

ZONING

**Chapter 97**

ZONING

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**[HISTORY: Adopted by the Special Town Meeting of the Town of Newbury 10-8-1959 by Art. 1, as amended through the Annual Town Meeting 4-27-1999 by Art. 25; reorganized 5-22-2007 ATM by Art. 23. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

**Earth removal — See Ch. 60.**  
**Wetlands — See Ch. 95.**  
**Subdivision of land — See Ch. 117.**  
**Waterways — See Ch. 122.**



**ARTICLE I – GENERAL PROVISIONS****§ 97-1. Purpose and Intent**

## A. The Purpose and Intent.

- (1) The purpose and Intent of this bylaw is to promote the health and safety and general welfare of the inhabitants of the Town of Newbury, including without limitation to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent over-crowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provisions of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.



## ARTICLE II – USE DISTRICTS

### § 97-2. Establishment of Use Districts.

#### A. Types of Use Districts:

For the purpose of this By-Law, the Town of Newbury is hereby divided into the following types of use districts:

- (1) Agricultural Residential (R-AG)
- (2) Parker River Residential (PR)
- (3) Residential-Limited Business (R-LB)
- (4) Business (B)
- (5) Commercial Highway (CH)
- (6) Commercial Highway A (CHA)
- (7) Industrial (I)

#### B. Location of Districts.

- (1) Zoning Map. The Planning Board of the Town of Newbury shall prepare and periodically update as required, a Zoning Map, which Zoning Map shall show all zoning use districts within the Town in a manner sufficient for identification.<sup>1</sup> The Zoning Map shall be a part of this By-Law; provided, however, that in the event of any inconsistency between the written provisions of this By-Law and said Zoning Map, the written provisions of this Zoning By-Law shall prevail.

- (2) Written Description of Use Districts:

- (a) Agricultural – Residential districts shall include all portions of the Town not otherwise classified;
- (b) Parker River Residential.

This district shall constitute a certain parcel of land situated east of High Road and north of the Parker River in the Town of Newbury, bounded and described as follows:

Beginning at a point in the easterly sideline of High Road at the northwesterly corner of the said parcel of land at the southwesterly corner of land of or formerly of The Society for the Preservation of New England Antiquities, said point being about 885 feet south of the southerly intersection of the sidelines of High Road and Cottage Road

Thence running: Easterly about 210 feet by said land of, or formerly of, The Preservation of New England Antiquities to a corner,

Thence running: Northerly about 135 feet by said land of, or formerly of, The Preservation of New England Antiquities to a corner of land of, or formerly of, Joan Hoysradt,

Thence Running: Easterly about 1120 feet by said land of, or formerly of, Joan Hoysradt, by land of or formerly of James D. Pearson, and by land of, or formerly of Rita E. Dizenzo and Patricia D. Daigle to a corner,

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<sup>1</sup> Editor's Note: The Zoning Maps are included at the end of this chapter.

Thence running: Northerly about 64 feet by said land of, or formerly of, Rita E. Direnzo and Patricia D. Daigle to a point in the southerly sideline of Cottage Road,

Thence running: Easterly about 1230 feet by the said southerly sideline of Cottage Road to a point,

Thence running: Northerly about 40 feet across Cottage Road to a point in the northerly sideline of Cottage Road at the southeasterly corner of land of, or formerly of John D. and Sharon Protopapas, said point being about 176 feet westerly of the northeasterly corner of Cottage Road,

Thence running: Northerly about 210.69 feet by said land of John D. and Sharon Protopapas to a point at land of, or formerly of the Trustees of Reservations,

Thence running: Easterly about 1150 feet by said land of, or formerly of the Trustees of Reservations, by land of or formerly of Joseph II, Nancy, and Peter Story, and by land of, or formerly of the Parker River National Wildlife Refuge to a corner,

Thence running: Southerly about 900 feet by said land of or formerly of the Parker River National Wildlife Refuge to a corner at the northerly side of the Parker River,

Thence running: Westerly about 3500 feet by the Parker River to a point in the easterly sideline of High Road,

Thence running: Northerly about 530 feet by the said easterly sideline of High Road to the point of beginning.

(c) Residential-Limited Business:

Beginning at a point on the easterly corner of said premises at an Iron Stake: Thence northerly by land now or formerly of Ross Gadd to a stone wall and land now or formerly of George Adams, John Thurston and others: Thence easterly by a stone wall 300 feet to an Iron Stake and land now or formerly of said Ross Gadd to Orchard Street to the point of beginning.

(d) Business:

An area bounded by the center lines of Lunt, Main and Central Streets in Byfield.

An area bounded by the center lines of Lunt, Main, Central and Church Streets in Byfield.

An area in Byfield west of Main Street bounded on the east by the center line of Main Street, on the north by a line 125 feet southerly of the center line of Grove Street and parallel to said line, on the west by a line 225 feet from the center line of Main Street and parallel to said line, and on the south by the center line of Forest Street.

(e) Commercial Highway:

Beginning at a point on the center line of Hanover Street 1,000 feet easterly from the center line of U.S. Route #1, thence by a line parallel to said center line of U.S. #1 and 1,000 feet east of it to a point 500 feet south of the center line of Boston Road thence westerly to a point 500 feet west of the center line of U.S. #1 and 500 feet south of the center line of Boston Road; thence northerly by a line parallel to the center line of U.S. #1 and 500 feet west of said line to a point on the center line of Middle Road 500 feet west of the center line of U.S. #1, thence by the

center lines of Middle Road and Hanover Street to the point of beginning.

An area at the Northeast Junction of the right-of-way of I-95 and Central Street 800 feet wide and extending northerly 400 feet.

An area at the Northwestern Junction of the right-of-way of I-95 and Central Street 225 feet deep and extending westerly along Central Street 300 feet to the Junction of Church Street.

An area located at the Northeast Junction of U.S. Rt. #1 and Hanover Street bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street and on the west by the center line of U.S. Rt. #1.

An area located on the northerly side of Scotland Road bounded on the west by the right-of-way of U.S. Rt. 95, on the south by Scotland Road, on the east and northeast by the easterly property line of Lot 1 Assessors' Map R-44, now or formerly of Bartlett, and on the north by the City Line of Newburyport and the Town Line of West Newbury.

(f) Commercial Highway District A:

An area at the Southwest Junction of the right-of-way of I-95 and Central Street, 500 feet wide and extending southeasterly to the Parker River.

(g) Industrial:

A 500 foot strip along the south bank of the Parker River in Precinct 1 extending for a distance of 1,000 feet west and 1,000 feet east of the Parker River Bridge on U.S. Route 1A, less any portion of Lot #78 Assessors' Map R-11.

A 500 foot strip along the south bank of the Parker River extending from Main Street to Route 95.

That portion of Precinct 1 bounded on the north by Newburyport line, on the east by a line 1,000 feet east of the parallel to the right-of-way of the Boston and Maine Railroad, Main Line, on the south by Hanover and Middle Streets, and on the west by Highfield Road and Scotland Road. Except that section which is bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street, and the west by the center line of U.S. Rt. #1.

C. Overlay Districts.

The following special districts are superimposed over specific parts of the Town (as described within each overlay district), and may establish requirements over and above those described in the respective underlying districts. All applicable regulations, whether Federal, State, or local, if more restrictive, shall also apply.

(1) Flood Zone

- (2) Water supply Protection
- (3) Plum Island
- (4) Adult Entertainment
- (5) Wireless Communications Services

D. Location of Overlay Districts.

- (1) Zoning Map:  
The Planning Board of the Town of Newbury shall prepare and periodically update as required, a Zoning Map, which Zoning Map shall show all zoning overlay districts within the Town in a manner sufficient for identification.<sup>2</sup> The Zoning Map shall be a part of this By-Law; provided, however, that in the event of any inconsistency between the written provisions of this By-Law and said Zoning Map, the written provisions of this Zoning By-Law shall prevail.
- (2) Flood Zone:  
Applicable as indicated on the special Federal Insurance Administration's Flood Insurance Rate Maps (FIRM), effective July 17, 1986.
- (3) Water Supply Protection:  
Shall include all lands within the Town of Newbury lying within the watersheds of groundwater aquifers which now or may in the future provide public water supply. The boundaries of the Water Supply Protection District are shown on a map entitled "Water Resources, Town of Newbury," dated March 31, 2003, and on file in the office of the Town Clerk.
- (4) Plum Island:  
Shall include all lands shown on a map entitled "Plum Island Overlay District, Town of Newbury", dated December 20, 2000, prepared by the Merrimack Valley Planning Commission, said map hereby incorporated as part of this By-law and on file in the office of the Town Clerk.
- (5) Adult Entertainment:  
That portion of Precinct 1 bounded on the north by Newburyport line, on the east by a line 1,000 feet east of the parallel to the right-of-way of the Boston and Maine Railroad, Main Line, on the south by Hanover and Middle Streets, and on the west by Highfield Road and Scotland Road. Except that section which is bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street, and the west by the center line of U.S. Rt. #1.
- (6) Wireless Communications Services:  
All lands located within the boundaries of the Commercial Highway District and the Industrial District.

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<sup>2</sup> Editor's Note: The Zoning Maps are included at the end of this chapter.

**ARTICLE III – REGULATIONS OF USE DISTRICTS****§ 97-3. Regulations of Use Districts.****A. General.**

In all zones where allowed, except for shopping centers, farms, industrial complexes, community facilities, and public utilities, only one principal structure shall be permitted on each separate lot.

**B. Written Description of Regulations.**

No building, structure or land shall be used, constructed, erected, placed, or converted, in whole or in part, for any purpose or in any manner other than for one or more of the uses set forth in § 97-3. Exceptions: These regulations shall not prohibit, regulate, or restrict the use of land, buildings, or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions, or bodies politic, or by a religious sect or denomination, or by a non-profit educational corporation.

**C. Agricultural – Residential District.****(1) Allowed Uses:**

- (a) Single and two family residences;
- (b) Agricultural uses;
- (c) Customary home occupation as provided for in section 97-10C;
- (d) Church or other religious purpose;
- (e) Educational purpose which is non-profit or public;
- (f) Uses customarily accessory to allowed uses.

**(2) Prohibited Uses:**

- (a) Any use not herein expressly allowed shall be prohibited.

**(3) Uses By Special Permit:**

- (a) Bed & Breakfast establishments as provided for in § 97-5B;
- (b) In appropriate cases and subject to appropriate conditions, safeguards and limitations on time or use, the Selectmen may grant an applicant a special permit to make use of the land or erect and maintain buildings or other structures thereon in accordance with the provisions of Chapter 40A of General Laws, if such use, buildings or other structures are in harmony with the general purpose and intent of this By-Law and with the provisions stipulated in § 97-10.C(1)(c)(d) & (e) for the purpose of municipal uses; A library; a nursing or rest home; a hospital; a private club; or a doctor's, lawyer's, or similar professional office; provided the Selectmen find, after a Public Hearing of which due notice is given to any party in interest as defined in Section 11, of Chapter 40A of the General Laws, that the proposed use, building or structure is for the best

interest of the Town, is not injurious or obnoxious to the neighboring properties, will satisfy a community need or convenience not otherwise being served, will not affect abutting and nearby properties by increasing traffic and on-street parking, and that nothing connected with the use, buildings or structure, such as machinery, vehicles, material, supplies, equipment and waste materials shall be stored between the street line and the front line of the structure or building, nor be visible from the street.

(4) Other District Specific Applicable Regulations: (Reserved for future use)

D. Parker River Residential.

(1) Allowed Uses:

- (a) Single family residences;
- (b) Structures customarily accessory to single family residences;
- (c) Church or other religious purpose;
- (d) Educational purpose which is non-profit or public;

(2) Prohibited uses:

- (a) Any use not herein expressly allowed shall be prohibited

(3) Uses By Special Permit:

- (a) None.

(4) Other District Specific Applicable Regulations:

- (a) Any structure constructed within the Parker River Residential District shall comply with all provisions required for lots within the Agricultural/Residential Use District;
- (b) Notwithstanding any provision of this By-Law to the contrary, any piece or parcel of land, lying within the Parker River Residential District designated as a separate tax lot on the Tax Map of the Town of Newbury (available in the Town Clerk's office) as of the date of enactment of Subsection A above and upon which one single one family residence and such structures normally accessory to such single one family residence exist as of the date of the enactment of Subsection B shall nevertheless be deemed to comply with the provisions of the Zoning By-Laws so long as such single one family residence remains on such lot.

E. Residential – Limited Business.

(1) Allowed Uses:

- (a) Limited business;

- (b) Single and two family residences;
  - (c) Agricultural use;
  - (d) Customary home occupation as provided for in section 97-10C;
  - (e) Church or other religious purpose;
  - (f) Educational purpose which is non-profit or public;
  - (g) Uses customarily accessory to allowed uses.
- (2) Prohibited Uses:
- (a) Any use not herein expressly allowed shall be prohibited.
- (3) Uses By Special Permit:
- (a) In appropriate cases and subject to appropriate conditions, safeguards and limitations on time or use, the Selectmen may grant an applicant a special permit to make use of the land or erect and maintain buildings or other structures thereon in accordance with the provisions of Chapter 40A of General Laws, if such use, buildings or other structures are in harmony with the general purpose and intent of this By-Law and with the provisions stipulated in § 97-10.C(1) (c) (d) & (e) for the purpose of municipal uses; A library; a nursing or rest home; a hospital; a private club; or a doctor's, lawyer's, or similar professional office; provided the Selectmen find, after a Public Hearing of which due notice is given to any party in interest as defined in Section 11, of Chapter 40A of the General Laws, that the proposed use, building or structure is for the best interest of the Town, is not injurious or obnoxious to the neighboring properties, will satisfy a community need or convenience not otherwise being served, will not affect abutting and nearby properties by increasing traffic and on-street parking, and that nothing connected with the use, buildings or structure, such as machinery, vehicles, material, supplies, equipment and waste materials shall be stored between the street line and the front line of the structure or building, nor be visible from the street.
- (4) Other District Specific Applicable Regulations: Limited Business uses shall be defined as auto body repair shop, glass sales and repair shop, business or professional office, provided that:
- (a) None of the contiguous lots shall be used for a limited business use as defined;
  - (b) Not more than five (5) persons are regularly employed thereon;
  - (c) No offensive noise, odors, glare or unsightliness is produced;

- (d) No public display of goods or wares, except for such signs as are permitted;
- (e) No outside storage of junk vehicles shall be permitted;
- (f) Exterior storage of materials, and equipment (including goods and automobiles to be repaired), shall be screened from view from the street or abutting residential uses by a six (6) foot high opaque fence or six (6) foot high landscaping strip of densely<sup>3</sup> planted evergreen trees;
- (g) Off-street parking facilities must be provided to accommodate customers and employees in connection with any permitted use; and
- (h) Hours of operation shall be limited to 8:00 A.M. to 5:00 P.M. Monday through Saturday. No hours of operations on Sunday.

