

TOWN OF MARLBOROUGH



ZONING ORDINANCE

2022 EDITION

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THE TOWN OF MARLBOROUGH

ZONING ORDINANCE

(Updated as of March 8, 2022)

SECTION 1: POWER, SCOPE, AND PURPOSES

1.1 GRANT OF POWER, RSA 674:16

For the purpose of promoting the health, convenience of the public, safety or the general welfare of the community, the local legislative body of the Town of Marlborough (affirmative and majority vote by registered voters present at Town Meeting) is authorized to adopt or amend a zoning ordinance under the ordinance enactment procedures of RSA 675:2-5. The zoning ordinance is designed to regulate and restrict:

- A. The height, number of stories and size of buildings and other structures;
- B. Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- C. The density of population within the Town, and;
- D. The location and use of buildings, structures and land used for business, industrial and/or other purposes.

1.2 SCOPE

The use(s) of land throughout the Town of Marlborough is/are to be regulated as shown upon an official copy of the Town Zoning Map on file within the office of the Town Clerk. This official Map is a part of this Ordinance. The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

1.3 PURPOSES, RSA 674:17

This ordinance is adopted in accordance with the requirements of RSA 674:18 and is designed to:

- A. Lessen congestion in the streets;
- B. Secure safety from fires, panic and other dangers;
- C. Promote health, safety and general welfare;
- D. Provide adequate light and air;
- E. Prevent the overcrowding of land;
- F. Avoid undue concentration of population;
- G. Facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, recreation and;
- H. Protect and assure proper use of natural resources and other public requirements.
- I. Encourage appropriate interrelationships of land uses and groups of land uses within the Town and;
- J. Support principles of good design and, as such, contribute to the economic, aesthetic, and harmonious and orderly growth of the Town.
- K. Render reasonable consideration, among other things, to the character of the

area involved and its particular suitability for particular use(s), as well as with a view to conserving the value of buildings and to encourage the most appropriate use of land throughout the Town.

SECTION 2: DEFINITIONS (alphabetical)

For the purposes of this Ordinance, the following words and phrases shall have the meanings or limitations of meanings herein defined. All present tenses shall include past and future tenses and all past tenses the present. All singular terms shall include the plural and the plural the singular.

- 2.1 **Abutter:** Any persons whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. Any property owner within 200 feet of the parcel under consideration.
- 2.2 **Accessory Dwelling Unit:** A residential living unit that is within or attached to a single family dwelling and that provides independent living facilities for one or more persons including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies
- 2.3 **Accessory Building or Use:** A subordinate building or use which is located on the same lot which the main building or use is situated and which is customarily and reasonably necessary and incidental to the conduct of the primary use of such main building or use. Accessory buildings cannot include campers, trailers or manufactured housing.
- 2.4 **Antenna:** Any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.
- 2.5 **Apartment Unit:** A dwelling contained in an apartment building.
- 2.6 **Apartment Building:** A building containing three or more apartment units.
- 2.7 **Attached Row House:** A building designed as a residence containing two or more dwelling units separated from one another by a vertical common wall.
- 2.8 **Average Tree Canopy Height:** The average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.
- 2.9 **Build:** The word build shall include the words "erect, construct, alter, enlarge, move, modify, excavate, fill" and any others of like significance.
- 2.10 **Building:** Is a structure designed, built, or occupied as a shelter or roofed enclosure for persons, animals, or property, including tents, lunch wagons, dining cars, camp trailers, trailers, and other roofed structures on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition "roof" shall include an awning or other similar covering whether or not permanent in nature.

- 2.11 **Building Height:** Is the vertical dimension measured from the average elevation of the finished lot grade at the front of the building, to the highest point of ceiling of the top story in the case of a flat roof, to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.
- 2.12 **Building Inspector:** The selectmen or any other person appointed or hired by them to act as inspector.
- 2.13 **Cluster Developments:** See Section 9.1.7.1
- 2.14 **Condominium:** A legal form of ownership of real property, usually individual ownership of a dwelling unit in a multi-unit development where some rights are held in common by the residents of that development.
- 2.15 **Development:** Shall mean any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.
- 2.16 **Dwelling, Detached:** A building containing a single dwelling unit separated from any other building except accessory buildings by side yards.
- 2.17 **Dwelling, One-Family:** A building designed or used as a residence and containing only one dwelling unit.
- 2.18 **Dwelling, Two-Family:** A building designed for or occupied as a residence and containing two dwelling units.
- 2.19 **Dwelling, Multi-Family:** A building containing three (3) or more dwelling units and designed for occupancy by three (3) or more families living independently of each each unit having its own exterior entrance or an entrance from an interior hall.
- 2.20 **Dwelling Unit:** A room or suite of rooms forming a habitable unit for one family with its own cooking, food storage equipment, bathing and toilet facilities, and its own living, sleeping and eating areas wholly within such room or suite of rooms.
- 2.21 **Dwellings, One and Two Family:** Includes dwellings in which each living unit is occupied by members of a single family with rooms rented to outsiders, in any, not accommodating more than three unrelated persons.
- 2.22 **Elderly Housing Unit:** Residential buildings with three or more residential units under common ownership, the tenancy of which is restricted to persons 55 years of age or over. Includes both private and federally subsidized ownership.
- 2.23 **Exception:** See Section 11.3B
- 2.24 **Family:** One or more persons occupying a dwelling unit and living as a single, non-profit housing unit; provided that a group of five or more persons (excluding domestic employees) who are not within the second degree of kinship shall not be deemed to constitute a family.

- 2.25 **Family Day Care:** An occupied residence in which child care is regularly provided for any part of a day, but less than 24 hours, except in emergencies for one to six children from one or more related or unrelated families. The maximum of six children includes children living in the home.
- 2.26 **Family Group Day Care:** An occupied residence in which childcare is regularly provided for any part of a day, but less than 24 hours, except in emergencies for 7 to 12 children from one or more related or unrelated families. The maximum of 12 children includes children living in the home.
- 2.27 **Frontage:** Means the length of that boundary of a lot that borders on a public street or an approved subdivision street (constructed to Town specifications). Where appropriate, the word frontage may be used to describe the length of that boundary of a lot that borders on a body of water. On any lot bounded on more than one side by a street, the street boundary that is to be the lot "front" shall be so designated in the application for a permit to build on such lot. Frontage shall be measured along the street on the road right-of-way line connecting the points of intersection on the side lot line and the front lot line. See Section 9.10.
- 2.28 **Group Child Care Centers:** Either full-day or half-day childcare centers which regularly provide services for any part of a day, but less than 24 hours, to 13 or more children.
- 2.29 **Group Homes:** A group of five individuals or more, not related by blood, marriage, adoption, or guardianship; living together in a dwelling unit as a single housekeeping unit under a common housekeeping plan.
- 2.30 **Home Based Business:** A conditional and additional use of a dwelling unit or accessory building for gainful employment involving the manufacture, provision or sale of goods and/or services. A home based business is defined as any commercial activity conducted on a residential property that has one or more of the following characteristics: non-resident employees, client or customer visits, deliveries by trucks weighing more than five tons, outdoor storage and/or display of goods or materials, parking of commercial vehicles, or creation of any exterior noise, odors, smoke, soot, lights, glare, vibrations, hazards; soil, water or air pollution; or visual or audible electrical interference. The use (home based business) shall be clearly incidental and secondary to the use of a residential property and shall not change the character thereof or adversely affect the uses permitted in the zoning district of which it is a part. A home based business may be permitted under the provisions of Section 6.4.D.8 and Section 9.5 as may be otherwise set forth in this Zoning Ordinance relative to exceptions.
- 2.31 **Hotel or Inn:** See Section 2.34 for definition of lodging establishment.
- 2.32 **Junk or Salvage:** The open and exterior storage or deposit at any place of business or residence, whether in connection with another business or residence or not, and which is subject to public view, to consist of old iron, unserviceable motor vehicles (those that are not registered and/or do not have a current State of New Hampshire inspection sticker), trash, garbage, appliances, metal, glass, plastics, paper or cordage or other waste of

discarded or secondhand materials.

- 2.33 **Institution:** A building occupied by a non-profit corporation or a non-profit establishment for public or semi-public use.
- 2.34 **Lodging Establishment:** A consumer service whose primary business is the rental of rooms or suites of rooms, without cooking facilities other than microwave and/or beverage heating units, to the public for short-term overnight accommodation. Included in this definition are such hospitality establishments as hotels, motels, inns, bed-and-breakfasts, tourist homes and guesthouses. Additional service may include meals, functions, and outdoor/indoor recreation.
- 2.35 **Lot:** Means a parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area and to provide required yards and other open spaces.
- 2.36 **Lot Area:** A horizontal area of the lot exclusive of any area in public or private way open to public use and above the high watermark of any body of water contained thereon.
- 2.37 **Lot Coverage:** The amount of area of a lot covered by the horizontal cross section of structures.
- 2.38 **Lot Depth:** A horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.
- 2.39 **Lot Line Front:** A line dividing a lot from a street or any lot bounded on more than one side of a street. The street boundary that is to be a lot front shall be so designated on any application for a permit to build on a lot.
- 2.40 **Lot Line Rear:** A line or the line most distant and opposite from the front lot line. Where the lot is of a regular shape, the rear lot line shall be a line perpendicular to the mean direction of the side lot line or lines and shall be at least ten feet in length within said lot.
- 2.41 **Lot Width:** The width of any lot measured wholly within such lot as the shortest distance between side lot lines at the front yard setback line.
- 2.42 **Marina:** Any complex of water-edge-located buildings, facilities, hallways, driveways, automobile parking areas and indoor/outdoor boat storage spaces in a common ownership and used for docking, mooring, berthing, storing, repairing, selling, supplying, fueling, and servicing boats.
- 2.43 **Manufactured Housing:** Manufactured housing (mobile homes) means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

- 2.44 **Presite Built Housing:** Presite built housing means any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development's minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this subdivision, presite built housing shall not include manufactured housing, as defined in RSA 674:31.
- 2.45 **Mobile Home Park:** Shall mean any lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any mobile home and upon which any mobile home or mobile homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether or not a charge is made for the use of mobile home park and its facilities. A mobile home park shall not include automobile or mobile home sales lots on which unoccupied homes are parked for the purposes of inspection and sale. A mobile home park shall be designed to accommodate twenty or more mobile homes.
- 2.46 **Modular Home:** Is a prefabricated dwelling unit partially constructed off-site to reduce the need for or the amount of on-site fabrication of the unit and is not considered a mobile home.
- 2.47 **Motel:** A structure primarily for transients traveling by automobile with direct access to each lodging from the outside and with an on-site parking space for each lodging unit, and where cooking facilities are not provided in individual units. (See 2.34 for definition)
- 2.48 **Non-Conforming Building or Structure:** A non-conforming building or structure is a building or structure, the use of which in whole or in part does not conform to the regulations of the district in which the building or structure is located.
- 2.49 **Non-Conforming Lot:** A lot that does not conform to a dimensional regulation prescribed by this ordinance for the district in which it is located.
- 2.50 **Non-Conforming Use:** A use which does not conform to these regulations for the district in which such use exists, provided that such use was in existence at the time of the adoption of this ordinance and was lawful at the time it was established.
- 2.51 **Nursing Home or Rest Home:** A private establishment for the care of persons of all ages, or a place of rest for those suffering bodily disorders but not including facilities for the treatment of sickness or injuries or for surgical care.
- 2.52 **Occupied:** Shall include the word designed, arranged, or intended to be occupied.
- 2.53 **Parking Space:** An area containing not less than one hundred sixty-two (162) square feet used exclusively as a parking stall for motor vehicles. It shall have minimum dimensions of nine (9) by eighteen (18) feet.
- 2.54 **Planned Unit Development:** See Section 9.1.8
- 2.55 **Regional Impact:** Any proposed development before the Board which in the

determination of the Board could reasonably be expected to impact upon a neighboring municipality because of such factors as (but not limited to) the following (see also Section 4.13)

- A. Relative size or number of dwelling units as compared with existing stock.
- B. Proximity to the border of a neighboring community.
- C. Transportation networks.
- D. Anticipated aggravation or creation of a traffic hazard, a fire hazard, a panic hazard, a health hazard or a safety hazard.
- E. Anticipated emissions such as light, noise, smoke, odors, particles, etc.
- F. Shared facilities such as schools and solid waste disposal facilities.
- G. Anticipated disturbing effects to groundwater and/or aquifers such as the improper use of hazardous materials, chemicals, and/or any other substances that create a hazard to safety or health.

- 2.56 **Rooming House:** A residential establishment which offers sleeping rooms (without cooking facilities other than microwave and/or beverage heating units) for rent to the public by the week, by the month or longer, and with or without meals.
- 2.57 **Setback:** The distance between the nearest portion of the building and lot right-of-way line, whichever is closer. See also further requirements and definitions as applicable to shoreland properties as provided in Section 15 of this Ordinance.
- 2.58 **Story:** That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained on sloping land of which more than one-half of such portion vertically is below the average natural grade of the ground adjoining such building.
- 2.59 **Half-Story:** That portion of a building next beneath a sloping roof and in which there are less than 4 feet vertically between the top of the floor and the intersection of the bottoms of the rafters with the interior faces of the wall.
- 2.60 **Space, Habitable:** Those areas within the exterior walls of a dwelling and/or dwelling unit which have head room of not less than seven (7) feet measured vertically upward from the top of the finished floor excluding basement areas and areas in any accessory structure attached to any dwelling.
- 2.61 **Street, Public:** Any highway, street, road, avenue, lane or other right-of-way over which the public has a right to pass and repass and state, county or municipality has responsibility to maintain. The phrase "public street" shall include any street shown on a subdivision plat approved by the planning board in accordance with State law whether or not the state, county or municipality has laid out such street as a publicly maintained highway. The words "public street" shall include the entire right-of-way.
- 2.62 **Structure:** Any object constructed or installed by man, including such objects although regulated or licensed by other provisions of law.
- 2.63 **Telecommunications Facilities:** Any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any

other electromagnetic spectrum-based transmission/receptions.

- 2.64 **Tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.
- 2.65 **Trailer:** The following shall be considered a trailer:
- A. **Travel Trailer:** A vehicular portable structure built on a chassis designed as a temporary dwelling for travel, recreation and vacation having a body width not exceeding eight feet and a body length not exceeding 32 feet.
 - B. **Pick-up Coach:** A structure to be mounted on a chassis for use as a temporary dwelling for travel, recreation and vacation purposes.
 - C. **Motor Home:** A portable temporary dwelling to be used for recreation and vacation, and which is constructed as an integral part of a self-propelled vehicle.
 - D. **Camping Trailer:** A canvassed or other folding structure mounted on wheels and designed for travel and used for recreation and vacation purposes. (See 2.43 for definition of "Manufactured Housing")
- 2.66 **Use:** The purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be utilized, occupied or maintained.
- 2.67 **Variance:** See Section 11.3A
- 2.68 **Wetlands:** Wetlands are areas which are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas. Such areas shall be delineated according to three (3) parameters, which are hydrophytic vegetation, hydric soils and hydrology. Wetlands are further identified as POORLY DRAINED AND VERY POORLY DRAINED SOILS. For further description, see Appendix I of the Town of Marlborough Subdivision Regulations.
- 2.69 **Yard, Front:** An open space extending the entire width of a lot from lot sideline to lot sideline between the front lot line or lines and the nearest extreme point of a building.
- 2.70 **Yard, Rear:** An open space extending the entire width of a lot line from sideline to sideline between the rear lot line or the corner of a triangular lot farthest from the front lot line and the nearest extreme point of the building.
- 2.71 **Yard, Side:** An open space extending along a sideline of a lot (between the front yard and the rear yard on such lot) and extending between the sideline of such lot to the nearest extreme point of the building.
- 2.72 **Other Words and Phrases:** Words and phrases not defined in this Section but defined in other codes, ordinances and regulations of the State or Town shall have the meanings in said code, unless otherwise indicated.

- 2.73 **Appliance and Equipment Repair Service:** Establishments providing repair services to the general public for household appliances; small equipment such as power hand tools; radio and television and other similar electrical equipment; but excluding repair work on any type of automotive equipment including but not limited to automobiles, trucks, buses, construction equipment, trailers, motorcycles, on/off road vehicles, boats, recreation vehicles, etc.
- 2.74 **Craft/Artisan Guild Shops:** Establishments such as studios, workshops, and galleries where a skilled artisan produces, creates or manufactures handcrafted items for sale to the general public.
- 2.75 **Kennels:** Establishments with four or more dogs used for commercial purposes such as, but not limited to, breeding, training, boarding and housing.

SECTION 3: ZONING DISTRICT BOUNDARIES AND MAPS

For the purposes of this Ordinance, the Town of Marlborough is hereby divided into the following zones. See the Table of Use Regulation in Section 6.4 for applications.

Zone	Description of District
<i>Residential:</i>	
R1	Village Residential
R2	Residential
R3	Rural
R4	Scenic Rural
<i>Commercial:</i>	
C1	Village Commercial
C2	Route 124 Commercial
C3	Route 101 Commercial
C4	Route 12 Commercial

FLOOD PLAIN DISTRICT:

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Cheshire, NH" dated May 23, 2006 or as amended, together with the associated Flood Insurance Rate Maps dated May 23, 2006 or as amended, which are declared to be part of the ordinance and hereby incorporated by reference.

SECTION 4: APPLICATION OF REGULATIONS, MODIFICATIONS AND EXCEPTIONS

- 4.1 All proposed development within the Town of Marlborough shall require a permit from the Selectmen or their authorized agent in order that no building be erected or used and no land be used or divided unless in conformity with the regulations of this Ordinance and Building Code of the Town of Marlborough. All other buildings and all other uses of land and/or of buildings are hereby expressly prohibited except those already lawfully existing which by the provisions of this Ordinance become lawfully non-conforming.

