

**TOWN OF NEWBURY
ANNUAL TOWN MEETING
APRIL 29, 2025**

ESSEX SS.

TO: ONE OF THE CONSTABLES FOR THE TOWN OF NEWBURY, MASSACHUSETTS

GREETINGS:

IN THE NAME OF THE COMMONWEALTH OF MASSACHUSETTS, YOU ARE HEREBY DIRECTED TO NOTIFY AND WARN THE INHABITANTS OF THE TOWN OF NEWBURY, QUALIFIED TO VOTE IN TOWN AFFAIRS, TO MEET AT THE **TRITON REGIONAL MIDDLE HIGH SCHOOL GYMNASIUM AT 112 ELM STREET** IN SAID TOWN OF NEWBURY ON TUESDAY, THE **29TH DAY OF APRIL 2025**, AT 7:00 P.M., TO ACT ON THE FOLLOWING ARTICLES, VIZ:

ADA ADVISORY

Anyone in need of special arrangements for the Town Meeting, please contact the Office of the Select Board at 978.465.0862 X301 by April 14, 2025 in order that reasonable accommodations may be made.

GENERAL GOVERNMENT MATTERS

ARTICLE 1. To meet in our respective voting districts on Tuesday, May 13, 2025, the polls will open at 7:00 AM and close at 8:00 PM, to vote on the following offices:

Pct. 1 – Firefighter's Memorial Hall, 3 Morgan Ave.

Pct. 2 – Newbury Town Library – 0 Lunt St.

<u>Position</u>	<u>Term</u>
Board of Assessors (1)	Three Years
Board of Health (1)	Three Years
Constable (1)	Four Years
Fish Commissioner (1)	Three Years
Library Trustee (1)	Three Years
Planning Board (1)	Five Years
Select Board (1)	Three Years
Triton Regional School Committee - Newbury	Three Years
Triton Regional School Committee - Rowley	Three Years
Triton Regional School Committee - Salisbury	Three Years
Trustee of First Settlers Burial Ground	Three Years

And the following Question:

Question 1:

Shall the Town of Newbury be allowed to assess an additional \$400,000.00 in real estate and personal property taxes for the purposes of fully funding the Education Assessments for the fiscal year beginning July 1, 2025?

_____ Yes _____ No

ARTICLE 2. To receive the reports of the Select Board, School Committee, Regular and Special Committees, and all other Town Officers, or take any other action in relation thereto.

ARTICLE 3. To see if the Town will fix the salaries and compensation of certain elective officers of the Town as follows:

Town Moderator		\$ 500.00
Select Board	Each Member	\$ 7,500.00
Board of Assessors	Chair	\$ 3,500.00
Board of Assessors	Each Member	\$ 2,500.00
Town Clerk		\$67,804.82
Tree Warden		\$ 5,500.00
Fish Commissioner	Each Member	\$ 1,300.00
Planning Board	Chair	\$ 1,500.00
Planning Board	Each Member	\$ 1,000.00
Board of Health	Chair	\$ 1,500.00
Board of Health	Each Member	\$ 1,000.00

APPROPRIATIONS

ARTICLE 4. To see if the Town will vote to raise and appropriate, transfer from available funds or otherwise provide to meet the salaries and wages of Town Officers and employees, expense and outlays of the Town Departments, and other sundry and miscellaneous, but regular expenditures necessary for the operation of the Town for Fiscal Year 2026;

General Government	\$ 3,009,223.00
Public Safety	3,796,027.00
Education	12,844,353.00
DPW	1,462,272.00
Human Services	530,668.00
Culture & Recreation	480,767.00
Debt Service	845,384.00
Benefits	2,467,361.00
Total Budget	\$25,436,055.00

or take any other action in relation thereto

ARTICLE 5. To see if the Town will vote to raise and appropriate the sum of \$200,000.00, to be added to the Stabilization Fund; or take any other action in relation thereto.

ARTICLE 6. To see if the Town will vote to transfer from available funds the sum of \$200,000.00, to fund Other Post-Employment Benefits; or take any other action in relation thereto.

ARTICLE 7. To see if the Town will vote to transfer or appropriate the sum of \$65,181.00, from the Receipts Reserved Cable Television PEG Access Special Revenue Fund, for the support of PEG access service and programming; or take any other action in relation thereto.

ARTICLE 8. To see if the Town will vote to authorize the total expenditures for the following revolving funds pursuant to G.L. c. 44 Section 53E ½ for the fiscal year beginning July 1, 2025 to be expended in accordance with the bylaws heretofore approved;

Fund	Spending Limit
Recreation Revolving Fund	\$50,000.00
Municipal Waterways Improvement and Maintenance Fund	\$60,596.00

or take any other action in relation thereto.

ARTICLE 9. To see if the Town will vote to raise and appropriate or transfer from available funds the following sums, or any other sums, to operate the Ambulance Enterprise for the fiscal year beginning July 1, 2025;

Salaries & Wages	\$	128,413.00
Expenses		109,360.00
Capital Outlay		12,000.00
Debt Service		0.00
Insurance		5,000.00
Medicare		2,195.00
Indirect Costs		69,634.00
Extraordinary/Unforeseen		12,000.00
Prior Year Deficit		0.00
Total:	\$	338,602.00
And further that \$338,602.00 be raised as follows:		
Departmental Receipts \$338,602.00		

or take any other action in relation thereto.

ARTICLE 10. To see if the Town will vote to transfer from Ambulance Enterprise Free Cash the sum of \$85,000.00 to pay the lease of a fully equipped ambulance; or take any other action in relation thereto.

ARTICLE 11. To see if the Town will vote to transfer from Free Cash the sum of \$1,800,000.00 for the following specific purposes outlined below:

Morgan Ave Fire Station Upgrades	\$	100,000.00
DPW Dump Truck Purchase	\$	250,000.00

Elementary School Roof Replacement	\$ 450,000.00
Elementary School HVAC Replacement	\$1,000,000.00

or take any other action in relation thereto.

ARTICLE 12. To see if the Town will vote to transfer from the Stabilization Fund the sum of \$250,000.00 for the following specific purposes outlined below:

Fire Fighter Structural Gear	\$ 25,000.00
Fire Dept Lucas Mechanical Chest Device	\$ 25,000.00
Elementary School Interior Renovations	\$ 200,000.00

or take any other action in relation thereto.

ARTICLE 13. To see if the town will vote to transfer from available funds the sum of \$5,987.07 to the Opioid Settlement Fund Special Revenue Account; or take any other action in relation thereto.

ARTICLE 14. To see if the Town will vote to transfer from Free Cash the sum of \$402.00 to pay the following outstanding bill from Fiscal Year 2024:

City Hall Systems	\$ 402.00
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or take any other action in relation thereto.

ARTICLE 15. To see if the Town will vote to raise and appropriate the sum of \$400,000.00 for the purpose of paying its full assessed share of the education assessments for the fiscal year beginning July first, two thousand and twenty-five, required to fully fund such assessments and thereby approve the Districts' budgets for the year, provided that such additional appropriation be contingent on the approval of a levy limit override question under Massachusetts General Laws Chapter 59, §21C; or take any other action in relation thereto.

Bylaws

ARTICLE 16: To see if the Town will vote to amend Chapter 18, § 18-3 of the Town's Bylaws by omitting the existing language and replacing it as follows:

The Town Administrator shall assume the duties of or designate a Chief Procurement Officer as set forth in Section 11, Subsection (8) of Chapter 447 of the Acts of 2008. The Chief Procurement Officer shall have all the powers and duties set forth in said Section 11 and the Massachusetts General Laws, including but not limited to, the sole authority to execute any agreement procured under Chapter 30B, Chapter 149 or Chapter 30 § 39M;
or take any other action in relation thereto.

Article 17. To see if the Town will vote to amend its General Bylaws by adding Chapter 77 thereto, entitled "Short-Term Rentals" as follows:

Chapter 77 Short-Term Rentals

§ 77-1 Purpose

A. Pursuant to the authority of G.L. c. 64G, the Town of Newbury establishes this Bylaw to balance private, neighborhood, and municipal interests. This Bylaw is intended to:

1. Provide a process through which certain dwelling units and bedrooms within dwelling units may be registered with the Town of Newbury for use as "Short-Term Rentals"
2. Comply with § R110-7 of the Massachusetts Building Code and 780 Code of Massachusetts Regulations.
3. Provide health and safety standards for Short-Term Rentals
4. Provide for the orderly operation of Short-Term Rentals within the Town's residential neighborhoods, and
5. Minimize potential public safety and health risks.

§ 77-2 Definitions

The following definitions shall apply in the interpretation and implementation of this Bylaw.

- A. **DWELLING:** Any building or area in a building used or intended for use for human habitation, including, but not limited to, apartments, condominiums, cottages, guesthouses, one-, two- or multiple-unit residential buildings/dwellings, except those licensed under any state or local laws or regulations other than those licensed under this chapter, (e.g., See definition of **SHORT-TERM RENTAL** in this section).
- B. **OCCUPANCY:** The use or possession of or the right to use or possess a Short-Term Rental.
- C. **OCCUPANT (GUEST):** Any individual, of any age, residing overnight in a Short-Term Rental.
- D. **OPERATOR (HOST):** Any person or other legal entity operating a Short-Term Rental. It is the intent of this Bylaw that the operator shall have the same meaning as set forth in General Laws c. 64G, § 1.
- E. **OWNER:** Any person who alone or severally with others has legal or equitable title or a beneficial interest in any Dwelling unit; a mortgagee in possession; or agent, trustee or other person appointed by the courts.
- F. **SHORT-TERM RENTAL:** A Dwelling unit or portion thereof which is not a transient residential facility, where: (i) at least one room or Dwelling unit is rented to an Occupant or sub-Occupant; and (ii) all accommodation is reserved in advance. Rental periods with a change in Occupancy in excess of 31 calendar days shall not be considered a Short-Term Rental. The rental of property for a total of 14 days or less in any calendar year shall not be considered a Short-Term Rental. This definition excludes: hotels licensed under G.L. c. 140, §6; motels licensed under G.L. c. 140, §32B; lodging establishments licensed under G.L. c. 140, §23.

§ 77-3 License Required

- A. No Dwelling or bedroom within a Dwelling may be used as a Short-Term Rental unless licensed by the Town of Newbury. Licenses issued under this Bylaw shall be reviewed and renewed on an annual basis.

§ 77-4 Licensing Authority

- A. The Select Board shall be the licensing authority under this Bylaw.

§ 77-5 Regulations

- A. The Select Board may adopt reasonable rules and regulations related to the issuance of such licenses, including the conditions to be satisfied by any applicant for such a license.

§ 77-6 Fees

- A. The Select Board from time to time may adopt reasonable fees for application and issuance of licenses under this Bylaw.

