

Zoning Ordinance

ARTICLE I - *Purpose of Zoning*

An ordinance to promote the health, safety, morals, convenience and general welfare of the community by regulating the location and use of buildings, structures, land and water areas for trade, industry, residence and other purposes: The construction, height and size of buildings: The size of yards and the density of population: Creating districts for said purposes and establishing the boundaries thereof: Defining certain terms used herein: Providing for the administration, enforcement and amendments: Providing for the imposition of penalties for the violation of the provisions of this ordinance: Repealing conflicting ordinances; Providing protection from any sight, light, odor, and or dust from any development, construction or use; And other purposes.

SECTION 1 - Authority: This ordinance has been prepared in accordance with the provisions of Chapter 31:60-89, New Hampshire Revised Statutes Annotated, 1955, as amended.

SECTION 2 - Title: This ordinance and accompanying official zoning map shall be known as and may be cited as Zoning Ordinance, Town of Newington, New Hampshire.

SECTION 3 - Purposes: This ordinance is for the purpose of promoting the health, safety, morals, prosperity, convenience or general welfare, as well as efficiency and economy in the process of development of the incorporated Town of Newington, New Hampshire, by securing safety from fire, panic and other dangers, providing adequate areas between buildings and various rights of way; by preserving the rural charm now attached to our town, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements, and by other means in accordance with a Master Plan; Now, Therefore, the following ordinance is hereby enacted by the voters of the Town of Newington, New Hampshire, in official meeting convened. (Originally adopted in March 1951).

SECTION 4 - Jurisdiction: The provisions of this ordinance shall govern all structures, all land and all water areas within the boundaries of the Town of Newington.

ARTICLE II - *Definitions*

SECTION 1 - General Definitions: Except as specifically defined herein all words in this ordinance shall carry their customary dictionary meanings. For the purpose of this ordinance, certain words or terms used herein are defined as follows:

"Town" means the Town of Newington.

"Legislative Body" means an Annual or Special Town Meeting.

"Municipal Officers" means the Selectmen, Town of Newington, New Hampshire.

Words used in the present tense include future tense.

Words used in the singular include the plural, and words used in the plural include the singular.

The word **"shall"** is mandatory; the word **"may"** is permissive.

The word **"person"** includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The word **"lot"** or **"occupied"** as applied to any land or building or water area, shall be construed to include the words, **"intended, arranged, or designed to be used or occupied"**.

SECTION 2 - List of Definitions

Abandoned Sign: Any sign which pertains to a time, event, or purpose which no longer applies, or to a business which is no longer on the premises, shall be deemed to have been abandoned.

Accessory Use or Building: A use or building customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult Bookstore or Adult Video Store: A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display, sale or rental of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1; or, instruments, devices, or paraphernalia which are designed for use in connection with "*sexual conduct*" as defined in NH RSA 571-B:1, other than birth control devices. An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of books and periodicals.

Adult Cabaret: A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Adult Drive-In Theater: An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Adult Motel: A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction of materials which meet the definition of "*harmful to minors*" and/or "*sexual content*" as set forth in NH RSA 571-B:1.

Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Adult Motion Picture Theater: An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of "*harmful to minors*" and/or "*sexual content*" as set forth in NH RSA 571-B:1, for observation by patrons. For the purposes of this ordinance, substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

Adult Theater: A theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Attached Sign: A sign which is attached to a building.

Billboard: A sign which directs attention to a business, product, activity or service which is not conducted, sold or offered on the premises where such sign is located.

Boarding or Rooming House: A dwelling in which living space without kitchen facilities is rented to three or more persons with or without meals.

Building: Any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals or chattels.

Building Frontage: The width of a building's primary facade, at grade level.

Business Sign: A sign which directs attention to a business, profession, service, product, activity, or entertainment sold or offered upon the premises where such sign is located.

Dwelling - Single Family: A detached building containing one dwelling unit.

Dwelling - Two-Family: A detached building containing two dwelling units.

Dwelling Unit: A house, an apartment, or other group of rooms, or a single room is regarded as a dwelling unit when it is used for the year-round occupancy as separate living quarters, that is, when the occupants do not live and eat with any other persons in the structure and there is either direct access from outside or through a common hall, or a kitchen or cooking equipment for the exclusive use of the occupants of the unit.

Family: One or more persons occupying a dwelling unit and living as a single housekeeping unit.

Free Standing Sign: A sign which is not attached to a building.

Frontage: Shall mean the width of the lot bordering on the public right-of-way. In those instances in which a property abuts multiple public ways, the Planning Board shall determine which side of the parcel is frontage.

Front Yard: An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and located between the street right-of-way line and the front line of the building projected to the side lines of the lot.

Home Occupation: An occupation conducted by a town resident in his/her legally established domicile, and which employs no non-residents.

Home Business: A business owned and operated by a town resident in his/her legally established domicile. The business may employ up to a maximum of three non-residents.

Industrial Corridor Road: A roadway corridor which begins at Woodbury Avenue and runs easterly down Piscataqua Drive, thence turns and runs northward to River Road, as depicted by plans prepared by Meridian Land Services, dated February 12, 1999, Revision V.

Junk Yard: An unroofed area where waste materials are brought, stored, baled, packed, disassembled, or handled, including, but not limited to scrap iron and other metals, paper, rags and bottles.

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this ordinance, and having frontage upon a public street.

Lot Width: The distance between the side boundaries of the lot measured at the front building line.

Major Street: A street designated as such in the Major Street Plan.

Machinery Junk Yard: Any yard or field used as a place of storage in which there is displayed to the public view junk machinery or scrap metal that occupies an area of 500 square feet.

Meteorological Tower (Met Tower). This is a temporary (3 years or less), information gathering tower. It includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Mobile Home: A transportable dwelling unit for one or more persons, equipped with a toilet and bathtub or shower, whether on a permanent foundation or not.

Modification. Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

Motor Vehicle Junk Yard: Any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two or more unregistered motor vehicles which are nor longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second hand material which has been a part, or intended to be a part of any motor vehicle, the sum of which parts or material shall be equal in bulk to two or more motor vehicles. Motor vehicle junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up the parts thereof.

Net Metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

Non-conforming Lot: A lot whose area is less than the minimum dimensional requirements for the zoning district in which it is situated.

Non-conforming Use: A use of land which is not permitted by the ordinance for the zoning district in which the use occurs.

Non-conforming Structure: A structure which does not comply with the terms of the ordinance.

Nude Model Studio: A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals, and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Nursing Home: Any dwelling place licensed by the State of New Hampshire in which three or more aged, disabled or ill persons who are dependent or not capable of properly caring for themselves are housed and furnished with meals, whether served in a central dining room or otherwise, and nursing care for compensation. This includes "convalescent facilities" and "rest homes" or "elderly congregate care residential facilities" limited to persons fifty-five (55) years of age or older with a present or anticipated future need for on-site nursing care.

Off-Premise Sign: A sign which advertises or publicizes an activity not conducted on the premises upon which such sign is situated.

Power Grid. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Rear Yard: An open space on the same lot with a principal building, unoccupied except by a permitted accessory building, or use, extending the full width of the lot and located between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

Retail: A use devoted to the sale, rent or lease of merchandise directly to the consumer for use off premises. For the purposes of this ordinance, wholesale clubs shall be considered a retail use.

Right-of-Way means and includes all town, state and federal highways and the land on either side of same as covered by statutes to determine the width of right-of-way, also all private rights-of-way.

Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: physical contact in the form of wrestling or tumbling between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or when the activities in sections *A* or *B* above are characterized by an emphasis on activities which meet the definition of "*harmful to minors*" and/or "*sexual conduct*" as set forth in NH RSA 571-B:1.

Sexually Oriented Business: adult bookstore, adult video store, adult motion picture theater, adult motion picture arcade, adult drive-in theater, adult cabaret, adult motel, adult theater, nude model studio, sexual encounter center, or any combination of the above.

Shopping Center: A group of retail stores, planned and developed for the site on which they are built.

Side Yard: An open, unoccupied space on the same lot with a principal building located between the side of the building and the side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. On corner lots, the side yard abuts a street, and the side yard requirements shall conform to those of the front yard.

Sign: Any device, structure, banner, fixture, placard, or painted surface

A) which uses graphics, symbols, and/or written copy to advertise or identify any establishment, product, goods, service, or activity, and

B) whose surface area is two square feet or larger, and

C) is visible from the public right-of-way.

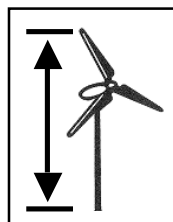
Shadow Flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

Special Exception: A use which would not be appropriate generally or without restriction in a particular district, but which, in the opinion of the Board of Adjustment, if controlled as to number, location, relation to neighborhood, or standard of performance, would promote the public safety, health, convenience or welfare. An exception is allowed in a district only if the regulations for that district specifically permit it, subject to the approval of the Board of Adjustment and only when the Planning Board finds that such use meets all of the requirements applicable to it as specified in the ordinance.