F. Business.

(1) Allowed Uses:

One and two-story residences which meet all of the requirements of the nearest residential district

- (a) Store, showroom, sales room for the conduct of retail business, including but not limited to, a neighborhood grocer, hardware, clothing, drug, or general store, a florist, gift, stationery, or antiques shop or photographer's studio.
- (b) Personal service establishments such as a barber shop or beauty parlor, and collection agency for a laundry or dry cleaner. Shops for custom work by a dressmaker, furrier, interior decorator, milliner or tailor.
- (c) Indoor eating establishment.
- (d) Bank or similar financial institution.
- (e) Real estate, professional or similar offices.
- (f) Roadside stand for sale of principally local farm produce.
- (g) Theater, craft shop, or other arts related business.
- (h) Religious or educational establishment.
- (i) Home occupations as provided for in § 97-10C.

(2) Prohibited uses:

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<sup>3</sup> Editor's Note: So in original.

- (a) Any use which may produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapors, harmful radioactivity, offensive noise or vibration, or other activity that may adversely affect or impair the normal use and peaceful enjoyment of any property, structure or dwelling in the neighborhood, contaminate ground water, pollute streams or other atmospheric pollutant beyond the lot on which such use is conducted;
  - (b) Kiosks and similarly sized service booths and detached structures, machines, or booths, the sole purpose of which is to dispense or provide products, services, or entertainment, including, but not limited to financial information or transaction services;
  - (c) Drive-in retail establishments regularly serving food or dispense<sup>4</sup> merchandise from inside a building to persons seated in their automobiles on the premises;
  - (d) Wholesale establishment, the principal activities of which shall be the preparation, storage, and transfer or distribution of goods (such as building materials or auto parts);
  - (e) Outdoor storage of fuel supplies and fuel products;
  - (f) Public parking garage or storage of commercial vehicles and used car sales and/or used car storage.
- (3) Uses By Special Permit:
- (a) Bed & Breakfast establishments as provided for in § 97-5B.
- (4) Other District Specific Applicable Regulations:
- (a) Building materials and style should be in keeping with the historic and rural character of the area. Dumpsters and other storage shall be fenced or otherwise out of view;
  - (b) In the case of non-residential uses, every effort shall be made to retain and protect existing trees, shrubs, and other landscaping on a site. A three (3) foot wide (minimum) landscaping strip shall be provided along the foundation walls of each building. A five (5) foot strip of densely planted green space shall be provided on all property boundaries. In cases where a business abuts a residential property, this buffer must be a minimum of ten (10) feet;
  - (c) These regulations are intended to preserve the historical and rural character of the area while allowing business enterprises that serve the needs of the local residents.

G. Commercial Highway.

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<sup>4</sup> Editor's Note: So in original.

- (1) Allowed Uses:
  - (a) Church or other religious purpose;
  - (b) Educational purpose which is religious, sectarian, non-denominational or public;
  - (c) Town building;
  - (d) Historical association or society;
  - (e) Street, bridge, tunnel or railroad;
  - (f) Public utility except power plant, water filter plant, sewage treatment plant, and refuse facility;
  - (g) Agriculture, salt marsh haying, horticulture and floriculture;
  - (h) Greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
  - (i) Stores usually selling a combination of two or more of the following: dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware and food;
  - (j) Establishments primarily selling food and drink;
  - (k) Establishments selling new and/or used automobiles and trucks, tires and other accessories, aircraft, boats, motorcycles and trailers;
  - (l) Hotel and motels;
  - (m) Personal service establishments;
  - (n) Funeral home or mortuary establishments;
  - (o) Miscellaneous business offices and services;
  - (p) Airport and landing strip;
  - (q) Commercial parking lot or structure;
  - (r) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.
- (2) Prohibited uses:
  - (a) Any use not herein expressly allowed shall be prohibited.

- (3) Uses By Special Permit:
- (a) Non-profit recreational facility and/or Recreational facilities for gainful business are allowed only by special permit from the Board of Selectmen according to the provisions of Chapter 40A of the General Laws, provided the Selectmen find, after a Public Hearing of which due notice is given, that the proposed recreational use, building or structure is: For the best interest of the Town; is not injurious or obnoxious to the neighboring properties and will not adversely affect the surrounding area; will satisfy a community need or convenience not otherwise being served; that the parking, loading and dimensional control requirements of this ordinance are met; and that the recreation business is in the interest of the common good. The plan must be reviewed and a recommendation made to the Board of Selectmen by the Planning Board, the Board of Fire Engineers, Public Safety, and the Board of Health;
  - (b) Town Cemetery;
  - (c) Sales by vending machines;
  - (d) Automotive repair, automobile services and garages (not including a junk yard or open storage of abandoned automobiles or other vehicles);
  - (e) Miscellaneous repair services;
  - (f) Communication and television towers as provided for in § 97-4C.;
  - (g) Boat marina;
  - (h) Filling of land or watercourse, water body or wetlands;
  - (i) Construction of drainage facilities or damming up or relocating a watercourse, water body or wetlands;
  - (j) Trucking service or warehousing;
  - (k) Other transportation services;
  - (l) Wholesale trade.
- (4) Other District Specific Applicable Regulations: (Reserved for future use)

H. Commercial Highway – A.

- (1) Allowed Uses:
- (a) Church or other religious purpose;
  - (b) Educational purpose which is religious, sectarian, non-denominational or public;

- (c) Town building;
- (d) Historical association or society;
- (e) Street, bridge, tunnel or railroad;
- (f) Public utility except power plant, water filter plant, sewage treatment plant, and refuse facility;
- (g) Agriculture, salt marsh haying, horticulture and floriculture;
- (h) Greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
- (i) Stores usually selling a combination of two or more of the following: dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware and food;
- (j) Establishments primarily selling food and drink;
- (k) Hotel and motels;
- (l) Personal service establishments;
- (m) Miscellaneous business offices and services;
- (n) Commercial parking lot or structure;
- (o) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.

(2) Prohibited uses:

- (a) Solid waste disposal facilities, including, without limitation, landfills and junk and salvage yards;
- (b) Storage of petroleum or petroleum products, including without limitation, gasoline, waste oil, heating oils, diesel fuel and other liquid hydrocarbons, except within buildings which the product will heat and in quantities for normal use in the facility in which it is kept;
- (c) Storage of road salt or other deicing chemicals in quantities greater than that necessary for normal use at that facility;
- (d) Manufacture, use, storage or disposal of toxic or hazardous materials;
- (e) Storage or disposal of hazardous wastes, including, without limitation, chemical wastes, radioactive wastes, and waste oil;
- (f) Industrial uses which discharge process liquids on site;

- (g) Disposal of liquid or leachable wastes, except normal non-process sewage wastes discharged through sewage disposal systems in compliance with Title V;
- (h) Boat or motor vehicle service or repair shops, animal feed lots, car washes, electronic manufacturing, metal plating, commercial or bacteriological laboratories, photographic processing laboratories, laundromats and establishments conducting dry cleaning activities on the premises.

(3) Uses By Special Permit:

- (a) Sales by vending machines;
- (b) Non-profit recreational facility and/or Recreational facilities for gainful business are allowed only by special permit from the Board of Selectmen according to the provisions of Chapter 40A of the General Laws, provided the Selectmen find, after a Public Hearing of which due notice is given, that the proposed recreational use, building or structure is: For the best interest of the Town; is not injurious or obnoxious to the neighboring properties and will not adversely affect the surrounding area; will satisfy a community need or convenience not otherwise being served; that the parking, loading and dimensional control requirements of this ordinance are met; and that the recreation business is in the interest of the common good. The plan must be reviewed and a recommendation made to the Board of Selectmen by the Planning Board, the Board of Fire Engineers, Public Safety, and the Board of Health.

(4) Other District Specific Applicable Regulations: (Reserved for future use)

I. Industrial.

(1) Allowed Uses:

- (a) Manufacturing;
- (b) Trucking service and warehousing;
- (c) Street, Bridge, tunnel, railroad;
- (d) Public utility including power plant, water filtration plant, sewage treatment plant, and refuse facility;
- (e) Agriculture, salt marsh haying, horticulture and floriculture except a greenhouse or stand for retail sale;
- (f) Commercial forestry and growing of all vegetation;
- (g) Clamming or fishing including a processing plant;

- (h) Church or other religious purpose;
  - (i) Educational purpose which is religious, sectarian, non-denominational or public;
  - (j) Other transportation services;
  - (k) Wholesale trade;
  - (l) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.
- (2) Prohibited uses:
- (a) Any use not herein expressly allowed shall be prohibited.
- (3) Uses By Special Permit:
- (a) Town building including equipment garage;
  - (b) Temporary (not to exceed erection or use for a period exceeding 6 months in any calendar year) greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
  - (c) Automotive repair, automobile services and garages (not including a junk yard or open storage of abandoned automobiles or other vehicles);
  - (d) Communication and television towers as provided for in Article IV; **[Amended 4-24-2001 ATM, Art.26]**
  - (e) Airport and landing strip;
  - (f) Filling of land or watercourse, water body or wetlands;
  - (g) Construction of drainage facilities or damming up or relocation of any watercourse, water body or wetlands;
  - (h) Mining, quarrying.
- (4) Other District Specific Applicable Regulations:
- (a) No business or industry shall be located which would be detrimental or offensive or tend to reduce property values in the same or adjacent districts, by reason of dirt, odor, fumes, smoke, gas, sewerage, refuse, noise, excessive vibration or danger of explosion or fire.

**ARTICLE IV – REGULATIONS OF OVERLAY DISTRICTS****§ 97-4. Regulations of Overlay Districts.**

## A. General:

- (1) The following special districts are superimposed over specific parts of the Town (as described within each overlay district), and may establish requirements over and above those described in the respective underlying districts. All applicable regulations, whether Federal, State, or local, if more restrictive, shall also apply.

## B. Water Supply Protection

## (1) Purpose:

- (a) To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Newbury;
- (b) To preserve and protect existing and potential sources of drinking water;
- (c) To conserve the natural resources of the Town of Newbury; and
- (d) To prevent temporary and permanent contamination of the environment.

## (2) Allowed Uses:

- (a) Residential development, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (b) Maintenance, repair, and enlargement of any existing structure, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (c) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (d) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply, and conservation devices;
- (e) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels. Underground storage tanks related to these activities are not categorically permitted;
- (f) Foot, bicycle, and/or horse paths, and bridges;
- (g) Nature study and outdoor recreation, including play areas, boating, fishing, swimming, and hunting where otherwise legally permitted;

- (h) Conservation of soil, water, plants, and wildlife;

**[Amended 5-23-2006 ATM Art. 17]**

- (i) Religious or Non-profit Educational Uses;
- (j) Non-profit Community and/or Neighborhood Centers;
- (k) Retail stores, established for the benefit and convenience of the local general public provided such use is a permitted use in the underlying zoning district;
- (l) Restaurants without “drive-thru” facilities or taverns provided such use is a permitted use in the underlying zoning district;
- (m) Business, professional and general offices provided such use is a permitted use in the underlying zoning district.

(3) Prohibited Uses:

- (a) Landfills and open dumps as defined in 310 CMR 19.006;
- (b) Storage of liquid petroleum products, except for the following:
  - 01) Normal household use, outdoor maintenance, and heating of a structure;
  - 02) Waste oil retention facilities required by MGL Chapter 21, Section 52A;
  - 03) Emergency generators required by statute, rule, or regulation;
  - 04) Treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters, provided that storage, listed in items § 97-4B(3)(b) 01) through § 97-4B(3)(b) 04) above is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container’s total storage capacity.
- (c) Landfills receiving only wastewater residuals and/or septage (wastewater residuals “monofills”) approved by the Department pursuant to MGL. c. 21, section 26 through 53; MGL. c. 11 section 17; MGL. c. 83, sections 6 and 7, and any regulations promulgated hereunder;
- (d) Storage of de-icing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

- (e) Storage of animal manure unless covered or contained so as to prevent the escape of contaminated leachate or runoff in accordance with the specifications of the Natural Resources Conservation Services;
- (f) Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 6 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, utility works, freshwater ponds, and individual sewage disposal systems;
- (g) Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.00, except the following:
  - 01) Very small quantity generators as defined under 310 CMR 30.00;
  - 02) Household hazardous waste collection centers and events operated pursuant to 310 CMR 30.390;
  - 03) Waste oil retention facilities required by MGL Chapter 21, Section 52A;
  - 04) Water remediation treatment works approved under 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
- (h) Automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
- (i) Truck terminals, truck maintenance terminals, bus maintenance terminals, commercial car washes;
- (j) Discharge to the ground of non-sanitary waste water including industrial and commercial process waste water except:
  - 01) Replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - 02) Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated ground or surface water operating in compliance with 314 CMR 5.05(3) or 5.05(13);
  - 03) Storage of liquid hazardous materials, as defined in MGL Chapter 21E, unless in a free-standing container within a building or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;
  - 04) Industrial and commercial uses which discharge process wastewater on site;

- 05) Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the District;
  - 06) Storage of commercial fertilizers and soil conditioners, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated leachate or runoff;
  - 07) Use of septic system cleaners which contain toxic or hazardous chemicals.
- (4) Uses and Activities By Special Permit
- (a) District boundary disputes:
    - 01) If the location of the District boundary in relation to a particular parcel is in doubt or dispute, resolution of the boundary dispute shall be through a Special Permit application to the Zoning Board of Appeals. Any application for a special permit for this purpose shall be accompanied by adequate documentation;
    - 02) The burden of proof shall be upon the owner(s) of the parcel in question to show where the bounds should properly be located. At the request of the owner(s), the Town may engage a professional civil or sanitary engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the District with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation;
    - 03) The determination of the location and extent of Zone II shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the DEP's Guidelines and Policies for Public Water Systems.
  - (b) The following uses and activities are allowed only upon the issuance of a Special Permit by the Board of Selectmen under such conditions as the Board may require:
    - 01) Enlargement or alteration of existing uses that do not conform to the Water Supply Protection District;
    - 02) Construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;
    - 03) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by

stormwater infiltration basins or similar systems covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