§ 77-7 Enforcement

- A. The Town of Newbury Building Inspector or any other Town entity designated by the Select Board may enforce provisions of this Bylaw and any regulations promulgated under this Bylaw.
- B. Violations of this Bylaw and violations of any regulations promulgated under this Bylaw shall be enforced pursuant to G.L. c. 40, § 21D (Non-Criminal Disposition).
- C. The fine for violation of this bylaw shall be three hundred dollars (\$300.00) for each offense. Each day that a violation continues shall constitute a separate offense.

Or take any other action in relation thereto.

ARTICLE 18: To see if the Town will vote to revoke its acceptance of General Laws Chapter 44, Section 53 F3/4, which established, more than three (3) years ago, a special revenue fund known as the PEG Access and Cable Related Fund, which reserved cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement. Instead the special revenue fund will cease as of fiscal year 2026 which begins on July 1, 2025; at which time the balance of the special revenue fund and any future cable franchise fees and cable related revenue will be deposited into the general fund which will thereafter by appropriation, support PEG access services and oversight and renewal of the cable franchise agreement; or take any other action in relation thereto.

ARTICLE 19. To see if the Town will vote to accept G.L. c. 59, sec. 5, Cl. 22I, which authorizes an annual increase in the amount of the exemption granted under G.L. c. 59, sec. 5, Cl. 22, Cl. 22A, Cl. 22B, Cl. 22C, Cl. 22E and Cl. 22F by the percentage increase in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) for the previous year as determined by the Commissioner of Revenue, to be effective for applicable exemptions granted for any fiscal year beginning on or after July 1, 2025; or take any other action relative thereto.

ARTICLE 20. To see if the Town will vote to accept G.L.c. 59, sec. 5, cl. 22J, which authorizes an annual increase in the amount of the exemption granted under G.L.c. 59, sec. 5, Cl.22, Cl. 22A, Cl. 22B, Cl. 22C, Cl. 22E and Cl. 22F by 100% of the personal exemption amount, subject to the conditions in Clause 22J, to be effective for applicable exemptions granted for any fiscal year beginning on or after July 1, 2025; or take any other action relative thereto.

ARTICLE 21. To see if the town will vote to amend Chapter 56 and Chapter 109 of the Town of Newbury General Bylaws, as follows (**underline and bold new**, ~~cross-out removed~~):

Town of Newbury

Chapter 56. Dogs and Other Animals

§ 56-1 Licensing.

A. All dogs 6 months old or over must be licensed and tagged. Licensing will be done through the Town Clerk's office. The license period shall run from January 1st to December 31st of each calendar year, both dates inclusive. The owner or keeper of an unlicensed dog after February 1st will be fined \$10.00 in addition to the license fee.

B. Licensing fees shall be \$10 per spayed or neutered dog and \$15 for intact dogs. Kennel fees are as follows: 4 dogs or less \$40.00, 5 to 10 dogs \$75.00, more than 10 dogs \$125.00. The fee for a commercial kennel including an animal day-care facility is \$125.00. The license period shall run from January 1st to December 31st of each calendar year, both dates inclusive. New kennel licenses may be issued pending an informational meeting, inspection and approval from the Animal Control Officer.

C. Anyone wishing to sell dogs not raised by them or to maintain a business kennel for the purpose of selling dogs of any age shall apply in writing to the Board of Selectmen. The selectmen shall hold a public hearing on the request. The petitioner must notify all abutters within 300' by registered mail and advertise the hearing in the Newburyport Daily News at least 10 days before the hearing date. Within 21 days after the hearing, the selectmen shall either deny the request or approve with any restrictions they deem necessary.

D. Anyone maintaining such a kennel without a proper license shall be subject to a \$100 fine. Each day shall constitute a violation. **Any violation of this subsection shall be punished by a fine of \$50. Each day shall constitute a violation.**

E. The keeping of a female dog and occasionally having a litter of puppies shall not be considered a business.

F. All monies collected for licenses and fines will be retained by the town in the dog fund. A review of these fees may be held by the selectmen, town clerk, and the animal control officer whenever deemed necessary.

§ 56-2 Enforcement.

A. The Animal Control Officer shall attend to all complaints and other matters pertaining to dogs and may take whatever legal action he thinks is necessary.

B. If the Animal Control Officer determines that a bitch in heat, even when confined, is attracting other dogs thus causing a disturbance or damage to neighboring property or public areas, he may require the owner or keeper of said bitch to keep her in a kennel or remove her from the area until out of heat. The Animal Control Officer is authorized to require owners or keepers of dogs to restrain their dogs from running at large in schools, school playgrounds, parks or public recreation areas.

C. The ACO is authorized to charge a fee of \$25 for any pick-up. A fee of \$50 will be assessed for each subsequent offense.

§56-3 Calls to Confine and Impounding

A. Upon calls to domesticated animals (except dogs), the Animal Control Officer, or any other officer authorized to enforce this bylaw shall assess a charge of \$50 per call.

B. A person who owns or keeps a dog within the territorial limits of the Town of Newbury, whose dog was picked up and impounded at the Town holding facility, shall be charged a pick-up fee of \$40 per day or part thereof.

C: The owner or keeper may obtain the release of an impounded dog as follows:

Providing proof of Town of residence valid dog registration

Providing proof of valid rabies vaccination

Providing photo ID

Providing full payment of all shelter fees and fines, if any before the dog is released.

D. Dogs impounded and unclaimed by the owner or keeper after such a ten-day period shall be disposed of in accordance with the provisions of MGL c. 140, S. 151A.

E. Any dog, cat or domesticated animal impounded due to a medically incapacitated owner and or an incarcerated owner shall be held for no longer than 14 days. After 14 days the owner, next of kin, attorney or otherwise legally responsible person shall:

-Pick up the animal

or

-Surrender the animal to Animal Control Custody

The animal may be released to the above-mentioned person with proof of valid Town of residence registration, valid rabies vaccination, photo ID and proof of legal guardianship, and all boarding fees must either be paid in full or an agreement must be made between the legal guardian and the Newbury Select Board regarding any and all fee's due to Ipswich Regional Animal Control pertaining to the care of the animal during its hold. Any animal impounded and unclaimed by the owner or legal guardian after such 14-day period shall be considered abandoned property and will be disposed of in accordance with the provisions of MGL c. 140, S. 151A.

56-4 Disposal of Waste

All persons owning or in custody of an animal on public recreation areas, a town beach, town playground, town parks, town greens or schoolyards will be responsible for the removal and disposal of that animal's waste which may not be placed in any receptacle owned by the town or in privately owned receptacles other than the owners. The fine for violation of this regulation shall be \$50 per offense.

56-5 Restriction on dogs on public beach.

No person, being the owner or keeper of a dog, shall allow said dog to be on any part of the public beach, between May 15 and September 15 of each year, from 8:30 a.m. to 5:30 p.m. daily, all dates inclusive. The fine for violation of this regulation shall be \$50 per offense.

56-6 Nuisance and Dangerous Dogs

A: No person owning, keeping, or otherwise responsible for a dog or dogs shall allow said dog or dogs to annoy another person by making loud or continuous noise, where such noise would be found by a reasonable person to be disruptive to one's quiet and peaceful enjoyment. Continuous and clearly audible barking, whining, crying or howling by a dog or dogs is prima facie evidence of a violation, if:

(1) It occurs between the hours of 10:00 p.m. and 7 a.m. of the next day; or

(2) It is in excess of 45 minutes between 7:00 a.m. and 10:00 p.m.

B. If observed by the Animal Control Officer, or any other officer authorized to enforce this section, or an investigation substantiates an excessive noise complaint under this bylaw, said officer will issue a written warning for the first offense and a fine of \$25 for each subsequent offense. Nothing in this subsection shall interfere with a person's right to file for a Nuisance Dog Hearing under § 56-7 of these bylaws.

C. Any person owning, possessing or controlling a dog in the Town of Newbury shall not allow or permit said dog be a nuisance dog or a dangerous dog, as defined by MGL c. 140, § 136A. The Animal Control Officer or any other officer authorized to enforce this Section may capture and hold any dog running at large in order to protect public safety, pending a hearing and decision by the Select Board upon such complaint. The Animal Control Officer or any other officer authorized to enforce this Section may also issue an order to remove or temporarily ban any dog that is the subject of a complaint as a dangerous dog from any street, sidewalk, park or any other public area in order to protect public safety, pending a hearing and decision by the Select Board.

56-7 Complaint, investigation, notification and appeal.

A. Any person, including the Animal Control Officer or any other officer authorized to enforce this Section, may make a complaint about a nuisance or dangerous dog in the Town of Newbury in

writing, signed under penalties of perjury and filed with the Town Clerk. Such complaint shall set forth the nature and date of the act complained of, the name and address, if known, of the owner, possessor or controller of the dog, and a description of the dog.

B. Upon the filing of any complaint under this Section, the Select Board of Selectman shall cause the investigation of such complaint and conduct a hearing to determine whether the dog is a nuisance or dangerous dog, and to determine the disposition of the complaint. Such hearings shall be held in accordance with MGL c. 140, § 157.

C. If the owner of the dog that is the subject of any such complaint and hearing is dissatisfied with the disposition of the complaint, he/she may bring a petition in the district court within 10 days requesting review of the complaint and disposition pursuant to MGL c. 140, § 157.

D. Violations and Penalties. Any owner or keeper of a dog found to be in violation of an order issued by the Select Board under this section shall result in seizure and impoundment of the dog and fines as described in MGL c. 140, § 157 and § 157A.

56-8Chaining or tethering dog to stationary object.

Any person owning, possessing or controlling a dog in the Town of Newbury shall not allow or permit said dog to be chained or tethered, as defined by MGL c. 140 § 174E. An initial violation of this subsection shall be punished by a written warning, or a fine of \$50, for a second offense, be punished by a fine of \$200 and for a third or subsequent offense, be punished by a fine of \$500, and be subject to impoundment of the dog in a local shelter at the owner's, keeper's or guardian's expense pending compliance with this section, or loss of ownership of the dog.

§ 56-9 Confinement.

Any person owning, possessing, or controlling a dog in the Town of Newbury shall not allow or permit said dog to be confined, as defined by MGL c. 140 § 174E. An initial violation of this subsection shall be punished by a written warning, or a fine of \$50, for a second offense, be punished by a fine of \$200 and for a third or subsequent offense, be punished by a fine of \$500, and be subject to impoundment of the dog in a local shelter at the owner's, keeper's or guardian's expense pending compliance with this section, or loss of ownership of the dog.

§56-10Confining an animal in a motor vehicle.

Any person owning, possessing or controlling an animal in the Town of Newbury shall not allow or permit said animal to be confined inside of a motor vehicle in a manner that could reasonably be expected to threaten the health of the animal due to exposure to extreme hot or cold. The process of removing an animal from a motor vehicle will be as defined by MGL c. 140, § 174F. An initial violation of this subsection shall be punished by a fine of \$150, and for a second offense and subsequent offense, be punished of a fine of \$300. Nothing in this subsection shall preclude prosecution under MGL c. 272, § 77.

CHAPTER 109 ANIMALS

Article 1Disposal of Waste

§ 109-1Owner responsible; violations and penalties.

