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**ARTICLE 1. GENERAL PROVISIONS****1. Title**

This Ordinance and the accompanying land use (*Zoning*) map shall be known and may be cited as the “Land Use Ordinance of the Town of Newburgh, Maine.”

**2. Authority**

This Ordinance has been prepared and adopted pursuant to the enabling provisions of Article VIII, Part 2, of the Maine Constitution, the provisions of Title 30-A MRSA Section 3001 (Home Rule), the Comprehensive Planning and Land Use Regulation Act, Title 30-A MRSA, Sections 4312 et.seq., and Section 4352, Zoning Ordinances.

**3. Purposes:** The purposes of this Ordinance are:

- A.** To provide a legal tool to implement the provisions of the Town’s Comprehensive Plan;
- B.** To encourage the most appropriate use of land throughout the community by providing districts for new development sufficient for all the requirements of community life;
- C.** To assure that adequate provisions are made for: traffic safety, access and circulation, water supply and sewage disposal; stormwater, erosion and sedimentation management, and emergency access and response;
- D.** To protect and conserve the groundwater and other natural resources;
- E.** To minimizing the adverse impacts on adjacent properties.

**4. Applicability**

The provisions of this Ordinance shall govern all land and water areas of the Town of Newburgh, Maine.

**5. Categories of Land Uses: (see Article 2 Table B-1)**

- A.** Land Uses Not Allowed
- B.** Land Uses Allowed without a permit, but must comply with applicable land use standards.
- C.** Land Uses requiring Code Enforcement Officer approval and Permits.
- D.** Land Uses requiring Site Plan Review, Planning Board approval, and Permit from the Code Enforcement Officer.

**6. Conflicts with Other Ordinances**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

This Ordinance supersedes and replaces the Land Use Ordinance which became effective on June 14, 2018, and shall not prevent enforcement of the repealed ordinance with respect to the time periods in which it was in effect.

**7. Validity and Severability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

**8. Effective Date**

The effective date of this Ordinance shall be the date of adoption by the legislative body on June 13, 2019.

## 9. Amendments

This Ordinance may be amended by a majority vote of the legislative body.

## 10. Availability

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of this availability shall be posted.

## ARTICLE 2. LAND USE DISTRICT REQUIREMENTS

### 1. Establishment of Districts

For the purposes of this Ordinance, the Town of Newburgh is hereby divided into the following land use districts:

**Commercial**

**Residential**

**Rural**

### 2. Rules Governing District Boundaries

The location and boundaries of the land use districts are established as shown on the “Town of Newburgh Land Use Map,” which is hereby made a part of this Ordinance. This map shall be on file in the office of the Town Clerk.

The description of these districts is as follows; exclusive of lands subject to shoreland zoning requirements:

**Commercial** - Rt 9 from Hampden town line to Kennard Road; Rt. 69 from Route 9 to Carmel town line; Murray Road to Carmel town line; North County Road to Hampden town line; extending 1000’ from the centerline of roads. The intent is that commercial lots must abut the above listed roads, and access must be from the above listed roads excluding the 1000’ extension.

**Residential** - Route 69 from Route 9 to Hampden Town Line. Route 9 from Kennard Road to Dixmont Line. All of Kennebec Road from Hampden to Dixmont. North Road from Rt. 69 to Carmel town line.

**Rural** - rest of town not defined above.

Unless otherwise set forth on the Town of Newburgh Land Use Map, district boundary lines are property lines, the centerlines of roads, streets and rights-of-way or such lines extended, and the center-lines of water courses or such lines extended, or the Town boundary lines. Boundaries indicated as following or parallel to shore lines shall be construed to follow or be parallel to the normal high water mark of such shore lines, and in the event of changes in the shore line shall be construed as moving with the actual shore line. Where zones overlap, the point of entry from the roadway will dictate zone as described.

Where uncertainty exists as to the exact location of the district boundary lines, the Board of Appeals shall be the final authority as to location.

Exclusive of lands subject to shoreland zoning requirements, where a land use district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than 100 feet into the more restricted portion of the lot.

### 3. Land Use Requirements

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

### 4. District Purposes

The purpose of district requirements is to provide for orderly growth and development in accordance with the Comprehensive Plan:

- A. Commercial District.** The purpose of this district is to provide land for commercial development that is accessible to transportation corridors and will have a minimal impact on neighboring land uses.
- B. Residential District.** The purpose of this district is to provide an area for future residential growth and limited commercial uses.
- C. Rural District.** The purpose of this district is to provide protection to rural resources from incompatible development by restricting the nature and extent of development in the Rural District.

### 5. District Requirements

Permitted uses and uses subject to approval of the Planning Board shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A plumbing permit and/or building and use permit shall be required for all buildings, uses and sanitary facilities according to the provisions of this Ordinance. All uses shall comply with all applicable “Good Neighbor” land use standards of Article 5 of this Ordinance. Land uses permitted in each of the districts, in accordance with the land use standards of this Ordinance, are shown in Table B-1.

TABLE B-1 - LAND USES BY DISTRICT			
<b>Key - Permit Symbols</b>			
<b>Y</b>	Yes, allowed without a permit, but must comply with land use standards		
<b>CEO</b>	Code Enforcement Officer permit required		
<b>PB</b>	Planning Board approval and Site Plan Review (see CEO for permits)		
<b>N</b>	No, not allowed		
Resource Extraction and Rural Uses	Commercial	Residential	Rural
1. Agriculture	Y	Y	Y
2. Agricultural products processing	PB	PB	PB
3. Artisanal Food/Beverage Facility	PB	PB	PB
4. Animal breeding or care	Y	Y	Y
5. Boarding and riding stables	CEO	CEO	CEO
6. Campground	PB	PB	PB
7. Extractive industry	PB	PB	PB
8. Firewood processing	PB	PB	PB

9. Outdoor recreation such as parks, playgrounds and golf courses	PB	PB	PB
10. Roadside produce stand	Y	Y	Y
11. Earth materials extraction or storage for road purposes only, affecting an area of less than two acres in size.	PB	PB	PB
12. Earth materials extraction or storage for road purposes only, affecting an area of two acres or greater in size.	PB	PB	PB
13. Accessory structure, uses, or services that are essential for the exercise of uses listed above.	PB	PB	PB
14. Solar Energy System - (PRSES only)	CEO	CEO	CEO
<b>Residential Uses</b>	<b>Commercial</b>	<b>Residential</b>	<b>Rural</b>
1. Single-family dwelling	CEO	CEO	CEO
2. Single family mobile home	CEO	CEO	CEO
3. Duplex (two family)	CEO	CEO	CEO
4. Multi-family dwelling (3 or more families)	PB	PB	N
5. Mobile home park	PB	N	N
6. Home Occupation	PB	PB	PB
7. Accessory apartment	CEO	CEO	CEO
8. Accessory structures, uses or services that are essential for the exercise of uses listed above.	CEO	CEO	CEO
9. Solar Energy System - (PRSES only)	CEO	CEO	CEO
<b>Institutional Uses</b>	<b>Commercial</b>	<b>Residential</b>	<b>Rural</b>
1. Cemetery	PB	PB	PB
2. Church, synagogue, parish house	PB	PB	PB
3. Civic, convention center	PB	PB	N
4. Community center	PB	PB	N
5. Community living arrangement	PB	PB	PB
6. Day care center	PB	PB	PB
7. Essential services	PB	PB	PB
8. Fraternal order and service club	PB	PB	N
9. Governmental facilities and grounds	PB	PB	N
10. Hospital	PB	PB	N
11. Medical clinic, nursing home, convalescent facility	PB	PB	N
12. Museum	PB	PB	N
13. Public or private school	PB	PB	PB
14. Public facility utility	PB	PB	PB
15. Accessory structures, uses or services that are essential for the exercise of Institutional Uses listed above.	PB	PB	PB

16. Solar Energy System - (PRSES and ISES only)	PB	PB	PB
<b>Commercial Uses</b>	<b>Commercial</b>	<b>Residential</b>	<b>Rural</b>
1. Amusement facility, commercial recreation	PB	PB	N
2. Art gallery/craft shop/gift shop	PB	PB	PB
3. Auction barn	PB	PB	PB
4. Automobile sales lot	PB	PB	N
5. Automobile service station and repair garage	PB	PB	PB
6. Bed and breakfast	PB	PB	PB
7. Boarding and lodging facility	PB	PB	PB
8. Boat building, repair	PB	PB	PB
9. Building materials, retail sales	PB	PB	N
10. Commercial complex	PB	N	N
11. Commercial greenhouse, garden	PB	PB	N
12. Commercial removal of earth materials	PB	PB	PB
13. Commercial school	PB	PB	PB
14. Communication facility	PB	PB	N
15. Communication/Telecommunication tower	PB	PB	PB
16. Financial institution	PB	PB	N
17. Fisheries processing, storage	PB	PB	N
18. Funeral home	PB	PB	PB
19. Grocery and variety store	PB	PB	N
20. Health spa, fitness club, gym	PB	PB	N
21. Hotel, motel	PB	N	N
22. Indoor entertainment and recreation	PB	PB	N
23. Kennel-boarding site	PB	PB	N
24. Laundry, dry cleaning establishment	PB	PB	N
25. Liquor store	PB	PB	N
26. Neighborhood convenience store	PB	PB	PB
27. Portable Saw Mill	PB	PB	PB
28. Off-street parking and loading facility	PB	PB	N
29. Outdoor storage business	PB	PB	N
30. Planned unit development	PB	PB	N
31. Professional offices, office building	PB	N	N
32. Publishing, printing	PB	PB	N
33. Redemption center	PB	PB	N

34. Restaurant	PB	PB	N
35. Repair service (other than auto)	PB	PB	PB
36. Retail business	PB	PB	PB
37. Self storage building	PB	PB	N
38. Service business	PB	PB	PB
39. Short-Term Rentals	PB	PB	PB
40. Signs	CEO	CEO	CEO
41. Take-out food service	PB	PB	N
42. Veterinary clinic	PB	PB	PB
43. Wholesale business	PB	PB	PB
44. Auxiliary private wind turbines	PB	PB	PB
45. Accessory structures, uses or services that are essential for the exercise of uses listed above.	PB	PB	PB
46. Solar Energy System - (CSES and ISES only)	PB	PB	PB
<b>Industrial Uses</b>	<b>Commercial</b>	<b>Residential</b>	<b>Rural</b>
1. Automobile graveyard/junkyard	PB	N	N
2. Airport, air transportation dependent use	PB	N	N
3. Bulk oil and fuel storage, in excess of 50 gallons except for on site purposes (define)	PB	N	N
4. Construction equipment storage	PB	N	N
5. Demolition, waste disposal	PB	N	N
6. Light manufacturing assembly plant	PB	N	N
7. Lumber yard	PB	N	N
8. Manufacturing	PB	N	N
9. Newspaper facility	PB	N	N
10. Pulp mill	PB	N	N
11. Saw mill	PB	N	N
12. Sewage treatment facility	PB	N	N
13. Solid waste transfer station	PB	N	N
14. Transportation facility and terminal	PB	N	N
15. Warehouse	PB	N	N
16. Wholesale business facility	PB	N	N
17. Accessory structures, uses or services that are essential for the exercise of uses listed above.	PB	N	N
18. Solar Energy System - (CSES and ISES only)	PB	PB	PB



## 6. Dimensional Requirements

All structures and uses shall meet or exceed the following minimum requirements. Additional lot area or setbacks may be required by other provisions of this Ordinance. See notes following the table for additional requirements.

**Table B-2**

Minimum Dimensional Requirements		All districts
	Minimum lot area	2 acres
	Minimum land area per dwelling unit	1 acre
	Minimum street frontage (in feet)	200 ft
Minimum setbacks (in feet)		
	Front setback	100 ft
	Side setback	25 ft
	Rear setback	25 ft
Maximum building height (in feet)		45 ft

### Notes to table:

- A. Multiple structures.** If more than one principal building is constructed on a single parcel of land, the "minimum land area per dwelling unit" requirement shall apply, and all structures shall meet the front, side, and rear setback requirements.
- B. Required frontage.** All lots hereinafter created shall possess frontage on (1) a public road, or on (2) a private road or other thoroughfare or access route which meets the specifications for road construction in the Town, or (3) which meet the provisions for a back lot.
- C. Cul-de-sac frontage.** New building lots located at the end of cul-de-sacs or along curves in a street where the radius of the curve at the front lot line is less than 90 feet, may be designed so that they have a minimum of 35 feet of street frontage along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for street frontage in that district. The lot width shall be measured along a line that is parallel to a tangent of the mid-point of the curve.
- D. Setback measurements.** The front setback along a public road shall be measured from the edge of the right-of-way line to the nearest part of the building. All side and rear setbacks shall be measured from the property line to the nearest part of the building.
- E. Driveways, parking areas.** Driveways and parking areas may be located within any required setback area provided that they shall not be located within six (6) feet of the side or rear lot lines.
- F. Accessory structures.** When located beyond the rear of the principal building, accessory buildings no larger than 150 square feet in floor area may be located within the required side or rear setbacks provided that no structure shall be located within 6 feet from a side or rear lot line.
- G. Corner lots.** The front setback requirement shall be observed along all roads abutting the lot.
- H. Corner lot obstructions.** All corner lots shall be kept free from visual obstruction for a distance of twenty-five (25) feet measured along the street lines.
- I. Structures on abutting lots.** Where a proposed structure would be abutted on both sides by existing structures, either on the same lot or adjoining lots, whose front setbacks are less than the required setback, the setback of the proposed structure may be reduced to that of the structure with the greatest front setback.

## ARTICLE 3. ADMINISTRATION, ENFORCEMENT AND PENALTIES

### 1. Administering Agencies

#### A. Code Enforcement Officer

Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance.

- (1) The Code Enforcement Officer shall be appointed by the Selectmen.
- (2) The term of office shall be one year.
- (3) The selectmen may remove a Code Enforcement Officer for cause, after noticing hearing.

#### **B. Code Enforcement Officer Duties**

- 1) **Applications and fees.** Act upon all applications and collect any fees due; refer/process all applications as required.
- 2) **CEO Permit approvals.** Act upon permit applications that are under the jurisdiction of the CEO as set forth in Article 2, Land Use Districts.
- 3) **Board of Appeals applications.** Refer requests for variances and administrative appeals to the Board of Appeals.
- 4) **Inspections.** Inspect sites where permit applications have been approved to ensure compliance with local ordinances and State laws or rules.
- 5) **Complaints and violations.** Investigate complaints and reported violations.
- 6) **Reports and records.** Keep written inspection reports and thorough records.
- 7) **Violation notices.** Issue violation notices.
- 8) **Appeals.** Participate in appeals procedures.
- 9) **Consent agreements.** Process or act on consent agreements involving violations of this Ordinance and appear in court when necessary.
- 10) **Agendas.** Prepare agendas for mailing at least seven days before meetings of the Planning Board and Board of Appeals, and attend meetings of the Planning Board and Board of Appeals where applicable.
- 11) **Permit revocations.** Revoke any permit after notice if it was issued in error or if it was based on erroneous information.
- 12) **Interpretation.** Refer matters to the Board of Appeals when there is a question concerning the interpretation of this Ordinance.

#### **C. In the absence of the Code Enforcement Officer, enforcement shall be the duty of one of the following approved Town Officials:**

1. Town Manager
2. Chairman of the Planning Board
3. Chairman of the Selectmen.

#### **D. Board of Appeals**

The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of Article 7 of this Land Use Ordinance. Following the issuance of any decision favorable to the applicant, the applicant shall return to the Code Enforcement Officer for approval of any applicable building permit notification application.

The role of the Board of Appeals is limited to ensuring that required procedures are followed and that variances are granted in strict conformity with the requirements of this Ordinance. The Board of Appeals shall have no authority to substitute its judgment for that of the Planning Board or Code Enforcement Officer in the substantive review of development proposals.

#### **E. Planning Board**

The Planning Board shall be responsible for reviewing and acting upon applications requiring Site Plan Review and Planning Board Approval, as well as acting upon applications for subdivision review, as set forth in the Subdivision Ordinance.

The Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions. Following approval by the Planning Board, the applicant shall return to the Code Enforcement Officer for issuance of any applicable permits.

## 2. Permits Required

It shall be unlawful, without first obtaining a permit from the appropriate reviewing authority, to engage in any activity or use of land or structure requiring approval in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. Approval shall be required for:

- A. Activities requiring Code Enforcement Officer approval.** Any activity listed in Article 2, Land Use Districts, as requiring approval from the Code Enforcement Officer.
- B. Activities requiring Planning Board approval.** Any activity listed in Article 2, Land Use Districts (Table B-1), as requiring Site Plan Review and Planning Board approval.

## 3. Application for Activities and/or Permits requiring Code Enforcement Officer approval.

- A. Written application.** Every applicant for a permit shall submit a written application, including a scaled site plan, on the appropriate form provided by the municipality, to the Code Enforcement Officer. The following items, when appropriate, shall be included on all permit applications:
  - (1) Name of owner of property.
  - (2) Name of owner/operator of land use if different from owner of property.
  - (3) The shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.
  - (4) Any structure(s) already on the lot.
  - (5) Depth of front yards of structure(s) and adjoining lots.
  - (6) Location of any abutting public road or right-of-way.
  - (7) Statement of intended use.
  - (8) Documentation that the applicant has right, title or interest in the property.
- B. Signature.** All applications shall be signed by the owner of the property or the owner's legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
- C. Application to be dated.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- D. Plumbing permit.** A valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Local Plumbing Inspector or Code Enforcement Officer, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface wastewater disposal system.
- E. Fees for Permit Applications requiring Code Enforcement Officer approval.** Applications for a permit from the Code Enforcement Officer shall be accompanied by a base fee of \$5 plus \$1 per \$1000 of estimated cost of the project at fair market value shall be required for new or expanded development. Such fee shall be payable to the Town of Newburgh and the permit shall be obtained from the Code Enforcement Officer (3-14-92). This application fee shall be made by check payable to the Town. No application shall be found complete until the fee is paid. This fee shall not be refundable.