- 4.2 When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this Ordinance shall be applied to the portion of such lot in the Town in the same manner as if the entire lot was situated in the Town.
- 4.3 When a lot is transected by a zoning district boundary, the regulations of the Ordinance applicable to the larger part by area of such lot may also at the option of the owner be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than fifty (50) linear feet in depth beyond such zoning district boundary.
- 4.4 For any residential use, there shall be no more than one primary residential building on any lot.
- 4.5 Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this Ordinance, even though the ownership of such land may be the owner(s) of the abutting lot(s).
- 4.6 Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken or was taken by eminent domain, shall not be deemed to be transferred in violation of the land area, width and space provisions of this Ordinance.
- 4.7 No building or buildings, roads, parking lots or other permanent improvements except one- or two-family residences shall be constructed, erected, altered and used for commercial purposes without having obtained prior site plan approval by the Planning Board.
- 4.8 No permit is required for construction or remodeling if the incurred cost of labor and materials is less than \$1000.00 and the use of the building is not changed.
- 4.9 No owner or occupant of land in any district shall permit fire or other ruins to be left, but shall remove the same within two years beginning at the time of cause of such ruins to exist.
- 4:10 Whenever an owner proposes to expand an existing structure or convert it from seasonal to year-round use so as to increase the load on a sewage disposal system; an approved application from the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division will be required prior to obtaining a permit for construction from the Board of Selectmen.
- 4.11 Cutting more than fifty percent of the timber within 150 feet of a water body or public highway prior to development is not permitted until all required permits have been issued.
- 4.12 No use under this Ordinance shall produce disturbing effects to any groundwater and/or aquifers such as the improper use or storage of hazardous materials, chemicals, and/or any other substances that create a hazard to safety or health.
- 4.13 All applications and proposals for development shall be reviewed by the land use board(s) to determine if a proposal has a potential regional impact. Doubt concerning

regional impact shall be resolved by a determination that the development **DOES HAVE** a potential regional impact. Upon a determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the Southwest Region Planning Commission and the affected municipalities the status of abutters as defined in New Hampshire Statutes, RSA 672:3 for the limited purpose of providing notice and giving testimony. At least 14 days prior to the public hearing, the local land use board shall notify, by certified mail, all affected municipalities and the Southwest Region Planning Commission of the date, time, and place of the hearing and their right to testify concerning the development. In addition, upon reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, within 72 hours following the decision, furnish the Southwest Region Planning Commission and the affected municipalities with a copy of the minutes of the meeting at which the decision was made by means of certified mail.

The criteria for determining regional impact by the land use board(s) shall include, but not be limited to, the following guidelines. These guidelines shall in no way be considered exhaustive in determining developments of regional impact.

- A. Residential Development: Proposals for lots or dwellings within one-quarter mile of a town boundary that would increase the existing housing stock of the affected towns by more than 25 percent, or proposals located anywhere within a town that would increase the existing housing stock of the town by more than 50 percent.
- B. Commercial Development: 75,000 square foot proposal or greater within one-quarter mile of a town boundary, or 150,000 square feet located anywhere within the town.
- C. Industrial Development: 50,000 square foot or greater proposal within one quarter mile of a town boundary or 125,000 square foot proposal located anywhere within the town; or any industry that deals in hazardous materials and/or that has a potential for accidents which would require evacuation or a large area.
- D. Other Factors: Traffic impacts upon a regional road network, as well as upon a neighboring local road network; and proximity to groundwater, surface water and wetlands which transcend municipal boundaries; the potential to destroy or disturb a significant or important natural environment or habitat; emissions such as light, noise, smoke, odors, particles, etc.; necessity for shared public facilities, such as schools, fire, police, emergency protection, medical and health institutions, water and/or sewage systems and solid waste disposal.

SECTION 5: NON-CONFORMING LOTS, STRUCTURES, AND USES

5.1 Non-Conforming Lots:

- a. Buildings and/or structures shall be permitted on a lot having frontage or an area which is less than that required by the applicable zoning regulation if said structure is permitted by right within the district and if the following provisions are met:
 - (1) The lot was a legal lot of record and duly recorded at the Cheshire County Registry of Deeds prior to the adoption of the original Town of Marlborough Zoning Ordinance;

(2) The lot is capable of supporting a well and septic system designed and installed in compliance with all applicable Town and State of New Hampshire Water Supply and Pollution Control Division Regulations or has access to Town water and sewer;

(3) All uses, buildings, structures, wells, or septic systems shall comply with the applicable setback requirements contained in the Ordinance; and

(4) Sufficient access by way of a Town or State maintained highway or approved subdivision road located in the town of Marlborough must be available.

- b. If two (2) or more lots of record are contiguous and in single ownership on the effective date of this Ordinance (March 12th, 1956) and if any of said lots are vacant and do not comply with the dimensional requirements of frontage and area, then those lots shall be considered to be an undivided parcel for purposes of this Ordinance. This provision shall not apply to lots in a subdivision approved by the Planning Board, recorded in the Cheshire County Registry of Deeds, and developed in accordance with applicable statutes and local ordinances and regulations.
- c. No portion of said lot shall be used or sold in a manner which diminishes compliance with frontage and area requirements established by this Ordinance, nor shall any division be made which creates a lot with frontage or area below said requirements. Further, yard dimensions and requirements, other than those applying to area and frontage, shall conform to the regulations for the district in which the lot is located.

5.2 Non-Conforming Buildings and/or Structures:

Where a lawful building or structure exists at the effective date of this Ordinance, or applicable amendment, that could not be built under the terms of this Ordinance or amendment by reason of restrictions on area, lot coverage, height, yards, or other dimensional requirements, the building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) No such non-conforming building or structure may be enlarged or altered in a way which increases its non-conformity, but any building or structural portion thereof may be altered to decrease its non-conformity;
- (2) A non-conforming building or structure which is destroyed by fire or other hazard may be rebuilt or restored provided that it was not destroyed voluntarily and restoration is begun within twenty-four (24) months after the act of destruction; and,
- (3) Should a non-conforming building or structure be intentionally moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

5.3 Non-Conforming Uses:

Where on the effective date of adoption of this Ordinance or applicable amendment, a lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided that:

- (1) No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of the adoption or amendment of this Ordinance;
- (2) No such non-conforming use shall be moved, in whole or in part, to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- (3) If any such non-conforming use of land ceases for any reason for a period of more than twenty-four (24) consecutive months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which the use is located; and,
- (4) No additional building and/or structures not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.

SECTION 6: USE REGULATIONS

- 6.1 No building, structure, or land shall be used or occupied except for the purposes permitted in the district as set forth in the accompanying Table of Use Regulations or as provided for elsewhere in this Ordinance.
- 6.2 A use listed in Section 6.4 is permitted as a right in any district under which it is denoted by the letter "P" provided that the provisions for sewage effluent disposal and other restrictions set by law are complied with. If designated in the Tables by the letters "SE", the use may be permitted as a special exception only if the Board of Adjustment so determines and grants a special exception and may be permitted by Sections 7 through 10 and further may be subject to such restrictions as the Board may establish. A use denoted by the letters "NP" shall not be permitted in that district.
- 6.3 The Flood Plain District is herein established as an overlay district. The underlying permitted uses are allowed in accordance with the following additional provisions.
 - a. The placement of manufactured homes is prohibited except in existing manufactured home parks.
 - b. In the floodway, designated on the Flood Insurance Rate Map, encroachments, including fill, new construction, substantial improvement to existing structures, and other developments are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood.

SECTION 6.4 TABLE OF USE REGULATIONS - PRINCIPAL USES

(P=Permitted; NP=Not Permitted; SE=Special Exception)
(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

SECTION 6.4 TABLE OF USE REGULATIONS, PRINCIPAL USES ^{1,2,3}		Village Commercial District (C1) ⁴	Rte 124 Commercial District (C2)	Rte 101 Commercial District (C3) ⁵	Rt 12 Commercial District (C4)	Village Residential District (R1) ⁴	Residential District (R2)	Rural District (R3)	Scenic Rural District (R4)	Permitted Special Provisions
A. RESIDENTIAL										
1	One and two-family dwellings, including manufactured housing if built on a foundation or crawl space, excluding slabs ⁶	NP	NP	NP	NP	P	P	P	P	9.1.1
2	Multi-family dwellings, such as apartment buildings, condominiums, and town houses	NP	NP	NP	NP	P	SE	SE	SE	9.1.2 9.1.4
3	Housing for the elderly	SE	SE	SE	SE	P	SE	SE	SE	9.1.2/9.1.4
4	Accessory Dwelling Units	SE ⁷	SE ⁷	SE ⁷	SE ⁷	SE	SE	SE	SE	
5	Manufactured housing parks (trailer parks)	NP	NP	NP	NP	NP	NP	SE	NP	9.1.5
6	Motorized homes, such as auto and trailer campers used as a temporary residence and situated other than within established and approved campgrounds or trailer parks	NP	NP	NP	NP	P	P	P	P	9.6
7	Cluster Housing	NP	NP	NP	NP	NP	SE	SE	NP	9.1.7
8	Planned Unit Developments (PUDs)	NP	NP	NP	NP	NP	SE	SE	NP	9.1.8
9	Group homes and nursing homes	NP	NP	NP	NP	NP	SE	SE	SE	Town Sewer Only

1 Footnotes and special provisions specified in the existing zoning ordinance (in effect prior to March 14, 2000) will remain in effect unless in direct conflict with the requirements specified in this table or in its associated footnotes.

2 Classifications of principal uses not listed in Section 6.4 will be determined by the Planning Board, with appeals heard by the Zoning Board of Adjustment.

3 Non-residential uses abutting a residential use shall provide and maintain a vegetative buffer or visual screen within the side and rear setback areas, as approved by the Planning Board during Site Plan Review. Within this buffer area there will be no parking or storage areas, driveways, signs, lighting fixtures, dumpsters or principal or accessory structures.

4 Development in the Village Commercial and Residential Districts shall be of a scale and type that is consistent and in harmony with the historic character of the district. All efforts should be made to rehabilitate and use existing structures rather than to build new structures. Signs should be constructed of wood and be no larger than 6 ft wide and 8 ft tall, with no internal lighting. Exterior lighting will be with a spotlight. Sign design and lettering should be professionally done to fit the historical character of the district.

5 The C3 Commercial District shall extend 500 feet back from the edge of the right-of-way of Rte. 101.

6 An owner or occupant of a residence damaged by fire or other disaster may place a temporary manufactured home upon the lot of the damaged residence and reside therein while the residence is being rebuilt. The occupancy limit shall be not more than 12 months from the date of placement of the structure or the issuance of a certificate of occupancy, whichever occurs first. The manufactured home shall be subject to State and Local requirements relating to sewer and water and shall not attain the status of a vested nonconforming use.

7 One ADU may be allowed by Special Exception in a building that has been used solely for commercial purposes for two or more years without the requirement of owner occupancy

SECTION 6.4 TABLE OF USE REGULATIONS - PRINCIPAL USES

(P=Permitted; NP=Not Permitted; SE=Special Exception)
(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

	SECTION 6.4 TABLE OF USE REGULATIONS, PRINCIPAL USES^{1,2,3}	Village Commercial District (C1)⁴	Rte 124 Commercial District (C2)	Rte 101 Commercial District (C3)⁵	Rt 12 Commercial District (C4)	Village Residential District (R1)⁴	Residential District (R2)	Rural District (R3)	Scenic Rural District (R4)	Permitted Special Provisions
B. TEMPORARY LODGINGS										
1	Lodging, rooming and boarding houses, or other accommodations for overnight guests; hotels, and bed and breakfast establishments	P	SE	SE	P	SE	SE	SE	SE	9.1.3
2	Motels	NP	P	P	P	NP	NP	NP	NP	9.1.3
3	Seasonal camps of a commercial nature, such as campgrounds and travel trailer parks	NP	NP	SE	SE	NP	NP	SE	NP	9.1.6/ 9.2.2
C. EDUCATIONAL, INSTITUTIONAL, AND RECREATIONAL USES										
1	Family group day care and group childcare centers	SE	SE	SE	SE	NP	SE	SE	NP	9.2.0
2	Family day care	P	NP	NP	NP	P	P	P	P	9.2.0
3	Educational facilities, such as (but not limited to) private and public schools, libraries, and museums	SE	SE	SE	SE	SE	SE	SE	SE	9.2.3
4	Places of worship	P	SE	SE	SE	SE	SE	SE	SE	9.3.1
5	Cemeteries	NP	NP	NP	NP	NP	NP	SE	NP	9.1.9
6	Governmental facilities	P	P	P	P	SE	SE	SE	SE	9.2.3
7	Hospitals	NP	SE	P	P	NP	NP	NP	NP	9.2.1
8	Indoor recreational facilities, such as (but not limited to) entertainment halls, movie cinemas, and bowling alleys	SE	SE	SE	SE	NP	NP	NP	NP	9.2.3B,C
9	Outdoor recreational facilities, such as (but not limited to) golf courses, playing fields, and tennis courts	SE	SE	SE	SE	SE	SE	SE	SE	9.3.0A,B,C
10	Private non-profit membership club or lodge	P	P	P	P	SE	SE	SE	NP	9.2.3C
11	Motorsports Facilities, such as (but not limited to) vehicle race tracks and racecourses, drag strips, mud bogging facilities, driving instruction and exhibition facilities, both public & private	NP	NP	NP	NP	NP	NP	NP	NP	
12	Hunting and Shooting Facilities including (but not limited to) hunting preserves, game parks, regulated shooting preserves, both private and public	NP	NP	NP	NP	NP	NP	NP	NP	

SECTION 6.4 TABLE OF USE REGULATIONS - PRINCIPAL USES

(P=Permitted; NP=Not Permitted; SE=Special Exception)
(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

	SECTION 6.4 TABLE OF USE REGULATIONS, PRINCIPAL USES^{1,2,3}	Village Commercial District (C1)⁴	Rte 124 Commercial District (C2)	Rte 101 Commercial District (C3)⁵	Rt 12 Commercial District (C4)	Village Residential District (R1)⁴	Residential District (R2)	Rural District (R3)	Scenic Rural District (R4)	Permitted Special Provisions
D. BUSINESS										
1	Banks, business and professional offices	P	P	P	P	SE	NP	NP	NP	9.2.3B,C
2	Personal service establishments, such as (but not limited to) beauty shops, barber shops, shoe repair, dry cleaning and laundry, and funeral services	P	P	P	P	SE	NP	NP	NP	9.2.3B,C
3	Restaurants and other eating places, not including drive-through restaurants	P	SE	P	P	SE	NP	NP	NP	9.2.3B,C
4	Establishments offering drive-through services involving the sale of food and/or beverages	NP	NP	NP	P	NP	NP	NP	NP	9.2.3B,C
5	Sales and service establishments with exterior display of goods, such as (but not limited to) garden supplies, farm equipment, and lumber	P	P	P	P	NP	NP	NP	NP	9.2.3.B,C
6	Adult-oriented sexually explicit entertainment or retail business	NP	NP	NP	SE	NP	NP	NP	NP	9.2.3B,C
7	Medical/Dental/Pharmaceutical/Other Health Care Facilities	P	P	P	P	SE	NP	NP	NP	9.2.3B,C
8	Home based businesses	P	P	P	P	SE	SE	SE	SE	9.5
9	Wholesale establishments	P	P	P	P	NP	NP	NP	NP	9.2.3B,C
10	Self-storage facilities	P	P	P	P	NP	NP	NP	NP	9.2.3B,C
11	Light manufacturing and assembly, such as (but not limited to) electronics, wood and plastics assembly, publishing, printing, and bookbinding	SE	SE	SE	SE	NP	NP	NP	NP	9.2.3B,C
12	Specialized trade establishments, such as (but not limited to) plumbing and heating, welding, blacksmithing, ventilation, air conditioning and refrigeration, carpentry, appliance repairs, arts and dance studios	P	P	P	P	SE	SE	SE	SE	9.2.3B,C 9.4
13	Automotive sales, service, parts and repair facilities	P	P	P	P	NP	NP	NP	NP	9.3.0B,C
14	Recycling business	NP	NP	NP	SE	NP	NP	NP	NP	9.2.3B,C
15	Open lot storage or sale of junk or salvaged materials	NP	NP	NP	SE	NP	NP	NP	NP	9.3.0A,B,C,D

SECTION 6.4 TABLE OF USE REGULATIONS - PRINCIPAL USES

(P=Permitted; NP=Not Permitted; SE=Special Exception)
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D. BUSINESS										
16	Sand and gravel excavation operations, as per RSA 155-E	NP	SE	SE	SE	NP	SE	SE	NP	9.3.0A,B,C,E 9.2.3 C
17	Commercial greenhouses, plant nurseries	P	P	P	P	SE	SE	SE	SE	
18	Veterinary establishments with no outside boarding animals	P	P	P	P	SE	SE	SE	SE	9.2.4
19	Kennels, commercial stables and riding academies	NP	NP	NP	N	NP	SE	SE	SE	9.2.4 and 2.75
20	Retail sales establishments such as (but not limited to) businesses that sell dry goods, furniture, hardware, antiques, computers, groceries beverages, supplies, pets and videos	P	P	P	P	NP	NP	NP	NP	
E. AGRICULTURE										
1	Commercial agriculture, not including farms for personal use	NP	NP	NP	SE	P	P	P	P	
2	Roadside stands for the sale of farm products raised on the premises	P	P	P	P	P	P	P	P	
3	Timber Removal	P	P	P	P	P	P	P	P	Site Plan review required if over 100,000 board feet
F. OTHER PRINCIPAL USES										
1	Commercial Wireless Communication Facilities	NP	NP	SE	SE	NP	NP	SE	NP	9.11
2	Trucking terminals	NP	NP	NP	SE	NP	NP	NP	NP	9.2.3B,C
3	Bulk petroleum storage facilities in excess of 2,000 gallons, except for permitted storage of gasoline and diesel fuels at automobile service stations	NP	NP	NP	SE	NP	NP	NP	NP	9.2.3B,C
4	Saw mills	NP	SE	SE	SE	NP	SE	SE	SE	9.2.3B,C