- (5) Procedures for issuance of special permit.
- (a) A special permit shall be granted if the Board of Selectmen determines, in conjunction with the Board of Health, the Conservation Commission, the Board of Water Commissioners, and the Planning Board, that the intent of this bylaw, as well as its specific criteria, are met. The Board of Selectmen shall not grant a special permit under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The Board of Selectmen shall document the basis for any departures from the recommendations of other Town boards in its decision.
  - (b) Upon receipt of the special permit application, the Board of Selectmen shall transmit one copy each to the Board of Health, the Conservation Commission, the Board of Water Commissioners, and the Planning Board for their written recommendations. Failure to respond in writing within 35 days of receipt shall indicate approval or no desire to comment by said agencies. The requisite five (5) copies of the special permit application shall be furnished by the applicant.
  - (c) The Board of Selectmen may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in § 97-11C of this bylaw, and any regulations or guidelines adopted by the Board of Appeals. The proposed use must:
    - 01) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District; and
    - 02) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
  - (d) The Board of Selectmen may adopt specific requirements to govern design features of projects. Such requirements shall be consistent with all subdivision regulations adopted by the Planning Board.
  - (e) The applicant shall file five (5) copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the Board of Appeals and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and

its attachments shall include, at a minimum, the following information where pertinent:

- 01) A non-refundable application fee of \$500, plus \$1000 or sufficient funds, as determined by the Board of Appeals, to ensure review of the plan as needed by independent engineers or other professions as provided in MGL Chapter 44 Section 53G. Said review fees shall be used only for engineering or other professional services related to the review of the permit application.
- 02) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
- 03) For those activities using or storing such hazardous materials, a Hazardous Materials Management Plan shall be prepared and filed with the Board of Health and Fire Chief. The Plan shall include:
  - a) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and cleanup procedures;
  - b) Provisions for indoor, secured storage of hazardous materials and wastes on impervious floor surfaces;
  - c) Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMRa 30.00, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection;
- (f) Proposed down-gradient location(s) for groundwater monitoring well(s), should the Board of Selectmen deem the activity a potential groundwater threat;
- (g) The Board of Selectmen shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments, and Commissions. Notice of the public hearing shall be given by publication and posting and by first-class mailings to “parties of interest” as defined in MGL Chapter 40A, Section 11. The decision of the Board of Selectmen and any extension, modification, or renewal thereof shall be filed with the Board and Town Clerk within 90 days following the closing of the public hearing. Failure of the Board to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said Section 11;

- (h) Written notice of any violations of this Section shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, Conservation Commission, Water Department, and Planning Board. The cost of containment, cleanup, or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the Water Supply Protection District, the Building Inspector, the Board of Health, or their agents, may order the owner or operator of the premises to remedy the violation. If said owner and/or operator fails to comply with said order, the Building Inspector, the Board of Health, or their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The cost of remediation shall be the sole responsibility of the owner and operator of the premises.

C. **Wireless Communications Services Overlay District. [Added 4-24-2001 ATM Art. 26; amended 6-26-2001 STM Art. 7]**

(1) Purpose:

- (a) The purpose of this Zoning Bylaw is to establish a district in which wireless communications services may be provided while preserving and protecting the public health, safety and general welfare. For the purposes of this Zoning Bylaw it is anticipated that such services will be provided via wireless communications facilities that may include a tower, one or more antennas and one or more accessory structures. Specifically, the Wireless Communications Services District has been created to:

- 01) Protect the general public from hazards associated with wireless communications facilities;
- 02) Minimize visual impacts from wireless communications facilities;
- 03) Protect the scenic, historic, natural and human-made resources of the Town;
- 04) Protect property values.

(2) Use Restrictions.

- (a) A wireless communications facility may be erected by special permit in the Industrial and commercial highway districts by the Zoning Board of Appeals pursuant to the Town of Newbury Zoning Bylaws and subject to site plan approval as set forth in this Zoning Bylaw, if the Zoning Board

of Appeals determines that the adverse effects of the proposed facility will not outweigh its benefits to the Town in view of the particular characteristics of the site and of the proposal in relation to the site. Said determination shall include consideration of each of the following:

- 01) The communications needs served by the facility;
  - 02) Traffic flow and safety, including parking and loading;
  - 03) Adequacy of utilities and other public services;
  - 04) Impacts on neighborhood character, including aesthetics;
  - 05) Impacts on the natural environment, including visual impacts;
  - 06) Potential fiscal impacts, including impacts on Town services, tax base and employment;
  - 07) Potential human health hazards due to radio signal radiation, to the extent not contrary to federal law.
- (b) In addition, such facility may be erected in said district, subject to the following conditions:
- 01) To the extent feasible, all service providers shall collocate their antennas on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practicable;
  - 02) New towers shall be considered only upon a finding by the Zoning Board of Appeals that existing or approved towers cannot accommodate the antennas planned for the proposed tower;
  - 03) Any new wireless communications facility tower shall be of the monopole type only; no lattice or guy-wire towers and no teleports shall be permitted, and the Zoning Board of Appeals may allow and/or limit the use and size of parabolic antennas and of repeaters;
  - 04) The highest point of any antenna support structure or of any antenna or any component thereof or attachment thereto shall not exceed 10 feet above the lesser of the preexisting significant tree canopy elevation or the proposed post-construction significant tree canopy elevation, as defined in section 97-4.C(2)(b)04)b) below;
    - a) If there is no significant tree canopy elevation, as defined in section 97-4C(2)(b)04)b) below, the maximum height of any antenna support structure or any antenna or any component thereof or attachment thereto shall not exceed 65 feet above finished grade of ground elevation.

- b) For the purpose of this Zoning Bylaw, “significant tree canopy elevation” shall be defined as the arithmetic average of the elevations of the tops of all trees at least 6 inches in diameter at four feet and over 20 feet tall in a stand of trees, all of which are located within a 150-foot radius of the base of the proposed antenna support structure, provided that at least 10 such trees are in said stand. Elevations shall be measured with respect to mean sea level datum.
- 05) No antenna, nor any support structure, nor any antenna or any component thereof or attachment thereto shall be located at a height in excess of 65 feet, unless there is such a significant tree canopy elevation, as defined in § 97-4C(2)(b)04)b) above.
- 06) Finished grades shall not be distorted above the preexisting natural grades as a way to achieve additional height.
- 07) A wireless communications facility shall not be erected nearer to any property line than a distance equal to the vertical height of the wireless communications facility, measured at the mean finished grade of the tower base.
- 08) To the extent feasible, all network interconnections from the wireless communications facility made via land lines shall be via underground lines.
- 09) Existing on-site vegetation shall be preserved to the maximum extent practicable.
- 10) The wireless communications facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Zoning Board of Appeals may impose reasonable conditions to ensure this result, including painting and lighting standards.
- 11) Traffic associated with the wireless communications facility shall not adversely affect abutting ways.
- 12) The applicant shall obtain written, legally valid and binding authorization for the use of each facility site from the owner thereof; and, where applicable, from the utility companies whose facilities are used; and from the Board of Selectmen with respect to public ways and Town-owned facilities.
- 13) Any antenna for use as a wireless communications facility shall not be installed, nor mounted on, nor attached to a new monopole tower or existing structure in any location that is within 900 feet of a lot line defining a parcel on which exists a dwelling, a school, a day-care center, a nursing home or an assisted or independent living facility.

- 14) The area around a tower, communication equipment shelters and related equipment shall be completely fenced for security to a height of six feet, and gated; and a sign shall be posted on or adjacent to all entry gates indicating the facility owner and a twenty-four-hour emergency telephone number.
  - 15) All radio frequency radiation from any wireless communications facility:
    - a) Shall comply with Federal Communications Commission (FCC) Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation;
    - b) Shall comply with standards of the Massachusetts Department of Public Health (MDPH), the National Council for Radiation Protection and the American National Standards Institute, insofar as such standards are more strict or limiting as to permissible human exposure than are the FCC Guidelines and may lawfully be applied;
    - c) Shall be controlled and limited as to frequency and power so as not to cause interference, by inter-modulation or otherwise, with any Town facility or amateur facility;
  - 16) Noise generated by any wireless communications facility, including auxiliary generators, shall not exceed 50 db at ground level at the property line at any public way on which it is located.
- (3) Submittal requirements.
- (a) As part of any application for a special permit, applicants shall submit, at a minimum, the information required for site plan approval as set forth herein. Applicants shall also describe the capacity of any tower, including the number and types of antennas, number and types of radios and of channels per radio that it can accommodate, and the basis for the calculation of capacity and shall describe any accessory structures.
  - (b) In addition, applicants shall submit:
    - 01) The name and address of the applicant and all agents of the applicant and of all legal and beneficial owners of the site or sites proposed for a wireless communication facility, copies of all instruments, options, contracts or encumbrances affecting ownership of the site or sites, together with the opinion of an attorney concerning the state of the title thereto, a copy of the applicant's FCC license, and an instrument executed by all persons or entities owning property at the site or sites agreeing that the applicant is authorized by them to make the application and agreeing to comply with provisions of this Zoning Bylaw.
    - 02) A statement signed by the applicant, on oath and under penalties of perjury, that all information included in the submittal is materially

- accurate, true, complete and verifiable. Inaccurate, misleading or false information shall be grounds for disapproval of the application or revocation of approval.
- 03) Plans and other information identifying the site or sites proposed, including:
    - a) A map at an appropriate scale (to be determined by the Zoning Board of Appeals), showing lot lines of the subject property and of all properties within 2,000 feet of the perimeter of the facility and showing the footprint of all buildings on all such properties.
    - b) Specification on a copy of the Town Maps of the zoning district, including any overlay district, applicable to such properties.
    - c) The heights of all existing buildings and structures on such properties and the height of any proposed new structure on the subject property.
    - d) Average height of existing free cover on such properties, specifying heights and principal species.
  - 04) A map of the Town of Newbury, including all towns to a distance of five miles from Newbury boundaries, showing the locations of:
    - a) All existing wireless communications facilities.
    - b) All proposed wireless communications facilities the applicant expects to install and reasonably knows will be installed by other providers within the next 24 months following the submittal of the application.
  - 05) A map showing:
    - a) The location of tree cover within 500 feet of the proposed facility.
    - b) Dominant tree species for each area of tree cover within 500 feet.
    - c) Topography contour lines at two-foot intervals to a distance beyond the proposed facility to be determined by the Zoning Board of Appeals, but not to exceed 1,000 feet, with reference contours to mean sea level datum.
  - 06) True copies of all applications [to include any Massachusetts Notification of Non-ionizing Radiation Source, and/or any Massachusetts Combined Request for Approval under 105 CMR 122.000 (et seq.) and Massachusetts Employer Notification under 453 CMR 5.000, (et seq.), and the like] and information submitted to the Massachusetts Department of Health (MDPH) Radiation Control Program, or any other subdivision of the MDPH, approval letter and any other notice from said Department or subdivisions and any revisions thereof; and true copies and any revisions thereof of all similar applications, notices, etc., submitted to the FCC.
  - 07) A complete specification certified by a radio frequency engineer licensed by the Commonwealth of Massachusetts of:
    - a) The energy outputs at ground level and at six feet and 16 feet above ground level, actual and potential, and the power densities at ground level and at six feet and 16 feet above ground level, actual and potential, produced at 200 feet, 500 feet and 1,000 feet and at the location where maximum

- power density is expected, for each antenna sector, from the operation of each and every proposed new wireless communications facility to be added.
- b) The cumulative energy outputs at ground level and at six feet and 16 feet above ground level, actual and potential, produced from all wireless communications facilities, and the cumulative power densities from the operation of all wireless communications facilities, actual and potential, produced at 200 feet, 500 feet and 1,000 feet and at the location where maximum power density is expected, for each antenna sector, from the operation of all wireless communications facilities, including any proposed new wireless communications facility.
  - c) With respect to such actual energy outputs and power densities, the data contained in such specification shall be from actual field measurements made within 30 days before the applicant submits the special permit/site plan review and approval application.
- 08) The beam widths at ground level for the energy outputs from each antenna sector and the degree of down-tilt of each antenna.
  - 09) A complete description, including, but not limited to, data, drawings, catalogs, brochures, manufacturers' specifications, photographs and all other pertinent information relevant to the proposal describing antennas, equipment mounts and all other equipment and structures proposed for the site or related to the proposal; plus all of the information required by By-law.
  - 10) Data as to noise, certified by an acoustical engineer, specifying in decibels Ldn (logarithmic scale) both existing or ambient noise at each proposed site and the maximum noise to occur, comprising the aggregate of that existing and that resulting from the proposed wireless communications facility.
  - 11) An environmental assessment meeting the standards set forth in § 97-4C(2)(b)(16), and the environmental assessment requirements of the FCC, together with evidence that the same has been submitted to and approved by the FCC.
- (4) Review and action by the Zoning Board of Appeals. The Zoning Board of Appeals shall review and act upon an application for a special permit and site plan review and approval for a wireless communications facility in accordance with applicable provisions of MGL c. 40A, §§ 9 and 11; and in accordance with this Zoning Bylaw; and:
- (a) Shall make such investigation as it deems appropriate to determine whether the application meets the requirements of § 97-4C(2) and § 97-4C(3);
  - (b) May engage a radio frequency engineer, an acoustic engineer and such other professional consultants as it deems necessary to assist and advise it in its investigation and determination, whose services will be paid for by the applicant;

- (c) Shall require of each applicant and each holder of a special permit and site plan approval hereunder reasonable deposit for and reimbursement of all fees for the employment of appropriate consultants;
  - (d) Shall limit the duration of a special permit to three years;
  - (e) Shall notify in writing the owners of properties within 900 feet of the proposed site of the facility of an application for a special permit.
- (5) Monitoring and inspections.
- (a) The applicant shall be required to float a balloon or use a crane test at the location of a proposed tower or antenna to show its height and visibility. Such test shall be conducted two weeks prior to the public hearing and shall be advertised at the applicant's expense in a newspaper of general circulation in Newbury at least one week prior to the test. Written notice of the test shall also be given to the owners of property within 900 feet of the proposed site.
  - (b) Photo documentation after construction of the facility and just prior to becoming operational shall be required.
  - (c) Prior to beginning operation of the wireless communications facility, background levels of electromagnetic frequency radiation shall be monitored for each antenna sector at ground level and at six feet and sixteen feet above ground level for points that are at 200 feet, 500 feet and 1,000 feet from the facility and at the locations where maximum power density is predicted, as listed in the application.
  - (d) After operation of the facility has commenced, random monitoring of radio frequency and acoustic emissions shall be required. Electromagnetic frequency radiation shall be monitored for each antenna sector at ground level and at six feet and 16 feet above ground level for points that are at 200 feet, 500 feet and 1,000 feet from the facility, at the locations where maximum power density was predicted, as listed in the application, and at the locations where maximum power density occurs.
  - (e) Inspection of the structural integrity and safety of all towers and equipment attached thereto shall be required. Monopoles shall be inspected every five years. Structures mounted on or attached to existing towers shall be inspected every three years. Any modification of an existing facility that includes changes to tower dimensions or antenna numbers or type shall require a new structural inspection.
  - (f) All required monitoring and inspections shall be performed by appropriate independent consultants selected by the Zoning Board of Appeals and paid for by the applicant/owner. Said consultants shall use monitoring and inspection protocols as outlined in applicable wireless communication facilities regulations or, in the absence of such regulations, as specified by the Zoning Board of Appeals. Reports of all monitoring and inspection results shall be prepared by the consultants

and submitted to the Zoning Board of Appeals, to the Planning Board, to the Building Inspector and to the Board of Health.

