20	20	15	25	75	40	25	25	5
Maximum Road	feet	n/a	10	10	50	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Minimum Side/Rear	feet	10	10	10	20	25	25	30	20*	25	15	15	10
Maximum structure	feet	50	50	35	35	35	35	35	35	35	35	35	35
Minimum Structure	feet	n/a	24	24	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

(Editorial note: B3 column added 05/07/03
M2-A column added 08/07/13)

Note: B-3 District additional Setbacks:

B-3 District Side/Rear Setbacks	Feet
To Residential District Boundaries	75
To Residential Uses	50

1. The maximum residential density for multi-family residential housing in the M-1 district is as stated in section 32-45(B)(2)(b)(6)
(Editorial note: Amended 11/19/08)
2. The planning board may waive the road setbacks, side and rear setbacks and height restrictions within the M-2A district to match the conformity of adjacent buildings, through the issuance of a Special Use Permit pursuant to section 32-46A(D). (Editorial note: Amended 08/07/13)

Secs. 32-90--32-119. Reserved.

ARTICLE IV. SIGNS

Sec. 32-120. Purpose.

Consistent with the overall purpose of this chapter, it is the town's intent to require signs, which enhance the character of the community and protect its visual environment. Businesses need identification and the public needs direction, so the town must balance these needs with the protection of community. Excessive signs shall be prevented. Sizes, materials, mounting locations and other such factors shall be consistent with the public objectives in the area in which a sign is located. Signs shall be readable and clear, and properly maintained. Signs shall not cause safety problems.

(Ord. of 2-14-1996, § 4.01; Ord. of 5-7-2003)

Sec. 32-121. Application process.

Except as listed below, all new signs or modifications to signs shall require a permit from the code enforcement officer. A written application and a \$50.00 fee shall be submitted to the town. The request shall have sufficient information to determine compliance with these requirements and shall include drawings.

- (1) *Exempt signs.* The following signs do not require a sign permit from the town, and are not subject to the setback requirements:
 - a. Sign with a message area of one square foot or less, which bears only property numbers, post office box numbers, names of occupants, other non-commercial identification, or with a message of the following type: "open", "closed", "now hiring", "vacancy", "no vacancy", etc.
 - b. Directional sign, with no commercial message, indicating entrance and/or exit to a site, with a message area of two square feet or less.
 - c. Legal notice, such as "no trespassing" signs, with a message area of two square feet or less.
 - d. Business name and/or directional sign with a message area of three square feet or less which are located over doorways.
 - e. Government or religious flags.
 - f. Window sign, unless a neon-style/LED sign per section 32-123(b). (Editorial Note: Amended 06/21/17 to add "neon-style/LED")
 - g. Sign identifying lawn, garage or barn sales, with a message area of six square feet or less, and displayed not more than one day prior to the event and removed not more than one day following the end of the event providing such sale does not occur on more than four days per calendar year. (Editorial Note: Amended 06/21/17)
 - h. Sign for a government election, with time limits as specified in state law, or if no state law applies, then erected no more than 45 days prior to the election and removed within ten days following the election, except for primaries where the winners signs may remain until ten days after the final election (see RSA 664 for further information).
 - i. Real estate sign for the sale or lease of the property on which the sign is located, with total message area not to exceed the permitted message area for other freestanding signs on the property. Real estate signs, being temporary, shall be permitted in addition to other permitted signs. Off-site real estate signs shall be limited to directional signs, with a maximum message area of two square feet, indicating directions to properties for sale

and/or open houses. Non-projecting signs, unless otherwise permitted, shall not be allowed within the public right-of-way. Real estate signs must comply with the Sign Height and Message Area table under Sec.124(1)(B). (Editorial Note: Amended 06/21/17)

- j. Promotional sign for public or institutional events, as authorized by the town council.
 - k. Directional sign to help locate facilities for persons with disabilities, with the message area not to exceed two square feet, as required for compliance with the Americans with Disabilities Act of 1990. (Editorial Note: Amended 06/21/17)
 - l. Announcement board, with a message area not to exceed 12 square feet, on the property of the town, school, public service organization, or religious institution, because such activities are vital to the civic function of these properties.
 - m. For construction in progress, one or more signs per lot with a total combined message area not to exceed 24 square feet, identifying the owner, architect, contractors, and/or developer, to be removed within one month of the completion of the project.
 - n. Sign for fraternal or social clubs, local service agencies and philanthropic organizations, which identifies meeting times and locations, with a message area of three square feet or less.
 - o. Awnings with messages, as permitted in section 32-46(c)(4) in the M-2 and M-2A district. Awnings shall not be of translucent material. (Editorial Note: Amended 06/21/17)
 - p. One subdivision identification sign, not to exceed twelve square feet in size and six feet in height, at the entrance of a subdivision denoting the name of the development, provided the signage is located out of the public right-of-way and is approved by the Planning Board. (Editorial Note: Amended 06/21/17)
- (2) *Maintenance*. No permit shall be required for normal maintenance, which shall include repainting and other surface renewal. (Editorial Note: Amended 06/21/17)
- (Ord. of 2-14-1996, § 4.02; Ord. of 5-7-2003; Ord. of 06-21-2017)

Sec. 32-122. Sign content.

The town has no intention of restricting individual free speech, but the town does recognize its right to place reasonable restrictions upon commercial speech. Further, the town wishes to prevent excessive or unnecessary signs along road corridors. In keeping with this reasoning, off-site commercial signs shall be prohibited. The town, however, may develop and install a standardized system of municipally-owned business directional signs, similar to the state system, to better index the community for people.

(Ord. of 2-14-1996, § 4.03; Ord. of 5-7-2003)

Sec. 32-123. General design standards.

- (a) *Illumination*.
 - (1) Each light source shall be located, directed and/or shielded such that it is not visible at any point along the property boundary, nor from any right-of-way or neighboring property; and
 - (2) Internal illumination of signs is permitted only in the B-1 District. The method of internal illumination shall be limited to the following techniques: (Editorial Note: Amended 06/21/17)
 - a. Backlighting of non-translucent letters, characters and/or symbols surface mounted on a non-translucent background.
 - b. For signs with a translucent message face and an internal light source, letters, characters and/or symbols shall be light colored against a darker colored background.

(b) *Neon/LED-style.* One neon/LED-style window sign shall be permitted in each business in the B-1, B-2, M-2 and M-2A districts. Message area shall not exceed four square feet. Neon/LED-style signs shall be prohibited in all other districts. Such signs shall not blink or flash. (Editorial Note: Amended 06/21/17)

(c) *Motion.* Moving signs, or signs which give the appearance of motion, shall be prohibited.

(d) *Flashing/blinking.* Flashing, blinking, alternating type electronic message centers, or digital type lighting shall be prohibited. (Editorial Note: Amended 06/21/17)

(e) *Materials.* Except for the sign face of a permitted, internally illuminated sign, the use of plastic shall be prohibited on the exterior of signs and their supporting structures. Wood, wrought iron, metal, stone, brick, and other natural materials, which are more traditional building materials in the region, should be used to the maximum extent feasible. High Density Urethane (HDU) signs, giving the appearance of wood, are permitted; however, other forms of plastic are not allowed. (Editorial Note: Amended 06/21/17)

(f) *Projection.* Signs shall not project over a public street, but projecting signs, as permitted herein, may project over town sidewalks, and over other sidewalks with the sidewalk owner's consent. A minimum of eight feet of clearance underneath shall be provided.

(g) *Placement.* Signs shall not be placed in such a position as to endanger vehicular, bicycle or pedestrian traffic by obstructing a clear view, by causing confusion with governmental signs and signals, or by any other means.

(h) *Movable signs.* Movable signs shall be prohibited. No vehicle, including parts thereof, trailers, and other accessories, shall be used as a means of circumventing the purpose and intent of this Ordinance. (Editorial Note: Amended 06/21/17)

(i) *Lighted signs.* Signs, other than neon signs where permitted, in which light sources create the message shall be prohibited.

(j) *Temporary items.* The following shall be allowed for one week per calendar year by permit from the code enforcement officer: search lights; balloons or other gas-filled figures; and banners and/or pennants. Feather flags, and pennants, as permanent fixtures, are not permitted in any zone. (Editorial Note: Amended 06/21/17)

(k) *Message boards.* Message boards (whether digital, electronic, manual and/or with interchangeable letters) are not permitted in any zone. (Editorial Note: Definition added 06/21/17)

(l) *Sandwich board signs.* Sandwich board signs may be placed on sidewalks in the M-1, M-2, and M-2A Districts. They must be less than two feet wide and less than three feet high. Sandwich board signs may not obstruct a sidewalk to less than 48 inches of clear travel path. Such signs may only be placed on the sidewalk, while the business is open. Sandwich board signs shall be made of wood and shall be designed to they are not affected by less than storm force winds. (Editorial Note: Definition added 06/21/17)

(Ord. of 2-14-1996, § 4.04; Ord. of 5-7-2003; Ord. of 06-21-2017)

Sec. 32-124. Regulations by district.

Specific restrictions regarding the type, message area, height, setback, and illumination are as follows:

(1) *Freestanding signs.* One freestanding sign per lot shall be permitted in all districts as follows:

- a. *Setback.* All freestanding signs shall be set back a minimum of five feet from the property boundary.
- b. *Sign height and message area.* Maximum sign height and message area shall be limited as follows:

Zoning District	Maximum Sign Height (feet)	Maximum Message Area (sq. ft.)
M-1	12	16
M-2/M-2A	12	16
M-3	8	16
M-4	12	32
B-1	12	32
B-2	12	32
B-3	8	32
R-1	8	12
R-2	8	8
R-3	8	8
R-4	8	8

(Editorial note: B3 District added 05/07/03, chart amended 06/21/17)

- c. In the M-1, M-2, M-2A, and B-1 districts, a projecting sign may be substituted for a freestanding sign. The message area shall not exceed eight square feet, and no part of the sign or its supporting mechanisms shall extend above the top of the wall to which the sign is attached. (Editorial Note: Amended 06/21/17)
 - d. In the B-3 district, signs must be made of wood or other natural materials and shall not be internally lit. Any lighting shall be directed from above and shall be installed and maintained so that no light is directed onto roadways or abutting properties. (Editorial note: Amended 05/07/03)
- (2) *Wall signs.*
- a. *Districts.* In addition to freestanding signs, wall signs shall be permitted on primary buildings in the following districts: M-1, M-2,; M-2A; M-3, M-4, B-1, B-2, and B-3. In all other districts, wall signs shall be permitted only as an alternative to a freestanding sign. (Editorial note: Amended 05/07/03)
 - b. *Height.* The top of the wall sign shall not extend above the top of the wall to which it is attached.
 - c. *Number of wall signs.* Not more than one wall sign shall be permitted per lot, except for a lot with multiple businesses, in which case each business shall be permitted its own wall sign; or a lot adjoining two or more streets, in which case a wall sign facing each street shall be permitted.

- d. *Message area.* The message area of a wall sign shall not exceed three percent (or five percent with a Special Use Permit approved by the Planning Board) of the area of the wall to which it is attached. Where the wall may include two or more off-set sections parallel to one another, the area of the wall shall include the area of all the sections parallel to and facing the same direction as that portion of wall to which the sign is attached. Where multiple wall signs are permitted, the sum of the message areas shall not exceed three percent (or five percent if approved by Special Use Permit approved by the Planning Board) of the area of the front wall of the primary structure on that lot.

(Editorial Note: Amended 06/21/17)

(Ord. of 2-14-1996, § 4.05; Ord. of 5-7-2003; Ord. of 06-21-2017)

Sec. 32-125. Signs in platted right-of-way.

Except as otherwise provided herein, no sign shall be permitted within any platted right-of-way.

(Ord. of 2-14-1996, § 4.06; Ord. of 5-7-2003)

Sec. 32-126. Maintenance.

All surfaces and supporting structures of signs, whether erected prior to the effective date of the ordinance from which this chapter is derived or not, shall be maintained in a safe and well-kept and aesthetically pleasing condition to the satisfaction of the code enforcement officer. (Editorial Note: Amended 06/21/17)

(Ord. of 2-14-1996, § 4.07; Ord. of 5-7-2003; Ord. of 06-21-2017)

Sec. 32-127. Nonconforming signs.

Signs lawfully in existence before the adoption of regulations, which make them nonconforming, shall be permitted to continue in existence and be maintained. No change in type, size of message area and/or support structure, height, location, message, illumination, number, or material shall be permitted without application to and approval from the town. Nonconforming aspects of the sign may continue, but no additional types of nonconformity shall be created by any change. Permitted changes may allow reduction in any one or more nonconforming aspects, but shall not allow any nonconforming aspect of the sign to become increasingly nonconforming. If a nonconforming sign is abandoned, the grandfathered rights shall terminate, and any replacement shall comply with the requirements of this chapter.