SECTION 6.4 TABLE OF USE REGULATIONS - PRINCIPAL USES

(P=Permitted; NP=Not Permitted; SE=Special Exception)
(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

	SECTION 6.4 TABLE OF USE REGULATIONS, PRINCIPAL USES^{1,2,3}	Village Commercial District (C1)⁴	Rte 124 Commercial District (C2)	Rte 101 Commercial District (C3)⁵	Rt 12 Commercial District (C4)	Village Residential District (R1)⁴	Residential District (R2)	Rural District (R3)	Scenic Rural District (R4)	Permitted Special Provisions
F.	OTHER PRINCIPAL USES									
5	Contiguous structures and parking areas covering more than 10,000 sq. ft.	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	9.3.0 A,B,C
6	Any use(s) accessory to the permitted principal uses above	P	P	P	P	P	P	P	P	
7	Wind Turbine Facilities including (but not limited to) wind turbine towers and other similar structures	SE	SE	SE	SE	NP	NP	SE	NP	9.12

⁸ If a special exception is granted, a site plan review will be required to assess the proposed structures' impact on the view from Mt. Monadnock

SECTION 7.1 TABLE OF LAND SPACE AND DENSITY REQUIREMENTS FOR INDIVIDUAL RESIDENCES AND NON- RESIDENTIAL USES

Lot and Yard Requirements 1,2

(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

SECTION 7.1 INDIVIDUAL RESIDENCES AND NON- RESIDENTIAL USES Lot and Yard Requirements^{1,2}	Village Commercial District (C1)⁴	Rte 124 Commercial District (C2)	Rte 101 Commercial District (C3)³	Rt 12 Commercial District (C4)	Village Residential District (R1)	Residential District (R2)	Rural District (R3)	Scenic Rural District (R4)
Minimum Area without town sewer	10,000 sq ft ⁴	2 acres ⁴	1 acre ⁴	2 acres ⁴	10,000 sq. ft ⁴	1.5 acres ⁴	5 acres ⁵	5 acres ⁵
Minimum Area with town sewer	10,000 sq ft ⁴	2 acres ⁴	1 acre ⁴	Not Applicable	10,000 sq. ft ⁴	1.5 acres ⁴	3.5 acres ⁵	3.5 acres ⁵
Frontage (continuous)	100 ft	200 ft	150 ft	200 ft	100 ft	150 ft	200 ft	300 ft
Minimum set back from edge of approved right-of-way	15 ft	50 ft	20 ft	40 ft	25 ft	40 ft	40 ft ⁶	40 ft ⁶
Minimum set back from side property lines	15 ft	35 ft	20 ft	20 ft	20ft	20 ft	25 ft	25 ft
Minimum set back from rear property lines	15 ft	35 ft	20 ft	20 ft	15 ft	40 ft	40 ft	40 ft
Minimum distance of structures, parking areas or septic from wetland areas	100 ft	100 ft	100 ft	100 ft	100 ft	100 ft	100 ft	100 ft
Maximum building height (35 ft or 2.5 stories, whichever is less)	Yes ⁷	Yes	Yes	Yes	Yes ⁷	Yes	Yes	Yes
Contiguous structures and parking areas covering more than 10,000 sq. ft	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸	SE ⁸

1 Footnotes and special provisions specified in the existing zoning ordinance (in effect prior to March 14, 2000) will remain in effect unless in direct conflict with the requirements specified in this table or in its associated footnotes.

2 Non-residential uses abutting a residential use shall provide and maintain a vegetative buffer or visual screen within the side and rear setback areas, as approved by the Planning Board during Site Plan Review. Within this buffer area there will be no parking or storage areas, driveways, signs, lighting fixtures, dumpsters or principal or accessory structures.

3 The C3 Commercial District shall extend 500 feet back from the edge of the right-of way of Route 101.

4 Excluding land classified as wetlands or having slopes over 15%

5 Lots of Record existing as of March 31, 2001 that do not meet these requirements are hereby considered to be conforming and will remain subject to the restrictions of the Marlborough Zoning Ordinances in effect on March 14, 2000.

6 No structure shall be located closer than 60 ft from the edge of right-of -way along the gateway corridors to Marlborough, as designated in the Master Plan, to include sections of Route 101 and 124 and the Troy Road. The intent of these greenways is to preserve the rural appearance of major roads at the town entrances and to maintain a natural demarcation between developed areas in Marlborough and neighboring towns. During Site Plan Review for non-residential proposals, the Planning Board will encourage landowners to take into consideration their unique location and effect on travelers entering Marlborough in the design of their construction and landscaping plans.

7 Development in the Village Commercial and Residential Districts shall be of a scale and type that is consistent and in harmony with the historic character of the district. All efforts should be made to rehabilitate and use existing structures rather than to build new structures. Signs should be constructed of wood and be no larger than 6 ft wide and 8 ft tall, with no internal lighting. Exterior lighting will be with a spotlight. Sign design and lettering should be professionally done to fit the historical character of the district

8 If a special exception (SE) is granted, a site plan review will be required to assess the proposed structures' impact on the view from Mt. Monadnock

SECTION 7.2 MINIMUM LOT AREA AND DENSITY REQUIREMENTS FOR MULTIFAMILY DWELLING UNITS

(Adopted 3/14/00, Updated as of 3/9/10, Current Version 3/8/22)

DISTRICT	MINIMUM LOT AREA	DENSITY
R1 – Village Residential	Minimum lot area – 1 acre Required lot area per dwelling unit with or without town sewer – 10,000 sq ft	4.3 units/acre
R2 – Residential	Minimum lot area – 2 acres Required lot area per dwelling unit with town sewer – 20,000 sq ft without town sewer – 30,000 sq ft	2.2 units/acre 1.5 units/acre
R3 – Rural	Minimum lot area – 5 acres Required lot area per dwelling unit with town sewer – 50,000 sq ft without town sewer – 70,000 sq ft	0.87 units/acre 0.62 units/acre
R4 – Scenic Rural	Minimum lot area – 5 acres Required lot area per dwelling unit with town sewer – 50,000 sq ft without town sewer – 70,000 sq ft	0.87 units/acre 0.62 units/acre

*SEE ATTACHED TABLES RELATING SIZE OF PARCELS
[EXCLUSIVE OF LAND WITH OVER FIFTEEN PERCENT (15%) SLOPE AND WETLANDS]
TO THE NUMBER OF MULTIFAMILY DWELLING UNITS BY ZONE AND WITH OR WITHOUT TOWN
SEWERAGE.*

TABLE 1-SIZE OF PARCEL TO NUMBER OF DWELLING UNITS PERMITTED IN R-2 ZONE, WITH AND WITHOUT TOWN SEWERAGE SERVICE

PARCEL IN ACRES*	NUMBER OF UNITS PERMITTED	
	WITH SEWERAGE (x 2.2)	WITHOUT SEWERAGE (x1.5)
2 (Minimum)	4	3
3	7	5
4	9	6
5	11	8
6	13	9
7	15	11
8	18	12
9	20	14
10	22	15
11	24	17
12	26	18
13	29	20
14	30	21
15	33	23
16	35	24
17	37	26
18	40	27
19	42	29
20	44	30
21	46	32
22	48	33
23	51	35
24	53	36
25	55	38
26	57	39
27	59	41
28	62	42
29	64	44
30	66	45
31	68	47
32	73	50
34	75	51
35	77	53

* Exclusive of lands with slopes over 15% and wetlands

**TABLE 2- SIZE OF PARCEL TO NUMBER OF DWELLING UNITS PERMITTED IN R-3 AND R-4 ZONES,
WITH AND WITHOUT TOWN SEWERAGE SERVICE**

PARCEL IN ACRES*	NUMBER OF UNITS PERMITTED	
	WITH SEWERAGE (x .87)	WITHOUT SEWERAGE (x .62)
5 (Minimum)	4	3
6	5	4
7	6	4
8	7	5
9	8	6
10	9	6
11	10	7
12	10	7
13	11	8
14	12	9
15	13	9
16	14	10
17	15	11
18	17	12
19	17	12
20	17	12
21	18	13
22	19	14
23	20	14
24	21	15
25	22	16
26	23	16
27	23	17
28	24	17
29	25	18
30	26	19
31	27	19
32	28	20
33	29	20
34	30	21
35	30	22

* Exclusive of lands with slopes over 15% and wetlands

SECTION 8: OFF-STREET PARKING REQUIREMENTS

- 8.1 One and two family dwellings shall require two parking spaces per dwelling unit. Each required parking space shall be not less than nine (9) feet in width and eighteen (18) feet in length. Required off-street parking spaces shall be provided on the same lot as the principal use that they are designed to serve.
- 8.2 Exterior, unscreened storage or placement of travel trailers, recreational vehicles, campers or camper bodies is limited to one unit per titled property.

Parking requirements for all other buildings and or uses are contained in Appendix IV of the Town of Marlborough Site Plan Review Regulations.

SECTION 9: SPECIAL PROVISIONS

9.1 The following special provisions govern land uses permitted in the Town. These provisions are in addition to the provisions of Section 6.4, Table of Use Regulations: Section 7, Land Space Requirements Table, and Section 8, Off-Street Parking and Loading Requirements. The requirements of this section must be met in addition to any other requirements, which the Board of Adjustment may deem appropriate under Section 2.

9.1.1 Two-Family Houses and Duplexes

Two-family houses and duplex structures shall be required to conform to the various provisions of this Ordinance governing single-family houses in the zone where proposed, with the further requirements that each lot proposed for two-family or duplex structures shall have one and one-half (1 1/2) the minimum lot size and minimum frontage required for single-family houses.

9.1.2 Apartments, Condominiums, Multiple or Attached Dwellings

A. In the R-1 Zone, no buildings or buildings intended for three or more families shall be constructed on a lot having less than two hundred (200) feet frontage and containing less than one acre. In the R-2 Zone, the minimum lot size shall be two acres and have not less than three hundred (300) feet frontage. In the R-3 and R-4 Zones, the minimum lot size shall be five acres and have not less than three hundred (300) feet frontage.

B. Lot and Density Requirements: See lot and density requirements in Section 7.2.

C. A space not less than twenty (20) feet in width shall be maintained open with grass, shrubs, flowers, or trees all along each side lot line, rear lot line and front lot line except for entrance and exit driveways; and such open space shall not be built upon, nor paved, nor used for parking.

D. The manner of sewage disposal shall be approved in advance and in writing by the State Water Supply and Pollution Control Commission or by the designated official.

E. All off-street parking shall be provided at the rear or side of the building for which it is intended to be used.

9.1.3 Lodging Establishments and Rooming Houses

A. If a lodging establishment or rooming house qualifies as, and is operated as, a home based business, the provisions of Section 9.5 shall apply.

B. A lodging establishment shall be permitted in the R-1 and R-4 Zones only when it qualifies as a home based business.

C. Each Rental sleeping unit shall contain not less than two hundred (200) square feet of habitable floor space.

D. Land space requirements set forth in Section 7.1 shall apply when the establishment qualifies as, and is operated as, a home based business; in all other cases the land space requirements as specified in 9.1.2.A for a multi-family dwelling shall apply; in the R-1 Zone, minimums of one (1) acre lot size and two-hundred (200) feet frontage; in the R-2 Zone, minimums of two (2) acres lot size and three-hundred (300) feet frontage; and in the R-3 and R-4 Zones, minimums of five (5) acres lot size and three-hundred (300) feet of frontage. In addition, a space of not less than twenty (20) feet in width shall be maintained open with grass, shrubs, flowers or trees all along each side lot line, rear lot line and front lot line, except for

entrance and exit driveways and such open space shall not be built upon, nor paved over, nor used for parking.

E. The site shall be provided with not more than two (2) motor vehicle driveways for each abutting street; such driveways shall intersect the abutting street or streets at ninety (90) degrees.

F. If municipal water and sewer service is not available, a plan for the satisfactory provision of water service and sewage effluent treatment and disposal shall be submitted with the site plan for review.

9.1.4 Multi-Family Dwellings

Each dwelling unit shall have not less than seven hundred (700) square feet of habitable floor space. (See 2.60)

9.1.5 Mobile Home Park

A. No mobile home park shall contain less than twenty (20) spaces of not less than 7,500 square feet for the purpose of mobile homes.

B. A usable area of not less than one thousand (1000) square feet per mobile home lot shall be set aside and maintained by the mobile home park, for the joint use of all the occupants of the mobile home park.

C. Within the minimum acreage, but in addition to all lots and common areas, a buffer strip at least fifty (50') feet wide shall be maintained along all boundaries and public roads. Within the minimum fifty (50') space, a dense, continuous screen of coniferous shrubs and trees fifteen (15') feet or more in height shall be provided to screen the units from view of abutting properties. If the site is visible from more distant points such as hillsides or hilltops, the natural vegetation must conceal the units from views of those properties as well. Where existing natural growth provides the required density, it may be utilized, but only after concurrence by the Planning Board. The remaining space shall be maintained open with grass, flowers, shrubs, or trees, and such open space shall not be built upon, nor paved, nor used for parking. A lot number sign shall be visibly displayed from the road.

D. Parking pads on which mobile homes rest shall consist of crushed rock, concrete, or similar solid construction and the under section shall be covered with suitable skirting.

E. Utilities including water, sewer and electricity shall be provided by the mobile home park owner. The water and sewer facilities shall be designed by a sanitary or civil engineer in conformance with N.H. law and Marlborough ordinances and regulations.

F. For each designated mobile home space there shall be provided not less than one and one-half (1 1/2) paved off-street automobile parking spaces to consist of a minimum total area of 243 sq. ft.

G. No mobile home parking space shall be so positioned as to permit the placement of a mobile home any closer than thirty-five (35) feet from another mobile home, or from attachments and appurtenances thereto, or from a street within the mobile home park.

H. All roads shall be constructed and maintained by the mobile home park owner in conformance with Marlborough road standards, except that the street paving need be only twenty (20) feet in width within a right-of-way thirty (30) feet in width.

I. Exterior lighting for a mobile home park shall be provided which meets standards by the power supplying utility for an accepted subdivision, except that illumination shall be at least three (3) foot-candles for all street areas at entrances to buildings and walkways used at night.

J. The owner of a proposed mobile home park shall meet with the Marlborough Planning Board before beginning construction, for the purpose of reviewing plans for such proposed mobile home park. The Planning Board shall review such plans to determine whether or not they conform to the requirements of this Ordinance. The Selectmen shall grant no permit for construction of a mobile home park until the Planning Board issues certification of conformance.

K. A Mobile Home Park permits housing units to be grouped on sites or lots with dimensions, frontages and/or setbacks reduced from conventional sizes, provided: (1) that the density of the tract as a whole shall not be greater than the density allowed for individual residences by the zoning district under existing regulations; and (2) that the remaining land area shall be devoted to common open space. This requirement applies to both new mobile home parks and expanded existing mobile home parks.

L. All expansions to existing mobile home parks shall be in compliance to sections 9.1.5.B through 9.1.5.J. The density requirement in sub paragraph 9.1.5.K will apply to an entire mobile home park in aggregate including any expansion.

M. In addition to these regulations, a mobile home park shall comply with pertinent State of New Hampshire regulations. Where a conflict appears, the most restrictive regulation shall apply.

9.1.6 Camp Grounds

A. No campground shall be constructed on less than five (5) acres of land.

B. A space at least fifty (50) feet wide shall be maintained open with grass, shrubs, flowers or trees all along each side property line, rear property line and front property line except for entrance and exit driveways, and such space shall not be built upon, nor paved, nor used for parking.

C. Each site proposed for camping with a tent, travel trailer, pick-up coach, pick-up camper, motorized camper or tent trailer, as defined by this Ordinance, shall contain not less than twelve hundred (1,200) square feet.

D. Each camping site shall be provided with an automobile off-street parking space of not less than 162 square feet either within the lot or some place adjacent to the lot. The camper shall also provide a picnic table, a trash receptacle and a fireplace of a design approved by the Municipal officers.

E. Each applicant for a campground permit shall furnish specific information and a site plan illustrating the location and type of sewage disposal system proposed, the source and supply of drinking water, the means of fire fighting and the type and location of roads proposed with the campgrounds. The applicant shall comply with State Codes governing health facilities such as, but not limited to water supply, sewage disposal, washing and bathing facilities.

9.1.7 Cluster Developments

9.1.7.1 Definition: A cluster development is a form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and/or setbacks reduced from conventional sizes, provided: (1) that the density of the tract as a whole shall not be greater than the density allowed by the zoning district under existing regulations; and (2) that the remaining land area shall be devoted to common open space.

9.1.7.2 Purpose The purpose of providing for cluster developments in this Ordinance is to promote innovative development concepts that will:

- A. Preserve and enhance the attractive visual features of the natural environment;
- B. Improve the aesthetic quality and visual impact of the man-made environment;
- C. Maintain and enhance the rural character of the Town;
- D. Provide for the most appropriate and efficient use of buildable land, in harmony with the natural terrain, permitting economies in road construction and road maintenance as well as in the provision of public utilities and public services;
- E. Preserve open space and provide within such open space, areas for recreation, and;
- F. Offer alternatives to strip and/or creeping road-front development.