Small Wind Energy System: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground. For the purposes of this ordinance, the following shall not be considered structures: docks, detached stairways, and paved driveways utilized for access to a property.

System Height: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

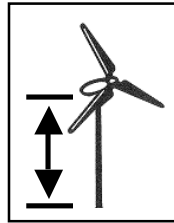


Telecommunications Facility: Any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), personal communications service (PCS), and common carrier wireless exchange access services.

Temporary Sign: A sign announcing a new business on the premises, said sign only to be displayed while awaiting installation of a permanent sign;

Tower: The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower Height: The height above grade of the fixed portion of the tower, excluding the wind generator.



Variance: A relaxation of the terms of the ordinance, consistent with NH law.

Wind Generator: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

ARTICLE III - *Districts Established*

SECTION 1 - Classes of Districts: For the purpose of this ordinance, the town is hereby divided into the following classes of districts or zones:

Residential District to be known as **R Zones**

Commercial District to be known as the **C Zone**

Office District to be known as the **O Zone**

Marina District to be known as the **M Zone**

Industrial Districts to be known as **I Zones**

Waterfront Industrial Districts to be known as **W Zones**

Historic Districts to be known as **H Zones**

Scenic Roads

An Airport District to be known as the **A Zone**

An Airport Industrial District to be known as the **AI Zone**

A Natural Resource Protection District to be known as the **NRP Zone**

A Light Industrial District, to be known as the **LI Zone**

A Mobile Home District, to be known as the **MH Zone**

The boundaries of these districts are hereby established as shown on the Official Zoning Map. Said map is hereby made a part of this ordinance; it shall be on file in the office of the Town Clerk.

SECTION 2 - Certification of Official Zoning Map and Changes Thereon: The official zoning map and narrative description of district boundaries are certified by the signatures of the Selectmen attested by the Town Clerk under the following words: "This is the Official Zoning Map referred to in Article III, Section 2, of the Zoning Ordinance, Town of Newington", together with the date of the adoption of the ordinance. The Official Zoning Map shall be located in the office of the Town Clerk, and shall be the final authority as to current zoning status of the Town. If changes are made in the zone boundaries or other matter portrayed on the Official Zoning Map, within 10 days after the amendment has been adopted an entry shall be made on the Official Zoning Map as follows: "On (insert date) by official action of the town following change(s) was (were) made (insert brief description of the nature of the change)." Immediately beneath the entry of the Selectmen shall affix their signatures, attested by the Town Clerk.

SECTION 3 - Rules Governing District Boundaries: Unless otherwise indicated, the district boundary lines are the nearest lot lines, the center lines of the streets or such lines extended, pier head or bulk head lines, or the town boundary lines.

ARTICLE IV - *General Provisions*

SECTION 1 - Zoning Affects All Structures, Land and Water Areas: Except as hereinafter specified, no structure, land or water area shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or altered unless in conformity with all regulations herein specified for the district in which it is located. The omission of a use from the list of those allowed in a particular district constitutes prohibition of that use in that district.

SECTION 2 - Restoration of Unsafe Property: Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Building Inspector.

SECTION 3 - Required Yard Space Shall Serve Only One Lot: No part of the off-street parking or loading spaces required about any building for the purposes of complying with the provisions of this ordinance shall be included as part of the yard, open spaces, or off-street parking or loading space similarly required for any other building.

SECTION 4 - Restrictions On Individual Mobile Homes, Trailers and Trailer Parks: One single mobile home or mobile house, so called, may be maintained upon a lot in a residential district as a residence providing that all provisions of the district regulations as applicable to single-family dwellings are complied with.

SECTION 5 - Restrictions On Removal of Sand, Gravel, Loam, Earth or Rock: No loam or gravel shall be hauled from any property within the Town of Newington unless approved by the Planning Board and Board of Selectmen. This shall not be construed as prohibiting removal of such material for purposes of landscaping or property improvements on the loam or gravel owners premises.

SECTION 6 - Setbacks: Accessory uses or buildings, including private garages, parking areas, non-commercial greenhouses and workshops, shall conform to the setbacks required for principal buildings.

SECTION 7 - Turnaround Space and Driveways: Adequate space shall be provided on each lot to prevent vehicles from backing onto a public road. Driveways shall have a minimum width of 10 feet.

SECTION 8 - Junk Yards Prohibited: Machinery junk yards, motor vehicle junk yards, and other type of junk yard and private or commercial dumps shall be prohibited within the Town.

SECTION 9 - Special Exceptions shall only be granted by the Board of Adjustment, if in the board's judgment, the proposed use **does not**:

- have an adverse effect on surrounding properties;
- cause a significant increase in motor vehicle traffic;
- emit odors, noise, dust, vibration, smoke or fumes which travel beyond the boundary lines of the subject property; or
- threaten the safety of nearby residents.

SECTION 10 - Buildings per Lot: There shall be no more than one principal building and no more than one dwelling building per lot.

ARTICLE V - *District Regulations*

SECTION 1 - Single Family Residential District "R"

A - Description and Purpose: The "R" District is established as a zone in which the principle use of the land is for single-family dwellings at low density, together with recreational, educational, and religious facilities which will encourage the development of well-rounded neighborhood living. Also included in the "R" District are open areas where similar residential growth appears likely. Any future development which does not perform a neighborhood function, or which would interfere with the growth or continuation of single-family dwellings is prohibited.

B - Uses Permitted:

- (1) Single family dwellings.
- (2) Two-family dwellings.
- (3) Accessory uses or buildings, including private garages, parking areas, non-commercial greenhouses, and workshops, providing they conform to the setbacks required for principal building.
- (4) Public facilities and grounds.
- (5) Home occupations and home businesses subject to the conditions specified in Article XVI below.
- (6) Roadside stand for the sale of produce raised within the Town of Newington provided that three off-street parking areas are provided.
- (7) Agriculture.
- (8) Bed & Breakfast Inns, providing such facilities have no more than eight lodging rooms, and that the Planning Board finds parking and septic systems to be adequate.

C - Uses Prohibited: Carnival, jamborees, rock concerts and similar large gatherings that generate noise, litter and other forms of waste or public nuisance.

SECTION 2 - Office District "O"

A - Purpose: The *Office District* is a zone in which the principal use of the land is office buildings, research & development facilities, and light manufacturing. It is the intent of the ordinance to encourage the provision of safe and convenient pedestrian access between the district's office buildings and nearby restaurants. The intent is also to encourage the development of facilities which:

- 1) provide high wage job opportunities,
- 2) demand relatively few municipal services,
- 3) provide reasonable economic returns for property owners,
- 4) maximize the size of Newington's tax base,
- 5) present an attractive, cohesive, and well landscaped appearance, thus enhancing the economic potential of the district,
- 6) are well suited for mass transit and other alternatives to single occupancy motor vehicles, so as to not unduly exacerbate Newington's air pollution, traffic congestion, and traffic safety problems.

B - Principal Uses Permitted:

- (1) offices, research & development facilities, biotech facilities, light manufacturing, warehouses, hospitals, medical clinics, nursing homes, veterinary hospitals, schools, hotels of 3 stories or higher, conference centers, and facilities to treat the developmentally disabled.
- (2) light manufacturing, providing that it does not cause excessive noise, vibrations, smoke, gas, fumes, odor, dust fire hazard, pollution, or conditions detrimental to the health, safety, or welfare of the community.

C - Accessory Uses Permitted:

- (1) Daycare facilities
- (2) Non-public dining facilities that occupy no more than 10% of the floor area of the building in which they are situated.

D - Uses Prohibited: Restaurants other than those cited in paragraph C above, motels, and all other uses not expressly permitted by this ordinance.

SECTION 3 - Commercial District "C"

A - Description and Purpose: The *Commercial District* is a mixed use zone in which the principal use of the land is retail sales, office buildings, research & development facilities, and light manufacturing. The rationale for permitting non-retail uses in this predominately retail area is to reduce the district's traffic congestion and safety problems by encouraging land uses which generate lower traffic volumes.

B - Uses Permitted: retail, offices, research & development facilities, light manufacturing, restaurants, motels, hotels, theaters, storage facilities, barber & beauty shops, laundries, repair shops, churches, indoor recreational facilities such as bowling alleys and roller skating rinks, and vehicle dealers (sale, rental, or leasing).

SECTION 4 - Marina District "M"

A - Description and Purpose: The *Marina District* is established in recognition of the historic use of property in close proximity to the environmentally sensitive area of Little Bay and a portion of Newington's residential district. A continued marina use at this site is desirable due to the somewhat seasonal nature of the business, the relatively light traffic volume that is generated, and the recreational opportunities, and the unique economic benefits offered by such a facility.