## 4. Application for Activities and/or Permits requiring Planning Board approval:

See Article 4: Section 3: Application Requirements: Site Plan Review for Land Uses Requiring Planning Board approval.

## 5. Procedure for Administering Permits

### A. Submission of Permit applications to Code Enforcement Officer

- 1) **Determination of complete application.** Within 30 days of the date of receiving a written application for approval of either the Code Enforcement Officer or the Planning Board, the Code Enforcement Officer shall notify the applicant in writing either that the application has

been accepted as a complete application or, if the application is incomplete, that specific additional material is needed to make the application complete.

- 2) **Action on complete application.** Within seven (7) working days of the date of receipt of a complete application the Code Enforcement Officer shall examine such application and physically examine the premises to determine whether or not the proposed building, structure or use would be in compliance with this Ordinance.
- 3) **Referrals.** All applications which require approval of the Planning Board or action by the Board of Appeals shall within a period of thirty (30) days be referred to the applicable board for action and public notice shall be given. After approval, with or without conditions by such Board, the Code Enforcement Officer shall issue a permit within seven (7) working days after being notified of such approval.
- 4) **Building permit approvals.** In all other cases involving approval by the Code Enforcement Officer, the Code Enforcement Officer shall within a period of seven (7) working days approve or deny such applications in accordance with the provisions of this Ordinance.
- 5) **Written notification.** If approval is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law which the municipality is responsible for enforcing.

#### **B. Applicant Responsibility**

- 1) **Burden of proof.** The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
- 2) **Posting.** Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.

#### **C. Expiration of Approval**

If no substantial progress of construction has been made within one (1) year from the date the approval is granted, the approval of the whole plan becomes invalid. If no substantial progress of construction has been made on any stage of a land use plan after 1 year, that stage of the plan becomes invalid, except where the Planning Board has approved a specific plan for stages of development. The Code Enforcement Officer may renew any land use approval within 30 days before the expiration of the approval upon payment of the applicable new land use fee as specified in this Ordinance. Otherwise the permit becomes invalid and the application process must begin anew.

### **6. Enforcement**

- A. **Violations.** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation.
- B. **Penalty.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, MRSA Section 4452. Each day that the violation occurs shall constitute a separate offense, beginning with the day following notification by the Code Enforcement Officer of such violation. The burden of proof that violations have been remedied as required shall be the responsibility of the violator. When the above action does not result in a correction of the violation or nuisance condition within the specified time period, the Selectmen, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions to halt further development or the continuance of unapproved uses, and the imposition of fines (a

minimum of \$100.00 and a maximum of \$2500.00) that may be appropriate or necessary to enforce the provisions of this Ordinance in and for the Town of Newburgh.

- C. **Other remedies.** If any building is constructed, altered, removed, or any building or land is used in violation of this Ordinance the Code Enforcement Officer or any other appropriate authority or any person who would be damaged by such violation, in addition to other remedies, may institute appropriate legal procedures to prevent such violation.
- D. **Unsafe buildings** Any building or structure that may be or shall at any time hereafter become dangerous or unsafe, shall, unless made safe and secure, be taken down and removed, in accordance with provisions of Title 17 MRSA Section 2851.

#### **ARTICLE 4. SITE PLAN REVIEW FOR ALL LAND USE APPLICATIONS REQUIRING PLANNING BOARD APPROVAL**

1. **Purposes:** To establish a procedure whereby the Planning Board may review new land-use proposals and to provide a Public Hearing process through which town residents may raise questions and receive answers about how new land use proposals would affect them;
2. **Preapplication.** Prior to submitting a formal application, the applicant or his/her representative may request a preapplication conference with the Planning Board. The preapplication conference shall be informal and informational in nature. There shall be no fee for a preapplication conference, and such conference shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. Section 302. No decision on the substance of the plan shall be made at the preapplication conference.
  - A. There are no formal submission requirements for a preapplication conference. However, the applicant should be prepared to discuss the following with the Board:
    1. Site location, size, and general characteristics.
    2. Nature of the proposed use and potential development.
    3. Any issues or questions about existing municipal regulations and their applicability to the project.
    4. Any possible requests for waivers.
3. **Fees for Applications for Planning Board approval.** Applications for a permit requiring Site Plan Review and approval by the Planning Board shall be accompanied by a fee of \$75 for minor development or \$125 for major development. This application fee shall be made by check payable to the Town. No application shall be found complete until the initial application fee is paid. The initial application fee shall not be refundable.
  - a. **Minor development:** shall include those projects involving the construction or addition or changes of use of up to one thousand (1000) square feet of combined gross floor area and impervious surfaces. The Planning Board may at its discretion reclassify a minor development as a major development if it is determined to be more complex and/or requires a more detailed review process and/or documentation.
  - b. **Major development:** Any project not classified as minor. The Planning Board may at its discretion reclassify a major development as a minor development if it is determined to be less complex and/or does not require a more detailed review process and/or documentation.
  - c. **Additional expenses.** The applicant must also pay for any additional administrative expenses which relate directly to the review of the application pursuant to the review criteria, which may include, but may not be limited to, additional publishing and notice fees, special Town Meetings, consultants fees, and special Planning Board Meetings, incurred by the Town, necessary to review the application.



**d. Technical Review Fees.** The applicant must also pay for any technical review fees, if legal and/or technical costs are incurred which relate directly to the review of the application pursuant to the review criteria, including but not limited to consulting engineering or attorney fees.

**4. Application Requirements.** The applicant must prepare and submit a Land Use Application, on the appropriate form provided by the municipality, to the Code Enforcement Officer or other approved Town Official. Submissions must contain the following exhibits and information unless specifically waived in writing. The Planning Board may waive any of the submission requirements based upon a written request of the applicant. A waiver of any submission requirement may be granted only if the Board makes a written finding that the information is not required to determine compliance with the standards.

**A. Required Submissions:**

1. A fully executed and signed copy of the Land Use application.
2. Evidence of payment of the application and any other required fees.
3. Five (5) copies of written materials plus five (5) sets of maps or drawings containing the information below. The maps or drawings scale shall not exceed one hundred (100) feet to the inch.
4. Any engineered drawings or plans submitted to the Planning Board must also be provided electronically as a pdf file on a thumb drive or similar device.

**B. General Information**

1. Record owner's name, address and phone number, and applicant's name, address and phone number if different.
2. The location of all required building setbacks, yards and buffers.
3. Names and address of all property owners within five hundred (500) feet of any and all property boundaries.
4. Sketch map showing the general location of the site within the municipality.
5. Boundaries of all contiguous property under the total or partial control of the owner of applicant regardless of whether all or part is being developed at this time.
6. The tax map and lot number of the parcel(s) on which the project is located.
7. A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
8. The name, registration number, and seal of the person who prepared the plan, if applicable.
9. Evidence of the applicant's technical and financial capability to carry out the project as proposed.

**C. Existing Conditions**

1. Zoning classification(s) of the property and the location of district boundaries if the property is located in two (2) or more districts or abuts a different district.
2. The bearings and length of all property lines of the property to be developed and the source of this information. The Planning Board may waive this requirement of a boundary survey when sufficient information is available to establish, on the ground, all property boundaries.
3. Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed, on abutting streets, or land that may serve the development, and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of flow.
4. Location, names and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
5. The location, dimensions, and ground floor elevation of all existing buildings on the site.

6. The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
7. Location of intersecting roads or driveways within two hundred (200) feet of the site.
8. The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, sand and gravel areas, and historic and/or archaeological resources, together with a description of such features.
9. The direction of existing surface water drainage across the site.
10. The location, front view, dimensions, and lighting of existing signs.
11. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
12. The location of the nearest water supply for fire protection.

#### **D. Proposed Development Activity**

1. Estimated demand for water supply and sewage disposal together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
2. The direction of proposed surface water drainage across the site and from the site, with an assessment of impacts on downstream properties.
3. Provisions for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities.
4. The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.
5. Proposed landscaping and buffering.
6. The location, dimensions and ground floor elevation of all proposed buildings or building expansion proposed on the site.
7. Location, front view, materials and dimensions of proposed signs together with the method for securing the sign.
8. Location and type of exterior lighting.
9. The location of all utilities, including fire protection systems.
10. An estimate of the peak hour and daily traffic to be generated by the project.
11. Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.

#### **E. Approval Block**

1. Space must be provided on the plan drawings for the signatures of the Planning Board and date together with the following words, "Approved: Town of Newburgh Planning Board".

### **5. Approval Standards and Criteria**

All Land Use Applications requiring Planning Board Approval must meet all applicable requirements of the "Good Neighbor" Performance Standards in ARTICLE 5.

### **6. Review Procedures**

- A. Within thirty (30) days of receipt of a formal site plan review application, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, and shall specify the additional materials required to make the application complete.

- B. As soon as the Board determines that the application is complete, the Board shall:
  1. Notify the applicant in writing of this finding, and
  2. Meet the notification requirements below, and
  3. Place the item on the agenda for substantive review within thirty (30) days of this finding, and
  4. Give written notice of the meeting at which the application will be considered to the applicant at least fifteen (15) days prior to the initial Planning Board consideration, and
  5. **Notify the Abutters:** by first-class mail with a Certificate of Mailing (USPS Form 3817) to all property owners within five hundred (500) feet of the parcel on which the parcel is located.
- C. The Planning Board may hold an on-site inspection, at the discretion of the Planning Board, of the site to review the existing conditions, field verify the information submitted, and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application may be extended, which extension shall not exceed thirty (30) days after the Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties entitled to notice.
- D. The Planning Board shall take final action on said application within thirty (30) days of determining that the application is complete. The Board shall act to deny, to approve, or to approve with conditions. The Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval.
- E. In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed development does or does not meet the standards of approval and other requirements of the Town.
- F. The Board shall notify the applicant and all parties who request to be notified of the action of the Board, including findings of fact and any conditions of approval. This requirement can be met through distribution of minutes of the meeting containing the findings of fact and decision of the Board
- G. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

## 7. Final Approval and Filing

- A. Upon completion of the requirements of this Section and an approval vote by the majority of the Planning Board, the application shall be deemed to have final approval and the site plan shall be signed by a majority of the members of the Board and must be filed with the Code Enforcement Officer or other approved Town Official, and recorded in the Registry of Deeds if applicable.
- B. The Planning Board may by majority vote extend the filing period for good cause.

## 8. Post Approval Activities

- A. **Limitation of Approval:** Substantial construction of the improvements covered by any site plan approval must be commenced within one (1) year of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to the expiration period. Such request must be in writing and must be to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the period if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.



- B. Incorporation of Approved Plan:** One copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer or other approved Town Official to address field conditions.
- C. Recording of the Approved Plan:** One copy of the approved site plan must be recorded in the Penobscot County Registry of Deeds if applicable within sixty (60) days of approval by the applicant and the book and page number provided to the Code Enforcement Officer or other approved Town Official. Failure to record the plan within sixty (60) days shall void the approval. The Planning Board may extend this period for cause.
- D. Improvement Guarantees:**
1. The Planning Board may require the posting of an improvement guarantee in such amount and form as is reasonably necessary to ensure the proper installation of all off-site improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant.
  2. Performance guarantees may be provided by, but not limited to the following:
    1. Security Bond - from a surety bonding company authorized to do business in Maine.
    2. Letter of Credit - from a bank or other reputable lending institution.
    3. Escrow Account: with the municipality or a bank.
  3. Upon substantial completion of all required improvements, the developer must notify the Planning Board.
  4. The Planning Board shall either approve, partially approve, or reject the improvements on the basis of inspection of the improvements by appropriate municipal officials.
  5. If approved, the guarantee shall be released. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.
- E. Submission of As-Built Plans:** Any project with engineered plans or involving the construction of more than seven thousand five hundred (7,500) square feet of gross floor area or forty-three thousand five hundred sixty (43,560) square feet of impervious surface, must provide the Code Enforcement Officer or other approved Town Official with a set of construction plans showing the building(s) and site improvement as actually constructed on the site. These “as-built” plans must be submitted within thirty (30) days of the issuance of a certificate of occupancy.
- F. Minor Changes to Approved Plans:** Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer or other approved Town Official provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing on the approved plan by the Code Enforcement Officer or other approved Town Official.
- G. Amendments to Approved Plans:** Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes that do not affect approval standards, is subject to Planning Board review and approval.

## **ARTICLE 5: “GOOD NEIGHBOR” PERFORMANCE STANDARDS:**

### **1. Purposes**

- A.** To establish a fair and reasonable set of standards for evaluating each land use proposal impartially, and on its own merits;
- B.** To provide local protection from those particular nuisances which are not governed by State law or regulations;

- C. To balance the right of land-owners to use their land for permitted purposes with corresponding right of abutting and neighboring land-owners to live without undue disturbance from noise, smoke, fumes, dust, odor, glare, traffic, or stormwater runoff, or the pollution of ground or surface water resources, or pollution of other natural resources;
- D. To suggest ways in which land use proposals may be modified so that potential problems and nuisances could be minimized or eliminated;
- E. To reduce or avoid negative impacts from proposed development upon town facilities (such as roads, stormwater drainage systems, etc.).
- F. To accomplish these objectives with the least possible regulation.

## 2. Exemptions and Waivers

The following uses or activities are specifically exempted from the requirements of this Article:

- A. Single family dwellings (and accessory uses).
- B. Farming operations (and accessory uses) as existing.
- C. All businesses as existing on the date of adoption of this Ordinance.
- D. All legally existing land uses and development from the review procedure, provided that the volume or intensity of such activities is not proposed to be increased substantially; or that such expansion is not in the form of a separate and different business.
- E. The Planning Board may waive submission requirements or reduce the amount of information required upon a finding that the submission is not necessary due to the scale of the project and/or the absence of any significant natural resources or development constraints on the site. Requests for waivers from a submission requirement must be submitted in writing by the applicant.

## 3. Criteria for “Good Neighbor” Performance Standards

The following standards shall be utilized by the Planning Board while reviewing the plans, drawings, sketches and other documents required. These standards are intended to provide a frame of reference for the applicant in the development of his plans, and a method of review for the Planning Board and the Board of Selectmen. The Board shall approve an application or approve it with conditions if it finds that the applicant has met his or her burden of proof and satisfies each of the following applicable performance standards. Once an application is approved, the applicant has a continuing obligation to ensure that his or her project conforms to these performance standards.

## 4. Standards Applicable To All Land Uses

### 1. Traffic and Access Management:

- A. **Adequacy of the Road System:** Vehicular access to the site must be on roads which have adequate capacity to accommodate any additional traffic generated by the development. The Planning Board may waive this requirement if the project is located in the Commercial District and the Board determines that the project will not have an unnecessary adverse impact on road maintenance, traffic flow or safety.
- B. **Access into the Site:** Vehicular access to and from the development must be safe and convenient.
  - 1. Points of access and egress must be designed to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.
  - 2. Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.
  - 3. The grade of any proposed points of access and egress must not be more than  $\pm 3\%$  for a minimum of forty (40) feet from the intersection.
  - 4. The intersection of any point of access/egress must function:

- a. At a level which will allow safe access into and out of the project if less than one thousand (1,000) or more vehicle trips per twenty-four (24) hour period are generated.
- b. When it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
- c. Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
- d. At the discretion of the Planning Board, a capacity analysis using the methodology described by the Transportation Research Board (TRB) may be required; where a level of Service of D is considered the minimum level of service needed to provide safe and convenient traffic movement, following development of a project that will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period.

**C. Accessway Location and Spacing:** Accessways must meet the following standards:

- 1. Accessways must be located at least fifty (50) feet from the closest unsignaled intersection and one-hundred fifty (150) feet from the closest signaled intersection. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
- 2. Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

2. **Noise:** Excessive noise at unreasonable hours shall be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness, or volume (please refer to table, below). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by an activity regulated by Article 4 of this Ordinance shall be as established by the time period and Land Use District listed below. Sound pressure levels shall be measured on a sound level meter at all major lot lines of the proposed site, at a height of at least four (4) feet above the ground surface.

Sound Pressure Level Limit	7 a.m. – 9 p.m.	9 p.m. – 7 a.m.
Commercial	65 dB(A)	55 dB (A)
Residential	55 dB(A)	45 dB(A)
Rural	55 dB(A)	45 dB(A)

Noises created by construction, logging, farming and maintenance activities between 6 a.m. and 9 p.m. are exempt from these requirements.

Construction activities on a site abutting any residential use between the hours of 9 p.m. of one day and 6 a.m. of the following day shall abide by the maximum sound level allowed in the Rural and Residential Districts. The following uses and activities shall also be exempt from these noise regulations:

- 1) The noises of safety signals, warning devices, and emergency pressure relief valves and any other emergency devices;
- 2) Traffic noise on public roads, or noise created by airplanes, railroads, and farm machinery.

The levels specified may be exceeded by 10 dBA for a single period no longer than 30 minutes, in any one day.

Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1981) “American Standard Specification for General Purpose Sound Level Meters.”

The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1. 2-1962 “American Standard Method for the Physical Measurements of Sound”.