- (6) Compliance and violations.
- (a) Every wireless communications facility for which a special permit is granted hereunder shall continue at all times to comply with the provisions thereof and of this Zoning Bylaw; and the holder of such special permit shall comply with requirements of the Zoning Board of Appeals in fulfillment of the provisions for monitoring herein.
  - (b) Every wireless communications facility and every application for a special permit for such facility shall comply with all other applicable provisions of this Zoning Bylaw, including, without limitation, requirements with respect to:
    - 01) The permit application;
    - 02) Special permits;
    - 03) Signs and exterior lighting;
    - 04) Site plan approval.
  - (c) Wireless communications facilities shall comply with such standards applicable thereto as may from time to time be imposed by the Board of Health, to the extent that such standards are not contrary to federal or state laws.
  - (d) The applicant shall be bound in the special permit and site plan approval processes and thereafter by the energy outputs and power densities at the locations as set forth in the special permit and site plan review and approval application and also with respect to the information contained in the application to the Radiation Control Program of the MDPH.
  - (e) If a wireless communications facility is determined to be in violation of any of the provisions of the special permit and/or site plan approval or any other applicable law or regulation, the Zoning Board of Appeals shall cause to be served on the operator of the facility and the owner of the land on or from which the violation is caused notice of such violation.
- (7) Modifications. Any changes or modifications to an already approved wireless communications facility shall be made through the special permit/site plan review and approval process. All such changes or modifications shall include:
- (a) Any change of personal wireless services as defined in the Federal Communications Act of 1996, other than allowed under an existing special permit;

- (b) Any change of service that involves changing the physical appearance of the wireless communications facility;
  - (c) Any change of tenant by collocation, regardless of the type of service;
  - (d) Any change in equipment that, by nature of the change, increases the level of radio frequency emissions;
  - (e) Any change in the physical appearance, physical characteristics or dimensions of the wireless communications facility;
  - (f) Any change in or deviation from the existing special permit;
  - (g) Written notice to owners of abutting properties within 900 feet of an application to modify an existing permit.
- (8) Liability insurance; removal and removal bond.
- (a) The special permit shall include a condition that any wireless communications services provider that operates a wireless communications facility in the Town of Newbury shall provide, for each such wireless communications facility, a certificate of insurance for bodily injury, in a form acceptable to the Zoning Board of Appeals, with coverage limits of not less than \$5,000,000. For good cause, and after notice and a public hearing, the Zoning Board of Appeals may, from time to time, require the owner to increase the limits of such coverage.
  - (b) If a wireless communications facility is not substantially in commercial operation for a period of one year, it shall be removed, and the site shall be returned to its preexisting condition by the owner of the facility and/or by the owner of the site within 180 days of notice by the Town. As part of an application for any wireless communications facility, a plan shall be submitted detailing how the site will be returned to its preexisting conditions, including planting of replacement trees, grading and removal of all structures and waste and any other work that may be required by the Zoning Board of Appeals, with a bond to be held by the Town, the amount of which shall be determined by the Zoning Board of Appeals. If the facility is not removed within said 180 days, the Town shall be empowered to use said bond for the removal of said facility.
- (9) Exemption.
- (a) The following type of wireless communications towers are exempt from this Zoning Bylaw: amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose.
  - (b) Wireless communications facilities constructed by the Town of Newbury for municipal public safety communications purposes.

D. Plum Island.

- (1) Purpose: To reduce damage to public and private property resulting from flood waters; ensure public safety by reducing threats to life and personal injury; eliminate costs associated with the response and cleanup of flooding conditions; preserve open space; and, limit the expansion of nonconforming single and two family structures so as to prevent the exacerbation of existing problems with density and intensity of use.
- (2) Allowed Uses:
  - (a) Municipal uses owned or operated by the Town of Newbury;
  - (b) Single family dwellings, subject to the dimensional requirements set forth in the table below:
 

01) Maximum Building Height	35 feet*
02) Maximum Number of Stories	2
03) Maximum Floor Area Ratio	0.25
04) Maximum Lot Coverage by Buildings	20%
- \* See height definition section 97-11D.
- (3) Prohibited uses: Any use not set forth in § 97-4D(2) is prohibited in the PIOD.
- (4) Nonconforming uses and structures, excluding single and two-family structures: The provisions of the PIOD shall not apply to pre-existing nonconforming structures or uses lawfully in existence as of [date of enactment].<sup>5</sup> Nonconforming uses and structures within the PIOD shall not be enlarged or extended; provided, however, that the following types of changes or alterations to nonconforming uses or structures may be authorized upon a finding by the Board of Appeals in the PIOD:
  - (a) Change of a pre-existing nonconforming use;
  - (b) Change of a pre-existing nonconforming use to another, less detrimental, nonconforming use;
  - (c) Reconstruction or structural change to a nonconforming structure;
  - (d) Alteration of a nonconforming structure to provide for a substantially different purpose or for the same purpose in a substantially different manner.
- (5) Non-conforming single and two-family residential structures.

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<sup>5</sup> Editor’s Note: So in original. This chapter was last amended 4-27-1999 ATM by Art. 25; reorganized 5-22-2007 ATM by Art. 23.

- (a) General. No preexisting nonconforming single or two-family residential structure within the PIOD shall be altered, reconstructed, extended, or structurally changed except as set forth in this § 97-4D(5).
- (b) Additional Bedroom. One (1) additional bedroom may be created in a lawfully preexisting nonconforming single or two-family structure with one or two bedrooms, subject to the applicable regulations set forth in Subsections § 97-4.D(5)(c) and § 97-4.D(5)(d).
- (c) As of Right Changes. The alteration, reconstruction, or extension of, or change to such structures may be authorized upon the issuance of a building permit where the Building Inspector determines that such alteration, reconstruction, extension or change shall:
  - 01) Not increase the footprint of the existing structure; and
  - 02) Not exceed the height of the existing structure, or 35 feet (See height definition section 97-11D), whichever is lower.
- (d) Special Permit. The alteration, reconstruction, extension of, or change to such structures to an extent other than that authorized by Subsection § 97-4D(5)(c), may be authorized upon a finding by the Board of Appeals that such alteration, reconstruction, extension, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood or the PIOD. The Board of Appeals shall not make a positive finding for any alteration, reconstruction, extension of, or change to such structures that would cause such structure to be located less than ten (10) feet from the side lot line or less than twenty (20) feet from the street unless a nearer building line is already established by existing buildings or would add bedrooms in excess of the provisions of § 97-4D(5)(b).
- (e) Catastrophe or Demolition: Rebuilding As of Right. A nonconforming single or two-family residential structure may be demolished and rebuilt or rebuilt after<sup>6</sup> destroyed or damaged by a catastrophe; provided, however, that
  - 01) The rebuilt structure shall not exceed the total volume of all demolished or destroyed structures on the locus; and
  - 02) The rebuilt structure shall not exceed the height of the tallest demolished or destroyed structure on the locus; and
  - 03) The rebuilt structure shall not contain more than the total number of bed rooms in all demolished or destroyed structures on the locus; provided, however, that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one or two and a bedroom had not been added under §97-4D(5)(b); and

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<sup>6</sup> Editor's Note: So in original.

- 04) The rebuilt structure shall not be located less than ten (10) feet from the side lot line or less than twenty (20) feet from the street unless a nearer building line is already by existing buildings; and
  - 05) Such structure shall be rebuilt not more than two years after the demolition or catastrophe; such period may be extended for one year for good cause shown upon a written request to the Building Inspector; and
  - 06) Any such rebuilding shall be subject to the provisions of § 95-4 A and § 95-4 B of the Newbury Wetlands By-Law; and
  - 07) structures within the FEMA V-Zone or AO Zone are not eligible for such findings under the provisions of § 95-4 A and § 95-4 B; of the Newbury Wetlands By-Law.
- (f) Catastrophe or Demolition: Rebuilding after a Finding. A nonconforming single or two-family residential structure may be demolished and rebuilt or rebuilt after destroyed or damaged by a catastrophe so as to exceed the total volume of all demolished or destroyed structures on the locus and/or exceed the height of the tallest demolished or destroyed structure on the locus upon a finding by the Board of Appeals.
- 01) Such structure shall be rebuilt not more than two years after such finding; such period may be extended for one year for good cause shown upon a written request to the Building Inspector.
  - 02) Such finding shall be made only upon the determination that the proposed alteration to the nonconforming structure or use shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood or the PIOD.
  - 03) The rebuilt structure shall not contain more than the total number of bedrooms in all demolished or destroyed structures on the locus; provided, however, that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one or two and a bedroom had not been added under § 97-4D(5)(b).
- (g) Frontage: No building permit for a single family residential structure within the PIOD shall be issued unless the lot to be built upon has frontage on a street.
- (h) Unconstructed ways: No building permit shall be issued for a lot with frontage on an unconstructed way which does not qualify as a "street" until the Planning Board approves a plan, prepared by the applicant, demonstrating that the proposed way has sufficient width and suitable grades to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the building

erected or to be erected thereon and the first course of pavement for such way has been installed in accordance with such plan, as certified in writing by the Planning Board. No certificate of occupancy shall be issued for such lot until the second and final course of pavement has been installed in accordance with such plan, as certified in writing by the Planning Board.

- (i) Grandfathering. The provisions of § 97-10B of the Zoning By-Law shall not apply in the PIOD. The construction of single residences in the PIOD shall be governed by G.L. c. 40A, s. 6. Para. 4.
- (j) The Board of Appeals may grant use variances within the PIOD provided the Board of Appeals finds that the proposed use is not more detrimental than the current use.

E. Flood Zone.

- (1) In all zones V1-30. The following Subsections shall be applicable in all districts of the Town which are classified as being within Zones V1-30 (coastal high hazard area) on the special Federal Insurance Administration's Flood Insurance Rate Maps(FIRM), effective\* July 17, 1986\* which map(s), as amended from time to time, shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector, the following subsections shall be applicable:
  - (a) With respect to all new or substantially improved structures, the application and plans for the building permit shall provide the elevation (in relation to mean sea level) of the lowest habitable floor (including basement), whether or not such structures contain a basement and, if the structure is to be or has been flood-proofed, provide the elevation (in relation to mean sea level) to which the structure is or has been flood-proofed;
  - (b) All new construction shall be located landward of the reach of mean high tide;
  - (c) (Reserved)
  - (d) (Reserved)
  - (e) The use of fill for structural support of buildings or other structures shall be prohibited;
  - (f) The placement of mobile homes or house trailers shall be prohibited;
  - (g) Man-made alterations of sand dunes and/or mangrove stands which would increase potential flood damage shall be prohibited;

- (h) The provisions of § 97-4E(1)(b) through § 97-4.E.1.C inclusive,<sup>7</sup> including all subsections thereof shall be applicable in all districts of the Town which are classified as being within Zone V1-30 on the special Federal Insurance Administration's FIRM. 4-15-86;
- (2) In Zones A1-30. The following Subsections shall be applicable in all districts of the Town which are classified as being within Zones A1-30 on the special Federal Insurance Administration's Flood Insurance Rate Maps (FIRM), effective July 17, 1986 which map(s), as amended from time to time, shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector:
- (a) (Reserved)
  - (b) (Reserved)
  - (c) (Reserved)
  - (d) (Reserved)
  - (e) Until such time as a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development when combined with all other existing and anticipated development, will not increase the water surface elevation of the base more than 1 foot at any point with the Town of Newbury.
  - (f) (Reserved)
  - (g) (Reserved)
- (3) More restrictive regulations to apply. Where the flood area regulations set forth in § 97-4E., including all sections thereof, impose greater or lesser restrictions or requirements than those of other applicable By-Laws or regulations, whether Federal, State or local, the more restrictive restrictions or requirements shall be applicable.
- (4) Applicability; data; texts and maps. The provisions of this sub-section shall apply in all unnumbered A Zones, Zones A1-30 and Zones VI-30. All proposed developments shall be reviewed to assure 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. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and all new and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and on-site waste disposal systems shall be located to avoid impairment to them or contamination

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<sup>7</sup> Editor's Note: So in original.

from them during flooding. All the provisions of § 97-4E(2) and all subsections thereof shall apply in any unnumbered A Zone on the FIRM.

- (5) There shall be obtained, reviewed and reasonably utilized any base flood elevation data available from a Federal, State or other source as criteria for requiring that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated or flood-proofed to or above the base floor level. The building Inspector shall obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, obtain, if the structure had been flood-proofed, the elevation to which it has been flood-proofed, and shall maintain a record of all such information.
- (6) Texts and maps may be inspected at the Town Hall, 25 High Road, Newbury, Massachusetts.
- (7) Floodway provisions. In the floodway, designated on the FIRM and the Floodway Maps the following provisions shall apply:
  - (a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood;
  - (b) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code;
  - (c) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.
- (8) Flood Zone Variances.
  - (a) The Permit Granting Authority may grant a variance from the requirements of Article VIII including all sections thereof, subject to the requirements of Massachusetts General Laws, Chapter 40A, § 97-11B of this By-law and upon the following conditions and restrictions:
  - (b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or on a State Inventory of Historic Places without regard to the procedures hereinafter set forth;
  - (c) No variance shall be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
  - (d) Variances may be issued only for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level;
  - (e) Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variances would result in exceptional hardship to the applicant and a determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create

nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances, other than the provisions of § 97-4E. together with all sections thereof, of this By-Law;

- (f) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford the relief requested;
- (g) The Permit Granting Authority shall notify the applicant for a variance in writing over the signature of the Chairman of the Permit Granting Authority that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100-.00 of insurance coverage and such construction below the base flood level increased risks to life and property. Such notification shall be maintained with the records of all variance actions maintained pursuant to requests for variances from the provisions of § 97-4E. together with all sections thereof.