9.1.7.3 **Where Permitted:** Cluster developments are permitted by special exception in all residential zones and are not permitted in commercial zones.

9.1.7.4 **Minimum Land Requirements** Ten (10) acres, excluding lands classified as wetlands or having slopes over fifteen percent (15%).

9.1.7.5 **Buffer Requirement** All internal lot lines shall be at least one hundred (100) feet from the periphery of the gross property lines.

9.1.7.6 **Maximum Number of Dwelling Units** The number of units shall not exceed the total number of dwelling units permitted on the same tract under the regular provisions of the Zoning Ordinance for the zone in which the tract is situated (reference Section 7).

9.1.7.7 **Minimum Lot Sizes** 33,000 square feet of contiguous buildable land area for single family dwellings and 25,000 square feet of contiguous buildable land area per dwelling in two and multi-family dwellings. These minimum lot sizes assume the availability and utilization of the Town sewer system. If Town sewage is not available, the minimum lot size required under the regular provisions of the Zoning Ordinance may be waived only if a septic system for each smaller than required lot, designed by a N.H. licensed septic system engineer, has been approved by the State. In no case shall the lot size be smaller than the minimums specified earlier in this paragraph.

9.1.7.8 **Number of Buildings Per Lot** Only one primary residential structure may be erected upon each lot.

9.1.7.9 **Maximum Number of Units Per Multi-Family Building** Multi-Family structures shall be permitted only if Town sewerage is utilized and shall be limited to no more than four (4) units per structure.

9.1.7.10 **Building Space Requirements** Those indicated for the zone in which the cluster development is located as shown in Section 7. There must be at least 200 feet between dwelling units.

9.1.7.11 **Frontage on Existing Road** Lots within a cluster development shall not front on existing State or Town roads; nor shall they have driveway access from such roads.

9.1.7.12 **A Plan for Common Elements** The application for a cluster development must include a satisfactory plan regarding (1) the ownership use, perpetual preservation and maintenance of the areas proposed for common open space; (2) the provision of water; and (3) the treatment and disposal of sewerage effluent.

9.1.7.13 Division of Parcel A minimum of fifty percent (50%) of the total land area of the parcel, excluding wetlands and slopes over fifteen percent (15%) slope shall be designated as common open space.

9.1.7.14 Review Process:

A. Applicants proposing cluster developments must receive a special exception from the Zoning Board of Adjustment prior to applying to the Planning Board for subdivision and site plan review. Conceptual discussions with the Planning Board are encouraged before any final approvals are sought. A joint hearing with the Zoning Board of Adjustment and the Planning Board is also permitted.

B. Although cluster developments may be subdivided and developed in phases, no incremental approvals may be granted. The entire parcel to be considered for cluster development must be presented as a whole so that the Planning Board may consider the entirety of the project.

9.1.7.15 Plan Requirements:

A. The site plan and development shall be of such character as to harmonize with the surrounding neighborhood, be aesthetically pleasing, preserve the natural features and beauty of the environment, and preserve the appearance of the community.

B. Landscaping shall be designed so as to enhance the appearance of a project, screen parking and service areas from residences to produce a blend between the project and surrounding areas.

C. The architectural design of structures shall conform to the principles of item (A) above.

D. All wires, cables, conduits and equipment used to transmit utilities to, among, and from buildings shall be installed underground in accordance with and to the extent permitted and feasible by generally accepted engineering practices. However, if the Planning Board should find that conditions of soils and terrain are such as to make underground installation economically unfeasible, it may, in its sole discretion, waive this requirement in whole or in part.

E. All land in cluster developments in excess of building lots, roadways, driveways and parking areas shall be reserved as one or more common open spaces for recreation, conservation, and enjoyment; and such common open spaces shall be readily accessible to all residents of the development.

F. No building permit shall be granted for any structure in the development except as specifically provided for in the site plan approval or special exception.

9.1.8 Planned Unit Development (PUD)

A. Purpose: The purpose of planned unit developments is to develop a tract of land as an entity while providing a variety of housing types, adequate service facilities to the residents, development of real property values, and development of land uses and building locations in harmony with the natural physical attributes of the area.

B. Procedures: The Board of Adjustment may, simultaneously with the approval of a plat or plats pursuant to this Section, modify applicable provisions of this zoning subject to the following conditions and such other reasonable conditions as the Board may in its discretion add thereto.

The owner or his agent shall make a written application for the use of this Section and shall submit to the Board a duplicate site plan of the proposed development, one copy of which plan the Board

shall deliver to the Planning Board for its review. The Zoning Board of Adjustment shall make no decision until a written report is received from the Planning Board or until 45 days have expired from the time of delivery of said plan without a response from the Planning Board. Should the decision of the Zoning Board of Adjustment differ from the recommendations of the Planning Board, the reasons therefore shall be clearly stated in writing. The Plan shall be prepared for the entire area in accordance with the specifications of the Subdivision Rules and Regulations of the Planning Board for preliminary subdivision plans. (whether or not the entire area constitutes a "subdivision") in accordance with said Planning Board regulations for subdivision plans. This procedure shall be limited to lands in the residential zones containing not less than twenty (20) acres. The computation of the 20-acre requirement must exclude wetlands and/or slopes over 15%. (See **Town Subdivision Regulations, Appendix I**, for wetland definition and also **Section 2.68 of the Town Zoning Ordinance**).

C. Use Regulations: In a PUD the following uses shall be permitted:

- A. One family dwelling
- B. Two family or semi-detached dwelling.
- C. Town house or row house provided no such row shall exceed eight units.
- D. Apartment houses.
- E. Condominiums or cooperative town houses or apartments.
- F. Place of worship.
- G. Public educational use.
- H. Recreational uses.
- I. Limited retail business uses such as, but not limited to, those listed below; provided the Board deems them specifically designed and intended for the use of the residents of the PUD:
 - Barber shop
 - Beauty shop
 - Tailor and/or cleaning shop
 - Shoe repair shop
 - Newsstand or store
 - Drug store
 - Food store
 - Clothing store or boutique
 - Restaurants
 - Medical and other professional offices
 - One real estate office for sales within the PUD.

D. Site Requirements

1. Number of dwelling units: The permissible number of dwelling units shall be determined by the required lot size for the zone in which the development is located; except that in no case shall building, parking, and street coverage exceed 15% of the land area exclusive of wetlands and/or slopes over 15%.

2. A **PUD** shall be considered as a non-residential use. As provided by **Chapters 674:43, 674:44, I, II and 675:8 of the New Hampshire Revised Statutes Annotated**. The Planning Board may, upon review, approve or disapprove site plans for the development of tracts for non-residential uses whether or not such development includes a subdivision or re-subdivision of the site.

3. Height restrictions shall be as set forth in **Section 7.1** of the **Zoning Ordinance** except that the Board of Adjustment may waive these restrictions for apartment dwellings. (See also Section 2.11).

4. All structures erected on lots that do not conform to the zoning when permitted as a matter of right, shall be set back a minimum of 150 feet from the periphery of the **PUD** property line; and no multi-family structure shall be erected within 300 feet of a single family dwelling existing at the time of subdivision of land under these provisions.

5. The maximum gross floor area of permitted business shall not exceed 500 square feet per acre for the first 20 acres nor exceed 200 feet for each acre over 20 acres exclusive if a restaurant is located within an apartment building or recreational facility. The total seating capacity of all restaurants not included in the square foot limitation shall not exceed one seat for each dwelling unit.

6. No one type of dwelling unit shall exceed 60% of the total units allowed and there shall be no less than two types of dwelling units.

E. Development Procedures: The plans shall specify reasonable periods of time and dates of the starting and development of each section. No building designed or intended for business, except an office for the sale or rental of real estate, shall be constructed until either 25% or 100 dwelling units have been constructed (whichever is less). The entire area planned for business may be completed after 50% or 300 units have been completed (whichever is less).

F. Open space Restrictions: One or more residential cluster developments may be proposed within a **PUD**. Each cluster development shall be subject to the provisions of **Section 9.1.7 Cluster Developments** of this Ordinance, as well as the provisions of this Section (9.1.8).

9.1.9 Cemeteries

Burial on private property shall be:

- A.** At least one hundred (100) feet from highway rights of way.
- B.** At least one hundred (100) feet from any dwelling and/or commercial building, and
- C.** At least fifty (50) feet from any known water source.
- D.** Described as to plot location within any deed upon future conveyance of the property and/or upon any changes in title of ownership thereto.

9.2.0 Schools, Community Center, Adult Education Center, Nursery, Kindergarten ETC.

A. Minimum lot size for a religious sectarian or non-sectarian, private or public school shall be five (5) acres.

B. Noisy outdoor activities shall be screened by a fence, wall or planting line from neighboring structures and shall not be detrimental to the neighborhood by reason of noise in any season.

C. In the C-2 and C-3 Zones, day nurseries, nursery schools, kindergartens or other agencies giving day care to children (Reference **Table 6.4 (C)(1 & 2)**) is limited to this service provided to the employees of the firm or company. Children of non-employees are not allowed.

9.2.1 Infirmaries, Nursing Homes, Convalescent Homes

In all residential areas where permitted, the minimum lot size for an infirmary, nursing home, or convalescent home shall be two (2) acres.

9.2.2 Camps, Seasonal, Of a Commercial Nature

A. No seasonal camp shall be constructed on a lot having less than four (4) acres of land.

B. A space at least fifty (50) feet wide shall be maintained open with grass, shrubs, flowers or trees all along each side lot line, rear lot line and front lot line except for entrance and exit driveways, and such open space shall not be built upon, nor paved, nor used for parking.

C. In making application for a seasonal camp for children, the applicant shall present data in sufficient detail to permit the Board of Adjustment to determine that the welfare and safety of occupants will be assured. Such data should include means of access to and egress from the seasonal camp; means of fire fighting and fire protection; location of recreational areas; sewage disposal means; and source location and distribution of water for drinking and other general uses.

9.2.3 Special Requirements

A. Where permitted by special exception (SE) in an R-3 Zone, no use under this provision will be developed upon less than five (5) acres of land. Land requirements for all other zones are specified in Section 7.

B. Setback requirements specified in Section 7.1 shall be maintained open with grass, shrubs, flowers, or trees along the front, rear and side lot lines except for entrance/exit driveways, and such open space shall not be built upon, nor paved, nor used for parking.

C. No use under this provision shall generate neighborhood disturbing effects as (but not limited to) inappropriate noise, dust, flashing cinders, odors, refuse matter, smoke, vapor, lights, traffic hazards, or disposal of material in a manner that creates a nuisance/hazard to safety or health.

9.2.4 Veterinary Establishments, Kennels, Pet Shops, Stables

A. Where these uses are permitted in commercial zones, animals must be kept wholly indoors.

B. No commercial stable shall be allowed on a lot of less than ten (10) acres.

C. No private non-commercial stable shall be located closer than one hundred (100) feet from the front, rear and side lot lines.

9.3.0. Other Uses

- A.** Where such uses are permitted, the minimum lot size shall be two (2) acres, except in the C-3 Zone.
- B.** A space at least twenty (20) feet wide shall be maintained open with grass, shrubs, flowers or trees all along each side lot and rear lot lines (except for entrance and exit driveways) and such open space shall not be built upon, nor paved, nor used for parking.
- C.** The applicant for a special exception under the provisions of this category of use shall furnish specific data to insure that the use, if permitted, will in no way adversely affect and/or endanger surrounding areas for reasons of noise, pollution of air or ground and/or surface water, or cause such conditions to result from vehicle circulation and parking.
- D.** Junk and salvage: Under the provisions of 6.4.D 15, the applicant shall specifically show the means proposed to screen the area from view. An opaque fence or tree screen around all sides of the area must be provided. The applicant shall also observe other Marlborough Ordinances and the State of New Hampshire statutes governing such uses.
- E.** Removal of clay, sod, loam, sand, gravel, etc.: Removal of these materials, which include construction aggregate, is governed by the Town of Marlborough Earth Excavation Regulations and State of New Hampshire RSA 155-E, as applicable.
- F.** Private airports: The applicant shall furnish a plan showing built-up areas surrounding the proposed facility, the glide path for the facility, proposed aircraft parking areas, proposed buildings and automobile parking and access/egress areas and demonstrate that the proposed facility will not endanger and/or present excessive noise problems in surrounding areas. The applicant shall also demonstrate that the proposed facility satisfies all State and Federal regulations regarding construction and use.

9.3.1 Access Requirements

Safe and proper access/egress must be provided to a public street/s to adequately serve the proposed use.

9.4 Performance Standards for Appliance and Equipment Repair Service and Craft/Artisan Guild Shops

- A.** Such establishments shall not have more than two employees in addition to the owner/operator working in the establishment at any one time, except in the C-3 Zone.
- B.** All activities shall be conducted within the primary and/or accessory building/s.
- C.** There shall be no outside display and/or storage of equipment, materials, waste materials, derelict equipment, used or abandoned equipment and/or parts.
- D.** Such establishments shall not adversely affect the district in which they are located by creating excessive noise, smoke, dust, vibration, heat, obnoxious odors and/or fumes that would be detrimental to neighboring properties.

9.5 Performance Standards for Home Based Businesses

Permitted home based businesses, as defined in this Ordinance, shall be conducted in accordance with the following conditions:

A. The home based businesses shall be conducted solely by the member/s of the immediate family that reside/s in the dwelling unit and by no more than three (3) non-resident employees.

B. There shall be no outside display and/or storage of goods or materials, rubbish, junk, derelict equipment, used or abandoned equipment and/or parts associated with the home based business.

C. In no manner shall alterations to existing structures; the size or appearance of new structures; or exterior evidence of business activity cause the property to differ from its residential character either by the style of construction or use of colors, materials, lighting or signs. Any outdoor storage of equipment or business related vehicles should be screened from roads and surrounding properties, as approved by the Zoning Board of Adjustment.

D. The home based business shall not involve the frequent use of commercial vehicles over five (5) tons gross weight for delivery of materials to and from the premises. The intent is to permit delivery vehicles such as United Parcel Service vehicles but to exclude tractor-trailers and other large, heavy commercial vehicles. Any traffic generated by the home based business use shall not create any hazard, nuisance, or other disturbance in the neighborhood, as determined by the Zoning Board of Adjustment.

E. The use shall not generate exterior noise, dust, soot, fumes, odors, smoke, glare, line voltage fluctuation, vibrations; soil, water or air pollution; or any hazard or nuisance beyond that which normally occurs on an average residential property within the same zoning district. No equipment or process shall be used which creates visual or audible electrical interference in any radio or audible television receivers off the premises. The home based business must not have any adverse effect on the environment or surrounding properties, as determined by the Zoning Board of Adjustment.

F. Any persons patronizing the home based business or employees shall be provided with suitable off-street parking facilities located on the property of the home based business. All efforts shall be made to locate parking at the side or rear of the property, properly screened from public view, as determined by the Zoning Board of Adjustment.

9.6 Camping Outside a Campground (adopted 3/8/2022)

A: PURPOSE: To allow reasonable use of any travel trailer, pick-up coach, motor home, or camper trailer on private property in the context of the community values stated in the Master Plan, providing for the protection of the natural, historic and scenic environment.

This ordinance takes particular care to safeguard the quality of all groundwater and surface waters in the Town of Marlborough. Travel trailers, pick-up coaches, motor homes, or camper trailers cannot be used as permanent dwellings or used to establish residency, except as provided in paragraph 2 below.

B: PERMITTED USES:

1. Temporary camping by the property owner, family, and friends on an individual's private land is permitted in any zoning district upon application for and the issuance of a required permit by the Board of Selectmen.

Any such permit shall be restricted to a specific travel trailer, pick-up coach, motor home, or camper trailer and not to an occupant for a term of not more than thirty (30) days. At least sixty (60)

days must elapse between the issuance of the first permit and the granting of a second thirty- (30) day permit. No more than two (2) permits may be granted in any one calendar year.

To apply, please use the application which can be obtained through the Board of Selectmen's Office.

2. A travel trailer, pick-up coach, motor home, or camper trailer may be used as a temporary dwelling on the building lot during the construction of a permanent dwelling. Before such use, permission shall be obtained from the Board of Selectmen, who shall ensure that adequate sanitary facilities exist on the site and that all permits required to build have been issued. Permission for use of such a temporary dwelling shall be limited to a period of one year. Extensions may be granted only by the Board of Selectmen.

9.7 Outdoor Swimming Pools

All outdoor swimming pools will be enclosed by a four- (4) foot fence in height and may consist of any material that will not allow entrance to the pool and will include a self-closing and self-latching gate.

9.8 Casual Sales

All yard, garage, tag, porch, et al, casual sales shall be limited to two (2) events per year per household, for no longer than two (2) consecutive days per event.

9.10 Street Access for Building Purposes

No building shall be erected on any lot unless the lot has actual frontage on a street giving access to the lot upon which such building is to be placed and unless such street access:

A. shall have been accepted or opened as, or shall have received the prior legal status of, a Class V or better highway; or

B. corresponds in its location and lines with:

(1) a street shown on the official Town Map, or

(2) a street on a subdivision plat approved by the Planning Board, or

(3) a street on a street plat made by and adopted by the Planning Board, or

(4) a street located and accepted by the Town, after submission to the Planning Board, and in case of the Planning Board's disapproval, by the favorable vote required by New Hampshire Statutes, RSA Chapter 674:40; or

C. is a Class VI highway, provided that:

(1) The Board of Selectmen, after review and comment by the Planning Board, has voted to authorize the issuance of building permits for the erection of buildings on said Class VI highway or a portion thereof; and

(2) the Town neither assumes responsibility for the maintenance of said Class VI highway nor liability for any damages resulting from the use thereof; and

(3) prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of Town responsibility and liability, has been recorded in the Cheshire County Registry of Deeds.