3. **Dust, Fumes, Vapors, and Gases:** Generation of dust, dirt, fly ash, fumes, vapors, or gases which damages human health, animals, vegetation, or property, or which could soil or stain persons or property, at any point beyond the lot line of the home occupation, commercial or industrial establishment creating that emission, shall be prohibited. All such activities shall also comply with applicable Federal and State regulations.
4. **Odor:** No land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground level or habitable elevation. Odors produced from manure spreading are exempt from this requirement.
5. **Glare:** No land use or establishment shall be permitted to produce a strong, dazzling light or reflection of that light beyond its lot lines onto adjacent properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way. All such activities shall also comply with applicable Federal and State regulations.
6. **Storm Water Run-Off:** Surface water run-off shall be minimized and detained on-site if possible or practicable. If it is not possible to detain water on-site, downstream improvements to the channel may be required of the developer to prevent flooding caused by his project. The natural state of watercourses, swales, floodways, or rights-of-way shall be maintained as nearly as possible.
7. **Erosion Control:** Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following “best-management” practices:
  - A. Stripping of vegetation, soil removal, and re-grading or other development shall be accomplished in such a way as to minimize erosion, such as in the following manner:
  - B. The duration of exposure of the disturbed area shall be kept to a practical minimum.
  - C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
  - D. Permanent (final) vegetation and erosion control measures, in accordance with the following standards, shall be installed as soon as practical after construction ends:
    1. Environmental Quality Handbook, Maine Soil and Water Conservation Commission (Handbook).
    2. State of Maine, Department of Transportation, Standard Specifications, Highways and Bridges (MDOT).
    3. Maine Erosion and Sedimentation Control Handbook for Construction. Best Management Practices 3/91.
  - E. Until a disturbed area is planted or otherwise stabilized, sediment in run-off water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as approved by the Planning Board.

- F. The top of a cut or the bottom of a fill section shall not be closer than ten (10) feet to an adjoining property. Extraction operations (sandpits, including operation, etc.) shall not be permitted within 100' of any property line.
- G. During grading operations, methods of dust control shall be employed if the grading is within 200 feet of an occupied residence or place of business. Dust control methods may consist of not grading light soils on windy days, or dampening the ground with water, for example.

#### **8. Earth Moving, Filling and Storage of Materials:**

Earth-Moving Activities. Earth-moving activities means any activity in which earth is moved from one location on a site to a different location on the site, in which earth is removed from a site, or in which earth is brought onto a site, including, but not limited to, any stripping of vegetation or topsoil, or any grading, excavation, filling or storage or disposal of earth or soil.

- A. A person performing any dredging, bulldozing, removal or displacing soil, sand, vegetation or other materials shall require a permit from the Department of Environmental Protection pursuant to Title 38 MRSA, Section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them.
- B. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan and shall include, where applicable, provisions for:
  - 1. Mulching and revegetation of disturbed soil.
  - 2. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - 3. Permanent stabilization structures such as retaining walls or riprap.
- C. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- D. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- E. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - 1. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - 2. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - 3. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
  - 4. Natural and manmade drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater and shall be stabilized with vegetation or lined with rip-rap.

- 9. **Buffers and Screening.** Buffers/screening are fences, vegetation, landscaping, berms and mounds used to minimize any adverse impacts or nuisance conditions as experienced on the site or from adjacent areas. The following standards apply to multi-family residential, commercial, industrial, institutional, and other non-residential structures or uses (except home occupations)



that abutt a residential use or different institutional use, or public or recreational use. Unless otherwise specified for a special use, a natural vegetation or a landscaped buffer strip at least twenty-five (25) feet wide must be provided to screen structures and uses visually. Where natural vegetation can not be maintained within the twenty-five (25) foot-wide strip due to a lesser setback of development or to site conditions, or upon mutual agreement of any abutters, the landscaping may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffering shall meet the following standards:

1. The buffer must contain a minimum of 2 deciduous trees of a minimum 1.5" caliper, 4 evergreen trees of a minimum 6' in height, and 10 shrubs (evergreen of a minimum of 18"; and deciduous a minimum of 24"), per 100' (or fraction thereof); 50% of the required shrubs shall be of an evergreen variety.
  2. Buffers shall be provided along interior roads running parallel to roads exterior to the site, to prevent confusion, particularly at night;
  3. Exposed storage and waste disposal areas, sand and gravel extraction operations, and areas used for the storage or collection of any articles of salvage or refuse shall have sufficient setbacks and screening (such as stockade fence, a wooden or masonry screen or a dense evergreen hedge six (6) feet or more in height) so that they do not adversely affect other land uses and properties in the area;
  4. For any use or area presenting a potential safety hazard to children, physical screening and/or barriers sufficient to deter small children from entering the hazardous area shall be provided and maintained in good condition.
  5. Free-standing screening fences visible from the street or abutting a residential use:
    - a. Must be a minimum of six (6) feet height.
    - b. Should be constructed of durable materials, such as cedar, redwood, pressure treated pine, matte surfaced PVC, vinyl, composite materials, metal or combinations thereof.
    - c. The finished side of a fence shall face outward from the property on which the fence is located. The side of a fence containing the posts or poles and other bracing appurtenances shall face inward to the property being fenced in or on which the fence is located.
    - d. All fences and their supporting parts and appurtenances shall be set back at least two feet from all lot lines to allow access for maintenance on both sides without intruding upon abutting properties.
    - e. In addition, no fence and its supporting parts and appurtenances shall be located closer than four feet to the edge of pavement of a paved road or the edge of the traveled way on an unpaved road.
  6. Buffers that will obstruct required site distances are not allowed.
  7. All buffer areas shall be maintained in a neat and sanitary condition by the owner.
- 10. Explosive Materials:** No highly flammable or explosive liquids, solids, or gases as defined by NFPA codes shall be stored in excess of 1000 gallons unless they meet the following setback requirements from any lot line, town way or exterior roadway: 1) If above ground 100 or 2) if underground 50 feet.
- 11. Water Quality:** All outdoor bulk storage facilities for fuel, raw materials products, and any other materials, as well as waste collection and disposal facilities, shall be located on impervious pavement, and shall be completely enclosed by an approved safety fence at least six (6) feet in height. Such fence shall be set on top of an impervious dike which shall be high enough to contain the total volume of liquid kept with the storage area, plus the rain falling in this storage area during a 25-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Minimum requirements must meet or exceed State law.

**12. Vehicular Access through Marginal Roads:****A. General**

1. The purpose of marginal access roads is to control vehicles entering and exiting premises which generate substantial traffic, in order to reduce congestion and to avoid safety hazards.
2. Marginal access roads shall be required along arterial roads in the Residential and Agricultural/Business District.

**B. Designs Standards**

1. An interior access road may be required to be paved, consisting of 2 traffic lanes, each 12 feet wide.
2. Continuous and uninterrupted movement shall be provided from one property or use to another.
3. The marginal access road shall be generally parallel to the arterial road. Where possible, it shall run between that road and the structure or land use to be served.
4. Access onto the maintained road from the marginal access road shall be at intervals of not less than 1,000 feet.

**13. Development in The Flood Plain****A. Filling, dumping, earthmoving activities:**

1. To ensure that any filling, dumping, and/or earthmoving proposed to be deposited or removed from the Flood Plain must be shown to have some beneficial purpose and that the amount of alteration is not greater than is necessary to achieve the purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled land will be put, and the final dimensions of the proposed fill or other materials.
2. The Planning Board may require such fill or other materials to be protected against erosion by riprap, vegetative covering or bulkheading as defined in Article 4 Section 3.7 Erosion Control.

**B. Structure**

1. No structure for human habitation shall be located within the Flood Plain unless the applicant shows proof, through the use of engineering surveys, that the proposed location for structure is at least one foot above the elevation of the 100-year flood level.

**C. Subsurface waste-water disposal systems will meet all applicable state codes.****D. Storage of material and equipment:**

1. The storage or processing of materials that are, in the time of flood, buoyant, flammable, explosive, or potentially injurious to human, animal, or plant life are permitted with special permit.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent floatation, or if readily removable from the area within the time available after flood warning.
3. Campgrounds and mobile homes shall be prohibited in the Flood Plain.

**14. Refuse Disposal**

The land use permittee shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner consistent with state and federal standards. The Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes generated by the proposed operation. Hazardous wastes as defined by the U.S. Environmental Protection Agency or the Maine Department of Environmental Protection may not be stored, processed, or disposed of within the Town except in conformance with all federal and state regulations.

## **15. Driveway Entrance**

### **A. Application Requirements And Procedures.**

- 1. Permit Required.** Before any construction, modification, or change of use of a driveway entrance from private property onto a town owned public way, the property owner shall first obtain an E911 address number from the E911 Coordinator, file a driveway entrance application form, and receive a Driveway Entrance Permit from the Road Commissioner.
- 2. Filing of Application (and attachments).** The completed "Driveway Entrance Permit Application" form shall be filed with the Town Clerk, any attachments, a drawing of the property parcel, and a statement of the uses of the driveway. The drawing shall include the proposed or existing driveway entrance location. Distances from the existing property lines to the centerline of the driveway entrance shall be shown to establish the driveway entrance location. The width of the driveway entrance at the edge of roadway shall be shown, and the proposed driveway entrance slope shall be provided.
- 3. Application Review**
  - a. Residential or Temporary Applications.** The Town Clerk shall forward the completed application to the Road Commissioner for review. The Road Commissioner shall approve or deny the application within 5 working days, and if denied, state the reasons for denial.
  - b. Permit Period.** The Driveway Entrance Permit is effective for twelve (12) months from the date of approval. If the driveway entrance had not been completed within that permit period, the permit is deemed expired and a new application must be submitted and approved. A single one year extension may be granted in writing by the Road Commissioner for good cause.
  - c. Driveway Entrance Inspection.** The applicant shall notify the Road Commissioner within five (5) working days from the completion of construction or improvement of the driveway entrance. The Road Commissioner shall conduct an inspection of the driveway entrance to ensure full compliance with all provisions of this ordinance and terms of the permit.
  - d. Building Permits.** The Code Enforcement Officer shall not issue building or other development permits until a driveway entrance permit is obtained.
  - e. Town Authority Preserved.** The Town of Newburgh, notwithstanding the issuance of any permit under this ordinance or construction of any driveway entrance, reserves the right to make any changes, additions, repairs or relocation of any part of a driveway entrance within the dedicated right of way at any time, including but not limited to, in connection with the relocation, reconstruction, widening and maintaining the road or right of way, without compensating the owner of such private driveway entrance for any damages or destruction within the Town's right-of-way.

### **B. Driveway And Culvert Location, Design And Construction Requirements.**

- 1. Construction Activities.**
  - a.** It is the contractor's responsibility to clean up the tracking of soil, gravel, vegetation or other material onto the public roadway.
  - b.** Any damage to a Town of Newburgh roadway, as determined by the Town, caused by the construction will be repaired at the contractor's expense.
  - c.** Construction of the driveway entrance prior to other development is necessary to allow for the safe and efficient access of construction vehicles entering or leaving the construction site.
- 2. General Requirements.** The location, design and construction of driveway entrances shall be in accordance with the following;



- a. **General Design.** Driveway entrances shall not provide direct ingress or egress to or from any road intersection, and shall not encroach upon or occupy areas of the street right-of-way required for effective traffic control. A driveway entrance shall be located a minimum of either 150' from the intersecting centerlines of roadways, or a maximum practical distance, but in no case less than 50', from the intersecting centerlines to the driveway entrance that can be achieved to provide access to an existing lot. Driveway entrance approaches shall be a least ten (10) feet apart except by special permission of the Town Planning Board, and driveway entrances shall in all cases be placed wherever possible so as not to interfere with utilities in place. If possible, driveway entrances should be directly opposite each other.
  - b. **Number of Entrances.** Not more than two (2) driveway entrances shall be permitted to serve an individual residential property.
    1. The Board of Appeals may grant a practical difficulty variance for an additional driveway entrance (s) if the owner demonstrates a legitimate need and if the Board determines that the additional driveway entrance will not create any significant impairment of efficient traffic movements or cause any danger to the public.
  - c. **Drainage.** The surface of the driveway entrance connecting with the road sections shall be sloped to preclude ordinary surface water drainage from flowing onto the traveled way. No driveway entrance apron shall extend out into the road further than the road edge or face of the curb. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of the road, side ditches and roadside areas or with any existing structure in the right-of-way. All driveway entrances and parking lot areas shall be graded and constructed in such a manner so that no storm water is discharged onto the roadway.
  - d. **Width of Driveway Entrance.** A residential driveway entrance shall be no less than fifteen (15) feet and no greater than twenty-six (26) feet wide at the edge of pavement of the roadway or curb line. Multi-family/shared driveways entrances shall be no less than twenty (20) feet and no greater than twenty-six (26) feet wide at the edge of pavement of the roadway or curb line.
  - e. **Angular Placement.** The angle between the centerline of the driveway entrance and the edge of the pavement or the curb cut shall not be less than seventy (70) degrees.
  - f. **Relocation of Utilities.** Any costs of relocating utility structure or facilities shall be the responsibility of the property owner. Approval by the utility company and Board of Selectmen shall be obtained before any utility structure or facility is relocated within the right-of-way. Digging across Town paved roads for utility construction is prohibited.
- C. Culvert Construction Standards And Maintenance Responsibilities.**
1. Culverts shall be installed prior to construction work being commenced on the property. All culverts shall be constructed of HDP plastic or other material approved by the Town Road Commissioner, and shall be of sufficient gauge to provide adequate bearing capacity for vehicles expected to use the driveway entrance as determined by the Town Road Commissioner. Use of used culverts for other than a temporary driveway entrance is prohibited.
  2. **Minimum Size.** Culverts shall be a minimum of twenty (20) feet in length and of a diameter as determined by the Town Road Commissioner based on anticipated water flowage but shall not be smaller than twelve (12) inches in diameter.
  3. **Placement.** Culverts shall be placed in the ditch line at elevations as set by the Road Commissioner so as to adequately convey water and assure proper drainage.

4. **Endwalls.** All culverts shall have flared endwall sections so that backfill and cover material will not erode into the bottom of the ditch and reduce the capacity of the ditch and culvert. Flared endwalls also serve a safety function in that vehicles that enter the ditch way inadvertently will not be stopped abruptly.
  5. **Backfill and Cover Material.** Culverts shall be covered with one-inch minus gravel, compacted in place, or other material approved by the Road Commissioner. The minimum cover, measured from the top of the culvert to the top of the sub grade material shall be a minimum of 12 inches or diameter of culvert if larger than 12 inches.
  6. **Maintenance Responsibility.** The Town is responsible for maintaining the culvert and ditch in such manner necessary to permit free and unobstructed flow of water. However, should the property owner willfully and/or negligently dump leaves or other debris, or plow snow and ice into the ditch or over the end of the culvert which disrupts the flow of water, the property owner shall be liable for the cost of correction if the Town has to clear the culvert or if a blocked culvert causes damage to the roadway. The removal or clearance of snow and or ice, or the opening of windrows of such material, upon any portion of the driveway entrance within the Town of Newburgh right-of-way is the responsibility of the property owner.
  7. **Existing Driveway Hazards or Problems.** When erosion or other conditions created by an existing driveway entrance obstructs or becomes a potential hazard to a public road, the Road Commissioner and Board of Selectmen shall notify the property owner of the conditions. Repair undertaken by the property owner after notice from the Town is not construction or modification pursuant to Article 4 Section 3.16.C of this ordinance. Any property owner failing to correct such conditions within thirty (30) days after notice shall be subject to the penalties described in the penalty section of this Ordinance.
  8. **Culvert Replacement.** Replacement due to normal rusting, and wear and tear of existing and future driveway entrance culverts is the responsibility of the Town and will be accomplished, as required, under the standards set by this Ordinance. Culvert replacement due to damage such as crushed end of culverts from driving over them shall be replaced by the Town, but the property owner shall be subject to the cost of the culvert and labor and machinery costs. When a culvert requires replacement, the Town of Newburgh assumes responsibility for the cost of the culvert and for repair or replacement of gravel, bituminous, or concrete surface as close to the previous condition as possible. Replacement of decorative pavement, decorative endwalls/headwalls, is not the Town's responsibility.
- D. Enforcement:** At the request of the Road Commissioner and the direction of the Board of Selectmen, the CEO shall issue a stop-work order if a driveway entrance, culvert or other permitted construction or any part thereof is being installed contrary to the terms of this ordinance or without a permit.
- E. Penalties.**
1. Any person who constructs or modifies any driveway entrance without a permit as required by this Ordinance or who shall construct or modify a driveway entrance in violation of any provision of this Ordinance, shall unless the violation is corrected within thirty (30) days of date of written notice from the Board of Selectmen, be subject to a civil penalty due and payable to the Town of Newburgh, Maine of not less than one hundred dollars (\$100.00) for each day said violation exists and not more than one thousand dollars (\$1,000.00) total.
  2. Payment of any penalty shall be made within thirty (30) days in cash or by certified check drawn on a recognized financial institution, made payable to the Town of Newburgh, Maine in an amount equal to the full amount of the penalty.

3. If the maximum penalty amount of this section is held void or invalid it is the intent of the Town of Newburgh, Maine that provisions of Title 30-A, M.R.S.A. Section 4452 be given full force and effect and that the maximum penalty amounts authorized by such provision apply to violations of any order, permit, approval or final decision of the Planning Board or the Town Road Commissioner, or any provision of this Ordinance.