F. Adult Entertainment.

- (1) Nothing herein contained is intended or shall be construed to prohibit and/or limit the use of the land within this district for those uses permitted in an Industrial District.
- (2) Location limitations of Adult Entertainment Businesses. No person shall establish or cause or permit to be established an Adult Entertainment Business within One Thousand Five Hundred feet (1500') of any other building or structure containing another Adult Entertainment Business nor within Seven Hundred Fifty feet (750') of any public or private school, public or private park or recreation area, public or private buildings with programs for minors, or religious institution, elder housing, library, hospital or emergency medical treatment clinic nor within Five Hundred feet (500') of an existing residence or residential use.
- (3) Requirements. No person shall establish or cause or permit to be established an Adult Entertainment Business without fulfilling each of the following requirements:
  - (a) Special use permit – In appropriate cases and subject to appropriate conditions or safeguards and limitations on time and use, the Board of Selectmen may grant a Special Permit to conduct an Adult Entertainment Business within the Industrial District A. Such Special Permit must be renewed annually.
  - (b) License and/or permit requirement – No person shall conduct an Adult Entertainment Business without first obtaining any and all necessary licenses and permits.
- (4) Conditions and Standards. Adult Entertainment Businesses shall comply with all of the following conditions and standards:

- (a) Advertisements, displays or other promotional materials depicting or describing “Specified Anatomical Areas”, or “Specified Sexual Activities”, or displaying instruments, devices, or paraphernalia which are designed for use in connection with “Specified Sexual Activities” shall not be shown or exhibited so as to be visible from other areas open to the general public.
  - (b) All building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior from any area open to the general public.
  - (c) All entrances shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.
  - (d) No loudspeakers or sound equipment shall be used for the amplification of sound to a level discernible by the public beyond the walls of the building in which the use is conducted.
  - (e) All exterior areas, including buildings, landscaping and parking areas, shall be maintained in a clean and orderly manner.
  - (f) An Adult Entertainment Business shall not remain open for business, or permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 1:00 AM. and 10:00 AM of any particular day. These hours of operation may be further restricted in the conditions approving the Special Use Permit.
- (5) No Adult Entertainment Business shall be established:
- (a) On any lot of less than 60,000 square feet with a frontage of not less than 200 feet. Not more than 20% of the minimum lot area (example: 12,000 sq. ft. of a 60,000 sq. ft. lot) shall be in wetlands. Such wetlands are defined in M.G.L., Chapter 131, Section 40 as amended, and include without limitation bogs, swamps, marshes, wet meadows, and areas of flowing or standing water, sometimes intermittent, and are characterized by their distinctive soils, including but not limited to peat or muck or by the existence of plant communities which require the presence of water at or near ground surface for the major portion of the year. Such plant communities are those described in M.G.L., Chapter 131, Section 40, as amended;
  - (b) Any building utilized for an Adult Business shall be set back from its street line not less than 100 feet and from its side or rear boundaries not less than 50 feet nor shall exceed 35 feet in height as measured from the mean level of the established grade to the mean height of the roof, nor shall occupy more than 25% of the lot area;
  - (c) Parking shall be in accordance with Parking Requirements Table 97-7B.



**ARTICLE V – SPECIAL PERMITS GENERAL****§ 97-5. Special Permits General.**

## A. General.

- (1) Certain uses are allowed only by Special Permit. The specific requirements for each special permit are described here below.

## B. Bed and Breakfast.

- (1) Requirements. After an initial Public Hearing and with a special permit granted from the Board of Selectmen, to be renewed annually, an owner-occupied and operated dwelling of residential character may be used as a Bed and Breakfast for the lodging of overnight guests provided such dwelling and the operation thereof meets all of the following conditions:
  - (a) Said Bed and Breakfast shall not have more than four bedrooms (excluding the owner's private quarters).
  - (b) Guest rooms shall contain no individual cooking facilities.
  - (c) Breakfast may be provided to guests from a central kitchen and shall be limited to those who are permanent residents and paying overnight guests.
  - (d) The use of said Bed and Breakfast shall be clearly incidental to the primary residential use of the dwelling.
- (2) The purpose of this By-Law is to allow the use of larger homes as a Bed and Breakfast, but the intent is not to allow structural or appearance changes to facilitate this use.
- (3) The applicant must demonstrate that no visible exterior alterations will occur: that adequate parking can be provided: and that the structure and use conform to all pertinent Board of Health and Board of Fire Engineers Regulations, and to the Regulations of any other body that may have jurisdiction

## C. Open Space Residential Development.

**[Added 4-24-2001 ATM, Art. 27; amended 4-22-2003 ATM Art. 6]**

- (1) Purpose and intent.
  - (a) The Primary Purposes for the Open Space Residential Development (OSRD) bylaw are the following:
    - 01) To allow for greater flexibility and creativity in the design of residential developments.

- 02) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;
  - 03) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
  - 04) To minimize the total amount of disturbance on the site;
  - 05) To further the goals and policies of the open space plans;
  - 06) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.
- (b) The Secondary Purposes for OSRD are the following:
- 01) To preserve and enhance the community character;
  - 02) To protect the value of real property;
  - 03) To provide for a diversified housing stock;
  - 04) To provide affordable housing to persons of low and moderate income.
- (2) Eligibility.
- (a) Any development that will create more than four lots or units shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the conventional subdivision process or under the OSRD.
  - (b) Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels.
  - (c) Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, §81P provided, however, that an OSRD may also be permitted where intended as a condominium on land not so divided or subdivided.
- (3) Special permit required. The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Such special permits shall be acted upon in accordance with the following provisions.
- (4) Pre-application.

- (a) Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the preapplication review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD special permit.
- (b) Submittals. In order to facilitate review of the OSRD at the preapplication stage, applicants are strongly encouraged to submit the following information:
- 01) Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
  - 02) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict;
  - 03) Other Information. In addition, applicants are invited to submit the information set forth in § 97-5C(5) in a form acceptable to the Planning Board.
- (c) Site Visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate preapplication review of the OSRD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission.

- (d) Design Criteria. The design process and criteria set forth below in § 97-5C(5) should be discussed by the parties at the pre-application conference and site visit.
- (5) Design process.
    - (a) At the time of the application for a special permit for OSRD in conformance with § 97-5C(6)(a), applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.
      - 01) Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.
      - 02) Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns. The number of homes or units if<sup>8</sup> a condominium proposal enjoying the amenities of the development should be maximized.
      - 03) Step Three: Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
      - 04) Step Four: Draw in the lot lines, if not treated as a condominium.
  - (6) Procedures.
    - (a) Application. An application for a special permit for an OSRD shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board. Applicants for OSRD shall also file with the Planning Board eight copies of the Concept Plan. The Concept Plan shall include a Sketch Plan and a Yield Plan [see Subsection -1 and -2 of this section]. The applicant shall submit both the

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<sup>8</sup> Editor's Note: So in original.

Site Context Map and Existing Conditions/Site Analysis Map prepared according to § 97-5C(5)(b) above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

01) Sketch Plan. The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multi-disciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, and give approximate configurations of the lots, of unit placements if treated as a condominium, of open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to § 97-5C(5) above, and the Design Standards, according to § 97-5C(10) below, when determining a proposed design for the development. The Sketch Plan shall include the following:

- a) The subdivision name, boundaries, north point, date, legend, title "Concept Plan," and scale;
- b) The name and address of the record owner or owners, the applicant, and the Landscape Architect or other designer that prepared the plan;
- c) The names, approximate location, and widths of adjacent streets;
- d) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level;
- e) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, waterbodies, archaeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major land views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to § 97-5C(5)(a). Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan;
- f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan;
- g) Lines showing proposed private residential lots, as located during Step Four, § 97-5C(5)(d), with approximate areas and frontage dimensions, or unit placements and proposed common areas;

- h) All existing and proposed features and amenities, including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off-street parking areas shall be shown on the plan and described in a brief narrative explanation, where appropriate;
- i) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or unit development, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner;
- j) Proposed roadway grades;
- k) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the Planning Board. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized;  
**[Amended 6-22-2004 STM, Art. 7]**
- l) A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether soft or hard engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan;
- m) A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system;
- n) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan;
- o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative;

- p) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose;
  - q) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.
- 02) Yield Plan. Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to § 97-5C(7), Basic Maximum Number (of lots/units).
- 03) Relationship between Concept Plan and Definitive Subdivision Plan. The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:
- a) An increase in the number of building lots and/or units;
  - b) A significant decrease in the open space acreage;
  - c) A significant change in the lot layout or unit placement;
  - d) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
  - e) Significant changes to the stormwater management facilities; and/or
  - f) Significant changes in the wastewater management systems.
- (b) Procedures.
- 01) Whenever an application for an OSRD special permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board

within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

- (c) Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.
  - (d) Other Information. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSRD with the public hearing required for approval of a definitive subdivision plan.
- (7) Basic maximum number of lots. The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for a Sketch Plan as set forth above in § 97-5C(6). The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots resulting from the design and engineering specifications shown on the Yield Plan.
- (8) Reduction of dimensional requirements. The Planning Board encourages applicants to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:
- (a) Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw;
  - (b) At least 50% of the required setbacks for the district shall be maintained in the OSRD unless a reduction is otherwise authorized by the Planning Board. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet;
  - (c) Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage;

- (d) Setbacks: Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In the event that dwellings are located on exclusive use areas or contain no interior lot lines, a minimum distance of 20 feet between single and two-family dwellings shall be required.

(9) Open space requirements.

- (a) Open Space. A minimum of fifty percent (50%) of the upland shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a permanent conservation or agricultural preservation restriction in accordance with G.L. c. 184 § 31, approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Any proposed open space that does not qualify for inclusion in the Conservation Restriction or that is rejected from inclusion in the Conservation Restriction by the State of Massachusetts will be subject to a Restrictive Covenant, that shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town. [**Amended 6-22-2004 STM, Art. 7**]

01) The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.

02) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, agriculture, horticulture, suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD.

03) Wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

- (b) Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:

- 01) The Town or its Conservation Commission;
  - 02) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
  - 03) A corporation, homeowners association or trust owned jointly or in common by the owners of lots or units within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded;
  - 04) A private owner for agricultural, horticultural or forestry.
- (c) Maintenance of Open Space. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance.
- (10) Design standards. The following Generic and Site Specific Design Standards shall apply to all OSRD's and shall govern the development and design process.
- (a) Generic Design Standards:
    - 01) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainageways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme;
    - 02) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks,

and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel;

- 03) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings;
  - 04) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties;
  - 05) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.
- (b) Site Specific Design Standards.
- 01) Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose and intent of the Open Space Residential Development Bylaw, as stated in section § 97-5C(1). [**Amended 6-22-2004 STM, Art. 7**];
  - 02) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation;
  - 03) Drainage. The Planning Board shall encourage the use of “soft” (nonstructural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate;
  - 04) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan;
  - 05) On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate;
  - 06) Disturbed Areas. Every effort shall be made to minimize the area of disturbed areas on the tract. A disturbed area is any land not left in its natural vegetated state.

- (11) Decision of the Planning Board.

- (a) The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:
- 01) Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
  - 02) Whether the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including waterbodies and wetlands, and historical and archaeological resources;
  - 03) Whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
  - 04) Whether the OSRD reduces the total amount of disturbance on the site;
  - 05) Whether the OSRD furthers the goals and policies of the open space and master plans;
  - 06) Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
  - 07) Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.

(12) Increases in permissible density.

- (a) The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSRD shall not, in the aggregate, exceed fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:
- 01) For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded.
  - 02) For every (1) one dwelling unit restricted to occupancy for a period in perpetuity by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, one (1) dwelling unit may be added as a density bonus. [**Amended 6-22-2004 STM, Art. 7**]
  - 03) For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added as a density bonus.

**ARTICLE VI – DIMENSIONAL REGULATIONS**

**§ 97-6. Dimensional Regulations.**

**A. General Regulations.**

- (1) Any building, structure, or part thereof, converted, constructed, altered, or moved shall conform with the requirements for lot area, frontage, yards, floor area ratio (FAR), lot coverage, and height as set forth in this table unless otherwise specified elsewhere in this bylaw.

**B. Table of Dimensional Requirements.**

TABLE OF DIMENSIONAL REQUIREMENTS							
Zoning District	Minimum Dimensions				Maximum Dimensions		
	Lot Area (sft)	Frontage (ft)	SetBacks		Footprint (sft)	Lot Coverage (%)	Height* (ft)
			Property line (ft)	Street (ft)			
<b>R-AG Single Family Residence</b>	40,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>Two Family Residence – Served by a public water supply</b>	60,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>Two Family Residence – all other</b>	80,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>PR</b>	40,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>R-LB</b>	80,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>B</b>	10,000 <sup>(1)</sup>	100	10	20	2,500 <sup>(5)</sup>	50	35
<b>CH</b>	40,000 <sup>(4)</sup>	200	25	50	—	50	35
<b>CHA</b>	40,000 <sup>(4)</sup>	200	25	50	—	50	35
<b>I</b>	40,000 <sup>(1)</sup>	200	25 <sup>(3)</sup>	50 <sup>(3)</sup>	—	50	35

Notes:

- <sup>(1)</sup> Required contiguous upland. Regardless of the actual lot size, at least 80% of the minimum lot area for the district shall be contiguous in uplands and shall not be in wetlands or in the Parker River-Essex Bay Area of Critical Environmental Concern. Such wetlands are defined in M.G.L. Chapter 131, Section 40 as amended, and include without limitation bogs, swamps, marshes, wet meadows, and areas of flowing or standing intermittent, and are characterized by their distinctive soils, including but not limited to peat or muck, by the existence of plant communities which require the presence of water at or near ground surface for the major portion of the year. Such plant communities are those described in M.G.L., Chapter 131, Section 40 as amended. [Amended 6-26-2001 STM, Art. 8; 6-24-2003 STM, Art. 15] [Added 6-24-2003 STM, Art. 17] [Added 6-24-2003 STM, Art. 16]
- <sup>(2)</sup> No part of any building on lots in said district may stand less than 10 feet from a property line or less than 20 feet from a street unless a nearer building line is already established by

- existing buildings.
- (3) No building on any lot shall be closer than 50 feet to a highway or watercourse or less than 25 feet from any side or rear boundary or more than 35 feet in height as measured from the mean sea level of the established grade at the building to the mean height of the roof.
  - (4) Each lot shall have an area not less than 40,000 square feet and shall have a frontage on an accepted way of not less than 200 feet (an additional 2,000 square feet of gross area shall be required for each unit in any motel).
  - (5) Maximum footprint area of a permitted non-residential building shall neither exceed 2500 square feet nor cover more than 50% of the lot.
- \* See height definition section 97-11 D

**ARTICLE VII – PARKING AND COMMON DRIVEWAYS**

**§ 97-7. Parking, Loading and Access.**

- A. General. Parking and loading shall be provided in accordance with this table unless otherwise specified elsewhere in this bylaw.
- B. Parking Requirements Table.