~~All persons owning or in custody of an animal on public recreation areas, a town beach, town playground, town parks, town greens or schoolyards will be responsible for the removal and disposal of that animal's waste which may not be placed in any receptacle owned by the town or in privately owned receptacles other than the owners. The fine for violation of this regulation shall be as follows:~~

A. ~~1st Offense: Fifteen Dollars (\$15).~~

~~B. 2nd Offense: Twenty five Dollars (\$25).~~

~~C. 3rd and Subsequent Offenses: Fifty Dollars (\$50).~~

~~Article II Dogs on the Beach~~

~~§ 109-2 Restriction on dogs on public beach.~~

~~[Amended 8-18-2022]~~

~~No person, being the owner or keeper of a dog, shall allow said dog to be on any part of the public beach, between May 15 and September 15 of each year, from 8:30 a.m. to 5:30 p.m. daily, all dates inclusive.~~

~~§ 109-3 Violations and penalties.~~

~~Whoever violates this article shall be subject to a fine of \$25 for the first offense, \$35 for the second and \$50 for the third and subsequent offenses within one season. Fines to be paid before dog is released.~~

or take any action relative thereto.

ARTICLE 22. To see if the Town will vote to make the following global changes to Chapter 97 of the Town of Newbury Zoning Bylaw:

1. Change the terms "Board of Selectmen/man" to "Select Board" wherever they may appear.
2. Change the term "By-law" to "Bylaw" wherever it may appear.
3. Authorize the Planning Director to create a Table of Contents for the Zoning Bylaw, once all changes are approved at this Town Meeting.

or take any action relative thereto.

ARTICLE 23. To see if the Town will vote to amend Article I of the Town of Newbury Zoning Bylaw, Chapter 97 as follows (with new language shown in underline and bold and deleted language shown with strike-through).

Article I
GENERAL PROVISIONS

§ 97-1 Purpose and Intent Authority

~~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.~~

- A. Title and Authority. This Bylaw is enacted pursuant to Chapter 40A, of the Massachusetts General Laws (Chapter 40A), and all amendments thereto and shall be known and may be cited as the "Town of Newbury Zoning Bylaw ("Bylaw").
- B. Purpose. This Bylaw is enacted to promote the general welfare of the Town of Newbury, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the Town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and the height, size and use of buildings and the area of open space around them, all in order to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Newbury, and to be consistent with and further the goals of the Town of Newbury's long-term planning documents, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.
- C. Conflicts. Where there are conflicts between this Bylaw and other bylaws, covenants, agreements or laws, this Bylaw shall prevail where it is more restrictive; it shall not prevail where it is less restrictive.
- D. Prior Law. Except as otherwise provided in G.L. c.40A sec. 11, the adoption of this Bylaw shall not affect the validity of any action lawfully taken under the provision of the Zoning Bylaw in effect prior to the date this Bylaw becomes effective.
- E. Severability. Should any section, provision or paragraph of this Bylaw be declared invalid by a court review, such decision shall not affect the validity of the Bylaw as a whole or any section or provisions, other than the portion so declared to be invalid.
- F. Scope. For these purposes, the construction, repair, alteration, demolition, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.
- G. Applicability. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located except where it is allowed or allowed by Special Permit or Variance. Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.
- H. Amendment. This Bylaw and Zoning Map may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

or take any action relative thereto.

ARTICLE 24. To see if the Town will vote to adopt the Essex County Flood Insurance Rate Map (FIRM), issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, effective July 8, 2025, and to amend the Town of Newbury Zoning Bylaws, Articles II and IV, by amending the provisions of the Flood Hazard Overlay District as follows, with new language shown **underlined and bold** and deleted language shown with ~~strike-through~~:

1. ARTICLE II – USE DISTRICTS: Revise § 97-2.D.(2) as follows:

(2) Flood Hazard:

~~[Amended 5-22-2012 ATM, Art. 19, 5-20-2014, Art. 21]~~

Applicable as indicated on the Federal Emergency Management Agency's Essex County Flood Insurance Rate Maps (FIRM), effective July 3, 2012 and July 16, 2014 **July 8, 2025**.

2. ARTICLE IV – REGULATIONS OF OVERLAY DISTRICTS: Revise § 97-4.E. Flood Hazard as follows:

E. Flood Hazard.

~~[Amended 5-22-2012 ATM, Art. 19]~~

(1) Purpose: The purposes of the Flood Hazard Overlay District are to:

- (a) Ensure public safety through reducing the threats to life and personal injury;
- (b) Eliminate new hazards to emergency response officials;
- (c) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- (d) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- (e) Eliminate costs associated with the response and cleanup of flooding conditions;
- (f) Reduce damage to public and private property resulting from flooding waters.

~~(2) Flood Hazard Overlay District Boundaries and Base Flood Elevation Data: The Flood Zone District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Newbury designated as Zone AE or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Newbury are panel numbers 25009C0114F, 25009C0116F, and 25009C0252F dated July 3, 2012; and panel numbers 25009C0117G, 25009C0118G, 25009C0119G, 25009C0136G, 25009C0137G, 25009C0138G, 25009C0139G, 25009C0141G, 25009C0143G, 25009C0256G, 25009C0257G, 25009C0276G, 25009C0277G and 25009C0281G dated July 16, 2014. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report, incorporated herein by reference, shall be kept on file with the Town Clerk, the Planning Board, and Inspectional Services.~~

~~[Amended 5-20-2014 ATM, Art. 21]~~

(2) Use of FEMA maps and supporting studies

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within Newbury designated as Zone A, AE, AO, or VE on the Essex County Flood Insurance Rate Map (FIRM) dated July 8, 2025 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National

Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 8, 2025. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Conservation Commission.

(3) Designation of community Floodplain Administrator

The Town of Newbury hereby designates the position of Building Commissioner to be the official floodplain administrator for the Town.

(4) Permits are required for all proposed development in the Floodplain Overlay District

The Town of Newbury requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

(5) Assure that all necessary permits are obtained

The town's permit review process includes the requirement that the proponent obtain all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must demonstrate that all necessary permits have been acquired.

(3) (6) In all Zones VE. The following Subsections shall be applicable in all districts of the Town which are classified on the FIRM as being within Zone VE (coastal high hazard area):

(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 horizontal structural member of the lowest floor (excluding pilings and columns) and 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;

(e)(c) The use of fill for structural support of buildings or other structures shall be prohibited;

~~(f)~~ The placement of manufactured homes shall comply with the requirements of NFIP Floodplain Management Regulations 44 CFR 60.3(e);

~~(g)(d)~~ Man-made Human alterations of sand dunes and/or mangrove stands which would increase potential flood damage shall be prohibited;

~~(h)~~ The provisions of § 97-4.E.(4) through § 97-4.E.(12) inclusive, including all subsections thereof, shall be applicable in all districts of the Town which are classified as being within Zone VE on the Federal Emergency Management Agency's Essex County FIRM effective July 3, 2012 and July 16, 2014. [Amended 5-20-2014 ATM, Art. 21]

(4) In all Zones AE. The following Subsections shall be applicable in all districts of the Town which are classified on the FIRM as being within Zone AE:

(a) Along watercourses that have a regulatory floodway designated on the FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(5) (7) In all Zones AO. Within all districts in the Town which are classified on the FIRM as being within Zone AO, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

- ~~(6)~~ (8) The provisions of this sub-section shall apply in all districts in the Town which are classified as being within unnumbered A Zones, Zones AE, Zones AO, and Zones VE.
- (a) 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, 33 U.S.C. 1334.;
- ~~(b)~~ (a) 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 from them during flooding.
- ~~(c)~~ (b) All the provisions of § 97-4.E.(4) and all subsections thereof shall apply in any unnumbered A Zone on the FIRM. **In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.**
- (c) 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.
- ~~(d)~~ (d) All subdivision proposals must be designed to assure that:
- 01) Such proposals minimize flood damage;
 - 02) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - 03) Adequate drainage is provided to reduce exposure to flood hazards.
- (e) When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.**
- (f) Existing contour intervals of site and elevations of existing structures may be required to be included on plan proposal.
- (g) ~~The placement of manufactured homes and recreational vehicles shall be in compliance with NFIP Flood Plain Management Regulations 44 CFR 60.3(c).~~ **In A, AO, A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.**
- ~~(h)~~ Texts and maps may be inspected at the Town Hall, 25 High Road, Newbury, Massachusetts.

(7) (9) Reference to Existing Regulations:

(a) The Flood Hazard District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

(b) More restrictive regulations to apply. Where the flood zone regulations set forth in § 97-4.E., including all sections thereof, impose greater or lesser restrictions or requirements than those of other applicable ~~By-Laws~~ Bylaws or regulations, whether Federal, State or local, the more restrictive restrictions or requirements shall be applicable.

(8) (10) Floodway provisions. In the regulatory floodway designated on the FIRM the following provisions shall apply:

(a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(b) Notwithstanding the above, encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may only be permitted provided that the Town submits an application for a conditional FIRM and floodway revisions in accordance with the provisions of 44 CFR 65.12 and receives the approval of the Federal Insurance Administrator.

(c) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code;

(d) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(9) (11) Flood Hazard Overlay District Variances.

(a) The Permit Granting Authority may grant a variance from the requirements of § 97-4.E, including all sections thereof, subject to the requirements of Massachusetts General Laws, Chapter 40A, § 97-11.B of this By-Law and upon the following conditions and restrictions:

01) 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;

02) No variance shall be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

03) 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;

04) 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;

05) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford the relief requested;

06) 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.

(10)-(12) Permitted Uses: The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require permanent structures, fill, or storage of materials or equipment:

(a) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;

(b) Forestry and nursery uses;

(c) Outdoor recreational uses, including fishing, boating, play areas, etc.;

(d) Conservation of water, plants, wildlife;

(e) Wildlife management areas, foot, bicycle, and/or horse paths;

(f) Temporary non-residential structures used **for 180 days or less** in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises;

(g) Buildings lawfully existing prior to the adoption of these provisions.

(11)(13) In a riverine situation, the Town of Newbury Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities

- NFIP State Coordinator

Massachusetts Dept. of Conservation and Recreation

251 Causeway Street, Suite 600-700

Boston, MA 02114-2104

- NFIP Program Specialist

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor

Boston, MA 02110

(14) Requirement to submit new technical data

If the Town/City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, Newbury will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist
Federal Emergency Management Agency, Region I

(15) Variances to building code floodplain standards

Newbury will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

Newbury shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) 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 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

(12) (16) Definitions: As used in this section, the following words and terms shall have the following meanings:

Area of Special Flood Hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Coastal High Hazard Area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

Development: Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials [US Code of Federal Regulations, Title 44, Part 59].

District: Floodplain district.

Federal Emergency Management Agency (FEMA): The Agency which administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Boundary and Floodway Map: An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (FHBM): An official map of a community issued by FEMA the Federal Insurance Administrator where the boundaries of the flood and related erosion areas having special hazards have been designated

as Zone A or E.