(Ord. of 2-14-1996, § 4.08; Ord. of 5-7-2003)

Secs. 32-128--32-152. Reserved.

ARTICLE V. OVERLAY ZONING DISTRICTS

Sec. 32-153. Aquifer protection overlay district. (Editorial note: Amended 03/06/02)

(a) *Authority and purpose.* Pursuant to RSA 674:16-21, the town adopts an aquifer protection district and accompanying regulations in order to protect, preserve and maintain existing and potential groundwater supplies and related groundwater recharge areas within the town. The objectives of the aquifer protection district are:

- (1) To protect the public health and general welfare of the citizens of Newmarket.
- (2) To prevent development and land use practices that would increase risk of contamination or reduce the recharge of identified aquifers.
- (3) To provide for future growth and development of the town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies.
- (4) To encourage uses that can appropriately and safely be located in the aquifer recharge areas.
- (5) To incorporate by reference and encourage implementation of the recommendations and findings of the recently completed report by Dufresne-Henry, entitled "Delineation of Wetland

Protection Area: Newmarket Plains Aquifer, December - 1999" in order to protect the existing and future viability of the town's primary water supply.

- (6) To incorporate by reference newly updated information and Wellhead Protection Area (WHPA) Delineation Map, as contained in a letter report dated October 3, 2006, to the Town of Newmarket, entitled "Delineation of Newmarket Plans Aquifer Wellhead Protection Area" prepared by Comprehensive Environmental Incorporated (CEI). (Editorial note: Amended 10/17/07)

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies

Groundwater means all the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

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

Impervious surface-protective means a surface through which regulated substances cannot pass when spilled. Impervious surfaces-protective include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden or gravel surfaces; or other surfaces, which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces-protective.

Leachable wastes means waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment, and specifically excluding wastes from functional, approved residential septic systems.

Mining of land means the removal of geologic materials for the purpose of extracting topsoil, sand and gravel, metallic ores or bedrock and excavation as defined in RSA 155-E and Newmarket Excavation Regulations.

Seasonal high water table (SHWT) refers to the upper limit of the ground water in a soil that becomes seasonally saturated with water.

Toxic or hazardous materials or regulated substance means petroleum, petroleum products, and substances listed under 40 CFR 302 7-1-90 edition, excluding propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.

Wellhead protection area is defined as found in RSA 485-C:2(XVIII), as amended.

(c) *District boundaries.*

(1) Location.

a. The aquifer protection district shall include all land identified as stratified drift aquifer (of any kind) in the vicinity of Newmarket Plains (along NH Route 152, Lee Hook Road, Langs Lane, and Ash Swamp Road) on Plate 6 of the report entitled "Geohydrology and Water Quality of Stratified Drift Aquifers in the Exeter, Lamprey, and Oyster River Basins, Southeastern New Hampshire" (USGS, Water Resources Investigations Report 88-4128, 1990 revised).

b. The wellhead protection area is designated by the map: Wellhead Protection Area - WHPA Delineation MAP (Attachment D), as contained in a letter report dated October 3, 2006 to the Town of Newmarket entitled "Delineation of Newmarket Plans Aquifer Wellhead Protection Area" (Comprehensive Environmental Incorporated (CEI), incorporated herein by reference. (Editorial note: Amended 10/17/07)

(2) The aquifer protection district is a zoning overlay district, which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirements shall apply.

- (3) *Appeals.* When the actual boundary of the aquifer protection district is in dispute by any landowner or abutter actually affected by said boundary, the planning board, at the landowner's/abutter's expense and request, may engage a professional geologist or hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. This report shall include but not be limited to the following:
- a. A two-foot interval topographic layout prepared by a registered land surveyor of the subdivision and/or area to be developed;
 - b. A high intensity soils map of the subdivision and/or area to be developed prepared by a soils scientist qualified in hydrologic studies including a written report of his on-site field inspection and test boring data;
 - c. The aquifer protection district boundary shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line;
 - d. Evidence derived from a pumping test or a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of aquifer or recharge area; and
 - e. Where the area in question is wellhead protection area, evidence shall also comply with guidelines published by the New Hampshire Department of Environmental Services for Phase II delineations of public water systems in order to determine the contribution zone of any portion of a municipal water supply that lies beneath the subject parcel.

Any additional mapping, hydrogeological reports or information which becomes available as a result of recent or on-going scientific investigations of the locations and extent of aquifers performed by the U.S. Geological Survey, New Hampshire state agencies or boards, the Town of Newmarket or agents of any of the above.

- (4) The planning board may, based upon any findings or reports submitted under this section, adjust the boundary or area designation of the aquifer protection district to more correctly define the aquifers and recharge areas on a site-specific, case-by-case basis.
- (d) *Use regulations for the aquifer protection district.*
- (1) *Minimum lot size.* The minimum lot size shall be governed by the dimensional controls outlined in the applicable zoning district. In all cases standard lot size shall be at least two acres. The minimum lot size within the wellhead protection area shall be at least three acres. Open space subdivisions are encouraged in the aquifer protection district, provided septic systems are designed to minimize potential contamination to groundwater, to the maximum extent possible. Land areas within the aquifer protection district shall be calculated as providing one unit of density per two acres; land within the wellhead protection area shall provide a density calculation of one unit per three acres.
 - (2) *Maximum lot coverage.* Within the aquifer protection district, for any use that will render impervious more than ten percent or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board, and town engineer, if necessary, determines is consistent with "Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire," Rockingham County Conservation District, August 1992 (as amended) and "Best Management Practices for Urban Stormwater Runoff," NH DES, January 1996 (as amended).
 - (3) *Site drainage.* At the discretion of the planning board, the design and the construction of any drainage facility shall be approved by the public works department, and/or designated town engineer. Drainage facilities shall be designed in accordance with best management practices as described in "Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire." All stormwater treatment and drainage facilities within the wellhead protection area shall be cleaned/serviced and inspected at least

once per year as a minimum, in accordance with design specifications. For all nonresidential uses, the planning board shall be authorized to require monitoring wells to insure water quality standards.

- (4) *Use of deicing chemicals.* There shall be minimal use of deicing chemicals on all public and private roads and parking lots within the district. The use of these chemicals shall be free of sodium and chloride to the greatest extent possible.
- (5) *Prohibited uses.* In addition to all other uses not permitted in the underlying district, the following uses shall not be permitted in the aquifer protection district overlay district except where permitted to continue as a nonconforming use. Such activities, however, in the wellhead protection area shall be prohibited from any further expansion as a matter of water quality protection and health and safety:
 - a. Disposal, storage, and staging of all solid waste, construction materials, vegetative debris, sludge, biosolids, and stumps, except as part of the process of improving the subject parcel, provided no such waste is buried on the site.
 - b. All disposal, discharge, processing or recycling of hazardous materials. Regulated substances shall be handled in accordance with NH Code of Administrative Rules Part Env-Ws 421.
 - c. Disposal of non-sanitary liquid or leachable wastes from all residential, commercial or industrial uses. Residential septic systems are exempt from this prohibition, pursuant to the definition of "leachable wastes" under subsection (b) of this section.
 - d. Subsurface storage of petroleum and other refined petroleum products. The placement of residential tanks underground for the storage of petroleum and other refined petroleum products shall not be allowed in new construction in the wellhead protection area. Propane fuel or other non-liquid fuel supplies shall be used and may be stored underground.
 - e. Outdoor unenclosed or uncovered storage of road salt and other deicing chemicals.
 - f. Dumping of snow containing deicing chemicals brought from outside of the aquifer protection district.
 - g. Commercial animal feedlots where animals are kept.
 - h. Automotive service and repair shops, junk and salvage yards.
 - i. Injection wells that dispose of waste in the ground.
 - j. Within the wellhead protection area, the establishment of a new excavation site is prohibited unless it is incidental to a permitted use and with the exception of any existing excavation legally permitted under the excavation regulations of the town at the time of adoption of the ordinance from which this chapter is derived. (See subsection (d)(7) of this section.)
 - k. The commercial storage of fertilizers, animal manure and compost unless in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets and Food, August 1998, and subsequent revisions, and for an agricultural use already in existence at the time of adoption of the ordinance from which this chapter is derived. Normal residential uses are exempt from this prohibition.
 - l. Any groundwater withdrawal well extracting water for nonresidential purposes in excess of 57,000 gallons per day.
- (6) *Permitted uses.* The following uses are permitted, provided they are conducted in accordance with the purposes and intent of this section:

- a. All uses permitted in the underlying zone, provided that all such uses requiring a septic system are reviewed by the town engineer for compliance with applicable rules, laws, and best management practices.
- b. Maintenance, repair of any existing structure in conformance with the regulations of this section.
- c. The expansion of a nonconforming use as long as it complies with the nonconforming use provisions of this section and section 32-5; provided, however, that such expansion presents no tangible increased risk of contamination or quantity reduction to the groundwater at the site. If such use is determined to be an imminent hazard to public health and safety by the town council or the health officer, it may not expand or be changed unless to a conforming use.
- d. Farming, gardening, nursery, forestry, harvesting, residential composting, grazing and recreational uses provided that fertilizers, pesticides and other management practices are deemed safe by the Rockingham County Conservation District. These uses of land in the aquifer protection district must not cause a tangible increased risk of contamination or decreased quantity to the aquifer as determined by the town and its consultants.
- e. Municipal uses, such as the town garage, schools, and such other uses as the town deems appropriate provided reasonable efforts are made to protect and preserve the quality and quantity of groundwater in the aquifer protection district.
- f. Commercial uses permitted in the underlying zone that are not water-dependent. Water withdrawals shall be permitted for the purposes of on-site irrigation and for providing potable water for on-site employees but not for manufacturing or industrial processes. Wells shall also be permitted for groundwater monitoring and sampling.
 - 1. Any groundwater withdrawal well extracting water for nonresidential purposes for a total of less than 57,000 gallons per day may be approved only upon a determination that no impact upon the Newmarket water supply will result.

(7) *Nonconforming earth, sand, and gravel excavations.*

- a. Sand and gravel excavations that are in existence at the time of the adoption of the ordinance from which this section is derived may continue, provided they are in full compliance with all governing local and state regulations. Upon expiration of previously approved excavation permits, all sand and gravel excavations within the aquifer protection district shall apply for a conditional use permit granted by the planning board in accordance with the procedural process as found in the excavation regulations based on the required submission of the following:
 - 1. Submission of quarterly reports on depth of excavation, spills, and timetable for excavation and reclamation.
 - 2. A development agreement requiring incremental reclamation and other conditions for an exception to the minimum distance requirement.
- b. Any sand and gravel excavation within the boundaries of the aquifer protection district that is no longer in operation or is considered to be an abandoned use shall be reclaimed within one calendar year of the adoption of the ordinance from which this section is derived or within one calendar year of the date of abandonment, whichever is later.
- c. Any sand and gravel excavation within the boundaries of the aquifer protection district that is operated by the town for the purpose of providing sand or gravel utilized by the public works department shall be exempt from the requirements for a conditional use permit; however, no excavation activity shall occur below the SHWT.
- d. At no time shall excavations occur below four feet above the SHWT. Compliance with ~~this provision shall be determined by the submission of an annual report showing the~~

SHWT as established by test pits (two per acre of excavation area distributed evenly throughout the excavation area) and witnessed by a licensed New Hampshire Soil Scientist.

- e. All refueling and vehicle maintenance shall be done, to the extent practical, outside of the aquifer protection area; if done within the aquifer protection area, such activity shall be completed on an impervious surface-protective or other facility, to be approved by the town engineer, that mitigates the spread of any unforeseen spill.
- (e) *Hydrogeological study.*
- (1) Within the aquifer protection district, a hydrogeological study shall be required for developments involving the disturbance of more than 50,000 square feet on the same parcel within a period of five years. No further development will be permitted unless a full study has been completed for the entire development potential of the parent parcel in accordance with the regulations in effect at the time. Hydrogeological studies shall be performed by a professional hydrogeologist. These studies shall be sufficiently detailed to evaluate the development's impacts to groundwater within the parcel to be developed and the surrounding land.
 - (2) For any proposed groundwater withdrawal associated with a subdivision containing four or more houses, or as found in subsection (e)(1) of this section, with individual supply wells or a centralized community supply well or for any other groundwater withdrawal in excess of 1,500 gallons per day for the development, a hydrogeological study must be conducted at the expense of the developer, owner, or applicant. The study shall be performed by a professional geologist or equivalently qualified hydrogeologist. The study shall evaluate the effects of the proposed withdrawal on the long-term water levels, groundwater flow direction, the limits of the wellhead protection area for the town's municipal wells and assess the availability of groundwater for a future municipal or smaller community supply well. The study shall evaluate both the short-term and the cumulative effects of this withdrawal with other existing and reasonably expected future withdrawals within the aquifer (i.e., the town's withdrawal in addition to all other current or approved withdrawals). The planning board may refer to the NH DES requirements for Site Selection of Small Production Wells for Community Water Systems, Env-Ws 378, as amended, for guidance on study design.
- (f) *Design and performance standards.*
- (1) Where portions of a site are partially located outside of the aquifer protection overlay zone, potential pollution sources such as on-site waste disposal systems and impervious surfaces should be located outside and down gradient of the zone to the extent feasible.
 - (2) Any change of use for a site shall require site plan review. The planning board shall be authorized to require additional measures to ensure adequate groundwater protection.
 - (3) The provisions of this section are minimum requirements; any town board or official who has jurisdiction over any activity or permit within the boundaries of this section may impose additional criteria to achieve the goals and objectives of this section.
 - (4) All activities, uses and construction shall be undertaken in such a manner so as to protect the town's aquifers.