**PARKING REQUIREMENTS**

<b>· DISTRICT or USE</b>	<b>· PARKING SPACES</b>	<b>· LOADING SPACES</b>
<b>R-AG</b>	2 spaces per dwelling unit [ <b>Added 4-22-2003 ATM, Art.3</b> ]	—
<b>PR</b>	2 spaces per dwelling unit	—
<b>R-LB</b>	See § 97-7C(1) below	None specified
<b>B</b>	See § 97-7C(2) below	See § 97-7C(2) below
<b>Eating establishment</b>	1 /3 seats + 1 /employee in a given shift	—
<b>Bank, office, professional building &amp; personal service establishment</b>	4 /1000 square feet of gross floor area	—
<b>Dentist, doctor, medical professional</b>	4 per medical practitioner + 1 /employee in a given shift	—
<b>Retail</b>	1 /200 square feet of gross floor area	—
<b>All other</b>	Determined by Special permit granted by the Board of Selectmen	—
<b>CH &amp; CHA</b>	See § 97-7C(3) below	See § 97-7C(3) below
<b>Roadside Stand</b>	10	—
<b>Motel – Hotel</b>	1 1/2/rental unit	—
<b>Retail, Service Finance, Insurance, or Real Estate Establishment</b>	1 /75 square feet of floor space	—
<b>Wholesale Establishment</b>	1 /300 square feet of floor space	—
<b>Auditorium, Church, or place of Public Assembly</b>	1 /75 square feet of floor space	—
<b>Hospital or Nursing Home</b>	2 /Bed at design capacity	—
<b>Elementary &amp; Junior High School</b>	2 /classroom plus spaces needed for auditorium or gymnasium, whichever has the larger capacity.	—
<b>Senior High School</b>	4 /classroom plus spaces needed for auditorium or gymnasium, whichever has the larger capacity.	—

· DISTRICT or USE	· PARKING SPACES	· LOADING SPACES
<b>Other Community Facility (town Building, Recreation, etc.) or Public Utility</b>	Dependent on individual needs but not less than 1 /75 square feet of floor space.	
<b>I</b>	1 /600 square feet of floor space	1 /15,000 square feet
<b>Adult Entertainment Business</b>	On-site parking spaces not less than 300 square feet per vehicle as mandated by the Board of Selectmen in the required special use permit.	—

C. Additional Parking Requirements.

- (1) Off-street parking facilities must be provided to accommodate customers and employees in connection with any permitted use.
- (2) Agricultural / Residential district.
  - (a) Driveways shall be a minimum width of 9 feet.
- (3) Business District.
  - (a) Parking spaces shall be nine (9) feet in width and eighteen (18) feet in length, except for handicapped parking spaces per the American with Disabilities Act. Aisles shall be twenty-four (24) feet wide. A paved apron of at least ten (feet) into the parking area shall be provided.
  - (b) Parking surface: Required parking and access thereto shall be provided with either a gravel or a paved surface,
  - (c) Parking may be provided off-site by special permit, reviewed annually by the Board of Selectmen
  - (d) Loading docks and delivery areas must be at the rear of the building.
  - (e) The number of parking spaces provided shall not be decreased for as long as the original use exists on site.
- (4) Commercial Highway District and Commercial Highway District A.
  - (a) Each parking space or loading zone shall consist of 300 square feet of hot top or well compacted gravel treated with two coats of oil complying with § 117-32 of the Subdivision Control Regulations for the Town of Newbury.
  - (b) There shall be one off-street loading zone for each 15,000 square feet of floor space in any building. Parking spaces shall be provided for each lot as follows:
    - 01) When units or measurements determining the number of required parking or loading spaces result in a requirement of a fractional

space, any fraction over one-half shall require one parking or loading space;

02) The parking spaces required for the uses in the above table shall be on the same lot as the use they are intended to serve, or, when practical difficulties as determined by the Building Inspector prevent their establishment upon the same lot, they shall be established no further than 300 feet from the premises to which they are appurtenant. In no case shall the required parking spaces be part of the area used to satisfy any loading requirements of this By-Law;

03) The loading zone required for the uses listed in the above table shall in all cases be on the same lot as the use they are intended to serve. In no case shall the required loading zone be part of the area used to satisfy the parking requirements of the By-Law.

(5) Industrial District.

(a) Parking and loading spaces shall be a minimum of 300 square feet

D. Common Driveways – By special permit only. [Added 4-22-2003 ATM, Art. 7]

(1) Purpose and intent. The purpose of the Common Driveway by-law is to provide an alternative to individual driveways that would allow the preservation and protection of natural features, the reduction of impacts to wet lands and the retention of the rural quality of Newbury while providing safe vehicular travel from the access point of the public way, reducing curb cuts, improving sighting distances and providing adequate access for emergency vehicles. It is not the intent of this by-law to subvert the subdivision regulations, but to offer an option to the installation of individual driveways.

(2) Eligibility. Up to three single-family lots or two duplex lots or one duplex lot and on single-family lot are eligible under the provisions of this by-law. All lots are required to have adequate and viable frontage, which complies with the Newbury Protective Zoning By-law, and shall be located on a public way.

(3) Special Permit required. The Planning Board shall make the following findings relative to the common driveway special permit:

(a) The use requested is noted in the Zoning By-law as a special permit in the district for which the application is made;

(b) The requested use is essential and/or desirable to public convenience or welfare;

(c) The requested use will not create undue traffic congestion or unduly impair pedestrian safety;

(d) The requested use will not overload public water, drainage, sewer systems or any municipal systems to such an extent that the requested

use or any developed use in the immediate area or any other area of the town will be unduly subjected to hazards affecting the health, safety and general welfare of the community;

- (e) Any special requirements for use set forth are fulfilled; and
  - (f) The requested use will not impair the integrity or character of the district or adjoining districts nor be detrimental to the health, safety or welfare of the immediate residents or the residents of the community.
- (4) Design standards.
- (a) Application requirements:
    - 01) Application fee in accordance with the Planning Board fee schedule;
    - 02) Overall plan showing all lots involved and abutting lots; abutters' names; wetlands; topography (two-foot contour interval); edge of pavements (proposed and existing); conceptual or existing location of dwellings and septic systems; natural features of the land including large trees, rock outcroppings, stone walls and other features;
    - 03) Plan of Land prepared by a Registered Land Surveyor, showing easements and property lines, suitable for recording at the Registry;
    - 04) Grading plan and profile at 40 scale, prepared by a Professional Engineer, showing drainage, proposed and existing contours, with a common driveway cross section;
    - 05) Proposed signage and proposed location of signs;
    - 06) Certified list of abutters;
    - 07) Legal documentation of easements and other legal instruments prepared by an attorney.
  - (b) Common Driveway Specifications:
    - 01) Minimum width shall be 16 feet and shall provide adequate access for emergency vehicles;
    - 02) Materials: A minimum of 12 inches compacted gravel base;
    - 03) Maximum center line slope shall be 15%;
    - 04) Driveway shall be crowned, so drainage is not crossing driveway surface. When drainage must cross drive, it shall be done in a closed culvert minimum 12-inch diameter under the road. Drainage

- for drive and lots shall be controlled on site (or adequate provisions and easements made for off-site control of drainage);
- 05) The minimum width of easement shall be 30 feet;
  - 06) The acute angle of the intersection of the driveway and the street shall not be less than 60 degrees;
  - 07) The general layout and alignment shall blend with the existing topography and landscaping of the area.
- (c) Easements and maintenance agreements. Prior to Planning Board endorsement of the plan and issuance of the Common Driveway Permit, Town Counsel shall review and approve the following:
- 01) Deed requirements. All deeds of ownership of lots served by a common driveway shall require that the owners of said lots shall be members of an association or homeowners agreement, whose purpose is to provide for the maintenance of the common driveway in order to perpetually provide safe continuous access for the owners of said lots and the Town in case of an emergency. Each lot served by the common driveway must have permanent access to the common driveway by easements recorded at the registry of deeds. Such easements shall include the rights for motor vehicles to freely pass and re-pass. Such easements shall include the right to install, repair and maintain drains, culverts, roadway surface and other utilities located under, across and/or along the common driveway. The deed shall state that the common driveway is not a Town road and shall not be considered a Town road in the future; therefore, Town maintenance is not an obligation of the Town;
  - 02) Owners and/or Association Agreement. The Owners/Association Agreement must impose upon the members the obligation of repair, maintenance and snow removal so as to cause the driveway, including the drainage serving the driveway and the sight lines to the intersecting public way, to be repaired or maintained in such a manner as to insure the continuous year-round access to each lot by the owners of said lots, fire, police, ambulance and other vehicles, the adequate delivery of public and private utilities to the lots served by the driveway, and so that the initial specifications (or improved specifications) of the common driveway are maintained.
- (d) Procedures and decision of the Planning Board.
- 01) Common driveway permitting process. The Newbury Planning Board shall follow the procedures noted in § 97-11C of the Newbury Zoning By-law. Three copies of the application package and plans shall be submitted to the Planning Board at a regularly scheduled meeting;

- 02) Decision of the Planning Board. The Newbury Planning Board may condition the special permit decision so as to meet the intent of the by-law and to insure the health, safety and welfare of the applicants as well as the residents of the community. As a condition of the approval, the Planning Board may condition the special permits so that no certificate of occupancy shall be issued until the common driveway has been constructed in accordance with these rules and regulations as deemed by the Newbury Planning Board. No certificate of occupancy shall be issued until plans and association documents are properly recorded.

**ARTICLE VIII – SIGNS****§ 97-8. SIGN REGULATIONS. [Amended 5-22-2007 ATM, Art. 24]****A. Purpose.**

The purpose of this Article is to allow such signs as are designed to:

- (1) Preserve and enhance the appearance of the Town of Newbury and protect our investment in buildings and open space.
- (2) Encourage sound signing practices for business identification and public information.
- (3) Prohibit excessive and confusing sign displays.
- (4) Eliminate potential hazards to motorists and pedestrians created by distracting and inappropriate sign displays.
- (5) Provide commercial signing which is used primarily as identification and not as advertising.

**B. Definitions.**

The term “sign” shall include any fabricated or outdoor display structure consisting of any logo, letter, character, design, reading matter, or illuminating device; constructed, fastened or manufactured so that the same shall be used for the attraction of the public to any place, firm, public performance, or merchandise and displayed for advertising purposes.

As used in this section, the following words and terms shall have the following meanings:

- (1) *Advertising Display Area* — the copy area encompassed within any simple geometrical figure which would enclose all parts of the sign. It shall not include any structural supports for the sign except to provide a frame for it, and provided that no copy is included on such supports. In the case of two sided ground signs or freestanding signs only 50% of the total of the two sides shall count as part of the allowed sign area permitted in the applicable zone.
- (2) *Animated Sign* — any sign which attracts attention by movement, changing colors, flashing or revolving. It shall not include time-temperature signs.
- (3) *Agricultural Sign* — A sign which has wording to advertise products raised or grown principally on the premises and signs advertising these products which may be changed periodically
- (4) *Awning or Canopies* — All lettering or graphics on awnings or canopies shall require a sign permit and count as part of allowed sign area. No awning or canopy shall be illuminated in such a way that the light from such illumination is directly visible through the canopy or awning.

- (5) *Directional Signs* — any sign located on the premises to provide for the safe flow of vehicular and pedestrian traffic upon said premises.
- (6) *Freestanding Sign* — any mobile or portable sign not securely attached to the ground or any building and intended for temporary purposes.
- (7) *Ground Sign* — any permanent sign which is erected on supports in the ground and not attached to any building.
- (8) *Non-commercial use* — a sign containing no commercial message or intent, such as a “no trespassing” sign; or a sign qualifying under a “freedom of speech” provision (e.g. a sign expressing a belief or sentiment).
- (9) *Roof Sign* — any sign which is erected so as to project higher than the cornice of the building on which it is erected.
- (10) *Off-Premise Sign* — any sign erected to advertise or give directions to an establishment or merchandise which is not sold, produced, manufactured or furnished at the property on which the sign is located.
- (11) *Projecting Sign* — any sign attached to a building which projects more than twelve (12) inches from a building wall and is intended to be read from the side.
- (12) *Wall Sign* — any sign painted or permanently attached to and parallel with the wall of a building and extending not more than twelve (12) inches from the wall of the building.
- (13) *Window Sign* — any sign installed on or attached to a window of a building and intended to be viewed from the outside of the building.

### **C. Prohibitions.**

The following types of sign are not allowed:

- (1) Animated signs
- (2) Roof signs
- (3) Off-Premise sign, except as follows: signs indicating locations of places of public assembly or interest such as churches, schools, museums, libraries, fraternal or civic organizations; provided they are otherwise in conformity with this bylaw.

Off-Premise Agricultural Purpose signs are permitted subject to the rules and regulations contained in “A Guide to Highway Signage for Agricultural Purposes in the Town of Newbury” –see Section 97-8.B(6)

- (4) Signs containing red or green lights, except for holiday signs.

- (5) Signs purposefully erected upon motor vehicles, trailers, or other movable objects regularly or recurrently located with the intent of fixed display.
- (6) Signs illuminated between the hours of 11:00 p.m. and 7:00 a.m., unless such premise is open to the general public during these hours.
- (7) Signs illuminated so as to cast a glare onto any portion of a way which would create a traffic hazard. Nor shall any sign cause direct illumination of adjacent property. Signs may be illuminated by the following means unless noted otherwise in a specific zone:
  - (a) Externally, by a steady, stationary white light shielded and directed solely at the sign.
  - (b) By interior lighting of reasonable intensity.
- (8) Signs erected within the right of way of any street except for traffic control and as specified in 97-8. B. (3) above.
- (9) No sign of any kind shall be attached to a public utility pole.