Flood Insurance Rate Map (FIRM): An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

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

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

Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

Historic Structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

Lowest Floor: The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for

parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

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

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

One-Hundred Year Flood: See **Base Flood**.

Recreational Vehicle means a vehicle which is:

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

[US Code of Federal Regulations, Title 44, Part 59]

Regulatory Floodway: See **Floodway**.

Special Flood Hazard Area: ~~An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.~~ The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

Start of Construction; The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent

construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **Structure**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Substantial Repair of a Foundation; When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

Variance means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Zone A1-30 and Zone AE (for new and revised maps): The 100-year floodplain where the base flood elevation has been determined.

Zone AH and Zone AO: The 100-year floodplain with flood depths of one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Zone B, C, and X: Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

Zone V1-30 and Zone VE (for new and revised maps): A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

(17) Disclaimer of liability

The degree of flood protection required by this Bylaw is considered reasonable but does not imply total flood protection.

(18) Severability section

If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

Or take any other action relative thereto.

ARTICLE 25. To see if the Town will vote to amend Article V – Section 97-5 of the Town of Newbury Zoning Bylaw, Chapter 97 as follows (with new language shown **underlined and bold** and deleted language shown with ~~strike-through~~):

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.~~

(1) Purpose and Intent. It is the purpose and intent of this section to provide the designation of the board or agency which shall act on the various special permits, the general and specific regulations governing special permits, and the procedures by which special permits shall be granted.

(2) Applicability. In addition to any specific criteria otherwise set forth in this bylaw, the provisions of this section shall apply to any application for a Special Permit under the table of uses or as otherwise set forth in this Bylaw unless exempt in accordance with section A.(12) below.

(3) Designation of Special Permit Granting Authorities.

Special Permit Granting Authority. The Board of Appeals shall act as the Special Permit Granting Authority (hereinafter "SPGA") for all Special Permits unless otherwise designated herein or in the Table of Use Regulations.

(4) Criteria. Special Permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any other specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following criteria:

(a) Social, economic, or community needs which are served by the proposal;

(b) Traffic flow, volume, and vehicular and pedestrian safety, including traffic related to parking and loading;

(c) Adequacy of utilities and other public services;

(d) Neighborhood and community character and social structures;

(e) Impacts on the natural environment; and

(f) Potential fiscal impact, including impact on Town services, tax base, and employment. Said analysis shall conform to with the Rules and Regulations of the SPGA.

(g) Consistency with the most recent Town of Newbury Master Plan.

(5) Procedures and Filing Requirements. An application for a special permit shall be filed in accordance with the rules and regulations of the SPGA including all required plan and filing requirements, review criteria and analysis.

(6) Conditions. Special permits may be granted with such reasonable conditions, safeguards,

or limitations on time or use, including performance guarantees, as the SPGA may deem necessary to serve the purposes of this Bylaw including, but not limited to, the following: front, side, or rear yards greater than the minimum required by this Bylaw; screening buffers or planting strips, fences, or walls; regulations of exterior lighting; modification of the exterior appearance of the structures; limitation upon the size, number of occupants, method and time of operation for the duration of permit, or extent of facilities; regulation of number, location of driveways or other traffic features; and off-street parking or loading or other special features beyond minimum required by this Bylaw. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the SPGA.

- (7) Plans. Plans shall be filed in accordance with the Rules and Regulations of the SPGA.
- (8) Waivers. Upon written request the SPGA may grant waivers from the submission requirements should they find good cause for such waiver. The SPGA may also request any additional information it may need to clarify the application.
- (9) Fees. The SPGA may adopt reasonable administrative fees and technical review fees pursuant to G.L. c. 44 §53G for applications for special permits. Fees for projects containing publicly-assisted low or moderate income housing may be reduced or waived at the discretion of the SPGA.
- (10) Regulations. The SPGA may adopt rules and regulations for the administration of this section.
- (11) Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within two (2) years following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk. Additionally, if construction or operations has not begun within six (6) months or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial six (6) months, then the construction or operations shall conform to any amendment to this Bylaw.
- (12) Applicability to Single and Two Family structures. The provisions of this Section should not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structures which are governed under section 97-4(D) and 97-10(A).

[No changes to Section B proposed for 2025 ATM, so Section B is not reprinted here.]

C. Open Space Residential Development. [~~Added 4-24-2001 ATM, Art. 27; amended 4-22-2003 ATM Art. 6; 6-24-2004 STM, Art. 7; 5-25-2010 ATM, Art. 15]~~]

Amend Sections 97-5.C.(2), 97-5.C.(3), 97-5.C.(4), 97-5.C.(9)(a), 97-5.C.(12)(a), and 97-5.C.(13) as follows:

(2) Definitions.

- (a) **Basic maximum number:** the number of lots/dwelling units that would be allowed on the site using Newbury Zoning ~~By-Law~~ Bylaw provisions and/or Subdivision Rules and Regulations as determined by a Yield Plan. Requirements for contents of the Yield Plan are to be found in the OSRD Rules and Regulations in Chapter 112 Open Space Residential Development; see § 97-5.C. (3) and § 97-5.C. (7) below.
- (b) **Conventional subdivision:** a development of land subject to and governed by Chapter 117, Planning Board's Rules and Regulations for the Subdivision of Land and any and all rules and regulations established by the Planning Board under said Chapter 117.
- (c) **Low and moderate income:** income levels as defined by the Commonwealth's Executive Office of Housing and Livable Communities for the Town of Newbury, based on the formulas for its currently assigned geographic area.

- (3) Authority. The Planning Board shall act as the ~~SPGA Special Permit Granting Authority~~ for OSRD applications. The Planning Board may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this ~~By-Law~~ Bylaw and G.L.c.40A and other provisions of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk.

(4) Applicability.

- (a) **An applicant for** ~~a~~Any subdivision of land or development that will create **three or more than four** lots or units may shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the subdivision process as found in Chapter 117, Planning Board's Rules and Regulations for the Subdivision of Land, 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, provided, however, that an OSRD may also be permitted where intended as a condominium on land not so divided or subdivided.

- (9) Design standards. The following Generic and Site-Specific Design Standards shall apply to all OSRDs 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 drainage ways 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. **All streets, whether the project is designed as an OSRD subdivision or an OSRD condominium site plan, shall conform with the street design and construction standards set forth in Chapter 117, Subdivision of Land.**
- 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.

(12) 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~~ **Select Board**/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 Commonwealth of Massachusetts will be subject to a Restrictive Covenant, that shall be approved by the Planning Board and ~~Board of Selectmen~~ **Select Board**/Town Counsel and enforceable by the Town.

- 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 By-Law 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, together with 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) Subsurface ~~W~~wastewater and stormwater management systems serving the OSRD may be located within the open space as long as the surface above such systems is usable open space consistent with the allowed uses of the open space as outlined in § 97-5.C.(12)(a)02) above. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

(13) 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 water bodies 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 ~~By-Law~~ **Bylaw**.
- (b) The Special Permit for the OSRD Concept Plan shall be reconsidered if there is substantial variation between the ~~Open Space Definitive~~ **OSRD Subdivision Plan** or the OSRD Condominium Site 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:
- 01) An increase in the number of building lots and/or units;
 - 02) A significant decrease in the open space acreage;
 - 03) A significant change in the lot layout or unit placement;
 - 04) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
 - 05) Significant changes to the stormwater management facilities; and/or
 - 06) Significant changes in the wastewater management systems.
- (c) The Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Law, nor oblige the Planning Board to approve a related definitive plan for subdivision, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Law or, where an OSRD Condominium Site Plan is proposed, the Board's Site Plan Review Regulations. 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 or a condominium site plan.

D. Common Driveways —~~By special permit only [Added 4-22-2003 ATM, Art. 7; amended 5-26-2009 ATM, Art. 34]~~

- (1) Purpose and intent. The purpose of the Common Driveway ~~by-law~~ **Bylaw** 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~~ **wetlands** 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~~ **Bylaw** 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~~ **Bylaw**, 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~~ **Bylaw** 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.

08) The Planning Board may waive strict compliance with any of these Common Driveway Specifications if it deems the waiver is consistent with the purpose and intent of this Common Driveway Bylaw, is in the public interest and does not impact public safety, and if written record is kept of such waivers, and the reasons for them.

(c) Easements and maintenance agreements. Prior to Planning Board endorsement of the plan and issuance of the Common Driveway Special 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 **Bylaw in conformance with the Planning Board's submission requirements.** ~~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 **Bylaw** 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.

[No changes proposed to Sections E & F for 2025 ATM, so these sections are not reprinted here.]

G. Registered Marijuana Dispensaries/Medical Marijuana Treatment Centers:

Omit this section 97-5.G in its entirety and add related provisions to section 97-5.H. Marijuana Establishments as shown below.

H. Marijuana Establishments and Medical Marijuana Treatment Centers: ~~[Added 4-24-2018 ATM, Art. 19]~~

(1) Purpose:

- (a) To provide a permitting process for the placement of Marijuana Establishments, in accordance with ~~the Regulation and Taxation of Marijuana Act, as amended, and as codified in G.L. c. 94G, § 1, et seq. (hereinafter G.L. c. 94G),~~ and Medical Marijuana Treatment Centers, in accordance with G.L. c. 94I, § 1, et seq. (hereinafter G. L. c. 94I), and the Cannabis Control Commission (hereinafter CCC) Regulations promulgated thereunder, 935 CMR 500.000 and 935 CMR 501.000, as the same may be amended from time-to-time, in locations suitable for lawful Marijuana Establishments;
- (b) To minimize and mitigate adverse impacts of Marijuana Establishments and Medical Marijuana Treatment Centers on adjacent properties, public ways, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate, and other land uses potentially incompatible with said facilities, by regulating the siting, design, and placement of Marijuana Establishments and Medical Marijuana Treatment Centers.

(2) Definitions:

- (a) Definition of Marijuana, ~~and~~ Marijuana Establishments, and Medical Marijuana Treatment Centers:

Craft Marijuana Cultivator Cooperative is a marijuana cultivator comprised of residents of the Commonwealth organized as a limited liability company or limited liability partnership under the laws of the Commonwealth, or an appropriate business structure as determined by the CCC, and that is licensed to cultivate, obtain, manufacture, process, package, and brand marijuana and marijuana products to deliver marijuana to Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana or Marihuana is all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws; provided that "Marijuana" shall not include:

- 01) The mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or

preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;

02) Hemp; or

03) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Cultivator is an entity licensed to cultivate, process, and package marijuana, to deliver marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana Establishment is considered a cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, all as defined in G.L. c. 94G. Said Marijuana Establishment shall be deemed independent of any other definition in this by-law bylaw and not a subset or subcategory of any other category. Said Marijuana Establishment may never be considered an accessory use.

Marijuana Product Manufacturer is an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to Marijuana Establishments and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana Products are products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils, and tinctures, as defined in G.L. c. 94G.