B - Uses Permitted: The repair, servicing, storage, dockage, moorage, and maintenance of vessels. The following accessory uses, *if* clearly subordinate to the principal use as a marina, are also permitted:

- (1) Sales of marine hardware and equipment;
- (2) Sales of vessels, e.g. yacht brokerage;
- (3) Restaurant/snack bar, not to exceed 75 seats;
- (4) Maritime related office use, e.g. marine surveyor;
- (5) Light manufacturing of marine related equipment, providing that it does not cause excessive noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard, pollution, or conditions detrimental to the health, safety, or welfare of the community;

SECTION 5 - General Industrial "I"

A - Description and Purpose: The "I" District is established as a zone in which the principal use of the land is for industry and associated uses. Certain open areas favorably situated with respect to transportation and containing other factors conducive to industrial development are also included. This is for the purpose of reserving suitable land for the expansion of existing industry and location of new industry, and to enhance economic development and employment opportunities. Any future development which would interfere with the growth or continuation of industry is prohibited. The off-street parking and loading requirements of this ordinance shall be provided.

B - Uses Permitted:

- (1) Industries provided that they shall not produce traffic congestion, cause injurious or obnoxious noise, glare, vibration, air or water pollution, hazardous waste, sewerage problems, odor, dust, fire safety hazards or other factors detrimental to health, safety and welfare of the area. The Building Inspector shall issue a permit upon the finding by the Planning Board that the proposed location, construction and operation will not injure present and prospective industrial development in the district, or the health and welfare of residential districts in the vicinity
- (2) Businesses customarily serving such industries
- (3) Public utility, transportation or communication facilities
- (4) Business signs subject to Article IV, Section 6
- (5) Warehouses, truck terminals and storage
- (6) Bulk oil stations
- (7) Public facilities and grounds
- (8) Telecommunication facilities, subject to the provisions of Article XIV.

C - Uses Prohibited:

- (1) Any uses not listed under *Uses Permitted* are prohibited.
- (2) Residential uses are specifically excluded from the "I" (Industrial) District except for watchman, caretaker or janitor.
- (3) Storage above ground or below ground of any explosive or hazardous fluid (including waste), toxic or noxious matter, or material causing odor, dust, fire hazard, smoke, gas or fumes.

SECTION 6 - Waterfront Industrial and Commercial District "W"

A - Description and Purpose: The "W" District is established as a zone in which the principal use is for activities which depend upon the ocean for transport or resources. There is a relatively limited amount of deep water frontage in the State of New Hampshire. This prime land is recognized as an invaluable natural resource of the Town of Newington and should be reserved for optimum utilization so that the economic benefits may be realized to their fullest extent. Any installation on shore or offshore, temporary or permanent which interferes with the purposes of this district is prohibited. The "W" District extends along the Piscataqua River from the Portsmouth line to Bloody Point near the General Sullivan Bridge, except for a single-family residential district "R" bounded and described as follows:

Beginning at a point on the southerly side of Patterson Lane at the boundary line between land of McCabe and Yeaton, thence running in a southerly direction along that boundary to southeasterly direction along that boundary to the southeast corner of land of Yeaton; thence turning and running northeasterly by other land of Yeaton, land of Sherman Spinney, and land of Labrie, and by a line drawn parallel to Patterson Lane a distant of 400 feet southerly therefrom to the Piscataqua River. Also a district on the northerly side of Patterson Lane bounded as follows: Beginning on Patterson Lane at a point opposite in the McCabe-Yeaton property, thence running in northwesterly direction perpendicular to Patterson Lane for 400 feet, thence turning and running in a northeasterly direction parallel to Patterson Lane to the Piscataqua River.

B - Uses Permitted

- (1) Any Industrial or Commercial activity dependent upon the ocean for transport or resources.
- (2) Any research laboratory or testing or experimental facility related to the ocean.
- (3) Business Signs, subject to the provisions of Article IV, Section 6.
- (4) Telecommunication facilities, subject to the provisions of Article XIV.

Prior to the issuance of a building permit by the Building Inspector, the prospective user shall submit the following information:

- (1) An estimate of the maximum number of employees contemplated for the proposed development and the number of shifts during which they would work.
- (2) A description of the operation proposed in sufficient detail to indicate the effect of those operations in producing traffic congestion, or problems of noise, glare, sewerage, odor, air or water pollution, fire safety hazards or other factors detrimental to the health, safety and welfare of the area. Upon a finding by the Planning Board that the contemplated use will constitute a development of sustained desirability and stability, that it will be in harmony with the character of the surrounding area, and consistent with the overall long-range plans for the community, that it will not result in an over-intensive use of the land, that it will not result in undue traffic congestion or traffic hazards, that the plans indicate that it will be adequately landscaped and otherwise promote the health, safety and welfare of the community, the Building Inspector shall issue a permit for a proposed development in the "W" District.

D - Uses Prohibited

- (1) Any new use of an existing building or premises without the approval of the Planning Board.
- (2) Residential uses are specifically excluded from the "W" District except for watchman, caretaker or janitor.
- (3) Storage and handling above or below the ground of any material which is explosive, toxic, noxious, or capable of causing odor, dust, fire hazard, smoke, gas, or fumes shall only be allowed when the following are complied with:
 - (a) National Fire Protection Association (NFPA) Standards
 - (b) Department of Transportation (DOT) regulations and standards on shipping and handling
 - (c) Environmental Protection Agency (EPA) regulations relating to the storing and handling such materials.

SECTION 7 - Historic Districts "H"

A - Description and Purpose: The "H" District is established within the provisions of RSA 674:46:

- (1) For the preservation of places and structures of architectural value and the heritage of the municipality which reflects its cultural, social, economic, political and architectural history;
- (2) Conserving property values in such Districts;
- (3) Promoting the use of the Historic District for the education, pleasure and welfare of the citizens of the municipality.

B - The Designated Areas are:

- (1) Beginning with both sides of Nimble Hill Road from the Air Base Line to its junction with Little Bay Road, the area to follow existing property lines of parcels fronting on said road.
- (2) All land and buildings leased from the State of New Hampshire at Bloody Point.

C - Uses Permitted

- (1) Any use permitted in a Single Family Residential "R" District, subject to the provisions of the Newington Historic District Ordinance.

SECTION 8 - Scenic Districts "S"

A. Description and Purpose: To assure that any repair, maintenance, construction or paving on a designated "Scenic Road" shall not involve or include the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, except for the prior written consent of the Planning Board, after a Public Hearing duly advertised as provided within the provisions of RSA 253:17. The Designated Scenic Roads are:

- (1) All Town Roads west of the Spaulding Turnpike, and;
- (2) All Town Roads north of the Newington/Greenland town line.

SECTION 9 - Airport (A) District

A - Purpose: The Airport District is focused on Pease Air Force Base runway, and other facilities essential to the operation of an airport. The District is intended to accommodate the safe operation of cargo/freight air transportation.

B - Description: The Airport shall encompass all land covered by Pease's runway, extending 1000 feet from the centerline of said runway. This District shall also include the adjoining aircraft parking apron, control tower, crash fire station, and those portions of the USAF Approach Zone and Clear Zone which lie within the bounds of Pease AFB.

C - Uses Permitted

- (1) Cargo/Freight air transportation
- (2) Air National Guard Activities
- (3) Servicing of aircraft
- (4) Medical Emergency flights
- (5) All air traffic during national emergencies.

D - Uses Prohibited

- (1) Commercial air passenger service
- (2) Recreational air traffic.

SECTION 10 - Airport Industrial (AI) District

A - Purpose: The Airport Industrial District is established to accommodate industrial land uses that are dependent upon the adjacent airport.

B - Description: This District is bounded on the north and east by Pease AFB boundaries, on the west by the Airport (A) District and on the south by the Portsmouth city line.

C - Uses Permitted:

- (1) Aircraft hangars and repair facilities, aircraft administration buildings, and freight terminals.
- (2) Customary accessory uses incidental to cargo/freight air transportation, including parking and parking structures, support and maintenance shops, fuel storage and concessions and services located within such concessions.
- (3) Uses dependent on cargo/freight air transportation.
- (4) Research and development engineering and associated light manufacturing of electronic products and components, particularly communications equipment and data systems equipment dependent on cargo/freight air transportation.
- (5) Business offices and data processing facilities associated with cargo/freight air transportation.
- (6) Research laboratories and related facilities for research, development and testing, including proto-type production facilities or the related assembly of high technology equipment or components associated with cargo/freight air transportation, however, biological or chemical laboratories are expressly prohibited.
- (7) Underground storage tanks provided all Federal, State and Local regulations are complied with.
- (8) Warehousing and transportation operations involving non-flammable and non-hazardous materials related to cargo/freight air transportation.
- (9) Precision instrument manufacturing and research related to cargo/freight air transportation.
- (10) Aircraft and aircraft parts manufacture, air freight terminals, aircraft parts storage, and aviation research and testing laboratories.

(11) Aircraft repair shops for multi-engine aircraft with a gross take-off weight of at least 75,000 pounds.

D - Standards:

(1) Sewage discharge shall not cause the existing Pease AFB Sewage Treatment plant to exceed 90% of its rated capacity.

(2) The following restrictions shall apply to lighting:

a) Pulsating, flashing, rotating, oscillating, or other type of lighting intended as an attention getting device shall be prohibited.

b) Floodlights, spot-lights, or other lighting devices shall be arranged or shielded so as not to interfere with the safe operation of aircraft.

c) Any light which constitutes a "*misleading light*" as defined by FAA Regulations, is prohibited.