(Ord. of 2-14-1996, § 5.01; Ord. No. 2002-04, 3-6-2002; Ord. No. 2007-08, 10-17-2007)

Sec. 32-154. Shoreland protection overlay district. (Editorial note: Section amended 08/04/10)

(a) *Purpose.* The waters of Great Bay, the Lamprey and Piscassic Rivers, and other surface waters contribute greatly to the heritage and unique qualities of the Town of Newmarket. It is the town's intent to conserve and maintain the integrity of these water resources, and to ensure that adjacent shoreland uses complement them. This shall serve to prevent degradation of the water resources, protect ecological integrity, reduce pollution, protect wildlife and fisheries habitats and travelways, protect and enhance natural beauty and scenic qualities, and foster tourism. It is accomplished by maintaining and enhancing natural forests and shoreland habitat and buffers. This is consistent with the general purpose of this

chapter, the policies of the Newmarket Master Plan, and the State Comprehensive Shoreland Protection Act, as set forth in RSA 483-B.

(b) *Comprehensive Shoreland Protection Act.* RSA 483-B is a New Hampshire State law, which applies to the land areas within 250 feet of the reference line of public waters. Public waters, as defined in RSA 483-B:4(XVI), include: coastal waters, including the Great Bay Estuary and the associated tidal rivers subject to the ebb and flow of the tide; lakes, artificial impoundments and ponds of ten or more acres listed on the New Hampshire Department of Environmental Services Official List of Public Waters; designated rivers under RSA 483:15; and year round flowing waters of fourth order or higher streams listed on the New Hampshire Hydrographic Dataset (NHHD) per RSA 483-B:4(XVI)(c). Measurement is taken from the reference line as defined per RSA 483-B:4(XVII), as amended.

(c) *Overlay district boundary.* The shoreland protection overlay district shall include all land within 250 feet of the reference line. The applicable water bodies are designated on the Newmarket Shoreland Protection Overlay District Map, as amended. In Newmarket, these include all tidal waters of Great Bay, the Lamprey River and Lubberland Creek, the non-tidal portion of the Lamprey River, the impoundment above the Macallen Dam, and the Piscassic River.

(d) *General requirements.* The following shall apply in the shoreland protection overlay district:

- (1) Within the areas of Newmarket's shoreland which have been exempted from the provisions of the RSA 483-B:12 pursuant to RSA 483-B:12, by the Commissioner of the New Hampshire Department of Environmental Services (NH DES), the following minimum standards as set forth in RSA 483-B:9 shall still apply regarding II(a) salt storage yards, automobile junkyards, solid or hazardous waste facilities; II(d) fertilizer application; V(a)(2)(A) chemicals, and V(a)(2)(D) erosion and siltation.
- (2) Within all other areas of the protected shoreland, the minimum standards as set forth in RSA 483-B:9 in its entirety shall apply regarding salt storage yards, building setbacks, automobile junkyards, water dependent structures, solid or hazardous waste facilities, fertilizer application, maintenance of waterfront and natural woodland buffers, septic systems, erosion and siltation, minimum lots and residential and nonresidential development (minimum lot size and shoreland frontage), impervious surfaces, and common ownership with the following exceptions:
 - a. The primary structure setback from the reference line shall be 125 feet.
 - b. Accessory structures are permitted; however, they shall be setback at least 20 feet from the reference line and meet the requirements of the Env-Wq 1405 of the New Hampshire Code of Administrative Rules. They shall have no toilet facilities and shall not be used for habitation.

(e) *Exempt parcels.* The following tax map and parcel numbers are exempt from the Comprehensive Shoreland Protection Act per RSA 483-B:12, as shown on the Newmarket Shoreland Protection Overlay District map, as amended: U2-57, U2-59, U2-60-B, U2-316, U2-330, U2-331, U2-333, U2-321, U2-327, U2-354-1, U2-355, U2-356, U2-357, U2-358, U2-359, U2-360, U2-361, U2-362, U2-363, U2-364, U2-366, U2-367, U2-368, U3-1, U3-2, U3-3, U3-4, U3-5, U3-6, U3-7, U3-8, U3-12, U3-13, U3-15, U3-16, U3-17, and U3-18.

(f) *Definitions.* For the purpose of interpretation relevant to this section of this chapter, the definitions as set forth at RSA 483-B:4 of the Comprehensive Shoreland Protection Act shall apply.

(Ord. of 2-14-1996, § 5.02; Ord. No. 2010/2011-011, 8-4-2010)

Sec. 32-155. Wetland protection overlay district. (Editorial note: Section adopted 06/18/03)

(a) *Purpose.* Wetlands are a critical natural resource that affect water quality, flooding, wildlife, recreation, and aesthetics, and their protection is a goal of the Master Plan. Wetlands protect surface water quality by reducing the speed of surface water runoff, allowing for the deposit of sediment and nutrients. Wetlands protect shorelines from erosion. Wetlands absorb water during times of flooding, thus helping to reduce floodwater elevations. Wetlands help to maintain the quality of groundwater recharge. Wetlands provide habitat for a wide variety of wildlife, including fish, birds, deer other animals. Wetlands

contribute to a broad range of recreational opportunities, including canoeing, hunting, fishing and bird watching. Wetlands contribute to the aesthetic values of the town, providing for open space, natural vistas, landform contrasts, and early autumn foliage. These purposes, in combination with the fact that wetlands are often ill-suited to development activities, demonstrate why the long-term protection of wetlands contributes greatly to the welfare of the community.

(b) *Authority.* The wetland protection overlay district is enacted to implement the recommendations of the Town of Newmarket Master Plan. The provisions of this section and the special permit process are adopted in accordance with RSA 674:21. Additional sources considered during the drafting of this section include Buffers for Wetlands and Surface Waters (rev. 1997) and the New Hampshire Estuaries Project Management Plan (2000).

(c) *Overlay district boundaries.* The wetlands protection overlay district shall include all areas of land that meet the criteria of the NH DES Wetlands Bureau rules for determination of wetlands, poorly drained and very poorly drained soils (as amended), prime wetlands, as delineated by the Newmarket Conservation Commission and approved in accordance with RSA 482-A:15 (as amended) and associated buffers, as defined in this chapter. (Changes in prime wetland designation require this section to be re-adopted in order for these provisions to apply to the new areas.) (Latest adoption version: Newmarket Prime Wetland Designation Study, West Environmental Inc., report dated: January 28, 2003.) (Editorial note: Amended 02/04/04)

- (1) The location of a wetland boundary in any particular case must be determined by on-site inspection. Determination of jurisdictional wetlands shall be performed by a NH certified soils or wetlands scientist in accordance with NH DES rules.
 - (2) Prime wetlands and associated buffers. Prime wetlands shall not be included in the minimum lot size or as part of any lot density calculation as required by any part of this chapter. There shall be no disturbance of any kind (including but not limited to construction, filling, dredging and the removal of vegetation) within a prime wetland or within a buffer area within 75 feet around the prime wetland. Structures shall be set back a minimum of 100 feet from prime wetlands. On-site septic systems shall be set back a minimum of 125 feet from prime wetlands.
 - (3) Very poorly drained soils (or Hydric A soils, if so designated on site) and associated buffer. Such wetlands shall not be included in the minimum lot size or as part of any lot density calculation as required by any provision of this chapter. There shall be no disturbance of any kind (including but not limited to construction, filling, dredging and the removal of vegetation unless in accordance with the provisions of this chapter) within such wetlands or within a buffer area 50 feet around such wetlands.
 - (4) Poorly drained soils (or Hydric B soils, if so designated on site) and associated buffer. Such wetlands may be used to fulfill up to 25 percent of the area of the minimum lot size or 25 percent of any lot density requirement as part of any section of this chapter. There shall be no disturbance of any kind (including but not limited to construction, filling, dredging and the removal of vegetation unless in accordance with the provisions of this chapter) within such wetlands or within a buffer area 25 feet around such wetlands.
 - (5) If there is reasonable question or dispute as to the boundary of this overlay district, the owner of the property or the town may hire a qualified soil scientist to examine the area and report all findings to the town. The cost of such investigation shall be borne by the applicant for the development permit or approval.
- (d) *General requirements.* The following requirements shall apply within the wetland overlay district:
- (1) Agricultural and forestry uses shall be permitted within the wetland overlay district, provided that such uses are carried out in accordance with best management practices. Forestry uses within prime wetlands shall be permitted, provided that tree removal complies with RSA 483-b:9(V)(a) of the Comprehensive Shoreland Protection Act for all areas within the prime wetland and associated buffer.

- (2) No surface water withdrawal shall be permitted within the wetland overlay district. This section does not cover surface withdrawals for public water supplies or that are necessary for emergency situations (such as to prevent flooding or the spread of pollution or to assist in firefighting efforts).
- (3) Where development within the wetland or its buffer is required for access to, and use of, an adjacent surface water, footbridges, catwalks, and/or docks shall be permitted. Such structures shall be constructed on posts or pilings where appropriate so as to permit the unobstructed flow of water, and the natural contour of the wetland shall be preserved. Minor filling for construction of a boat ramp shall be permitted upon obtaining a state wetlands permit, and subject to the requirements of the shoreline protection overlay district (section 32-154, as amended).
- (4) Notwithstanding other provisions of this chapter, the construction of additions and extensions to single family dwellings shall be permitted within wetland buffers provided that the dwelling lawfully existed prior to the delineation of the wetland area and that the proposed construction conforms to all other applicable codes of the town.

(e) *Driveway and utility crossings.* Driveway and utility crossings through the wetland protection overlay district may be permitted for the legitimate use of land areas outside of this overlay district. Crossings may be permitted only if granted a special use permit by the planning board. The planning board may approve, deny or approve with conditions a special use permit upon a determination of compliance with the following criteria:

- (1) Such dredging, filling or other alteration associated with driveway and/or utility crossings shall be designed to minimize adverse impacts on the wetland, even if this requires adjustments in design outside of this overlay district.
- (2) Such activity is required for the legitimate use of land areas outside of the overlay district, and there is no reasonable way to eliminate the impact or shift the impact to a wetland of less functional value, and still accommodate the use.
- (3) Provisions shall be made as a condition of a special use permit to restore the surrounding site to a functional grade, condition and vegetative state in terms of both quality and quantity in order to reduce long-term damage to the site.
- (4) The proposed crossing impacts less than 6,000 square feet of very poorly drained soils and associated buffer area and 12,000 square feet of poorly drained soils and associated buffer areas.

(f) *Dredge, fills or other impacts.* Other dredge, fills or impacts for development and any crossing impact in excess of the requirements of subsection (e)(4) of this section may be permitted only if granted a special use permit by the planning board. The planning board may approve, deny or approve with conditions a special use permit upon a determination of compliance with the following criteria:

- (1) The wetland is not within 150 feet of the Great Bay, Lamprey River, Piscassic River or Follett's Brook.
- (2) The applicant has prepared a mitigation proposal, upon consultation with the Newmarket Conservation Commission, that provides for increased wetland buffers elsewhere on the site that surround a wetland of greater size or greater functional value than the impacted wetland. Increased buffer areas shall only qualify for this permit if the horizontal distance or total area of the buffer is doubled. Protected areas shall be noted on a plan filed in the Rockingham County Registry of Deeds and shall be noted as no disturbance/no cut zones on the plan and in the field; or
- (3) The applicant has provided for the perpetual protection of an area of off-site wetlands of a greater area and equal or higher functional value located in an open space priority area, as denoted in the Newmarket Open Space Conservation Plan in a way that is proportional to the

size and functionality of the impacted wetlands (assistance may be in the form of contributions to a wetland protection land bank if such is created).

- (4) The applicant has provided the planning board with written comments on the proposed mitigation proposal from the conservation commission.
- (5) Any mitigation proposal submitted to the board shall attest to the above requirements and shall be completed under the authority and certification of a NH certified wetland scientist using standard-accepted scientific methods.