9.11 Telecommunications Facilities

A: AUTHORITY

This Ordinance is adopted by the Town of Marlborough in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 21.

B: PURPOSE

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of the Town of Marlborough to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.
2. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.
3. Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.
4. Preserve Marlborough's unique viewsheds and scenic values.

C: LOCATION OF TELECOMMUNICATIONS FACILITIES

Telecommunications facilities may be permitted in all districts approved in Section 6.4.F.1, provided that they are camouflaged, hidden or disguised. Historic Districts are specifically exempted from this provision. In no case, however, shall such a facility be sited in a location that would impact any view to Mt. Monadnock.

D: PERMITTED USES

1. Principal or Secondary Use. Telecommunications facilities may be considered either principal or secondary uses. Having an existing-permitted use on site shall not preclude the addition of a facility as a Secondary Use as long as all other provisions of the Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
2. Any alteration of the original permitted use and device configuration of the facility will require a new Special Exception approval and Site Plan Review approval.
3. Amateur Radio; Receive-Only Antennas. This Ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive- only

antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16,IV.

4. Essential Services & Public Utilities. Telecommunication facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications is a use of land, and is addressed by this Section.

E: CONSTRUCTION PERFORMANCE REQUIREMENTS

1. Federal Requirements. All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with Section 9.11.11 through the execution of the posted security.

2. Building Codes/Safety Standards. To ensure the structural integrity of towers and antennas, all facilities must be maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers published by the Electronics Industries Association. If upon inspection at the owner's expense, the Town concludes at the owner's expense that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section 9.11.11, of the tower or antenna, at the owner's expense through execution of the posted security.

3. Additional Requirements for Telecommunications Facilities. These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

a. Height All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 100 feet.

b. Setbacks and Separation. In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.

c. Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

d. Landscaping.

1. A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

2. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.

3. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited

on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

4. Camouflaging.

a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

b. Where possible, dish antennae will be arranged contiguous to or below the abutting tree line.

c. If an antenna is installed on a structure other than a tower, antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive

d. Balloon Test. The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

F: CONDITIONAL USE PERMITS

1. General. Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with other applicable ordinances and regulations of the Town of Marlborough.

2. Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

a. Procedure on Application

1. The Planning Board shall act upon the application in with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

2. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

b. Decisions. All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.

3. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:

a. Title block that shows the name of the development or project.

- b.** North arrow, date of plat, scale; name, address and seal of all persons preparing the plat.
- c.** Signature block for Planning Board endorsement.
- d.** Vicinity sketch and zoning district(s).
- e.** Total area of the parcel in acres and square feet.
- f.** Lot frontage.
- g.** Boundary lines and approximate dimensions and bearings.
- h.** Tax map and lot numbers.
- i.** Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
- j.** Physical features on the site and within 200 feet of the site.
- k.** Soil information based on the Cheshire County Soil Survey.
- l.** All natural features, such as streams, ponds, wetlands, etc.
- m.** Existing and proposed grades and contours, and base flood elevations.
- n.** Shape, size, height, location and use of existing and proposed structures on the site.
- o.** Existing buildings and structures within 500 feet of the site.
- p.** Access to the site, with location and width of existing and proposed driveways.
- q.** A driveway permit been granted from either the NH DOT or the Town of Marlborough.
- r.** Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.
- s.** Final road profiles and cross sections for any new roads.
- t.** Locations and sizes of all electric and telephone lines on the site.
- u.** Existing and proposed fire hydrants and/or fire ponds.
- v.** Existing and proposed methods of handling storm water runoff, and the direction of the flow indicated by arrows
- w.** Sizes and locations of all storm water drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.
- x.** Location, types, and sizes of all existing and proposed landscaping and screening.
- y.** Location of any proposed lighting.

4. Other Information Required. In order to assess compliance with this Ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

- a. Propagation map showing proposed radio frequency coverage.
- b. Photographic documentation of the balloon test(s).
- c. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
- d. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.
- e. The applicant will provide the Board with the following information:
 - 1. The number of sites for telecommunication facilities each provider will require
 - 2. Sites outside of the Town for the particular coverage area that are being considered;
 - 3. How the siting of a telecommunication facility will affect the ability to allow a competitor's antennas on the same property;
 - 4. The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.
 - 5. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
 - 6. The applicant will provide the Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.
 - 7. The Board of Adjustment may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto.
 - 8. Upon request, the applicant will provide:

a. Detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and

b. Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.

9. The applicant will submit an agreement to the Town to the effect that Town will be held harmless for any extraordinary fire or safety events.

G: WAIVERS

1. Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations.

2. Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

3. Procedures. A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

H: BONDING AND SECURITY INSURANCE

1. The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

2. The term of the bond shall be negotiated with the Planning Board. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

I: REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

J: ADMINISTRATION AND ENFORCEMENT

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance. Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

K: APPEALS

Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but to the superior court as provided by RSA 677:15.

9.12 Wind Turbine Facilities

A: PURPOSE

These regulations have been enacted in order to establish general guidelines for the siting of towers to enhance and fulfill the following goals:

1. Preserve the authority of the Town of Marlborough to regulate and provide for reasonable opportunity for the siting of wind tower facilities.
2. Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.
3. Preserve Marlborough's unique viewsheds and scenic values.

B: LOCATION OF WIND TOWER FACILITIES

Wind tower facilities may be permitted in all districts approved in Section 6.4.F.7. In no case, however, shall such a facility be sited in a location that would impact any view to Mt. Monadnock.

C: CONSTRUCTION PERFORMANCE REQUIREMENTS

1. A building permit shall be required prior to the construction of any wind turbine facility.
2. Building Codes/Safety Standards. To ensure the structural integrity of towers, all facilities must be maintained in compliance with standards contained in applicable local building codes and the applicable standards for wind towers. If, upon inspection, the Town concludes that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such facility into compliance with the standards. If the owner fails to comply with the notice, or fails to appeal the administrative decision, within 30 days, such action shall constitute an abandonment and grounds for the removal, at the owner's expense, through execution of the posted security.
3. Additional Requirements for Wind Tower Facilities. These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.
 - a. Height. All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 100 feet.
 - b. Setbacks and Separation. In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.
 - c. Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

d. Noise. Sound generated by activities shall not exceed a maximum value of 60 dBA at any point on the property line of the facility. A maximum value is an instantaneous maximum as measured with sound level meter slow response.

e. Landscaping.

1. A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

2. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.

3. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

f. Balloon Test. The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

D: CONDITIONAL USE PERMITS

1.General. Wind Turbine Facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with all other applicable Federal and State laws, and ordinances and regulations of the Town of Marlborough.

2. Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

a. Procedure on Application

1. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

2. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

b. Decisions. All decisions shall be rendered in writing in accordance with RSA 676:3.

3. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:

a. Title block that shows the name of the development or project

b. North arrow, date of plat, scale; name, address and seal of all persons preparing the plat

c. Signature block for Planning Board endorsement

- d.** Vicinity sketch and zoning district(s)
 - e.** Total area of the parcel in acres and square feet
 - f.** Lot frontage
 - g.** Boundary lines and approximate dimensions and bearings
 - h.** Tax map and lot numbers
 - i.** Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
 - j.** Physical features on the site and within 200 feet of the site
 - k.** Soil information based on the Cheshire County Soil Survey
 - l.** All natural features, such as streams, ponds, wetlands, etc
 - m.** Existing and proposed grades and contours, and base flood elevations
 - n.** Shape, size, height, location and use of existing and proposed structures on the site
 - o.** Existing buildings and structures within 500 feet of the site
 - p.** Access to the site, with location and width of existing and proposed driveways
 - q.** A driveway permit granted from either the NH DOT or the Town of Marlborough
 - r.** Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site
 - s.** Final road profiles and cross sections for any new roads
 - t.** Locations and sizes of all electric and telephone lines on the site
 - u.** Existing and proposed fire hydrants and/or fire ponds
 - v.** Existing and proposed methods of handling storm water runoff, and the direction of the flow indicated by arrows
 - w.** Sizes and locations of all storm water drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts
 - x.** Location, types, and sizes of all existing and proposed landscaping and screening
 - y.** Location of any proposed lighting
- 4.** The Planning Board may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto.

5. The applicant will submit an agreement to the Town to the effect that the Town and its employees, officers, agents and representatives, will be held harmless, and that the applicant will indemnify the Town, and its employees, officers, agents and representatives, for any damage to person or property caused by the applicant's wind turbine facility

E: WAIVERS

1. Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations.

2. Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

3. Procedures. A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

F: BONDING AND SECURITY INSURANCE

1. The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

2. The term of the bond shall be negotiated with the Planning Board. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

G: REMOVAL OF ABANDONED TOWERS

Any tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

H: ADMINISTRATION AND ENFORCEMENT

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance. Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

I: APPEALS

Pursuant to RSA 676:5, any decision made under Section D of this ordinance cannot be appealed to the Board of Adjustment, but to the superior court as provided by RSA 677:15.

9.13 Accessory Dwelling Units

Section 1. Definitions.

ADU: A residential living unit that is within or attached to a single-family dwelling and that provides independent living facilities for one or more persons including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Section 2. Provisions.

An attached accessory dwelling unit shall be permitted in all zoning districts that permit single family dwellings, subject to the following:

- A.** Only one (1) ADU shall be permitted for each single-family dwelling.
- B.** The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation.
- C.** The ADU shall have an independent means of ingress and egress, or shall have ingress and egress through a common space such as a shared hallway to an exterior door.
- D.** The ADU shall be attached to the principal dwelling unit. In order to be considered an attached ADU there must be a common wall between the principal dwelling unit and the ADU. Detached accessory dwelling units are prohibited.
- E.** Either the ADU or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property. The owner of the property shall mean the individual or individuals having title to the property and, in the case of title being in a Trust, Limited Liability Partnership or Limited Liability Company, a Trustee of the Trust, a Partner in the LLP or an officer of the LLC. The owner of the property may include a legal relative and/or a legal guardian. Both units must be in common ownership and condominium ownership is not permitted.
- F.** The ADU shall be no larger than one-third the size of the combined square footage of living space in the principal dwelling unit and proposed accessory dwelling unit.
- G.** An ADU shall be provided a minimum of two (2) off-street parking spaces.
- H.** An ADU shall make provision for adequate water supply and sewage disposal service in compliance with RSA 485-A:38 and regulations adopted by the New Hampshire Department of Environmental Services.

Section 3. Minimum Lot Dimension Requirements:

An attached ADU shall not be required to meet additional lot area requirements other than already provided for the principal dwelling unit.

An ADU shall comply with all lot setback requirements.

SECTION 10: SIGNS

TABLE OF CONTENTS:	10.1 Scope and Objective
	10.2 Definitions
	10.3 Residential District Signs
	10.4 Commercial District Signs
	10.5 Directional Signs
	10.6 Prohibited Signs
	10.7 Permit Application Procedures
	10.8 Appeals and Enforcement
	10.9 Table of Dimensional Requirements

10.1 SCOPE AND OBJECTIVE This Section governs all exterior signs erected in the Town of Marlborough and is designed to promote the safety, general welfare, and the economic and scenic value of the Township.

10.2 DEFINITIONS:

10.2.1 Sign A sign is a lettered board, lettered material, or other public display used to identify or advertise. A sign shall include any announcement, declaration, display illustration, insignia, letter, word, symbol, drawing, design, article, device, or object or combination thereof that advertises, directs attention to or indicates any premises, merchandise, person, or activity, regardless of the nature of the material thereof and the manner of composition or construction.

10.2.2 Animated sign A sign intermittently lighted to indicate movement.

10.2.3 Awning and Canopy signs An awning sign shall include any structure with a frame attached to a building and projecting over a sidewalk or public right-of-way, when the same is so erected as to permit its being raised to a position flat or rolled against a building when not in use. A canopy sign shall include any structure, other than an awning or a wedding canopy, attached to a building, projected over a sidewalk or public right-of-way, and carried by a frame supported by the ground or sidewalk.

10.2.4 Building sign A sign containing the name of the building or business, and which is erected on the building or located in or on the front wall of the building.

10.2.5 Bulletin board A board for the posting of bulletins, notices, announcements, etc., by a non-commercial organization.

10.2.6 Date sign A sign made of any material showing only the date when the building was constructed.

10.2.7 Directional sign (private or commercial) A sign of permanent nature that directs the traveling public to specific buildings or areas.

10.2.8 Directional sign, public, civic, and educational A sign of a permanent nature that directs the public to a public, civic, or educational building or activity.

10.2.9 Free-standing sign A sign not attached to, located on, or a part of a building, and which is free standing on a pole, mounted upon or in the ground surface, or on a structure designed to support the sign.

10.2.10 Government sign Any traffic or other municipal sign, such as a legal notice, railroad crossing, danger sign, and such temporary emergency or non-advertising sign as may be approved by the Board of Selectmen under such terms and conditions as are appropriate.

10.2.11 Ground sign A sign supported by poles, pylons, uprights, braces and/or cables placed mounted upon or in ground surface. Said poles, pylons, uprights braces, and/or cables shall be deemed to be part of a ground sign for all purposes of this Section.

10.2.12 Illuminated sign A sign which has characters, letters, figures, designs, or outlines illuminated by electric lights or luminous tubes with these light sources being either internal or external.

10.2.13 Incidental residential sign Mailbox identification, name, "NO TRESPASSING", "KEEP OFF THE GRASS" signs, and others of like nature, of one and one-half (1 1/2) square feet or less signboard area.

10.2.14 Mobile or Temporary sign Any sign, banner, pennant, propeller, valence, balloon, plastic decoration, sandwich board, mannequin, or advertising display constructed of cloth, canvas, plastic, light fabric, blackboard, cardboard, wall board, or other light materials, with or without frames, as well as any vehicle or trailer used as a fixed or mobile advertising display.

10.2.15 Obscene sign A sign or other advertising structure displaying any obscene, indecent, or immoral matter.

10.2.16 Occupational sign A sign denoting only the name and/or profession of an occupant.

10.2.17 Off-premise sign A sign which does not pertain to a business, industry, or person occupying the premises upon which the sign is displayed.

10.2.18 Political sign A sign which advertises or promotes a political organization, a political issue, or the candidacy of any individual for an elected local, county, state, or national office.

10.2.19 Projecting sign A sign that is attached to a building or other structure and extends more than twenty-four (24) inches beyond the surface of that portion of the building or structure to which it is attached.

10.2.20 Public, civic or educational sign A sign that denotes public, civic, educational, or non-profit activities.

10.2.21 Real estate sale/rental sign A sign which advertises only the sale, rental, or lease of the entire premises or portions thereof.

10.2.22 Roof sign A sign that is erected upon or above the roof of a building.

10.2.23 Skeletal or parapet sign A sign made of individual letters mounted upon an exterior parapet wall.

10.2.24 Temporary sign A sign displayed for a limited duration.

10.2.25 Tree sign A sign attached to a tree.

10.2.26 Wall sign Any lettered and/or numbered sign upon a wall that extends less than twenty-four (24) inches beyond the building.

10.3 RESIDENTIAL DISTRICT SIGNS: Signs in residential zoning districts identified as R-1, R-2, R-3 and R-4. Signs not visible from the road or property line, such as on an outbuilding, are not covered by these provisions. When a use is terminated, all signs pertaining to the use shall be removed within thirty (30) days of the termination of such use.

10.3.1 General Sign Construction One sign displaying the street number, or name of the occupant of the premises, or both, not exceeding four (4) square feet in area, shall be permitted. Such sign may be attached to a building or may be on a rod or post not more than six (6) feet high and not less than ten (10) feet from the street line, or fifty percent (50%) of the distance from the building to the street line, whichever is less. Such sign may include identification of an accessory studio or professional office in the dwelling or on the premises, or may identify other permitted accessory uses, including customary home based businesses. All signs/advertising devices shall be stationary. They shall not contain visible moving parts nor be of neon or illuminated tube type. The lighting of any sign/advertising device shall be continuous (not intermittent, flashing, or changing) and be so placed or hooded as to prevent light from shining onto any street or adjacent property.

10.3.2 Premises Identification One bulletin or announcement board or identification sign for a permitted non-residential building or use, not more than six (6) square feet signboard area. For churches and institutions, two bulletin or announcement boards or identification signs are permitted on each building not to exceed ten-(10) square feet signboard area. No such sign shall be located nearer to a street than one-half (1/2) the required front setback.

10.3.3 Incidental Residential Signs As defined in **Section 10.2.13**, these signs are permitted without application and a fee is not required.

10.3.4 Residential Developments One development name sign may be permitted for each entry from a public way, not to exceed sixteen-(16) square feet signboard area.

10.3.5 Temporary Signs These signs are permitted for events conducted for educational, charitable, political, etc., public and non-profit purposes. These signs may be displayed for a maximum of forty-five (45) days prior to each event and must be removed within twenty-four (24) hours after the event. Application for permit and fee is not required.

10.3.6 Sale/Rent Signs One "FOR SALE" or "FOR RENT" sign advertising only the premises or personal property thereon is permitted but it is not to exceed six (6) square feet signboard area. Application for permit and fee is not required.

10.3.7 Contractor's Signs One sign shall be permitted upon the premises while work is being performed but it is not to exceed six-(6) square feet signboard area. Application for permit and fee is not required.