## **16. Off-Street Parking (Non-Residential):**

### **A. Required Number of Spaces:**

A minimum number of off-street parking spaces shall be provided and maintained by the owner of every building or property hereafter erected, altered or changed in use, in accordance with the following requirements:

1. Governmental-subsidized, low-income housing: one space per dwelling unit.
2. Congregate housing for the elderly: 1 space per dwelling unit or room.
3. Group home, halfway house, community living facility or emergency shelter: one space for each six clients to be housed, plus one space for each staff person to be on the premises during the peak shift.
4. All other dwellings: 1 1/2 spaces per dwelling unit, except that any multifamily site development containing eight or fewer dwelling units shall have two spaces per dwelling unit.
5. Boarding house, rooming house or tourist home: one space per guest room.
6. Hotel, motel, inn, B&B, and short-term rentals: one space per unit.
7. Hospital, sanitarium or nursing home: one space for every four patient beds.
8. Place of assembly, such as a restaurant, tavern, entertainment or recreation facility, private club, community center or church, for which seating capacity can be determined: one space for every four seats and every eight linear feet of bench space. Such places of assembly for which seating capacity cannot be determined: one space for every 200 square feet of gross floor area.
9. Office building: one space for each 300 square feet of gross floor area.
10. Retail or service business:
  - a. Retail stores limited to furniture and large appliance sales: one space for each 300 square feet of gross floor area for the first 2,000 square feet and one space for each 600 square feet in excess of 2,000 square feet.
  - b. Information processing and communications: one space per employee; if shifts are used, one space per employee working during the shift with the most employees.
  - c. Personal services establishment: 1 space per work station.
  - d. All other retail and service businesses: one space for each 300 square feet of gross floor area.
11. Restaurants:
  - a. Sit-down Restaurant: An establishment where food is prepared and served to the public for immediate consumption within the premises; the take out of food on a secondary basis is allowed: 1 space per three (3) seats based upon maximum seating capacity.
  - b. Drive-through restaurant: An establishment where food and/or beverages are sold in a form ready for consumption and may be vended in disposable containers for consumption on or off the premises at the customer's choice; where the customer has the option of driving a motor vehicle to a window or mechanical device to order and be served with or without exiting the vehicle; or where the customer may enter the premises to order at a take-out counter; and the establishment may have seating within the premises: 1 space for each 50 square feet of floor area.

- c. Drive-in restaurant and/or dairy stand: An establishment where orders of food and beverages may be taken and delivered to a motor vehicle that remains in a parking space, or in which consumption of food and beverages normally takes place within the customer’s automobile on the establishment’s premises: 10 spaces.
- 12. Wholesale, warehouse business or industrial plant: one space for each employee per shift, plus visitor and customer parking to meet needs of specific operations.
- 13. Uses not listed in this schedule: spaces will be provided on the same basis as required for the most similar listed use above, as may be determined by the Planning Board based upon the Institute of Traffic Engineers (ITE) standards.
- 14. Combination of above uses: the sum of the requirements of the various uses computed separately.
- 15. In addition to the above requirements, sufficient spaces shall be provided to accommodate parking requirements of employees (based on the maximum number of employees on a peak shift) and company vehicles as may be needed.
- 16. Exemptions from the requirements of this are as follows:
  - a. Small day-care facilities are not required to have any parking spaces other than those required by other uses on the property.
- 17. Handicapped accessible spaces:
  - a. The total number of accessible parking spaces shall be distributed to serve the various accessible entrances as well as possible.
  - b. In addition to the above requirements, any building or facility constructed as a place of public accommodation, as defined by the Maine Human Rights Act as it may be amended from time to time, or when the estimated total costs for remodeling or enlarging such an existing building or facility exceed \$150,000, shall provide for the following:

Total Parking Spaces	Required Minimum Number of Handicapped Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for every 100 over 1000

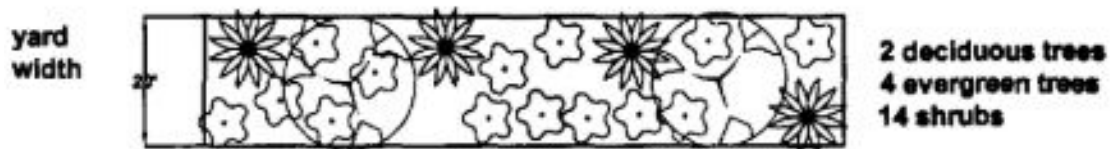
- 18. In addition to the above requirements, any building or facility constructed as a place of employment, as defined by the Maine Human Rights Act, as it may be amended from time to time, or when the estimated total costs for remodeling or enlarging such an

existing building or facility exceed \$100,000, shall be subject to all the requirements of this section.

19. Parking spaces shall be provided as required and made available for use before the final inspection is completed by the Code Enforcement Officer. An extension of one (1) year's time may be granted by the Code Enforcement Officer providing a performance bond, or its equivalent, is posted equaling the cost to complete the improvements as estimated by the Code Enforcement Officer, provided the parking space is not required for immediate use. In the event the improvements are not completed within the specified time, the bond or its equivalent shall be forfeited and the improvements thenceforth constructed under the direction of the town.

**B. Parking area location and screening.**

1. All parking spaces shall be located on the same or adjacent lot with the principal building or use served, except that when such parking spaces cannot be reasonably provided on the same or adjacent lot, the Planning Board may authorize parking on another lot within 500 feet distance of the premises to be served by such parking, provided that such lot is held under the same ownership or lease and is located in the same or a less restrictive district as the building or use served.
2. **Setbacks:**
  - a. In any district, no off-street parking space, outdoor display area or outdoor storage area shall be located less than 20' from all property lines for lots with less than 50 spaces.
  - b. In any district, no off-street parking space, outdoor display area or outdoor storage area shall be located less than 30' from all property lines for lots with more than 50 spaces.
3. **Screening of parking.** All parking lots containing five or more parking spaces, outdoor display areas, outdoor storage areas and all outdoor off-street loading areas shall be screened in accordance with the following requirements:
  - a. A 20' wide buffer containing a minimum of 2 deciduous trees of a minimum 1.5" caliper, 4 evergreen trees of a minimum 6' in height, and 14 shrubs (evergreen of a minimum of 18"; and deciduous a minimum of 24"), per 100' (or fraction thereof); 50% of the required shrubs shall be of an evergreen variety. For example:



- b. Existing vegetation may be preserved and maintained to meet the applicable buffer yard providing the vegetation is the type and variety of plants for specific buffer yard requirements.

**C. Design, construction and maintenance.**

All off-street parking areas containing 50 or more spaces shall have such interior landscaping as may be approved by the Planning Board pursuant to land development review for purposes of reducing any adverse effects resulting from extensive areas of pavement. In addition, all off-street parking areas shall meet the following requirements:

1. **Minimum design standards** (surface parking).
  - a. General requirements for ninety-degree parking shall be as follows:
    1. Minimum area per vehicle, including parking and maneuvering: 270 square feet.
    2. Minimum parking stall width: 9.0 feet.

3. Minimum parking stall length: 18.0 feet.
4. Minimum travel aisle width: 24.0 feet.
5. Minimum standards for diagonal parking shall be as follows:

Parking Angle	45°	60°	75°
Stall width (feet)	9.0	9.0	9.0
Stall length (feet)	25.0	22.0	20.0
Stall depth (feet)(aisle to curb)	17.5	19.0	19.5
Aisle width (feet) (one-way travel)	12.0	16.0	23.0

2. **Required parking lot improvements.** All off-street parking areas containing three or more rows of spaces shall be constructed with raised dividers of at least five feet in width between adjacent rows of parking spaces in at least every other double row and raised traffic islands of at least four feet in width at the end of rows of spaces to separate access drives from parked vehicles.
3. **Paving.** Parking lot paving will be required in accordance with the following schedule:

District	Extent of Paving Required
Commercial Zone	All parking, loading, display and maneuvering surfaces
Residential Zone	All front yard display, maneuvering and parking area surfaces.
Rural Zone	NA

**Note:** A waiver may be granted at the discretion of the Planning Board for low-traffic uses and/or residential zones to allow reclaimed pavement.

4. **Parking lot design.**
  - a. **Circulation routes.** Parking lots shall provide well-defined circulation routes for vehicles and pedestrians.
  - b. **Traffic control devices.** Traffic control signs and devices shall be used to direct traffic where necessary within a parking lot.
  - c. **Orientation.** Parking bays shall be perpendicular to the buildings they serve to the maximum extent feasible. Large parking lots shall include walkways that are located in places that are logical and convenient for pedestrians.
  - d. **Landscaped islands.** To the maximum extent feasible, landscaped islands shall be used to define parking lot entrances, ends of all parking aisles and location and pattern of primary internal access drives, and to provide pedestrian refuge areas and walkways.
  - e. **Points of conflict.** The lot layout shall specifically address the interrelation of pedestrian and vehicular circulation in order to provide continuous, direct pedestrian access with a minimum of driveway and drive aisle crossings. Special treatments of pedestrian crossings shall be used, such as special paving materials additional signage, and other means.



- f. **Pad sites.** Buildings should not be located so as to be within the parking bays. Separate building sites shall provide well-defined landscape islands controlling traffic flow around any such facilities.
- g. **Scale.** Large surface parking lots shall be visually and functionally segmented into several smaller lots according to the following standards:
  1. All rows of parking spaces shall contain raised end islands. A minimum percentage of the interior of the parking lot shall be landscaped and planted, exclusive of required buffer plantings, according to the schedule below:

Number of Spaces	Percent Green Space	Shade Trees (per 10 spaces)	Shrubs (per 10 spaces)
50 or more	5%	1	4
250 or more	10%	1.5	6
500 or more	15%	2	8

2. Required green space shall be provided within planted islands between rows, end islands and islands between access drives and parking stalls. Where parking areas are located on several sides of the building, landscaped areas should be located in portions most visible to the traveling public. No less than 50% of the interior shrubs shall be of an evergreen variety. Internal green space may include stormwater devices, bicycle racks, benches and other pedestrian amenities.

**D. Required Loading Spaces:** A minimum number of off-street loading spaces shall be provided and maintained by the owner of any building hereafter erected, altered or changed in use, in accordance with the following schedule:

Use	Gross Floor Area (square feet)	Spaces Required
Hotel or office building	3,000 to 50,000	1
	50,001 or more	2
Retail, service, wholesale warehouse, industrial or institutional use	1,000 to 25,000	1
	25,001 to 50,000	2
	50,001 to 100,000	3
	For each additional 50,000 or fraction thereof	1 additional
Apartment buildings with 10 or more units		1

**E. Size of Loading Spaces**

Each off-street loading space comply with the following requirements:

Gross Floor Area of Building (square feet)	Minimum Length (feet)	Minimum Width (feet)	Minimum Clearance (feet)
Less than 10,000	25	10	10

10,000 or more	50	10	10
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- F. General Requirements:** All off-street loading areas shall require approval by the Code Enforcement Officer and shall comply with the following requirements:
1. All loading spaces shall be designed so that all vehicles using them shall park or stand completely off the street.
  2. Joint use of loading spaces by two or more users in any commercial, industrial or airport district may be authorized by the Planning Board.
  3. All off-street loading spaces shall be on the same or adjacent lot which is being served.
  4. Required loading spaces shall in no case be part of the area used to satisfy the off-street parking requirements of this chapter.
  5. In any residential or commercial district, no off-street loading spaces shall be permitted in a front yard or on the side of a building abutting a street, except where approved by the Planning Board.
  6. All outdoor loading areas shall be screened in accordance with the requirements of this Section.

**17. Lighting**

- A. Statement of purpose: ensure appropriate outdoor lighting by addressing the issues of safety, efficiency, the environment and aesthetics.
- B. All development requiring land development approval shall be provided with adequate outside lighting to ensure a safe environment. All lighting intended to illuminate any outdoor area, or the outside of any building, shall be directed into the property served by such lighting so that no undesirable illumination or glare will be produced on adjacent streets or lots occupied by residential, institutional or public uses.
- C. Performance standards.
  1. Regulations. Unless determined to be a safety hazard or in violation of any state or federal law, all outdoor lighting installed in the Town of Newburgh shall comply with this section, except for the following: lighting installed and maintained for public safety by municipal, state or federal government; approved signs; external illumination of flags; approved lighting for athletic fields; temporary outdoor lighting; holiday lighting; luminaires with a lamp or lamps rated at a total of 2,000 lumens or less.
  2. For the purposes of this section, a lumen is a unit of luminous flux. One footcandle is equal to one lumen per square foot. The lumen-output values shall be the initial lumen output ratings of a lamp.
  3. No luminaire shall produce a stray, dazzling light or reflection onto neighboring residential properties, or onto any public road so as to impair the vision of any driver.
- D. Luminaires shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent buildings. No luminaire shall emit any direct light above its horizontal plane.
- E. No flood or spot luminaire of any lumen output rating shall be aimed, directed or focused toward any adjacent or nearby residential parcel.
- F. Rather than leaving security lights on, the use of motion sensors is encouraged.
- G. Direct or indirect illumination shall not exceed 1/2 footcandle upon abutting residential properties.
- H. Luminaire height, including the base, shall not exceed 25 feet. Exceptions may be granted only when it can be demonstrated that the intent of this section will still be substantially met.
- I. Existing nonconforming luminaires.



1. The continued use of nonconforming luminaires legally existing as of the effective date of this section shall be permitted unless determined to be a safety hazard.
2. Nonconforming luminaires replaced or moved after the effective date of this section shall comply with the provisions of this section.

## **18. Signs**

The following provisions shall apply to all new or replacement signs for outdoor display in Newburgh, excepting name signs identifying residential occupants, farms and tree farms.

### **A. Dimensions**

1. Single signs shall be allowed up to 32 sq. ft. each, whether free-standing or attached to a structure. The maximum total sign area per business shall be 50 sq. ft.
2. Double-sided signs with equal and parallel faces shall be measured as if they were single-sided, because only one side can be seen at a time.
3. Signs may be allowed to be larger in area when they advertise a group of businesses located in a single building, mall, plaza or office park. In such cases, the maximum permitted sign area shall be 16 sq. ft. for the sign bearing the name of the building, mall, plaza or office park; and 2 sq. ft. for each business or office located there. In addition to the group sign, each business in the mall, plaza, or office park may have a sign on their premises, up to 32 sq. ft. in area.

### **B. Height**

1. Free-standing signs may be up to 15' high, measured with respect to the average ground grade.
2. Roof signs or signs above eaves level of building are not allowed to extend beyond the peak of the roof. However, signs mounted on a parapet wall which extends above the roofline may be permitted, provided they don't extend above the top of the parapet.

### **C. Location**

1. As required by state law (Title 23, MRSA, Sect. 1914), no signs may be located:
  - a. Within 33 feet of the center-line of any public way if the highway is less than 66 feet in width;
  - b. Within 20 feet from the outside edge of the paved portion of any public way with more than 2 travel lanes and a total paved portion in excess of 24 feet in width; or
  - c. Within the full width of the right-of-way of any public way, whichever is stricter.
2. Signs shall be placed at least ten feet from any side lot lines, and shall be placed so as not to obstruct the view of traffic.

### **D. Lighting**

1. Flashing, moving, or animated sign shall be prohibited. (This shall not prohibit signs which swing from hooks.)
2. Signs will be illuminated only by shielded non-flashing lights so as to effectively prevent beams or rays of light from being directed at neighboring residential properties or any portion of the main traveled way of a roadway, or is of such low intensity of brilliance as not to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with the operation thereof.
3. Plastic signs which are internally lit shall be allowed, provided they contain dark backgrounds with light-colored letters or symbols (to reduce roadside glare). When plastic signs are to be externally illuminated, they may be any color.

### **E. Miscellaneous**

1. Strings of light bulbs, pennants, propellers, etc. shall not be permitted, except as part of a holiday celebration.

2. Mobile signs, such as those mounted on a movable chassis (with or without wheels) may be displayed for up to fifteen days at a time, and no more than two times in any twelve month period.

#### **F. Administration**

Prior to erecting a sign or replacing an existing sign, owners shall first submit a drawing to the Building Inspector showing the dimensions, location, materials, and illumination proposals. The Building Inspector shall issue a permit if the application meets all the requirements of this ordinance and conforms with all applicable state laws. Unless exempted below, in paragraphs G or H, no sign may be erected or replaced without a permit.

#### **G. Exceptions:** For the purpose of this Section, the term “sign” shall not include:

1. Signs erected for public safety and welfare or pursuant to any governmental function.
2. Directional signs solely indicating entrance and exit placed at driveway locations, containing no advertising material, and where display area does not exceed three square feet or extend higher than seven feet above ground level.
3. Signs relating to trespassing and hunting, not exceeding two square feet in area.
4. Temporary sign advertising property for lease or sale, and political campaign signs.

#### **H. Non-Conforming Signs**

1. **Maintenance:** Any new sign of different size, shape, or material replacing a non-conforming sign shall conform to the provisions of this Section, and the non-conforming sign shall not thereafter be displayed.
2. **Replacement:** Any new sign of different size, shape, or material replacing a non-conforming sign shall conform to the provisions of this Section, and the non-conforming sign shall not thereafter be displayed.
3. **Continuance:** Any conforming sign may continue to be displayed indefinitely. Signs which exceed the maximum standards for area shall be brought into compliance with this ordinance.
  - A twelve-month extension may be granted once to any sign-owner, by Selectmen, continuance of the sign, and if it finds that the sign has been well-maintained. Such extension shall not be granted to any applicant whose premises are in violation of other town requirements.
  - Signs not removed within these time limits shall be removed by the Town, if the sign owner of property owner fails to do so after being so instructed by the Selectmen. Costs of said removal shall be borne by the property and/or sign owner and may be recovered by the Town, if necessary, in an action of contract in the District court.