(Ord. of 2-14-1996, § 5.03; Ord. of 2-4-2004)

Sec. 32-156. Class A watershed protection overlay district. (Editorial note: Section amended 05/07/03).

Septic systems shall be set back a minimum of 150 feet from the reference line of all Class A surface waters. The definition of "reference line," pursuant to RSA 483-B:4(XVII)(d), shall be the ordinary high-water mark. Class A surface waters in Newmarket include the Piscassic River and Follett's Brook.

(Ord. of 2-14-1996, § 5.04; Ord. of 5-7-2003)

Sec. 32-157. Steep slope protection overlay district.

(a) *Purpose.* The ability of land to accommodate development is related to its slope, among other factors. Steeper slopes are more fragile than flatter slopes, and are far more susceptible to erosion and runoff problems once the earth is disturbed. The Master Plan calls for control of development based on slope, and in particular calls for greatest care on slopes of 25 percent or more.

(b) *Restrictions.* To accomplish the purposes of the steep slope protection overlay district, the following shall apply to all contiguous areas with a slope of 25 percent or greater:

- (1) Construction of new roads through areas with a slope of 25 percent or greater shall be minimized.
- (2) Slopes of 25 percent or more shall not be used to fulfill more than 25 percent of the area of the minimum lot size, as required per section 32-85.
- (3) Prior to any disturbance of earth, suitable provisions for the prevention of erosion and for the control of runoff shall be made. Such provisions shall be maintained in full working order until the site is again stabilized with vegetation or permanent improvements.

(Ord. of 2-14-1996, § 5.05)

Sec. 32-158. Floodplain protection overlay district. (Editorial note: Section amended 12/08/20)

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

(b) *Purpose.* The purposes of this Overlay District are to: protect floodplains from development and construction activities which would aggravate flooding; prevent development in locations which would place occupants at risk or which would likely require rescue of occupants by emergency services personnel during floods; protect the floodplains for use as habitat and for the aesthetic qualities; and ensure Town compliance with the National Flood Insurance Program.

(c) *Overlay district boundaries.*

(1) *Study and Map.* This ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its “Flood Insurance Study for the County of Rockingham, N.H.” dated January 29, 2021, together with the associated Flood Insurance Rate Maps (FIRM), dated January 29, 2021, or as amended, which are declared to be a part of this ordinance and hereby incorporated into this ordinance by reference.

(2) *Boundaries.* This overlay district shall include all areas, which are inundated with water during the base flood (Special Flood Hazard Areas as shown on the FIRM). To determine this boundary, the following order of precedence shall apply:

- (a) In Zone AE, refer to the base flood elevation data provided in the “Flood Insurance Study and accompanying FIRM;
- (b) In Zone A, reference shall be made to any base flood elevation data available from any Federal, State or other source including data submitted for development proposals to the town, including subdivisions and site plans.

(d) *Standards.* All proposed development shall require a permit from the Building Official. Such permit shall not be issued until the applicant has provided all other local, state and federal permits. The Building Official shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, the following standards shall apply to all development within this Overlay District:

(1) New structures or expansion of existing structures may be constructed within this Overlay District only in the M-1 and M-2 districts.

(2) The Building Official shall determine the base flood elevation in the following order of precedence according to the data available:

- (a) In Zone AE, refer to the elevation data provided in the Flood Insurance Study and accompanying FIRM.
- (b) In Zone A, the Building Official shall obtain, review, and reasonably use any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the Town for subdivision and site plan approvals.
- (c) In Zone A where the base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

(3) All new construction or substantial improvement shall:

- (a) Be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b) Be constructed with materials resistant to flood damage;
- (c) Be constructed by methods and practices that minimize flood damages;
- (d) Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or

located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(e) if residential, have the lowest floor (including basement) elevated to or above the base flood elevation;

(f) if non-residential, have the lowest floor (including basement) elevated to or above the base flood elevation, or together with attendant utility and sanitary facilities shall:

[1] be flood-proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

[2] have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

[3] be certified by a NH licensed Professional Engineer specializing in structural engineering or a NH licensed Architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Overlay District.

(g) if the structure has an enclosed area below the lowest floor that is subject to flooding, shall conform to the following requirements:

[1] the enclosed area shall be unfinished or flood resistant, usable solely for vehicle parking, structure access, or storage;

[2] the area is not a basement;

[3] shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a NH licensed Professional Engineer specializing in structural engineering or a NH licensed Architect, or must meet or exceed the following minimum criteria:

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

[b] the bottom of all openings shall be no higher than one foot above grade.

[c] openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured homes, to be placed or substantially improved, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level elevation, and shall be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but shall not be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to any other applicable requirements for anchoring to resist wind forces.

(5) For all new or substantially improved structures, the applicant shall furnish the following information to the Building Official:

- (a) the as-built elevation of the lowest floor (including basement) in relation to NAVD, and include whether or not such structure contains a basement;
- (b) if the structure has been flood-proofed, the as-built elevation (in relation to NAVD) to which the structure was flood-proofed; and
- (c) certification of flood-proofing, if required.

(6) Where new or replacement water or sewer systems (whether municipal, community or on-site) are proposed in a special flood hazard area, the applicant shall provide the Building Official with assurance that these systems shall be designed to minimize or eliminate infiltration of floodwaters into these systems and discharges from these systems into floodwaters. On-site systems shall be located to avoid impairment to them and contamination from them during periods of flooding.

(7) All recreational vehicles placed on sites within a special flood hazard area shall either:

- (a) be on the site for fewer than 180 consecutive days;
- (b) be fully licensed and ready for highway use; or
- (c) meet all requirements pertaining to permitting per subsection (d) and the elevation and anchoring of manufactured homes per subsection (d)(4) of this section.

(8) In riverine situations:

(a) Prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the NHDES Wetlands Bureau and submit copies of such notification to the Building Official, in addition to the copies required by RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Official, including notice of all scheduled hearings before the Wetlands Bureau.

(b) The applicant shall submit to the Building Official, certification provided by a NH licensed Professional Engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

(c) The Building Official shall obtain, review, and reasonably utilize any regulatory floodway data available from Federal, State, or other sources as criteria for requiring that all development in Zone A comply with the following: "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the regulatory floodway that would result in any increase in flood levels within the community during the base flood discharge."

(d) Along watercourses that have not had a regulatory floodway designated or determined by a Federal, State or other source, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing

and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- (e) Along watercourses with a designated Regulatory Floodway no encroachment including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

(9) *Other Permits.* The Building Official shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(e) *VariANCES.*

(1) In the case of an application for variance made to the Zoning Board of Adjustment, three additional standards shall apply in addition to the usual five variance standards under State law. The applicant shall have the burden of showing:

- (a) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
- (b) That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
- (c) That the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) The Zoning Board of Adjustment shall notify the applicant in writing that:

- (a) The issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- (b) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained as part of the variance application record.

(f) *Records.* Separate records shall be maintained, and made available for public inspection on request, for all Development Permits and Variances in this Overlay District. Such records shall include all materials submitted as part of the application, and an explanation of the final decision on such application. The Code Enforcement Officer shall report all variances issued in reports to the FEMA Federal Insurance Administrator upon request, but not more frequently than annually.

(g) *Supplemental Definitions.* In addition to the definitions provided in Section 1.11, the Federal Emergency Management Agency (FEMA) requires that additional definitions be included in this ordinance for the Town to remain in the NFIP. The supplemental definitions in this Section shall apply only to this Overlay District, and these shall supersede any other municipal definition in case of conflict in this Section. As used in this Overlay District, the following terms shall have the meanings indicated:

Area of Special Flood Hazard. The land in the floodplain within the Town of Newmarket subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the FIRM

Base Flood. The flood having a 1% probability of being equaled or exceeded in any given year.

Base Flood Elevation. The computed elevation to which floodwater is anticipated to rise during the base flood. Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) and on the flood profiles. The BFE is the regulatory requirement for the elevation or flood proofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium.

Basement. Any area of a structure having its floor subgrade on all sides.

Building. See “structure”.

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

FEMA. The Federal Emergency Management Agency.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; or the unusual and rapid accumulation or run-off of surface waters from any source.

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

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

Floodplain or Flood Prone Area. Any land area susceptible to being inundated by water from any source.

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

Floodway. See “regulatory floodway”.

Functionally Dependent Use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading or unloading of cargo or passengers, and ship building or repair facilities but does not include long term storage or related manufacturing facilities. Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. Any structure that is: listed individually in the National Register of Historic Places, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; 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; individually listed on

a State inventory of historic places in a state with an historic preservation program which has been approved by the Secretary of the Interior; or individually listed on a local inventory of historic places in a community with an historic preservation program that has been certified either (1) by an approved state program as determined by the Secretary of the Interior, or (2) directly by the Secretary of the Interior in a state without an approved program.

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

Manufactured Home. Manufactured housing as defined in Section 1.11 of this Ordinance, but also for floodplain management purposes the term includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

Manufactured Home Park or Subdivision. A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level. The North American Vertical Datum (NAVD) of 1988 to which the base flood elevations shown on Newmarket's Flood Insurance Rate Maps are referenced.

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

Recreational Vehicle. This is a vehicle built on a single chassis, with 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

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

Special Flood Hazard Area. See "area of special flood hazard".

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

Structure. A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

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% of the market value of the structure before the damage occurred.

Substantial Improvement. Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should equal: the appraised value prior to the start of the initial repair or improvement; or in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, “substantial improvements” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the structure commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures, which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure as defined herein, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

Violation. The failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Section 5.06 (D)(3)(f), Section 5.06(D)(5), or Section 5.06 (D)(8)(d) of this ordinance is presumed to be in violation until such time as that documentation is provided.

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

(Ord. of 2-14-1996, § 5.06; Ord. of 8-4-2010)

Sec. 32-159. Telecommunications facility overlay district. (Editorial note: Amended 05/06/98)

(a) *Purpose.* The ordinance from which this section is derived is enacted in order to establish general guidelines for the siting of telecommunication towers and antennas and to enhance and fulfill the following goals:

- (1) Preserve the authority of the town to regulate and to provide for reasonable opportunities for the siting of telecommunication facilities while ensuring that telecommunications provider’s service remains effective and efficient.
- (2) Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to, impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.
- (3) Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future location availability, innovative siting techniques, and siting possibilities beyond the geographic boundaries of the town.
- (4) Permit the construction of new towers only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of towers and antennas to configure them in a manner that minimizes visual impacts of said structures.
- (5) Require antenna co-location on existing tower structures through cooperation and agreements between providers.

- (6) Provide for documentation of scheduling of recurring maintenance and safety inspections for all telecommunications facilities and appurtenances.
- (7) Provide for the demolition and removal of abandoned facilities. Provide a procedure for the town to remove abandoned towers to provide for the health and safety of citizens.
- (8) Provide for the removal or upgrade of technologically outmoded or abandoned facilities.
 - (b) *Location.* Telecommunication facilities shall be allowed in accordance with the following:
 - (1) On parcels situated in and owned by the town known as:

Map/Lot	General Location	No. Acres
U1 16	Packers Falls Rd – Follett’s Brook	32.0
U1 96		
U1 97		
U2 84	Elm St- Little League Park	4.7
U2 109B	Beech St Ext near Senior Center	1.28
U4 5	Exeter St – Police/Ambulance	1.0
U5 57T	Great Hill – Water Tank	0.5
R3 30-47	Lita Ln – Land south of apts	19.5
R5 9-1	Route 152 – Sewall Well	18.93
R6 36	Route 152-Town Transfer Station	190.0
R6 38		
R6 39		
R6 40		
R6 50B	Route 152 – Town Garage	24.0
R6 52		
U2 281	Simon’s Ln – near daycare	1.0

- (2) As co-location on pre-existing towers, antennas, and alternative tower structures.
 - (3) In other areas of Newmarket by special use permit, provided written proof be provided to the planning board that the use meets the purposes of this overlay district and that an evaluation has taken place showing that the sites listed in subsection (b)(1) of this section are unavailable or unworkable for a new telecommunications facility or co-location on an existing tower/alternative tower structure.
- (c) *Telecommunication facilities procedural requirements.* All facilities shall be subject to site plan review, except as exempted in subsection (e) of this section.
- (d) *Performance standards.*
- (1) *Principal or secondary use.* Subject to this section, an applicant who obtains site review approval to site under this chapter as a secondary and permitted use may construct telecommunications facilities in addition to the existing principal use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure shall not preclude the installation of an antenna or tower on a lot. Towers that are constructed, and antennas that are installed in accordance with the provisions of this chapter, shall not be deemed the expansion of a nonconforming use or structure. Telecommunications facilities shall not be considered an accessory use.
 - (2) *Height requirements.* The height requirements and limitations outlined in this section shall preempt all other height regulations as required by this chapter, and shall apply only to telecommunications facilities.
 - a. New tower construction: 180 feet maximum, up to 199 feet on towers allowing co-location.
 - b. Co-location on pre-existing tower: current height plus 15 percent, not to exceed 200 feet.
 - c. On existing alternative tower structure: current height plus 40 feet.
 - (3) *Setbacks and separation.* The following setbacks and separation requirements shall apply only to telecommunication facilities, and shall supersede all other such standards found elsewhere in this chapter or other applicable town ordinances and regulations.
 - a. Towers shall be set back a distance equal to 150 percent of the height of the tower from any residential structure not located on the property the tower is sited upon.
 - b. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except legal notice, such as “No Trespassing” or “Danger” signs, with a message area of two square feet or less and limited to ten feet above grade.
 - (4) *Federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owner of the towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulations, within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with this regulation, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.
 - (5) *Certification of safety standards and continued need.* The owner of a tower or antenna shall provide an annual certification to the code enforcement officer verifying compliance with building codes and safety standards. All towers shall comply with applicable building codes and TIA/EIA-222-F standards at all times. The certification shall also verify that the structure ~~is still needed for the operation of the owner's network. Said certification shall be submitted to~~

the code enforcement officer prior to December 31 of each year. Failure to submit an annual certification shall constitute abandonment and be ground for removal in accordance with subsection (g) of this section.