Marijuana Retailer is an entity licensed to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers, as defined in G.L. c. 94G, further provided that a Marijuana Retailer may not be considered a Retail Business in any other context.

Marijuana Testing Facility is an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants, as defined in G.L. c. 94G.

Medical Marijuana Treatment Center, formerly known as a Registered Marijuana Dispensary (RMD)), means an entity licensed under 935 CMR 501.101 that acquires, cultivates, possesses, processes (including development of related products such as edibles, MIPs, tinctures, aerosols, oils, or ointments),

repackages, transports, sells, distributes, delivers, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to Registered Qualifying Patients or their Personal Caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of Marijuana for medical use.

- (b) Definition of other terms used in this section: Where not expressly defined in the Code of the Town of Newbury, Chapter 97, Zoning, terms used in this Section shall be interpreted as defined in ~~The Regulation and Taxation Of Marijuana Act, as amended, and as codified in G.L. c.94G,~~ G.L. c. 94I, and the CCC Regulations promulgated thereunder, 935 CMR 500.000, et seq. and 935 CMR 501.000, et seq., as the same may be amended from time-to-time, and otherwise by their plain language.

(3) General Requirements:

- (a) A Special Permit shall be required for the establishment of a Marijuana Establishment or Medical Marijuana Treatment Center. For the purposes of this Section, the Special Permit Granting Authority (SPGA) shall be the Planning Board.
- (b) All permitted Marijuana Establishments or Medical Marijuana Treatment Centers shall have received a provisional license from the CCC and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. Failure to obtain a final license from the CCC shall result in automatic rescission of the special permit as more fully described in 7(ed) below. No Building Permit or Certificate of Occupancy shall be issued for a Marijuana Establishment or Medical Marijuana Treatment Center that has not received a provisional license from the CCC.
- (c) The Special Permit shall be valid only for the Applicant(s) (hereinafter Applicant), shall become invalid if the Applicant ceases operating the licensed Marijuana Establishment or Medical Marijuana Treatment Center, and shall not transfer with a change in ownership of the business and/or property.
- (d) The Special Permit shall become invalid if the Applicant fails to obtain a final license from the CCC or upon the expiration or termination of the Marijuana Establishment's or Medical Marijuana Treatment Center's CCC license.
- (e) Parking and loading for a Marijuana Establishment or Medical Marijuana Treatment Center shall be in accordance with § 97-7. Off Street Parking, Access, and Loading of Newbury's Zoning By-Law Bylaw. However, the SPGA may require a greater number of parking spaces and/or loading bays if it finds, based on the application materials submitted to the SPGA regarding operation of the Marijuana Establishment or Medical Marijuana Treatment Center, that the minimum requirements are not sufficient.

- (f) All signage shall conform to the requirements of § 97-8. Sign Regulations of Newbury's Zoning By-Law Bylaw. Any exterior sign may identify the Establishment, but shall not contain any other advertisement. The SPGA may impose additional restrictions on signage as appropriate for the site, provided such regulations and restrictions do not conflict with state law or any CCC regulation.
- (g) All Marijuana Establishments or Medical Marijuana Treatment Center shall operate within a fully enclosed building that is monitored by surveillance cameras, alarm systems, and all other security measures in accordance with CCC Regulations deemed appropriate to ensure patron and community safety and deter unauthorized access to the premises.
- (h) No products shall be displayed in the Marijuana Establishment's or Medical Marijuana Treatment Center's windows or visible from any street or parking lot.
- (i) Industry Best Management Practices shall be utilized to control odors inside and outside all types of Marijuana Establishments or Medical Marijuana Treatment Center. No odors from marijuana or its processing shall be detectable by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or Medical Marijuana Treatment Center or at any adjoining property or use.
- (j) Waste disposal shall be in accordance with the CCC Regulations and State and local regulations. No composting of waste materials may occur at the Marijuana Establishment or Medical Marijuana Treatment Center. Outside storage of general solid waste not containing any usable marijuana shall be screened with a locked fence. Solid waste containing any usable marijuana shall be stored inside a designated locked, limited-access area located inside the main structure. Liquid waste from processing or disposal of marijuana shall not be discharged to surface waters or groundwater or septic systems. Liquid waste must be stored pending disposal in an industrial wastewater holding tank in accordance with 314 CMR 18.00: Industrial Wastewater Holding Tanks and Containers.

(4) Location:

- (a) The Zoning Districts in which Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, Marijuana Product Manufacturers, and Marijuana Testing Facilities may be located are the Business & Light Industrial District and the Commercial Highway District, excluding that area of the Commercial Highway District at the Northwestern Junction of the right-of-way of I-95 and Central Street.
- (b) The Zoning District in which Marijuana Retailers or Medical Marijuana Treatment Centers may be located is the Business & Light Industrial District.

(c) No Marijuana Retailer or Medical Marijuana Treatment Center may be located within 1,000 feet of the real property comprising any of the following:

01) A public or private school;

02) Daycare center; or

03) A similar facility in which minors commonly congregate (e.g. library, playground, etc.).

(d) No Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, Marijuana Product Manufacturers, and Marijuana Testing Facilities may be located within 500 feet of the real property comprising any of the following:

01) A public or private school;

02) Daycare center; or

03) A similar facility in which minors commonly congregate (e.g. library, playground, etc.).

(e) No Marijuana Establishment or Medical Marijuana Treatment Center may be located within 300 feet of the real property comprising a residence.

(f) The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Section (4)(c), (4)(d), or (4)(e) above to the nearest point of the property line of the proposed Marijuana Establishment or Medical Marijuana Treatment Center.

(5) Application Process and Requirements:

(a) Application Procedures: The application for a Special Permit for a Marijuana Establishment or Medical Marijuana Treatment Center shall be filed at a regularly scheduled Planning Board meeting and with the Town Clerk in accordance with § 97-11.C.(1) of Newbury's Zoning By- Law and with G.L. c. 40A § 9. The application shall be signed by a duly authorized officer of the Applicant.

(b) Required Documents: The Applicant shall provide the SPGA with 15 copies of the application and the required fees. All plans and maps shall be prepared, stamped, and signed by a professional engineer or architect licensed to practice in Massachusetts. An application to the SPGA shall include, at a minimum, the following information:

01) The Applicant's name, address, telephone number, and email address;

02) Evidence that the Applicant has site control and the right to use the site for a facility in the form of a deed or valid purchase and sale agreement, or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;

- 03) A certified copy of the provisional license issued by the CCC to the Applicant, along with copies of all other materials issued by the CCC to the Applicant, except for those materials that are deemed by the CCC to be confidential and therefore subject to the public records exemption;
- 04) A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to, cultivating and processing of marijuana or marijuana products as defined in G.L. c. 94G, § 1, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities;
- 05) A map depicting all properties and land uses within a one thousand-foot (1,000') radius (minimum) of the project site, whether such uses are located in Newbury or within surrounding communities, including, but not limited to, all educational uses, daycare, preschool and afterschool programs, playgrounds, libraries, public parks, houses of worship, and housing facilities owned by a public housing authority;
- 06) A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of parking, the location of pedestrian and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type, and direction of all outdoor lighting on the site, and any landscape design;
- 07) A plan or plans showing any proposed stormwater management system, which plan(s) shall meet the submission requirements of Newbury's Stormwater Management Rules and Regulations;
- 08) Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are strongly recommended, but not required;
- 09) A written Energy Use/Environmental Plan demonstrating best practices for energy conservation to ensure that there are no undue impacts on the natural environment; the plan shall include proposed energy and water conservation measures, including use of energy efficient lighting where appropriate, measures for controlling odors and effluent, and measures for disposal of solid waste.
- 10) Traffic Impact Report;
- 11) A Security Plan, to be submitted to the Newbury Police Department only, including all security measures for the site and for transportation of marijuana and marijuana products to and from off-site premises. The Security Plan shall include a site plan showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;
- 12) A description of waivers, if any, from the CCC Regulations issued for the Marijuana Establishment **or Medical Marijuana Treatment Center, and whether or not the**

Applicant is a Social Equity Business, as defined by the CCC Regulations.

- (c) Within five business days of the receipt of the application, the SPGA shall refer copies of the application to the Building Commissioner, the Conservation Commission, the Board of Health, the Fire Department, and the Police Department. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 30 days of referral of the application shall be deemed lack of opposition.
 - (d) After notice and public hearing and consideration of application materials, public comments, and the recommendations of other Town boards and departments, the SPGA shall act upon the application.
- (6) Decision Criteria: The SPGA shall issue a special permit for a Marijuana Establishment **or Medical Marijuana Treatment Center** only if it finds that the Applicant has submitted sufficient information from which it can conclude that:
- (a) The Marijuana Establishment **or Medical Marijuana Treatment Center** has received a provisional license CCC as required in (3)(b) above and complies with all applicable state and local laws, regulations, and requirements, including, but not limited to, health and safety regulations, and construction and environmental requirements;
 - (b) The building and site have been designed to be reasonably compatible with other buildings in the area;
 - (c) The siting of the Marijuana Establishment **or Medical Marijuana Treatment Center** will be accomplished so as to minimize any adverse impacts on abutters and other parties in interest, as defined in G.L. c. 40A, § 11, including but not limited to compliance with the following:
 - 01) proper location in accordance with the distance and location requirements in § 97-5.H (4) above
 - 02) design which ensures sufficient buffering, except to the extent that any part of such buffering is contrary to state law and the CCC Regulations;
 - 03) design which minimizes visual impacts, noise, odors, and light pollution or other undue nuisance;
 - 04) design which creates no hazard or congestion;
 - 05) design which shields loading and service areas;
 - 06) design which ensures adequate waste disposal of products containing usable marijuana that does not adversely impact the environment or water resources.