(3) The following restrictions shall apply to radio and electronic devices:

a) Radio or electronic devices shall be permitted only in conjunction with a valid license therefore or other authorization as may be issued by the Federal Communications Commission.

b) The operation of any radio or electronic device which would violate any rules or regulations of the Federal Communications Commission is prohibited.

(4) Any operation or use which emits smoke, dust, or any visible fumes or vapors into the atmosphere shall be prohibited.

(5) Noise shall be controlled so as not to be excessive due to intermittence, beat frequency, shrillness, or volume. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound shall comply with all standards set forth in the Aviation Safety and Noise Abatement Act 1979, and the FAA Regs, Part 150.

(6) The Newington Design Review Regulations shall be adhered to.

SECTION 11 - Natural Resource Protection District (NRP)

A - Purpose: The NRP District is established in order to conserve natural resources, protect wildlife habitats, protect significant potable water resources, and to provide the public with opportunities for passive recreation.

B - Description: The NRP District shall encompass the Peverly Brook watershed (except that portion situated in the Airport (A) District), and all land lying between the Peverly Brook watershed and the bay. The NRP District is bounded on the east by the Airport District, on the west by the bay, and on the north and south by the boundaries of Pease AFB.

C - Permitted Uses:

- (1) Tree farms and forestry
- (2) Wildlife refuge
- (3) Nature trails
- (4) Airport navigational equipment

D - Uses Prohibited: Off-road vehicles

SECTION 12 - Light Industrial (LI) District

A - Purpose: The Light Industrial District is established to accommodate the needs of small businesses, research & development firms, and other start-up industrial operations.

B - Description: The Light Industrial District is bounded on the east by the Spaulding Turnpike, on the south by the City of Portsmouth, on the west by Franklin Street, and on the north by the NH Air National Guard, the Mobile Home District, and Portsmouth Avenue.

C - Uses Permitted:

- 1) Light Industrial operations
- 2) Research & Development firms
- 3) Offices that customarily support #'s 1 & 2 above

D - Uses Prohibited: Uses that are not expressly permitted in section C above.

E - Standards: Minimum standards are the same as Section 8E of this article.

SECTION 13 - Mobile Home (MH) District

A - Purpose: The Mobile Home District is established in order to provide home ownership opportunities for low income residents of the NH Seacoast area, thereby raising living standards while keeping labor costs at a moderate level. This, in turn, will enhance the region's prospects for attracting new businesses and industries.

B - Description: This district encompasses approximately 36 acres. The district boundaries are depicted on page 329 of the Newington Master Plan (*Revision 9/6/89*). The district is bounded on the north and west by Portsmouth Avenue, and on the south and east by the Light Industrial District.

C - Uses Permitted: Manufactured housing

D - Uses Prohibited: All uses except manufactured housing

Article VI - *Dimensional Requirements*

No building or structure shall be erected, enlarged or moved, nor shall any land use be authorized or extended, nor shall any existing lot be changed as to size or shape, except in accordance with Table VI - 1. In the table below, land area is expressed in thousands of square feet.

Table VI - 1

	<i>Minimum Lot Dimensions</i>		<i>Minimum Yard Dimensions</i>			
Zone	Land Area	Continuous Road Frontage	Front	Side & Rear	Maximum Building Height	Maximum Building Coverage
<i>Airport Industrial</i>	80	200'	70'	50'	#	
<i>Industrial</i>	200	100'	75'	50'	#	
<i>Light Industrial</i>	40	100'	40'	20'	30'	
<i>Marina</i>	120	300'	75'	30'	35'	30%
<i>Mobile Home</i>	12	50'	30'	10'	15'	
<i>Office</i>	120	300'	75'	30'	#	
<i>Residential</i>	80	200'	40'	15'	35'	
<i>Commercial</i>	120	300'	75'	30'	35'	30%
<i>Waterfront Industrial</i>	200	100'	75'	50'	#	

#= Height of structures in these districts are subject to Planning Board approval.

Height Limits: *The above referenced height limits shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, transmission towers, chimneys, conveyors, derricks, radio and television towers, and other structures not intended for human occupancy.*

Article VII - *ICR Overlay District*

Due to the unique nature of the Industrial Corridor Road (ICR), structures which abut the ICR shall be exempt from setback requirements articulated in Article VI, and the corner lot requirements specified in Article II. In lieu of the above referenced requirements, all paved parking lots adjacent to the ICR shall be set back a minimum of fifty feet from the ICR, and all other structures adjacent to the ICR shall be set back a minimum of seventy-five feet from the ICR.

ARTICLE VIII - *Traffic Mitigation*

The development or redevelopment of any site in the Office District, Commercial District, or any of the industrial districts may be approved only after a finding by the Planning Board that the following conditions are met at the time of opening of the building and that they will continue to be met for five years from the time of building opening:

SECTION 1 - Visibility: Line of sight distance shall meet or exceed New Hampshire DOT standards for entrances and exits to commercial sites.

SECTION 2 - Access: Access to the site shall be directly from a Town road or State highway or through a private roadway built to Town standards and approved by the Planning Board.

SECTION 3 - Traffic Controls: Adequate traffic controls shall be provided to insure safe access and on-site circulation of vehicle and pedestrian traffic. If traffic signals are required, signalization shall be interconnected with other traffic signals in the Town if such interconnection is found to be appropriate by the Planning Board.

SECTION 4 - Acceleration/Deceleration Lanes or suitable alternate roadway improvements shall be provided on State and Town roads where the Planning Board finds that such lanes are necessary to provide safe site access based on sound engineering principles and practice.

SECTION 5 - Off-site Improvements: The landowner/developer shall pay the fair share of cost of all off-site highway improvements necessary to maintain stable peak hour traffic flow conditions and/or payment of landowner's fair share of the costs associated with the replacement or creation of reserve capacity in the roadways and intersections impacted within the Town by the proposed development. In evaluating the traffic impacts, the Planning Board's consideration will include, but not be limited to, the volume and nature of the traffic. In determining a landowner's "fair share" of off-site roadway improvements, the Planning Board shall be guided by the tests established by the New Hampshire Supreme Court in *Land/Vest Props, Inc. v. Town of Plainfield*, 117 N.H. 817 (1977) and *N.E. Brickmaster v. Town of Salem*, 133 N.H. 655 (1990). The Planning Board can compel a landowner to assume only that portion of the cost for off-site improvements that bear a rational nexus to the needs created by and the special benefits conferred upon the development. In making this calculation, the Board must consider the burdens that will be immediately imposed by the development and those that will be imposed in the demonstrably immediate future. Future and indirect benefits accruing to the development from the improvements can be considered since permanent improvements are not made solely with reference to present conditions. No single factor can be determinative of the appropriate mode of apportionment of improvement costs. A non exhaustive list of the factors which might be used in allocating costs include:

A - Roadway Standard: the standard to which impacted roadways and intersections are presently maintained;

B - Level of Service: the existing level of service of impacted roadways and intersections;

C - Frontage: the frontage of the proposed development on State and local roadways;

D - Potential Traffic: the potential traffic increases necessitated by the proposed development; and

E - Development Potential: the character and potential for development and redevelopment of the area served by impacted roadways.

SECTION 6 - Mitigation Funds: Funds contributed to the Town for mitigation of existing roadway/intersection infrastructure deficiencies may be used by the Town to construct improvements or to represent the Town's fair share toward construction of State improvements on roadway projects within the Business District, or may be used by the Town to develop and implement programs to reduce dependence upon automobiles at the impacted roadways and intersections within the Town. If, within sixty months of the issuance of a certificate of occupancy for which the funds were contributed, the funds have not been expended or otherwise encumbered for the purpose for which they were collected, the developer/applicant contributing the funds may request that the funds be returned. If, upon hearing, the Planning Board determines that the contributed funds are still needed and that the project(s) for which they are being held is still scheduled for implementation, the funds may continue to be held. If the purpose for which the funds were originally contributed is no longer necessary, the funds shall be returned with accrued interest. In any event, the maximum time that funds may be retained under this section shall be ten years.

SECTION 7 - Review Costs: The costs incurred by the Town in reviewing traffic studies of applicants, calculating the fair share of off-site improvements and/or in developing mitigation plans shall be borne by applicants.

SECTION 8 - Construction Standards: All improvements required by this ordinance shall be built in accordance with local, State, and ASHTO standards.

ARTICLE IX - *Air Pollution Mitigation*

SECTION 1 - Purpose: The United States Environmental Protection Agency has recently designated New Hampshire's seacoast region as a "*Serious Ozone Nonattainment Area*". Ozone is a toxic gas. It has been well established that emissions of ozone precursors such as volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (Nox) can cause a plethora of adverse health effects. The Town of Newington seeks to curb the increase of ozone precursor emissions, many of which are generated by mobile sources, i.e. motor vehicles. The Town seeks to offset the adverse impact of development which increases motor vehicle traffic by requiring air pollution mitigation improvements, an objective that is fully consistent with the spirit and intent of the federal Clean Air Act Amendments of 1991.