(e) *Exemptions.*

- (1) *Amateur radio; citizen band radio; receive-only antennas.* This section shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur or citizens band station operator, and/or is used exclusively for receive-only antennas. This section adopts the provisions and limitations as referenced in RSA 674:16(IV).
- (2) *Essential services and public uses.* Henceforth, from the date of adoption of the ordinance from which this section is derived, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the town's ordinances and regulations. Siting for telecommunications facilities shall be considered a use of land, and is addressed by this section.

(f) *Bonding, security and insurance.* Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the town administrator shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with subsection (g) of this section. Bonding and surety shall be consistent with section 5.04 of the Newmarket Site Plan Review Regulations set forth in Appendix B to this Code. Furthermore, the planning board shall require the submission of proof of adequate insurance covering accident or damage.

(g) *Removal of abandoned antennas and towers.* Any antenna or tower that is not operated for a continuous period of 12 months, or is no longer needed for the operation of the network, shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned facility, including tower footings, equipment shelter, and fencing within 90 days of receipt of a declaration of abandonment from the building official notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

(Ord. of 2-14-1996, § 5.07)

Sec. 32-160. Downtown commercial overlay district. (Editorial note: Amended 05/06/98)

(a) *Purpose.* The purpose of the downtown commercial overlay district shall be to protect and enhance the commercial, social, civic and residential functions of the downtown village area. It is recognized that the village is an important place of business and of social interaction. Controls are intended to enhance the village by recognizing the importance of street level commercial space, providing for relatively high density, a mix of uses, and design compatible with the pedestrian scale and historic nature of the area.

(b) *Overlay district boundaries.* The downtown commercial overlay district boundaries shall include all properties within the M-2 district and having frontage on Main Street or South Main Street.

(c) *Requirements.*

- (1) All permitted uses allowed in the M-2 district shall be allowed, except single-family residential, excluding manufactured housing, duplex residential, and age-restricted housing shall be prohibited in any street level space.
- (2) All uses permitted by special exception in the M-2 district shall follow the applicable requirements of section 32-46(b)(2), except that multifamily residential shall be prohibited in any street level space.

(Ord. of 2-14-1996, § 5.08)

Sec. 32-161. Historic overlay district. (Editorial note: Section adopted 04/15/09, Amended 11/04/09)

(a) *Purpose.* The purpose of the historic overlay district is to protect and preserve cultural resources, particularly structures, buildings, and places of historic, architectural, and community value in an effort to promote a vibrant downtown, support existing and new business, conserve property values, foster economic development and revitalization, strengthen and expand the local economy and business community, and instill an appreciation of the town's cultural heritage and civic beauty for the education, pleasure, and general welfare of the citizens of Newmarket.

(b) *Overlay district boundaries.* The historic overlay district shall include all the property within the area delineated as the "Newmarket Industrial and Commercial Historic District" as listed on the National Register of Historic Places in December 1980. District boundaries may be amended and new districts may be proposed following the enactment procedures of RSA 675.

(c) *Enforcement.* The provisions of this section shall be enforced as provided in RSA 674:49 and section 32-8.

(d) *Penalties.* Any person who violates any of the provisions of this section shall be subject to fines and penalties pursuant to RSA 676:17.

(Ord. of 2-14-1996, § 5.09(A), (B), (I), (M); Ord. No. 2008/09-3, 5-6-2009; Ord. No. 2009/10-01, 7-29-2009; Ord. No. 2009/2010-05, 11-4-2009)

Secs. 32-162--32-190. Reserved.

ARTICLE VI. RESIDENTIAL OPEN SPACE DESIGN DEVELOPMENT BY SPECIAL USE

PERMIT (Editorial note: Section adopted 09/01/04)

Sec. 32-191. Authority.

Pursuant to RSA 674:21, the planning board is hereby authorized to grant a special use permit for a residential open space design development in accordance with the restrictions and requirements of this article. The planning board is further authorized to adopt amendments to the subdivision regulations in accordance with RSA 674:35 and RSA 674:36 in order to further administer the requirements of this chapter.

(Ord. of 2-14-1996, § 6.01; Ord. of 9-1-2004)

Sec. 32-192. Purpose.

This article provides an optional flexible method of residential development that is consistent with principles of sound planning and wise land use that are not implemented through traditional zoning methods. All residential developments seeking a special use permit shall be administered by the planning board to insure that open space design development opportunities do not adversely impact neighboring properties, or the citizens and Town of Newmarket. The planning board shall consider the following purposes and balance them accordingly during review of individual applications:

- (1) Maintain and preserve rural character of the Town of Newmarket by allowing an alternative residential development option which preserves large areas of open space, provides for visual buffers from existing roads and residential development, and permits agricultural opportunities on parcels of open space.
- (2) Require the preservation of large, contiguous parcels of open space throughout the town and in neighboring jurisdictions and as found in the Newmarket Open Space Conservation Plan.
- (3) Provide for a diversity of housing types, opportunities, and styles.
- (4) Encourage flexible road design that will contribute to and enhance a rural atmosphere and maintain adequate safety design standards.
- (5) Encourage connected corridors of open land throughout town and region for preservation of habitat, environmental resources, and public enjoyment. To enhance the opportunity for

protected open spaces in town and new subdivisions eventually adjoin each other, ultimately forming an interconnected network of conservation areas across the town.

- (6) Encourage open space design in highly sensitive areas of town that are part of an overall plan for the conservation of natural resources and preservation of large contiguous unfragmented parcels of land.
- (7) Require minimal lot sizes and the clustering of homes in close physical proximity to maximize preservation of open space lands.
- (8) Provide for a flexible and coordinated application process to reduce design costs to the applicant and promote a collaborative result with board input. The special use permit is meant to allow the board to participate jointly with the applicant to prepare a development that is consistent with this chapter, applicable regulations, and the Master Plan for the Town of Newmarket.
- (9) Minimize fragmentation of open space, habitat, and conservation land on a variety of scales.

(Ord. of 2-14-1996, § 6.02; Ord. of 9-1-2004)

Sec. 32-193. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Community homeowners' association means a private nonprofit corporation, association or other nonprofit and/or voluntary legal entity established by the developer for the benefit and enjoyment of the residents of the development. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or conveyed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of association or incorporation must be acceptable to the planning board and reviewed by town counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.

Developable land base means the total area of land that forms the basis for determining the baseline for development and conservation land calculations. This area shall be calculated using the following limitations (the more restrictive designation shall apply):

- (1) Not included:
 - a. Open water/land that is subject to tidal flows.
 - b. Very poorly drained soils.
 - c. Slopes equal to or greater than 25 percent.
- (2) Included up to and equal to 25 percent of the developable land base. The total of the following areas can be used, in their aggregate, to account for no more than 25 percent of the developable land base:
 - a. Poorly drained soils.
 - b. Lands that are within utility easements.
 - c. Lands within the 100-year floodplain.

Exclusive use land division means land ownership divisions that are created as part of this chapter and are limited to the exclusive use of the owner. This land division is meant to provide flexibility in design, provide for the siting of structures and ownership. The ownership interest can include fee-title, condominium format, or any other reasonable method of division. The creation and modification of these land parcels shall be considered a subdivision in accordance with RSA 672:14 but shall not require compliance with provisions of this chapter regarding frontage and lot area except as found in this article.

Open space - common land means any parcel or area of land set aside as a result of an approval under this chapter. This land area shall be designated for the benefit and enjoyment of the residents of the

approved development. These areas may contain accessory structures for recreation purposes, water access, and improvements necessary and appropriate for the educational, recreational, cultural, social or other noncommercial/nonresidential/non-industrial uses for residents of the subdivision, plus any utility services (including water wells, well radii, and individual and/or common septic facilities or land areas required for state septic approvals) utilized by the residents of the subdivision. Other than the above, common land shall be preserved in perpetuity through deed restriction, conservation easement, or other legal restriction. The restriction shall be recorded and designated on the approved and recorded plat to prohibit from any further use, subdivision, or development.

Open space - conservation land means land that is preserved as protected open space in perpetuity through deed restriction, conservation easement, or other legal restriction and that is designated on the approved and recorded plat. Restrictions must be tied to the title of the land, regardless of its subsequent ownership. Such land may be given to a public body dedicated to conservation of forests, parkland, etc., or to a private conservation trust, with the intent of preserving in its original ecological condition. Conservation land areas may be located within well radii and may contain wells and associated appurtenances but shall not contain septic facilities, drainage facilities, or other recreational structures. Only unpaved pedestrian trails and associated structures (such as kiosks, walking bridges, etc.) are permitted in these spaces. Conservation land is not required to be open to the public access unless it is required as part of an elective bonus provision provided for in this chapter or at the wishes of the landowner.

(Ord. of 2-14-1996, § 6.03; Ord. of 9-1-2004)

Sec. 32-194. Location.

Open space design subdivisions shall be permitted in the R-1, R-2, and M-4 districts. Open space design subdivisions in the M-4 district shall meet additional criteria with respect to outdoor recreation, such other requirements shall be adopted by the planning board as part of the subdivision regulations.

(Ord. of 2-14-1996, § 6.04; Ord. of 9-1-2004)

Sec. 32-195. Special use permits.

All open space design developments shall obtain a special use permit from the planning board. The special use permit shall clearly set forth all conditions of approval and shall list all plans, drawings and other submittals that are part of the approved use. Prior to the granting of a special use permit, the planning board shall hold a public hearing. Everything shown or otherwise indicated on a plan or submittal that is listed on the special use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions of approval without modification by the planning board.

(Ord. of 2-14-1996, § 6.05; Ord. of 9-1-2004)

Sec. 32-196. Standards for approval.

In addition to standard review requirements of the subdivision regulations, the planning board must find the following conditions to have been met in order to grant a special use permit.

- (1) The application is in compliance with all requirements of this chapter.
- (2) There is no existing violation of state or federal environmental law or regulation or this chapter on the site. Applications where such a violation exists must include mitigation or remediation plans as part of an application.
- (3) The open space in the development is designed consistent with the requirements of this chapter. This determination, to be made by the planning board, shall be made by considering the following aspects of the surrounding area.
 - a. Protection of natural resources, determined through analysis of the following:
 1. Protection of environmentally sensitive areas, including but not limited to, wetlands, shoreland buffers, wildlife corridors, significant groundwater resources, etc.,

2. Maintenance of viewsheds and other visually appealing aspects of the site;
 3. Connectivity to regional open space areas and adjoining parcels;
 4. Identification and preservation of wildlife corridors and rare and/or endangered species and supporting habitats.
- b. Protection of cultural resources, determined through analysis of the following:
1. Establishment of new and protecting existing trailways for travel;
 2. Protection of historic buildings or significant historical landscapes;
 3. Establishment, protection and promotion for agricultural uses of the site;
 4. Enhancement of other active or passive recreation facilities or opportunities.
- c. At least 40 percent of the developable land base for the parcel must be set aside and designated as the minimum required open space.
1. At least 75 percent of minimum required open space shall be designated as conservation land, as defined in this chapter.
 2. Up to 25 percent of the minimum required open space may be considered common land, as defined in this chapter.
 3. Additional land that is not included in the developable land base shall be considered additional open space - conservation land as defined herein but shall not be subject to other requirements regarding shape and size.
- d. The minimum restricted open space and/or common area within a development subject to a special use permit under this chapter shall be owned by and/or legally restricted by requirements of this chapter by an easement owned by at least one of the following:
1. Community homeowners' association, which may use it only in accordance with these restrictions, or may later grant the land to a private or public entity to hold as conservation land.
 2. A public or private conservation entity that shall hold and have enforcement rights related to the status of the land as conservation land.
 3. As additional protection, all land to be restricted shall include a notation on the recorded Mylar indicating the land as "This land is designated and restricted as open space in accordance with RSA 674:21-a and shall be enforceable by the Town of Newmarket."
- e. The minimum restricted open space shall be designed in accordance with additional regulations governing the shape, configuration, location, and management plan adopted by the planning board as part of the subdivision regulations.