- (d) The Marijuana Establishment or Medical Marijuana Treatment Center will create no substantial harm to the established or future character of the neighborhood or town.
- (e) With due consideration to aesthetics, the Marijuana Establishment or Medical Marijuana Treatment Center is designed to ensure convenient, safe and secure access as follows:
- 01) personal safety of those working at or utilizing the facility;
 - 02) personal safety for clients and invitees; and
 - 03) loading and service areas are designed to be secure;
 - 04) protection of the premises from theft.
- (f) The Applicant has not provided materially false documents or testimony.
- (g) The Applicant has satisfied all of the conditions and requirements of Newbury's Zoning By-Law Bylaw.
- (7) Special Permit Conditions: The SPGA shall impose conditions reasonably appropriate to improve siting, design, placement, traffic flow, and public safety; protect water quality, air quality, and significant environmental resources; preserve the character of the surrounding area; and otherwise serve the purpose of this By-Law Bylaw. In addition to any specific conditions applicable to the Marijuana Establishment or Medical Marijuana Treatment Center, the SPGA shall include the following conditions in any special permit granted under this By-Law Bylaw:
- (a) Within 24 hours of creating an Incident Report required by the CCC Regulations, the permit holder shall file a copy of said Incident Report with the ~~Board of Selectmen~~ Select Board, with copies to the Zoning Enforcement Officer and the SPGA. Such reports may be redacted as necessary to comply with any and all applicable laws and regulations;
 - (b) The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by the CCC or the Division of Administrative Law Appeals, as applicable, regarding the Marijuana Establishment with the ~~Board of Selectmen~~ Select Board, with copies to the Zoning Enforcement Officer and the SPGA, within 48 hours of receipt by the Marijuana Establishment or Medical Marijuana Treatment Center;
 - (c) The permit holder shall provide to the ~~Board of Selectmen~~ Select Board, the Zoning Enforcement Officer, the SPGA, the Police Chief, and the Fire Chief the name, telephone number and email address of a contact person in the event that such person

needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder;

- (d) The Special Permit shall be limited to the current Applicant, shall become invalid if the permit holder ceases operating the Marijuana Establishment or Medical Marijuana Treatment Center, and shall not transfer with a change in ownership of the business and/or property;
- (e) The Special Permit shall become invalid upon the expiration or termination of the Applicant's CCC license or the failure of the Applicant to receive a final license from the CCC;
- (f) The permit holder shall notify the ~~Board of Selectmen~~ Select Board in writing, with copies to the Zoning Enforcement Officer, the Police Department, and the SPGA, within 48 hours of the cessation of operation of the Marijuana Establishment or Medical Marijuana Treatment Center, notice by the CCC of denial of a final license, or the expiration or termination of the permit holder's CCC license;
- (g) In the event that the CCC revokes, fails or refuses to issue a final license to the Marijuana Establishment or Medical Marijuana Treatment Center, a Special Permit issued by the Town for the Marijuana Establishment shall be deemed null and void;
- (8) Prohibition against Nuisances: The Marijuana Establishment or Medical Marijuana Treatment Center shall not create a nuisance to abutters or to the surrounding area, or create any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent, or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.
- (9) Conflicts with State Law and Regulations: If any provision, paragraph, sentence, or clause of this ~~By-Law~~ Bylaw shall be determined to be in conflict with applicable State Law or Regulations, the provisions of said State Law or Regulations shall prevail.
- (10) Severability: The provisions of this ~~By-Law~~ Bylaw are severable. If any provision, paragraph, sentence, or clause of this ~~By-Law~~ Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ~~By-Law~~ Bylaw.

or take any action relative thereto.

ARTICLE 26. To see if the Town will vote to amend Article IX Section 97-9(A), Site Plan Review of the Town of Newbury Zoning Bylaw, Chapter 97 as follows (with new language shown underlined and bold and deleted language shown with ~~strike-through~~):

Article IX. SPECIAL REGULATIONS

A. Amend § 97-9 (A)(6)(h) as follows:

- (h) Minimize intrusion of glare from headlights and site lighting on surrounding properties, and minimize light pollution using dark sky compliant standards;

B. Amend § 97-9 (A)(6) by adding a new subsection (n) as follows;

- (n) Utilize energy, water and resource efficient design to the greatest degree possible, including appropriate building orientation, landscape design, use of solar or other energy collection apparatuses, electric vehicle charging stations, LED light fixtures and use of resource-efficient materials and energy- and water-efficient systems.

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.

C. Amend § 97-9 (A)(7) by adding a new subsection (g) as follows;

- (g) Prior to the start of clearing and construction (other than that required for surveying or testing or for the installation of erosion control measures), a pre-construction meeting shall take place with, at a minimum, the Planning Director, the Planning Board's engineering consultant, the Conservation Agent, and a representative of the Newbury Department of Public Works. The meeting will be held to review the site design, the planned operations at the construction site, planned stormwater practices and site controls during the construction phase, and the planned stormwater practices and site controls to be used to manage runoff created after developed will be reviewed. The limit of work and extent of tree clearing shall be clearly marked prior to the pre-construction conference.

or take any action relative thereto.

ARTICLE 27. To see if the Town will vote to amend Article X Section 97-10(C) of the Town of Newbury Zoning Bylaw, Chapter 97 as follows (with new language shown underlined and bold and deleted language shown with strike-through):

Article X GENERAL REGULATIONS

Amend § 97-10.C. Customary home occupations by adding a new subsection (2) as follows:

- (2) No use which requires a Special Permit under the Table of Use Regulations shall be permitted as a Customary Home Occupation.

or take any action relative thereto.

ARTICLE 28. To see if the Town will vote to amend Article X - Section 97-10.D. Accessory Apartments of the Town of Newbury Zoning Bylaw, Chapter 97 by omitting it in its entirety and replacing it as follows:

Chapter 97-10 General Regulations

D. Accessory Dwelling Units.

(1) Purpose and Intent: The intent of permitting Accessory Dwelling Units is to:

- (a) Recognize that the housing needs of the Town are changing and that zoning by-laws must be crafted to allow additional options in the provision of housing to the Town's citizens;
- (b) Increase the supply of housing and the diversity of housing options, in response to demographic changes such as smaller households and older households;
- (c) Provide homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- (d) Develop housing units in residential neighborhoods that are appropriate for households at a variety of stages in their life cycle and for multi-generational households;
- (e) Encourage a more balanced and diverse population and income mix, with particular attention to young adults and senior citizens;
- (f) Encourage the creation and addition of moderately priced rental units to the housing stock that meet the needs of small and moderate-income households who might otherwise have difficulty obtaining affordably priced housing in the community.

(2) Definitions: For the purpose of this section, the following definitions shall apply:

- (a) "Accessory Dwelling Unit" (ADU) is defined as a self-contained housing unit, attached to or detached from the principal dwelling unit, inclusive of sleeping, cooking, and sanitary facilities on the same lot as a principal dwelling, that
 - 01) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress;
 - 02) is not larger in Gross Floor Area than half (1/2) the Gross Floor Area of the principal dwelling or 900 square feet, whichever is smaller.
 - 03) is subject to all applicable zoning requirements within the established zoning district as set forth in Chapter 97, Zoning, §97-4.D. and §97-6.
- (b) Gross Floor Area is defined as the sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units, but excluding: crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the lot, the Gross Floor Area of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.
- (c) Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority.

- (d) Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

(3) Accessory Dwelling Unit Applicability:

- (a) An ADU may be administratively reviewed and authorized by the Building Commissioner with the issuance of a Building Permit when the conditions and requirements of § 97-10.D.(2)(e) and §97-10.D.(4) are met.
- (b) An ADU may be permitted by a Special Permit pursuant to Requirements as described in §97-10.D.(5). The Zoning Board of Appeals (ZBA) shall be the Special Permit Granting Authority for a Special Permit ADU.
- (c) ADUs proposed to be constructed on pre-existing legal non-conforming structures or lots shall conform with the requirements of § 97-10.A.(1).
- (d) The Building Commissioner's decision on an application for an ADU constitutes the final decision; however, a property owner may appeal the denial of a Building Permit for an ADU by appealing to the ZBA pursuant to G.L. c. 40A sec. 8.

(4) General Requirements for Accessory Dwelling Units:

- (a) There shall be no more than one ADU on a lot, and there shall be no more than two dwelling units in the primary dwelling.
- (b) The total number of bedrooms in the primary dwelling and the ADU combined may not exceed the capacity of the permitted septic system, per Title V requirements.
- (c) An ADU proposed in the Plum Island Overlay District shall meet the requirements thereof and may not result in exceedance of the dimensional requirements or bedroom count as set forth therein for each lot, in accordance with § 97-4.D and § 97-6.B.
- (d) The primary dwelling and the ADU shall comply with all applicable health, safety, building and other applicable codes in effect at the time of the granting of the Building Permit, and of the Special Permit where applicable.
- (e) Utilities necessary for the ADU, including but not limited to water, electric, and gas, may be extensions of the existing utilities serving the principal single-family dwelling. New or separate water and sewer lines directly between the ADU and the trunk lines are not required. Applicants may choose to use a shared water meter for the primary structure and the ADU or have a separate water meter installed for each.
- (f) Not more than one additional parking space shall be required for an ADU; and further, no parking space shall be required for an ADU located not more than 0.5 miles from a Commuter Rail Station or any Bus Station as defined in § 97-10.D.(2).
- (g) An ADU permitted through §97-10.D. shall not be used for "Short Term Rental" as that term is defined in M.G.L. c. 64G and is prohibited from any use as a rental unit on a weekly or daily basis.
- (h) Neither the ADU nor the principal dwelling on a lot shall be required to be owner-occupied.

(5) Special Permit Requirements for ADUs: The Zoning Board of Appeals, as Special Permit Granting Authority, may allow dimensional variations for a proposed ADU up to 15% above 900 square feet of Gross Floor Area as defined in §97-10.D.(2), provided that:

- (a) the ADU meets the dimensional requirements of the single-family lot;
- (b) the ADU is subordinate to the primary structure in height, location on the lot, bulk, and massing;
- (c) the allowance of such variation, in the Board's opinion, is not contrary to the public interest and is consistent with the intent and purpose of this bylaw.

(6) Submission Requirements:

(a) An application for an ADU shall be submitted to the Building Inspector and shall include, at a minimum:

01) A site plan, stamped by a registered engineer or land surveyor, drawn to scale, showing existing conditions, boundaries and area of the lot, location(s) of all structures, setbacks, location and capacity of the approved septic system, including reserve area, well, driveway, and parking spaces, if required;

02) Existing and proposed building floor plans and elevations, stamped by a registered architect, drawn to scale, showing the proposed interior and exterior changes to the primary dwelling or accessory structure and the number of existing and proposed bedrooms;

03) Drawings showing adherence to all current Building Code and Fire Code requirements;

04) A narrative description of the proposal that describes the ways the ADU meets the Purpose and Intent of § 97-10.D.

(b) An application for a Special Permit for an ADU shall be submitted to the Zoning Board of Appeals and shall include the Requirements of §97-10.D.6(a)

or take any action relative thereto.

ARTICLE 29. To see if the Town will vote to amend Article XI - Section 97-11 of the Town of Newbury Zoning Bylaw, Chapter 97 as follows (with new language **underlined and bold** and deleted language shown with strike-through):

Article XI
ADMINISTRATION

§ 97-11 Administration.

A. Enforcement.

(1) Authority to enforce. This ~~By-Law~~ **Bylaw** shall be enforced by the ~~Selectmen~~ **Select Board** or a Building Inspector **Commissioner** 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 **appropriate permitting authority** ~~Selectmen~~ or the Building Inspector **Commissioner**. ~~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.~~

(2) Granting of building permits.

The Building Commissioner shall not grant a permit for the use, construction or

alteration of any building unless the provisions of this Bylaw have been met.

(3) Building permit requirements.

(a) No building shall be erected, moved, placed on a lot, added to or structurally altered until a permit therefor has been issued by the Building Commissioner.

(b) No excavation for a building foundation nor work on a foundation shall be commenced, until a building permit has been issued by the Building Commissioner.