SECTION 2 - Air Quality Impact Analysis Required: Proposed land development requiring site plan approval that will generate in excess of 1,000 vehicle trip ends per day (*as defined by the Trip Generation Manual, 5th edition, published by the Institute of Transportation Engineers*), or will impact any intersection at a Level of Service E or lower (*hereinafter "regulated development"*), shall be subject to an air quality impact analysis (*mesoscale and/or microscale, depending on the projected traffic impact*) by Planning Board consultants, at the applicant's expense.

SECTION 3 - Air Pollution To Be Mitigated: Any regulated development shall be required to mitigate the impact of the accompanying ozone precursor and carbon monoxide emissions. This mitigation shall bear a rational nexus to the impact of the mobile source emissions generated by the development, as identified by the air quality impact analysis. The proposed mitigation shall be subject to Planning Board review and approval as part of the Site Plan Review process. In the event that the mitigation cannot offset the total impact, the developer shall be afforded the alternative of contributing to a fund maintained by the Town of Newington for the purpose of improving air quality within the town. In no event shall the contribution required under this section exceed the greater of the following:

- 1) \$.25 for every square foot of building space which is the subject of the development application; or
- 2) the total resulting from multiplying the number of vehicle trip ends per day on the busiest day of the proposed use by \$5.

Article X - *Wetlands Conservation District*

SECTION 1 - Purpose and Intent

The purpose of this article is to protect the public health, safety and general welfare, as well as, the wetland's ecological integrity and function by controlling and guiding the use of land areas which have been found to be wetlands. It is intended that this article shall:

A - Prevent development of structures and land uses on wetlands which will contribute to pollution of surface and groundwater by sewage or toxic substances or sedimentation;

B - Prevent destruction of, or significant changes to natural wetlands which provide flood protection, provide filtration of water flowing into ponds and streams, augment stream flow during dry periods, or are connected to the ground or surface water supply;

C - Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 483- A:1-b;

D - Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;

E - Prevent unnecessary or excessive expense to the Town in providing or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands;

F - Prevent damage to structures and properties caused by inappropriate development of wetlands.

SECTION 2 - Wetlands Defined

“Wetland” is an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to swamps, streams, ponds, vernal pools, marshes, bogs, tidal wetlands and similar areas. Man-made detention basins and treatment swales are not to be construed as wetlands.

“Tidal Wetlands” are defined as wetlands whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

“Vernal Pools” are defined as a temporary body of water providing essential breeding habitat for certain amphibians and invertebrates and that do not support fish. For reference, see *Identification and Documentation of Vernal Pools in New Hampshire, 1997*.

Delineation Requirements: The precise location of a wetland boundary in any particular case must be determined by on-site inspection of soils, vegetation, and hydrology by a New Hampshire Certified wetland scientist using the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January 1987)* and *Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998)* published by the New England Interstate Water Pollution Control Commission.

SECTION 3 - District Boundaries

The requirements of this article are applicable to the entire Town of Newington and include all jurisdictional wetlands as defined in Section 2 above, as well as, all prime wetlands shown on the most recent edition of the Town of Newington's Prime Wetland Map.

SECTION 4 - Permitted and Prohibited Land Uses in Wetlands

A - Prohibited uses include any use that alters the surface configuration of the land by the addition of fill or by dredging, except if expressly permitted in Section B below.

B - Permitted uses are as follows:

- (1) Agriculture, including grazing, crop production and the construction of fences, using *Best Management Wetlands Practices for Agriculture* (July 1993- Amended September 1998) provided that such use does not cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion.
- (2) Forestry and tree farming using *Best Management Practices Erosion Control on Timber Harvesting Operations in New Hampshire* (April 1996). This permitted use includes the construction of an access road for said purpose.
- (3) Wildlife habitat enhancement and management.
- (4) Passive recreational uses consistent with the purpose and intent of this article as defined in Section one above.
- (5) Conservation areas and nature trails using *Best Management Practices for Erosion Control During Trail Maintenance and Construction* (1994 updated 1996).
- (6) Driveways for access to residential buildable upland lots, with proper drainage and erosion control measures.

(7) Residential uses by Special Exception as provided for in Section 4C below.

(8) The construction of footbridges, catwalks and wharves, provided that:

a) said structures are constructed on posts or pilings so as to permit unobstructed flow of water;

b) the natural contour of the wetland is preserved; and

c) the Planning Board has approved the proposed construction of the footbridges, catwalks and wharves.

C- Special Exceptions: The construction of roads, access ways, water impoundment & water supply systems, pipelines, power lines and other transmission lines in wetlands areas shall require a Special Exception from the Board of Adjustment (BOA). The Special Exception shall be granted by the BOA, after considering the Conservation Commission's recommendations, and only upon finding all of the following:

(1) The proposed construction is essential to the productive use of non-wetland areas.

(2) Design, construction and maintenance methods will minimize any detrimental impact upon the wetlands, and will include restoration of the site as nearly as possible to its original grade and condition.

(3) No alternative route is feasible and reasonable.

(4) Issuance of permits (if applicable) from the New Hampshire Wetlands Bureau and the Army Corps of Engineers. A copy of these permits shall be submitted to the Town in advance.

(5) All Special Exception criteria specified in Article IV Section 9 of this ordinance, and

(6) The provision of mitigation measures, in Newington, close to the affected wetland system, where appropriate.

SECTION 5 - Minimum Lot Size Requirements

Areas designated as jurisdictional wetlands may be used to fulfill no more than 50% of the minimum lot size required by the Zoning Ordinance, provided that the upland area is at least 30,000 contiguous square feet.

SECTION 6 - Wetland Buffer Provisions

The following vegetative buffers shall be observed in order to protect the integrity and functionality of the wetlands resources referenced below (Reference *Buffers for Wetlands & Surface Waters: A guidebook for New Hampshire Municipalities*, revised May 1997).

Resource	Size of Resource	Type of Buffer	Size of Buffer
All Wetlands	Greater than 5,000 square feet	No-cut and No- Disturbance	25 Feet
Vernal Pools	All Sizes	No- cut and No- Disturbance	25 Feet
Tidal & Prime Wetlands	All Sizes	Limited- Cut*	75 Feet

*"Limited- Cut" buffer cited above means a healthy, well-distributed stand of trees, saplings, shrubs and ground cover that must be maintained and which leaves an intact vegetated buffer. Tree-cutting shall be limited to 50% of the basal area of trees, and 50% of the total number of saplings over a 20- year period. Reference- New Hampshire's Comprehensive Shoreland Protection Act (RSA 483- B).

SECTION 7 - Structural Setbacks

The following setbacks to wetlands shall be observed by all structures in order to protect the integrity and functionality of the wetlands resources referenced below.

Resource	Size of Resource	Relationship to Surface Waters	Minimum Setback
All Wetlands	All Sizes	Contiguous with Surface Waters	100 Feet
All Wetlands except Prime Wetlands & Vernal Pools	Greater than 5,000 square feet	Not Contiguous with Surface Waters	50 Feet
All Wetlands except Prime Wetlands & Vernal Pools	5,000 square feet or less	-	0 Feet
Vernal Pools	All Sizes	-	50 Feet

SECTION 8 - Exemptions

Undeveloped building lots of 3 acres or less that were created prior to 2003 shall be exempt from the pond & stream buffer and pond & stream setback requirements in this article.

SECTION 9 - Violations

Any wetland (including prime wetlands and vernal pools) or its buffer altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5 and under the direction of a New Hampshire certified wetland scientist and said restoration shall be subject to review by the Newington Conservation Commission. When appropriate, injunctive relief shall be sought by the Town as per RSA 676:15, and civil fines imposed as per RSA 676:17.

Article XI - Signs

SECTION 1 - Purpose & Intent: The purpose of this article is to permit and regulate signs in a manner that protects the public safety and enhances the economic advantages enjoyed by Newington property owners, advantages which rest to a great extent on the quality of the town's appearance.

SECTION 2 - Sign Permit Required: No sign, except those that are specifically exempted by the terms of this article, shall be erected without a *Sign Permit* issued by the Town Planner.

SECTION 3 - Dimensional Limits: All signs, except those addressed in Section 4 of this article, shall adhere to the dimensional requirements set forth in *Table XI-3*. In determining the surface area of a free standing sign, *one* side of the sign shall be measured.

Table XI-3 - *Dimensional Limits*

		Commercial Zone	Office, Airport & All Industrial Zones	All Other Zones
<i>Free Standing Signs</i>	Maximum # of signs per lot	1	1	1
	Maximum sign area, per side	100 sf*	50sf*	2sf
	Maximum aggregate sign area, all sides	200sf	100sf	4sf
	Maximum height above grade	35'	20'	6'
<i>Attached Signs</i>	Maximum aggregate area			
	On building front	**	150sf	4sf
	On building sides & rear (each side)	75sf	25sf	4sf

* 1.5 square feet of sign area allowed for every linear foot of building frontage, up to the maximum specified.