(Ord. of 2-14-1996, § 6.06; Ord. of 9-1-2004)

Sec. 32-197. Application procedure.

Applications for special use permits for an open space design development shall be made in accordance with the procedures set forth in the relevant sections of the subdivision regulations of the Newmarket Planning Board. These applications shall be joined with an application for subdivision approval in the interest of procedural ease. The planning board shall adopt regulations providing for the following minimum required milestones in the application process.

- (1) Pre-application discussion. *Planning department.*
- (2) Environmental resource and yield plan submittal. *Planning department.*
- (3) Yield equation and yield plan review and recommendation to the planning board. *Planning department.*

- (4) Submission hearing, preliminary plan review, and yield equation/plan approval. *Planning board review - notification and public hearing required.*
- (5) Site walk.
- (6) Application consideration.
- (7) Decision.

(Ord. of 2-14-1996, § 6.07; Ord. of 9-1-2004)

Sec. 32-198. Approval of applications.

The planning board may condition its approval on reasonable conditions necessary to accomplish the objectives of this chapter, the Newmarket Master Plan, or any other relevant federal, state, or local regulation ordinance or law.

(Ord. of 2-14-1996, § 6.08; Ord. of 9-1-2004)

Sec. 32-199. Parent parcel.

Lot size and frontage. The minimum parent parcel lot size shall be governed as any development that is required to produce a minimum of five acres of restricted open space that satisfies this chapter. The minimum frontage for the development shall be of sufficient length to provide safe access for a roadway to access the parcel. The width of the access shall be a minimum of 50 feet and shall be dedicated as a fee title interest to the town for a public roadway or a community homeowners' association for a private roadway. Frontage on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. The access to the development shall be over fee-title ownership land and cannot be through an easement of right-of-way.

(Ord. of 2-14-1996, § 6.09; Ord. of 9-1-2004)

Sec. 32-200. Density.

Maximum density, in terms of the number of allowable units, for an open space design shall be determined by use of an environmental resource and yield plan and development yield equation. All numbers that are 0.5 and over (x.5 and above) shall be rounded up to the next highest round number. The purpose of the yield plan and the development yield equation is to show the density that is reasonably achievable with respect to environmental impacts, economic realities, and sound land use. The intent is to create a resource inventory that is part of the overall application and not to require an applicant to incur additional expense in the formal engineering design of two separate subdivision plans. Both methodologies shall be submitted showing the development count and the allowed density shall be determined by the planning board. The planning board shall adopt additional regulations, as part of the subdivision regulations that provide for the requirements and submittal of materials in accordance with this article.

- (1) An additional density bonus of ten percent may be granted by the planning board as part of the special use permit provided the minimum open space required as part of section 32-196(3)c is greater than or equal to 50 percent of the developable land base.
- (2) An additional density bonus of five percent may be granted by the planning board as part of the special use permit provided public access is granted to the open space for passive recreation purposes. Such grant shall be non-lapsing and provided for in the deeds of the parcels.

(Ord. of 2-14-1996, § 6.10; Ord. of 9-1-2004)

Sec. 32-201. General requirements.

This article supersedes any provision to the contrary found elsewhere in this chapter with respect to lot size, setbacks, frontage, access, and unit density for land divisions created under this chapter.

- (1) Only single-family detached residential uses shall be permitted in an open space design development.

- (2) Setbacks, dimensions, and building sites. In addition to these minimum requirements, the planning board shall adopt regulations governing the definition and location of building sites, the design of shared access points and driveways, and other provisions necessary to carry out these requirements.
- a. The following frontage requirements shall apply:
 1. The development shall have 50 feet of frontage where the parcel accesses the existing town road system and the access shall be within the Town of Newmarket.
 2. Each single-family lot or unit shall have a minimum of 25 feet of exclusive use land with frontage on interior roadways or access roads for driveway purposes. Shared driveways and access easements along access roads may be permitted to satisfy this requirement.
 3. No more than three houses may share a single access point to the interior roadways.
 4. No building shall be more than 500 feet from the interior roadways.
 - b. Developments that contain three dwelling units or less may be accessed from an existing town road via a single, shared private right-of-way, provided the following additional requirements are provided:
 1. The buildings are no greater than 500 feet from the point of access.
 2. The parcel has 200 feet or more of frontage on an existing town road.
 3. Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability pursuant to RSA 674:41(I)(d)(2) has been recorded in the county registry of deeds for the site for which the building permit is sought.
 4. The minimum required open space for any such development shall be eight acres.
 - c. All developments shall contain a legal description that designate a reasonable amount of exclusive use land attributable to each particular structure for the purpose of ownership and reasonable accessory structures, landscaping, and yard areas. This provision is not meant to establish a minimum lot area and none shall be required beyond this provision.
 - d. The following setbacks shall apply to all residential structures within the development:
 1. 75-foot setback from all exterior property lines of the parent parcel.
 2. 25-foot setback from the edge of pavement for roadways within, and part of, the development.
 3. 30-foot structural separation for all single-family structures within the development.
 4. Ten-foot structural setback from all exclusive use land delineation lines, except where shared access easements are provided.

(Ord. of 2-14-1996, § 6.11; Ord. of 9-1-2004)

Sec. 32-202. Other regulations applicable.

The planning board shall adopt regulations as part of the subdivision regulations as directed herein and consistent with this chapter, which shall apply to the open space design development, including the right to waive such regulations.

(Ord. of 2-14-1996, § 6.12; Ord. of 9-1-2004)

Sec. 32-203. Utilities.

All utilities serving the development shall be underground.

(Ord. of 2-14-1996, § 6.13; Ord. of 9-1-2004)

Sec. 32-204. Expiration.

Any special use permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest within 12 months after the day of approval, or in accordance with the terms of approval (RSA 674:39).

(Ord. of 2-14-1996, § 6.14; Ord. of 9-1-2004)

Secs. 32-205--32-231. Reserved.

ARTICLE VII. OTHER REQUIREMENTS

Sec. 32-232. Home occupation and home-based business.

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

- (1) *Home occupation.* One home occupation shall be permitted in each residential unit. No town approval is required. This type of home occupation shall be such that there are no impacts detectable from beyond the property boundaries. There shall be no nonresident employees, no increase in traffic generation, no increase in parking, and no outside activity or storage of any kind. A sign meeting the standards of article IV of this chapter shall be permitted.
- (2) *Home-based business.* One home-based business shall be permitted in each single-family residential unit, subject to the following:
 - a. The home-based business is accessory to the residential use.
 - b. Size limits. The home-based business shall not exceed the following size limits without a special use permit from the planning board. The board shall consider the size of the lot, the suitability of access, ability to provide municipal services, impact on neighbors and the neighborhood, and other such considerations.
 1. Nonresident employees shall not be greater than one per acre of lot size, or greater than a total of four.
 2. The home occupation shall be located within the dwelling or an accessory structure, and shall be limited to a floor area of not more than one-third of the total floor area of the primary residential structure including its attic, basement and attached garage.
 - c. Home-based businesses uses may include office, personal or business service, light manufacturing, or other uses of a similar nature, but there shall be no on-site sale of goods except as is incidental to the primary activity or service.
 - d. There shall be no outdoor activity or use, including storage and parking of commercial vehicles of 1.5-ton capacity or greater, beyond the provision of employee parking.
 - e. The home occupation shall not be such that it requires regular or frequent service by heavy commercial trucks since this would adversely impact the character of the neighborhood.
 - f. Sufficient on-site parking shall be provided.

(Ord. of 2-14-1996, § 7.01)

Sec. 32-233. Mixed-use development.

- (a) *Nonresidential only.* Mixing of multiple nonresidential uses on a lot shall be permitted.
- (b) *Mix of residential and nonresidential uses on one lot.* In certain instances, it is appropriate to have a mix of permitted uses on a single lot. Residential use may be permitted in combination with nonresidential uses on a single lot or in a single structure, provided the following conditions are met:

~~(1) Permitted only in the M-1, M-2, M-3, M-2A and M-4 districts, and in other districts as~~

specified elsewhere in this chapter. Mixed-use redevelopments within the M-1 district are subject to the special use permit requirements as set forth in section 32-45(b)(2)b. (Editorial Note: Amended 11/18/09)

- (2) Site plan review approval shall be required for the entire property to ensure that the site is suitable for the proposed mix of use.
- (c) Existing commercial properties in M-2A zone shall not add 3 residential units or more unless it can be shown by completion of a Fiscal Impact Study and a Market Analysis that the entire development will have a positive fiscal impact compared to current tax revenues. (Editorial note: Added 08/07/13)

(Ord. of 2-14-1996, § 7.02; Ord. of 11-18-2009; Ord. of 08 07 2013)

Sec. 32-234. Accessory apartments. (Editorial note: Amended 09/01/04).

(a) *Purpose.* Accessory apartments are permitted in all zoning districts that permit single family residential uses to ensure adequate provision of small, affordable residential units for various segments of the population, to help homeowners utilize excess space to generate revenue to help offset the costs of home ownership, and to encourage the adaptive reuse of historic homes. (Editorial note: Amended 03/01/17)

(b) One accessory apartment shall be permitted per detached single-family residence if granted a special exception by the zoning board of adjustment. The accessory apartment shall be contained entirely within or attached to the detached single-family residence. The zoning board of adjustment shall grant the special exception if the following conditions are met: (Editorial note: Amended 03/01/17)

- (1) The accessory apartment shall be a minimum of 300 square feet and a maximum of 1,000 square feet of finished living area. (Editorial note: Amended 03/01/17)
- (2) The accessory apartment shall either be an efficiency apartment (without a separate bedroom), or a one-bedroom or two bedroom apartment. (Editorial note: Amended 03/01/17)
- (3) One of the dwelling units must be owner-occupied.
- (4) There shall be a minimum of two parking spaces for each dwelling unit. A parking space shall be defined as a rectangular space nine feet by 18 feet. Parking spaces shall be permitted within the setbacks if the location is over 50 feet from abutting dwelling units.
- (5) No exterior changes shall be made unless they maintain the aesthetic continuity of the accessory dwelling unit with the principal dwelling unit as a single-family dwelling.
- (6) Adequate water supply and sewage disposal shall be provided. If town water and sewer services the site, tie-in fees shall be paid.
- (7) Granting of the special exception would be consistent with section 32-5(1)b.
- (8) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit; however, it shall not be required to remain unlocked. (Editorial note: Amended 03/07/17)
- (c) Subdivision and site plan review approval are not required.

(Ord. of 2-14-1996, § 7.03; Ord. of 9-1-2004)

Sec. 32-235. Sexually oriented businesses. (Editorial note: Section adopted 04/04/01)

(a) *Purpose.* The purpose of this section is to regulate sexually oriented businesses which, unless closely regulated, may have serious secondary effects on the community. These secondary effects include, but are not limited to, the following: depreciation of property values, deterioration of neighborhoods, increases in vacancy rates in residential and commercial areas, increases in incidences of criminal activity, increases in litter, noise, and the interference with residential property owner's enjoyment of their property in the vicinity of such businesses. It is the Town's intent to prevent community-wide adverse impacts, which can be brought about by the concentration of adult businesses in close proximity to each other or proximity to incompatible uses such as schools, churches, parks, public facilities and buildings and

residentially zoned uses. The town finds that it has been demonstrated in various communities that the concentration of adult businesses causes adverse impacts described in this subsection and can cause businesses and residents to move elsewhere. It is, therefore, the further purpose of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their close proximity to incompatible uses, while permitting the location of such businesses in certain areas. (See additional information considered upon adoption of the ordinance from which this section is derived available as reviewed and incorporated into the record of the planning board as part of its hearing on February 13, 2001, regarding the adoption of the ordinance from which this section is derived.)