**D. Permits.**

- (1) No sign shall be erected until Sign Permit has been issued by the Building Inspector, except for those exempt signs described in Section 97-8.F of this Bylaw.
- (2) Site Plan Review if required in the district in which the sign will be located, shall show building location and height, entrances and exits. Parking arrangements, loading areas, sign location and height, and a detailed drawing of the proposed sign shall accompany application.
- (3) All Sign Permits issued under this Bylaw shall be retained at all times on the premises.

**E. General Requirements.**

- (1) No sign in any district shall exceed 25 feet in height or be higher than the main roof line of the building, whichever is greater.
- (2) No sign shall project over or extend beyond the property line.
- (3) No sign shall be erected so as to obstruct the vision of vehicular traffic entering or exiting the premises.
- (4) In all districts, ground signs shall be set back a minimum of 10 feet from the traveled way or from the property line.
- (5) Agricultural Purpose Signs: in all districts, the placement, size and type of sign shall conform to Section 97-8.I, Business Districts, and to the rules and regulations set forth in "A Guide to Highway Signage for Agricultural

Purposes in the Town of Newbury” which may be amended from time to time by vote of the Planning Board.

**F. Exempt Signs:**

The following types of signs shall be exempt from the provisions of this bylaw, except for construction and safety regulations:

- (1) **Public Signs:** Signs of a non-commercial nature and in the public interest erected by, or on the order of, a public official in the performance of his public duty, such as safety signs, danger signs, trespassing signs, traffic signs, street signs, memorial plaques, signs of historical interest, signs designating a public project or improvement program and the like.
- (2) **Integral Sign:** Names of buildings, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent-type construction and made an integral part of the structure.
- (3) **Identifying signs** used for 911 purposes.
- (4) Any sign of a non-commercial use. Such a sign shall not exceed 6 square feet in area.
- (5) **Holiday signs.**
- (6) **Temporary signs:** A maximum of three (3) temporary signs plus 1 for each additional separately identifiable unit over one (1) shall be allowed per lot. All temporary signs shall not exceed six (6) feet in height and shall not exceed six (6) square feet each. Temporary signs shall be set back at least ten (10) feet from the edge of the traveled way, except where insufficient setback exists; in such cases, signs shall be attached to a building wall facing the traveled way.

All temporary signage shall be removed within 14 days of the completion of any specific event or election to which they may be related

The following types of signs do not require a permit but will count toward the total number of allowed signs on a lot:

- (a) **Construction signs:** Signs identifying architects, engineers, contractors and tradesmen involved with the construction, and signs announcing the purpose for which the building is intended.
- (b) **Real estate signs:** Signs which advertise the sale, rental or lease of the premises or part of the premises on which the signs are displayed.
- (c) **Political campaign signs:** Signs announcing political positions or candidates seeking public office and other data pertinent thereto.
- (d) **Temporary signs** may be erected on Town owned property upon application to the Selectmen, provided all such signs are removed within fourteen (14) days of the conclusion of the event or events. Such signs shall respect the purposes set out in Section A of this bylaw and obey the prohibitions set out in Section B of this bylaw.
- (7) **Agricultural-Residential and Parker River Residential:** Permits are not required in these zones for the following:
  - (a) **One identification sign** for each dwelling unit provided: such sign shall not exceed two (2) square feet in surface area; if lighted, it shall be illuminated with a white light directed solely at the sign.

- (b) One identification sign for a home occupation that is registered with the Town provided: such sign shall not exceed 6 square feet in surface area; if lighted, it shall be illuminated with white light directed solely at the sign.
  - (c) One identification sign for each community facility or public utility use, provided the sign shall not exceed thirty two (32) square feet in surface area; if lighted, it shall be illuminated with white light directed solely at the sign and it shall be set back at least ten (10) feet from the street lot line.
- (8) All signs that do not meet the requirements in this section (Section 97-8.F) must apply for a Special Permit from the Zoning Board of Appeals.

**G. Agricultural-Residential and Parker River Residential Districts.**

- (1) The following signs are allowed in all Residential Districts subject to the provisions of Section 97-8.E. of this bylaw:
- (a) One Ground Sign for the permanent identification of a housing development of twelve (12) or more dwelling units. The Advertising Display Area shall not exceed twenty (20) square feet.

**H. Commercial Highway and Commercial Highway A.**

The following signs are allowed in these two districts subject to the provisions of Section 97-8.E. of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.
- (2) One Ground Sign for identification purposes and the advertising of goods and services available. The Advertising Display Area shall not exceed thirty-six (36) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall to which it is attached.
- (4) Opaque window signs shall not cover more than a maximum of thirty six (36) square feet of the window glass area in which it is located.
- (5) In mixed use or multi-tenant buildings, sign usage shall conform to the following:
  - (a) One (1) Ground Sign per lot for identification purposes of the building and rentable unit located therein. The Advertising Display Area shall not exceed thirty (30) square feet plus an additional four (4) square feet for each tenant located therein.

- (b) One (1) Wall Sign per tenant for the identification of such tenant. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of the rentable unit's wall to which it is attached.

OR

One (1) Projecting Sign per tenant for the identification of such tenant. The Advertising Display Area per tenant shall not exceed six (6) square feet.

- (c) One (1) additional Wall Sign shall be allowed at a secondary entrance from a parking area for the identification of tenants. The Advertising Display Area per tenant shall not exceed two (2) square feet.
- (d) One (1) Freestanding Sign pertaining to the sale, lease, or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.

**I. Business Districts.**

The following signs are allowed in the business district subject to the provisions of Section 97-8.E of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed twelve (12) square feet.
- (2) One Ground Sign for identification purposes and the advertising of goods and services available. The Advertising Display Area shall not exceed eighteen (18) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall facing the street from which its frontage is derived.
- (4) Window Signs shall not cover more than twenty (20) percent of the window glass area in which it is located.
- (5) In mixed use or multi-tenant buildings, sign usage shall conform to the following:
  - (a) One (1) Ground Sign per lot for identification purposes of the building and tenants located therein. The Advertising Display Area shall not exceed twenty (20) square feet
  - (b) One (1) Wall Sign per tenant for the identification of such tenant. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of the tenant's wall facing the street from which the building derives its frontage.

OR

One (1) Projecting Sign per tenant for the identification of such tenant. The Advertising Display Area per tenant shall not exceed three (3) square feet.

- (c) One (1) Freestanding Sign pertaining to the sale, lease, or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.

**J. Industrial Districts.**

The following signs are allowed in the Industrial Districts subject to Section 97-8.E of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed twenty-four (24) square feet.
- (2) One (1) Ground Sign for identification purposes. The Advertising Display Area shall not exceed thirty-six (36) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall facing the street from which the building derives its frontage.

**K. Exceptions – only by Special Permit.**

Upon application duly made to the Zoning Board of Appeals, said Board may in appropriate cases and subject to the general requirements set out in Section 97-8.E above and appropriate safeguards and conditions, grant a Special Permit for changes in:

- (1) Permitted size.
- (2) Permitted setback.

Such exceptions may be allowed by Special Permit granted by the Zoning Board of Appeals and are subject to the following requirements:

- (1) The Board finds that the increase does not detract from the character of the neighborhood.
- (2) The Board finds that the increase does not constitute a threat to public health and safety.
- (3) The proposed sign complies with all other sections of this bylaw.

**L. Maintenance.**

- (a) All Signs shall be maintained in a safe, presentable and good structural condition at all times to the satisfaction of the Building Inspector in accordance with Section 3102.5 through 3102.5.4 of the State Building Code.

**M. Sign Removal.**

- (1) It shall be the responsibility of the property owner to remove any sign identifying or advertising goods and services of a discontinued business within sixty (60) days of being so notified by the Building Inspector.

**N. Nonconforming Signs.**

- (1) Signs legally existing on the effective date of this article, or of any amendment hereto, may continue to be maintained; provided however that any such sign that fails to conform to the current requirements of this by-law shall not be enlarged or relocated.
- (2) Such signs shall be removed or brought into conformity upon the discontinuance of the business or the failure to be maintained in accordance with Section 97-8.L and shall be removed in accordance with Section 97-8.M upon receipt of a Certified Letter from the Building Inspector.
- (3) There shall be no increase in any nonconformity.

**ARTICLE IX – SPECIAL REGULATIONS****§ 97-9. Special Regulations.**

- A. Site Plan Review. [Amended 5-23-2006 ATM by Art. 18; 10-24-2006 STM by Art. 2]
- (1) Purpose: To protect the health, safety, convenience and general welfare of the public by providing for a comprehensive review procedure of plans for uses and structures which may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character. Any use or structure, or expansion thereof, referred to in G.L. c. 40A, § 3, (exemption from zoning) is not exempt from the provisions of this section, provided any of the criteria contained in § 97-9A(2) also applies.
  - (2) Applicability: Any non-residential or non-agricultural construction project which requires construction of a new building or will result in a change in the outside appearance or a change of use of an existing building or buildings or premises, and which includes one or more of the following:
    - (a) Construction of 2,500 or more square feet of gross floor area..
    - (b) An increase in gross floor area of at least 2,000 square feet.
    - (c) Grading or re-grading of land to planned elevations and/or removal or disturbance of the existing vegetative cover except for agricultural activities, over an area of 5,000 square feet or more.
    - (d) Construction, enlargement or alteration of a parking area containing 10 or more parking spaces.
    - (e) The development of 10,000 square feet or more of impervious surface area or more than 15% of the lot area.
    - (f) The construction of a drive-in retail establishment serving food or dispensing merchandise from inside a building to persons seated in their automobiles on the premises.
  - (3) Procedure
    - (a) An applicant for site plan review shall file with the Planning Board an application and such submission materials as required by the Site Plan Review Submission Requirements and Procedures adopted by the Planning Board and filed with the Town Clerk.
    - (b) The Planning Board shall, within five days of receipt of a site plan review application, transmit copies of the application and the site plan to the Building Inspector, Conservation Commission, Board of Health, and Director of Public Works for comments and recommendations.

- (c) The Planning Board shall hold a public hearing within 65 days of the filing of any application for a project and shall file a decision within 90 days of the close of the hearing. Where the Planning Board is the Special Permit Granting Authority for the proposed work, the Public Hearing for the Special Permit shall take place in conjunction with the Public Hearing for the Site Plan Review. Notice of the time, place, and subject matter of the public hearing shall be given by the Planning Board, at the expense of the applicant, to the applicant and to all owners of land abutting the land being the subject of such application as appearing on the most recent tax list on file at the Assessors Office. In addition, the Planning Board shall also give notice of the time, place, and subject matter of the public hearing, at the expense of the applicant, by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing. The time within which the Planning Board must act on an application may be extended upon mutual agreement in writing upon request of the Applicant and set forth mutually in a written agreement between the Planning Board and the applicant. Failure to act within the time limitations established in this article shall be deemed constructive approval of the application.
- (d) Final action, which shall be a “Decision of Site Plan Review” that is filed with the Office of the Town Clerk and the Building Inspector, shall consist of either:
  - 01) A written approval of the application, including a finding and determination that the proposed project will constitute a suitable development based on conformance with the criteria and conditions of approval contained in § 97-9A(4) and § 97-9A(6) respectively.
  - 02) A written denial of the application based on a determination that insufficient information was submitted for the proposal or the proposal did not meet the criteria as stated in Section § 97-9A(4).
- (e) A vote of a simple majority of the full membership of the Board shall be sufficient to adopt a Decision of Site Plan Review.
- (f) Any person aggrieved by a Decision of Site Plan Review by the Planning Board may appeal such Decision to the Zoning Board of Appeals within 30 days of the date of the Decision.
- (4) Decision Criteria: The Planning Board shall approve an application for site plan review if it finds that:
  - (a) The surrounding area will be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, vibration, odors, dust and other air pollution and the preservation of adequate light and air;

- (b) The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways is provided for;
  - (c) Environmental features of the site and surrounding areas are protected;
  - (d) The site plan is consistent with the Master Plan;
  - (e) The proposed building scale and/or site development plan is consistent with the surrounding neighborhood;
  - (f) All signs are in accordance with the sign regulations for the pertinent district;
  - (g) All variances or special permits required from the Board of Appeals have been granted;
  - (h) Notwithstanding the above, regulation of uses and structures referred to in G.L. c. 40A, § 3 (exemptions from zoning) shall be limited to the extent allowed under said section of the General Laws.
- (5) Conditions of Approval: Site plan approval may be made subject to conditions, modifications and restrictions as the Planning Board may deem necessary. Any construction, reconstruction, alteration or addition shall be carried on only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. Any order of conditions from the Conservation Commission which imposes conditions inconsistent with site plan approval, shall require a revision of the site plan. A request for such revision must be submitted to the Planning Board. For any construction project or a change in use that requires site plan review, no building permit may be issued unless and until the applicant has complied with the provisions relating to site plan review under this article and the conditions, modifications, and restrictions contained within the Decision of Site Plan Review are referenced to and incorporated in, and made an express condition of, such building permit. Site plan approval by the Planning Board shall not be construed as approval from any other Board, official or department. At the discretion of the Building Inspector, with the concurrence of the Planning Board, recording of a certification of the Town Clerk and the Decision of Site Plan Review at the Registry of Deeds may be included as an additional condition precedent to the issuance of any building permit ((see G.L. c. 40A, § 11, 1 ¶. 4) Notice requirements for Public Hearings etc.).
- (6) Performance Guarantee: As a condition of site plan approval, the Planning Board may require by a simple majority of the full board that a performance bond, deposit of money or negotiable securities, (to be selected by the Applicant) be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require by a simple majority of the full board that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall include a 15% contingency and shall be determined based on an estimate from the applicant's engineer which

may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

- (7) Duration of Approval: Site plan approval for a project shall become void two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in G.L. c. 40A, §§ 8 and 17, (Appeals to permit granting authority) unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. In such case a request for extension of the date of completion must be submitted to the Planning Board.
- (8) Fees: Site plan review fees shall be governed and set by the Planning Board and shall be assessed to the owner and/or the applicant. Such fees may include a deposit for review by a consultant selected by the Town. The amount of fees shall be as listed in the Site Plan Review Submission Requirements and Procedures and administrated in accordance with § 117-46 thru § 117-48 of the Town's Regulations for the Subdivision of Land.