### **4. STANDARDS APPLICABLE TO SPECIFIC LAND USES**

1. **Automobile Junkyards/Graveyard:** The following performance standards are required of all automobile graveyards, junkyards and automobile recycling businesses, whether new or existing.
  - A. The site must be enclosed by a visual screen at least 6 feet in height and built in accordance with the requirements of Title 30-A MRSA, Section 3754- A(1)(A)(1)-(4), and any regulations of the Maine Department of Transportation;
  - B. No vehicle shall be stored within any protected zone of any water body or inland wetland.
  - C. No vehicle shall be stored within three hundred (300) feet of public or private well (excluding owners), school, church or public playground or public park;
  - D. No vehicles shall be stored over a sand and gravel aquifer or aquifer recharge area as mapped by the Maine Geological Survey or by a licensed geologist;
  - E. No vehicle shall be stored within a floodplain;

- F. Upon receiving a motor vehicle, the battery shall be removed, and the engine lubricant, transmission fluid, brake fluid and engine coolant (air conditioners included) shall be drained into watertight, covered containers and shall be recycled or disposed of according to all applicable Federal and State laws, rules and regulations regarding disposal of such waste material. No discharge of fluids from any motor vehicle shall be permitted into or onto the ground.
- G. No vehicle shall be closer than twenty (20) feet from a lot line.
- H. All vehicles, once stripped of valuable parts shall be removed from the lot to a metal recycler. Any vehicle remaining over one (1) year shall be considered as junk metal to be recycled.
- I. No more than four (4) tires per vehicle shall be allowed to be stored in the yard. Scrap tires shall not be allowed to accumulate into a scrap tire pile. All tires shall be disposed of in an appropriate facility and manner in accordance with State and Federal regulations.
- J. No open burning of salvage materials or junk shall be permitted on the premises. Waste fluids and unusable materials shall be disposed of in a duly licensed disposal facility.
- K. The Planning Board and/or Code Enforcement Officer may attach reasonable conditions to the permit covering the operation and use of the automobile graveyard, junkyard or automobile recycling business to ensure compliance with the foregoing standards, and any other applicable ordinances, laws or regulations.

## 2. **Backlots**

Single-family dwellings and duplex dwellings shall be permitted on backlots, provided that they are served by a private street/driveway meeting the standards of this ordinance, subject to the following provisions:

- A. Up to two (2) new “back lots” (without road frontage) may be created from any preexisting lot of record and shall require:
  - 1. Twice the minimum lot size.
  - 2. A right-of-way no less than 50 feet wide, except that in no case shall such private right-of-way be required to be wider than the public street which it intersects, and providing the creation of said right-of-way does not leave the original lot nonconforming in terms of area or frontage.
  - 3. Accessed by a minimum twelve (12) foot wide driveway containing eighteen (18) inches of gravel, with drainage ditches and culverts at appropriate points.
- B. The Board of Appeals may allow a reduction of these standards upon a finding that backlots will be provided with safe access and that the proposed reduction in requirements is otherwise in conformance with conditions for approval. In granting appeals or special exception approvals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this section, to assure that there will be no adverse effects on adjacent properties, and to assure that the proposed use or modification will be compatible with other uses in the neighborhood or district.
  - 1. Such conditions for approval may be imposed based upon the following factors:
    - a. The location of buildings, drives, parking areas, lighting, signs, and other outdoor storage areas.
    - b. Access to the site for vehicular and pedestrian traffic and emergency access.
    - c. Sight distance at access points.
    - d. Fences, screening and buffering.
    - e. Landscaping and storm drainage.
    - f. Garbage storage and snow storage areas.
    - g. Any other factors relating to the impact of the proposed use on neighboring properties or on the public health, safety, and welfare.

2. The concurring votes of at least three members of the Board shall be required for the approval of any appeal or application.
- C. Where a lot is in existence and is provided access by a private right-of-way recorded at the Penobscot County Registry of Deeds prior to the adoption of this chapter, these provisions shall not apply.
3. **Multi-Family Housing:** Not to exceed four dwelling units, per lot, in the residential and agricultural/business district and in the residential and agricultural/general purpose district. Final “As-Built” plans must be recorded with the Registry of Deeds.

Definitions based upon current Building Ordinance: The word “dwelling” shall mean a fixed structure containing one or more dwelling units. The phrase “dwelling unit” shall mean a structure comprising a room or group of rooms designed and equipped exclusively for use as a single housekeeping unit, including provisions for living, sleeping, cooking and eating.

#### 4. **Flexible Residential Development**

**A. Purpose** - The purpose of flexible residential development is to ensure that residential development in Newburgh, to the maximum possible extent, respects the natural features of the land including wetlands and watercourses, the rural character of the community which is exemplified by its open fields, pastures, stone walls, and working farms, those lands identified as sites of significant species of plants and/or wildlife, the integrity of ancient ways, scenic views and vista, historic sites and the tradition of recreational access to resource lands. The purpose of these provisions is to allow for innovative concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the land Use District in which the development is proposed.

#### **B. Basic Requirements**

1. All the requirements and standards of these regulations, except those dealing with lot layout, dimensions and roadways shall be met.
2. The minimum area of land in a flexible residential development shall be ten acres, except where there is public water and sewer.
3. Flexible Residential Development is required for all major subdivisions which will front town maintained roads, and may be required for any minor subdivision.
4. Determination of housing density is to be based upon net buildable area. This provision ensures that extremely steep slopes or other unbuildable areas are not counted when the number of new homes to be permitted are calculated.
5. The plan shall indicate the location of all proposed roads, structures, parking areas, footpaths and common lands.
6. No building shall be constructed on soil types in Penobscot County, Town of Newburgh, classified by the Soil and Water Conservation District as being poorly or very poorly drained.
7. Buildings shall be oriented in order to preserve and protect scenic vistas, natural landscape features, topography, south-facing slopes, and natural drainage areas in accordance with an overall plan for site development and landscaping.
8. All buildings or other structures to be constructed must at least meet the minimum setback requirements of the Newburgh Building Ordinance in regard to abutting properties or ways. To protect abutting properties from undue impact from the grouping of dwelling units, the Board may require greater building setbacks and the maintenance and/or planting of buffers of natural vegetation. The Board’s decision, however, may

provide that setbacks for structures from interior lot lines be of lesser dimension than that established by the Building Ordinance.

9. When necessary to conform to this section the Board may set forth conditions in its decision including but not limited to the following:
  - a. Granting of a covenant or easement to ensure that existing fields or pastures will be plowed or mowed periodically with attention given to the requirements of existing animal and plant species.
  - b. Granting of an easement providing and defining rights of existing, legally established public access.
  - c. Designation of no-cut or limited clearing areas or lots.
  - d. Measures to ensure the maintenance of scenic views and vistas.
  - e. Specific approval of the uses allowed in designated common areas and recreational areas including the requirement that before construction of any recreational structures such as tennis courts, swimming pools or accessory clubhouses, plans be submitted to the Board for review.
  - f. To preserve rural character in a flexible residential development, the Board may allow roads to meet a lesser standard than required by the Newburgh Street Ordinance (i.e. 2-rod road).

### **C. Dedicated Common Land**

#### **1. Dedication and Maintenance of Common Lands and Services**

- a. All common land shall be owned jointly or in common by the owners of the dwelling units by means of an incorporated home-owners association, by an association which has as its principal purpose the conservation or preservation of land in essentially its natural condition.
- b. Any proposed agricultural or common land, unless conveyed for conservation/passive recreational use to a non-profit land conservation organization, approved by the Board, shall be covered by a restriction enforceable by the Town or non-profit land conservation organization providing that such land shall be used only for the purpose specified in the special permit. Such restriction shall conform to the standards of the Environmental Quality, Maine Soil and Water Conservation Commission (Handbook). All proposed common agricultural or common land shall be kept in its natural state or be used for woodland and agricultural operations, including, but not limited to, the cultivation and harvesting of crops, flowers and hay, the planting of trees and shrubs and the mowing of grass, the grazing of livestock, the construction and maintenance of fences necessary or appropriate in connection therewith, provided such activities are in accordance with good woodland and agricultural management practices. Such restrictions may provide for easements for underground utilities, including wells, and septic systems, to service lots in the development, as set forth in the bylaws of the Home Owners association.
- c. Further subdivision of the land is prohibited.
- d. The common areas shall be shown on the Final Plan with appropriate notation on the plan to indicate that is shall not be used for future building lots.
- e. If any or all of the common lands and services are to be reserved for the use of the residents, the bylaws of the proposed homeowners association shall permanently guarantee maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.

#### **2. Provisions for Ownership and Maintenance of Common Lands/Dedicated Agricultural Land:**

- a. Covenants for mandatory membership in the homeowners association setting forth the owners' rights, interests, and privileges in the association and the common



property, shall be reviewed by the Board and included in the deed for each lot or dwelling.

- b. The homeowners association shall have the responsibility of maintaining the common lands:
- c. The association shall levy annual charges against all lot owners to defray the expenses connected with the permanently guaranteed maintenance of common lands and tax assessments.
- d. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place.

**3. Retention of Common Land/Dedicated Agricultural Land & Natural or Historic Features**

- a. In any subdivision, the Board may require the developer to provide a minimum of 1/3 of his total area as common lands. The developer may instead make a payment in-lieu-of dedication into a municipal land acquisition or improvement fund equal to the value of a minimum of 1/3 of his total area. The developer may propose a combination of dedicated land and cash-in-lieu which would equal the 1/3 total area minimum for the Board’s approval. Payment in-lieu-of dedication shall be calculated at the market value of land at the time of the subdivision, as determined by the municipal tax assessor, and deposited into a municipal land acquisition or improvement fund.
- b. Land reserved for common land purposes shall be of a character, configuration and location suitable for the particular use intended. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Board may deem suitable and no less than twenty five feet of road frontage.
- c. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc. where necessary and appropriate.

**5. Agricultural Land Conservation and Development Standards.**

**A. Purpose:** The purpose of this section is to allow landowners a reasonable return on their holdings, in such a way that the majority of existing open field, pasture, or woodland registered under the Maine Tree Growth Tax Law may remain unbuilt for use by future generations. Toward this end, all residential subdivision development proposals encompassing 10 or more acres of existing open fields, pasture, or woodland registered under the Maine Tree Growth Tax Law shall be laid out according to the flexible residential development standards in Section 13 above, and in a manner consistent with the Newburgh Subdivision Review Standards.

On any parcel meeting the above criteria, which is proposed for development, which contains land that is not either open field or pasture, new dwellings shall be clustered on such land to the most practical extent, so that the fields and pasture remain as undeveloped as possible.

**B.** Dwelling units shall be arranged so that not more than one acre of land is developed for every two dwellings built (including roads) subject to the determination of “suitable land for development” below. The above building densities shall be based on the following table, which shows the percentage of land in various drainage categories which may be counted as “suitable land for development”.

<b>Somewhat Poorly and Poorly Drained Soil</b>	<b>Very Poorly Drained Soil</b>	<b>Other</b>
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50%	0%	100%
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- C. In order to determine the maximum of dwelling units permitted on a tract of land, the total acreage allowed to be included (on the basis of the above table), less the land needed for roads, is divided by the minimum lot size required in the district. The “total acreage” includes all land within the overall parcel, including that portion which is to become permanent open space. A high-intensity soil survey by a Registered Soil Scientist shall be submitted to certify the extent and location of these soil types.
- D. To the fullest extent practicable, all buildings and roads shall be located away from the soil types which are most suitable for agriculture or silviculture (based on the “Soil Suitability Guide or Land Use Planning in Maine”). This provision does not apply to the location of on-site septic disposal facilities, which must be placed on soil meeting the standards of Maine State Plumbing Code.
- E. Applicants for subdivision review under this subsection shall provide the Planning Board with copies of deed covenants (with prospective purchasers) or conservation easements (with the Town of Newburgh) describing land management practices (to be followed by the developer and/or a community association of homeowner association) which will ensure that existing fields or pastures will be plowed or mowed at least once every year.
- F. Farmland (or woodland) owners are not required to sell that part of their property which is to become open space provided that they convey the development rights of that open space to the town or a land trust, in a conservation easement prohibiting future non-agricultural (or silvicultural) development.

**6. Home Occupations**

- A. A home occupation is an occupation or profession which is carried on in a dwelling unit or structure accessory to a dwelling unit, and which is clearly incidental and subordinate to the use of the lot for residential purposes.
- B. Any home occupation which may be carried out without 1) altering residential character of the neighborhood; or 2) changing the character of the lot from its principal use as a residence, shall be permitted if it complies with the requirements of this section.
- C. The following requirements shall be satisfactorily demonstrated to the Planning Board before it may issue a home occupation permit:
  - 1. The home occupation shall be carried on by members of the family residing in the dwelling unit, with not more than 2 full time employment positions filled by persons who are not members of the family;
  - 2. The home occupation shall be carried on wholly within the principal and accessory
  - 3. structures;
  - 4. The home occupation shall not occupy more than 1000 square feet of floor area or more than 50% of total floor area of the principal structure, whichever is less;
  - 5. The “good neighbor” performance standards of this ordinance shall apply with regard to noise, smoke, dust, odors, signs, etc.
  - 6. No traffic shall be generated by such home occupation in a volume greater than would normally be expected during the day time in a residential neighborhood.
  - 7. Off-street parking up to 5 spaces should be provided as follows:
    - a. One space per employee not residing in the dwelling unit;
    - b. One space per 200 square feet of the home occupations’ occupied space if the home occupation involves clients.
    - c. Home occupations requiring more than 5 spaces are subject to Off-Street Parking (Non-Residential) requirements.

8. No exterior signs or displays other than one sign with a maximum area of six-square feet visible in each direction along the road shall be permitted, and no other exterior indication of the home occupation or variation from the residential character of the principal building is allowed.
9. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises, and to catalog items ordered on the premises by customers.
10. The term “home occupation” shall also include both professional and personal services (such as physicians, dentists, lawyers, architects, real estate or insurance agents, barbers, hairdressers, watch/lock repair, authors, and similar business compatible in residential areas), within the limits on number of employees, etc. for home occupations.
11. Farm produce raised on the premises shall not be classified as a Home Occupation unless a roadside stand exceeding 40 sq. ft. in area is proposed to be built. Likewise, yard sales occurring on less than three weekends or less than six consecutive days during the period May 1 through September 30 shall not be considered to be home occupations and shall not require any review or permits.

**7. Campgrounds:**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following (in cases of possible conflict, the stricter shall apply):

**A. General**

1. A campground must be constructed on at least 10 acres of land, and all camping units or structures shall be located at least 200 feet from any residence (except residences belonging to the campground owners).
2. Campsites shall be laid out or screened in such a manner that none are within view from public roads, navigable rivers, existing residences or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms, or solid fencing may be used to achieve this screening standard, when campsites would otherwise be visible from the location described above.
3. The management of campground shall be responsible for operating their premises in accordance with all Town codes and ordinances and all State laws and regulations. The maintenance of all open space areas, roads, and utilities in a park shall be the responsibility of the park management.
4. A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: twelve weeks for the period May 15 to September 15 of each year, and two weeks for all other times. Only camping units such as defined herein (plus a towing vehicle), shall be permitted within any camper park, temporarily or otherwise.
5. No trailers other than recreational vehicles as defined herein shall be permitted within any camper park, temporarily or otherwise. No camping unit shall be stored or exhibited for sale for commercial purposes within the park.
6. Tent sites and sites for recreational vehicles (RV’s) shall be laid out so that the density on each developed acre of land does not exceed the standards below (in terms of site per acre of land, excluding circulation roads):

	Non-Shoreland	Shoreland Area
Tent Sites	14 per acre	8 per acre
RV Sites	11 per acre	6 per acre



7. Minimum frontage per site along any shoreline shall be 100 feet. Minimum setbacks from the shoreline shall be 75 feet for all recreational vehicles, tents, or other vehicles and temporary or permanent structures.

#### **B. Parking and Circulation**

1. A minimum of two hundred square feet of off-street parking plus maneuvering space shall be provided for each recreational vehicle, tent, or shelter site. Recreational vehicles shall be so parked in spaces that:
  2. there shall be a minimum of 25 feet between vehicles, and that
  3. there shall be a minimum of 45 feet between all recreational vehicles and tents, and all public rights-of-way located inside the boundaries of the trailer park or campground.
4. Vehicular access shall be provided in conformance with the standards of the Maine Department of Transportation traffic personnel for size, location, site distance, grade separation, and possible future changes in highway alignment on any affected public roads. Roads shall be constructed of at least 12' of bank run (no stone larger than 4") gravel.

#### **C. Health and Safety**

1. Each recreational vehicle, tent, or shelter site shall be provided with a picnic table and trash receptacle. Within a maximum of one hundred and fifty feet from each campsite, there shall be a container capable of storing the amount of refuse that the camping area for which it was designed could generate in one week. The park management shall dispose of refuse from said containers by transporting the refuse in a closed truck or in enclosed containers or bags to an approved disposal area at least once a week.
2. A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the State of Maine Department of Human Services. In no case shall less than one toilet, lavatory and shower be provided for each sex for every ten camping and tent sites.
3. All RV (recreational vehicle) site shall be equipped with water and sewage hook-ups, connected to approved distribution or disposal systems; or a central water supply and sewage holding tank shall be installed, in compliance with all applicable state regulations.
4. Fire extinguishers and/or fire hoses shall be kept in all service buildings. A suitable ingress and egress shall be provided so that every campground may be readily serviced in emergency situations. 24 hour emergency communication services (e.g. telephones) shall be provided.

#### **D. Planning and Review**

1. Roads, parking, campsites and required facilities shall be planned in accordance with the basic principles outlined below, and shall be shown on the proposed plan which is submitted for review and approval by the Planning Board.
  - a. A logical sequence of entry and circulation should be created: entrance, administration and storage, parking, campsites, toilets and laundry, playing fields and shoreline.
  - b. Campsites should be clustered in groups according to intensity of use (low density, medium density, etc.) serving a number of campsite clusters. The purpose is to minimize road length, increase accessibility, and preserve open space.
  - c. Footpaths and roads should follow "desire lines" of pedestrian and vehicular movement between campsites and all jointly used facilities. Parking areas may be grassed, reinforced with open concrete blocks.
  - d. Access roads shall be laid out as loops to the greatest extent that is practicable, although "cul-de-sacs" or "dead-ends" may be allowed to serve up to 20 campsites.
2. A soil erosion and sedimentation control plan meeting the standards of the Penobscot County Soil and Water Conservation Commission shall be submitted. In addition to data

soils, slopes and drainage, a vegetation map showing the following items may be required:

- a. The major types of vegetation should be identified and described (as to age, height, openness or density, and pattern – either natural or reforested)
  - b. New planting should be selected to provide screening and shelter, to tolerate existing and proposed site conditions, and to blend compatibility with existing natural vegetation.
  - c. All vegetative clearing should avoid creating straight-line edges between open land and surviving stands.
  - d. Areas of activity and/or traffic should be sited to avoid wildlife areas (such as thicket for birds and small mammals, or deer yards and trails).
3. **Shoreland Campgrounds:** Campgrounds in the Shoreland zones shall also be designed in conformance with all relevant performance standards in the State-Mandated Shoreland Zoning Ordinance.

### 8. **Kennels, Boarding Kennels, and Veterinary Clinics**

- A. All enclosed kennels or parts of veterinary buildings where animals are kept shall be constructed of masonry (to at least four feet above finished floor level) to provide for cleanliness, ease of maintenance, and noise control.
- B. If outdoor “runs” are provided, they shall be completely fenced in (6 feet high) and shall be paved with cement, asphalt or a similar material to provide for cleanliness and ease of maintenance.
- C. If outdoor “runs” are provided, they shall be located at least 100 feet from any property line and at least 200 feet from the nearest dwelling existing or under construction on the date of the kennel or vet clinic’s application. (This setback requirement shall not apply to the vet’s or kennel proprietor’s own dwelling.)
- D. Temporary storage containers for any wastes containing or including animal excrement shall be kept tightly covered at all times, and emptied no less frequently than once every four days. Such containers shall be made of steel or plastic to facilitate cleaning, and shall be located in accordance with the setbacks required for outdoor runs.
- E. Any incineration device for burning excrement – soaked waste papers and/or animal organs or remains shall not be allowed. Disposal of above shall conform to DEP regulations.
- F. Kennels, boarding kennels and veterinary clinics shall not be located on lots having less than three acres in size.
- G. All other relevant “good neighbor” performance standards in this ordinance (such as for noise and odor) shall also be observed.

### 9. **Telecommunication Towers**

Newly constructed cellular telecommunication towers and related equipment shall be consistent with the following guidelines. Existing cellular telecommunication towers that exceed the applicable height and setback standards shall be grandfathered and additional cellular telecommunication equipment may be added but no additional height above what is allowed by these regulations may be added.

#### A. **Cellular telecommunication equipment.**

1. The installation and placement of new antennas, cellular service support structures on existing towers or on other existing structures shall be treated as a permitted use consistent with the Land Use Ordinance for the nature and extent of the proposed additions or changes.
  - a. Cellular telecommunication equipment shall be allowed in all zoning districts except the Resource Protection District as a permitted use.

2. All new cellular telecommunication equipment shall demonstrate its consistency with all applicable FCC regulations.

**B. Cellular telecommunication towers.**

Construction of new cellular telecommunication towers shall be consistent with the provisions of this section and the district in which they are located.

1. The installation and placement of new antennas, cellular service support structures on existing towers or on other existing structures shall be treated as a permitted use consistent with the Land Use Ordinance for the nature and extent of the proposed additions or changes.
2. Cellular telecommunication equipment shall be allowed in Commercial and Residential zoning districts except the Resource Protection District as a permitted use.
3. All new cellular telecommunication equipment shall demonstrate its consistency with all applicable FCC regulations.

**C. Submission Standards**

In addition to the information required for site plan review, applicants for cellular telecommunication towers shall:

1. Provide documentation as to the need for service in the location sought either by existing underserved users or a lack of coverage in the location requested.
  2. Send written notice to all other such tower structure owners and licensed telecommunication providers in the town on existing towers within a one-mile radius of the proposed tower, stating their locational needs and/or co-location capabilities. Evidence that this notice requirement has been fulfilled shall be submitted to the Planning Board.
  3. Include evidence that existing or previously approved towers and alternative tower structures within the Town have been reviewed and cannot accommodate the communications equipment (antennas, cables, etc.) planned for the proposed tower.
  4. Provide written approval by all applicable state and federal agencies, including but not limited to the FAA and FCC, including a description of any conditions or criteria contained in their approval.
  5. The cellular tower and equipment compound shall be enclosed by security fencing a minimum of eight feet in height to minimize unauthorized access.
- D.** Cellular telecommunication towers shall be deemed abandoned if not used continuously for more than 24 consecutive months, and the tower owner shall remove the tower and related equipment at the tower owner's expense from the site within 12 months after the tower has been deemed abandoned.
- E.** Prior to issuance of a building permit, the applicant shall provide the Town of Newburgh with a bond in the amount of \$25,000 in a form acceptable to the Town office, for the purpose of tower removal should the tower be determined to have been abandoned.
- F.** Such structures will be set back from the property line 100% of the structure height plus fifty (50) feet from any property lines, Resource Protection District, Park and Open Space District, and Stream Protection District.
- G.** No cellular telecommunication tower shall exceed 170 feet in height, unless otherwise restricted by Federal Law.
- H.** The Planning Board may require the redistribution of plantings within the buffer yard to maximize the effectiveness of the visual buffer on adjacent properties.
- I.** Procedure. At the discretion of the Planning Board, a public hearing may be held.

**10. Auxiliary Private Wind Turbines**

- A. Purpose.** To promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility-supplied electricity.

- B. Zones where allowed. Small wind energy systems shall be allowed as accessory structures in all zoning classifications, subject to all other applicable provisions of this section.
- C. Maximum wind turbine tower height. Tower height shall not exceed 80 feet if the lot size is less than 5 acres and 100 feet if the lot size is greater than 5 acres. Nothing herein shall be construed to preempt any height limitations imposed by FAA regulations.
- D. Setback. The base of the wind system structure shall be set back from all property lines a minimum distance equal to the height of the wind system structure (including fully extended blades), plus 25 feet.
- E. Noise. Small wind energy systems shall not exceed 60 dBA, as measured at the property line. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
- F. Approved wind turbines. All small wind turbine designs must be approved by the Emerging Technologies Program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
- G. Compliance with International Building Code. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the International Building Code and certified by a licensed professional engineer shall also be submitted. Wet stamps shall not be required.
- H. Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
- I. Compliance with National Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- J. Utility notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid and arid systems shall be exempt from this requirement.
- K. A Building permit shall be required upon Planning Board approval.

## 11. **Solar Energy Systems:**

- A. **Purpose:** It is the purpose of these performance standards to enable the Town to: regulate the permitting of residential, commercial, and industrial solar energy systems; be informed of the placement of residential and commercial solar energy systems; preserve and protect public health and safety; allow for the orderly development of land; and protect property values in the Town of Newburgh.
- B. **Classification:**
  - 1. **Private Residential Solar Energy Systems (PRSES):** An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for on-site residential use, and consisting of one or more free-standing, ground mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power and/or fuels. Solar arrays or modules that are flush-mounted on the roofs or walls of private residences shall not be subject to PRSES performance standards or permit requirements for same. PRSES can be up to 2,000 square feet in surface area, with a rated nameplate capacity of up to 20kW.
  - 2. **Commercial Solar Energy Systems (CSES):** An area of land or other area used by a business for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for on-site commercial use, and consisting of one or more free-standing, ground or

roof mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power and/or fuels. CSES can be up to 20,000 square feet in surface area, with a rated nameplate capacity of up to 250 kW.

3. **Industrial Solar Energy Systems (ISES):** An area of land or other area used by a property owner and/or corporate entity for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for off-site utility grid use, and consisting of one or more free-standing, ground-mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce off-site consumption of utility power and/or fuels. ISES are a minimum of 20,000 square feet in surface area, and can be up to 800 acres in surface area, and there is no limit on the rated nameplate capacity of an ISES.

#### **C. Permits Required**

1. No person shall construct a PRSES, CSES, or ISES without obtaining a permit from the Code Enforcement Officer (CEO) or Planning Board as follows:
  - a. For PRSES, approval by the CEO is required for the construction and/or expansion of all such solar energy systems.
  - b. For CSES and ISES, approval by the Planning Board is required for the construction and/or expansion of all such solar energy systems.

#### **D. Application Procedure**

1. The applicant for PRSES, CSES, and ISES permits must prepare and submit a Land Use Application, on the appropriate form provided by the municipality, to the Code Enforcement Officer or other approved Town Official.
2. CSES and ISES permit applications will also require the following supplemental information:
  - a. Solar system specifications, including manufacturer and model.
  - b. Array/module design and site plans.
  - c. Certification that layout, design, and installation conform to and comply with all applicable industry standards, such as the National Electrical Code (NEC)(NFPA-70), the American National Standards Institute (ANSI), the Underwriter's Laboratories (UL), the American Society for Testing & Materials (ASTM), the Institute of Electric & Electronic Engineers (IEEE), the Solar Rating & Certification Corporation (SRCC), the Electrical Testing Laboratory (ETL), and other similar certifying organizations, the Federal Aviation Administration (FAA), the Maine Uniform Building & Energy Code (MUBEC), fire and life-safety codes (NFPA 1 & 101), and any other standards applicable to solar energy systems. The manufacturer specifications for the key components of the solar energy system shall be submitted with the application.

#### **E. Standards for PRSES Permits**

1. All PRSES shall be setback from abutting property lines, utility lines, and/or public roads or right-of-way by a distance no less than the standard structural setback distance applicable in the zoning district where the system is to be installed. Best Engineering Practices shall be utilized in determining the optimal placement within the above requirements.
2. All PRSES, whether ground or building mounted, shall comply with the structural height restrictions applicable in the zoning district where the system is to be installed. Best Engineering Practices shall be utilized in determining the optimal placement.
3. All ground-mounted electrical and control equipment for PRSES shall be labeled and secured to prevent unauthorized access.
4. All PRSES shall not exceed 50 dB(A), as measured at the closest property line.



5. All PRSES shall be installed so as not to cause any wire or wireless communication signal disturbance.
6. For roof-mounted PRSES it is the owner(s) responsibility to ensure that the roof structure is capable of supporting the additional load of the PRSES.
7. All PRSES shall be situated to eliminate concentrated glare onto abutting structures and roadways.
8. The owner of a PRSES shall be required to remove all components if it hasn't produced power for a period of twelve (12) consecutive months, unless otherwise waived by the CEO or the Planning Board.

**F. Standards for CSES and ISES Permits**

1. There shall be written evidence in the form of letter copies that all applicable State regulatory agencies with jurisdiction over the project have been notified of the pending application and the location of all system components covered by the application.
2. All PSES and ISES panel arrays and/or modules shall be setback from abutting property boundaries by a distance of 75'. In no case may the setback be less than the required setback distance in the zoning district, shoreland area, or floodplain where the system is to be installed. Best Engineering Practices shall be utilized in determining the optimal placement within the above requirements.
3. All CSES and ISES, whether ground or building mounted, shall comply with the structural height restrictions in the applicable zoning district.
4. The application shall include a description of the proposed CSES or ISES facility to include all non-proprietary manufacturer's specifications for the solar panels, components, controls, and other equipment, sound emission levels, normal and emergency operational shutdown procedures, the number and individual ratings of panels in the array and/or modules, and the aggregate generating capacity of the total system. A description of all associated facilities shall also be included.
5. To the greatest practical extent, CSES and ISES shall possess a manufactured finish appropriate to and compatible with the surroundings, with reflective characteristics that minimize negative visual impacts. The Planning Board may require photos of the existing proposed site from various locations and similar photos from the same locations with the system superimposed to aid in evaluating the visual impact, and will take into consideration the limitations of available manufactured finishes.
6. All ground-mounted electrical and control equipment for CSES and ISES shall be fenced and labeled or secured to prevent unauthorized access. The solar array and/or modules shall be designed and installed to prevent access by the public, and access to same shall be through a locked gate.
7. To the greatest practical extent, all electrical wires and utility connections for CSES and ISES shall be installed underground, except for transformers and controls. The Planning Board will take into consideration prohibitive costs and site limitations in making their determination.
8. Exterior lighting for CSES and ISES shall be limited to that required for safety and operational purposes, and shall meet the Newburgh performance standards for lighting.
9. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a solar panel array and/or modules, building, or other structure associated with a CSES and ISES shall be prohibited. No CSES or ISES shall have any signage, or writing or pictures that may be construed as advertising placed on it at any time.
10. The CSES or ISES applicant shall certify that they will comply with the utility notification requirements contained in Maine law and accompanying regulations through



- the Maine Public Utility Commission, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid.
11. All CSES and ISES shall not exceed 60 dB(A), as measured at the property line.
  12. The installation of a CSES or ISES shall be appropriate to the surroundings and shall be located according to Best Engineering Practices. The application shall include site line, photographic and, if applicable, screening information to aid the Planning Board in evaluation of the environmental and visual impact of the construction and operation of the system. The system site shall also be enclosed within an eight (8) foot tall fence with locking gate.
  13. All CSES and ISES shall be installed so as not to cause any wire or wireless communication signal disturbance.
  14. Ground-mounted CSES and ISES shall be screened from view by any abutting residential property, using vegetation, topography, or fencing.
  15. The owner of a roof-mounted CSES or EISES shall provide evidence certified by a TPI that the roof structure is capable of supporting the additional load of the system.
  16. All CSES and ISES shall be situated to eliminate concentrated glare onto abutting structures and roadways.
  17. Decommissioning of the entire facility will begin if twelve consecutive months of no generation occurs at the facility.

In order to facilitate and ensure appropriate removal of the energy generation equipment of a CSES or ISES when it reaches the end of its useful life, or if the applicant ceases operation of the facility, applicants are required to file a decommissioning plan which details the means by which decommissioning will be accomplished. This plan must include a description of implementing the decommissioning, a description of the work required, a cost estimate for decommissioning, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

In the event of a force majeure or other event which results in the absence of electrical generation for twelve months, by the end of the twelfth month of non-operation the applicant must demonstrate to the Town that the project will be substantially operational and producing electricity within twenty-four months of the force majeure or other event. If such a demonstration is not made to the Town's satisfaction, the decommissioning must be initiated eighteen months after the force majeure or other event. The Town considers a force majeure to mean fire, earthquake, flood, tornado, or other acts of God and natural disasters, and war, civil strife or other similar violence.

The applicant will provide financial assurance for the decommissioning costs in the form of a performance bond or a surety bond, for the total cost of decommissioning. The applicant will have the financial assurance mechanism in place prior to construction and will reevaluate the decommissioning cost and financial assurance at the end of years five, ten and fifteen. Every five years after the start of construction, updated proof of acceptable financial assurance must be submitted to the Town for review. Proof of acceptable financial assurance will be required prior to the start of commercial operation.

- G. Expiration of Approval:** All PRSES, CSES, and ISES approvals shall expire within one (1) year of the date of issuance unless work thereunder is commenced. Normally, if work is not completed within two (2) years from the date of issuance, a new application must be made. The CEO shall make determinations regarding commencement and completion. All CSES and ISES approvals shall expire upon decommissioning.

- H. Extension of Approval:** PRSES, CSES, and ISES approvals may be extended for one (1) year from the date of issuance by the CEO for projects not commencing within one (1) year of initial Board approval. Written extension requests must be submitted to the CEO at least forty-five (45) days before the one (1) year expiration. Proposal approvals which are granted a one (1) year extension from the date of issuance shall also have their completion date extended by one (1) year. Before extending an approval, the CEO must determine that extenuating circumstances beyond the control of the applicant exist. Extenuating circumstances may include but are not limited to: procurement of financing; legal issues; availability of materials; availability of qualified contractors; and adverse weather conditions.
- I. Extension of Completion Date:** The CEO may extend the completion date of a commenced approved project by one (1) year beyond the allotted two (2) years. In determining this extension the CEO shall consider factors such as, but not limited to: financial hardship; legal difficulties; site condition problems; contract delay; disruption in supply of labor and/or materials; or personal issues.

## **12. Mineral Exploration and Extraction Filling**

- A. Purpose:** The purpose of this section is to establish minimum removal and reclamation standards, and municipal procedures intended to regulate the removal, processing and storage of topsoil, loam, rock, flat rock, sand, gravel, or similar materials, other than metallic minerals. These standards and procedures are intended to protect the public health, safety, and general welfare: and to minimize the adverse impact of extraction to the town, abutting owners, citizens of the town, and wildlife and natural resources by:
1. Preserving and protecting surface and groundwater quality and quantity;
  2. Preserving the value of property;
  3. Assuring protection of wildlife and wildlife habitat;
  4. Protecting the scenic quality of Newburgh, its environment and it's residents.
- B. Administration:** The provisions of this section shall be administered by the Newburgh's Planning Board and enforced by the Town of Newburgh's CEO and Board of Selectmen.

The Board of Selectmen will establish, after notice and hearing, and may from time to time revise a fee schedule for the various applications and permits required by this section.

- C. Applicability:** The provision of this Section shall apply to all mineral extraction operations (MEO) within the Town of Newburgh, Maine except the following:
1. The removal or filling of material incidental to construction, alteration or repair of a building accessory structure or in the grading and landscaping incidental to such construction, alteration or repair;
  2. The removal or filling of material incidental to construction, alteration or repair of a public or private way or public utility;
  3. The excavation, processing, or storage of less than 100 cubic yards of material on a parcel within the period of one year.
  4. Construction of farm and fire ponds.
- D. District Requirements**
1. **Earth-moving in the General Purpose District and Agricultural/Residential and Business District:** Movement of material in excess of 100 cubic yards requires the approval of the Code Enforcement Office. All relevant performance standards below shall be

observed, including binding agreements to guarantee proper reclamation of the site after operations cease.

2. **Earth-moving in the Shoreline Districts:** any filling or dredging of land below the normal high water mark shall require a Conditional Use Permit from the Planning Board. Any filling or excavation of less than 10 cubic yards per year shall require a permit from the Code Enforcement Officer (except as prohibited above), to ensure proper erosion and sedimentation controls as described in the Shoreland Zoning Ordinance.
3. **Earth-moving in the Resource Protection and Floodplain Districts:** Filling shall be prohibited in these two districts, but excavation or dredging may be permitted within the Floodplain District in accordance with the performance standards of this Ordinance, after review and approval by the Planning Board.

**E. Application:** Within ninety (90) days of approval of this section, all MEOs, shall either;

1. Provide evidence of registration with the Mine department of Environmental protection to the Code Enforcement Officer or
2. Provide statement from the pit owner to the Code Enforcement Officer that the pit was active prior to the 1990 excavation ordinance or
3. Registered with the Planning Board and submitted:
  - a. Registration Fee
  - b. Names and addresses of the current owner of the MEO and the operator, and a copy of the deed or lease if the operator is not the property owner.
4. Submitted the following:
  - a. Scale of drawings, with north arrow
  - b. Boundaries of the tract of land showing lot lines and total acreage of entire parcel
  - c. Existing and proposed excavation areas, depth and height of final excavation
  - d. Structures on property, area used for storage of topsoil and other overburden
  - e. Location of hazardous material storage areas
  - f. Location of existing public and private streets, roadways, right of way, and access road
  - g. Location of residences and wells within 1,000 feet of property boundaries
  - h. Exposed groundwater site
  - i. A reclamation plan describing the implementation of the Performance Standards in Section 19.H.
5. The permit application shall provide the following information:
  - a. An estimated time schedule of future excavation;
  - b. An estimated time schedule for reclamation and closure;
  - c. An estimate of the amount of earth material annually extracted;
  - d. An estimate of the average daily number of trucks taking material in or out of the site;
  - e. Whether processing of material is done on the site, and the nature and amount of that processing;
  - f. Proposed hours and days of operation
  - g. Blasting plan, if any
  - h. A statement regarding the financial resources that will be dedicated and reserved for the reclamation process. This statement should express the dollars per acre that will be reserved for reclamation and the manner that it will be reserved
6. No permit shall be issued for a period to exceed three years, although such permit may be renewed for additional periods in the same manner. If no excavation activity has occurred since the issuance of the last permit, the permit may be extended for two years by the Code Enforcement Officer. The owner is responsible for filing a report (90 days prior to the expiration date of the permit) stating the current operational status of the MEO.

7. Any operation not registered, or which fails to qualify to be registered, pursuant to this section, shall be deemed closed, and may not , after such 90 day period, continue or resume operation, and shall be subject to the civil penalties allowed in 30-A M.R.S.A., section 4452 assessed for each day after the 90 day period.

#### **F. Performance Standards**

1. Mineral extraction operations shall conform to all applicable State Laws and local ordinances or regulations.
2. Where provision of this section conflict with specific provisions of State Laws or other town ordinances, the stricter provision shall prevail.
3. The owner and/or operator of mineral extraction activity shall be responsible, both jointly and severally, for ensuring compliance with this Section.
4. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this section and subsequent approval be met.
5. Where the Code Enforcement Officer and/or Planning Board determine there is a need for testing or measurements of standards, all reasonable testing shall be at the operator's expense.
6. The hours of operation at any extraction site shall be limited to 7 a.m. to 6 p.m.

#### **G. Buffers**

1. All new MEOs must have a natural buffer strip at least 50 feet wide between the working edge of an excavation and any public road or right of way; a strip at least 40 feet wide must be maintained from the edge of any off-site private road. No below grade excavation or mining shall be allowed within 100 feet of any public road or right of way.
2. All new MEOs must have a natural buffer strip at least 100 feet wide maintained between all mineral extraction operations and the closest edge of an existing residence, business, or farm building used for livestock on abutting properties. With written permission of abutter, the above buffers can be reduced to 10 feet.
3. All new MEOs must have property boundary buffers. To minimize impacts and provide for wildlife, a natural buffer strip at least 100 feet wide must be maintained between property boundaries. The natural buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission.
4. Groundwater protection: To provide an adequate buffer for ground water and allow for infiltration of impurities from surface water, excavation may not occur within 5 feet of the seasonal high water table.
5. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products and hydraulic fluids and other on-site activity involving storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the SPCC Plan and follow Performance Standards for the Storage of Petroleum Products as outlined and included in MDEP's Chapter 378, effective January 22, 1997.
6. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.
7. Sediment may not leave the parcel or enter a protected natural resource.
8. Erosion and sedimentation control for access roads and excavation areas must be conducted in accordance with the Department of Transportation best management practices for erosion and sedimentation control.
9. Land shall be restored and stabilized according to the Reclamation Plan.
10. Dust and Air Pollution: Air pollution in the form of dust and dirt shall be kept to a minimum by the use of modern equipment and methods of operation designed to avoid excessive dust,

dirt or other air pollution injurious or substantially annoying to adjoining property owners. Emission of dust and dirt at any point beyond the lot lines shall be prohibited.

11. All access/egress roads leading to/from the extraction site to public ways shall be treated to reduce dust and mud for a distance of at least 100 feet from such public ways.
12. Loaded vehicles shall comply with all State Laws and Regulations and be suitably covered to prevent dust and contents from spilling or blowing from the vehicle. Spillage of extracted materials on public roads shall be the responsibility of the operator.

#### **H. Reclamation**

1. All land areas excavated after the implementation of the 1990 Earth Removal and Filling Ordinance must be reclaimed. The affected land must be restored to a condition that is similar or compatible with the conditions that existed before excavation. Reclamation shall be conducted in accordance with the MDEP's best management practices for erosion and sedimentation.
  2. Highwalls, or excavation walls, must be treated in such a manner as to leave them in a condition that minimizes slope failures and collapse.
  3. Side slopes of gravel pits must be regraded to a slope no steeper than three (3) feet horizontal to one (1) foot vertical.
  4. Within six months of the completion of extraction operations, ground levels and grades shall be established in accordance with the reclamation plan; within 30 days of final grading, topsoil must be placed, seeded and mulched; dependent upon seasonal weather conditions. Vegetable cover must be established on all affected land.
  5. Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or wood plants, shrubs, trees or a mixture of these.
  6. The planting of trees and shrubs shall result in a permanent stand, or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate; and the planting of all material shall result in permanent 90% ground cover.
  7. All structures or temporary shelters and equipment used in an active extraction operation shall be removed within 30 days following completion of active extraction operations.
  8. All affected lands must be reclaimed within 2 years after final grading.
  9. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. Stockpiles must be seeded, mulched or otherwise stabilized.
  10. At least 4 inches of topsoil should be used for final cover.
  11. The site must be reclaimed in phases so that the active extraction area does not exceed 4 acres at any time.
  12. Upon completion of the reclamation, or the reclamation phase, the landowner shall notify the Code Enforcement Officer.
- I. Where activities carried out under this Article require the removal of existing ground cover, revegetation should be carried out. The Planning Board shall set a specific date by which permanent ground cover shall be planted. Applicant shall submit written approval from the appropriate soil and water conservation district. Temporary ground cover (such as mulch) and temporary run-off filters (such as hay bales in swales) shall be used as required to prevent erosion and sedimentation.
- J. Application for a permit for the excavation of any stream banks require prior written approval of the Department of Environmental Protection.



- K. Performance Guarantees and Insurance.** No permit shall be issued without a surety bond or other equivalent security to ensure compliance with such conditions as the Planning Board may impose. The bond or surety shall be in an amount recommended by the Code Enforcement Officer, and approved by the Planning Board, as sufficient to guarantee conformity with the conditions of approval, taking inflation into account. No permit shall be issued for a period to exceed three years, although such permit may be renewed for additional periods in the same manner. Before commencing removal of any earth material, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation; and
- L. Optional Conditions of Permit.** The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the Town which may include those relating to:
1. methods of removal or processing;
  2. days and hours of operation;
  3. type and location of temporary structures;
  4. routes for transporting material;
  5. area and depth of excavations;
  6. provision of temporary or permanent drainage;
  7. disposition of stumps, brush and boulders; and
  8. cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by said activity;
  9. methods of site cleanup, closure, and site restoration.
- M. Existing Operations.** Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this Ordinance becomes effective may operate for a period of two years from effective date.
- Continuation of any existing operation for more than two years shall require a permit from the Code Enforcement Officer. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit.
- N. Additional Review Requirements:** In addition to the forgone review, any MEO shall comply with any other applicable criteria and standards of Article 5 “Good Neighbor” Performance Standards of the Newburgh Land Use Ordinance.

## ARTICLE 6: NON-CONFORMANCE

### 1. Purpose

It is the intent of these provisions to promote land use conformities, except that non-conforming conditions that legally existed before the effective date of this Ordinance, or any amendment thereto, shall be allowed to continue, subject to the requirements set forth in this section.

### 2. General Requirements

- A. Transfer of ownership.** Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- B. Repair and maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs and renovations that do not



involve expansion of the non-conforming use or structure, and such other change in a non-conforming use or structure as federal, state or local building and safety codes may require.

### 3. Non-Conforming Structures

- A. Expansions.** A non-conforming structure may be added to or expanded by up to 30% of the floor area of the structure as it exists as of the date of the adoption of this ordinance, after the owner has obtained a permit from the same permitting authority as that for a new structure, provided such addition or expansion does not increase the non-conformity of the structure.
- 1) Foundations. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided:
    - a) That the structure and new foundation are placed such that the setback and other dimensional requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria listed in subsection B, Relocation, below;
    - b) That the completed foundation does not extend beyond the exterior dimensions of the structure for the portion of the structure that is non-conforming.
- B. Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface wastewater disposal system meets the requirements of State law and State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback or other dimensional requirements to the greatest practical extent, the Planning Board shall base its decision on:

- 1) The size of the lot;
  - 2) The slope of the land;
  - 3) The potential for soil erosion;
  - 4) The location of the septic system and other on-site soils suitable for septic systems;
  - 5) The type and amount of vegetation to be removed to accomplish the relocation.
- C. Reconstruction or replacement.** Any non-conforming structure that is located less than the required setback from the normal high water mark of a water body, tributary stream or upland edge of a wetland, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed by more than 50 percent of the market value of the structure before such damage, destruction or removal may be reconstructed or replaced provided that a permit is obtained within two year of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface wastewater system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming structure that is damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit from the Code Enforcement Officer.

In determining whether the building reconstruction or replacement meets the setbacks to the greatest practical extent, the Planning Board shall consider, in addition to the criteria in subsection B, above, the physical condition and type of foundation present, if any.

#### 4. Non-Conforming Uses

**A. Expansions.** Expansion of nonconforming uses may be allowed provided the Planning Board after reviewing written application determines that no greater adverse impacts would occur as the result of the expansion as defined below:

1. The expansion of a nonconforming use will be in accordance with any applicable Performance Standards set forth in this Ordinance.
2. The expansion of a nonconforming use will be in accordance with any applicable Performance Standards set forth in this Ordinance.
3. The expansions of the nonconforming use will not encroach further on the required setbacks.
4. The proposed expansion is of the same character or less noxious than the current nonconforming use.
5. The expansion use will not create a traffic hazard nor increase an existing traffic hazard.
6. That the amount of parking required to meet the minimum requirements for the proposed use exists on the site or will be otherwise provided in accordance with this Ordinance.
7. The amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed expansion shall be equal to or less than the present use.
8. The hours of operation of the proposed expansion will be compatible with the existing, surrounding land uses.
9. The proposed use will not increase the adverse impact on surrounding properties.

**B. Resumption prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or that is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding 5-year period.

**C. Change of use.** An existing non-conforming use may be changed to another non-conforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and that the proposed use will have no greater adverse impact on adjacent properties than the former use. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new non-conforming uses.

#### 5. Non-Conforming Lots

**A. Non-conforming lots.** A vacant, non-conforming lot of record legally existing on the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals. If more than one residential dwelling unit or other use is built, located or created on a non-conforming lot of record, the minimum lot size requirement of the district in which it is located shall be met for each residential dwelling unit and the frontage requirements of the district shall be met. The minimum side setback may be reduced by two-thirds for nonconforming lots of record which were created and built upon prior to the effective date of this Ordinance.

- B. Contiguous built lots.** If two or more contiguous lots or parcels are in the same ownership of record at the time of adoption or amendments of this Ordinance, and if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that, where on-site subsurface wastewater systems are used, lots of at least 20,000 square feet are created and provided further that all such lots meet the requirements of the State of Maine Wastewater Disposal Rules. If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold as a separate lot provided that the above-referenced law and rules are followed. When such lots are divided, each lot thus created shall be as conforming as possible to the dimensional requirements of this Ordinance.
- C. Contiguous lots – vacant or partially built.** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, and if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments thereto, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface wastewater disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules and:

## 6. Vested Rights

Non-conforming use rights cannot arise by the mere filing of a notice or intent to build, or an application for required State permits and approvals. Such rights usually arise when actual substantial construction has begun or, in the case of pending applications, when the substantive review process to determine compliance with substantive performance standards on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both State and local.

## ARTICLE 7: APPEALS

### 1. Appointment and Composition

- A.** The municipal officers shall appoint members of the Board of Appeals in accordance with the requirements of Title 30-A MRSA Section 2691.
- B.** The Board shall consist of five members serving staggered terms of three years.
- C.** The Board shall elect annually a chairman and secretary from its membership. The secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be a public record.

### 2. Powers and Duties

- A. Administrative Appeals.** The board of appeals shall have the authority:
1. To hear and decide administrative appeals, on an appellate basis, from actions by the Planning Board;
  2. To hear and decide administrative appeals, on a “de novo” basis, from actions by the Code Enforcement Officer; and

3. Any order, requirement, decision, or determination made, or failure to act, in the enforcement of a land use ordinance is not appealable to the Board of Appeals. Appeals regarding enforcement go directly to the Superior Court.

**B. Variance Appeals.** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

1. **Dimensional variances only.** Variances may be granted only from dimensional requirements including frontage, lot area, lot width, structure height, percentage of lot coverage, and setback requirements.
2. **No use variances.** Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
3. **Limitations.** The Board of Appeals shall not grant a variance unless it finds that:
  - a. The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
  - b. strict application of the terms of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
    - i. The land in question cannot yield a reasonable return unless a variance is granted; and
    - ii. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
    - iii. The granting of a variance will not alter the essential character of the locality; and
    - iv. The hardship is not the result of action taken by the applicant or a prior owner.
4. **Disability variance.** The Board of Appeals may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property.

For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5 MRSA Section 4553 and the phrase "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

5. **Conditions.** The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions on the variances as it deems necessary.
6. **Certificate.** If a variance is granted under this section, the Board shall prepare a certificate, prepared in recordable form, indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance including any conditions on the variance, has been granted and the date of the granting. The certificate must be recorded by the property owner in the local registry of deeds within 30 days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection.

### 3. Appeal Procedure

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- A. Time limit.** An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within 30 days of the date of the decision that is the subject of the appeal.
- B. Written notice.** Such appeal shall be made by filing with the Board of Appeals a written notice of the appeal that includes:
1. A concise written statement indicating what relief is requested and why it should be granted;
  2. A sketch plan drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.
- C. Record of case.** Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision from which the appeal is made.
- D. Public hearing.** The Board of Appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.
- E. Decision by Board of Appeals.**
1. **Quorum.** A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
  2. **Majority vote.** The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision or determination of the Code Enforcement Officer, or Planning Board, to remand the matter to the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter which it is required to decide under the provisions of this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms.
  3. **Burden of proof.** The person filing the appeal shall have the burden of proof.
  4. **Action on appeal.** Following the public hearing on an appeal, the board may affirm, affirm with conditions, or reverse the decision of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance. When errors of administrative procedure or interpretations are found, the case shall be remanded back to the Code Enforcement Officer or Planning Board for correction.
  5. **Time frame.** The Board shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
  6. **Findings.** All decision shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis for the decision, and the appropriate order, relief or denial.
- F. Appeal to superior court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to superior court in accordance with State laws within 30 days from the date of any decision of the Board of Appeals.
- G. Reconsideration.** The Board of Appeals may reconsider any decision reached within 30 days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.



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**ARTICLE 8: DEFINITIONS**

In this Ordinance, the following terms shall have the following meanings:

**Abutter:** The owner of any property with one or more common boundaries, or across the street or stream from the property involved in an application or appeal.

**Accessory use or structure:** A use or structure that is customarily both incidental and subordinate to the principal use or structure on the same lot. The term “incidental” in reference to the principal use or structure shall mean both a) subordinate and minor in significance to the principal use or structure, and b) attendant to the principal use or structure. Such accessory uses, when aggregated, shall not subordinate the principal use of the lot.

**Agriculture:** The production, keeping, or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. The term shall also include greenhouses, nurseries and versions thereof (but these two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs and/or trees are grown for sale); as well as agri-tourism activities. Agriculture does not include forest management and timber harvesting activities or recreational marijuana.

**Agri-tourism:** outdoor recreational and entertainment activities that involve minimal structural development and that are accessory to the main agricultural activity, such as tours, rides, corn mazes, harvest festivals, special events, catering, educational activities, and other similar activities.

**Agricultural Products Processing:** The manufacturing, handling, treatment, or packing of crops, livestock, or dairy products, produced or raised on farms, including, but not limited to, fruits and fruit products, vegetables, eggs, cheese and other dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, maple products, apple cider, fruit juice, malt liquor, wine, ornamental or vegetable plants, nursery products, fiber or fiber products, firewood and Christmas trees, and excluding rendering plants, fertilizer manufacturing plants, and similar manufacturing operations. Other included activities are cleaning, milling, pulping, drying, roasting, hulling, storing, packaging, selling, and other similar activities. Also included are the facilities or buildings related to such activities. Not to include recreational marijuana.

**Alteration:** Any change or modification in construction, or change in the structural members of a building or structure such as bearing walls, columns, beams or girders, or in the use of a building. The term shall also include change, modification, or addition of a deck, dormer, staircase, or roof of a building.

**Aggrieved party:** A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, or a person whose land abuts or is across the road or street or body of water from land for which a permit or variance has been granted, or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Amusement facility:** Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four (4) or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.



**Animal breeding or care:** The keeping or raising of four or more animals, including domestic animals and pets, for any commercial use. This definition also includes kennels.

**Artisanal Food/Beverage Facility:** A facility wherein artisanal food/beverage products are produced. Products may be retailed for consumption on or off the premises; and the facility may additionally engage in small-scale wholesale distribution of products produced on-site. Examples include, but are not limited to: a facility engaged in small-batch baking; small-scale cheese production; coffee roasting; small-batch vegetable pickling; small-scale meat or fish curing; or a small scale craft brewery, licensed under the relevant state and federal statutes, for the production of malt, wine, or hard cider beverages primarily for on premises consumption and sale with limited distribution to retail or wholesale. An Artisanal Food and/or Beverage Facility shall be allowed to offer guided tours of the facility and tasting rooms. Bottling of beverages is permitted as an accessory to an Artisanal Food and/or Beverage Facility.

**Authorized agent:** An individual or a firm having written authorization to act on behalf of a property owner. The authorization shall be signed by the property owner(s).

**Automobile repair shop:** A business establishment engaged in general repair, engine rebuilding, or parts replacement. Automotive repair shall not mean body, frame or fender straightening and repair or painting and undercoating, nor the sale of gasoline, other motor fuels or motor oil.

**Automobile junkyard/graveyard:** A place where five or more unregistered, unserviceable, discarded, worn-out, or junked automotive vehicles, or bodies, or engines thereof are gathered together.

**Bed and breakfast:** Any dwelling in which transient lodging or boarding and lodging are provided and offered to the public by the owner for compensation for less than one week. This dwelling shall also be the full-time, permanent residence of its owner. Otherwise, it shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

**Boarding, lodging facility:** Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. When the criteria for a family residing in the building cannot be met, the building shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

**Building:** Any three-dimensional enclosure by any building materials or any space for any use or occupancy, temporary or permanent, including swimming pools, foundations, or pilings in the ground, and all parts of any kind of structure above ground including decks, railings, dormers and stairs, and excluding sidewalks, fences, driveways, parking lots, electrical transmission and distribution lines, and field or garden walls or embankment retaining walls.

**Building height:** The vertical distance between the highest point of the roof and the average grade of the existing or original ground adjoining the building, whichever distance is greater.

**Business and professional offices:** The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations including banks and other financial services, but not retail sales nor activities utilizing trucks as part of the business operation.

**Campground:** Land upon which one or more tents are erected or trailers are parked for temporary use for a fee on sites arranged specifically for that purpose. The word “campground” shall include the words “camping ground” and “tenting grounds.”

**Cellular Telecommunications Equipment:** Antennas, receivers or other devices that send, receive, or process cellular telephone signals; not including cellular telecommunication towers, and radio and television broadcast towers.

**Cellular Telecommunication Tower:** Any structure in excess of 10 feet in height that is designed and constructed primarily for the purpose of supporting one or more antennas that send, receive or process cellular telephone signals, including self-supporting lattice towers, guy towers or monopole towers. The term includes personal communication service towers (PCS), microwave towers, common-carrier towers, and cellular telephone towers. The co-location of cellular telecommunication equipment on existing towers, buildings, and other structures does not constitute a new cellular telecommunication tower, provided the antenna(s) does not extend more than 10 feet above the existing structure.

**Cemetery:** Property used for the interring of the dead.

**Church:** A building or structure, or group of buildings or structures, designed, primarily intended and used for the conduct of religious services, excluding school.

**Civic, convention center:** A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a government agency.

**Club:** Any voluntary association of persons organized for social, religious, benevolent, literary, scientific, or political purposes, whose facilities, especially a clubhouse, are open to members and guests only and not the general public, and not engaged in activities customarily carried on by a business or for pecuniary gain. Such term shall include fraternities, sororities, and social clubs generally.

**Code enforcement officer:** A person appointed by the municipal officers to administer and enforce this Ordinance.

**Commercial Greenhouses:** commercial greenhouses used for agricultural products except recreational marijuana is an agricultural use (see definition of agriculture).

**Commercial recreation:** Any commercial enterprise that receives a fee in return for the provision of some recreational activity including but not limited to: campgrounds, racquet and tennis clubs, health facility, amusement parks, golf courses, gymnasiums and swimming pools, etc., but not including amusement facility, as defined herein.

**Commercial school:** An institution that is operated for profit, but is not authorized by the State to award baccalaureate or higher degrees, that offers classes in various skills, trades, professions, or fields of knowledge.

**Commercial use:** Any activity carried out for pecuniary gain.

**Community center:** A building that provides a meeting place for local, non-profit community organizations on a regular basis. The center shall not be engaged in activities customarily carried on by a business.

**Community living arrangement:** A housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

**Comprehensive Plan:** The Comprehensive Plan of the Town of Newburgh.

**Conforming:** A building, structure, use of land or portion thereof, that complies with the provisions of this Ordinance.

**Constructed:** Built, erected, altered, reconstructed, moved upon, or any physical operations on the premises that are required for construction. Excavation, fill, drainage and the like shall be considered a part of construction.

**Day care:** Homes and centers licensed as such by the Maine Department of Health and Human Services.

**Density:** The number of dwelling units per area of land.

**Development:** A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**District:** A specified portion of the municipality, delineated on the land use map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

**Driveway Entrance:** A private driveway, road, field road, or other avenue of vehicular travel that runs through any part of a private parcel of land and that connects or will connect to a Town way at the property boundary.

**Dwelling:** Any building or structure or portion thereof designed or used for residential purposes:

1. **Dwelling unit** – a room or suite of rooms used by a family as a habitation that is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.
2. **Single-family dwelling** – any structure containing only one (1) dwelling unit for occupation by not more than one (1) family.
3. **Two-family dwelling** – A building containing only two (2) dwelling units, for occupation by not more than two (2) families.
4. **Multi-family dwelling** – A building containing three (3) or more dwelling units, such buildings designed exclusively for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

**Essential services:** Facilities for the transmission or distribution of water, gas, electricity or essential communications, or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories but not buildings.

**Extraction:** The removal of earth material; soil, loam, sand, gravel, rock, mineral deposits, etc.; from a site for sale or other commercial purposes.

**Extractive industries:** The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

1. The excavation of material incidental to and at the site of approved construction of buildings, driveways or parking areas;
2. The excavation of material incidental to and at the site of construction or repair of streets; and
3. The excavation, processing or storage of less than ten (10) cubic yards of material on a lot within a one-year period.

**Family:** One or more persons occupying a dwelling and living as a single housekeeping unit, as distinguished from a group occupying a tourist home, rooming house, hotel, motel or inn.

**Filling:** Depositing or dumping any matter on or into the ground or water.

**Flea Market:** The indoor or outdoor sale of used merchandise, customarily involving tables, or space leased or rented to individual vendors. A flea market is a principle commercial use, and is differentiated from “yardsales” and “use to merchandise sales”.

**Flood or flooding:**

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters;
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or changes in water levels of a water body accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similar unusual and unforeseeable event that results in flooding as defined in paragraph 1 of this definition.

**Flood insurance rate map:** The official map of a community, on which the Administrator of the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones.

**Flood plain:** The land areas susceptible to being inundated by water from any source.

**Floodway or regulatory floodway:** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the flood plain, as measured from the normal high water mark to the upland limit of the flood plain.

**Forestry:** The operation of timber tracks, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

**Frontage, road:** The horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

**Frontage, shore:** The horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

**Garage:** An accessory building, or part of a principal building, including a car port, used primarily for the storage of motor vehicles as an accessory use.

**Gasoline service station:** Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

**Grade Elevation:** The height of the ground, especially in relation to nearby buildings.

**Hardship:** See undue hardship.

**Hazardous material:** Any gaseous, liquid or solid materials, either in pure form or incorporated into other materials, designated as hazardous by the Maine Department of Environmental Protection.

**Home Occupation:** A business, profession, occupation, or trade undertaken for gain or profit which is carried on within a dwelling unit or structure with a family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes; and which does not involve any exterior alterations which change the residential character of the dwelling; carried on by at least one resident of the dwelling and up to two unrelated persons; and uses no more than 50% of the dwelling's floor area or no more than 1,000 square feet of floor area. Home occupations shall include, but are not limited to, art or other craft studios, hairdressing or beauty shops, dressmaking, teaching, or professional offices such as that of a physician, dentist, lawyer, engineer, architect, or accountant, real estate broker or agent, or other small home businesses, which may involve the sale, crafting, or other creation of goods or products on the premises, or home vocations which involve the application of a trade or skill, such as a mechanic.

**Hospital:** An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central service facilities, and staff offices.

**Hotel/motel:** A commercial building or group of buildings built to accommodate for a fee travelers and other transient guests who are staying for a limited duration, with sleeping rooms without cooking facilities, each rental unit having its own private bathroom and its own separate entrance leading either to the outdoors or to a common corridor or hallway. A hotel may include restaurant facilities where food is prepared and meals served to its guests and other customers.

**Kennel:** the term kennel shall apply to five (5) or more dogs owned singly or jointly and living on a single premises (e.g. per dwelling unit), for any purpose, including but not limited to breeding, hunting, show, training, hobby, trials, or exhibition purposes. This definition shall not apply to dogs under the age of six months.

**(Boarding) Kennels:** A boarding kennel means any place, building, tract of land, abode, or vehicle wherein or whereon four or more dogs are kept for their owners in return for a fee. This definition shall also include the temporary keeping of three or more animals for grooming purposes in return for a fee, and for animal shelters for lost or stray dogs.

**Land use ordinance:** An ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for those uses.

**Lot:** An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the county registry of deeds.

**Lot area:** The total horizontal areas within the lot lines, minus land below the normal high water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Lot, minimum area:** The required lot area within a district for a single use. The lot area shall be determined on the basis of the “net residential acreage calculation,” contained in this Ordinance.

**Lot, corner:** A lot with at least two contiguous sides abutting upon a street or right-of-way.

**Lot coverage:** The percentage of a lot covered by all structures.

**Lot lines:** The lines bounding a lot as defined below:

1. **Front lot line:** interior lots - the line separating the lot from a street right-of-way; corner or through lots - the line separating the lot from either street right-of-way. Where a right-of-way does not exist or cannot be determined, the front lot line shall be the edge of the paved or graveled area of the road.
2. **Rear lot line:** the lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to and the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front line of least dimension.
3. **Side lot line:** any lot line other than the front lot line or rear lot line.

**Lot of record:** A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the county registry of deeds.

**Lot, shoreline:** Any lot abutting a body of water that is regulated by the shoreland zoning ordinance.

**Lot, through:** Any interior lot having frontages on two more or less parallel streets or rights-of-way or between a street and a body of water, or a right-of-way and a body of water, or between two bodies of water, as distinguished from a corner lot. All sides of through lots adjacent to streets, rights-of-way and bodies of water shall be considered frontage, and front yards shall be provided as required.

**Lot width:** The distance between the side boundaries of the lot measured at the front setback line.

**Manufactured housing:** A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by use of its own chassis or an independent chassis, to a building site.

**Mobile home park:** A parcel of land under unified ownership approved by the municipality for the placement of three (3) or more mobile homes.

**Moratorium:** A land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development.

**Neighborhood convenience store:** A store of less than 1,500 square feet of floor space intended to serve the convenience of a residential neighborhood primarily with the sale of merchandise including



such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items, that may include “sit down,” “dining” or “eat-in” foods or take out windows.

**Net buildable area:** The area of a lot or lots that is usable for determining allowable densities, which is the total acreage available for development, as shown on the proposed development plan, minus the area for the roads of access and the areas which are unsuitable for development. This includes areas of 2 or more contiguous acres with a sustained slopes of 20% or greater, and wetlands.

**Net residential density:** The number of dwelling units per net buildable area.

**Non-conforming:** A building, structure, use of land, or portion thereof, legally existing on the effective date of adoption or amendment of this Ordinance which thereafter fails to conform to all applicable provisions of this Ordinance.

**Nursing home:** A privately operated establishment where maintenance and personal or nursing care are provided for persons who are unable to care for themselves.

**One inch minus gravel:** natural or crushed rock or gravel which is a mixture of sizes no larger than 1” in diameter, and containing approximately no less than 40% material of 1” in diameter and free from flat, elongated, soft, or disintegrated pieces, vegetable material, or other deleterious matter.

**Parks and recreation:** Non-commercially operated recreation facilities open to the general public including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities. The term shall not include campgrounds, or commercial recreation and amusement centers.

**Paving or Paved Surface:** hot mix asphalt pavement or reclaim; minimum 1.5” surface course on 2.5” base course.

**Permitted use:** A use that is listed as a permitted use in one or more of the districts established by this Ordinance. The term shall not include any prohibited uses.

**Planning Board:** The Planning Board of the Town of Newburgh.

**Principal use:** The primary use and chief purpose of a lot or structure.

**Public and private schools:** Primary and secondary schools, or parochial schools, which satisfy either of the following requirements: the school is not operated for profit or as a gainful business; or the school teaches courses of study that are sufficient to qualify attendance in compliance with State of Maine compulsory education requirements.

**Public utility:** Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.

**Recreational vehicle:** A self-propelled or drawn vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, that is not a dwelling, and that may include a pick-up camper, travel trailer, tent trailer or motor home.

**Rental unit:** is a portion of any residential structure rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit.

**Restaurants:**

- a. **Restaurant:** An establishment where food is prepared and served to the public for immediate consumption within the premises; the take out of food on a secondary basis is allowed.
- b. **Drive-through restaurant:** An establishment where food or beverages are sold in a form ready for consumption and vended in disposable containers for consumption on or off the premises at the customer's choice; where the customer has the option of driving a motor vehicle to a window or mechanical device to order and be served with or without exiting the vehicle; or where the customer may enter the premises to order at a take-out counter; and the establishment may have seating within the premises as well.
- c. **Drive-in restaurant and/or dairy stand:** An establishment where orders of food and beverages may be taken and delivered to a motor vehicle that remains in a parking space, or in which consumption of food and beverages normally takes place within the customer's automobile on the establishment's premises.

**Retail business:** A business establishment engaged in the sale, rental or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale.

**Right-of-way:** All public or private roads and streets, state and federal highways, private ways (now called public easements), and public land reservations for the purpose of public access, including utility rights-of-way.

**Road:** An existing state, county or town way or a street dedicated for public use and shown on a plan duly approved by the Planning Board and recorded in the county registry of deeds or a road dedicated for public use and shown on a plan duly recorded in the county registry of deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term shall also include private, undedicated roads that are described in a recorded document. The term "road" shall not include those ways that have been discontinued or abandoned.

**Solar Energy Systems:**

1. **Private Residential Solar Energy Systems (PRSES):** An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for on-site residential use, and consisting of one or more free-standing, ground mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power and/or fuels. Solar arrays or modules that are flush-mounted on the roofs or walls of private residences shall not be subject to PRSES performance standards or permit requirements for same. PRSES can be up to 2,000 square feet in surface area, with a rated nameplate capacity of up to 20kW.
2. **Commercial Solar Energy Systems (CSES):** An area of land or other area used by a business for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for on-site commercial use, and consisting of one or more free-standing, ground or roof mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption

of utility power and/or fuels. CSES can be up to 20,000 square feet in surface area, with a rated nameplate capacity of up to 250 kW.

- 3. Industrial Solar Energy Systems (ISES):** An area of land or other area used by a property owner and/or corporate entity for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for off-site utility grid use, and consisting of one or more free-standing, ground-mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce off-site consumption of utility power and/or fuels. ISES are a minimum of 20,000 square feet in surface area, and can be up to 800 acres in surface area, and there is no limit on the rated nameplate capacity of an ISES.

**Setback:** The minimum horizontal distance from a lot line to the nearest part of a building, including porches, steps and railings.

**Shopping center:** Any concentration of two or more retail stores or service establishments under one ownership or management containing 15,000 square feet or more of gross floor space.

**Short-Term Rental:** a temporary rental of a rental unit for less than 30 consecutive days.

**Structure:** Anything constructed or erected, the use of which requires a fixed location on or in the ground or in the water, or an attachment to something having a fixed location on the ground, including buildings, billboards, signs, commercial park rides and games, carports, porches, and other building features including stacks and antennas, but not including sidewalks, fences, driveways, parking lots, and field or garden walls or embankment retaining walls.

**Swimming pool:** An outdoor, man-made receptacle or excavation designed to hold water to a depth of at least twenty-four (24) inches, primarily for swimming or bathing, whether in the ground or above the ground.

**Undue hardship:** As used in this Ordinance, the words “undue hardship” shall mean all of the following:

1. That the land in question cannot yield a reasonable return; and
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

A variance is not justified unless all elements are present in the case.

**Use:** The manner in which land or a structure is arranged, designed or intended, or is occupied.

**Variance:** A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicants, a literal enforcement of the Ordinance would result in undue hardship as defined in this Ordinance. Variances permissible under this Ordinance are limited to height of buildings, structures, lot size, yard and open space sizes, frontage and setbacks.

**Zoning ordinance:** A type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.