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, in whole or in part, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business

Sexually oriented businesses or *SOB* includes the following:

- (1) Any business conducted for the entertainment of adults, engaged in the selling, renting, or displaying of publications depicting the specified anatomical areas or specified sexual activities described herein or other material of a sexually explicit nature. Included in the definition is any business, that as substantial or significant course of conduct, sells, offers for sale, rents, exhibits, shows or displays publications depicting the anatomical areas or specified sexual activities described herein or other material of a sexually explicit nature. Also included in this definition is any business selling, renting, or displaying sexually oriented devices intended for use in the specified sexual activities.
- (2) A particular business at a particular location that sells, offers for sale, rents, exhibits, shows or displays specified anatomical areas or specified sexual activities in the form of a book, magazine, newspaper, pamphlet, film video or any other form or medium, or sexually oriented devices intended for use in the specified sexual activities, which receives 15 percent or more of the gross revenue from, or devotes 15 percent or more of the stock on hand or 15 percent or more of the gross floor area to such activity, is presumed to be engaging in substantial or significant conduct with respect to such activity.
- (3) Any business wherein the selling of any food or beverage served by employees engaged in partial or total nudity or exposed specified anatomical areas.
- (4) Any business conducted for the entertainment of adults wherein an employee, patron or any other person engages in or are shown specified sexual activities or exhibit or engage in partial or total nudity or otherwise expose specified anatomical areas.
- (5) Any business, which as a substantial or significant portion of its business, provides live or filmed entertainment wherein specified anatomical areas of the human anatomy are exposed.

Specified anatomical areas includes any of the following, whether actual or simulated:

- (1) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely covered human genitals or pubic region, buttock, and female breast below a point immediately above the top of the areola.

Specified sexual activities means and includes any of the following:

- (1) The fondling or sexual touching of human genitals, pubic regions, buttocks, anus, or female breasts;
 - (2) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation, or sodomy;
 - (3) Masturbation, actual or simulated; or
 - (4) Excretory functions as part of, or in connection with, any of the activities set forth in this definition.
- (c) Sales of obscene matter. A sexually oriented business may not sell or display obscene matter, as that term is defined by RSA 650:1 as it is amended.
- (d) *Location requirements.* A sexually oriented business shall not be located within a residential district or within 750 feet of any of the following:
- (1) A church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities;
 - (2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (3) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, or other similar public land within the town which is under the control, operation, or management of the town parks and recreation authorities;
 - (4) The property line of a lot devoted to a residential use as defined in this chapter;
 - (5) An entertainment business which is oriented primarily towards children or family entertainment; or
 - (6) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state.
- (e) *Development and performance standards.* The following development standards shall apply to all sexually oriented businesses:
- (1) No adult business shall be located in any temporary or portable structure.
 - (2) Trash dumpsters shall be completely enclosed by a screening enclosure so as not to be accessible to the public.
 - (3) Off-street parking shall be provided as specified in the site plan review regulations.
 - (4) The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times.
 - (5) Any signage shall conform to the requirements of this chapter, and shall not contain sexually oriented photographs, silhouettes, or other pictorial representations.
 - (6) All entrances to an SOB shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.
 - (7) No residential structure or any other nonconforming structure shall be converted for use as an adult business.
 - (8) No residence, apartment, living quarters or mobile home shall be located on the parcel where an adult business is located.
 - (9) The following performance standards shall apply to all sexually oriented businesses:

- (10) The establishment of any sexually oriented business shall require site plan review approval from the planning board. As part of any application to the planning board, the applicant shall provide copies of any other permit required by the town, state, or federal government. No approval shall become final until local licensing requirements have been satisfied.
- (11) The adult business shall not conduct or sponsor any special events, promotions, festivals, concerts, or similar activities, which would create a demand for parking spaces beyond the number of spaces, required for the business.

(Ord. of 2-14-1996, § 7.04)

Sec. 32-236. Affordable elderly housing. (Editorial note: Section Adopted 09/25/02)

(a) *Authority.* In accordance with RSA 674:21(c) and RSA 674:21(h), the ordinance from which this section is derived is adopted to permit the establishment and construction of affordable elderly housing facilities in the Town of Newmarket. Consistent with the provisions of RSA 674:21, this section provides for a use incentive that permits increased densities and development flexibility.

(b) *Purpose.* It is declared to be in the public interest and for the general welfare of the Town of Newmarket to permit the development of affordable elderly housing facilities specifically suited to address the special housing needs of the elderly. It is the purpose of this section to establish provisions under which affordable elderly housing developments may be permitted by the planning board in a flexible manner that recognizes the unique needs of such facilities in terms of design, cost and accessibility while protecting the health and safety of the residents and the general welfare of the citizens of Newmarket.

(c) *Special use permit and overlay district.* Affordable elderly housing facilities are permitted by special use permit at a density and within an overlay zone as designated herein. The special use permit shall be administered by the planning board. The board is authorized to grant, deny or grant with conditions a permit to establish an affordable elderly housing facility. Site plan review approval, in accordance with the planning board's regulations, shall also be required. The planning board shall be authorized to adopt additional regulations as part of the site plan review regulations in order to address the unique concerns related to affordable elderly housing facilities and implement this section.

(d) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Affordable. An elderly housing facility shall be considered "affordable" if 75 percent or more of all units that are approved for the site, that have been constructed, are operated and constructed in accordance with the guidelines of or have been funded by a federal, state or local program that provides below market-rate housing for low or moderate income persons as part of its purpose.

Affordable elderly housing means housing used, designed and adapted for use by elderly citizens, 55 years of age and older, and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended, and licensed by any appropriate state and/or federal agencies. Affordable elderly housing may be contained in a single building or group of buildings and shall have protective mechanisms (such as a land use restriction and/or conditions on local approvals) to ensure occupation of such units by adults over 55 years of age for a period as long as the structures or use fails to comply with all underlying zoning requirements for the district in which it is located. An in perpetuity age restriction shall be enforceable by the Town of Newmarket as part of necessary local approvals. Conversion of affordable elderly housing facilities to other uses shall not occur unless the proposed use complies with all applicable zoning and site plan review regulations, even if such conversion requires the demolition and removal of excess units.

(e) *Criteria for approval.* The planning board may grant approval to permit the construction of affordable elderly housing only upon a finding that the following specified conditions exist. The applicant shall provide a narrative justifying its position on these criteria. The

enforcement of these criteria shall be met to the maximum extent possible with due regard to the affordability of the project:

- (1) Any site on which an affordable elderly housing complex is proposed shall be reviewed with respect to the availability of shopping services, medical services and transportation services thereto, and that the proposed construction and design of the affordable elderly housing complex shall contain the usual amenities and living aids found in housing designed for use by the elderly and as required by state and federal law such as accessibility features, communal facilities, etc.
- (2) That the public interest will be served generally if the proposal were to establish affordable elderly housing on the site and the establishment of an affordable elderly housing complex on the site would not cause a diminution in the property values of surrounding parcels.
- (3) That any conflicts with the character of the adjacent properties will be minimal in terms of the size and bulk of the visible buildings, through the use of buffers, landscaping or location of the buildings on site. This provision is meant to assure that facilities are reasonably consistent either with residential style buildings or sufficiently secluded so as to minimize negative impacts to abutting property.
- (4) The development shall be landscaped so as to enhance its compatibility with the town with emphasis given to the use of existing natural features where possible.
- (5) The design and site layout of the development shall emphasize the rural character of the town, maximize the privacy of the dwelling units, preserve the natural character of land, provide for the separation of parking and neighboring residential uses, and consider such factors as orientation, energy usage, views, etc.
- (6) Parking facilities shall comply with the existing site plan review regulations, unless the planning board authorizes waivers in accordance with information submitted showing a decreased need in parking. The planning board may require land to be set-aside for future parking facilities and require adequate financial security to assure its construction with the Newmarket Site Review Regulations.
- (7) Seventy-five percent of all units on the site shall be identified as and remain affordable in accordance with this section for as long as the on-site structures fail to comply with all other zoning requirements of the underlying district.
- (8) Affordable elderly housing facilities shall not include manufactured housing units.
- (f) *Requirements.*
 - (1) Zoning requirements for the underlying district shall apply unless covered below.
 - a. The planning board shall, through its site plan review regulations, review the location and provision of drainage facilities, adequate access for emergency vehicles, parking, landscaping and other facilities required to serve the residents of the facility.
 - b. Setbacks for affordable elderly housing facilities shall be 35 feet from all property lines.
 - c. The buffer shall be of sufficient opacity to adequately shield the abutting residential properties from the development. Buffer strips must contain vegetation that will partially screen the view from adjacent residential property during all seasons. This screening must limit visual contact between uses and create a strong impression of the separation of spaces.
 - d. Existing trees and vegetation must be incorporated into the buffer strips or landscaping design. Fencing alone may not be considered an acceptable method of screening, but fencing may be an element of design.
 - (2) Overlay zone. Affordable elderly housing shall be permitted within the R-1, R-2 and R-3 districts on sites that are presently served (or is brought to the site) by both town water and

sewer and also have frontage and access limited to one of the following roadways: Route 108 from the Newfields boundary north to Elm Street, Route 152 or Bennett Way.

(3) Density.

- a. As part of the special permit process, the planning board may permit an increased density for the number of units per developable acre of land. The board shall consider factors such as sufficiency of access, water and sewer capacity, functionality, site design and layout. Standard permissible density shall be eight units per developable acre. In no case shall the density, including bonuses, exceed ten units per developable acre.
- b. The calculation of developable acres shall not include: very poorly drained soils, slopes exceeding 25 percent and water bodies. No more than 25 percent of the total calculation of developable acres may be comprised of poorly drained soils.
- c. Density bonus. When an applicant proposes a site design that includes landscaping and setbacks that meet the following criteria, a density bonus may be awarded by the board of up to 25 percent (to a maximum of ten units per developable acre):
 1. The facility provides for a naturally landscaped buffer increased by an additional 25 percent where a proposed development abuts residential property.
 2. No roads or driveways shall be located within any part of this buffer zone, but may be located in the additional setback area.
 3. Where existing vegetation is not present, a buffer of similar opacity may be planted providing the same separation. Deciduous and coniferous trees shall be incorporated within the design and shall have a caliper of at least three inches at a point six inches above the root ball. One tree shall be planted for every 100 square feet of buffer area.

(g) *Saving clause.* If any portion of this section is found invalid by a court of competent jurisdiction, this finding shall not invalidate the remainder of this section.

(Ord. of 2-14-1996, § 7.05; Ord. of 9-25-2002)

Sec. 32-237. Lighting and illumination. (Editorial note: Section adopted 06/18/03)

(a) *Purpose.* This section is intended to eliminate problems of glare, minimize light trespass and obtrusive light created by improperly designed and installed outdoor lighting. Further purposes are to enhance and protect the quality of the New Hampshire night sky, Newmarket's rural character, and conserve energy and resources. These concerns are balanced while maintaining safety, security and productivity by establishing limits for the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination in the Town of Newmarket.

(b) *Prohibitions.* This section applies to all lighting within the Town of Newmarket on any site except for legal nonconforming uses as covered in section 32-5 and temporary or emergency lighting.

- (1) *Mercury vapor lamps fixtures and lamps.* The installation of any mercury vapor fixture or lamp for use as outdoor lighting is prohibited.
- (2) *Laser source light.* The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
- (3) *Searchlights.* The operation of searchlights for advertising purposes is permitted by permit issued by the building inspector for a period of two nights (regardless of hours in operation) per year per lot.
- (4) *Neon.* Neon lighting shall be limited to signage use and must be located within the exterior dimension of the sign as approved under this section. Neon lighting as architectural accents or used as window displays is prohibited.

(c) *Residential lighting.* These provisions are intended to prevent private and public nuisances and protect property values. This section applies to existing and proposed single-family and duplex residential uses.

- (1) Residential lighting uses shall not be used or maintained in such a fashion as to inhibit or interfere with the use and enjoyment of neighboring properties.
- (2) Spot lights, flood lights and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property. Security lighting using motion detection switches are encouraged, but continual lighting must be angled or shielded in such a fashion as to not produce glare onto neighboring property, particularly dwelling units.
- (3) Accent lighting, low-wattage seasonal lighting and other fixtures commonly associated with residential uses are not intended to be prohibited by this section.

(d) *Nonresidential and multifamily uses.* These provisions are intended to provide for more comprehensive lighting regulations due to potential negative impact on a greater number of residents and the public from inappropriate lighting installation or fixtures. In addition, it is the intent of these restrictions to prevent lighting conflicts and competing lighting installations in commercial areas of the Town of Newmarket, particularly where the town encourages mixed-use development. This section applies to nonresidential uses and any structure with three or more residential units. The planning board shall adopt regulations as part of the site plan review regulations that implement the purpose and intent of this section.

- (1) A building permit shall be required prior to the installation of any new fixtures on existing nonresidential and multifamily uses. If the original site plan approval granted by the planning board specified, in detail, the type and nature of lighting, any increase or change in lighting that may have an increased impact on the site shall be referred to the planning board for site plan review. The building official shall approve a permit for other installations upon a finding that the fixtures comply with the following general lighting requirements.
- (2) General lighting requirements:
 - a. All lighting in the Town of Newmarket is required to have full-cutoff shielding, except for that portion of lighting installation that is consistent with the Mill yard Lighting Theme as defined in the Newmarket Planning Board Site Plan Review Regulations, set forth in Appendix B to this Code.
 - b. The new installation of up-lighting, by any method, is prohibited; however, the limited use of upward landscape lighting on a case-by-case basis may be approved provided the lighting does not spill onto neighboring properties or public ways.
 - c. Non-cutoff wall pack type fixtures are prohibited.
 - d. Existing lighting sources that do not present a health and safety issue with respect to glare on public ways or nuisance as a result of off-site illumination shall be exempt from the provisions of this section.
- (3) New fixtures accompanying establishment of new uses or change of use that requires site plan review shall have lighting plans approved as part of the site plan review process.