**ARTICLE X – GENERAL REGULATIONS****§ 97-10. General Regulations.****A. Nonconforming Uses (Except Plum Island Overlay District).****(1) Continuance:**

- (a) The lawful use of any structure or land existing at the time of enactment or subsequent amendment of this By-Law may be continued, although such structure or use does not conform to the provisions of the By-Law. But if any such nonconforming use or structure is not used for a period of two (2) years, it shall not thereafter be resumed. Nonconforming structures or uses may be extended or altered, provided, however, that no such extension or alteration shall be permitted unless there is a finding by the Permit Granting Authority that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Constructions or operations under a building or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion, as continuously and expeditiously as is reasonable.

**B. Grandfathering:**

- (a) Notwithstanding any provision of this By-Law, a single residence or any other permitted buildings or structures in all zones may be erected on any lot registered at the Registry of Deeds in Salem prior to July 1, 1959. Notwithstanding any provisions of this By-Law, a single residence or any other permitted buildings or structures may be erected in the agricultural-residential district on any lot which has not less than 100 feet of frontage on a street or way, and was recorded at the Registry of Deeds in Salem prior to March 21, 1978, and otherwise met all of the applicable requirement of the Zoning By-Law in effect at the time it was recorded or registered. Notwithstanding any provisions of this By-Law, a single residence or any other permitted buildings or structures may be erected in the agricultural-residential district on any lot which has not less than 20,000 square feet, and was recorded at the Registry of Deeds in Salem prior to March 21, 1978, and otherwise met all of the applicable requirement of the Zoning By-Law in effect at the time it was recorded or registered. This provision shall not apply to the Plum Island Zoning District, which shall instead be governed by G. L. c.40A, s 6, Para 4.

**C. Customary home occupations:**

- (1) Customary home occupations (such as professional and business offices, arts and crafts shops, tradesman's shops and miscellaneous repair services) may be conducted in a dwelling or building accessory thereto by a person residing on the premises are permitted provided that:

- (a) Such use is clearly incidental and secondary to the residential use;
  - (b) Not more than two (2) persons other than the resident is<sup>9</sup> regularly employed thereon;
  - (c) No offensive noise, odors, glare or unsightliness is produced;
  - (d) There is no public display of goods or wares except for such signs as are permitted; and
  - (e) That there is no exterior storage of materials, equipment [including the parking of more than one (1) commercial vehicle] or waste material that would indicate the presence of the use or violate the residential character of the premises.
- D. Accessory Apartments in the Agricultural-Residential District. [**Amended 10-24-2006 STM by Art. 3**]
- (1) Purpose and Intent: It is the intent of this article to allow accessory apartments for non-rental purposes, including kitchens, within single family properties in the Agricultural-Residential District for the purpose of supplying accessory housing stock in owner-occupied properties within the Town of Newbury.
  - (2) Allowed Use: A non-rental accessory apartment may be allowed upon issuance of a building permit by the Building Inspector subject to the conditions and requirements set out in this bylaw.
  - (3) Accessory Apartment Applicability: The Building Inspector shall issue a building permit for an accessory apartment in a detached, one family dwelling in the Agricultural – Residential District provided that the dwelling unit and the proposed apartment meet the following conditions and requirements.
    - (a) The owner of the dwelling in which the accessory apartment is created, shall occupy either of the dwelling units in the located structure in question, with temporary absences of up to six months.
    - (b) For the purposes of this section, the “owner” shall be one or more individuals residing in a dwelling unit, who holds title and for whom the dwelling is the primary residence for voting and tax purposes.
    - (c) The gross floor area of the dwelling, including the basement shall be at least 1600 square feet.
    - (d) The size of the accessory apartment shall not exceed 35% of the principal dwelling unit at the time of the granting of the special permit.
    - (e) No more than one accessory apartment shall be allowed per residential lot.

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<sup>9</sup> Editor’s Note: So in original.

- (f) There shall be no boarders or lodgers within either unit of a dwelling with an accessory apartment.
- (g) There shall not be more than two bedrooms in the accessory apartment.
- (h) The Accessory Apartment must be within or have a common wall and common interior door with the single-family dwelling unit.
- (i) The existing house and the accessory apartment shall comply with all applicable health, safety, building and other applicable codes in effect at the time of the granting of the special permit.
- (j) Utilities such as water, electric and gas necessary for the accessory apartment shall be extensions of the existing utilities serving the principal single-family dwelling.
- (k) A minimum of one parking space shall be required for the accessory apartment. Parking spaces shall be located so that both the principal dwelling unit and the accessory apartment shall have at least one parking space with direct and unimpeded access to the street without passing through a parking space designated to serve the other dwelling unit.
- (l) The accessory apartment shall not change the single-family characteristic of the dwelling except for the provision of an additional access or egress, subject to the following conditions and requirements:
  - 01) all stairways to second or third stories shall be enclosed within exterior walls;
  - 02) any new entrance shall be located on the side or on the rear of the building.



**ARTICLE XI – ADMINISTRATION****§ 97-11. Administration.**

## A. Enforcement.

- (1) Authority to enforce. This By-Law shall be enforced by the Selectmen or a Building Inspector appointed by them. No building shall be built or altered and the use of a building shall not be changed without a permit having been issued by the Selectmen or the Building Inspector. Any person violating any of the provisions of the By-Law may be fined not more than \$100.00 dollars for each offense. Each day that such violation continues shall constitute a separate offense.

## B. Zoning Board of Appeals.

- (1) Establishment. There is hereby established a Zoning Board of Appeals of 3 members and 2 associate members to be appointed by the Selectmen, such 3 members to be appointed for terms of such length and so arranged so that the term of 1 member shall expire in each year. Such Board shall act on all matters within its jurisdiction under this By-Law and under Chapter 40A of the General Laws in the manner prescribed in said Chapter 40A. Said Zoning Board of Appeals shall not be authorized to appoint a Zoning Administration under the provisions of Section 13 of said Chapter 40A or under the provisions of any other applicable law.

## C. Special Permit Procedures — Public Hearing.

**[Amended 4-24-2001 ATM, Art. 27]**

- (1) Procedures. Any special permit which shall hereafter be issued under this By-Law, whether by the Selectmen, by the Planning Board, or by the Zoning Board of Appeals, shall be issued only following a public hearing held within 65 days after the filing of a petition or application with said Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, and provided that said applicant and/or petitioner has furnished written notice by U.S. Mail, certified or registered, not less than 21 days prior to said public hearing to all adjoining owners-abutters and furnished evidence of such written notice to the Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, a copy of which petition or application shall forthwith be given to the Town Clerk by the applicant. Any special permit granted under this By-Law shall lapse 2 years from the date of the granting of such permit (including time required to pursue or await the determination of an appeal from the grant thereof) if a substantial use thereof has not sooner commenced, or, in the case of a permit for construction, if such construction has not begun by such date, unless such failure is for good cause. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Selectmen providing the Selectmen find that the proposed accessory use does not substantially derogate

from the public good. Petitions or applications for special permits under the By-Law shall be submitted to and reviewed by the following (such reviews may be held either jointly or severally): the Board of Health, the Planning Board, the Conservation Commission and any other Board or Commission of the Town to which petition or application to be submitted for review. Any such Board or Commission to which petitions or applications are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the Selectmen, Planning Board, or zoning Board of Appeals, as applicable, and to the applicant; provided, however, that failure of any such Board or Commission to make recommendations within 35 days of receipt by such Board or Commission of the petition or application shall be deemed lack of opposition thereto.

- (2) **Granting Authority.** When a five-member Planning Board has been designated as the special permit-granting authority, one associate member may be authorized for a one-year term. The Board of Selectmen shall authorize/appoint the associate member who, upon the designation of the Chairman of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest on the part of any member or in the event of a vacancy on the Board. [**Added 4-22-2003 ATM, Art. 8**]

D. Definitions.

(1) General.

- (a) For the purposes of this bylaw, the following words and phrases shall have the following meanings, except that terms (including without limitation, appurtenant structure, base flood, development, flood, flooding, flood elevation determination, flood-prone area, flood-proofing mean sea level, mobile home, new construction, regulatory floodway, sand dunes, structure, substantial improvement and water surface elevation) used in Section 97-4E of this By-Law, including all sections thereof inclusive shall be as set forth in Section 1909.1, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations, a copy of which Section 1909.1 shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector.

(2) Written Definitions.

**Accessory Apartment:** one dwelling unit associated with a single-family dwelling which is subordinate to the principal unit.

**Accessory Structure:** A structure which houses or is being used for something other than an allowed principal use.

**Adult Arcade:** an establishment or portion thereof where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, computer displays, slides, or other photographic reproductions which are

characterized by the depiction or description of “Specified Sexual Activities” or “Specified Anatomical Areas.”

**Adult Bookstore, Adult Novelty Store Or Adult Video Store:** a commercial establishment which has as a substantial portion of its stock in trade or a substantial portion of its revenues or devotes a substantial portion of its interior business or advertising to the sale, rental or viewing for any form of consideration, of any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, computer software or other visual representations which are characterized by the depiction or description of “Specified Sexual Activities” or “Specified Anatomical Areas”; or instruments, devices or paraphernalia which are designed for use in connection with “Specified Sexual Activities.”

**Adult Cabaret:** a nightclub, bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which features: a, persons who appear semi-nude, b. live performances which are characterized by the exposure of “Specified Anatomical Areas” or by “Specified Sexual Activities”; or c, films, motion pictures, video cassettes, Computer software, slides, or other photographic reproductions which are characterized by the depiction or description of “Specified Sexual Activities” or “Specified Anatomical Areas.”

**Adult Dance Club:** an establishment which, as its principal form of entertainment, permits a person or persons to perform in a state of nudity as defined in M.G.L. ch 272 § 31.

**Adult Entertainment Business:** shall mean those businesses meeting one or more of the following definitions: Adult Arcade, Adult Bookstore, Adult Novelty Store or Adult Video Store, Adult Cabaret, Adult Dance Club, or Adult Theater.

**Adult Theater:** a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear semi-nude or live performances which are characterized by exposure of “Specified Anatomical Areas” or by “Specified Sexual Activities”

**Aquifer:** Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

**Building:** A combination of any materials, whether portable or fixed, having a roof, the purpose of which is the shelter of persons, animals, property or processes. For the purpose of this definition, “roof” shall include an awning or any similar covering whether or not permanent in nature. The word “building” shall be construed where the context allows as though followed by the words “or parts thereof”. Building includes open porches, open breezeway and other roofed areas.

**Bedroom:** shall mean a bedroom as defined in 310 CMR 15.002 of the State Environmental Code.

**Building Height:** shall mean the height of the building as measured from the mean level of the established grade at the building to the mean height of the roof.

**Common Wall:** A wall or floor that is connected, usable and heated on both sides of the existing dwelling.

**Dwelling Unit:** a single unit providing complete, independent living facilities for one (1) or more persons including permanent provision for living, sleeping, eating, cooking and sanitation.

**Family:** Man and Wife, or either one separately, with dependent children or other close relatives.

**Finding:** shall mean a finding by the Zoning Board of Appeals, pursuant to G.L. c. 40A, s. 6, that the proposed alteration to a nonconforming structure or use shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood or the PIOD.

**Floor Area, Gross:** shall mean the total square feet of floor space under a roof within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

**Floor Area Ratio (FAR):** shall be construed as a mathematical expression determined by dividing total gross floor area of a building by the area of the lot on which it is located. For example, a lot with 12,000 square feet in a district with a maximum FAR of .25 could contain no more than 3,000 square feet of gross floor area ( $12,000 \times .25 = 3,000$ ).

**Footprint:** shall mean the total square feet within the outermost dimensions of a building including decks porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

**Groundwater:** All water found beneath the surface of the ground in a saturated zone.

**Height:** The dimension in feet as measured from the mean level of the established grade at the building to the mean height of the roof.

**Impervious Material:** Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate into soil.

**Lot:** Any piece of land used or designed for use as the location of a residence or building.

**Lot Coverage, Maximum:** shall be determined by dividing the sum of all building footprints by the area of the lot on which they are located.

**Mining:** The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

**Mobile Home or House Trailer:** A dwelling or residence designed as year-round living quarters, whether so used or not, and built on a chassis to be moved from site to site, whether used with or without a permanent foundation.

**Permit Granting Authority:** For the purpose of this By-Law, the Permit Granting Authority shall be the Zoning Board of Appeals of the Town of Newbury.

**Recharge Areas:** Areas that collect precipitation or surface water and transmit it to aquifers. Recharge areas may include areas designated as Zone I, Zone II, or Zone III.

**Reconstruction:** shall mean the structural alteration of the existing building, but shall not include the demolition and rebuilding thereof.

**Residence:** Any structure, fixed or movable, designed for use as living quarters.

**Residence, Single Family:** A single structure, fixed or movable, providing complete, independent living facilities for one family.

**Residence, Two Family:** A single structure, fixed or movable, providing complete, independent living facilities for not more than two families.

**Special Permit Granting Authority:** For the purpose of this By- Law, the Special Permit Granting Authority shall be the Board of Selectmen, the Planning Board, or the Zoning Board of Appeals. [Amended 4-24-2001 ATM, Art. 27]

**Specified Anatomical Areas:** shall include any of the following:

- 1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
- 2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified Sexual Activities:** shall mean and include any of the following:

- 1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- 2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
- 3) masturbation, actual or simulated; or

- 4) human genitals in a state of sexual stimulation, arousal or tumescence; or
- 5) excretory functions as part of or in connection with any of the activities set forth in this definition.

**Street:** shall mean:

- 1) a public way or a way which the Town Clerk certifies is physically constructed and maintained and used as a public way; or
- 2) a private way shown on a definitive subdivision plan endorsed subsequent to 1953 and built to the specifications set forth therein; or
- 3) a way presently having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Street, Highway:** For the purpose of § 97-3. and § 97-6 shall mean, where appropriate, the street lot line or the highway lot line.

**Toxic or Hazardous Material:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Newbury. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapters 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

**Use, Accessory:** A use of a structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental or secondary to the use of the principal building.

**Use, Mixed:** Two or more principal uses occupying the same structure or lot, each of which is independent of and unrelated to the other.

**Use, Principal:** The main or primary purpose for which a structure or lot is designed, arranged, or intended or for which it is permitted to be used, occupied or maintained under this By-Law.

**Water Supply Protection District:** A zoning district defined to overlay other zoning districts in the Town of Newbury. The water supply protection district may include specifically-designated aquifers and recharge areas.

***Wireless Communication Services:*** shall mean the provision of the following types of services: cellular telephone service, personal communications service, enhanced specialized mobile radio service, and radio transmission.

***Zone II:*** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation) as defined in 310 CMR 22.00.



**ARTICLE XII – VALIDITY**

**§ 97-12. Validity.**

A. General.

- (1) The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the bylaw. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.