10.3.8 Non-conforming Use Premises Sign One sign may be permitted but it is not to exceed six-(6) square feet signboard area.

10.3.9 Illuminated Signs As defined in **Section 10.2.12**, illumination of signs is permitted only between the hours of 7:00 A.M. and 11:00 P.M. Signs for safety and security lighting may be exempted by the Board of Selectmen.

10.4 COMMERCIAL DISTRICT SIGNS: These signs are utilized for those activities in Districts C-1, C-2, C-3 and C-4. For other permitted commercial activities in the residential districts, i.e., home based

businesses, shall be governed by residential district rules. Signs not visible from the road or property line, such as on an outbuilding, are not covered by these provisions.

When a business is terminated, all signs pertaining to the business shall be removed within thirty (30) days of the termination date of the business.

10.4.1 General Sign Construction A sign or advertising device shall relate to the premises upon which they are located and shall only identify the occupant of such premises, and/or advertise the article or services available upon said premises except for directional signs covered in **Section 10.5**. Signs shall not contain any visible or moving parts. Lighting shall be continuous (not intermittent, flashing or changing) and placed or hooded to prevent light from shining onto any street or adjacent property.

10.4.2 Building Sign Two per lot, or for each independent business upon a lot, up to two signs affixed to the exterior of a building is permitted. The top edge of such sign shall not be higher than the roof edge of the building or the highest point of the roof; if there is no ridgepole the top edge of such sign shall be no higher than the plane of a flat roof. The maximum size permitted shall be one hundred (100) square feet signboard area, and three fourths (3/4) of the length of the face of the building upon which the sign is affixed if only one sign is used. If two signs are used, the total for both signs cannot exceed eighty (80) square feet in signboard area, and three fourths (3/4) of the length of the face of the building upon which the sign is affixed.

10.4.3 Free-standing Sign One sign per lot is permitted, and if located within the front yard shall:

- (i) not be nearer than ten (10) feet to any lot line except that;
- (ii) one sign per lot located within the C-1 Zone along Main Street (Route 101) shall not be nearer than fifteen (15) feet of the granite curbing along the Main Street nor nearer than ten (10) feet to any other lot line. The top edge shall not be higher than fifteen (15) feet from the ground. The sign shall not exceed twenty-four (24) square feet in area.

10.4.4 Size Limitation Commercial activities located in the R-2, R-3 and R-4 Zones are permitted a combination of free-standing and building signs with the dimensions permitted as follows: If a combination of a free-standing and building sign is used, the dimensional requirements are a maximum of 124 square feet and 104 square feet for two building signs and one free-standing sign.

10.4.5 Illuminated Signs Signs may be illuminated only between the hours of 7:00 A.M. and 11:00 P.M. or during any hours these establishments are open to the public. The Board of Selectmen may exempt signs serving as safety or security lighting.

10.4.6 Temporary Signs Events conducted for educational, charitable, political and like causes, public and non-profit purposes may have temporary signs for a maximum of forty-five (45) days prior to each event. Signs must be removed within 24 hours after the event. **Exception:** One sign or banner designating "**OPEN**" or "**CLOSED**" may be permitted. Application for a permit and a fee is not required.

10.4.7 Temporary Commercial Signs Temporary commercial signs can be utilized by permit not to exceed fifteen (15) days in any thirty (30)-day period. At no time may a business have more than one temporary sign. The sign must be relevant to the business.

10.4.8 Sale/Rent Signs One **"FOR SALE"** or **"FOR RENT"** sign advertising only the premises or personal property thereon not to exceed six (6) square feet of signboard area may be permitted. Application for a permit and a fee is not required.

10.4.9 Contractor's Sign One sign, which is not to exceed six-(6) square feet signboard area, shall be permitted upon the premises while work is being performed.

10.5 DIRECTIONAL SIGNS Directional signs are for off-premises use for non-residential purposes and may be permitted as allowed in **Section 10.5.1**. Any directional sign will be purchased, erected, and maintained by each business or institution after permit approval. A uniform design is required and an illustration is available at the Selectmen's Office.

10.5.1 Directional Sign Allowance In all Zoning Districts, off-premises directional signs are allowed as an exception under the following conditions:

- A.** The institution, landmark, or business is not located on Routes 101, 12, or 124.
- B.** A permitted on-premises sign could not be visible from Routes 101, 12, or 124.
- C.** A sign is allowed for each approaching direction.
- D.** Each sign may include one signboard containing the name of and direction to the institution, landmark, or business to which it pertains. The Board of Selectmen must approve the wording of the sign.
- E.** Each sign must be placed at a location approved by the Board of Selectmen.

10.5.2 Removal of Directional Signs Five or more persons may petition the Board of Selectmen to remove a directional sign. Upon receipt of the petition, the Board of Selectmen shall advise the Chairman of the Zoning Board of Adjustment to call a public hearing to review and consider action as proposed within the petition. The Zoning Board of Adjustment shall recommend the removal of the sign if the petitioners prove either of the following conditions exists:

- A.** The need for the sign no longer exists.
- B.** The location of the sign is offensive to the public and tends to devalue surrounding property.

10.6 PROHIBITED SIGNS The following signs are prohibited:

- A. Animated signs; tree signs; projecting signs; signs displaying obscene matter; off-premises signs (except as permitted in Section 10.5); or open flames.**
- B. Roof signs** are not permitted unless they are an integral part of the architecture of the building. These signs will be allowed only in the event of new construction or major renovations affecting the exterior of the building.
- C. Signs in public rights-of-way**, except of a public, civic, or educational nature, as approved by the Board of Selectmen.
- D. Obstruction to doors, windows, or fire escapes.** Signs will not inhibit light and/or ventilation nor prevent free ingress to or egress from any door, window, or fire escape. Signs will not be attached to a standpipe or fire escape.

E. Signs constituting a traffic or pedestrian hazard. Such hazards are:

1. The obstruction of the free and clear vision of either motorists or pedestrians.
2. A sign which obstructs, interferes, or may be confused with (by reason of its content, position, shape, or color) an authorized vehicular or pedestrian sign, signal, or device.
3. A sign which displays the words, "**STOP**", "**LOOK**", "**DANGER**", or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular or pedestrian traffic.
4. A sign which uses lights in a manner which will create a traffic hazard, or where its use may be confused with vehicular or pedestrian traffic control devices or emergency vehicle signals (to include revolving beacons, intermittently illuminated, animated, flashing, and/or a travelling light).

F. Internally illuminated signs. Signs shall not exceed four-(4) square feet signboard area.

10.7 PERMIT APPLICATION PROCEDURE All signs visible from a property line or public road shall be erected, altered, or moved only upon a permit being approved and issued by the Board of Selectmen. Exceptions: incidental residential signs, real estate/rental signs, temporary, and contractor signs that do not require a permit. Permits shall require a written application and fee to the Board of Selectmen. Application forms are available from the Town Clerk and/or the Board of Selectmen.

The Board of Selectmen shall review the application to insure the plans for the sign/s, and the intended use thereof, complies with the provisions of this Section. A copy of each permit issued, including any condition or exception attached thereto, shall be on file within the Office of the Board of Selectmen.

An owner of a sign must insure the original quality of visual appearance of the sign/s is maintained. This includes peeling paint, chipped, missing, or illegible lettering, cracked or broken signboard materials or supports, and/or other visual deterioration.

10.8 APPEALS: Any applicant wishing to appeal the decision of a sign permit approval or denial must submit a written application to the Zoning Board of Adjustment. See **Section 11.2.B.**

The applicant/s should explain the situation creating the conflict and justification for the requested relief. The Zoning Board of Adjustment will act upon the appeal following a public hearing scheduled for this purpose.

10.9 ENFORCEMENT The Selectmen, upon being informed in writing of a possible violation, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. If such investigation and inspection confirms a violation the Board of Selectmen shall give written notice to the owner and occupant of the premises. If no violation exists, the Selectmen's notice shall so state.

Upon receipt of such written notice, the violation must be corrected with 30 days. If not corrected within this time, the Board of Selectmen shall institute appropriate action and/or proceedings in the name of the Town to prevent, correct, restrain, or abate the violation. Violation penalties are specified in **Section 13.5** of this Ordinance and are contained in **New Hampshire Statutes, RSA, Chapter 676:17.**

10.10 DIMENSIONAL REQUIREMENTS:

RESIDENTIAL:		
10.3.1	Street number and name of occupant	4 square feet
10.3.2	Bulletin/announcement board for:	
	Non-residential use	6 square feet
	Church/institution	10 square feet
10.3.3	Incidental Residential	1½ square feet
10.3.4	Development identification	16 square feet
10.3.6	Real estate for sale/rent	6 square feet
10.3.7	Building contractor identification	6 square feet
10.3.8	Non-conforming use	6 square feet

COMMERCIAL:		
10.4.2	One Building sign affixed to building	100 square feet
	Two Building signs affixed to building (Not more than 3/4 length of the face of a building)	80 square feet
10.4.3	Free-standing	24 square feet
10.4.4	Combination free-standing and One building sign	124 square feet
	Combination free-standing and Two building signs	104 square feet
	except: commercial signs in R-2, R-3, and R-4 Zones	
	Free Standing Sign	24 square feet
	Affixed to a building	Combined total not more than 124 sq ft
10.6.F	Internally Illuminated Signs	4 square feet

SECTION 11: ZONING BOARD OF ADJUSTMENT

11.1 MEMBERSHIP AND TERM OF OFFICE

A. The Zoning Board of Adjustment shall consist of five (5) members appointed in a manner prescribed by the Board of Selectmen. Each member of the Board shall be a resident of Marlborough in order to be appointed and/or to serve. The term of an appointed member shall be three (3) years. The initial term of members first appointed shall be staggered so that no more than two appointments occur annually, except to fill vacancies. The Board of Selectmen shall fill vacancies in membership for the unexpired term of the member vacating the office. The Zoning Board of Adjustment shall include not more than five (5) alternate members. Whenever a member shall be absent or whenever a regular member is disqualified, the chairman shall designate an alternate to act in the member's place.

B. The Board of Adjustment shall elect a chairman from its own membership and shall prepare rules and orders for procedure before it, not inconsistent with this Ordinance.

C. Any compensation rendered to a member of the Board shall be at the discretion of the Board of Selectmen.

D. A member may be removed from said Board by the Board of Selectmen but only for cause and after presentation of written charges and a public hearing.

11.2 APPEAL AND ADJUSTMENT PROCEDURE

A. On all matters within the jurisdiction of the Zoning Board of Adjustment under this Ordinance and New Hampshire Statutes Annotated, the Board shall hear and affirm, modify or revise in accordance with the terms of this Ordinance or set aside any decision of the building inspector or other Town administrative official from whom an appeal has been timely taken by any person aggrieved by such decision.

B. Any person(s) aggrieved by any decision of the building inspector, or other Town administrative official, may appeal such decision. A written Notice of Appeal, in duplicate, and in a form approved by the Zoning Board of Adjustment must be submitted to the office of the Town Clerk within fourteen (14) days following the day of the decision which is to be appealed. The application shall be accompanied by payment of a sum sufficient to cover the costs of advertising as is required by paragraphs "D" and "E", Section 11.2, that follow. The Notice of Appeal must state the specific grounds for the appeal, cite the decision which is appealed, identify the property in question, and list the names and mailing addresses of the owners of all abutting properties as defined in Section 2.1 of the Ordinance.

C. The Town Clerk shall stamp the date of receipt on both copies of any such appeal and shall forthwith transmit one copy thereof to the Zoning Board of Adjustment, and shall keep the other copy available in his/her office for inspection by any inquirer.

D. The Zoning Board of Adjustment upon receipt and approval of an appeal shall determine a hearing date. The hearing date will be advertised in a newspaper of general Town circulation a notice of such appeal to identify the property involved, the nature of the appeal, and the time and place of public hearing of such appeal, which shall be not earlier than ten (10) days after the date of publication. The Board shall issue a written notice of its decision to the applicant(s) within thirty (30) days from the date of filing of the appeal. The Board shall also notify the Town Clerk of its decision within 72 hours of the day of decision. The applicant, all abutters, and all professionals whose seal appears on any plat submitted to the Board (i.e., engineers, architects, surveyors, soil scientist, holders of conservation, preservation, or agricultural preservation restrictions as defined under RSA 477:45 etc.) shall be notified of the time and place of the hearing by certified mail not less than ten (10) days before the hearing date.

E. The Zoning Board of Adjustment shall, not later than three (3) business days after such publication, mail a copy of the notice of appeal as published to each of the property owners listed in the appeal and to owners of abutting properties, holders of conservation, preservation, or agricultural preservation restrictions as defined under RSA 477:45, and owners of properties across a street or way from the property affected by such appeal; to be addressed to names and addresses of such property owners as shown in the most recent tax listing of the Town. Failure of any property owner to receive a notice of public hearing shall not require the conduct of another hearing by the Board of Adjustment.

F. The Board shall keep a record of each appeal received, noting the date when received from the Town Clerk, the date of hearing and the name of the person who formally presented the appeal at such hearing. The Board shall then record, in writing, the disposition of each case; whether favorable to the appeal or otherwise, with the reasons therefore.

G. All the foregoing shall be matters of public record.

H. A right granted by appeal by the Zoning Board of Adjustment shall expire if the work or change involved is not commenced within one year from the date upon which the appeal is granted, or if the work or change is not substantially completed within two years from the date upon which the appeal is granted. Where approval of a project includes phase-in schedule of various portions of construction, the Zoning Board of Adjustment may waive the two-year limitation for completion from the date upon which the appeal is granted.

I. If the Zoning Board of Adjustment shall deny an appeal respecting certain buildings or premises, a second appeal of a similar nature shall not be brought before the Board within ninety (90) days from the date of the denial by the Board of the first appeal; unless, in the opinion of a majority of the Board, substantial new evidence shall be brought forward, or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.

J. The Board shall, at its discretion, require that all provisions as set forth in any petition, be completed and inspected to the Board's satisfaction, before any final decision shall be made. These conditions shall be written into the final decision, and shall be a matter of record.

11.3 ADJUSTMENTS AFTER HEARING

A. Variances shall conform to existing state law as outlined in RSA 674:33 I(b) and as set forth by the State Supreme court in its rulings. The granting of a variance shall be based on the following:

1. The variance will not be contrary to public interest.
2. The spirit of the ordinance is observed.
3. Substantial justice is done.
4. The values of the surrounding properties are not diminished.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

B. Special Exceptions. The Board may permit as a special exception, any matter so referred to it by other provisions of this Ordinance. The applicant shall have the burden of demonstrating that each and every condition set forth in the Ordinance for the granting of a special exception is met, and must submit sufficient evidence to support a finding that each condition has been met. The applicant shall submit statements of record to the Board that may be accompanied by diagrams and/or photographs to demonstrate those conditions set forth below. The Board shall make its determination as to whether a use qualifies for a special exception on the basis of the use as proposed at the time the application is made, along with information presented during the hearings on the application. The grant of a special exception is valid for the use that is examined by the Board. When relevant aspects of the proposed use are changed after receiving a special exception permit, the applicant must reapply to enable the Board to ascertain that such changes qualify for the special exception initially granted. A special exception shall be granted only if the following conditions have been demonstrated:

1. That the exception sought fulfills the specific requirements, if any, set forth in this Zoning Ordinance relative to such exceptions;
2. That the exception sought will not create nor aggravate a hazard to traffic, health, fire, panic, or safety or impair the convenience of the public;
3. That the exception sought will not impair the integrity of nor hamper the purposes of the Zoning Ordinance and/or of the Town Master Plan as amended; and
4. That the exception sought will not alter the essential characteristics of the neighborhood nor adversely affect adjoining property and/or property nearby that under petition.

C. Equitable Waiver. The Board may permit a waiver of dimensional requirements of this Ordinance upon those circumstances which may be satisfactorily proven by an applicant that a lot or structure exists in violation of dimensional requirements (e.g. setbacks, frontage or area). Such waiver shall not apply to use restrictions. A waiver granted under this Section shall not be construed as a non-conforming use, and shall not exempt future use, construction, reconstruction, or additions on a property from full compliance with this Ordinance. This Section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements nor to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them. In order that the Board may grant such a waiver under the provisions of this Section, an applicant must prove to the Board's satisfaction each and every element of the following:

1. A violation must have been unknown to the owner or the owner's predecessors or agents or Town officials until after a structure has been substantially completed or a lot has been conveyed to a bona fide purchaser for value (i.e. an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value).
2. The violation was caused by a good faith error in measurement or calculation by an owner or agent or an error in interpretation of the Ordinance or its applicability by a Town official in the process of issuing a permit while that official was acting within the scope of his/her authority.
3. No public or private nuisance is created by any such violation.
4. No diminution in the value of other property in the area has been the result of such violation.
5. The violation will not interfere with nor adversely impact any present or permissible future uses of any property in the area.
6. As an alternative to the stated conditions provided in (1) and (2), above, a waiver may be granted if an owner proves to the Board's satisfaction that a violation has existed for ten (10) years or more and no enforcement action, including written notice of violation has been initiated regarding the violation by the Town or anyone directly affected by the violation.

D. Time Limits: Any variance or special exception which is granted but not exercised within twelve (12) months after approval becomes void. If an applicant wishes to exercise the variance or exception after twelve months a new application must be filed.

SECTION 12: AMENDMENTS

12.1 ZONING CHANGE

A. Proposal. Each zoning change proposal may be initiated by written application by any individual to the Town Planning Board for public hearing as provided by statute, or such change may be requested by the Planning Board.