** 1 square foot of sign area allowed for every linear foot of building frontage of each individual business.

SECTION 4 - Other Permitted Signs: In addition to the signs that are permitted by Section 3 of this article, each lot shall be allowed the signs permitted by *Table XI-4*:

Table XI-4 - Other Permitted Signs

	Maximum # per lot	Maximum Area per Sign Face	Maximum Duration	Sign Permit Required
Entrance & Exit signs, no higher than 3' above grade	2 per driveway	4sf	no limit	yes
Directional Signs	no limit	4sf	no limit	yes
Signs offering the premises for sale, rent or lease	1*	16sf	no limit	no
Contractor's sign	no limit	32sf	6 months**	no
Temporary sign	1*	32sf	2 months	yes
Yard Sale sign	1*	8sf	1 week	no
Signs endorsing candidates for political office	no limit	16sf	2 months	no
Signs for agricultural products grown or produced on the premises	no limit	16sf	no limit	no
Special Event displays	1*	100sf	Discretion of Selectmen	yes
Signs installed per order of Selectmen for a public purpose	no limit	no limit	no limit	no

** 2 signs shall be permitted on corner lots, but no more than 1 shall be permitted along each street frontage.*

*** or the duration of the project, whichever is less.*

SECTION 5 - Setbacks: All signs except *entrance & exit signs, directional signs, and yard sale signs* shall adhere to the minimum setbacks from property lines required by this ordinance of principal buildings, except that permitted signs for legal home businesses in the Residential Zone may be situated as close as twenty feet to the roadway pavement.

SECTION 6 - Prohibited Signs & Devices: The following are prohibited:

A - Signs that are **animated, moving, flashing**, or signs that emit **noise**.

B - Rotating **beacons**.

C - **Off-Premise** signs.

D - Signs **painted on** or **attached to a vehicle or trailer** parked for the purpose of advertising or directing people to a business or activity.

E - Signs that, in the judgment of the Selectmen, **impede the view** of traffic, traffic safety signs, or traffic signals.

F - Signs that contain **pornographic** words or pictures.

G - Signs made of highly **combustible** materials.

H - Free standing signs that are **not permanently anchored** to the ground.

I - Attached signs which extend above the building's **parapet** or **eaves**.

J - Any sign or any sign location that is **not specifically permitted** by this article.

SECTION 7 - Shielding: Light directed toward signs shall be shielded in such a way that the source of said light is not visible three feet above grade at the lot line.

SECTION 8 - Neon Lighting & Signs: The secondary voltage of the transformer(s) shall not exceed 7,500 volts. All exterior mounted electric-discharge tubing shall be protected from the weather.

SECTION 9 - Sign Maintenance: Every sign shall be maintained in good structural condition at all times. The Selectmen or their designee shall have the authority to order the painting, repair, alteration or removal of any sign. Upon failure to comply with an order to repair or remove said sign within 30 days, the Selectmen are hereby authorized to cause the removal of said sign. All expenses associated with any such repair or removal shall be borne by the owner of the land upon which said sign is situated.

SECTION 10 - Signs on Public Property: The Selectmen shall immediately remove from public property any unauthorized sign which does not comply with the terms of this ordinance.

SECTION 11 - Abandoned Signs: Abandoned signs are prohibited, and shall be removed by the land owner immediately. The advertisement of any subsequent business, product or service shall be restricted to signs which comply with the terms of this article.

SECTION 12 - Non-Conforming Signs: Signs installed prior to January 1, 1993 and that do not conform to the standards set forth in this ordinance shall not be altered, enlarged, moved, or replaced, except in a manner that would bring the sign into conformance with the terms of this article, provided, however, nothing herein shall prevent any change in the message portion of any non-conforming sign.

SECTION 13 - Sign Permit Expiration: If the work authorized under a sign permit has not been completed within six months after the date of issuance, said permit shall become null and void.

Article XII - *Sexually Oriented Businesses*

SECTION 1 - The Purpose & Intent of this article is:

A - to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses;

B - to protect public health, safety and general welfare; and

C - to prevent the blight and deterioration which generally accompanies and is brought about by the concentration of sexually oriented businesses.

D - to mitigate the secondary effects of sexually oriented businesses, effects which were cited by the Newington Planning Board in its *Findings of Fact* dated August 5, 1993.

It is not the intent of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, nor is it the intent of this article to condone or legitimize the distribution of obscene material.

SECTION 2 - Zoning District: Sexually oriented businesses are only permitted in the Commercial (C) Zone.

SECTION 3 - Buffers: Sexually oriented businesses shall **not** be permitted in or within 400 feet of a church, 500 feet of a school, or 1,000 feet of a residence, another sexually oriented business, or a sexually oriented business for which a building permit has been applied for.

SECTION 4 - Other Prohibited Locations: Sexually oriented businesses shall **not** be permitted in enclosed shopping malls or any establishment patronized by minors.

SECTION 5 - The Measure of Distance between any sexually oriented business and other named point of reference shall be measured in a straight line.

SECTION 6 - Free-Standing Structures: Sexually oriented businesses shall only be permitted in single use, free-standing structures. In no instance shall sexually oriented business share premises, facilities or buildings with businesses which are not sexually oriented.

SECTION 7 - Site Plan Approval by the Newington Planning Board shall be a pre-requisite for the establishment of a sexually oriented business. The Planning Board may impose reasonable restrictions relative to buffers, outdoor lighting, signs, parking, egress and ingress, pedestrian movement, landscaping, building aesthetics, and measures to ensure that displays of merchandise conform with NH RSA 571-B.

SECTION 8 - Public Nuisances: Violation of the use provisions of this ordinance is declared to be a public nuisance per se, which shall be abated by the Town of Newington by way of civil abatement procedures.

SECTION 9 - Limiting Clause: Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation or maintenance of any business, building or use which violates any Town of Newington ordinance or statute of the State of New Hampshire relative to public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

SECTION 10 - Severability: If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The legislative body of the Town of Newington hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

ARTICLE XIII - *Non-conforming Property*

SECTION 1 - Expansion: Non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended. Conforming uses and conforming structures may be enlarged regardless of minimum lot size requirements specified in Article VI.

SECTION 2 - Cessation: If a non-conforming use ceases for a period of one year, all subsequent uses shall conform to the terms of the Zoning Ordinance.

SECTION 3 - Merger: If two or more adjacent lots in the same ownership do not meet the dimensional requirements of this ordinance, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance.

ARTICLE XIV - *Telecommunication Facilities*

SECTION 1 - Signs: Telecommunication towers shall not contain signs or graphic representation of any kind.

SECTION 2 - Evidence that Co-Location is not Feasible: If a new tower is being proposed, the applicant shall submit evidence which is satisfactory to the Planning Board, that no existing structure can accommodate the applicant's antenna(s).

SECTION 3 - Cooperation: An applicant proposing to build a new tower shall submit a binding agreement which provides for the maximum allowance of antenna co-location on the new structure. This agreement shall obligate the applicant to supply antenna co-location for reasonable fees and costs to other telecommunications providers. Failure to provide an agreement that is satisfactory to the Planning Board is grounds for denial.

SECTION 4 - A Bond shall be submitted by the applicant to cover the costs of tower removal in the case of abandonment. The applicant shall submit a written agreement, the terms of which are to be satisfactory to the Planning Board, which governs the bond.

SECTION 5 - Abandoned Telecommunications Facilities are those which have not operated for a period of twelve consecutive months. In such a case, the Town shall be authorized to execute the security, and cause the tower to be removed.

ARTICLE XV – *Trailers & Mobile Storage Containers*

The following conditions must be met for trailers, mobile storage containers, and mobile towers in the Office and Commercial Zones:

SECTION 1 – Permit Required: The property owner shall obtain a permit for all trailers, mobile storage containers or mobile towers on-site longer than ten business days. The permit must be posted in plain view on the trailer/container/tower. In the case of a Town/State declared emergency, a tower permit is required no later than two days after the erection of the tower.

SECTION 2 – Application: Property owners shall apply to the Building Inspector for a permit. Owners must attach the appropriate fee and a sketch or plan showing the proposed location with respect to setbacks, easements, roads, and parking areas. The Building Inspector will coordinate a review by the Fire Chief.

SECTION 3 – Duration: The use of storage trailers/containers/towers will be permitted on a temporary basis limited to no more than 90 days. Trailers/storage containers/towers will be removed once the permit expires.

EXEMPTIONS: (subject to Planning Board approval)

- A. The use of trailers for storage or temporary office space may be permitted for the duration of the construction, expansion, or repair of a permanent business.
- B. The use of trailers/containers to store *recycled* materials (i.e. tires, pallets, etc) may be permitted on renewable basis.

SECTION 4 – Number & Location: No more than two (2) trailers/containers/towers may be placed on a lot unless approved by the Planning Board. No trailer /container/tower shall be situated in such a way as to obstruct safe sight distance, fire lanes, or setbacks.

SECTION 5 – Limitation on Occupancy: Occupancy of trailers for temporary office space is limited to businesses undergoing initial construction, expansion, or repair of a permanent place of business. The Building Inspector shall approve all temporary utility connections to occupied trailers.

SECTION 6 – Storage of Material: Storage trailers/containers/towers shall be locked at all times when an attendant is not present. The outside storage of materials beneath, above, or around a trailer/container/tower is prohibited.