(Ord. of 2-14-1996, § 7.06; Ord. of 6-18-2003)

Sec. 32-238. Impact fees. (Editorial note: Section adopted 02/07/01)

(a) *Authority and applicability.*

- (1) The ordinance from which this section is derived is authorized by RSA 674:21 as an innovative land use control. The administration of this section shall be the responsibility of the planning board. This section, as adopted by the town council, as well as regulations and studies adopted by the planning board consistent with and in furtherance of this section, shall govern the assessment of impact fees imposed upon new development in order to meet the needs

occasioned by that development for the construction or improvement of public capital facilities owned or operated by the Town of Newmarket or the Newmarket School District.

- (2) The public capital facilities for which impact fees may be assessed in Newmarket include, and are limited to, water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreation facilities not including public open space.
- (3) Prior to assessing an impact fee for one or more of the public capital facilities enumerated in this section, the planning board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of public capital improvement costs that are created by new development. For purposes of this chapter, the "Methodologies for the Calculation of Impact Fees for Newmarket, New Hampshire" dated October 23, 2000, are those prepared by Bruce Mayberry, Planning Consultant, Yarmouth, Maine and approved by the Newmarket Planning Board and are incorporated herein by reference and made a part hereof. Said adopted methodologies may only be revised after a public hearing by the planning board and after a subsequent public hearing and amendment of this chapter by the town council. Such calculations shall reasonably relate to the capital costs associated with the increased demand placed on capital facility capacity by new development.
- (4) The following regulations shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development.
 - (b) *Findings.* The Town of Newmarket hereby finds that:
 - (1) The Town of Newmarket is responsible for and committed to the provision of public capital facilities and services at standards determined by the town to be necessary to support development in a manner, which protects and promotes the public health, safety and welfare;
 - (2) Public capital facilities have been and will be provided by the town utilizing funds allocated through the Capital Improvements Program, which has been adopted and regularly updated by the planning board per the Newmarket Town Charter;
 - (3) An impact fee ordinance for public capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Newmarket;
 - (4) New development in Newmarket will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate public capital facilities for its residents;
 - (5) Impact fees may be used to assess an equitable share of the growth-related cost of the capacity of public capital facilities resulting from the new development in proportion to the facility demands created by that development;
 - (6) According to data compiled by the NH Office of State Planning, as of 1999 Newmarket had the lowest equalized property valuation per capita of all cities and towns in Rockingham County;
 - (7) An analysis of equalized valuation per capita prepared by the NH Office of State Planning for years 1980, 1990 and 1999 indicates that Newmarket's equalized valuation per capita was 30 to 40 percent lower than the state average in those comparison years;
 - (8) In the absence of impact fees, anticipated residential and nonresidential growth and associated capital improvement costs will likely necessitate an excessive expenditure of public funds in order to maintain adequate public capital facility standards and to promote and protect the public health, safety, and welfare;
 - ~~(9) Impact fees assessed pursuant to this section will not exceed the costs of:~~

- a. Providing additional or expanded public capital facilities necessitated by new development in Newmarket; and/or
- b. Compensating the Town of Newmarket or the Newmarket School District for public capital facility capacity that it provided in anticipation of new development in Newmarket.

(c) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Fee payer means the applicant for the issuance of a permit that would create new development as defined in this subsection.

Gross floor area means the sum of the areas of all floors of main and accessory buildings on the lot as measured to the outside surfaces of the exterior walls. The gross floor area shall include basements, lobbies, and stair openings, elevator shafts and storage. The gross floor area shall exclude open wells (atriums), mechanical rooms, crawl spaces and attics without floors, attics used only for mechanical services, porches, balconies and open-sided roofed-over areas.

New development.

- (1) The term "new development" means an activity, which results in:
 - a. The creation of a new residence or residential units (as defined by section 32-11);
 - b. The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of residential units;
 - c. Construction of a new nonresidential building or, a net increase in the gross floor area of any nonresidential building;
 - d. The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessment methodologies adopted by the planning board; or
 - e. A new or modified service connection to the public water system or the public wastewater disposal system of the Town of Newmarket that would result in a net increase in demand on the capacity of these facilities.
- (2) The term "new development" shall not include the replacement of an existing mobile home, or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, intensification of, or type of use, and where there is no net increase in demand on the public capital facilities of the Town of Newmarket.
- (d) *Computation of impact fee.*
 - (1) The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the planning board for the purpose of public capital facility impact fee assessment in Newmarket. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. The amount of any impact fee shall be computed based on the municipal public capital improvement cost of providing adequate public capital facility capacity to serve new development. Such documentation shall be available for public inspection in the finance office of the Newmarket Town Hall.
 - (2) In the case of new development created by the conversion or modification of an existing use, the impact fee assessed shall be computed based upon the net increase in the impact fee assessment for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of the ordinance from which this section is derived.

- (e) *Assessment of impact fee.*
- (1) Impact fees shall be assessed by the code enforcement officer, prior to or as a condition to issuance of a building permit on new development to compensate the Town of Newmarket for the proportional share of the public capital facility costs generated by this development.
 - (2) Any person who seeks a permit for new development, including permits for new or modified service connections to the public water system or public wastewater disposal system that would increase the demand on the capacity of those systems, is hereby required to pay the public capital facility impact fees authorized under this section in the manner set forth herein, except where all or part of the fees are waived in accordance with the criteria for waivers established in this section.
- (f) *Waivers.* The planning board may grant full or partial waivers of impact fees where the board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed.
- (1) A person may request a full or partial waiver of public school capital facility impact fees for those residences or residential units that are lawfully restricted to occupancy by senior citizens age 62 or over or to households with at least one person age 55 and over, as applicable, in a development that is maintained in compliance with the provisions of RSA 354-A:15, Housing For Older Persons. The planning board may waive school impact fee assessments on age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy for a period of at least 20 years.
 - (2) The planning board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the planning board shall submit a copy of the waiver request to the town council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the planning board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this section.
 - (3) The planning board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fees waived.
 - (4) The planning board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the public capital facility or system for which the impact fee is being assessed.
 - (5) A fee payer may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on public capital facility capacity and related costs attributable to that development. In support of such request, the fee payer shall prepare and submit to the planning board an independent fee calculation or other relevant study and supporting documentation of the public capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the town. The planning board shall review such study and render its decision. All costs incurred by the town for the review of such study, including consultant and counsel fees, shall be paid by the fee payer.
 - (6) A person may request a full or partial waiver of impact fees for construction within a plat or site plan approved by the planning board prior to the effective date of the ordinance from

which this section is derived. Prior to granting such a waiver, the board must find that the proposed construction is entitled to the four-year exemption or vested status provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed.

(g) *Payment of impact fee.*

- (1) No building permit shall be issued for new development as defined in this section until the code enforcement officer has assessed the impact fee. The code enforcement officer shall not issue a certificate of occupancy for the development on which the fee is assessed until the impact fee has been paid in full or has been waived by the planning board. In the interim between assessment and collection, the planning board may authorize another mutually acceptable schedule for payment, or require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Newmarket.
- (2) Where off-site public capital improvements have been constructed, or where such improvements will be constructed simultaneously with new development, and where the town has appropriated necessary funds to cover such portions of the work for which it will be responsible, the code enforcement officer may collect the impact fee for such capital facilities at the time a building permit or a permit to connect to the public water or public wastewater system is issued.

(h) *Appeals.*

- (1) A party aggrieved by a decision made by the code enforcement officer pursuant to the assessment or collection of impact fees authorized by this section may appeal such decision to the zoning board of adjustment as provided by RSA 676:5, as amended.
- (2) The decision of the zoning board of adjustment may be appealed to the superior court as provided by RSA 677:2-14.
- (3) A party aggrieved by a decision of the planning board under this section may appeal such decision to the Rockingham County Superior Court as provided by RSA 676:5(III) and RSA 677:15, as amended.

(i) *Administration of funds collected.*

- (1) All funds collected under this section shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each type of public capital facility for which impact fees are assessed. Each impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues deposited therein accrue to the general fund. The town treasurer shall have custody of all accounts, and shall pay out the same upon approved vouchers through the accounts payable system.
- (2) The finance director shall record all fees paid, by date of payment and the name of the person making payment. The finance director shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this section for each permit so affected for a period of at least nine years from the date of receipt of the impact fee payment associated with the issuance of each permit.
- (3) Impact fees collected may be spent from time to time by order of the finance director and shall be used solely for the reimbursement of the town or the Newmarket School District, in the case of school impact fees, for the cost of the public capital improvements for which they were collected, or to recoup the cost of public capital improvements made by the town or the school district in anticipation of the needs for which the impact fee was collected.
- (4) In the event that bonds or similar debt instruments have been or will be issued by the Town of Newmarket or the Newmarket School District for the funding of capacity-related improvements, impact fees from the appropriate related public capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.

(5) At the end of each month, the finance director shall prepare a report to the town treasurer, giving particular account of all impact fee transactions during that month. At the end of each fiscal year, the finance director shall prepare a report to the town council, planning board, town treasurer, and the town administrator, giving a particular account of all impact fee transactions during the year.

(j) *Use of funds.*

(1) Funds withdrawn from the public capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing or expanding, equipping, or improving public capital facilities, to increase their capacity, or to recoup the cost of such capacity improvements.

(2) Effective upon passage of the ordinance from which this section is derived, the annual updates of the Newmarket Capital Improvement Program shall contain a procedure for assigning funds, including any accrued interest, from all of the public capital facilities impact fee accounts for specific public capital facility improvement projects related expenditures or debt service. Monies, including any accrued interest not assigned in any fiscal period, shall be retained in the same public capital facilities impact fee account until the next fiscal period, except as provided by the refund provisions of this section.

(3) Funds may be used to provide refunds as described in this section.

(k) *Refund of fees paid.*

(1) The current owner of record of property for which an impact fee has been paid shall be entitled to a full or partial refund, whichever is applicable, plus accrued interest under the following circumstances:

- a. When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six years from the date of the full and final payment of the fee; or
- b. When the town, or, in the case of school impact fees, the Newmarket School District, has failed, within the period of six years, from the date of the full and final payment of such fee, to appropriate their proportionate share of related public capital improvement costs.

(2) The town council shall provide all owners of record, who are due a refund, written notice of the amount due, including interest accrued, if any, and shall promptly cause said refund to be made.

(l) *Additional assessments.* Payment of the impact fee under this section does not restrict the town or the planning board from requiring other payments or improvements from the fee payer, as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

(m) *Scattered or premature development.* Nothing in this section shall be construed so as to limit the authority of the Newmarket Planning Board to deny new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates this chapter, or the Newmarket Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

(n) *Review and change in method of assessment.* The methodologies adopted by the planning board for impact fee assessment, and the associated fee schedules, shall be reviewed periodically and amended as necessary by the planning board. Such review shall take place not more than five years from the initial adoption of the ordinance from which this section is derived, nor more frequently than annually, except as required to correct errors or inconsistencies in the assessment formula. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be submitted to the town council for its review and comment prior to final consideration of the proposed changes by the planning board. The review by the planning board and town council may result in recommended changes or adjustments to the methodology and related fees based on the most recent data as may be available. No change in methodology or in the impact fee schedules shall be adopted by the planning board until it shall have been the subject of a public hearing noticed in accordance with RSA 675:7.

(Ord. of 2-14-1996, § 7.07; Ord. of 2-7-2001)

Sec. 32-239. Accessory sheds. (Editorial note: Section adopted 12/05/07)

An accessory shed is permitted on any lot subordinate to and customarily incidental to a primary residential use with a minimum five-foot rear and five-foot side setback in the M2, M2A, M3, R2, R3, and R4 Zoning Districts subject to the following restrictions:

- (1) The maximum floor area of the accessory shed shall be 120 square feet (exterior dimension) or less, with no dimension being greater than 15 feet, or less than eight feet.
- (2) The height of the accessory shed shall be no greater than 12 feet.
- (3) The accessory shed shall be located to the side or rear of the primary structure and not in the front yard. For purposes of this section, the front yard is determined as that area in front of the primary structure.
- (4) A building permit is required for all accessory sheds regardless of the size.
- (5) Only one accessory shed shall be permitted per lot under this section.

(Ord. of 2-14-1996, § 7.08; Ord. of 12-5-2007)