B. Rules. Any private petitioner submitting a proposed zoning amendment proposal shall be as required by **New Hampshire Statutes, RSA 675:4.**

12.2 ZONING MAP CHANGE.

A. Method. A written proposal to change a Town zoning map shall be submitted and shall explicitly state the nature, extent and location of the proposed map change and it shall be accompanied by:

1. Three (3) comprehensible prints of a diagram (to scale) clearly illustrating and stating the dimensions (in feet) of the land area proposed to be changed, and
2. A sketch, or other explicit identification, of the location of such land in relation to the rest of the Town.

12.3 PUBLIC HEARINGS Public hearings for proposed zoning amendments will be held and conducted in accordance with the provisions of **New Hampshire Revised Statutes, RSA 675:3 and 675:4**, as applicable.

SECTION 13: REQUIREMENTS, PROCEDURES, ENFORCEMENT, FINES & PENALTIES

13.1 Building Permits

No building shall be erected, altered or relocated within the Town without a written permit being approved and issued by the building inspector. Such permits shall be applied for in writing to the building inspector. The building inspector shall not issue a permit unless the plans for the building, and the intended use thereof, fulfill all provisions of this Zoning Ordinance (except as may have been specifically permitted otherwise by action of the Zoning Board of Adjustment and provided a written copy of the terms governing any such permit is attached to the application and to the issued building permit). One copy of each issued permit (including any conditions or exceptions attached thereto), shall be retained on file by the building inspector.

13.2 Application for Building Permit

Each application for a permit to build, alter, or relocate a building shall be accompanied by a plot plan in such number of copies and drawn to scale as shall be required by the Town Zoning Ordinance. Each plot plan shall illustrate dimensions, areas of lots and structures to be erected, altered or relocated, with adjacent streets, ways or angles of all lot lines illustrated and identified thereon. Such plot plan shall indicate approved street grades and proposed elevations of foundations. Plot plans shall indicate the locations of existing sanitary sewers, storm drains and water pipes in any street/s shown and the locations of all existing buildings and structures within the land area of location.

13.3 Enforcement

The building inspector of the Town shall adhere to the provisions of the Zoning Ordinance. The building inspector, upon being informed in writing of a possible violation of the Ordinance or upon his own initiative, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The building inspector, upon evidence of any violation, and after investigation and inspection, shall within a reasonable time give written notice of such violation to be abated as designated therein by the building inspector. Such notice and demand shall be given by mail addressed to the owner at the address appearing on the most recent property tax records of the Town and to the occupant at the address of the premises of such alleged violation.

13.4 Follow-Up

If, after such notice and demand, such violation has not been abated within the time specified, the building inspector shall institute appropriate action or proceedings in the name of the Town to prevent, correct, restrain or abate any violation of this Ordinance.

13.5 Fines and Penalties

A violation of any provision of the Ordinance, code(s), or regulation(s) adopted for land use shall be made punishable as specified in **NEW HAMPSHIRE STATUTES, as annotated, Chapter 676:17**. A violation of any condition of approval granted by a land use board or building permit restriction shall be a violation of the provisions of the Ordinance.

SECTION 14: FLOOD PLAIN DISTRICT REGULATIONS (adopted 3/8/22)

Certain areas of the Town of Marlborough, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Marlborough, New Hampshire has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its **Flood Insurance Study for Cheshire County, N.H.** dated May 23, 2006, a or as amended, together with the associated **Flood Insurance Rate Maps**, dated **May 23, 2006**, or as amended, that are declared to be a part of this Ordinance.

ITEM I. Definition of Terms:

- 1. Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year.
- 2. Base Flood Elevation (BFE)** means the elevation of the base (one-percent annual chance) flood referenced to a specified vertical datum (National Geodetic Vertical Datum of 1929 or North American Vertical Datum of 1988).
- 3. Basement** means any area of the building having its floor subgrade (below ground level) on all sides.
- 4. Building** see **Structure** - defined for this section only for flood management purposes.
- 5. Development** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- 6. Flood or Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation or runoff of surface waters from any source.
- 7. Flood Damage-Resistant Materials** means any building product(material, component, or system) capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. See FEMA "Technical Bulletin 2, Flood Damage-Resistant Materials Requirements."
- 8. Flood Insurance Rate Map (FIRM)** means the official map incorporated with this ordinance, on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the Town of Marlborough.
- 9. Flood Insurance Study (FIS)** means an examination, evaluation and

determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

10. Flood Opening means an opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA "Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures.

11. Flood plain or Flood-prone area means any land area susceptible to being inundated by water from any source (see definition of **flooding**).

12. Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

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

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

15. Historic Structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) by an approved state program as determined by the Secretary of the Interior, or
 - (ii) directly by the Secretary of the Interior in states without approved programs.

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

17. Mean sea level means, for purposes of the **National Flood Insurance Program, the North American Vertical Datum (NAVD)** of 1988, or other datum, to which base flood elevations shown on the Town's **Flood Insurance Rate Map** are referenced.

18. Manufactured home means a structure, transportable in one or more sections, which are built on a permanent chassis and are designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

19. Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

21. Recreational vehicle for flood management purposes means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light-duty truck; and (iv) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

22. Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

23. Special flood hazard area is the land in the flood plain within the Town of Marlborough subject to a 1 percent or greater chance of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.

24. Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. (**Note:** This definition is only appropriate for this section and differs from that in **Section 2.56.**)

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

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

27. Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

28. Violation means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations.

29. Water surface elevation means the height, in relation to the North American Vertical Datum, (**NAVD**) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

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

ITEM III. The building inspector shall review all permit applications for proposed development located within a special flood hazard area to determine whether the development will be reasonably safe from flooding. All development within a special flood hazard area shall: (1) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (2) be constructed with flood damage-resistant materials, (3) be constructed by methods and practices that minimize flood damages, and (4) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located at least one foot above base flood elevation as to prevent water from entering or accumulating within the components during conditions of flooding.

ITEM IV. Where new and replacement water and sewer systems (including on-site systems) are proposed in special flood hazard areas the applicant shall provide the Building Inspector with the assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding. **NOTE: Unless sewer systems previously existed, public sewer and water "hook-ups" are not permitted in any wetlands and/or flood plain areas per Town contract with Keene Sewer Treatment Facility and the Environmental Protection Agency.**

ITEM V. For all new or substantially improved structures located in Zones A or AE, the applicant shall furnish the following information to the Building Inspector:

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

ITEM VI. The building inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the building inspector.

ITEM VII. In riverine situations, prior to the alteration or relocations of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the building inspector (See RSA 482-A:3). Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the building inspector. If within an altered or a relocated portion of any watercourse, certification provided by a registered professional engineer assuring that the flood-carrying capacity of the watercourse can and will be maintained shall be submitted by the applicant to the building inspector.

Along watercourses that have a designated Regulatory Floodway, no encroachments including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory Floodway which would result in any increase in flood levels within the Town during the base flood discharge.

If within Zone A; the building inspector shall obtain, review, and reasonably utilize any floodway data available from a Federal, State, or other source as criteria for requiring that any developments comply with the floodway requirements of this Section.

ITEM VIII.

1. Within special flood hazard areas, the building inspector shall determine the base flood elevation in the following order of precedence according to the data available:

a. Within Zone AE refer to the elevation provided in the Flood Insurance Study and accompanying FIRM.

b. Within Zone A, any development proposals submitted to the Town shall be obtained, reviewed, and examined by the building inspector who, in turn, shall utilize any base flood elevation data from federal, state, or other sources for this purpose (example, subdivisions approvals, State approvals, etc.).

i. Where a base flood elevation is not available or not known, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade.

2. The building inspector's base flood elevation determination will be used as criteria for requiring within Zones A and AE that:

a. all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated at least 1 foot above the base flood elevation:

b. all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated at least 1 foot above the base flood elevation; or together with attendant utility and sanitary facilities, shall:

i. be floodproofed at least 1 foot above the base flood elevation so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;

ii. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

iii. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Section.

c. all manufactured homes to be placed or substantially improved within special flood hazard areas in existing manufactured home parks shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least 1 foot above the base flood elevation and is securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to, the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

d. for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements: (a) the enclosed area is unfinished or flood-resistant, useable solely for parking of vehicles, building access or storage; (b) the area is not a basement; (c) the area is designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two flood openings having a total net area having not less than one square inch for every square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all flood openings shall be no higher than one foot above grade. Flood openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

e. All recreational vehicles placed on sites within Zones A and AE shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of "manufactured homes" as stated in Item VIII(2)(c).

ITEM VIV – VARIANCES AND APPEALS:

1. Any order, requirement, decision, or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, the applicant shall have the burden of showing in addition to the usual variance standards under state law that:

a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

b. if the requested variance is for activity within a designated regulatory floodway no increase in flood levels during the base flood discharge will result.

c. the variance is the minimum necessary, considering the flood hazard, to afford relief.

3. The Zoning Board of Adjustment shall notify the applicant in writing that:

a. the issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

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

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

4. The community shall:

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

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

SECTION 15: SHORELAND PROTECTION REGULATIONS

15.1 AUTHORITY

Pursuant to New Hampshire Statutes, RSA 674:16 and RSA 483-B: 8, and The Shoreland Protection Act, the minimum requirements of this Act have been adopted by the Town of Marlborough and are hereby a part of the provisions of the Marlborough Zoning Ordinance in order to protect the public health, safety, and general welfare.

15.2 PURPOSE

These Ordinance provisions establish standards for the subdivision, use and development of shorelands adjacent to public waters, as defined herein, for the purpose of minimizing degradation of shorelands and assuring retention of the benefits provided by such shorelands. These benefits include: maintenance of safe and healthy conditions; prevention and/or control of water pollution; protection of important fish, bird and wildlife habitat; reduction or elimination of flooding and accelerated erosion; protection of wetlands and their important natural functions; maintenance of water quantity and related stream flows during low flow periods; protection of shoreland cover as a means of maintaining water quality; and the conservation and protection of natural beauty and the scenic qualities which are critical attributes of our Communities and our State.

15.3 DEFINITIONS

For the purposes of shoreland protection requirements the following definitions are provided:

I. **Abutter** – any person whose property is adjoining or is directly across the street or stream from the land under consideration by a Land Use Board of this Town. For the purposes of receiving testimony only, and not for purposes of notification, the term “abutter” shall include any person who is able to demonstrate that his/her land will be directly affected by the proposal under consideration.

II. **Accessory structure** – a structure detached from the primary building on the same lot and which is customarily incidental and subordinate to the primary building or use, such as a pump house, gazebo or woodshed.

III. **Basal area** – the cross sectional area of a tree measured at a height of 4.5 feet (54 inches) above the ground, usually expressed in square feet per acre for a stand of trees.

IV. **Boat slip** means a volume of water, 20 feet long, 6 feet wide and 2 feet deep and 6 feet in width, as measured at normal high water, and located adjacent to a structure to which a watercraft may be secured.

V. **Commissioner** means the commissioner of the department of environmental services or designee.

VI. **Department** means the department of environmental services (DES).

- VII. Disturbed area** means an area in which natural vegetation is removed, exposing the underlying soil.
- VIII. Ground cover** means any herbaceous plant that normally grows to a mature height of four (4) feet or less.
- IX. Lot of record** means a parcel, the plat or description of which has been recorded at the registry of deeds for the county in which it is located.
- X. Marina** means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft.
- XI. Municipality** means a city, town, and village district if specifically authorized to zone by the legislature, or county in respect to unincorporated towns or unorganized places or any combination thereof pursuant to RSA 53-A.
- XII. Natural woodland buffer** means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.
- XIII. Ordinary high water mark** means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernible, DES may determine the ordinary high water mark.
- XIV. Person** means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.
- XV. Primary building line** means a setback from the reference line.
- XVI. Primary structure** means a structure other than one that is used for purposes wholly incidental or accessory to the use of another structure on the same premises.
- XVII. Protected shoreland** means for natural fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.
- XVIII. Public waters** shall include:
- a. All fresh water bodies listed in the official list of public waters published by the department pursuant to RSA 271:20, 11, whether they are great ponds or artificial impoundments.
 - b. Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.
 - c. Rivers, meaning all year round flowing waters of fourth order or higher, as shown on the current version of the US Geological Survey 7 ½ feet topographic maps.
- XIX. Reference line** means:

a. For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Water Division of the Department.

b. For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.

c. For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

d. For rivers, the ordinary high water mark.

XX. Removal or removed means cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

XXI. Residential unit means a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.

XXII. Sapling means any woody plant that normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4 ½ feet above the ground.

XXIII. Shoreline Frontage means the average of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the reference line.

XIV. Shrub means any multi-stemmed woody plant that normally grows to a mature height of less than twenty (20) feet.

XXV. Structure means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

XXVI. Subdivision means subdivision as defined in RSA 672:14.

XXVII. Tree means any woody plant that normally grows to a mature height greater than 20 feet and that has a diameter of 6 inches or more at a point 4½ feet (54 inches) above the ground.

XXVIII. Urbanization means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for commercial or industrial use, or mixed residential, commercial, and industrial use.

XXIX. Water Department Structure means a dock, wharf, pier, breakwater, or other similar structure or any part thereof, built over, on or in the waters of the State.

15.4 SHORELAND PROTECTION DISTRICT

The Shoreland Protection District is an overlay that is superimposed over the conventional existing zoning and includes within its boundary the protected shorelands adjacent to all public waters within the Town.

15.5 PROHIBITED USES

- a.** Establishment or expansion of:
 - (1)** salt storage yards;
 - (2)** automobile junk yards;
 - (3)** solid or hazardous waste facilities.
- b.** No fertilizer, except limestone shall be used within 25 feet of the reference line of any property. Twenty-five feet beyond the reference line, low phosphate, slow release nitrogen fertilizer or limestone, may be used on lawns or areas with grass,
- c.** Bulk storage of chemicals.
- d.** Bulk storage of petroleum products or hazardous materials.
- e.** Sand and gravel excavations as defined in RSA 155-E.
- f.** Processing of excavated materials.

Dumping or disposal of snow and ice collected from roadways or parking areas outside the district.

15.6 RESTRICTED USES

- a.** A water dependent structure, meaning one which is a dock, wharf, pier, breakwater or other similar structure, or any part thereof, built over, on or in the waters of the Town, shall be constructed only as approved by the Department of Environmental Services (DES), Division of Water, State of New Hampshire, pursuant to RSA 482-A.
- b.** Public water supply facilities, including water supply intakes, pipes, water treatment facilities, pump stations and disinfectant stations as permitted by the Commissioner of DES.
- c.** Public water and sewage treatment facilities as permitted by the Commissioner of the DES.
- d.** Hydroelectric facilities, including, but not limited to dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, permitted by the Commissioner of the DES, as necessary.
- e.** Public utility lines and associated structures and facilities as permitted by the Commissioner of DES.
- f.** An existing solid waste facility which is located within 250 feet of the reference line of public waters may continue to operate under an existing permit, provided it does not cause degradation to an area in excess of that area under DES permit.
- g.** No solid waste facility shall place solid waste within 250 feet of the reference line of public waters except as expressly permitted under the provisions of RSA 483-B: 9, IV-c. However, any solid waste facility may be allowed, subject to permitting conditions under RSN 149-M: 10, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line of public waters, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the DES. Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.

15.7 NATURAL WOODLAND BUFFER

- a.** Where existing, a natural woodland buffer shall be maintained within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion,

preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

b. Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B: 9, V, the following prohibitions and limitations shall apply:

- 1.** Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level.
- 2.** Trees, saplings, shrubs and ground covers which are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations under section 7.b.(1).
- 3.** Dead, diseased, unsafe or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under section 7.b.(1).
- 4.** Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the Department through the Division of Water, pursuant to RSA 482-A.
- 5.** Dead and living trees that provide dens and nesting places for wildlife are encouraged to be undertaken.
- 6.** Planting efforts that are beneficial to wildlife are encouraged to be undertaken.

15.8 SUBSURFACE WASTEWATER DISPOSAL SYSTEMS

a. All new lots, including those in excess of five acres, created within the protected shoreland are subject to subdivision approval by the DES Division of Water Subsurface Bureau under RSA 485-A29 and Env-Ws 1000.

b. All subsurface waste disposal systems must be designed and installed in accordance with the DES, Division of Water publication Subdivision and Individual Sewage Disposal System Design Rules Env-Ws 1000.

c. The following conditions, based on the characteristics of the receiving soils as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes shall dictate the setback requirements for all new leaching portions of new subsurface wastewater disposal systems adjacent to ponds, lakes, estuaries and the open ocean, as follows:

- 1.** Where the receiving soil down gradient of the leaching portions of a subsurface wastewater disposal system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;
- 2.** For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and
- 3.** For all other soil conditions the setback shall be no less than 75 feet.

d. Adjacent to rivers the setback shall be no less than 75 feet, and may be greater if approved by the Commissioner.

e. The placement of all septic tanks and leaching portions of subsurface wastewater treatment systems for replacement systems shall comply with the requirements of subparagraph 8.c to the maximum extent feasible.

15.9 EROSION AND SILTATION CONTROL

a. All new structures within the protected shoreland shall be designed and constructed in accordance with rules adopted by the DES pursuant to RSA 541-A, relative to terrain alteration under RSA 485-A: 17, for controlling erosion and siltation of public waters, during and after construction and shall, at a minimum reflect the recommendations of the publication entitled Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire prepared for the DES by the Rockingham County Conservation District, in cooperation with the USDA Natural Resources Conservation Service, August, 1992.

b. New structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

c. A permit pursuant to RSA 485-A: 17, I shall be required for improved, developed or subdivided land within the protected shoreland whenever there is a contiguous distributed area exceeding 50,000 square feet.