Article XVI – *Home Occupations & Home Businesses*

The intent of this article is to permit home occupations and home businesses to function in a manner that has no noticeable impact on the quality and character of Newington's residential district.

SECTION 1 - Home Occupations may be permitted in the Residential Zone only if they meet all of the following conditions:

- A) Home occupations shall be performed only by the resident(s) of the domicile. There shall be no outside employees.
- B) Home occupations shall have no impact on the surrounding residential neighborhood.
- C) A home occupation may only be conducted within a residence or pre-existing accessory building.
- D) There shall be no display of goods, wares or storage of materials visible from any public way, shoreline or abutting residences.
- E) Signs shall meet the requirements of the Newington Zoning Ordinance.
- F) No commercial vehicles related to said home occupation shall be stored on the premises.
- G) Parking generated by the home occupation shall be located off the street, and the vehicles shall be subject to the zoning setbacks for structures.
- H) The building or premises containing the home occupation shall not be detrimental to the residential character of the neighborhood due to its exterior appearance. There shall be no emission of odor, smoke, dust, vibration, noise or detectable tones.
- I) No equipment or process shall be used that creates visual or audible interference in any cell phone, wireless LAN, radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- J) Bandwidth consumption or denial of service to the publicly accessed information infrastructure (coaxial, fiber, wired or wireless) must not be perceptible at the lot line at a higher level than is customary in a residential neighborhood.
- K) Water consumption shall be no more than is normal in a residential neighborhood.
- L) On-site storage of hazardous materials other than small quantities of products that are intended for normal household use shall be subject to approval by the Newington Fire Chief.

SECTION 2 - Permitted Home Occupations: The following are permitted, subject to the conditions specified in Section 1 above: engineer, consultant, advisor, surveyor, sales representative, programmer, systems analyst, computer operator, artist, illustrator, graphic artist, draftsman, photographer, writer, architect, seamstress, decorator, insurance agent, real estate agent, and any similar use, provided that the Planning Board, after a public hearing, finds that all of the conditions in Section 1 are satisfied.

SECTION 3 - Home Businesses may be permitted in the Residential Zone only if they meet all of the following conditions:

- A) Home businesses shall have no impact on the surrounding residential neighborhood
- B) Prior to the commencement of operations, home businesses must receive a Conditional Use Permit and Site Plan approval from the Planning Board.
- C) Before granting a Conditional Use Permit, the Planning Board must determine that the proposed structure(s), location, and size of the parcel are of a suitable scale, appearance, and character that are compatible with the surrounding neighborhood. The structure(s) must maintain the appearance of a residence.
- D) The principal operator must reside on the premises.
- E) No more than one (1) home business may be established on a property.
- F) No more than fifty percent (50%) of floor space of buildings on the premises can be devoted to such use.
- G) The home business may be conducted in a pre-existing accessory building which may utilize up to one hundred percent (100%) of said building's floor area.
- H) There shall be no display of goods, wares, or storage of materials visible from the public way or shoreline or abutting residences. Outdoor storage of materials or equipment is not permitted unless specifically approved by the Planning Board. Outdoor storage:
 - a. Shall be at least fifty (50) feet from all lot lines
 - b. Shall be screened with fencing or a vegetative buffer.
- I) Signs shall meet the requirements of the Newington Zoning Ordinance.
- J) A limited number of commercial vehicles related to the home business may be stored on the premises. The number and size of the commercial vehicles is subject to approval by the Planning Board.

- K) Customer parking generated by the home business shall be off the street, and the vehicles shall be subject to the zoning setbacks for structures. A total of 4 customer parking spaces are permitted on conforming lots. The number of parking spaces for non-conforming lots shall be determined by the Planning Board.
- L) The building or premises containing the home business shall not be detrimental to the residential character of the neighborhood due to its exterior appearance. There shall be no emission of odor, smoke, dust, vibration, noise or detectable tones.
- M) No equipment or process shall be used that creates visual or audible interference in any cell phone, wireless LAN, radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- N) Bandwidth consumption or denial of service to the publicly accessed information infrastructure (coaxial, fiber, wired or wireless) must not be perceptible at the lot line at a higher level than is customary in a residential neighborhood.
- O) Water consumption shall be no more than is normal in a residential neighborhood.
- P) On-site storage of hazardous materials other than small quantities of products that are intended for normal household use shall be subject to approval by the Newington Fire Chief.
- Q) A certificate of occupancy is required prior to the commencement of business operations.

SECTION 4 - Permitted Home Businesses: The following are permitted subject to the conditions specified in Section 3 above: light distribution, painter, architect, plumber, carpenter, electrician, building contractor, hair dresser, landscaper, all home occupations listed in Section 2 above, and any similar use, provided that the Planning Board, after a public hearing, finds that all of the conditions in Section 3 are satisfied.

Article XVII - *Lighting & Illumination*

SECTION 1 – Purpose: This article is intended to eliminate problems of glare, minimize light trespass and obtrusive light created by improperly designed and installed outdoor lighting. Further purposes are to enhance and protect the quality of the New Hampshire night sky, Newington’s rural character, and conserve energy and resources. These concerns are balanced while maintaining safety, security and productivity by establishing limits for the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination in the Town of Newington.

SECTION 2 – Prohibitions: This section applies to all lighting within the Town of Newington on any site except for legal non-conforming uses and temporary or emergency lighting.

A - Mercury Vapor Lamps Fixtures and Lamps. The installation of any mercury vapor fixture or lamp for use as outdoor lighting is prohibited.

B - Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment is prohibited.

C - Searchlights. The operation of searchlights for advertising purposes is prohibited.

D - Neon or Tubular Gas. Neon or tubular gas lighting shall be limited to signage use and must be located within the exterior dimension of the sign as approved under Article XI of this ordinance. Neon or tubular gas lighting as architectural accents is prohibited.

E - Pulsating, flashing, rotating, oscillating, or attention getting lights. Pulsating, flashing, rotating, oscillating, or other type of lighting intended as an attention getting device shall be prohibited. Oscillating lighting is lighting that changes intensity or color in less than 30 seconds.

SECTION 3 - Residential Lighting: These provisions are intended to prevent private and public nuisances and protect property values. This section applies to existing and proposed single-family and duplex residential uses.

A - Spot lights, floodlights and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property.

B - Accent lighting, low wattage seasonal lighting and other fixtures commonly associated with residential uses are not intended to be prohibited by this ordinance.

SECTION 4 - Non-residential: These provisions are intended to provide for more comprehensive lighting regulations due to potential negative impact on a greater number of residents and the public from inappropriate lighting installation or fixtures. In addition, it is the intent of these restrictions to prevent lighting conflicts and competing lighting installations - particularly in the commercial, office and industrial districts of the Town of Newington. This section applies to non-residential uses. The Planning Board shall adopt regulations as part of the Site Plan Review Regulations that implement the purpose and intent of this ordinance.

A - A Building Permit shall be required prior to the installation of any new fixtures on existing non-residential uses. If the original Site Plan Approval granted by the Planning Board specified, in detail, the type and nature of lighting, any increase or change in lighting that may have an increased impact on the site shall be referred to the Planning Board for Site Plan Review. The Building Official shall approve a permit for other installations upon a finding that the fixtures comply with the following general lighting requirements.

B - Spotlights, flood lights, and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property. Security lighting using motion detection switches are encouraged, but continual lighting must be angled or shielded in such a fashion as to not produce glare onto neighboring property, particularly dwelling units.

C - General Lighting Requirements:

- (1) All lighting in the Town of Newington is required to have full-cutoff shielding, except for that portion of lighting installation that is consistent with the Historic District.
- (2) The new installation of up-lighting, by any method, is limited to the use of upward landscape or flagpole lighting, provided the lighting does not interfere with the safe operation of aircraft or spill onto neighboring properties or public ways.
- (3) Non-cutoff wallpack type fixtures are prohibited.
- (4) Existing lighting sources that do not present a health and safety issue with respect to glare on public ways or nuisance as a result of off-site illumination shall be exempt from the provisions of this ordinance.

D - New fixtures accompanying establishment of new uses or change of use that requires Site Plan Review shall have lighting plans approved as part of the Site Plan Review process.

SECTION 5 - Grandfathering of Non-conforming Lighting: Any lighting that replaces a grandfathered lighting, or that is moved, must meet the standards of this ordinance. Non-conforming lighting for advertising signs or architectural accents is grandfathered only for a period of ten years and no later than January 1, 2017. Grandfathered lighting that directs light toward streets or parking lots that cause disability glare to motorists or cyclists shall be either shielded or re-directed within 90-days of notification so that the lighting does not cause a potential hazard to motorists or cyclists.

SECTION 6 – Exceptions: All temporary lighting required for construction projects, related to road construction and repair, installation of sewer and water facilities, and other public infrastructure, all temporary emergency lighting needed by the police and fire departments or other emergency services, as well as vehicular luminaries, all hazard warning lights required by Federal regulatory agencies, and seasonal and decorative lighting displays using multiple low wattage bulbs.