(c) No building permit shall be issued unless the application for such permit complies with the Building Code and this Bylaw, and is accompanied by such written information, plans, elevations and sections, specifications and other data necessary as determined by the Building Commissioner, for a full and accurate description of the proposed construction, alteration or use. A record of such applications shall be kept on file in the office of the Building Commissioner.

(d) Lapse of building permit. A building permit shall lapse if construction has not begun within six months from the issuance of the building permit. A permit shall remain valid only if the use, construction or alteration for which it was issued proceeds in good faith continuously to completion except for good cause shown.

(4) Changes in approved construction, alteration, or use. If subsequent to the issuance of a special permit, variance, or building permit, changes in approved construction, alteration or use are desired, the applicant shall inform the Building Commissioner in writing of these changes and his written approval must be obtained in advance of any work commencing. Said notification shall be confirmed in writing to the Building Commissioner together with appropriate revised plans and specifications within one week from said approval and the building permit shall be amended accordingly. If a site plan approval, special permit or variance has been issued, written approval from the permit granting authority is required before the Building Commissioner will accept the proposed changes, unless otherwise provided in the permit granting authority permit.

(5) Certified plot plan. Within 21 days after the completion of the foundation, the applicant shall file with the Building Commissioner, a plot plan based upon an actual current survey, showing the location of the foundation on the lot and first floor elevation prepared by a registered land surveyor who shall certify on the plan that the location of the foundation complies with this Bylaw and any relief

granted hereunder.

(6) Violation of building permits. If the Building Commissioner finds that any of the provisions of this Bylaw are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and order the action necessary to correct it. The Building Commissioner shall order discontinuance of illegal use of land or buildings, or construction of buildings, or work related thereto; removal of illegal buildings, additions, alterations or structural changes; and shall take any other action authorized by this Bylaw to ensure compliance with its provisions.

(7) Appeals to Board of Appeals. If the Building Commissioner is requested in writing to enforce this Bylaw against any person allegedly in violation, the Building Commissioner shall respond, in writing, within 14 days of receipt of such request and state any enforcement measures and any other action taken or state a refusal to act and the reasons for that refusal or determination. Any person (including any Town board) aggrieved by an action taken or determination made by the Building Commissioner in the administration of this Bylaw may appeal within 30 days thereafter to the Board of Appeals in accordance with the requirements of G.L. c. 40A §§ 8 and 15 by filing with the Town Clerk notice of appeal in accordance therewith. The Town Clerk shall transmit copies thereof to the Board of Appeals and Building Commissioner.

(8) Penalty for violation. Whoever violates any of the provisions of this Bylaw shall be punishable by a fine of \$300 for each offence. Each day that such violation is permitted to exist shall constitute a separate offence. The imposition of a penalty shall not excuse the violation and shall not be held to prevent the enforced removal of prohibited conditions where they continue to exist as a violation of this Bylaw.

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 **Select Board**, 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 **Bylaw** 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 Administrator under the provisions of Section 13 of said Chapter 40A or under the provisions of any other applicable law.

(2) Variances. The Zoning Board of Appeals shall be permitted to grant dimensional variances in accordance with the provisions of G.L. c. 40A §10.

C. **Reserved.** 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~~Bylaw, 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."

Alteration: Any construction, addition, or renovation to an existing structure, other than minor repairs, that requires a building permit. Also, a change in a mechanical, plumbing, gas, or electrical system that involves an extension, addition, or change to the arrangement, type, or purpose of the original installation and that requires a permit. ~~[Added 5-26-2009 ATM, Art. 36; amended 5-19-2015 ATM by Art. 22]~~

Animal Boarding Kennels: Facilities primarily for boarding of pets for extended periods, at least overnight, including care, feeding and grooming thereof. ~~[Added 5-24-2011 ATM, Art. 23]~~

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

Assisted Living or Life Care: Residence or facility licensed by the State to provide supervision or assistance with activities of daily living (ADLs); coordination of services by outside health care providers; and monitoring of resident activities to help to ensure their health, safety, and well-being. ~~[Added 5-22-2012 ATM, Art. 20]~~

Basement: That portion of a building that is partly or completely below grade, which is not defined as a Story Above Grade. (see "Story above Grade"). ~~[Added 5-26-2009 ATM, Art. 36]~~

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

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.

Building Supply Store: Building for retail or wholesale sales of lumber, masonry supplies, roofing materials or similar merchandise. ~~[Added 5-22-2012 ATM, Art. 20]~~

Bus Terminals/Railroad Terminals: Facilities intended for the boarding and discharge of passengers, dispatch of buses and railroads as well as fueling and minor routine maintenance such as oil changes for busses. ~~[Added 5-24-2011 ATM, Art. 23]~~

Child Care Facility: A child care center or a school-aged child care program, as those terms are defined in Massachusetts General Laws, Chapter 15D, Section 1A. ~~[Added 5-22-2012 ATM, Art. 20]~~

Commercial Parking Lot or Structure: Imperviously paved areas, pervious areas intended for parking, and open or enclosed buildings primarily intended for the parking of passenger vehicles such as automobiles, vans, pick-up trucks, etc. This does not include parking areas for other approved uses. ~~[Added 5-24-2011 ATM, Art. 23]~~

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

Contractor's Yard: Office and shop buildings for a construction company or landscape contractor, including parking of equipment, and storage of materials. Bulk material storage, such as sand, gravel, loam, etc., must be limited to thirty (30) cubic yards of each material. ~~[Added 5-24-2011 ATM, Art. 23; amended 5-22-2012 ATM, Art. 20]~~

Convenience Stores: Retail establishment that sells food, liquor, other beverages, "over

the counter" drugs, household supplies, tobacco products, lottery tickets and/or sundries. **[Added 5-24-2011 ATM, Art. 23]**

Dwelling, Multi-Family: ~~A building providing three or more dwelling units.~~ **A single structure providing complete, independent living facilities for three or more families.**

[Added 5-26-2009 ATM, Art. 36]

Dwelling, Single Family: **A single structure providing complete, independent living facilities for one family.**

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

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.

Feed Store: A retail store catering to pet owners and small farmers, selling pet and livestock feeds in bags or containers, rather than in bulk, along with associated products.

[Added 5-22-2012 ATM, Art. 20]

Fence: Any structure constructed of natural or manufactured materials, including but not limited to; wood, metal, plastic, wire mesh, or masonry erected for the purpose of screening one property from another either to assure privacy or to protect the property screened. For the purpose of this ~~By-Law~~Bylaw, a masonry wall is considered to be a fence. **[Added 5-25-2010 ATM, Art. 16]**

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.~~

Flicker: Alternating light and shadow caused by sunlight passing through the moving rotor of a wind turbine. **[Added 5-26-2009 ATM, Art. 33]**

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. Unfinished attics and suspended basements outside the thermal envelope shall not be counted as gross floor area. **[Amended 5-19-2015 ATM by Art. 22]**

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 X .25 = 3,000).

Footprint: shall mean the total square feet within to the outermost dimensions of a structure and/or building including decks, porches, and staircases. ~~-, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.~~ **[Amended 5-26-2009 ATM, Art. 36]**

Grade Plane: A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1829 mm) from the building, between the building and a point six feet (1829 mm) from the building. **[Added 5-26-2009 ATM, Art. 36]**

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

Hazardous Material Storage: Storage of all substances defined as toxic or hazardous under Massachusetts General Laws, Chapters 21C and 21E, and 310 CMR 30.00; as well as such products as solvents and thinners in quantities greater than those associated with normal household use. ~~[Added 5-22-2012 ATM, Art. 20]~~

Height, Building: The dimension in feet as measured from the mean level of the established grade at the building to the mean height of the highest roof highest point of the roof (including parapet) for flat roofs, to the deck line for mansard roofs, and to the mean height (midpoint) between the highest eaves and ridge of the main body of the roof for gable, hip, shed, saltbox, and gambrel roofs, or combinations thereof. Height restrictions shall not apply to chimneys, spires, cupolas, bulkheads, TV antennae and other appurtenances not intended for human occupancy. Grade measurements are to be taken from existing, undisturbed topography. ~~[Amended 5-26-2009 ATM, Art. 36]~~

Height, Wind Turbine: The distance from the average grade at the base of the tower (or structure to which it is attached) to the tip of the rotor blade at its highest point, or blade-tip height. ~~[Added 5-26-2009 ATM, Art. 33]~~

Heliports: Facilities for landing and takeoff of rotary wing aircraft, as well as facilities for aircraft fueling and maintenance, and air traffic control. ~~[Added 5-24-2011 ATM, Art. 23]~~

Hospital and Medical Center: An institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured; may also include related services for in-patient and/or out-patient medical, surgical, or psychiatric care. ~~[Added 5-22-2012 ATM, Art. 20]~~

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

Industrial Clean-up Services: Service companies including hazardous material spill clean-up firms, asbestos removal firms, janitorial firms, and similar facilities. ~~[Added 5-22-2012 ATM, Art. 20]~~

Light Manufacturing: Facilities engaged in the transformation of materials, predominantly from previously prepared materials, or finished products or parts, including processing, fabrication, assembly, treatment, packaging incidental storage and distribution of such products. ~~[Added 5-22-2012 ATM, Art. 20]~~

Lot: ~~Any piece of land used or designed for use as the location of a residence or building.~~ An area or parcel of land or any part thereof, in separate or common ownership, designated on a plan filed with the Building Commissioner by its owner or owners as a separate lot and having boundaries identical with those recorded in the Southern Essex Registry of Deeds.

Lot Coverage, Maximum: ~~shall be determined by dividing the sum of all structure footprints by the area of the lot on which they are located.~~ The percentage of the total area of a lot covered by buildings and/or structures. ~~[Amended 5-26-2009 ATM, Art. 36]~~

Lot, Frontage: The continuous portion of the line separating a lot from a street to which the owner of the lot has a legal right of access and from which the owner could provide for vehicular access to the principal building or a required parking space.

When a lot is bounded by more than one street, frontage shall be on the street designated by the property owner or, if not so designated, on the street with the longest frontage. However, in the case of a lot bounded by two streets forming an interior angle of more than 135 degrees, their combined frontage between lot lines may be used to satisfy the lot frontage requirement.

Lot Line, Front: The property line dividing a lot from a street right-of-way.

Lot Line, Rear: Any lot line which is parallel to or within 45 degrees of being parallel to a front lot line, except for a lot line that is itself a front lot line, and except that in the case of a corner lot, the owner shall have the option of choosing which of the two lot lines that are not front lot lines is to be considered the rear lot line. In the case of a lot having no street frontage or a lot of odd shape, only the one lot line furthest from any street shall be considered a rear lot line.

Lot Line, Side: Any lot line not a front or rear lot line.