15.10 MINIMUM LOT REQUIREMENTS

a. The minimum size for new lots in areas dependent upon on-site subsurface wastewater treatment systems shall be determined by soil type lot size determinations, as established by the water supply and pollution control division in accordance with Env-Ws 1000.

b. For projects in areas dependent upon on-site subsurface wastewater treatment systems, the total number of residential units in the protected shoreland shall not exceed one unit per 150 feet of shoreland frontage.

c. Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards and frontage requirements.

d. Setback: No primary structure shall be located within 50 feet of the reference line.

e. Accessory structures such as storage sheds and gazebos but excluding automobile garages may be located with the 50 foot setback as a special exception provided:

1. The location and construction of the structure is consistent with the intent of the ordinance to maintain a vegetated buffer;
2. The structure is required as a shelter for humans, equipment, or firewood;
3. The structure is usually customary and incidental to a legally authorized use located with the shoreland district.

f. Building Heights. No structure within the Shoreland District shall exceed 2½ stories or 35 feet in height as measured from average ground level around the structure to the highest point on the roof excluding chimneys.

g. Building Placement. Buildings should be sited to minimize impact on habitat and the watershed.

h. Parcel Coverage by impervious materials shall not exceed 20%.

15.11 WATER DEPENDENT USES AND STRUCTURES

The following uses and structures are permitted within the shoreland protection district provided they comply with all applicable local, state and federal regulations.

a. Marinas developed in accordance with the following:

1. Minimum shoreland frontage shall be 300 feet with an additional 25 feet of shore frontage for each slip.

2. Off street parking shall be provided at a rate of 500 square feet per boat slip.

3. Submission of an environmental impact study that indicates mitigation measures to minimize potential negative impact on the public waters including but not limited to:

a. Measures to be taken to prevent leakage or spills of fuels, lubricants, waste products or other potential pollutants into the public waters.

b. Assurances that impacts on wetlands and related sensitive areas and habitats will be avoided.

4. Submission of a site plan for review by the Planning Board which includes location of parking, restrooms, buildings and related support facilities with assurances that these facilities are permanently available to the project.

5. Receipt of a permit from the DES.

b. Water dependent structures including, but not limited to, decks, wharves, swimming floats and boat ramps.

c. Other water dependent uses and structures approved as special exceptions by the Zoning Board of Adjustment in accordance with the following:

1. The use is in keeping with the purpose and intent of these regulations:

2. The least impacting route and methodology for the use has been selected and represents the best practicable alternative;

3. Canopies and seasonal covers extend only over the boat slips and shall be removed during the non-boating season.

15.12 CLUSTER OR OPEN SPACE DEVELOPMENT

The grouping of residential units on a parcel within the Shoreland district is permitted and encouraged to the extent that valuable shoreland resources and open spaces are retained. Such developments should meet the following provisions:

- a. Densities should not exceed those permitted under the soil based lot size density plus a bonus of 2% to recognize the open space advantages of clustering.
- b. A minimum of 60% of the total parcel shall remain as permanent open space which shall be in a conservation easement in perpetuity.
- c. Parcel coverage by impervious cover including building footprint, impervious roadway or other impervious cover shall not exceed 20% of the parcel.

15.13 NON-CONFORMING LOTS OF RECORD

Existing, individual, undeveloped, non-conforming lots of record within the shoreland protection district may be used for the purpose of constructing a single family residential dwelling unit and related facilities, including, but not limited to, decks, piers, boat houses, boat loading ramps, walkways and other water dependent structures in accordance with the following:

All leach fields shall meet the setback requirements of Section 15.8b.

In the event that the leach field cannot physically be located on the lot in conformity with this Ordinance, the owner shall be encouraged to acquire additional land or a permanent easement to such land for this purpose in so far as practicable.

Should additional undeveloped land not be available, allowable sewage loading shall be reduced by decreasing the number of bedrooms; requiring low-flow fixtures; and limiting the maximum sewage loading to 300 gallons per day, in accordance with Env-Ws 1008.01.

15.14 NON-CONFORMING STRUCTURES

No existing non-conforming use or structure shall be reconstructed, extended or enlarged except as follows:

- a. An existing dwelling that extends beyond the shoreline of a public water or, publicly-owned water body may be repaired and/or reconstructed; however, such repair and/or reconstruction may not expand the existing footprint or outside dimensions of the building. An existing structure, such as a boathouse, shall not be modified to create a dwelling if the structure extends beyond the shoreline.
- b. Existing non-conforming structures that do not comply with the dimensional requirements of this ordinance may remain in use. No change in such a structure is permitted that would result in increasing the non-conformity with these requirements in any way.
- c. An expansion that increases the sewerage load to an on-site wastewater treatment system, for example, additional bedrooms, shall require approval by the Department. Between the primary building and the reference line, no alteration shall extend the structure closer to the public water.

15.15 NON-CONFORMING USES

Existing uses that are non-conforming under this Ordinance may continue until the use ceases to be active or is discontinued for a period of one year. An existing non-conforming use may not be changed to another non-conforming use; existing nonconforming uses shall be required to meet the shoreland natural buffer, drainage and related water quality protection requirements of this Ordinance to the maximum extent feasible.

15.16 COMMONLY USED WATER FRONT PARCELS OR LOTS

Shorefront lots/parcels, which are intended for use for common access by the non-shoreland property owners within the development or subdivision which owns or has control over the common land, shall:

- a.** Contain a minimum of one acre.
- b.** Have a minimum shoreland frontage of 150 feet for the first ten residential units and an additional 10 feet for each additional unit.
- c.** Save no structures other than toilet facilities, picnic shelters and/or recreational facilities. Necessary leach fields shall be located at least 125 feet from the reference line.
- d.** Half the shoreland frontage shall be designated for swimming and shall be separate from boating areas. Swimming areas shall be separated from boating areas by ropes and appropriate marks, subject to the approval of the Safety Services Division of the NH Department of Safety.
- e.** Off street parking shall be provided on the basis of 300 square feet for each residential unit ¼ mile or more from the common area that has use of the area.
- f.** Toilet facilities shall be provided on the basis of one facility each for men and women for each 25 residential units.
- g.** Impervious cover for roof area, parking lots, access roads, sidewalks and any other similar cover over or on the parcel or lot shall not exceed 10% of the area of the parcel or lot.

15.17 LAND CLEARING FOR AGRICULTURAL PURPOSES

All agricultural activities and operations in the state as defined in RSA 21:34a and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this Ordinance, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Natural Resources Conservation Service, the United States Department of Agriculture Cooperative Extension Service and the Department of Agriculture. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property.

15.18 RELATIONSHIP BETWEEN STATE AND TOWN REQUIREMENTS

Where both the State of New Hampshire and the Town of Marlborough have existing requirements the more stringent shall govern.

15.19 SAVING CLAUSE

Where any provisions of Section 15 of this Ordinance may be found to be unenforceable, it shall be considered savable and shall not be constructed to invalidate the remainder of this Ordinance.

TOWN OF MARLBOROUGH

APPENDIX I TO SECTION 15, SHORELAND PROTECTION REGULATIONS, ZONING ORDINANCE

PROVISIONS ARE APPLICABLE TO PERMEABILITY AND PERCOLATION RATES

COMPARISON OF MUNICIPAL SUBDIVISION REVIEW PROCESS TO STATE SUBSURFACE WASTEWATER DISPOSAL SYSTEM REGULATORY PROCESS

Town Subdivision and Order 1 Soil Maps

National Cooperative Soil Survey Order 1 maps use NRCS soil series as the method for identifying the soils found on a given piece of land. They differ from NRCS published soil maps in that they are often prepared on a topographic base map at a larger scale. If required for use, they must be prepared by a Certified Soil Scientist for a tract of land to be subdivided. Their use is recommended when the Community is concerned about lot sizing to accommodate subsurface wastewater disposal systems.

When the Planning Board reviews an application for subdivision of a parcel of land, Order 1 soil maps may be required to document soil conditions on-site. These maps can be used to determine appropriate lot sizes and to provide the Planning Board with adequate documentation of where sensitive soil conditions exist. This type of information is recommended to provide the Planning Board with justification for regulatory requirements for septic system setbacks that are greater than the minimum of seventy-five feet. The soils map should be prepared at the scale required for a plat by the Subdivision or Site Plan Review Regulations.

The Planning Board shall make use of permeability as part of the Town Subdivision or Site Plan Review process to determine the most appropriate location for subsurface wastewater disposal systems. This will assist the Planning Board in two ways:

First, permeability is considered by soil scientists to be a good measure of the “ease with which liquids pass through a mass of soil or a soil layer. (Soil Manual for Site Evaluations in New Hampshire, 2nd Edition by USDA Natural Conservation Service Durham, NH and NH Dept. of Env. Services, Concord, NH);

Secondly, this information is readily available from published soil surveys which provide municipalities with a good database and a quick and reasonable technique for determining required lot sizes in areas of highly variable soils. There is no added cost for this data.

USE OF PERMEABILITY IN ADDITION TO PERCOLATION RATES AS A TOOL IN EVALUATION OF APPLICATIONS FOR TOWN SUBDIVISION AND SITE PLAN REVIEW APPROVALS

The Planning board, when reviewing a subdivision under the authority granted to municipalities by RSA 674:35, may require that an Order 1 soils map be prepared at the same scale as the subdivision plat. The permeability information derived from the soil map is utilized to evaluate and verify that the percolation test information submitted by the subdivider/developer is generally within an acceptable range for the particular soil series. Although there is not an exact correlation between permeability and percolation rates, the permeability helps to give the Planning Board an indication of whether additional site specific information or test pits should be required of the applicant. This is particularly useful in sensitive areas where shoreland protection is the goal.

If the Planning Board opts to require a high intensity soil (HIS) map instead of an Order 1 soil map, a HIS map alone will not provide permeability information. In order to make use of a check on the percolation rate, the Board shall review the Ordinance to provide that the soil scientist who prepares the HIS map collect, at a

minimum, enough technical information to determine the soil's permeability. In New Hampshire, the soil series control section for which permeability is considered is typically within a depth of sixty inches. In either case, in accordance with RSA 310-A the soil mapping must be undertaken by a certified soil scientist.

DISCUSSION OF PERMEABILITY

The USDA Natural Resources Conservation Service defines soil permeability as “. . . the quality of the soil that enables water or air to move through it. It is expressed in inches per hour. If the rate applies to only one horizon, it describes the potential of that horizon to transmit water and does not reflect the influence of the other horizons on that movement. If the rate applies to the entire soil, then the transmitting potential of the least permeable horizon is implied, “National Soils Handbook, Natural Resources Conservation Service, 430-VI-NSH Section 618.03-24, September 1992.

Soils with rapid and very rapid permeability or the ability to permit liquids to move rapidly or very rapidly down gradient are more likely to transmit pollutants to the public waters without purification than are less permeable soils.

DISCUSSION OF PERCOLATION RATES

The NH Department of Environmental Services defines percolation as the “Rate of absorption of water into the soil under partially controlled conditions.” Subdivision and Individual Sewage Disposal System Design Rules-Chapter Env-Ws 1000, June, 1992. The results of percolation tests vary, depending upon site conditions, who performs the tests and the methodology used. The requirements for percolation tests performed in accordance with Env-Ws 1000 follow:

Part 1007. Percolation Test

Env-Ws 1007.01 Location. A percolation test shall be taken in the location of the proposed leaching area. If more than one test is made, the test holes shall be spaced 20 feet apart.

Env-Ws 1007.02 Depth of Percolation Test. The percolation test shall be conducted in the most restrictive permeable soil horizon above the seasonal high-water table and below the A horizon.

Env-Ws 1007.03 Distance from Test Pits. The percolation test shall be at least 5 feet from any test pit to assure that it is conducted in undistributed soil.

Env-Ws 1007.04 Size of Test Hole. The percolation test hole shall be dug with horizontal dimensions of from 4 to 12 inches and vertical sides to at least 14 inches into the most compact permeable soil.

Env-Ws 1007.05 Procedures. The person conducting the percolation test shall:

- a. Remove any smeared soil surfaces and provide a natural soil interface into which water may percolate:
- b. Remove all loose material from the hole;
- c. Add 2 inches of coarse sand or fine gravel to protect the bottom from scouring and sediment;
- d. Fill the hole with clear water to a minimum depth of 12 inches over the gravel and maintain water in the hole for at least 2 hours, or until the drop in water as measured in Env-Ws 1007.05(e)(1) stabilizes; and (e) determine the percolation rate 2 hours after water is first added

to the hole to insure that the soil is given ample opportunity to swell and to approach the condition it will be in during the wettest season of the year. In sandy soils containing little or no finds, the soaking procedure shall not be required, and the test may be made after the water from 2 fillings of the hole has completely seeped away.

- i. After the rate of water loss has stabilized, add clear water to bring the depth of water in the hole to approximately 6 inches over the gravel. From a fixed reference point, the drop in water level shall be measured at approximately 10-minute intervals for 1 hour, refilling 6 inches over the gravel as necessary. The drop that occurs during the final 30-minute period shall be used to calculate the percolation rate.

Env-Ws 1007.06 Size of Leaching Area. The size of the leaching area shall be based on the percolation rate taken in the most restrictive horizon above the seasonal high-water table and below the A horizon. Where no A horizon exists the percolation test shall be taken in the most restrictive layer above the seasonal high-water table.

RELATIVE COMPARISON OF GENERAL RANGES OF PERMEABILITY TO GENERAL RANGES OF PERCOLATION RATES

The following table was prepared by OSP, with the assistance of the New Hampshire State Office of the Natural Resources Conservation Service in Durham. It can be used by the Planning Board as a tool in the Town's Subdivision and Site Plan Review processes. A simple comparison of the percolation rates submitted by the applicant to document suitability of lots for on-site wastewater disposal systems with the generalized range of permeability rates associated with existing soil conditions is recommended. This will provide the Planning Board with a relative indicator of whether it should require additional site exploration.

PERMEABILITY VS PERCOLATION RATE TABLE* PREPARED BY THE OFFICE OF STATE PLANNING WITH ASSISTANCE FROM THE NATURAL RESOURCES CONSERVATION SERVICE FEBRUARY, 1994			
Means Percolation Rate In Minutes Per Inch**	Percolation Rate in Minutes per Inch***	Permeability Rate in Inches Per Hour	National Cooperative Soil Survey Terms
2.5	---	> 20 in./hour	Very Rapid
3	< 2 min./in.	6.0-20 in./hour	Rapid
6	3-6 min./in.	2.0-6.0 in./hour	Moderately Rapid
12	6-15 min./in.	0.6-2.0 in./hour	Moderate
54	15-30 min./in.	0.2-0.6 in./hour	Moderately Slow
152	30-60 min./in.	0.06-0.2 in./hour	Slow
300	> 60 min./in.	< .06 in./hour	Very Slow

Sources:

* Relationship of Permeability to Percolation Rates as supported by the National Soil Survey Laboratory, NRCS, Lincoln, NE, 1993, with the understanding that there is not an exact correlation. The Lincoln lab has no objection to changing the percolation rate from < 3 min./inch to < or = 2 min./inch for consistency in implementation of the requirements New Hampshire Comprehensive Shoreland Protection Act. (Personal Communication with Steven J. Hundley, NH State Soil Scientist, NRCS July, 1993)

** Means Percolation Rate in Relation to Permeability derived from Penn. State University, Dept. of Agronomy; Published: Derr, et al. 1969. Soil Science Society of America Proceedings 33:942.

*** Unpublished data from the University of Minnesota, Dept. of Plant and Soil Science.

TOWN OF MARLBOROUGH

APPENDIX II TO SECTION 15, SHORELAND PROTECTION REGULATIONS, ZONING ORDINANCE

PROVISIONS APPLICABLE TO SOIL BASE LOT SIZES

DISCUSSION OF SOIL BASED LOT SIZES

Within the past few years an Ad Hoc Soil Based Lot Size Committee was formed to review the current rationale for using soil properties as the basis for determining lot sizes in areas where on-site wastewater disposal systems are used. The Committee prepared a report of their findings for the New Hampshire DES, which is available from the Rockingham County Conservation District in the Federal Building, Exeter, NH 03833. This report, entitled Environmental Planning for On-site Wastewater Treatment in New Hampshire, Volume 1: Technical Report of the Ad Hoc Committee for Soil Based Lot Size, NH DES and Rockingham County Conservation District (RCCD), June 1991 includes the most current technical justification for the practice of lot sizing by soil type. Although not identical, the lot sizes derived from a computer model that is discussed in the report are comparable to those that are currently used by DES.

The Ad Hoc Committee prepared another report entitled Model Subdivision Regulations for Soil-based Lot Size, Vol. II, NH DES and Rockingham County Conservation District, June 1991. This provides local officials with a model based upon the most current scientific data available from the Technical Report. Volume II is also available from the RCCD.

TOWN OF MARLBOROUGH

APPENDIX III TO SECTION 15, SHORELAND PROTECTION REGULATIONS, ZONING ORDINANCE

DEFINITION OF PUBLIC WATERS

REVISION OF MAY 5, 1995

BACKGROUND

The minimum shoreland protection standards established by the Comprehensive Shoreland Protection Act (RSA 483-B) apply to all land located within 250 feet of the public boundary line of public waters. The statute defines public waters as:

- a. All fresh water bodies listed in the official list of public waters published by the department of environmental services pursuant to RSA 271:20, II, whether they are great ponds or artificial impoundments.
- b. Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.
- c. Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the US Geological Survey 7 ½ minute topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the junction of second order streams yields third order streams, et seq. A listing of the streams of fourth order or higher shall be prepared and maintained by the Office of State Planning and delivered to the commissioner 30 days after the effective date of this act. **NOTE: This list is not printed here as there are no such streams in the Town of Marlborough.**