Article XVIII - Small Wind Energy Systems

SECTION 1 – Purpose: This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public’s health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

SECTION 2 – Procedure for Review:

A - Location: Small wind energy systems and met towers are an accessory use that is permitted in all zoning districts.

B - Building Permit: No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Meteorological (Met) towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

C - Application: Applications submitted to the building inspector shall contain a site plan with the following information:

- i) Property lines and physical dimensions of the applicant’s property.
- ii) Location, dimensions, and types of existing major structures on the property.
- iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
- iv) Tower foundation blueprints or drawings.
- v) Tower blueprints or drawings.
- vi) Setback requirements as outlined in this ordinance.
- vii) The right-of-way of any public road that is contiguous with the property.
- viii) Any overhead utility lines.
- ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.

- x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
- xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
- xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
- xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
- xiv) List of abutters to the applicant's property.

D - Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

SECTION 3 – Standards: The building inspector shall evaluate the application for compliance with the following standards;

A - Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
- ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

Minimum Setback Requirements Indicated as a % of Tower Height			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	150%	110%	150%

B - Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

C – The Sound Level of the small wind energy system shall not be discernible at the property line.

D - Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

E - Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

F - Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

G - Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

H - Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

- i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground.
- ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment.

- iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

I - Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

J - Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

K - Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

L - Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

M - Impact on Wildlife: Only wind energy system models that have a minimal negative impact on birds, said impact as determined by the Newington Planning Board, shall be permitted.

SECTION 4 – Abandonment:

A – Notification: At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

B – Removal: Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. “Physically remove” shall include, but not be limited to:

- i) Removal of the wind generator and tower and related above-grade structures.
- ii) Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

C – Failure to Notify: In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

D – Legal Action: If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

SECTION 5 – Violation: It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

SECTION 6 – Penalties: Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

ARTICLE XIX - *Administration*

SECTION 1 - Zoning Enforcement: The provisions of this ordinance shall be administered by the Building Inspector. Such Inspector is the administrative officer specified in New Hampshire Revised Statutes Annotated, 1955, Chapter 36, Section 35. Enforcement shall be carried out by the Board of Selectmen.

SECTION 2 - Building Permit Required: No building or structure shall be erected, added to, or moved, until a permit has been issued by the Building Inspector.

SECTION 3 - Application for Building Permit: The applicant for a Building Permit shall submit accurate construction plans at a suitable scale. Industrial plans shall be drawn by a professional architect or professional engineer, and shall include:

- A - The shape, size and location of the lot to be built upon; and
- B - The shape, size, height and location upon the lot of the buildings to be erected, altered or removed; and
- C - Any building already on the lot; and
- D - Setback lines of buildings on adjoining lots; and
- E - Any other information needed by the Building Inspector or Board of Select-men to determine whether the provisions of this ordinance are being observed.

If the application conforms with the provisions of this ordinance, the building codes, and other ordinances of the municipality, the permit shall be issued upon payment of the required fee. If not, the building permit shall be refused by the Building Inspector stating such refusal in writing with the cause. The issuance or refusal of a permit shall be within 15 days of the submission of the application with all necessary information to the Building Inspector.

No permit shall be issued for construction of storage facilities for any petroleum products unless such construction complies with the Rules and Regulations of the State Board of Fire Control. The Newington Fire Chief and/or State Fire Marshall shall inspect such construction to determine that said regulations are being adhered to.

If no substantial progress of construction has been made in six months beginning with the date the permit is issued, the permit becomes invalid. The Building Inspector may renew the permit. A renewal fee in the amount of the original fee is required to be paid by the applicant before the permit is renewed.

SECTION 4 - Penalties for Violation: Any person violating any provision of this ordinance shall upon conviction, be fined not less than \$20, nor more than \$100, for such offense. Each offense shall constitute a separate offense for each day the violation occurs.

SECTION 5 - Repeal of conflicting ordinances: Any existing zoning ordinances or such parts thereof as may be inconsistent herewith are repealed.

SECTION 6 - Validity: Should any section or part of a section or any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 7 - Effective Date: This Ordinance shall take effect upon its passage.

ARTICLE XX - *Floodplain Management*

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

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Rockingham, N.H." dated May 17, 2005, together with the associated Flood Insurance Rate Maps dated May 17, 2005, which are declared to be a part of this ordinance and are hereby incorporated by reference, and any subsequent revisions thereto.

Item I - Definition of Terms: The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Newington.

1. "Area of Shallow Flooding" means a designated A0, AH, or V0 zone on the Flood Insurance Rate Map (FIRM) with a one-percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.
2. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Newington subject to a one-percent or greater possibility of flooding in any given year. The area is designated as **zone A on the FHBM and is designated on the FIRM as zone AE.**
3. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
4. "Basement" means any area of a building having its floor subgrade on all sides.
5. "Building" - see "structure".
6. "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.
7. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading,

paving, excavation, or drilling operation.

8. "FEMA " means the Federal Emergency Management Agency.

9. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A - the overflow of inland or tidal waters, or

B - the unusual and rapid accumulation or runoff of surface waters from any source.

10. **"Flood Boundary and Floodway Map" (Floodway Map) is the official map of the Town of Newington, on which FEMA has delineated the "Regulatory Floodway". This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.**

11. "Flood Elevation Study" means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood - related erosion hazards.

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

13. Flood Insurance Study" - see "Flood elevation study".

14. "Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

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

16. **"Floodway" - see "Regulatory Floodway".**

17. "Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

18. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

19. "Historic Structure" means any structure that is:
- j. 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;
 - k. 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;
 - l. 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
 - m. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - i) by an approved state program as determined by the Secretary of the Interior, or
 - ii) directly by the Secretary of the Interior in states without approved programs.
20. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
21. "Manufactured Home" means 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" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.
22. "Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
23. "New construction" means, for the purposes of determining insurance rates, structures for which the start of construction@ commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any

subsequent improvements to such structures.

24. "100-year flood" - see "base flood"
25. "Recreational Vehicle" is defined as:
 - i) built on a single chassis;
 - ii) 400 square feet or less when measured at the largest horizontal projection;
 - iii) designed to be self-propelled or permanently towable by a light duty truck; and
 - iv) designed primarily **not** for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
26. **"Regulatory floodway" means 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 increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.**
27. "Special flood hazard area" means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on **an FHBM or FIRM as zone A, A0, AI-30, AE, A99, AH, V0, VI-30, VE, V, M, or E.** (See "Area of Special Flood Hazard")
28. "Structure" means 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.
29. "Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.
30. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

31 "Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:

1. the appraised value prior to the start of the initial repair or improvement, or
2. in the case of damage, the value of the structure prior to the damage occurring.

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. This term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

32 "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Item II- Permits:

All proposed development in any special flood hazard areas shall require a permit.

Item III - Construction Requirements:

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- a. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

- b. be constructed with materials resistant to flood damage,
- c. be constructed by methods and practices that minimize flood damages,
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item IV - Water and Sewer Systems:

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will 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 will be located to avoid impairment to them or contamination from them during periods of flooding.

Item V - Certification:

For all new or substantially improved structures located in **Zones A, A1-30, AE, A0 or AH**, the applicant shall furnish the following information to the building inspector:

- a. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. if the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- c. any certification of floodproofing.

For all new construction or substantially improved buildings located in **Zones VE or V1-30** the applicant shall furnish the building inspector records indicating the as-built elevation of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) in relation to NGVD and whether or not the structure contains a basement.

The Building Inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

Item VI - Other Permits:

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

Item VII - Watercourses:

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.
2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

4. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones **AI-30 and AE on the FIRM**, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
5. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

Item VIII- Special Flood Hazard Areas:

1. In special flood hazard areas the Building Inspector shall determine the 100-year flood elevation in the following order of precedence according to the data available:
 - a. in **zones AI-30, AH, AE, VI-30, and VE** refer to the elevation data provided in the community's Flood Insurance Study and accompanying **FIRM or FHB**.
 - b. in unnumbered A zones the Building Inspector shall obtain, review, and reasonably

utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

- c. **in zone A0 the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least 2 feet.**

2. The Building Inspector's 100 year flood elevation determination will be used as criteria for requiring in zones **A, A1-30, AE, V1-30, and VE** that:

- a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation.
- b. All new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
 - (I) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- d. All recreational vehicles placed on sites within **Zones A1-30, AH, AE, V, V1-30, and VE** shall either:
 - (I) be on the site for fewer than 180 consecutive days;
 - (ii) be fully licensed and ready for highway use; or
 - (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for

"manufactured homes" in Paragraph 8 (6) of Section 60.3.

- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
 - (i) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
 - (ii) the area is not a basement;
 - (iii) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- f. Proposed structures to be located on slopes in special flood hazard areas, zones AH and A0 shall include adequate drainage paths to guide floodwaters around and away from the proposed structures.

Item IX - Variances and Appeals:

- 1. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- 2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
 - a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - b. if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 - c. the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 3. The Zoning Board of Adjustment shall notify the applicant in writing that:

(iv) the issuance of a variance to construct 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

b. such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

4. The community shall:

a. maintain a record of all variance actions, including their justification for their issuance, and

b. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.