Lot, Non-conforming: Any Lot which does not conform to the dimensional and area requirements in this ordinance for the district in which it is located; provided, that such Lot was in existence and lawful at the time the applicable provisions of this or prior zoning ordinances became effective, and meets the requirements of G.L. c. 40A sec. 6 par. 4

Manufacturing: Facilities engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembly of component parts, the fabrication of products, treatment of articles or merchandise, and the blending of materials such as lubricating oils, plastics, resins or liquors. ~~[Added 5-24-2011 ATM, Art. 23]~~

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

Mining or Quarrying: Removal, relocation and/or processing of earth products such as stone, gravel, sand, topsoil or mineral ores or other geological material. Processing shall include crushing, screening, intraplant conveying, washing and storage of products. Concrete and asphalt batch and mixing plants are included in this use. ~~[Added 5-24-2011 ATM, Art. 23]~~

Mini-Storage Warehouses: A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods or contractors supplies. ~~[Added 5-22-2012 ATM, Art. 20]~~

Mixed Use Structure: A building which contains nonresidential or hotel uses on the first floor and may contain such uses on any other floor and also may contain one (1) or more residential units on any other floor other than the first floor. ~~[Added 5-22-2012 ATM, Art. 20]~~

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 foundation. ~~[Amended 5-25-2010 ATM, Art. 16]~~

Museum: An institution devoted to the procurement, care, study, and the public display of

objects of lasting interest or value. ~~[Added 5-22-2012 ATM, Art. 20]~~

Nacelle: The frame and housing at the top of the tower that encloses the gearbox and generator and protects them from the weather. ~~[Added 5-26-2009 ATM, Art. 33]~~

Non-Profit Recreational Facility: Recreational facility- a playground, ball field, gym or swimming pool or structure for other recreational pursuits, operated by a not-for-profit entity. ~~[Added 5-22-2012 ATM, Art. 20]~~

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. ~~[Added 5-24-2011 ATM, Art. 23; amended 5-22-2012 ATM, Art. 20]~~

On-Site Wind Facility: A wind project which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated annually by the project on-site. ~~[Added 5-26-2009 ATM, Art. 33]~~

Open Storage: Storage of raw materials, finished goods and equipment or household goods, appliances and products, or the like, which are open to view from a public right of way. ~~[Added 5-22-2012 ATM, Art. 20]~~

Performing Arts Center. A multi-use performance space that is intended for use by various types of the performing arts, including dance, music and theatre. ~~[Added 5-22-2012 ATM, Art. 20]~~

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.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment. ~~[Added 5-26-2009 ATM, Art. 33]~~

Open Storage of Raw Materials, Etc.: Storage of products, other than products of a mining operation (such as stone, crushed stone, gravel, sand and loam) in the open air, not inside a building. This does not include storage of small quantities of materials incidental to other permitted uses, such as a contractor's yard. ~~[Added 5-24-2011 ATM, Art. 23]~~

Pet Animal Daycare: Daytime care of ~~pets~~ animals including washing and grooming, without overnight care. ~~[Added 5-24-2011 ATM, Art. 23]~~

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.

Rehabilitation Center: A facility not providing overnight accommodations that provides ~~providing~~ outpatient therapy and training for rehabilitation, to help their clients regain skills needed to function. The center may offer occupational therapy, physical therapy, vocational training, and special training such as speech therapy. ~~[Added 5-22-2012 ATM, Art. 20]~~

Rehabilitation Residence: Residence for persons recovering from treatment for alcohol and drug abuse. ~~[Added 5-24-2011 ATM, Art. 23]~~

~~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.~~

Retail Establishment Selling General Merchandise: Retail establishment selling such items as shoes, clothing and accessories, dry goods, household wares, appliances and equipment, furniture, hardware, books, jewelry, gifts, sporting goods, stationery, automotive parts and accessories. ~~[Added 5-24-2011 ATM, Art. 23]~~

Retail/Service Kiosk Automated Teller Machines: Stand-alone structures providing services or entertainment, as opposed to products, to the general public including but not limited to banking - including integrated ATMs, real estate and insurance, and establishments providing personal services. ~~[Added 5-22-2012 ATM, Art. 20]~~

Rotor: The blades and hub of the wind turbine that rotate during turbine operation. ~~[Added 5-26-2009 ATM, Art. 33]~~

Sales by Vending Machines: Sales by a machine that automatically dispenses consumer goods such as videos, compact disks, cigarettes, food, or beverages when money is inserted. ~~[Added 5-22-2012 ATM, Art. 20]~~

~~**Services to Industrial Clean-up Services:** Service companies including hazardous material spill clean-up firms, asbestos removal firms, janitorial firms, and similar facilities. [Added 5-22-2012 ATM, Art. 20]~~

Shopping/Business Center: A shopping/business center or complex with smaller shops/business uses, allowed by right or by special permit, which is planned, constructed and managed as a total entity and where no one retail and/or service use exceeds twenty-five thousand (25,000) square feet and where the total gross square feet of the principle structure shall not contain more than seventy thousand (70,000) gross square feet and which includes onsite parking. ~~[Added 5-22-2012 ATM, Art. 20]~~

~~**Shopping Centers:** Building complexes under one ownership, consisting of multiple tenant retail spaces, with on-site parking provided. [Added 5-24-2011 ATM, Art. 23]~~

~~**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.

Story: That portion of a building included between the upper surface of a floor and the

upper surface of the floor or roof next above, excluding attics that have no habitable area and that are used solely for storage and to house mechanical equipment. Intermediate level(s) such as mezzanines, lofts, and penthouses shall be counted as a story. ~~[Added 5-26-2009 ATM, Art. 36]~~

Story above Grade: Any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade where the finished surface of the floor above the basement is: ~~[Added 5-26-2009 ATM, Art. 36]~~

- a. More than 6 feet (1829 mm) above grade plan;
- b. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter;
- c. More than 12 feet (3658 mm) above the finished ground level at any point.

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.~~

~~**Structure:** That which is built or constructed, excluding ground level driveways and walkways, and fences and retaining walls, ~~[Added 5-26-2009 ATM, Art. 36]~~ A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."~~

~~**Substantial Evidence:** Such evidence as a reasonable mind might accept as adequate to support a conclusion. ~~[Added 5-26-2009 ATM, Art. 33]~~~~

~~**Suspended Basement:** A storage area suspended below a residential dwelling that: ~~[Added 5-19-2015 ATM by Art. 22]~~~~

- a. Is 250 s.f. or less measured from the exterior sides of outside wall to outside wall with deductions only for mechanical equipment;
- b. Can only be accessed from the exterior and has no access directly into the dwelling unit;
- c. Has a maximum ceiling height of 6'-2", measured from finished floor to ceiling framing;
- e. Is unfinished on the interior and unconditioned.

~~**Temporary Trailer:** A trailer serving as an office, workshop or storage facility during the construction of a building with a permitted use, or serving as temporary quarters for a building establishment undergoing repair or renovation. ~~[Added 5-24-2011 ATM, Art. 23]~~~~

~~**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.

Trailer: A furnished vehicle drawn by a truck or automobile and used when parked as a dwelling or office. ~~[Added 5-25-2010 ATM, Art. 16]~~

Truck, Train and Bus Maintenance Facilities: Facilities intended for the performance of routine as well as specialized, large-scale, major maintenance and repairs of trucks, trains or buses. This use includes fueling facilities. ~~[Added 5-24-2011 ATM, Art. 23]~~

Truck Terminals: Facilities intended to shelter truck, and to provide facilities for fueling and minor routine maintenance on trucks. This includes dispatching facilities. ~~[Added 5-24-2011 ATM, Art. 23]~~

Use, Accessory: A purpose subordinate to and dependent upon the principal use of a lot. ~~[Amended 5-26-2009 ATM, Art. 36]~~

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

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 Bylaw.

Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets. ~~[Added 5-26-2009 ATM, Art. 33]~~

Water and Wastewater Systems: Facilities which take raw and/or contaminated water and treat it by physical, chemical and biological means so as to render it potable. Also, facilities that treat industrial and domestic waste in the same manner, so as to render it suitable for discharge into waterways. Such facilities are central processing systems and do not include wells and on-lot sewage disposal systems (septic tanks and leaching systems) intended for single residential, commercial or industrial facilities. ~~[Added 5-22-2012 ATM, Art. 20]~~

~~**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.~~

Water Transport of Goods and People: Water taxis, ferries, excursion boats, party boats for fishing, and similar uses. ~~[Added 5-22-2012 ATM, Art. 20]~~

Wholesale Trade, Warehousing and Distribution: Facilities intended to provide indoor storage of products and materials, not manufactured on the premises, and which will be further transported to other locations. ~~[Added 5-24-2011 ATM, Art. 23]~~

Wind Energy System/Wind Energy Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, electrical collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines. ~~[Added 5-26-2009 ATM, Art. 33]~~

Wind Monitoring or Meteorological ("test" or "met") Tower: A temporary tower

equipped with anemometer, wind vane, and other equipment to measure wind speed and direction, used to determine how much wind power a site can be expected to generate.

~~[Added 5-26-2009 ATM, Art. 33]~~

Wind Turbine: A single device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body and components, and rotor with two or more blades. ~~[Added 5-26-2009 ATM, Art. 33]~~

Wireless Communication Facilities 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.

Zoning Map: The Zoning Districts and Zoning Overlay Districts, as detailed on a set of maps together entitled "Official Zoning Map of the Town of Newbury," with all boundary lines designated thereon; said Zoning Map shall hereby be part of this Bylaw and shall be on file in the office of the Town Clerk.

or take any action relative thereto.

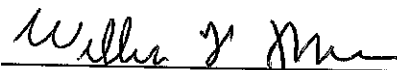
AND YOU ARE HEREBY DIRECTED TO SERVE THIS WARRANT BY POSTING AN ATTESTED COPY THEREOF IN EACH VOTING DISTRICT, FOURTEEN DAYS AT LEAST BEFORE THE TIME OF HOLDING SAID MEETING.

HEREOF, FAIL NOT, AND MAKE DUE RETURN OF THE WARRANT WITH YOUR DOINGS THEREON TO THE TOWN CLERK AT THE TIME AND PLACE AFORESAID.

GIVEN UNDER OUR HANDS THIS 18th DAY OF MARCH, 2025.



Alicia Greco, Chair



William DiMaio, Vice Chair



Leslie Matthews, Clerk



Dana Packer

Geoffrey Walker

SELECT BOARD, TOWN OF NEWBURY

A TRUE COPY ATTEST

PURSUANT TO THE ABOVE WARRANT TO ME DIRECTED, I HEREBY NOTIFY AND WARN THE INHABITANTS OF THE TOWN OF NEWBURY, QUALIFIED TO VOTE IN TOWN AFFAIRS, TO MEET AT THE TIME AND PLACE MENTIONED FOR THE PURPOSE HEREIN NAMED.

DATE:

CONSTABLE:

PURSUANT TO THE ABOVE WARRANT TO ME DIRECTED, I HAVE NOTIFIED AND WARNED THE INHABITANTS OF THE TOWN OF NEWBURY, QUALIFIED TO VOTE IN TOWN AFFAIRS, TO MEET AT THE TIME AND PLACE MENTIONED FOR THE PURPOSE HEREIN NAMED.

DATE:

CONSTABLE:

