

ZONING ORDINANCE



Town of New Castle, New Hampshire

2018



NEW CASTLE ZONING ORDINANCE

Adopted by

**The Town of New Castle, New Hampshire
May 2018**

CERTIFICATION

This is to certify that the Zoning Ordinance as printed on pages numbered 1 through 85, are as adopted by ballot vote at the Town Meetings on May 11, 1999; March 9, 1954; March 13, 1962; March 12, 1963; March 9, 1971; March 6, 1973; March 2, 1976; March 8, 1977; April 1, 1978; May 8, 1979; May 13, 1980; May 13, 1986; May 10, 1988; May 8, 1990; May 14, 1991; May 12, 1992; May 11, 1993; revised, re-organized and re-codified by ballot vote on May 10, 1994; amended by ballot vote on May 9, 1995; May 14, 1996; May 13, 1997; February 17, 1998; May 9, 2000; May 8, 2001; May 14, 2002; May 13, 2003; May 11, 2004; May 10, 2006; May 9, 2006; May 8, 2007; May 13, 2008; May 12, 2009; May 11, 2010; May 10, 2011; May 8, 2012; May 14, 2013; May 13, 2014; May 10, 2016; May 9, 2017 and May 8, 2018.

Zoning Ordinance filed with the N.H. Office of Energy and Planning on: Oct. 1, 2018
(Date)

Priscilla Hodgson
Town Clerk
TOWN OF NEW CASTLE, NH

Dated: June 11, 2018

AMENDMENT HISTORY

Sections Adopted or Amended May 10, 1994:

1. Section 2.3 - Bed and Breakfast, Accessory Apartment, Home Occupation and Open Space under "Definition of Terms";
2. Section 6.2: - Home Occupations; 6.2.1 through 6.2.4;
3. Section 6.6 - Accessory Apartments; 6.6.1 through 6.6.5;
4. Section 9.1.1 - Recreational Vehicle under "Definition of Terms";
5. Section 9.1.8b - paragraph iii - Recreational Vehicles.

Sections Adopted or Amended May 9, 1995:

1. Section 2.3 - "Definition of Terms": amendments made to definitions for Basement, Multifamily Structure, Parking Space Right of Way, Structure, Story, Town Engineer; new term added: "Parcel"
2. Subsection 4.2.2 - "Modification and Special Provisions" (of "Dimensional Regulations" section) and Table 1 "Density and Dimensional Regulations": amended with respect to lot coverage;
3. Section 4.3 - "Special Exceptions": amended by combining paragraphs 4.3.2 and 4.3.3 and renumbering the result as 4.3.2;
4. Section 6.2.1 - Amended to include a reference to the special exception criteria of Section 4.3;
5. Section 6.3.1 - Amended to clarify its meaning by inserting the word "any" before "related development...";
6. Section 7.2 - Renamed from "Expansion & Reconstruction" to "Replacement" and deleted the phrase "or expansion" from paragraph 7.2.1
7. Subsection 9.2.7 - "Special Exceptions for Non-Conforming Lots": replaced subsection with new language.

Sections Adopted or Amended May 14, 1996:

1. Section 2.3 - "Definitions": amend definitions for Coverage, Grade, Height, Structure; new term added: Living Area.
2. Section 4.1.2 - "Residential District": amended list of Prohibited Uses to include paragraph No. 5 regarding buildings, structures or other devices which restrict access to public or private rights of way.
3. Section 4.2 - "Density and Dimensional Regulations": amended Table 1 to establish a front building setback requirement in all zoning districts of 20 feet.
4. Section 4.2, Subsection 4.2.2. - "Modifications and Special Provisions": adopted a new provision to establish maximum living area and minimum roof pitch for the principal structure on a building lot.
5. Section 5.3 - "Streets": adopted replacement language for Subsection(s) 5.3.1 "Acceptance of Streets," 5.3.2 "Right of Way," and 5.3.3 Parking.
6. Section 6.1.5.1 - "Cluster Development -- Dimensional Standards": amended paragraphs A., B., C. and D.
7. Section 6.1.5.2 - "Lot Size and Density Standards for Cluster Development": amended paragraph C. and added new Subsection 6.1.5.2.D Credit for Common Open Space.
8. Section 6.1.6.1 - "Provisions for Common Open Space": amended paragraph C to add text regarding Planning Board approval of area and general layout of open space.

9. Section 6.1.7 - "Utilities and Roads": amended No. 4 to reference *A Policy on Geometric Design of Highways and Streets* - 1990- AASHTO.
10. Section 6.5 - "Regulations for Swimming Pools," Subsection 6.5.2 amended to update the edition of the *National Electrical Code* from 1971 to 1993. Also added a new paragraph No. 9, regarding inclusion of pools in calculations for allowable lot coverage.
11. Section 6.5.3 - "Signs": Section moved to a new Section 6.7 and text amended.
12. Section 7.2.1 - "Replacement": amended to replace the words "exterior must be a replica or reproduction" with "the non-conforming portion."

Sections Adopted or Amended May 13, 1997:

1. Subsection 2.3.21 - "Coverage" changed to "Lot Coverage" and definitions renumbered accordingly.
2. Subsection 4.2.2.3 - Maximum % of Lot Covered was redefined for lot size of less than 3500 square feet and lot size of more than 9000 square feet.
3. Subsection 4.2.2.3 - Added sentence stating that maximum lot coverage for clustered dwellings on undivided lots will be determined by the Planning Board.
4. Subsection 4.2.2.5 - Added sentence stating that maximum living area for clustered dwellings on undivided lots shall be determined by the Planning Board.
5. Subsection 6.1.5.2.C - Title of section changed; Inserted "and living area" after the word "coverage" in the second sentence; Added "and 4.2.2.5" to the end of the second sentence.
6. Section 6.2.3 - First sentence amended to clarify its meaning by adding the word "permanent" after the word "No."
7. Section 6.5 - Added the sentence "The following regulations also apply to exterior hot tubs and spas." to the section heading.
8. Section 6.5.2.4 - Deleted section as was a "rough" duplication of Section 6.5.2.8, and renumbered subsections accordingly.
9. Section 6.7 - Text of entire section replaced.
10. Section 6.8 - Added as new section.
11. Section 9.2.3 - Reference to NH RSA corrected to "NH RSA 482:A:4."
12. Subsection 9.3.1.2 - Text of entire section replaced.
13. Section 9.5 - Added as new section.

Sections Adopted or Amended February 17, 1998:

1. Section 2.3 - "Hotel Apartments", added definition, and renumber remainder of section accordingly.
2. Section 4.1.5 - "Uses Permitted by Special Exception", delete section in its entirety.
3. Section 4.1.5.1 - "Permitted Uses", amend entire paragraph.
4. Section 4.2.1 - "Density and Dimensional Regulation Chart", Amend Table 1.
5. Section 5.1 - "Off-Street Parking and Loading", no changes to Subsection 1 through 11, amend remainder of section.
6. Section 6.1.1 - "Approval Procedure", delete in its entirety and replace with "Permitted Uses".
7. Section 6.1.2 - "Uses Permitted by Special Exception", delete in its entirety and renumber the remainder of section accordingly.
8. Section 6.1.3.1 - "Hotel and Commercial Use Restrictions", amend section.
9. Section 6.1.3.2a - Amend section.
10. Section 6.1.3.2c - Amend section.
11. Section 6.1.4 - "Minimum Tract Size and Suitability Requirements", amend sections 6.1.4.1 and 6.1.4.2.
12. Section 6.1.5.1 - "Dimensional Standards for Residential Cluster Development", amend section.
13. Section 6.1.6.2 - "Ownership", amend section with no changes to Sub-Section A, B and C.

Sections Adopted or Amended May 11, 1999:

1. Section 9.3.16 - "Hearing and Notices", amend section (d).
2. Section 8 - "Building Code Ordinance Fees", add new section (c), and re-letter existing sections.

Sections Adopted or Amended May 9, 2000:

1. Section 4.3.2 - "Special Exceptions", amend General Requirements.
2. Section 6.2.2 - "Home Occupations, General Requirements", amend section.
3. Section 6.3 - "Marinas, Docks, and Piers", amend 6.3.1.
4. Section 6.6 - "Accessory Apartments", amend 6.6.1, 6.6.2, 6.6.3, 6.6.4, 6.6.5, and 6.6.6.
5. Section 9.2 - "Wetlands Conservation District", amend 9.2.4.
6. Section 9.2.9 - "Buffer Provisions", amend section.
7. Section 9.2.10 - "Natural Woodland Buffer", amend section.
8. Section 9.2.11 - "Review Process", amend section.
9. Section 9.3.2.3 - "Historic District Purposes", amend section.
10. Section 9.3.2.17a - "Historic District Review Criteria", amend section.

Sections Adopted or Amended May 8, 2001:

1. Section 6.3 - “Marinas, Docks, and Piers”, amend 6.3.1, and 6.3.2; add section 6.3.3.
2. Section 9.3.2.14(b) - “Historic District Regulations - Application Procedure”, amend section.
3. Section 10.3 - “Board of Adjustment - Rules of Procedure”, amend section.
4. Section 11.1 - “Schedule of Fees”, amend section.

Sections Adopted or Amended May 14, 2002:

1. Section 6.1.7 - New wording for number 4.
2. Section 6.2 - “Home Occupations”, amend 6.2.2, new wording.
3. Section 6.6 - “Accessory Apartments”, amend 6.6.2, and 6.6.4, new wording.
4. Section 9.3.2 - “Historic District Regulations”, amend 13c, d; 14a, b; add new section 9.3.2, 18, 3 and 4.

Sections Adopted or Amended May 13, 2003:

1. Section 1.0 - “Authority and Purpose”, new wording.
2. Section 2.1 - “Definitions”, Interpretations, new wording.
3. Section 4.2.1 - “Density and Dimensional Regulations”, new wording.
4. Section 4.3.2 - “Special Exceptions”, new section heading and new wording.
5. Section 6.3.2.2-I - “Marinas, Docks and Piers”, new wording.
6. Section 7.0 - “Non-Conforming Lots and Uses”, revises new section heading.
7. Section 7.1.4 - “Non-Conforming Lots and Uses”, amend language.
8. Section 7.3 - “Discontinuance and Abandonment”, revise section heading.
9. Section 7.3.1 - “Discontinuance and Abandonment”, amend language.
10. Section 7.4 - “Change in Use”, revise section heading.
11. Section 7.4.1 - “Change in Use”, revise entire section.
12. Section 9.2.9.2 - Amend language.

Sections Adopted or Amended May 11, 2004:

1. Section 9.3.20 - “Historic District Ordinance”.
2. Section 9.2.9.3 - “Wetlands Conservation District”, add new language.
3. Section 9.3.2.8(f) - “Historic District Ordinance”, add new language.
4. Section 3.0 - “Establishment of Districts”, delete entire section and replace.

5. Section 3.3 - "District Boundaries", delete entire section, it is combined with Section 3.1.
6. Section 4.1 - "Permitted Uses", delete entire section and replace.
7. Section 4.2.1 - "Applicability of Density and Dimensional Regulations, Table 1", delete text and replace Table 1.
8. Section 9.6 - "Sensitive Areas Overlay District", create new section.
9. Section 7.1.4 - Revise existing section 7.1.4 and recodify section as Section 7.2.
10. Section 9.3.1.2 - "Historic District Overlay", add new language to modify existing boundary description.

Sections Adopted or Amended May 10, 2005:

1. Section 9.1 - "Flood Plain Development District", delete paragraph and replace.
2. Section 11.1 - "Enforcement; Fines", delete section and replace.

Sections Adopted or Amended May 9, 2006:

1. Section 9.2 - "Wetlands Conservation District", revise entire section.
2. Section 9.5 - "Personal Wireless Service Facility Overlay District", revise entire section.

Sections Adopted or Amended May 8, 2007:

1. Section 2.3 - Amend definition (Building).
2. Section 2.3 - Add additional definitions (Building Area, Erosion, Sedimentation, Slope, Site Disturbance, and Steep Slope).
3. Section 4.1.2.3 - Add 3a.
4. Section 4.2.1.1 - Amend "Ground Floor Area – Exempt Structures" and make change Table 1.
5. Section 4.2.1.3 - Amend "Maximum Lot Coverage" and make changes to Table 1.
6. Section 4.2.1.5 - Amend "Maximum Building Area" and make changes to Table 1.
7. Section 4.2.1.7 - Add new section "Building Setback Exceptions for Narrow and Shallow Lots in the R-1, R-2, and MU Districts" and make changes to Table 1.
8. Section 6.1.4.1.i - Amend section and make changes to Table 1.
9. Section 5.2 - Add new section "Development on Steep Slopes".
10. Section 6.5.2.7 - Amend section.

Sections Adopted or Amended May 13, 2008:

1. Section 2.2 - Amend year of International Residential Code.
2. Section 2.3.13a - Amend definition.
3. Section 4.3.2 - Delete sentence.
4. Section 6.1.4.1 - Amend dimensional standards.
5. Section 2.2.3 - Add definition.
6. Section 9.2.3 - Add new section.
7. Section 9.2 - Delete 9.2.3.2.d; replace 9.2.5.1.d; add 9.2.5.1.e; delete 9.2.6.1; add 9.2.3.2.e; replace 9.2.5.2.g.
8. Section 9.3 - Amend Historic District Ordinance.

Sections Adopted or Amended May 12, 2009:

1. Section 2.3.3 - Amend definition.
2. Section 6.6 - Amend Accessory Apartment.

Sections Adopted or Amended May 11, 2010:

1. Section 4.1.6 – Amend Prohibited Uses #3.
2. Section 10.3 – Amend with updated language.
3. Section 10.5 – Amend with updated language.

Sections Adopted or Amended May 10, 2011:

1. Section 2.2.3 - Add definition.

Sections Adopted or Amended May 8, 2012:

1. Section 9.2 – Amend Wetlands Conservation District.

Sections Adopted or Amended May 14, 2013:

1. Section 4.1.2 – Amend Residential District (R-1) Permitted Uses.

Sections Adopted or Amended May 13, 2014:

1. Section 2.3.36 – Amend definition.
2. Section 9.2.8.4.b - Add definition ‘Turf’.
3. Section 9.2.3.3a – Amend Wetlands Conservation District.
4. Section 9.2.8.4 – Amend Wetlands Conservation District.

Sections Adopted or Amended May 12, 2015:

No Warrant Articles for Zoning Ordinance, Building Code, Subdivision Regulations, or Site Plan Regulations.

Sections Adopted or Amended May 10, 2016:

1. Section 4.2.1.5 - Amend with updated language and amend Table 1.
2. Section 5.2.3.1 – Add new subsection “c”.
3. Section 9.2.5.2 – Add new subsection “j”.
4. Section 6.1.4.2.d – Amend with updated language.
5. Section 9.2.11 – Add new Section.
6. Section 2.3 – Add definition.

Sections Adopted or Amended May 9, 2017:

1. Section 6.6 – Accessory Dwelling Units – Change wording.
- 2.. Section 2.3 – Definitions, Subsection 2.3.3 Accessory department to add new section.
3. Section 9.3.4.2 – Terms of Office in Historic District Commission – New wording.
4. Section 9.3.4.2.c – To change wording in Historic District Commission.
5. Section 9.3.7.3 – Hearing and notices subsections a,b,c to change wording.

Sections Adopted or Amended May 8, 2018:

1. Section 2.0 – Definitions, 2.3.38 Lot Coverage to change wording.
2. Section 2.3.35 – Impervious surface to adopt.
3. Section 9.5.9 – Colocation procedures to add new wording.
4. Section 9.2 – Wetlands conservation district under Section 9.2.5.2 conditions, to add new section.
5. Section 9.5.5 – Condition uses under Section 9.5.5.1 Conditional use permit to amend.

TABLE OF CONTENTS

Zoning Ordinance

<u>SECTION</u>	<u>PAGE</u>
1.0 AUTHORITY AND PURPOSE	Zone-1
2.0 DEFINITIONS	Zone-1
2.1 Interpretations	Zone-1
2.2 Terms Not Defined.....	Zone-1
2.3 Definitions	Zone-1 to Zone-8
2.4 Flood Development Regulation Definitions	Zone-8, Zone-61
3.0 ESTABLISHMENT OF DISTRICTS	Zone-9
3.1 Establishment and Designation of Districts.....	Zone-9 to Zone-12
3.2 Zoning Map	Zone-13
4.0 DISTRICT REGULATIONS.....	Zone-14
4.1 Permitted Uses	Zone-14
4.2 Density and Dimensional Regulations	Zone-17 to Zone-20
4.3 Special Exceptions	Zone-21
5.0 GENERAL REGULATIONS	Zone-22
5.1 Off-Street Parking and Loading.....	Zone-22
5.2 Development of Steep Slopes	Zone-23 to Zone-25
5.3 Streets.....	Zone-26
5.4 Condominium Regulations	Zone-26 to Zone-27
6.0 SUPPLEMENTARY USE REGULATIONS	Zone-28
6.1 Special Regulations for the Planned Development District.....	Zone-28 to Zone-32
6.2 Home Occupations.....	Zone-33
6.3 Marinas, Docks and Piers	Zone-34 to Zone-36
6.4 Storage of Hazardous Materials.....	Zone-36
6.5 Regulations for Swimming Pools	Zone-36
6.6 Accessory Dwelling Units (ADU)	Zone-37 to Zone-38
6.7 Signs.....	Zone-38 to Zone-39
6.8 Fences and Walls	Zone-39
7.0 NON-CONFORMING LOTS, BUILDINGS, STRUCTURES AND USES	Zone-39
7.1 Definitions	Zone-39 to Zone-40
7.2 General	Zone-40
7.3 Replacement	Zone-40
7.4 Discontinuance	Zone-40
7.5 Change to Non-Conforming Lots, Buildings, Structures and Uses	Zone-40
8.0 RESERVED.....	Zone-41

9.0	OVERLAY ZONING DISTRICTS	Zone-42
9.1	Flood Plain Development District.....	Zone-42 to Zone-50
9.2	Wetlands Conservation District	Zone-50 to Zone-60
9.3	Historic District Ordinance.....	Zone-60 to Zone-69
9.4	Manufactured Housing Exclusion District	Zone-69
9.5	Personal Wireless Service Facility Overlay District	Zone-70 to Zone-76
9.6	Sensitive Areas Overlay District	Zone-76
10.0	BOARD OF ADJUSTMENT	Zone-77
10.1	Establishment.....	Zone-77
10.2	Authority and Purpose.....	Zone-77 to Zone-78
10.3	Rules of Procedure	Zone-78
10.4	Hearings and Notices	Zone-78
10.5	Criteria for Variances and Special Exceptions	Zone-78 to Zone-79
10.6	Findings of Fact	Zone-79
10.7	Limitations on Variances & Special Exception	Zone-79
11.0	ADMINISTRATION AND ENFORCEMENT	Zone-80
11.1	Enforcement; Fines	Zone-80
12.0	AMENDMENTS, VALIDITY, APPLICABILITY	Zone-80
12.1	Validity, Severability	Zone-80
12.2	Conflicting Provisions.....	Zone-80
12.3	Amendments.....	Zone-80
12.4	Effective Date	Zone-80

ZONING ORDINANCE

New Castle, New Hampshire

1.0 Authority and Purpose

Pursuant to the authority conferred by Chapter 674:16 of the New Hampshire Revised Statutes Annotated, as amended, and for the purpose of promoting the health, safety, and general welfare of the community and the intent of the Town Master Plan, this Ordinance is hereby adopted by the Town of New Castle.

2.0 Definitions

2.1 INTERPRETATIONS

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this ordinance to have the meaning defined in this section. Words used in the present tense include the future; the singular use includes the plural and the plural use the singular. Headings within this ordinance shall not be construed to affect the interpretations of the words and phrases of the sections of the ordinance.

2.2 TERMS NOT DEFINED

Where terms are not defined in this section or elsewhere in the Zoning Ordinance, or in the New Castle Subdivision or Site Plan Review Regulations or other regulations or bylaws of the Town, but are defined in the 2000 International Residential Code, as amended, the 2009 International Residential Code definitions shall be used. Where terms are not defined in any of the aforementioned sources, such terms shall have ordinary accepted meanings such as the context of their use implies.

2.3 DEFINITIONS

1. **Abandonment:** The visible or otherwise apparent intention of an owner to discontinue the use of a building or premises or the removal of characteristic equipment or furnishings used in the performance of any nonconforming use without its replacement by similar equipment or furnishings. The replacement of any nonconforming use or building by a conforming use or building.
2. **Abutter:** Any person whose property is located in New Castle and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For 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 land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.
3. **Accessory Dwelling Unit (ADU):** A residential living unit that is within or attached to a single-family dwelling or is located in a detached structure, 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.

4. **Accessory Use or Structure:** A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building.
5. **Addition:** As applied to a building or structure, means any construction which increases the area or the height of any portion of the building or structure.
6. **Alteration:** As applied to a building or structure, means any change or modification in construction, existing facilities, or permanent fixtures or equipment which does not include an addition to the building or structure.
7. **Approval:** see Subdivision Regulations
8. **Approval, Conditional:** see Subdivision Regulations
9. **Area:** As applied to a building or structure, means the maximum horizontal projected area of the building or structure at or above grade.
10. **Basement:** A story of a building or structure having an aggregate of sixty percent (60%) or more of its clear height below grade. Also see "Story".
11. **Bed and Breakfast:** A transient lodging facility which is the owner's personal residence, is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.
12. **Board:** The Planning Board of the Town of New Castle, New Hampshire as established under the provisions of RSA 673:3 as amended.
13. **Building:** Means a combination of materials to form a construction that is safe and stable and adapted to permanent or continuous occupancy for assembly, business, educational, high hazard, industrial, institutional, mercantile, residential or storage purposes; the term "building" shall be construed as if followed by the words "or portion thereof". For the purposes of this code each portion of a building separated from other portions by a fire wall, as defined in the current International Building Code as adopted by the Town of New Castle, shall be considered as a separate building.
- 13a. **Building Area:** The gross floor area of all buildings on a lot including garages, detached buildings and covered porches and including 50% of the area of walkout basements, but excluding patios, decks and storage sheds of less than 80 square feet.
14. **Building Coverage:** The aggregate or maximum horizontal cross sectional area of all

buildings on the lot, but excluding eaves or gutters projecting not more than thirty (30) inches. Structures less than eighteen (18) inches above ground level shall not be included in calculating building coverage.

15. **Building Height:** See Height.
16. **Building Setback Line:** The line, established by law, beyond which a building shall not extend, except as specifically provided by law.
17. **Building Official:** The officer or other designated authority charged with the administration and enforcement of this code, or his duly authorized representative.
18. **Building, Principal:** A structure in which is conducted the principal use of the site on which it is situated. In any residential district any dwelling shall be deemed to be a principal building on the lot on which the same is located.
19. **Condominium:** A fee interest in land or buildings owned by a unit owner, together with an undivided interest in the common areas of facilities. Condominiums can include single-family or multi-family dwellings and are managed by a condominium association. The creation of a condominium shall be considered a subdivision entitled to regulation by the town under RSA 356-B:5.
20. **Condominium Instruments:** A collective term referring to the declaration, by-laws, site plan and floor plan, recorded pursuant to RSA 356-B.
21. **Dwelling:** A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, but not including hotels, motels, rooms or a boarding house, clubs, lodges, trailers, or structures solely for transient or overnight occupancy.
22. **Dwelling Unit:** One (1) or more rooms, including cooking facilities, and sanitary facilities in a dwelling structure, designed as a unit for occupancy by not more than one (1) family for living and sleeping purposes.
23. **Easement:** A non-possessory interest in real property; the right to use another's real estate for a limited purpose.
24. **Erosion:** The wearing away of the ground surface as a result of the movement of wind, water, ice, or from land disturbance activities.
25. **Family:** Individuals occupying a dwelling unit and living together as a single housekeeping unit and doing their cooking together; provided that unless all members are related by blood, marriage, or adoption, no such family shall contain more than five

persons.

26. **Final Plat:** See Subdivision Regulations
27. **Frontage:** The horizontal distance measured along a lot line dividing a lot from a street. Such measurement shall refer to a continuous line except where otherwise specified.
28. **Grade:** With reference to a building or structure, means the average elevation of the ground adjoining the building or structure on the lowest side. When the ground slopes away from the exterior walls, the grade shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six (6) feet from the building, between the building and a point six feet from the building.
29. **Gross Floor Area:** The sum of the areas of the several floors of the buildings as measured by the exterior faces of the walls, but excluding the areas of fire escapes, unroofed porches or terraces, and areas such as basements and attics exclusively devoted to uses accessory to the operation of the building.
30. **Habitable Room:** A room or enclosed floor space arranged for living, eating or sleeping purposes, not including bath or toilet rooms, laundries, pantries, foyers, or communicating corridors.
31. **Health Officer:** The Health Officer of the Town of New Castle.
32. **Height:** As applied to a building, means the vertical distance measured from the building line at the lowest grade on any side, to the highest point of the roof, excluding chimneys and similar projections that are usually appurtenant to the building.
33. **Home Occupation:** An occupation, professional activity, or use that is clearly a customary, incidental and secondary use of a residence and which does not alter the exterior of the property or affect the residential character of the neighborhood.
34. **Hotel Apartment:** A hotel unit containing up to two (2) bedrooms and kitchen facilities with a gross floor area of less than 1,250 square feet. Hotel apartments shall be allowed only as a subordinate and accessory use to an approved hotel of 150 or more rooms and must be maintained and managed by the hotel operator. Hotel apartments shall not be used as a residence as defined in this ordinance.
35. **Impervious Surface:** A modified surface that cannot effectively absorb or infiltrate water, including but not limited to, decks, patios, driveways, parking areas, walkways, tennis courts, swimming pools, and hot tubs, unless such structures have been designed to effectively allow for water to infiltrate or be absorbed. Roofs are always considered impervious surfaces regardless of infiltration systems.

36. **Junk Yard:** An area of land, with or without buildings, primarily used for the storage outside of a completely enclosed building, or used and discarded materials, including but not limited to waste paper, rags, metal, building junk as defined in this article, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. Junkyard also means any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways.
37. **Local Land Use Boards:** A planning board, historic district commission, inspector of buildings, building code board of appeals, or zoning board of adjustment established by the local legislative body.
38. **Lot:** A single parcel of land in the same ownership throughout as shown or defined on a recorded instrument or defined by metes and bounds and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for building on such land.
39. **Lot Coverage:** That percentage of the plot or land area covered by impervious surfaces including but not limited to paved, bricked, or gravel areas, buildings, or other structures, decks, patios, driveways, walkways, sheds, tennis courts, swimming pools and hot tubs.
40. **Lot Depth:** The mean horizontal distance between the front and rear lot lines.
41. **Lot Line:** A line dividing one lot from another, or from a street or other public space.
42. **Lot of Record:** A lot described in a deed which has been lawfully recorded in the Rockingham County NH Registry of Deeds or which is part of a subdivision plat approved by the Planning Board and lawfully recorded in the Registry of Deeds.
43. **Master Plan:** The comprehensive plan or plan of development for the community.
44. **Manufactured Housing:** 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 a permanent foundation

when connected to required utilities, which include plumbing, heating and electrical systems contained herein.

45. **Minor Landscaping:** Minor landscaping shall mean the placement or installation of landscaping features that do not involve significant disturbance of soil or require or involve grading of the surface of the land. For the purposes of the Wetlands Conservation Ordinance the following specific landscaping activities shall be considered minor: (1) planting of non-invasive plant species; (2) tilling land for a residential garden with appropriate erosion controls; (3) installation of raised decks which do not meet the definition of structure as defined herein; (4) repairs to existing structures and facilities and (5) installation of foot trails or paths that do not concentrate storm water or contribute to erosion.
46. **Minor Subdivision:** See Subdivision Regulations.
47. **Multi-family Structure:** Any building which includes three or more residential dwelling units.
48. **Non-Conforming Use, Lot or Building:** A use, lot or building lawfully existing at the time of adoption of this ordinance or any subsequent amendment thereto which does not conform to one or more provisions of this ordinance.
49. **Official Map:** The adopted street or base map of the municipality as defined in RSA 36:16-18.
50. **Open Space:** An area that is intended to provide light and air and is used for either environmental, scenic or recreational purposes. Open space may include, but is not limited to lawns, decorative plantings, walkways, recreation areas and wooded areas. For the purpose of calculating open space and recreational area requirements of cluster development, open space does not include driveways, parking lots, open water or intertidal areas.
51. **Owner:** A person having legal or equitable title to the property in question.
52. **Parcel:** A single unit of land in the same ownership throughout as shown or defined on a recorded deed.
53. **Parking Space:** See Section 5.1, Off-Street Parking and Loading.
54. **Permanent Building:** Any building resting upon a foundation or otherwise legally defined as "real estate".

55. **Person:** Includes an individual as well as a corporation, firm, partnership or other organization or group acting as a unit.
56. **Plat:** See Subdivision Regulations.
57. **Repair:** The replacement of existing work with equivalent materials for the purpose of its maintenance; but not including any addition, change or modification in construction, exit facilities, or permanent fixtures or equipment.
58. **Resident; Inhabitant:** A person who is domiciled or has a place of abode in the Town of New Castle and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.
59. **Residence/Residency:** A person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.
60. **Right of Way:** All town, state and federal highways and the land on either side of same as covered by statutes to determine the widths of rights-of-way. The term also includes private and other public ways and the land on either side as stipulated in each specific instance.
61. **Rooming and Boarding Houses:** A building other than a hotel or motel where lodging is provided for compensation without individual cooking facilities.
62. **Sedimentation:** The process by which sediment resulting from accelerated erosion has been or is being transported from disturbed land into a lake or natural watercourse or wetland.
63. **Septic Failure:** The condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes or threatens to cause the discharge of sewage on the ground surface or into adjacent surface or directly into surface waters.
64. **Setback:** The distance between the nearest portion of a building and a lot or public right-

of-way line, whichever is closer.

- 65. **Sign:** Any name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, person, institution or business.
- 66. **Site Disturbance:** The alteration of the surface of the land, including stripping of vegetative cover from the land surface.
- 67. **Slope:** Slope is the change in elevation over a certain horizontal distance on the earth's undisturbed surface, expressed as the percent of elevation change over that distance.
- 68. **Special Exception:** A use permitted within a District only after a determination is made by the New Castle Board of Adjustment that the prerequisite conditions as specified in this Ordinance have been met.
- 69. **Steep Slope:** Land with existing slopes greater than 15%. For the purpose of calculating the slope shall be determined by the average slope from lowest to highest point in the area of a proposed building site.
- 70. **Street:** A right-of-way, avenue, road, boulevard, lane, alley, viaduct, highway, freeway and other ways including a private way offering the principal means of access to abutting properties. A public way includes the entire right-of-way.
- 71. **Structure:** A combination of material to form a construction greater than 18" high, with or without foundation, that is safe and stable; including among others, buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, wharves, sheds, shelters, and display signs but excluding retaining walls, fences, and other customary landscaping elements. The term structure shall be construed as if followed by the words "or part thereof."
- 72. **Story:** That part of a building comprised between a finished floor and ceiling above with a minimum height of 7 feet, 6 inches. A mezzanine shall be considered a story if it exceeds 33 1/3 per cent of the area of the floor immediately below. A penthouse shall be considered a story if it exceeds 1,000 square feet or 33 1/3 per cent of the horizontal roof area.
- 73. **Subdivider:** See Subdivision Regulations.
- 74. **Subdivision:** See Subdivision Regulations.
- 75. **Temporary Structure:** A structure which, by the type and materials of its construction is erected for not more than ninety (90) days. Such structures shall include tents, portable band stands, bleachers, reviewing stands, a mobile home used in conjunction with construction activities, tractor trailers, or other structures of similar character.
- 76. **Town Engineer:** The duly designated engineer of the Town of New Castle or, if there is no such official, the planning consultant or official assigned by the Board of Selectmen.

- 77. **Turf:** Means non-agricultural land planted in closely mowed, managed grasses except golf courses, parks, athletic fields and sod farms.
- 78. **Variance:** A legal permit to depart from the requirements of the Zoning Ordinance as granted by the Board of Adjustment.
- 79. **Walkout Basement:** A basement having the exterior elevation equal to or below the elevation of the existing basement floor and being accessed through a door or opening at grade level.
- 80. **Wetlands:** Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to, swamps, bogs, marshes, ponds, lakes, soils that are defined as Type A (very poorly drained) or Type B (poorly drained) hydric soils and any area of wetland falling within the jurisdictional definition of N.H. RSA 482-A:4.
- 81. **Yard:** Any open area that lies between the principal buildings or group of buildings and the nearest lot line and is unoccupied by any structure except as herein permitted.

2.4 FLOOD DEVELOPMENT REGULATION DEFINITIONS

Definitions specific to the Flood Development District are stated in Section 9.1 of this Ordinance.

3.0 Establishment of Districts

3.1 ESTABLISHMENT AND DESIGNATION OF DISTRICTS

The Town is hereby divided into areas as shown upon the New Castle Zoning Map, dated May 11, 2004, hereby incorporated by reference and made a part hereof.

Such areas shall be designated as: 1. Residential District (R-1); 2. Moderate Density Residential District (R-2); 3. Low Density Residential District (R-3); 4. Planned Unit Development District (R-4); and 5. Mixed Use District (MU).

In addition to these, the following overlay zoning districts are designated: 6. Mobile Home Exclusion District (MHE); 7. Historic Overlay District (HD); 8. Sensitive Areas Overlay District (SA); 9. Telecommunications Overlay District (TEL); 10. Flood Plain Development District (FL); 11. Wetlands Protection District (WET);

The Districts referenced above are defined as follows:

- 3.1.1 Residential District (R-1):** The Residential District includes the central densely settled area of New Castle of primarily residential development. Its purpose is to accommodate and support single and two family residential and permitted accessory uses consistent with the developed village center.

The District is bounded as follows: beginning with and including Goat Island, then easterly to include all land between Portsmouth, Cranfield, Main and Ocean Streets and the Piscataqua River; also including all land bounded between Wentworth Road, Pit Lane and Cranfield Street; also including land with frontage on the following streets: Portsmouth Avenue, Cranfield Street, Laurel Lane, Grist Mill Lane, Davidson Street, Walton Road, Quarterdeck Lane, Mainmast Circle. Excluded from the Residential District is that land designated as the Mixed Use District as defined in Section 3.1.5.

- 3.1.2 Moderate Density Residential District (R-2):** This district is designated primarily for single and two family residential development but with lower development suitability and development density than the Residential (R-1) District. The District is bounded as follows: All land on the easterly side of Wentworth Road located between the northerly boundary of Great Island Common and Ocean Street; also land on the westerly side of Wentworth Road located between Pit Lane to the north, the R-1 District to the west and

the rear lot lines of the lots located to the southwesterly side of Spring Hill Road.

- 3.1.3 Low Density Residential District (R-3):** This district is designated primarily for single family residential development but with lower development density than other residential districts in order to promote a development density that is more consistent with the predominant development pattern in the lesser developed areas of New Castle, including land in proximity to the Great Island Common and Fort Stark.

The Low Density Residential District (R-3) includes the following areas: All land on the easterly and southeasterly side of Wentworth Road extending from and including the Great Island Common, to the rear lines of lots accessed on the east side of Little Harbor Road. The R-3 District shall also include all land north of Ocean Street on the easterly side of Wentworth Road. It shall also include all Islands within the municipal boundaries except Goat Island, Campbell's Island and Duck's Head Island.

- 3.1.4 Planned Development District (R-4):** This District is intended to permit a variety of uses consistent with and permitted by the defined development plan for this area, including clustered residential and resort/hotel uses as approved by the Town.

The Planned Development District shall include the following area: all land on both sides of Wentworth Road between the Rye Town line to the west, and to the R-2 and R-3 District boundaries on the east.

- 3.1.5 Mixed Use District (MU):** The Mixed Use District is principally a residential district, with certain non-residential uses permitted by special exception. The purpose is to allow traditional village commercial and retail uses such as stores, shops and offices where such uses are of limited scale and are compatible with surrounding residential uses.

The Commercial District is bounded and described as follows: Commencing at a point at the center of the intersection of the public highways now known as Cranfield Street and Main Street and thence running North along the center of said Cranfield Street 100 feet to a point; thence turning and running Easterly on a line 100 feet Northerly from Main Street and parallel therewith to and through Atkinson Street to the center of Walbach Street; thence turning and running Southerly 100 feet to the center of said Main Street and continuing 100 feet to a point 100 feet Southerly from the center of said Main Street; thence turning and running Westerly on a line 100 feet from and parallel with the center line of said Main Street to the center line of Cranfield Street, (excepting the present Church properties which shall be designated as residential); thence turning and running Northerly along the center line of said Cranfield Street 100 feet to the point of beginning.

- 3.1.6 Manufactured Housing Exclusion District (MHE):** is the area within the Residential District where manufactured housing is prohibited. The District is defined as follows: extending along both sides of Route 1B from the causeway to the intersection of Main Street and Wentworth Road. The area shall be one lot deep on the south side of Route 1B

and shall extend to the Piscataqua River on the north side. (See Section 9.4)

- 3.1.7 Historic Overlay District (HD):** The Historic Overlay District is intended to preserve and protect the buildings and the historical architectural landscape of the historical village center of New Castle. See Section 9.3 for the District boundary definition and related regulations.

- 3.1.8 Sensitive Areas Overlay District (SA):** The Sensitive Areas Overlay District consists of several unique, sensitive properties under the control of governmental entities and which have special historic, environmental, economic and recreational value to the citizens of the Town of New Castle and the State of New Hampshire.

The District is intended to establish attendant use restrictions that encourage the retention of these areas as public parks and recreation areas and limit any potential development to a scale and density consistent with the existing character of use of those properties.

The District shall encompass the following areas: Great Island Common; Fort Stark; the U.S. Coast Guard Facility, including Battery Farnsworth and Fort Constitution and all other land north of Ocean Street on the easterly side of Wentworth Road. It shall also include all Islands within the municipal boundaries except Goat Island, Campbell's Island and Duck's Head Island. (See Section 9.6)

- 3.1.9 Telecommunications Overlay District (TEL):** The Telecommunications Overlay District is established to preserve the authority of the Town of New Castle to regulate and provide for reasonable opportunity for siting telecommunications facilities, and reduce adverse impacts that the siting of such facilities may create.

The District consists of all town owned land within the Town of New Castle except that which is within the New Castle Historic District. (See Section 9.5)

- 3.1.10 Flood Plain Development District (FP):** is defined as the areas subject to flooding and overlays all other districts. The intent is to forbid new construction which would result in a danger to life, or an unreasonable danger to property in the event of flooding whether induced by hurricane or otherwise.

The District consists of those areas so designated by the Federal Emergency Management Agency in its "Flood Insurance Study for the Town of New Castle, N.H." together with the associated Flood Insurance Rate Maps and Flood Boundary and Floodway maps of the Town of New Castle, N.H., Rockingham County, Community Panel Number 3301350001B and dated August 5, 1986, which are declared to be a part of this Ordinance. (See Section 9.1)

- 3.1.11 Wetlands Conservation District (WC):** the Wetlands Conservation District is designated to protect the public health, safety and general welfare of the community by

controlling and guiding the use of land areas defined as wetlands.

The District is defined by the existence of jurisdictional wetlands as defined by RSA 482-A and NH Code of Administrative Rules Wt Section 101. Wetlands include all areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marches, bogs, and similar areas. (See Section 9.2)

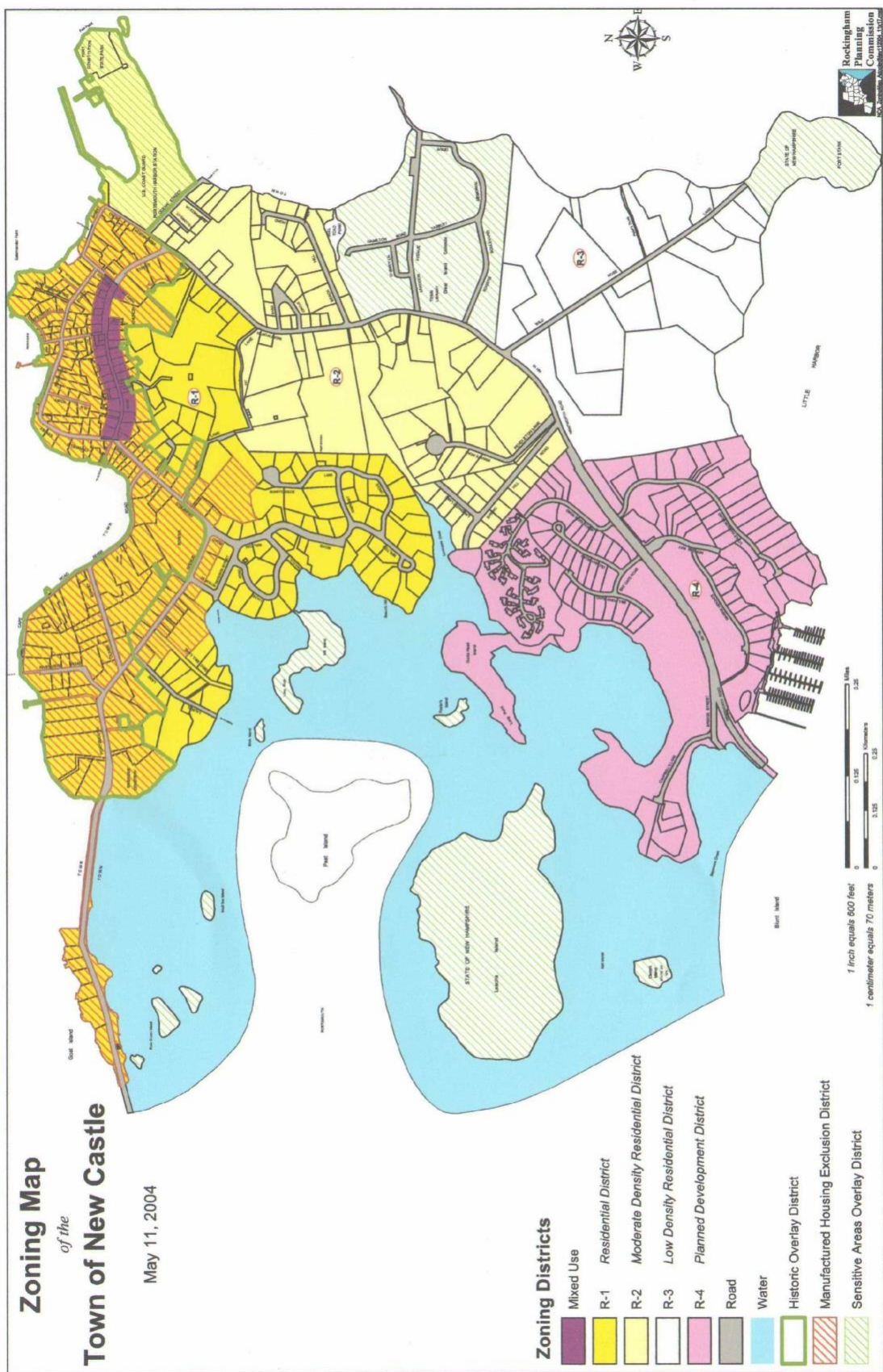
3.2 ZONING MAP

3.2.1 Establishment: Except as noted below, the districts herein defined are located and bounded as is shown on the Zoning Map of the Town of New Castle, dated May 11, 2004, and available for inspection at the Town Hall. A facsimile of the New Castle Zoning Map is provided on the following page of this Ordinance.

3.2.2 Condition-defined Overlay Districts: The boundaries of the Flood Plain Development District, Wetlands Conservation District and Telecommunications Overlay District are defined by the existence of certain conditions determined by site specific mapping and are not depicted on the zoning map. See their respective sections in Section 9.0 of this ordinance for further definition.

3.2.3 Interpretation: Where uncertainty exists with respect to the boundaries of a district, the following rules will apply in all districts except the Flood Plain Development and Wetlands Conservation Districts:

1. Where a boundary apparently follows a property line, it shall be interpreted as such;
2. Where a boundary line is shown following a street or utility, the boundary shall be interpreted as the centerline thereof, unless otherwise indicated;
3. Where a district boundary line divides a lot, either zoning district shall be interpreted as extending fifty (50) feet into the adjacent district;
4. In cases of uncertainty about a district boundary, and where not otherwise provided for, the Planning Board shall determine the exact boundary.



4.0 District Regulations

4.1 PERMITTED USES

4.1.1 General:

The following conditions shall apply to uses in all Districts:

1. **Use:** No building shall be erected, reconstructed or structurally altered nor shall any building or land be used for any purpose other than is permitted in the District in which such building or land is located. Any use not specifically allowed as a permitted use, or as a use permitted by special exception, is prohibited.
2. **Principal Building:** There shall be no more than one (1) principal building on one (1) lot unless expressly permitted by other provisions of this Ordinance.
3. **Federal and State Lands:** The provisions of this Ordinance shall apply and be effective over any area owned by the United States Government or State of New Hampshire, in the event that such land is relinquished by the United States Government or State of New Hampshire and transferred by sale or lease or easement to another public body or to a private entity.

4.1.2 Residential District (R-1):

Permitted Uses

1. Single and two (2) family dwelling structures;
2. Manufactured housing as defined in Section 2.3 except in the manufactured housing Exclusion Zone as defined in Section 3.1.6;
3. Garages, workshops, toolsheds, greenhouses and other accessory uses that are customary incidental uses to the principal permitted use provided they are not used for commercial or industrial purposes;
- 3a. Structures of 80 square feet or less are permitted to be placed no closer than 5 feet from the rear and side lot line not abutting a street, providing the structure is on a temporary foundation and is not connected to utilities;
4. Farming or gardening or other agricultural uses, provided that the particular use is not injurious, noxious or objectionable to others residing in the same neighborhood;
5. Churches, schools, parks, playgrounds and open land;
6. Parking of not more than one trailer or camper, owned and used by the occupant of a dwelling for recreational purposes. None shall be occupied without first obtaining a permit from the Selectmen; and
7. Customary home occupations as provided in Section 6.2 of this Ordinance.

Prohibited Uses

1. Junk yards and scrap metal establishments;
2. Trailer camps, overnight cabins, hotels, motels, rooming and boarding houses, public bathhouses, public dance halls, roller skating rinks, bowling alleys, arcades, moving picture theaters, clubs, societies, gambling facilities or other places likely to cause the congregation of a large number of people except for an ecclesiastical or educational purpose;
3. Public garages, automobile repair shops, truck terminals, gasoline stations, animal kennels other than ones for domestic use, animal shelters or hospitals, livery stables, commercial canneries, rendering plants, abattoir or other businesses or occupations, the general nature of which are noisy, odoriferous, or likely to cause vibrations, fumes, smoke or be otherwise objectionable;
4. Outdoor advertising signs or billboards not connected with a local town business. All outdoor advertising signs not on the premises advertised and all neon and/or flashing signs are prohibited; and
5. Buildings, structures, and other devices that exist to restrict access to public or private rights of way, including but not limited to, Gate Houses and automatic or manually operated access control gates.

4.1.3 Moderate Density Residential District (R-2):

Permitted Uses

1. All uses permitted in the Residential District.

Prohibited Uses

1. All uses prohibited in the Residential District shall be prohibited in the Moderate Density Residential District.

4.1.4 Low Density Residential District (R-3):

Permitted Uses

1. All uses permitted in the Residential District except two (2) family dwelling structures.

Prohibited Uses

1. All uses prohibited in the Residential District shall be prohibited in the Low Density Residential District.

4.1.5 Planned Development District (R-4):

Permitted Uses

1. Land in this District may be used as permitted in the Residential District, except that east of Wentworth Road residential structures of two units or more are prohibited, except as provided for in Section 6.1.1 - Special Regulations for the Planned Development District; and
2. The provisions of Section 6.1.1 shall govern permitted uses for non-residential development proposals over 7 acres and for developments previously approved under that Section.

Prohibited Uses

1. Land uses prohibited in this District shall be those prohibited in the Residential District, except as otherwise permitted by Section 6.1.1.

4.1.6 Mixed Use District (MU):

Permitted Uses

1. All uses permitted in the Residential District, including all applicable restrictions.

Uses Permitted by Special Exception

1. Retail stores and shops, professional offices and professional services, which are otherwise compatible with the predominant residential character of the District, provided that such use does not occupy more than 1,000 square feet in gross floor area of building space per lot. Determination of residential compatibility shall consider at least the following criteria: parking, traffic and congestion, lighting, noise, odor, smoke, architectural design and operating hours;
2. Bed and Breakfast establishments; and
3. Building(s) with more than one principal use per lot.

Prohibited Uses

1. Scrap metal yards, salvage yards or junk yards;
2. Trailer camps, overnight cabins, rooming and boarding houses, bowling alleys, public dance halls, arcades, roller skating rinks, or gambling facilities;
3. The sale or dispensing of beer, wine or liquor to be consumed on the premises, with the exception of occasional beer and wine tastings approved by the State Liquor Commission in accordance with Section 179:44 of the Revised Statutes, and the regulations promulgated there under, provided such tastings are held indoors and only after Labor Day and before Memorial Day;

4. Hotels, motels.

4.2 DENSITY AND DIMENSIONAL REGULATIONS

4.2.1 Modifications and Special Provisions:

1. **Ground Floor Area - Exempt Structures:** Uncovered porches, decks under 18" and similar structures shall not be included in the compilation of the minimum ground floor area.
2. **Tidal Lands:** For the purpose of determining lot dimensions, setback and area, when the property line(s) of a lot extend into tidal waters, the lot boundary(ies) abutting the water shall be considered as the mean high water line. Property below the Mean High Water Line may not be used in computation of density. Additional setback for building construction adjacent to tidal land may be required by RSA 482-A.
3. **Maximum Lot Coverage:** The maximum portion of a lot that may be covered (see lot coverage definition #2.3.39) shall be determined according to the schedule shown below; however, at least 1050 square feet (ground floor area) of building coverage will be permitted for lots between 3500 and 8000 square feet in size, and at least 2000 square feet (ground floor area) will be permitted for lots over 8000 square feet in size. The maximum lot coverage for clustered dwellings on undivided lots will be determined by the Planning Board.

<u>Lot Size</u>	<u>Maximum % of Lot Covered</u>
-less than 3500 square feet:	30%
-3500 to 8000 square feet:	1050 square feet or 25% of the lot size, whichever is greater.
-more than 8000 square feet:	2000 square feet or 20% of the lot size, whichever is greater.

See Section 6.1.4.2 for lot coverage provisions applicable to clustered residential units.

4. **Lot Size and Wetland Area:** Wetland areas designated as having poorly drained soils may be used to fulfill 25% of the minimum lot size or other density limitation required by town ordinances and subdivision regulations, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required structures including utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations. No part of areas designated as having very poorly drained soils, or bodies of water, may be used to satisfy minimum lot size or other density limitation.

5. **Maximum Building Area:** The maximum Building Area permitted on a Lot shall be limited according to the following schedule:

For Building Lots up to and
including 4000 square feet in area: 50% of total lot area

For Building Lots greater than
4000 square feet in area:

- 50% of the first 4000 square feet of lot area
- 25% of the lot area between 4000 and 9000 square feet
- 15% of the lot area above 9000 square feet

The maximum building area for clustered dwellings on undivided lots shall be determined by the Planning Board.

6. **Roof Pitch:** The minimum roof pitch on the primary building of a lot shall be 1-to-3 (one-foot vertical distance for every three feet in horizontal distance).
7. **Building Setback Exceptions for Narrow and Shallow Lots in the R-1, R-2, and MU Districts:** A building setback of 10 feet from the side shall be allowed wherever the lot is 70 feet wide or less, and a building setback of 10 feet from the rear shall be allowed wherever the lot is 70 feet deep or less.

For the Density and Dimensional Regulations (Chart) please refer to the link on the Building Inspector's web page.

The link is Titled: Table 1: Density & Dimensional Regs.

http://www.newcastlenh.org/Pages/NewCastleNH_Building/table.pdf

4.3 SPECIAL EXCEPTIONS

4.3.1 This Ordinance provides that some uses are permitted only by Special Exception by the Board of Adjustment. Following public hearing, the Board of Adjustment shall grant a Special Exception when all requirements are met and shall deny such exceptions when any requirement is not met.

4.3.2 General Requirements

All uses permitted by Special Exception must meet the following general requirements as well as additional special exception criteria applicable to particular uses as may be elsewhere specified in this ordinance.

1. All driveways and parking areas shall be developed in accordance with subdivision regulations and shall contain facilities for night illumination where and if appropriate.
2. The proposed use is so designed, located and operated that the public health, safety, welfare and convenience will be protected.
3. The use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.
4. Any special exception which may be authorized by the Board of Adjustment may be required to have fencing, screening, landscaping or buffer zones sufficient to obscure such uses from view from abutting properties. Landscaping treatment shall consist of ground cover, trees and shrubs appropriate to the character of the area as well as carefully designed hard surface and paved areas for paths and points of maximum concentration of use.

5. Adequate off-street parking and loading shall be provided and ingress and egress so designed as to cause minimum interference with traffic on abutting streets.
6. The applicant for a Special Exception agrees as a condition of the Special Exception to obtain Planning Board approval of the site plan prior to applying for a building permit if a non-residential use.
7. The granting of such exceptions will not adversely affect abutting or nearby property values.

5.0 General Regulations

5.1 OFF-STREET PARKING AND LOADING

All buildings constructed, erected, altered or moved for any of the following purposes shall conform to the following Off-street Parking Schedule:

- | | | |
|----|--------------------------------------|----------------------------------------------------------------------------------------------------|
| 1. | Churches | 1 for each 3 ½ permanent seats |
| 2. | Community buildings and social halls | 1 for each 200 square feet of floor area |
| 3. | Dwelling units | 2 for each dwelling unit |
| 4. | Hotels | 3 for each two units |
| 5. | Restaurants | 1 for each three seats |
| 6. | Retail stores, shops, offices, etc. | 1 space for each 200 square feet of floor space |
| 7. | Professional office | 5 for each professional |
| 8. | Theater | 1 for each 3 ½ seats |
| 9. | Home occupations other than offices | 1 for each 200 square feet, or part professional thereof, of floor space used for home occupations |

- 10. Clubs and societies 1 for each 3 seats
- 11. Marinas 1 for each boat slip or mooring

A single parking space shall be no less than nine (9) feet in width and eighteen (18) feet in length. Each parking space shall have unobstructed ingress and egress and no "stacked" parking shall be permitted unless the following conditions are met:

- a. The required number of off-street parking spaces set forth in Section 5.1 are met or exceeded without the use of "stacked" parking;
- b. The "stacked" parking is performed only by valet parking service;
- c. The "stacked" parking shall not occur continuously for periods in excess of 24 hours;
- d. The location and extent of said "stacked" parking shall be subject to approval of the Planning Board; and
- e. Multi-family dwellings and subdivisions of more than two (2) lots shall provide ample turn-around space on site so that vehicles will not have to back into any abutting street or way.

5.2 DEVELOPMENT OF STEEP SLOPES

5.2.1 Purpose

The purpose of this regulation is to limit disturbance of steep slopes in order to prevent the creation of unstable or otherwise unsafe land configurations; soil erosion and resulting adverse impacts on water quality and habitat from sedimentation and siltation, and adverse impacts on downtown properties resulting from the alteration to surface water drainage.

5.2.2 Development Limitations

- 1. On steep slope building sites with natural slopes greater than 25%, the erection of structures, buildings, retaining walls, and other uses that result in the alteration of the surface of the land, or in stripping of vegetation shall be prohibited.
- 2. On steep slope building sites with natural slopes between 15% and 25%, the erection of structures, buildings, retaining walls, and other uses that result in the alteration of the surface of the land may be permitted only as a Conditional Use granted by the Planning Board, except the following uses, which shall be prohibited:
 - a. Construction and installation of septic systems, including tanks and leaching fields;
 - b. Swimming pools.

3. No portion of any driveway may exceed 10% grade.

5.2.3 Conditional Use Permit

1. A conditional use permit may be granted by the Planning Board (RSA 674:21, II) for non-prohibited uses on steep slope building site provided that all conditions established in 5.2.3.2 have been satisfied and the submissions required in 5.2.3.3 has been supplied.
2. **Criteria:** The Planning Board shall use the following criteria in evaluating an application under this section.
 - a. **No alternative.** That the use for which the permit is sought cannot be carried out on a portion or portions of the lot which are not steep slope;
 - b. **Proposal minimizes impacts.** That the design, construction and maintenance of the proposed use will minimize detrimental impact from surface alterations on steep slope and that there is no alternative to the proposed use that has less detrimental impact on wetlands or tidal lands;
 - c. **No Public hazard.** That the proposed use will not create a hazard to individuals or the general public health, safety and welfare of the community.
 - d. **Roads and driveways use natural topography.** Roads and driveways shall minimize the potential for erosion and shall be consistent with other applicable regulations of the Town and sound engineering practices. The applicant must demonstrate that no other routing which would avoid steep slopes is feasible.
 - e. **Report of certified soil or geotechnical engineer.** Where required by the Planning Board, the applicant must submit a report by a certified soil or geotechnical engineer indicating that the steep slope may be safely developed.
 - f. **Report of the Conservation Commission.** The Planning Board shall consider the findings and recommendations of the New Castle Conservation Commission concerning the proposed development.
 - g. **Three to one finished slopes.** Finished slopes of all cuts and fills in soil shall not exceed one-to-three (1:3 rise-to-run, or 33%) unless the applicant can demonstrate that steeper slopes can be stabilized and after construction can be sustained in ordinary circumstances without ongoing maintenance or intervention.
 - h. **Replanting of disturbed areas.** Disturbed areas shall be replanted with vegetation appropriate to the site and to slope and drainage conditions. Indigenous vegetation is preferred. Invasive species, as defined by NH Fish and Game Department shall be prohibited.
 - i. **Re-grading of disturbed areas.** Re-grading shall blend in with and follow the natural contours of the land to the extent feasible.
 - j. **Temporary stabilization measures.** Temporary soil stabilization – including, if

appropriate, temporary stabilization measures such as netting or mulching to secure soil during the grow-in period must be applied to all areas of disturbance within two (2) days of establishing the final grade, and permanent stabilization must be applied within fifteen (15) days of establishing the final grade.

3. **Required submissions.** Applicant shall submit a plan for the proposed development of steep slopes of sufficient detail to support the evaluation of the above items as well as the following elements:

- a. The location of the proposed construction or area of disturbance and its relationship to the property lines, easements, buildings, roads, walls, septic systems, wells and wetlands within one hundred feet of the proposed area of disturbance for adjacent properties at the same elevation and within five hundred feet for properties significantly lower, as may be requested by the Planning Board.
- b. The estimated material quantities of excavation/fill.
- c. The location and size of areas of soils listed by soil types in the area of the proposed disturbance and to a distance of one hundred feet.
- d. Existing and proposed contours at two-foot intervals in the area of the proposed disturbance and to the distance of one hundred feet beyond.
- e. Location and construction details of retaining walls or like methods of construction, as may be proposed.
- f. Erosion and sediment control plan as may be determined to be necessary by the Planning Board. The plan shall be developed in accordance with the design standards and specifications set forth in the Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire as adopted and amended by the Rockingham County Conservation District, and consistent with requirements as specified in Appendix A of the New Castle Subdivision Regulations “Grading, Drainage and Erosion and Sediment Control Plan Specifications”, as amended.
- g. The Planning Board, after consultation with the Conservation Commission, may require the applicant to submit an environmental assessment when necessary to evaluate an application made under this Section. In cases where the Planning Board has determined that the proposed use may result in detrimental impacts the applicant may be further required to submit a mitigation plan to reduce or eliminate said impacts. The cost of this assessment and mitigation plan shall be borne by the applicant.

4. **Performance Security; Fees**

- a. Where required by the Planning Board, the applicant shall agree to submit a performance security to ensure that all construction and any required restoration or mitigation is carried out in accordance with an approved design or stated conditions. The security shall be provided, in a form and amount satisfactory to the Town, prior to the issuance of any permit authorizing construction.

- b. The Planning Board may assess the applicant reasonable fees to cover the costs of any technical studies or professional services required under this section.
- c. The applicant shall pay, at the time the application is filed, an application fee in the amount set from time to time by the New Castle Select Board to cover internal costs. In addition, the applicant is responsible for required legal notices and may be responsible for other outside costs incurred by the Town.

5.3 STREETS

5.3.1 Acceptance of Streets:

Any new or existing streets, or extensions to existing streets, must meet the requirements of this Section and of the Road Construction Standards as specified in the New Castle Subdivision Regulations before they may be accepted by the Town. Streets may only be accepted as town streets by action of the Town Meeting or by action of the Board of Selectmen if duly authorized by per RSA 674:40-a.

5.3.2 Right-Of-Way:

The width of the street right-of-way and the apportioning of the right-of-way amongst roadway, sidewalks, and grass strips shall be subject to the approval of the Planning Board. The right-of-way width shall not be less than thirty (30) feet and may be greater if warranted by anticipated traffic volume and safety considerations.

5.3.3 Parking:

All residential building lots must provide for the parking within the lot of at least two (2) cars for each dwelling unit.

5.4 CONDOMINIUM REGULATIONS

5.4.1 Authority and Purpose:

In order to promote the health, safety, and general welfare of the Community, the following Ordinance is hereby enacted by the voters of New Castle, New Hampshire. This Ordinance is in accordance with Chapters 356 and 674, New Hampshire Revised Statutes Annotated.

5.4.2 Condominium Approval:

In any district, the creation or conversion to condominium ownership shall require Planning Board approval following a public hearing. Approval shall be granted only if all the following conditions are met by the petitioner at his expense:

1. A complete set of site plans and floor plans, as well as a complete set of all condominium documents are on file with the Planning Board.
2. Documentation reflecting Office of Attorney General approval of all condominium instruments as called for in RSA 356-B is on file with the Planning Board.
3. The septic system standards of the New Hampshire Water Supply & Pollution Control Commission existing as of the date of the request for condominium conversion are met or exceeded by all systems used by the units associated with the condominium conversion, and a certificate to that effect is filed with the Planning Board based on review of Town records by the Building Inspector and on-site inspection of systems and soil conditions by a professional engineer or soil scientist.
4. The off-street parking requirements of the Town of New Castle existing as of the date of the request for establishment of the condominium conversion are met.

5. A plan is submitted to the Planning Board showing the location of all utilities on the site, the location of all water connections and locations where the shutoff valve will be located for each unit. The plan shall indicate whether or not additional meters other than those existing or additional lines from the street will be required as a result of the establishment of the condominium units.
6. The commercial or residential units subject to the request for the establishment of condominiums are, at the time of the request, legal units pursuant to Town ordinances.

6.0 Supplementary Use Regulations

6.1 SPECIAL REGULATIONS FOR THE PLANNED DEVELOPMENT DISTRICT

6.1.1 Permitted Uses:

Provided that the following conditions are met, and that an overall density of one (1) dwelling unit per 20,000 square feet is met, hotels, hotel apartments, and accessory uses and structures thereto, in one or more structures, including but not limited to, restaurants, recreational facilities and retail shops, shall be an allowed use in this District. Dwelling units may be clustered by Special Exceptions, and lot sizes and other dimensional requirements reduced under the provisions of this Section.

6.1.2 Hotel and Commercial Use Restrictions:

1. A hotel room or hotel unit of less than 500 square feet shall be considered the equivalent of 1/4 of a dwelling unit. Hotel apartments as defined herein shall be considered ½ of a dwelling unit.
2. The permitted development may contain up to 15% of the total hotel floor area for retail sales of convenience goods including the sale of food, pharmaceuticals, gifts and stationery, and for services including restaurants, clubs, barber shops, beauty shops, and self service Laundromats, providing that such uses:
 - a. are substituted for dwelling units (for purposes of this calculation - a dwelling unit will be assumed to contain 3,000 square feet of floor area);
 - b. are incidental to the primary use or uses;
 - c. are planned to serve the residents or patrons of the development and the community at large;
 - d. have only one indirectly lighted sign not to exceed two (2) square feet in area for each commercial use;
 - e. are subject to off-street parking and loading requirements; and
 - f. are architecturally compatible with the other structures in the development.

6.1.3 Minimum Tract Size and Suitability Requirements:

1. Any development plan for other than residential purposes shall include no less than seven (7) acres of contiguous land, provided that development on any island other than Great Island shall include the entire island. Public roads shall not be deemed to divide acreage for this purpose.
2. A minimum of twenty percent (20%) of such land shall be open space. Permanent parking areas, vehicle access facilities and external boundary setbacks shall not be considered a part of this open space.

6.1.4 Cluster development -- Dimensional Standards:

1. Dimensional Standards for Residential Cluster Development

Provided that the maximum density of one dwelling unit per 20,000 square feet is not exceeded, dwelling units may be clustered in any fashion with the following limits:

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| a. | Maximum number of dwelling units per building ... | 4 units |
| b. | Maximum number of hotel apartments per building ... | 18 units |
| c. | Maximum number of hotel apartments associated with a 150 room hotel ... | 18 units |
| d. | Maximum building footprint for building containing hotel apartments ... | 5,800 square feet |
| e. | Maximum number of hotel rooms per building ... | 175 units |
| f. | Minimum distance between any two buildings other than multi-family dwelling structures and between such buildings and a street ... | 20 feet |
| g. | Minimum distance between multi-family dwelling structures and: | |
| | (1) other multifamily structures ... | 30 feet |
| | (2) lot lines (internal or external) ... | 15 feet |
| | (3) Residential and Oceanside and Beach District boundaries ... | 500 feet |
| h. | ...and except between a multi-family dwelling and a pre-existing single-family dwelling lot not part of the proposed planned development where there shall be a minimum distance of ... | 300 feet |
| i. | Maximum building height ... | |
| | (1) residential dwelling units | 32 ft; 2½ stories |
| | (2) hotels and hotel apartments | 45 ft; 3½ stories |

provided that (a) additions to existing hotels shall not exceed the height of the existing structure or 45' whichever is greater and (b) provided that construction and protection are in accordance with the International Residential Code as interpreted by the Fire Chief, Town of New Castle, in conjunction with such consultant as the Town of New Castle may retain.

No building shall be placed within any required setback or buffer zone.

2. **Lot Size and Density Standards for Residential Cluster Development**

- a. **Minimum Parcel Size:** No parcel of land less than two (2) acres in size may be proposed for residential cluster subdivision under this Ordinance.
- b. **Development Density:** Residential Cluster development shall have a maximum overall development density of one dwelling unit per 20,000 square feet of land area, excluding tidal lands, very poorly drained soils and 75% of poorly drained soils, and streets, parking and utility structures.
- c. **Minimum Lot Size, Lot Coverage and Building Area:** Clustered residential units shall have a minimum building size of 7,500 square feet per dwelling unit. Maximum lot coverage and building area shall be the same as that required for conventional residential development as per section 4.2.1.3 and 4.2.1.5.7. This standard shall apply whether or not the proposed development plats individual lots for the clustered units except as set forth in Paragraph D below.
- d. **Credit for Common Open Space:** In cluster developments in the Future Development District a credit shall be made available to reflect the percentage of open space when determining the maximum lot coverage and/or maximum living area. The Credit shall be equal to the following formula which shall produce the percentage of open space allocated to each lot:

$$\frac{\text{Non-Wetland Open Space}}{\text{Developable Land}} = \text{Open Space Credit}$$

The calculation, as developed, follows:

$1 + (20.43/59.54) = 1.3431$ is the multiplier to determine adjusted area for purposes of maximum coverage and living area.

Where there is more than one cluster or development area in a single unified development, the Planning Board, at its discretion, may make adjustments in the allocation of common open space to accommodate features unique to the development, such as topography, boundaries, building types, and similar unique features provided:

- 1) The Planning Board finds that the adjusted allocation of open space will promote the public good and improve the quality of the development and is not designed simply to allow an increase in density.
- 2) Any adjustment made by the Planning Board which increases the percentage of open space available to one cluster for purposes of zoning calculations shall reduce the amount of open space available to remaining clusters.

6.1.5 Provisions for Common Open Space:

1. **Requirements.** In the event the planned development contains a common space of one acre or more, regardless of the form of ownership of the remainder, the following provisions shall apply:

- a. In addition to any applicable provision of RSA 479-A:1-28 inclusive, common open space area shall mean a parcel of land or area of water, or combination thereof, designed and intended for the benefit and enjoyment of the residents or patrons of the planned development.
- b. Areas devoted to street right-of-way, vehicular parking or utility services shall not be considered as common open space nor used in calculating density limitations.
- c. Common open space areas must be used for amenity or recreational purposes, must be accessible, and must be suitably landscaped except that areas containing natural features worthy of preservation may be kept unimproved. Common open space areas may contain accessory structures and improvement necessary and appropriate for educational, recreational, cultural or social uses. Facilities devoted to such uses may be operated on a membership basis whereby membership is open to residents or patrons of the planned development. The Planning Board shall approve the area and general layout of open space to ensure consistency with the requirements of this section and with term definition contained in Section 2.3.

2. **Provisions for Common Open Space.** (2) OWNERSHIP. Common open space will be preserved in perpetuity by restrictive covenant which shall be enforceable by any citizen of New Castle or by the Town of New Castle and such common open space, with the exception of common open space associated with non-residential uses, shall be owned by one of the following:

- a. A private, nonprofit corporation, association or other nonprofit legal entity established by the applicant for the benefit and enjoyment of the residents of the planned development and over which residents of the planned development have control. (For example, a condominium agreement or homeowners' association)
- b. A public body which shall maintain the land as open space for the benefit of the general public. (For example, the Town of New Castle)
- c. A private, nonprofit organization which has as a purpose the preservation of open space through ownership and control, provided, however, that the residents of the planned development have access to the common open space for appropriate recreational uses. (For example, the Audubon Society of New Hampshire)

6.1.6 Utilities and Roads:

1. Improvements serving more than one dwelling unit, whether or not dedication to the Town is intended, shall be constructed to Town specifications. Such improvements shall

include, but are not limited to, streets, sidewalks, and storm drainage systems.

2. It is recommended where possible that all electrical and telephone transmission lines shall be located at least fifteen (15) inches underground.
3. Water supply shall be provided with a minimum pressure of forty (40) pounds per square inch at all times, with a sustained flow of at least three (3) gallons per minute per dwelling unit.
4. The frontage requirements of this ordinance shall not apply except that at least two hundred (200) feet of frontage on a State or Town road shall be provided for each development for access. Even though on a Town road, all intersections shall meet the design and sight line standards set forth for wet pavements in A Policy on Geometric Design of Highways and Streets - 1990 - AASHTO.

6.1.7 Miscellaneous Provisions:

1. **Subdivision and Site Plan Requirements Apply.** Whether or not actual subdivision of the tract is contemplated, all pertinent portions of the subdivision regulations shall be complied with, including, but not limited to, the filing of a bond for improvements, and the submission of completed plats.
2. **Plot Plan Required.** In the event that the planned development is designed in such a fashion that individual structures and the land upon which they are sited could be sold separately, a plot plan shall be drawn up demonstrating a logical method of doing so which would provide front, side and rear yards as required in Section 6.1.5. In addition, at least twenty (20) feet frontage on a street or in a fifty (50) foot right-of-way used as a street, no portion of which shall lie in a required yard.
3. **Plan Requirements.** Exhibits shall include all those required by the subdivision regulations and zoning ordinance as applicable. In addition, the preliminary and final plats for all proposed structures and improvements shall show the number, type, location, size and elevations of all buildings; number and type of dwelling units; number, type, location and size of structures designed for other permitted uses and all elevations thereof; location and number of parking spaces; location of common open spaces; existing and proposed landscaping and vegetation. The appropriate agreements shall be presented if ownership is to be of the cooperative, condominium or other similar legal form and/or if there is to be a common open space of one acre or more. Such legal agreements shall be reviewed by the Town Counsel, who shall determine that the document is acceptable before a planned development approval is given. "As built" plans shall be filed with the Planning Board upon completion of construction.
4. **Abandonment.** The visible or otherwise apparent intention of the applicant not to diligently pursue the on going construction of an approved planned development within one (1) year of receiving Planning Board approval, including any and all appeal periods, shall constitute Abandonment thus revoking any and all approvals/permits issued by the Town of New Castle, NH. Prior to revocation the applicant may request an extension of no more than six (6) months. (May 2002)
5. **Architectural Compatibility.** In order to preserve the New England character of the

Town, architecture shall be compatible with the existing architecture of the Town.

6.2 HOME OCCUPATIONS

6.2.1 Where Permitted:

Within Single Family Dwellings: Home occupations are allowed within single family dwellings in all districts, provided that the conditions and requirements of the following Section 6.2.2 and other applicable requirements of this Ordinance are met.

Within Duplex and Multi-family Dwellings and Accessory Structures: Home occupations are allowed within duplex and multifamily dwellings and in accessory buildings only by Special Exception granted by the New Castle Board of Adjustment. In granting such special exception, the Board of Adjustment must find that the conditions set forth in Section 4.3 and in the following Section 6.2.2 have been met.

6.2.2 General Requirements:

1. A home occupation must not be detrimental to the character of the surrounding neighborhood or otherwise cause a nuisance by the emitting of smoke, dust, odor, fumes, noise, glaring light, refuse matter, or by generating excessive traffic.
2. The exterior appearance of the building must not create or display evidence of the home occupation which detracts from the residential character of the neighborhood. No outside storage of industrial materials or finished products which would be inconsistent with the residential character of the neighborhood shall be permitted.
3. Home occupation, whether carried out within a dwelling or in an accessory building must not occupy more than 500 square feet of the gross floor area of the dwelling and must remain clearly incidental and subordinate to the principle residential use.
4. Home occupations must be conducted by the residents of the premises. Not more than a total of three persons may work at the premises, two of whom must be residents of the premises. Not more than one non-resident of the dwelling may work at the premises.
5. Not more than two business vehicles, consisting of none other than automobiles, vans, pickup trucks or similar vehicles may be kept overnight at the premises at one time.
6. Adequate off-street parking must be provided in accordance with the provisions of Section 5.1 ("Off Street Parking and Loading") of the New Castle Zoning Ordinance. All parking areas shall be designed and located so as to minimize the detrimental impact on the neighborhood.
7. Home occupations which regularly require delivery from trucks in excess of 30 feet in total length, or which generate an average of more than 4 (four) vehicle trips per day in excess of those normally associated with the residential use shall be prohibited.

8. The sale of merchandise on the premises as a home occupation is prohibited, except:
 - a. the incidental display and sale of items fabricated or produced from the home shall be permitted, and
 - b. the display and sale of agricultural products produced on the premises shall be permitted.
9. Home occupation, whether carried out within a dwelling or in an accessory building, must not occupy more than 500 square feet and must remain clearly incidental and subordinate to the principle residential use.

6.2.3 Signs:

No permanent commercial display sign or advertising shall be permitted except for a single stationary professional announcement sign that: (1) is not larger than four (4) square feet in area, (2) has no more than two sides, (3) does not utilize direct or indirect lighting and (4) is compatible in design with the surrounding residential neighborhood.

6.2.4 Inspection:

The Building Inspector may conduct periodic inspections of the home occupation if there is evidence that any of the conditions and requirements set forth in this section are not being met.

6.3 MARINAS, DOCKS AND PIERS

6.3.1 Marinas, boatyards, yacht clubs and permanent or seasonal docks, piers, wharves, floats, and their accessory structures shall be permitted by Special Exception. Request for a Special Exception under this provision shall be made to the Board of Adjustment prior to applicants filing for approval by federal and/or state regulatory agencies. Special Exceptions under this section shall be granted only after review and recommendation by the Conservation Commission to the Board of Adjustment. However, the Board of Adjustment is not bound by the decision of the Conservation Commission.

6.3.2 Such exceptions shall be found by the Board of Adjustment to comply with the requirements of Section 4.3 - Special Exceptions and the following review criteria:

1. General. In reviewing applications for Special Exceptions under this section, the Board of Adjustment shall balance private property interests with the public's interest in its tidal shore by fostering the right of people to the natural, scenic, historic and aesthetic qualities of their environment and protecting the public health, safety and general welfare as it may be affected by any of the projects described in 6.3.1 above.
2. Specific Review Criteria. The specific review criteria with respect to docks, piers, wharves and floats are:
 - a. All docks, piers, wharves and floats must be designed to minimize visual impact and to avoid degrading the environment;

- b. All docks, piers, wharves and floats must be designed so as not to represent a hazard to navigation, including that of fishing craft, small pleasure boats and kayaks, or to obstruct public rights of passage or access;
 - c. All docks, piers, wharves and floats must be designed so as to minimize to the greatest extent possible, any impact on the value of abutting properties;
 - d. Only one dock, pier, wharf or float is permitted for each property;
 - e. A dock, pier, wharf or float must not be located within 20 feet of any abutting property lines on land or the imaginary extension of these lines over the surface waters of any abutter to the property from which it is proposed to have a dock, pier, wharf, or float. To the degree practicable, these structures should be located in the center of the owner's property and the imaginary lines extended over the surface waters from the center of that property;
 - f. The maximum permissible width of a dock, pier or wharf is 6 feet. The maximum area of a float is 400 square feet;
 - g. The maximum permissible height of a dock, pier or wharf is 5 feet above mean high water except where the possibility of extreme storm tides requires a higher level;
 - h. The property from which it is proposed to establish docks, piers, wharves or floats must have a minimum of 60 feet of tidal shoreline frontage;
 - i. In determining the maximum allowable length of a pier, the Board of Adjustment shall consider the property's shoreline frontage, the visual impact of the proposed pier, avoidance of damage to the environment, the width of the waterway, the location of the proposed docks and piers on the waterway, the length of the neighboring docks and piers and the protection of neighboring property values. The maximum aggregate length of a dock, pier, wharf and float as measured from the seaward face to mean high water line shall be as determined by the Board of Adjustment but may exceed 100 feet only after a finding that unusual circumstances exist.
 - j. All structures constructed under these criteria shall be maintained. Maintenance shall be such that the structure shall conform to reasonable safety standards. Failure to maintain the structure for five years in a condition that is functional and intact constitutes abandonment. The owner will be obligated to restore or remove the abandoned structure.
3. Requirements for Marinas: Marinas shall be permitted subject to a finding that all of the following conditions are met:
- a. The marina is a part of a planned unit development consisting of at least ten acres of land and least 1,000 feet of shoreland;
 - b. It is designed so as to result in the least amount of alteration of water area;

- c. Supporting marine facilities such as winter storage yards are located inland;
- d. Pilings or cribbings are used to elevate marine structures rather than solid fill;
- e. Pump out facilities for boat sewage are provided and connected to the municipal sewer system.

6.4 STORAGE OF HAZARDOUS MATERIALS

The storage of petroleum or other inflammable liquids, is prohibited except for heating or other legitimate uses in an amount not exceeding 560 gallons, or 1,000 gallons if underground. Storage of liquefied petroleum gas (LPG) is prohibited except for heating and other legitimate uses and shall be in accordance with standards set forth in National Fire Protection Association (NFPA) pamphlet 58. A building permit is required for installation of LPG storage containers. The building permit must be countersigned by the Fire Chief.

6.5 REGULATIONS FOR SWIMMING POOLS

(The following regulations also apply to exterior hot tubs and spas.)

6.5.1 Swimming pools, either permanent or portable, constructed in connection with or on property occupied by a family dwelling and maintained by an individual primarily for the use of members of his household and their guests, without charge, shall be classified as private swimming pools. All other swimming pools shall be classified as public swimming pools and shall be subject to the regulations of the State of New Hampshire Water Supply & Pollution Control Commission pertaining to public swimming pools and bathing places.

6.5.2 The following regulations shall govern the construction, use and maintenance of all private swimming pools installed in the Town of New Castle:

- 1. No swimming pool or appurtenance thereto shall be constructed or installed, enlarged or altered until a permit has been obtained from the Town Building Official.
- 2. All private swimming pools shall be completely enclosed by a non-climbable fence and gate(s) approved by the Town Building Official, the fence and gate(s) shall be not less than five (5) feet in height above the pool walk/grade level. Gates serving the enclosed area shall have an approved locking device and shall be locked, against unauthorized entrance, when no one is in attendance at the swimming pool.

Pools constructed above the ground having non-climbable walls of at least five (5) feet in height shall be considered to conform to the fencing requirements, providing all accesses are secure against unauthorized access.

- 3. All swimming pools shall conform to the minimum setback from property lines as specified in Section 4.2, Table 1, of this Ordinance.
- 4. The maintenance, operation and use of a swimming pool shall be subject at all times to the applicable health laws of the Town of New Castle and the State of New Hampshire

now or hereafter in effect and may be subject to inspection, at any reasonable time, by the Town Health Official.

5. All swimming pools shall be maintained in a clean and sanitary condition during periods that the pool is in use. A filter shall be installed in all private swimming pools. Such filters shall be of a type approved by the NSF (National Sanitary Foundation).
6. Except for acts of trespass beyond control of the resident, he shall have absolute responsibility for the use and maintenance of said pool.
7. All electrical installations provided and installed and used in connection with swimming pools shall be in conformance with current "National Electrical Code," and Addendums.
8. The area of in-the-ground pools, as well as above-the-ground pools that are more than 18" high and are enclosed with a deck or platform, shall be included in calculations for allowable lot coverage. See also definition of Coverage in Section 2.3.

6.6 ACCESSORY DWELLING UNITS

6.6.1 Authority:

This Section is enacted in accordance with the provisions of RSA 674:71-73 and RSA 674:21.

6.6.2 Purpose

The purposes of the accessory dwelling unit ordinance are to:

- (a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
- (b) Provide flexible housing options for residents and their families.
- (c) Integrate affordable housing into the community with minimal negative impact.
- (d) Provide elderly citizens with the opportunity to retain their homes and age in place.
- (e) Enable establishment of an accessory dwelling unit while retaining the single family appearance of the principal dwelling together with the existing character of the neighborhood and community.

6.6.3 Definition:

An "accessory dwelling unit" (AUD) means a residential living unit that is within or attached to a single-family dwelling or is located in a detached structure, 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.

6.6.4 Conditional Use Permit Required:

Pursuant to RSA 674:21 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for one ADU per principal residential dwelling in accordance with the restrictions and requirements of this section.

6.6.5 Criteria for Conditional Use Permit:

All of the following criteria must be met in order for the Planning Board to approve the construction of an ADU:

- (a) A maximum of one (1) ADU may be permitted on property located in zoning districts that allow single-family dwellings and may be located within or attached to the principal single family dwelling unit or be located in a detached structure on the property.
- (b) If the ADU is within the primary dwelling or attached thereto, an interior door shall be provided between the principal dwelling unit and the ADU. The ADU shall have an independent means of access. An attached ADU shall be connected to the principal dwelling unit by a shared wall.
- (c) All municipal regulations applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and a ADU including, but not limited to, lot and building dimensional requirements. A minimum of two additional parking spaces shall be provided for the ADU.
- (d) An applicant for a Conditional Use Permit shall demonstrate adequate provisions for water supply and, for those not served by public sewer, for waste discharge for the accessory and primary dwelling units in accordance with RSA 485-A:38. Water and wastewater systems for the principal and accessory dwelling units may be combined or separate.
- (e) The property owner must occupy either the principal dwelling unit or the ADU. The owner must demonstrate that one of the units is his/her principal place of residence. Both the primary dwelling unit and the ADU must remain in common ownership.
- (f) Accessory dwelling units shall maintain an aesthetic continuity with the principal dwelling unit as a single-family dwelling
- (g) An ADU may contain no more than 1/3 of the primary dwelling building area, not to exceed 1200sf, and no less than 300 sf.
- (h) An ADU shall have no more than 2 bedrooms.
- (i) Prior to any change to an existing property relating to construction of, addition to, or renovation of any ADU a building permit must be obtained from the building inspector and shall conform to all permitted use restrictions specified in paragraph 4.1 of the ordinance.
- (j) Applicant shall supply the Planning Board scaled drawings and/or sketches adequate to determine that the proposed ADU meets the criteria specified herein.

6.6.6 Occupancy Permit Required:

Prior to occupancy of the ADU, the homeowner shall obtain an occupancy permit from the Building Inspector.

6.7 SIGNS

No display sign or advertising shall be permitted except for a single stationary announcement sign that:

- (a) is not larger than four (4) square feet in area,
- (b) has no more than two (2) sides,
- (c) does not utilize direct or indirect lighting and,
- (d) is compatible in design with the surrounding residential neighborhood.

Temporary signs complying with the above are permitted as follows:

- 1. Construction signs for work requiring a building permit may be erected on the premises to identify the owner, architect, builder, or others associated with the work. Such signs shall be removed upon completion of the work and/ or prior to the issuance of a Certificate of Occupancy.
- 2. Contractor signs for work not requiring a building permit may be displayed only while work is in progress.
- 3. Real estate signs directly related to the sale, rental, or lease of the building or lot upon which the sign is erected are permitted. Such signs shall be removed within seven (7) days of the sale, rental, or lease.

6.8 FENCES AND WALLS

- 6.8.1** Fences and walls no more than six (6) feet in height are permitted. Retaining walls over eighteen (18) inches in height require a building permit from the Town Building Official.

Fences and free standing walls over six (6) feet in height are permitted only by Special Exception granted by the New Castle Board of Adjustment. In granting such Special Exception the Board of Adjustment must find that the conditions set forth in Section 4.3 and in the following Section 6.8.2 have been met.

6.8.2 Requirements for Fences and Walls:

- 1. Fences and walls must not be detrimental to the character of the surrounding neighborhood.
- 2. Fences and walls may not obstruct sight distances at driveway intersections or otherwise create unsafe conditions.
- 3. Fences and free standing walls greater than six (6) feet in height shall not be permitted even by Special Exception if an abutter objects to the increased height.

7.0 Non-Conforming Lots, Buildings, Structures, and Uses

This Zoning Ordinance does not affect any structure, premise or their uses existing at the time the applicable provisions of this Ordinance were originally enacted. However, any change in use must comply with this Ordinance.

7.1 DEFINITIONS

At the time of enactment of this ordinance, all lots, buildings or structures, and uses which are not

in conformity with the regulations governing the district in which they are located are declared non-conforming and subject to the following definitions and regulations:

7.1.1 Non-Conforming Lot: Any lot which does not conform to the regulations of the district in which it is located and which is permitted only because it was in lawful existence prior to the enactment of this ordinance.

7.1.2 Non-Conforming Building or Structure: Any building or structure, in whole or in part, which does not conform to the regulations of the district in which the building or structure is located. Those parts of any building or structure which are conforming may be expanded provided the expansion is conforming and the use is not changed.

7.1.3 Non-Conforming Use: Any use of a premises that does not conform to the permitted uses of the district in which it is located, and which was in lawful existence prior to the enactment of this ordinance.

7.2 GENERAL

7.2.1 Any lot, building, structure or use, enjoying a non-conforming status under Section 7.0, initially adopted March 6, 1973, will not be affected. Nothing in this ordinance shall be deemed to restrict the sale or lease of any such non-conforming lot, building, structure or use by a new owner or lessee.

7.2.2 Any legal lot of record shall not be deemed unbuildable because it does not meet the minimum lot requirements of the ordinance so long as the lot has frontage on a Class V or better highway or a private street approved by the Planning Board and can meet lot requirements regarding sewage and water supply.

7.3 REPLACEMENT

7.3.1 The replacement of any non-conforming building or structure that is intentionally demolished, all or in part, must either conform to the regulations of the district in which the building or structure is located, or, the non-conforming portion must not exceed in size, shape, or volume, that of the building or structure that was demolished.

7.4 DISCONTINUANCE

7.4.1 Any and all non-conforming buildings, structures, land or uses of the same, which is (are) discontinued, or which is (are) partially or wholly destroyed by fire, explosion, storm, tides or other acts of God, may be resumed or restored and operated in its (their) former non-conforming status if the same is done within two (2) years thereafter.

7.5 CHANGE TO NON-CONFORMING LOTS, BUILDINGS, STRUCTURES AND USES

7.5.1 No addition, change or expansion to any non-conforming building, structure, lot or use which causes the building, structure, lot or use to become more non-conforming shall be allowed.

- 7.5.2** Any building, structure or land in or on which a non-conforming use is replaced by a permitted use, shall thereafter conform to the regulations for the district in which such building, structure or land is located and the non-conforming use may not thereafter be resumed.

8.0 RESERVED

9.0 Overlay Zoning Districts

9.1 FLOOD PLAIN DEVELOPMENT 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 Rockingham County, New Hampshire" dated May 17, 2005, or as amended, together with the associated Flood Insurance Rate Map Panels numbered 278, 279, 286, 287 dated May 17, 2005, or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference. This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of New Castle Flood Plain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of New Castle Zoning Ordinance and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under the state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

9.1.1 Definition of Terms:

NOTE: Any terms defined in this subsection which conflict with definitions contained in Section 2.0 - "Definitions" of the New Castle Ordinance are applicable only to Floodplain Development District regulations.

1. **Area of shallow flooding:** means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
2. **Area of special flood hazard:** is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, VO, or V1-30, VE, or V.
3. **Base flood:** means the flood having a one percent chance of being equaled or exceeded in any given year.
4. **Basement:** means any area of the building having its floor subgrade (below ground level) on all sides.
5. **Building:** -- see "structure."
6. **Breakaway wall:** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.
7. **Coastal high hazard area:** means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30, VE, or V.

8. **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.
9. **Flood:** or "Flooding" means: A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The overflow of inland or tidal waters and (2) the unusual and rapid accumulation or runoff of surface waters from any source.
10. **Flood Boundary and Floodway Map:** (FLOODWAY) is an official map of the community, on which the Federal Emergency Management Agency has delineated the "Regulatory Floodway". This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.
11. **Flood elevation study:** means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mud flow) and/or flood-related erosion hazards.
12. **Flood Hazard Boundary Map:** (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood, mudslide (i.e., mud flow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.
13. **Flood Insurance Rate Map:** (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.
14. **Flood Insurance Study:** see "flood elevation study."
15. **Flood plain:** or "flood prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").
16. **Flood proofing:** means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
17. **Floodway:** see "regulatory floodway"
18. **Functional dependent use:** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
19. **Highest adjacent grade:** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

20. **Historic Structure:** means any structure that is: (1) 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; (2) 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; (3) 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 (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a) by an approved state program as determined by the Secretary of the Interior, or b) directly by the Secretary of the Interior in states without approved programs.
21. **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.
22. **Mean sea level:** means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
23. **Manufactured home:** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.
24. **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.
25. **100-year flood:** see "base flood."
26. **Recreational vehicle:** Means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
27. **Regulatory floodway:** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. These areas are designated as floodways on the Flood Boundary and Floodway Maps.
28. **Riverine:** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

29. **Special flood hazard area:** means an area having special flood, mudslide (i.e., mud flow), and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M or E. (See Area of Special Flood Hazard)
30. **Structure:** means for Flood plain 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.
31. **Start of Construction:** includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; or 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.
32. **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.
33. **Substantial improvement:** means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
34. **V-zone:** -- see "Coastal high hazard area."
35. **Water surface elevation:** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.
- 9.1.2 All proposed development in any special flood hazard areas shall require a permit.

- 9.1.3** The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) 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, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 9.1.4** Where new and replacement water and sewer systems (including on-site systems) are proposed in flood prone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- 9.1.5** The Building Inspector shall maintain for public inspection and furnish upon request, any certification of flood-proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and include whether or not such structures contain a basement. If the structure has been flood proofed, the as built elevation (in relation to mean sea level) to which the structure was flood proofed. This information must be furnished by the applicant.
- 9.1.6** The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.
- 9.1.7**
1. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector.
 2. Within the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.
 3. 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 that

would result in any increase in flood levels within the community during the base flood discharge. In 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 development meet the floodway requirements of this section.

4. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- 9.1.8** 1. In special flood hazard areas, the Building Inspector shall determine the 100 year flood elevation in the following order of precedence according to the data available:

- a. In Zones A1-30, AH, AE, V1-30, and VE refer to the elevation provided in the communities Flood Insurance Study and accompanying FIRM or FHBM.
- b. In unnumbered A zones the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from Federal, State, development proposals submitted to the community (example subdivisions, site approvals, etc.) or other source.
- c. In Zone AO the 100 year flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least two feet.

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

- a. all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level;
- b. that all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
 - 1) be flood proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - 2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

- 3) 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. recreation vehicles placed on sites within Zones A1-30, AH, 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 Section 60.3(b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3;
- d. all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
- e. 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: (1) the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodgates. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria; A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodgates; and
- f. proposed structures to be located on slopes in Special Flood Hazard Areas, Zones AH and AD, shall include adequate drainage paths to guide floodgates around and away from the proposed structures.

9.1.9 In "Coastal High Hazard Areas", designated on the communities FIRM as Zones V1-30, VE, or V, the following additional requirements shall be met:

1. All new construction or substantial improvements are to be elevated on pilings and columns so that:
 - a. the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and

- b. the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (i) and (ii) above.

- 2. The Building Inspector will obtain and maintain records of new construction or substantial improvements indicating the elevation of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) in relation to mean sea level and whether or not such structures contain a basement.
- 3. The space below the lowest floor must be either free of obstructions or constructed with non-supporting breakaway walls, open latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be usable solely for parking vehicles, building access, or storage.
- 4. The use of fill for the structural support of buildings is prohibited.
- 5. Man-made alterations of sand dunes which would increase potential flood damage is prohibited.

9.1.10 Variances and Appeals:

- 1. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- 2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
 - a. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

- b. that 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. that 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 level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and;
 - b. such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- 4. The community shall:
 - a. maintain a record of all variance actions, including their justification for their issuance and;
 - b. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

9.2 WETLANDS CONSERVATION DISTRICT (Amended May 2006; May 2012)

9.2.1 Purpose and Intent:

The purpose of the Wetlands Conservation District is to protect the public health, safety and general welfare of the community by controlling and guiding the use of land areas defined as wetlands and buffers. It is intended that this Article shall:

- 1. Prevent the development of structures and land uses on or within a functional buffer of naturally occurring wetlands which will contribute to pollution of surface and groundwater by sewage or toxic substances or sedimentation;
- 2. Prevent the degradation, destruction of, or significant changes to, natural wetlands and their buffers which provide flood protection; provide filtration of water flowing into tidal water, ponds and streams, augment stream flow during dry periods and are connected to the ground or surface water supply;
- 3. Protect wildlife habitats, maintain ecological values and support other public purpose such as those cited in RSA 482-A:1;
- 4. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;
- 5. Prevent unnecessary or excessive expense to the Town for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of

development in wetlands;

6. Prevent unnecessary or excessive expense to individual property owners arising from damages by flooding or other consequences resulting from development in wetlands.

9.2.2 Non-Local Permits:

Notwithstanding the provisions of this Article or local approval of proposed uses, any permits required by the N.H. Department of Environmental Services or the U.S. Army Corps of Engineers shall be obtained prior to the use or alteration of wetlands in the Town of New Castle.

9.2.3 Areas of Jurisdiction:

The Wetlands Conservation District shall include all wetlands, tidal lands, Class A wetland buffers, Class B wetland buffers and Tidal Land buffers as defined herein.

1. Definition of Wetlands:

- a. **Wetlands:** Pursuant to RSA 482-A:2 and RSA 674:55, “Wetlands” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to: swamps, bogs, marshes, ponds, as well as any other area falling within the state wetlands jurisdictional definition of RSA 482-A:4. Wetlands may include soils that are defined as poorly and very poorly drained.
- b. **Tidal Lands:** All lands submerged by the highest observable tide including land which borders on tidal waters, such as banks, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action. The highest observable tide line shall mean the “reference line” as defined in RSA 483-B:4, XVII and is hereinafter referred to as such.
- c. **Isolated Non-bordering Wetlands:** Those areas of 3,000 square feet or less which satisfy the definition above of “wetlands” but which (1) are not within 100 feet of any other wetlands and do not abut a marsh, pond, bog, river, natural intermittent or perennial stream; (2) do not contribute to flood storage or the proper conveyance of surface water runoff; (3) are not identified as a vernal pool; and (4) have not been identified in the surveys referenced in Section 9.2.3.2 as having high function and value.

2. Definition of Wetland Buffers: Variable wetland buffers are established for wetlands and tidal lands as follows:

- a. **Class A Wetland Buffers:** Buffers of 100 feet are established from the edge of the named wetlands listed below. These wetlands are identified in the 2005 Wetlands Study (“Wetlands Survey – Town of New Castle” and “2005 Wetland

Study Map”) and evaluated to be wetlands with the highest functional values and requiring a higher degree of protection:

Wetlands ID# 23 Lavenger Creek
Wetlands ID# 22 Secret Pond
Wetlands ID# 24 Quarterdeck Lane
Wetlands ID# 16 Pit Lane “A”
Wetlands ID# 26 River Road

- b. **Class B Wetland Buffers:** Buffers of fifty (50) feet are established from the edge of all wetlands that are not named as Class A or as non-bordering wetlands. Isolated non-bordering wetlands shall have no required buffers.
 - c. **Tidal Lands Buffers:** Buffers of 100 feet are established from the reference line of any tidal lands.
3. **Delineation of District Boundaries:** The limits of the Wetlands Conservation District are hereby determined to be the following:
- a. **Town Level Map:** Those areas identified, classified and mapped as wetlands in the study entitled “Wetlands Study, Town of New Castle, New Hampshire”, as amended, prepared for the Town of New Castle by Oak Hill Environmental Services and dated October 2005 (hereinafter referred to as the “2005 Wetlands Study” as amended). The map contained in this Study shall serve as the general delineation of the District, and may be supplemented with other Town level wetlands mapping sources prepared using the standards of the evaluative criteria for wetlands delineation referenced in the following section.
 - b. **Site Level Delineation:** For the purposes of the administration of the Wetlands Conservation District, the area of jurisdiction shall be delineated through site specific wetlands identification prepared by a certified wetlands scientist using the standards of the evaluative criteria for wetlands delineation as set forth in the publication entitled Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1989. Such delineation shall include all swamps, bogs, salt and fresh water marshes, vernal pools and ponds and all other wetlands as defined by Section 9.2.3.1. Site level wetlands delineation shall be carried out at the expense of the landowner.
4. **Boundary Appeals:** In the event that the Building Inspector, Planning Board or Conservation Commission questions the validity of the boundaries of a wetland area on a specific parcel of land or upon the written petition of the owner **OR** any abutter of said property to the Planning Board, the Board may call upon the property owner to secure the services of a certified wetlands scientist to examine said area and report the findings to the Planning Board for their determination of the district boundary. Site level wetlands delineation necessary to resolve boundary appeals shall be conducted at the expense of the landowner.

9.2.4 **Permitted Uses:**

- 1. Any use otherwise permitted by the Zoning Ordinance and state and federal laws that

does not involve the erection of a building or structure or that does not alter the surface of the land by the addition of fill or by dredging or any other means.

2. Forestry and tree farming, excluding the construction of access roads.
3. Wildlife habitat development and management.
4. Recreational uses consistent with the purpose and intent of this Article as defined in Section 9.2.1.
5. Conservation areas and natural trails.

9.2.5 Conditional Uses:

1. **Conditional Use Permit:** A conditional use permit may be granted by the Planning Board (RSA 674:21 II) for the following uses or alterations in the Wetlands Conservation District provided that all of the conditions listed in subsection 9.2.5.2 below are met. Conditional Use Permits may only be granted after review and recommendation by the Conservation Commission and may require the submission of such information as contained in the DES Wetland Bureau "Minimum Impact Expedited Application" as necessary and reasonable to determine that the proposed use will meet the conditions set forth below:
 - a. Construction of roads and other access ways and for pipelines, power lines and other transmission lines, provided that the proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
 - b. Construction of those uses that constitute common treatment associated with a permitted use, e.g., boardwalk for use in natural trail, etc.
 - c. Water impoundments constructed for the enhancement of a wetland area.
 - d. Site improvements or alterations to the surface configuration of the land proposed within Class A or B Wetland buffer or Tidal Lands buffers as set forth in Section 9.2.3.2, provided that such improvements or alterations have been approved by the New Hampshire Comprehensive Shoreland Protection Act (RSA 483-B), as amended and provided that they satisfy all other requirements of Conditional Use Permits pursuant to Section 9.2.5.2.
 - e. Buildings or structures set back in excess of 50 feet from the edge of Class A or Class B Wetland or Tidal Lands or which have received appropriate relief from the Zoning Board of Adjustment, provided such buildings or structures have been approved by the New Hampshire Comprehensive Shoreland Protection Act (RSA 483-B), as amended and provided that they satisfy all other requirements of Conditional Use Permits pursuant to Section 9.2.5.2.
2. **Conditions:**
 - a. That the use for which the permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation

District or associated buffers.

- b. That the design, construction and maintenance of the proposed use will, to the extent feasible, minimize detrimental impact on the wetland and be consistent with the purpose and intent of this Article.
- c. There is no feasible alternative to the proposed use that has less detrimental impact on wetlands or tidal lands.
- d. In cases where the proposed use is temporary or where construction activity disturbs areas adjacent to the immediate use, the landowner agrees to restore the site as nearly as possible to its original grade and condition following construction, if required as a condition by the Planning Board.
- e. That the proposed use will not create a hazard to individual or public health, safety and welfare due to the loss or degradation of wetland, surface waters, the contamination of groundwater or other reason.
- f. Where required, permits shall be obtained from the N.H. Department of Environmental Services under RSA 485-A:17 or RSA 482-A or the U.S. Army Corps of Engineers under section 404 of the Clean Water Act.
- g. In cases where uses permitted under Section 9.2.5.1 are proposed to occur within any wetlands or tidal land buffers as set forth in Section 9.2.3.2, the Planning Board shall determine that the proposed use is designed and constructed in a manner which minimizes environmental impacts, including the following:
 - creation of impervious surface;
 - ground or soil disturbance;
 - removal of natural vegetation;
 - capacity of the buffer area to provide filtration and toxicant removal from the site to the buffered wetland.
- h. The Planning Board, after consultation with the Conservation Commission, may require the applicant to submit an environmental assessment when necessary to evaluate an application made under this Section. In cases where the Planning Board has determined that the proposed use may result in detrimental impacts to the subject wetland, the applicant may be further required to submit a mitigation plan to reduce or eliminate said impacts. The cost of this assessment and mitigation plan shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of the review of technical studies required under this section.
- i. Where required by the Planning Board, the applicant shall agree to submit to the Town a performance security, in a form and amount satisfactory to the Planning Board to ensure that all construction and any required restoration and/or mitigation per section 9.2.5.5.d or 9.2.5.2.h, is carried out in accordance with the approved design plans and stated conditions. At the time the applicant submits

its performance security, the applicant shall also execute and submit to the Planning Board a "Site Access Agreement". The security and Site Access Agreement shall be submitted and approved, prior to the commencement of any work and prior to the issuance of any permit authorizing construction. The form of security posted shall be "Self Calling" to insure that if no certificate of completion of the required restoration and/or mitigation work is received within one (1) year, and if no extension approved by the Planning Board is obtained and submitted, the security is automatically paid over to the Town of New Castle.

At the time of approval, the Planning Board shall specify the documentation which shall be required in order to release the security to the applicant.

In order for security to be released, the applicant shall submit in writing to the Planning Board a request for the release of security along with evidence that all work has been completed in accordance with the approved plans and stated conditions. The Planning Board shall review the submitted materials and vote on the request to release the security. The Planning Board, or its designee, has authority to enter any property which is the subject of the work, to conduct inspections to ensure the required work has been satisfactorily completed per the approved plans and stated conditions.

If the Planning Board is not satisfied that all work is complete and complies with the approved plans, the security shall remain in place with the Town. The Planning Board shall specify a time in which work shall be completed to cure the defects in the work, after which the applicant may resubmit a request for the release. If after the second request the Planning Board is still not satisfied that work is complete, the Planning Board shall have the discretion to use the security to cause the work to be completed or vote to extend the period to cure any defect. If the Planning Board elects to use the security to complete the work, the Town of New Castle, its employees, agents and contractors, have authority to enter the property which is the subject of the work, with reasonable notice to the owner, to complete the required construction, restoration, and/or mitigation work.

- j. The applicant shall pay, at the time the application is filed, an application fee in the amount set from time to time by the New Castle Select Board to cover internal costs. In addition, the applicant is responsible for required legal notices and may be responsible for other outside costs incurred by the Town.

9.2.6 Special Exceptions:

1. Water Dependent Structures:

The construction of footbridges, boardwalks and wharves only may be erected within the Wetlands Conservation District, provided: (1) said structures are constructed on posts or pilings so as to permit unobstructed flow of water; (2) the natural contour of the wetland is preserved; and (3) the Conservation Commission has reviewed the proposed construction. The Board of Adjustment shall review applications for such uses in accordance with the procedures and criteria established in Section 6.3 MARINAS, DOCS and PIERS.

9.2.7 Lot Size Determination:

Wetlands areas may be used to fulfill up to 25% of the minimum lot size or other density limitations required by the Zoning Ordinance and Subdivision Regulations, provided that the non-wetland area of the lot is sufficient in size and configuration to adequately accommodate all required structures and utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations.

9.2.8 Wetland Buffers:

1. No subsurface wastewater disposal system shall be constructed within 75 feet of any wetlands or tidal water lands.

Setback requirements for all septic systems are determined by soil characteristics.

- a. Where the receiving soil down gradient of the leaching portions of a septic system is a porous sand and gravel material (i.e., material with a percolation rate equal to or faster than two minutes per inch) the setback shall be at least 125 feet from the reference line or the edge of any wetland.
 - b. 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 or the edge of any wetland.
 - c. For all other soil conditions where there is no restrictive layer within 18 inches of the natural soil surface and/or where the soil gradient is not a porous sand and gravel material (i.e., material with a percolation rate equal to or faster than two minutes per inch) the setback shall be at least 75 feet from the reference line or the edge of any wetland.
2. Construction of a building, structure, site improvements or any other alteration to the surface configuration of the land, excluding minor landscaping improvements, shall be prohibited within all Class A, Class B and Tidal Land buffers as established in Section 9.2.3.2, except as may be granted by Conditional Use Permit per Section 9.2.5.1.
 3. Marinas, docks and piers as reference in Section 6.3 shall be exempt from these buffer requirements -- See Section 9.2.6.2-- Water Dependent Structures.

4. a. Pesticide and/or turf fertilizer use with the exception of limestone are prohibited within 25 ft. of the reference line for tidal wetlands and shoreline, or from the edge of the wetlands for fresh water wetlands.
 - b. Turf fertilizers use beyond the 25 ft. reference line must contain a minimum of 50% slow release nitrogen as a percentage of the total nitrogen content.
 - c. Turf fertilizer use beyond the 25 ft. reference line shall not contain more than 2% phosphorus.
5. All construction, forestry and agriculture activities within 100 feet of any wetlands shall be undertaken with special care to avoid soil erosion and siltation of wetlands. The Planning Board, pursuant to its subdivision and site plan review authority, may require an erosion control plan approved by the Rockingham County Conservation District for any project that results in surface alteration or soil disturbance undertaken in this area.
 6. **Natural Woodland Buffer:** Where natural woodland buffers exist within 150 feet of the edge of a wetland, a well distributed stand of trees, saplings, shrubs and ground cover must be maintained in accordance with the following:

The 150' wide protected Natural Woodland Buffer is divided into two zones. The first 50', beginning at the reference line, is the Waterfront Buffer Zone and the second between 50' and 150' from the reference line is the Woodland Buffer Zone. Different vegetation removal limitations apply within each of these zones:

- a. Live tree and sapling cutting and removal of ground cover is limited to the following criteria, based on that established in the N.H. Comprehensive Shoreland Protection Act (CSPA) as amended in 2008:

1. Live trees and saplings may be removed provided that a minimum combined tree, sapling, shrub and groundcover is maintained. This shall be determined using the 50' x 50' grid point scoring system implemented by NH Department of Environmental Services for the CSPA. Within each grid segment a minimum score of 50 points must be maintained.

Trees and Saplings (Diameter)

1 to 3 inches	= 1 pt
Greater than 3 to 6 inches	= 5 pts
Greater than 6 to 12 inches	= 10 pts
Greater than 12 inches to 24 inches	= 15 pts
Greater than 24 inches	= 25 pts

Shrub and Groundcover (May not account for more than 25 points in any grid):

4 square feet of shrub area	= 1 pt
50 square feet of Groundcover	= 1 pt

2. Diameters for scoring are measured at a height of 4.5 feet above the ground.

3. Shrub and Groundcover may not account for more than 50% of the pts assigned per grid.
 4. If there is insufficient area to account for a full grid (2,500 square feet) the required points shall be maintained as proportional to a full segment.
- b. Branches may be trimmed, pruned and thinned to the extent necessary to protect structures, maintain clearances and provide views. Limbing of branches for the purpose of providing views is limited to the bottom half of trees and saplings to help ensure the health of the tree or sapling.
 - c. Stumps and their root systems must remain intact in the ground within 150 feet of the reference line. The opening for building construction is limited to 25 feet outward from the building, septic system and driveway.
 - d. Tree clearing for access and egress to accessory structures is limited to 10 feet outward from the footprint.

Within the Woodland Buffer Zone:

For lots larger than ½ acre, 50% of this zone, excluding areas covered by impervious surfaces, must be left in an unaltered state. “Unaltered State” means existing natural native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing or other similar activities except as needed for plant health, normal maintenance and renewal.

For lots less than ½ acre, 25% of this zone must be left in an unaltered state. “Unaltered State” means existing natural native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing or other similar activities except as needed for plant health, normal maintenance and renewal.

9.2.9 Appeals:

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

9.2.10 Review Procedure:

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

9.2.11 Emergency Sewage Disposal System Procedure:

The replacement plan for an existing septic system or other sewage disposal system, located within the required buffers or setbacks from any Wetland, Prime Wetland or Tidal Water Lands and determined in writing to be in Septic Failure by a NH Permitted Subsurface Sewage Disposal System Designer/Installer or a GSDI Certified Septic System Evaluator, may be approved by a majority of a three-person Emergency Relief Committee in lieu of appearing before any land use board. This Committee shall consist of the Building Inspector/Assistant Building Inspector, Chairman of the Conservation Commission or his/her designee and the Select Board representative to the Planning Board or his/her designee. Any approval by this Committee shall be conditioned upon the necessary State approvals. This Emergency Procedure does not waive any applicable State law requirements, and except as specifically stated herein, does not waive any other applicable Town of New Castle requirements or ordinances, concerning wetlands, tidal water lands and wetland or tidal water land buffers, or the design, installation and/or replacement of sewage disposal systems.

Appendix: Wetland Survey – Town of New Castle

ID#	Geographic Name	Historic Name	Size (Ac.)	Type
#1	Crosby “A”	Bartlett’s Swamp	14.54	PEM1H
#2	Crosby “B”		.07	POWC
#3	Crosby “C”		.63	PFO/SS41C
#4	Crosby “D”		.43	PFO/SS41C
#5	Crosby “E”		.49	PEM1E
#6	Wild Rose Lane “A”		.03	PFO1Y
#7	Wild Rose Lane “B”		.04	PFO1Y
#8	Little Harbor Road “A”		.21	PFO1B
#9	Little Harbor Road “B”		.44	PFO1B
#10	Marina		1.10	E2AB1N
#11	Wild Rose Lane “C”		1.72	PEM1H
#12	Great Island Common		4.37	PEM1E
#13	Cemetery	Shaw’s Pond	.57	PFO14/SS
#14	Bull Toad Pond	Bull Toad Pond	2.00	PEM/OW
#15	Wentworth Road “A”	Walford’s Swamp	4.20	PEM1E
#16	Pit Lane “A”	Souter’s Pond	2.50	PEM1E
#17	Pit Lane “B”		3.41	PSS/EM1E
#18	Wentworth Road “B”		1.27	PSS/EM1E
#19	Colonial Lane		.60	PFO1E
#20	Neal’s Lane “A”	Kitt’s Marsh	.33	PSS/EM1E
#21	Neal’s Lane “B”		.41	PSS/EM1E
#22	Secret Pond	Secret Pond	3.45	PEM1H
#23	*Lavenger Creek	Lavenger Creek	9.35	E2EM1
#24	*Quarterdeck	Kitt’s Marsh	1.06	PEM1E/E
#25	Ritson Street		.21	PFO1E
#26	*River Road	Muskito Hall	.85	E2EM1
#27	Duck’s Head		.65	PEM1E
Note: *= Estuarine				

9.3 HISTORIC DISTRICT ORDINANCE (Amended May 2008)

9.3.1 Authority and Purpose:

Pursuant to RSA 673:1 and under the authority granted to the Town in RSA 674:46, the Town of New Castle has established an Historic District Commission and has enacted the New Castle Historic District Ordinance as an overlay zoning district within the New Castle Zoning Ordinance. The preservation of cultural resources and particularly of structures and places of historic, architectural and community value is hereby declared to be a public purpose. The specific purposes of the Ordinance include the following:

1. To preserve and protect the buildings and the historic architectural landscape of the Historic District;
2. Conserve property values in the District;

3. Maintain continuity of scale and architectural style of constructed, reconstructed and renovated buildings within the District;
4. To promote the cultural and educational values of the historic buildings in the Town;
5. To further the implementation of the New Castle Master Plan.

9.3.2 Definitions:

Unless specifically defined below or in Section 2 of the New Castle Zoning Ordinance, words or phrases in this ordinance shall be interpreted to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

- a. Appearance. The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color, and texture of the – building material and the type, design, and character of all windows, doors, light fixtures, signs and appurtenant elements.
- b. Character. The aggregate of visible historic and architectural features and traits that together form the distinct nature of an historic district.
- c. Construction. The act of adding to an existing structure or the erection of a new principal accessory or structure on a lot or property.
- d. Demolition. Any act or process that destroys in part or in whole a landmark or structure.
- e. Historic Property. Any historic site, place, building, structure, or object that is deemed by the Commission to have historic, cultural, or architectural significance.
- f. Maintenance/Routine Maintenance. Ordinary maintenance and repair of any architectural feature that does not involve permanent removal or a change in design, dimensions, materials or outer appearance of such feature. It includes repairing/preserving original work with like materials to match what is original so that the repair is virtually indistinguishable.
- g. Moving. Any relocation or removal of a structure on its site or to another site.
- h. Preservation. The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic structure, place, or feature.
- i. Reconstruction. The act or process of reproducing by new construction, the form, feature, and detailing of a non-surviving site, landscape, building, structure, or object for the purposes of replicating its appearance at a specific period of time and in its historic location.
- j. Regulations. Design guidelines and standards of review promulgated by the New Castle Historic District Commission under authority granted in RSA 674:46- that interpret and implement statutory requirements and are in conformance with the Historic District Ordinance.

- k. Rehabilitation. The process of returning property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.
- l. Restoration. The act or process of accurately recovering the form, features, and character of a property and its setting as it appeared at a particular period of time by means of removal of features from other periods in its history and reconstruction of missing features from the restoration period.
- m. Rules of Procedure. A set of rules adopted by the Commission pursuant to RSA 676:1 concerning the method of conducting the Commission's business.
- n. Scale. The proportionate size or mass judged to be in relation to the predominant size and mass of structures in the area or neighborhood of reference.
- o. Significant Change. Substituting a different feature or material or adding or subtracting from the original fabric or structure.
- p. Texture. The visual and tactile quality of a surface, apart from its color or form.

9.3.3 Establishment of District:

An historic district is established as an overlay district to the other districts established in this zoning ordinance and is superimposed upon them. The permitted uses, regulations and procedures applicable in the Historic District shall apply in addition to the regulations of the underlying districts and other applicable ordinances.

1. Overlay District Boundaries

An historic district shall be shown on the Zoning Map as from time to time adopted and amended by the Town of New Castle. It may coincide with, cross, or include all or part of one or more of the underlying districts.

2. Verbal Description

The New Castle Historic District boundaries are defined on Maps of the Tax Assessors of the Town of New Castle. The Boundary of the district is described as follows: Beginning at the point where Portsmouth Avenue enters Great Island from the west at the town cemetery, and extending easterly to the intersection with Oliver Street, one lot deep along the southerly side of that avenue and to the Piscataqua River on the northerly side of that avenue. Thence extending northeasterly along Oliver Street including both sides of the street to the intersection with Cape and River Roads. Thence extending southeasterly along River Road to its intersection with Cranfield Street one lot deep along the southwesterly side. Thence extending in two directions: first, southwesterly along Cranfield Street to the intersection with Neals Lane, one lot deep on the southeasterly side of the street and to the Piscataqua River on the northwesterly side; second, northeasterly along Cranfield Street to the intersection with Main Street and thence easterly along both sides of Main Street to the intersection with Wentworth Road, thence

easterly along Ocean Street, one lot deep on the southeasterly side of Cranfield Street and southerly side of Main Street and to the Piscataqua River on the northwesterly side of Cranfield Street and northerly side of Main Street and Ocean Street.

9.3.4 Historic District Commission:

Pursuant to authority and stipulations of RSA 673:1 and 674:46, and in order to carry out the purpose of this ordinance the Town of New Castle established an Historic District Commission and Historic District Ordinance at the Annual Town Meeting of 1993. There is herein established the New Castle Historic District Commission with the functions and duties as authorized in RSA 673-676 and set forth in this Article, and as may be needed to carry out the purpose of this Article.

1. Membership:

- a. The Historic District Commission shall consist of five members and up to three alternates appointed by the Board of Selectmen. All members and alternates must be residents of New Castle and must have demonstrated interest and ability to understand, appreciate, and promote the purposes of this Article.
- b. One member shall be a member of the Board of Selectmen, one member shall be a member of the Planning Board, and at least two members shall be residents of the historic district. In appointing the remaining members and alternates the Board shall strive to include:
 - 1) a local historical society member;
 - 2) a registered architect or a builder;
 - 3) a member of another land use board:
- c. Whenever a regular member of the Commission is absent or whenever a regular member disqualifies himself or herself, the chairperson shall designate an alternate to act in the place of the absent member.

2. Terms of Office, Officers, Vacancies, and Removal:

- a. Nominations for the Historic District Commission shall be put forward by the Chair, and Members shall be appointed by the Select Board for three year terms. However, the initial appointment shall be staggered so that two members shall be appointed for three years, two members for two years, and one member for one year.
- b. The Commission shall annually elect a chairperson from the appointed members and may create other officers as it deems necessary. The term of every officer and chairperson elected by the Historic District Commission shall be one year. Both the chairperson and officers shall be eligible for re-election.
- c. The Select Board shall act upon nominations sent by the Chair within sixty days to fill a vacancy, including expired terms. Vacancies shall be filled as provided by RSA 673:12.

- d. Members may be removed for cause in a manner as provided by RSA 673:13; the chairperson may request the voluntary resignation of any member who fails to attend three consecutive meetings without just cause.

3. **Meetings:**

Meetings of the Historic District Commission shall be held at the call of the Chair and at such other times as the Commission members may determine in their Rules of Procedure, but not less than four times a year. Public notification and the public hearings of the Commission's actions shall be in conformance with RSA 91-A and other applicable statutory requirements. Four 4 members of the Commission shall constitute a quorum for the conduct of business.

4. **Powers and Duties:**

The Commission shall have all the powers and duties vested in Historic District Commissions under RSA 674 and 675. In accordance with RSA 674:46, the Historic District Commission shall have the powers and duties to:

- a. Adopt and amend historic district regulations in the manner provided for in RSA 675:6, and adopt and amend Historic District Commission Rules of Procedure for the conduct of business in the manner provided for in RSA 676:1 and in accordance with RSA 91-A;
- b. Establish, adopt and make available, to applicants and the public, guidelines to be used by the Commission in reviewing and acting on applications for a Certificate of Approval to construct, alter, repair, move or demolish any building or structure within the historic district; such guidelines shall be consistent with the criteria established in Section 9.3.6 – Review Criteria;
- c. Approve or disapprove, in whole or in part, applications for Certificates of Approval for which a permit is required under Section 9.3.4., and file said Certificate of Approval or Notice of Disapproval with the Building Inspector;
- d. Request reports and recommendations from town departments and from other organizations and sources which may have information or can provide advice pertinent to the application or the proposal's impact on the District;
- e. Retain professional consultants as may be necessary to carry out the purposes of this Article, subject to the availability of funds for this purpose;
- f. Act in an advisory role to other officials, departments, boards, commissions, and committees of the town, regarding the identification, protection and preservation of local historical resources;
- g. Act as a liaison between the local government and individuals and organizations concerned with historic preservation;
- h. Work toward continuing education of citizens regarding historic preservation issues and concerns;

- i. Recommend and propose amendments and/or revisions of this Article and to the boundaries and limits of any Historic District to the Planning Board; and
- j. Keep or cause to be kept accurate and complete records of each application, all of which shall be a part of the public record.

9.3.5 Activities Subject to Approval by Historic District Commission:

Except as provided herein, it shall be unlawful for any owner or person (including without limitation any municipal or governmental entity) to construct, alter, move or demolish any building, structure, or improvements which lies within the New Castle Historic District and is visible from any street without first obtaining a Certificate of Approval from the Historic District Commission in the manner prescribed in this Article. Exceptions are declared in Section 9.3.5.2.

1. Activities Requiring Review:

For the purposes of this Article, the following activities shall require a Certificate of Approval from the Historic District Commission:

- a. Significant change, erection, alteration, relocation, or demolition of a building or structure and construction on any site;
- b. Construction or reconstruction of any stonewall or fencing; and
- c. Use of "nontraditional" building materials. These materials may be utilized within the district provided the materials are indistinguishable from traditional materials and meets the approval of a majority of the commissioners.

2. Exceptions:

For the purposes of this Article, the following activities shall not require a Certificate of Approval from the Historic District Commission:

- a. Routine maintenance and repair of any building, structure, stonewall or fencing;
- b. Painting or repainting of buildings, structures or fences in any color;
- c. Installation of replacement windows or doors provided that the replacements:
 - 1) are of like material and of the same size and architectural features;
 - 2) if the windows or doors have glass panes, the replacement panes shall be of the same number and size and may not utilize "snap in" muntins or grills.
- d. Any heating or ventilating ducts or flues extending less than four feet above the roof plane or extend less than 12 inches out from the plane or vent into a public way.

9.3.6 Review Criteria:

The following criteria shall be considered by the Historic District Commission in reviewing applications for Certificate of Approval. In accordance with Section 9.3.4, review standards and design guidelines consistent with the following criteria may be further specified in the Historic District Regulations as adopted by the Commission per RSA 675:6.

1. Preamble:

- a. New Castle is an historic town with its character reflected in the architecture of the structures that lie within the historic district. New construction should reflect and respect established architectural traditions. Contemporary architecture is not allowed in the Historic District.
- b. It is not the purpose of this ordinance to deny a citizen the right to erect, alter, relocate, or demolish a building or structure within the historic district so long as the result will not affect the character of the historic district.

b. Criteria – Existing Structures:

- a. The impact of the proposed activity on the special character of the District, including the historical, architectural or cultural value of the buildings and streetscapes of the District.
- b. The compatibility of the exterior design, architectural components, texture and materials proposed to be used in relationship to existing structures and their setting.
- c. The scale and general size of new construction and renovations in relation to the existing surroundings, with consideration of such factors as height, width, streetscape, setbacks, number of stories, roof type, façade opening (windows, doors, etc.) and architectural details.
- d. The impact that the proposal will have on the setting and extent to which it will preserve and enhance the historical, architectural and cultural qualities of the district and the community shall be considered.

c. Criteria – New Construction:

- a. New Construction will be consistent with the criteria for Existing Structure, listed above.
- b. The Architecture of a proposed new structure shall conform in form and style to typical historic structures of the neighborhood within the District. Such structures shall conform to a specified historic architectural style.
- c. Size of proposed structures should be similar in external dimensions to typical

historic structures of the style, except where such dimension would conflict with the building code. Such structure shall be consistent with the prevailing size and scale of other structures within the District or relevant neighborhood.

9.3.7 Application Procedure:

1. Application for Certificate of Approval:

- a. Prior to the issuance of a building permit for any exterior work with respect to any property situated in an Historic District, the owner shall submit a Certificate of Approval application to the Historic District Commission for consideration. The Building Inspector may issue the building permit only following approval of that application by the Historic District Commission or as provided in RSA Chapter 676:8 and 676:9.
- b. An application fee shall be required to accompany the application. The Historic District Commission shall establish an application fee schedule in its Regulations. Such fees shall be sufficient to cover the internal costs of review and processing of the application as well as the cost of legal notices as may be incurred by the Town.

2. Information Required:

a. Application for Certificate of Approval:

- 1) completed permit form;
- 2) narrative description of the project;
- 3) graphical renderings of sufficient clarity and detail to give the Commission a clear and certain understanding of the applicant's intention regarding the work contemplated.
- 4) when required by the Commission, site plans, building plans, elevations, perspective sketches, photographs, building materials samples or other information reasonably required by the Commission to make its determination of approval or disapproval.

- b. As necessary in reviewing applications for Certificate of Approval applications for their impact on the Historic District, the Historic Commission may request reports and recommendations regarding the feasibility of the applicant's proposal from the Planning Board, Conservation Commission, Fire Chief, Building Inspector, and other administrative officials who may possess information concerning the impact of the proposal on the historic district, and seek advice from professional, educational, cultural or other groups or persons as may be deemed necessary for the determination of a reasonable decision.

3. Hearings and Notices:

- a. The Historic District Commission shall conduct one or more hearings on the application, with the first hearing held within thirty-five days of the filing of a completed application package.
- b. The Commission shall issue a Certificate of Approval or Notice of Disapproval within ten days of the final hearing date unless the applicant shall agree to an extension in writing.
- c. Failure to render a decision within ten days of the final hearing date or failure to render a decision within 70 days of the filing of a completed application, shall be deemed to constitute approval by the Commission, unless the applicant shall agree to an extension in writing.
- d. Written notice of the Commission hearing dates shall be given by certified mail to each abutting property owner, in cases involving demolition, relocation, new construction and/or substantial alteration. The costs involved in the above notification and required legal notices will be paid by the applicant.

4. **Notice of Approval or Disapproval:**

At the conclusion of its review, the Historic District Commission shall issue in writing one of the following documents:

a. **Certificate of Approval**

- 1) If in the opinion of a majority of the Historic District Commission members present and voting, the applicant's proposal meets the purposes of this Article, then the Commission shall issue a Certificate of Approval together with any changes, conditions, and/or stipulations necessary to comply with the provisions of this Article, signed by the chairperson.
- 2) After issuance of this Certificate, the building inspector may issue a building, demolition or other permit for the approved project.
- 3) Such approval shall lapse one year from the date of Commission's actions, unless an extension of no more than one year has been granted prior to the expiration of the original action. Such extensions may be granted without a Public Hearing, unless the Commission deems one to be in the public's interest.
- 4) No more than one extension shall be granted; except, if authorized following a Public Hearing convened to consider such a request.

b. **Notice of Disapproval**

- 1) If in the opinion of the majority of the Historic District Commission members present and voting, the application does not meet the purposes of this Article, then the Commission shall issue a Notice of Disapproval in writing together with the reasons for such decision, signed by the chairperson of the Commission.

- 2) The issuance of a Notice of Disapproval shall prohibit the building inspector from issuing a building, demolition, or other permit.
- 3) If the applicant's proposal is denied, the applicant may, and will be encouraged to, make modifications to the proposed plans and to resubmit the application for a hearing without prejudice.

c. Notice of Filing of Decision

All decisions of the Commission shall be made available for public inspection within 72 hours, and placed on file with the town clerk.

9.3.8 Administration and Enforcement:

1. Appeals:

Any person or persons jointly or severally aggrieved by a decision of the Historic District Commission shall have the right to appeal that decision to the Zoning Board of Adjustment in accordance with the provisions of RSA 676:5 and RSA

677:1-14. Appeals must be filed directly with the Zoning Board of Adjustment within thirty (30) days of the date of decision of the HDC without the need for the filing of a motion for rehearing with the HDC.

2. Enforcement:

In case of the violation of any ordinance or regulation made under the authority conferred by RSA 676, the Historic District Commission, in addition to other remedies, may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or enjoin or abate or remove such violation.

3. Penalties:

Violation of this historic district ordinance may be made punishable as provided by RSA 676:17.

9.3.9 Validity:

If any section, clause, provision, portion or phrase of these Articles shall be held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of this Article.

9.4 MANUFACTURED HOUSING EXCLUSION DISTRICT

- 9.4.1** The Manufactured Housing Exclusion District is the area within the Residential District as defined in Section 3.1.6., where manufactured housing is prohibited.

9.5 PERSONAL WIRELESS SERVICE FACILITY OVERLAY DISTRICT

9.5.1 Purpose and Intent:

New Castle is a small, historic, densely populated island community. There are limits on the amount of land and how that land can be used. The total land area of the Town is .8 square miles; the population density of the Town is 1222.6 per square mile. Because Personal Wireless Service Facilities (“PWSFs”) are inherently intrusive unless deployed in an aesthetically sensitive manner, and given the distinctive physical and historical character of the Town, this ordinance has been adopted to permit and promote the siting of PWSFs in a manner which meets the public interest by permitting the siting of PWSFs in the manner described below and by providing for Personal Wireless Services throughout the Town. The purpose of the Personal Wireless Service Facility Overlay District is to effectuate the following legislative goals:

1. Preserve the full authority of the Town of New Castle to regulate and to provide for reasonable opportunity for the siting of PWSFs.
2. Reduce adverse impacts the siting of such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant areas, flight corridors, health and safety and prosperity.
3. Provide for and promote co-location on PWSFs.
4. Provide for removal of abandoned facilities.
5. Promote personal wireless services throughout the Town.
6. Discourage applications for variances from this ordinance because the comprehensive scheme of regulation provided by this ordinance is in the public interest.
7. Legislate this ordinance pursuant to and consistent with relevant New Hampshire and federal law, including, but not limited to RSA 12-K et. seq. and the Telecommunications Act of 1996, as each may be amended.

9.5.2 Establishment of Personal Wireless Service Facility Overlay District:

The Personal Wireless Service Facility Overlay District shall consist of following and shall be subject to the hierarchical siting principles set forth below:

1. PWSFs may be deployed within existing structures, including legal nonconforming structures.

2. Town owned land outside the Historic District which does not restrict by deed or otherwise the siting of PWSFs.
3. Town owned or controlled public rights of way.

9.5.3 Siting Standards and Priorities

The following hierarchy for siting PWSFs shall apply, when consistent with the purpose and intent of this ordinance:

1. First, use of existing PWSFs;
2. Second, use of existing structures, including, but not limited to legal nonconforming structures;
3. Third, use of Town owned land as described herein.

Siting of PWSFs shall be by Alternative Antenna Structures, as defined herein. The height at which PWSFs may be deployed shall be the height of any existing structure within which such deployment occurs, including the height of any legal nonconforming structure, or, in the case of deployment of a new Alternative Antenna Structure within the public right of way, the height of existing utility poles within the public right of way in the immediate vicinity of the proposed deployment or, in the case of a new Alternative Antenna Structure on Town owned land, which is qualified for such a siting under this ordinance, such Alternative Antenna Structure may be deployed at a height which shall not exceed 10 feet over the average tree canopy height. Average tree canopy height means, for purposes of establishing the permitted height of an Alternative Antenna Structure, the average height found by inventorying the height at above ground level of all trees over twenty (20) feet in height within a radius extending fifty (50) feet from the proposed Alternative Antenna Structure.

9.5.4 Definitions:

1. **Alternative Antenna Structure:** A structure, including supporting apparatus and antennas, that employs innovative siting techniques that disguise, camouflage or conceal the presence of the supporting apparatus in a manner which is compatible with the environs of the Alternative Antenna Structure. The alternative antenna structure and all related equipment must be concealed.
2. **Public Rights of Way:** all federal, state and town public streets, highways, roads, ways, including rights of ways, and all private ways open to the public or over which the Town has an easement for public travel.
3. **PWSFs:** any facility as defined in the Federal Telecommunication Act of 1996, 47 U.S.C. section 332(c)(7)(C)(i).
4. **FAA:** An acronym that shall mean the Federal Aviation Administration.
5. **FCC:** An acronym that shall mean the Federal Communications Commission.

6. **Height:** Shall mean, when referring to a PWSF, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
6. **Planning Board or Board:** Shall mean the Town of New Castle Planning Board and the regulator of this ordinance.
7. **Preexisting PWSFs:** Shall mean any PWSF lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any PWSF lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

9.5.5 Conditional Uses:

1. Conditional Use Permit

All applicants for PWSFs under this ordinance, except applicants for colocation under Section 9.5.9, shall apply to the Planning Board for site plan review in accordance with the requirements of the Town site plan review regulations. The Planning Board shall act upon an application for siting by applying its site review regulations as well as the provisions of this ordinance and shall process application in accordance with the procedural requirements of its site plan review regulations and RSA 676:4. All decisions rendered by the Planning Board shall be in writing and any denial of an application to site a facility shall be in writing and shall be based upon substantial evidence contained in the written record. The Planning Board may impose conditions in granting a conditional use permit pursuant to this subsection to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed facility on adjoining properties and to effectuate the intent of this ordinance. The siting of a Personal Wireless Service Facility is permitted in the Personal Wireless Service Facility Overlay District by Conditional use permit which may be granted by the Planning Board based on the following criteria and pursuant to the following procedure.

2. Application Requirements

- a. Each applicant requesting a conditional use permit under this ordinance shall submit a scaled plan in accordance with the site plan review regulations of the Town of New Castle. The plan shall include at a minimum the following:
 - 1) A scaled elevation view depicting the proposed site and the property of all abutters and depicting structures located within a radius of one half mile from the proposed site;
 - 2) Topographic depiction of the site;
 - 3) Depicting all setbacks from existing structures, streets, rights-of-way, common areas and other structures, including existing PWSFs;
 - 4) Depicting proposed ingress and egress to the site;

- 5) Depicting surrounding tree coverage and foliage; and
 - 6) Depicting visual impacts on view sheds, ridge lines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- b. Other information required:
- 1) Radio frequency coverage;
 - 2) Written proof that the proposed facility complies with FCC regulations on radio frequency exposure guidelines;
 - 3) Written proof that an evaluation has taken place and reporting the results of that evaluation, certifying that the requirements of the National Environmental Policy Act (NEPA) have been met and certifying that any environmental assessment process required by FCC rules has been met;
 - 4) Written inventory of existing sites which are within the jurisdiction of the Town and which are within two miles of the geographic borders of the Town, including specific information about the PWSF, as well as economic and technological feasibility for co-location on those PWSFs;
 - 5) Written information demonstrating that no existing structure described in the inventory can accommodate the antenna the applicant proposes to locate.
 - 6) Written statement confirming that the applicant will pay reasonable fees imposed by the Planning Board pursuant to RSA 12-K:4 and RSA 676:4I(g).

3. Conditions

- a. The Planning Board shall grant a conditional use permit authorizing the siting of a PWSF within the Personal Wireless Service Facility Overlay District upon finding that the applicant has met each of the following conditions:
- 1) The proposed PWSF will not unreasonably interfere with the view of any park, natural scenic vista, historic building, or view corridor;
 - 2) That the height of the proposed, PWSF meets this Ordinance;
 - 3) That the hierarchy for siting PWSFs has been met.
 - 4) That the proposed facility will be built to allow for maximum allowance of co-location upon the new facility. The Planning Board shall make a finding, based upon information submitted by the applicant, that the applicant will reasonably enable subsequent co-location on the facility to

be sited by agreeing to make such co-location available for reasonable fees and costs to other telecommunications providers.

- 5) That the applicant has complied with all applicable site review regulations with the Town of New Castle.

- b. The Planning Board shall make written findings on each of these conditions.

9.5.6 Construction Performance Requirements:

1. Aesthetic and Lighting

The guidelines in this subsection (A), shall govern the location of all PWSFs and the installation of all antennas. However, the Planning Board may waive these requirements, only if it determines that the goals of this ordinance are served thereby.

- a. PWSFs shall be painted so as to reduce visual obtrusiveness.
- b. At a PWSF 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 PWSFs with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
- c. If an antenna is installed on an existing structure, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- d. PWSFs shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- e. PWSFs shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

2. Federal Requirements

All PWSFs 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 towers and antennas. If such standards and regulations are changed, then the owners of the PWSFs governed by this ordinance shall bring such PWSFs into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring PWSFs into compliance with such revised standards and regulations shall constitute grounds for the removal of the PWSFs, as abandoned, at the owner's expense through the execution of the posted security.

3. Building Codes-Safety Standards

To ensure the structural integrity of PWSFs, the owner of a PWSF shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for PWSFs that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a PWSF fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the PWSF, the owner shall have 30 days to bring such PWSFs into compliance with such standards. If the owner fails to bring such PWSFs into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the PWSFs or antenna, as abandoned, at the owner's expense through execution of the posted security.

4. Additional Requirements

These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

a. Setbacks and Separation

- 1) Alternative Antenna Structures must be set back a distance equal to 125% of the height of the structure from any off-site residential structure. This provision does not apply to Alternative Antenna Structures located within town owned or controlled public rights of way.
- 2) PWSFs and accessory facilities must satisfy the minimum zoning district setback requirements provided; however, that the Planning Board is authorized to waive this requirement in the case of deployment within a structure or within a right of way if the Planning Board determines that the PWSF and accessory facilities are concealed or camouflaged.

b. Security Fencing

PWSFs 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 to the extent the Planning Board, in its reasonable discretion, believes such fencing is required to ensure public safety.

c. Landscaping

- 1) Base equipment and other accessory facilities servicing a PWSF shall be landscaped with a buffer of plant materials that effectively screens the view of the base equipment and other accessory facilities 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 base equipment would be minimal, the landscaping requirement may be reduced or waived entirely.
- 3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

9.5.7 Bonding and Security and Insurance:

Recognizing the extremely hazardous situation presented by abandoned and unmonitored PWSFs, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned PWSFs in the event that the PWSFs is abandoned and the owner is incapable and unwilling to remove the PWSF. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

9.5.8 Removal of Abandoned PWSFs:

Any PWSFs that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said PWSFs provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. 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 PWSF. If the abandoned PWSF is not removed within ninety (90) days the Town may execute the security and have the PWSFs removed. If there are two or more users of a single PWSF, this provision shall not become effective until all users cease using the PWSF.

9.5.9 Colocation procedures:

An applicant for colocation of an antenna or antennae on an existing PWSF shall comply with RSA 12-K:10 and 11, the Telecommunications Act of 1996, all pertinent F.C.C. regulations, and the requirements of New Castle Ordinance sections 9.5.6.1.c, 9.5.6.2, 9.5.6.3 and 9.5.6.4. No applicant pursuant to this Section shall be required to file for a Conditional Use Permit pursuant to Section 9.5.5. For the purpose of reviewing a colocation application under RSA 12-K:10, the Authority shall be the Building Inspector.

9.6 SENSITIVE AREAS OVERLAY DISTRICT

9.6.1 Designation of District: the “Sensitive Areas Overlay District” shall encompass the

following areas (see New Castle Zoning Map): Great Island Common; Fort Stark; the U.S. Coast Guard Facility, including Battery Farnsworth and Fort Constitution and all other land north of Ocean Street on the easterly side of Wentworth Road. It shall also include all Islands within the municipal boundaries except Goat Island, Campbell's Island and Duck's Head Island.

9.6.2 Purpose: New Castle is fortunate to have a number of unique, sensitive properties under the control of governmental entities. These properties have special historical, environmental, economic and recreational value to the citizens of New Castle and the State of New Hampshire. The purposes of this district are, therefore:

1. To establish a zoning district and attendant use restrictions that encourage the retention of these areas as public parks and recreation areas and limit any potential development to a scale and density consistent with the existing character of these areas; and
2. To ensure that special care is taken to protect these sensitive areas in the event that any of the properties are transferred by sale of lease or easement to another public body or to a private entity.

9.6.3 Permitted Uses:

Land in this district is subject to all restrictions in the R-3 Low Density Residential District in which they are located but, in addition, are further limited by the terms of this District. The uses permitted in this District shall be limited to single family homes, public parks and playgrounds, including picnic facilities, athletic fields and outdoor ice skating rinks not involving the erection of permanent structures, trails, or interpretive signs. Structures for housing interpretive exhibits related to the inherent historical, cultural or natural features of the site are permitted by special exception.

9.6.4 Density and Dimensional Standards:

Density and Dimensional Standards for this District shall be as indicated in Table 1 "Density and Dimensional Regulation, Town of New Castle Zoning Ordinance".

10.0 Board of Adjustment

10.1 ESTABLISHMENT

The Board of Adjustment heretofore established shall continue in existence and shall conform in membership and terms of office to the provisions of N.H. Revised Statutes Annotated 673:1, as amended. The zoning board of adjustment shall consist of five (5) members. The members of the board shall either be elected in the manner prescribed by RSA 669, or appointed in a manner as prescribed by the local legislative body. Each member of the board shall be a resident of the

municipality in order to be appointed or elected.

10.2 AUTHORITY AND PURPOSE

Authority is granted by the New Hampshire Revised Statutes Annotated (RSA) 674-677 and as may be further assigned by amendments to the RSAs. The purpose is to hear appeals and administer special provisions in the Zoning Ordinance dealing with variances and special exceptions, and with administrative decisions pertaining to the New Castle, NH Land Use Regulations.

The Board of Adjustment may grant variances from the provisions, but cannot amend the Zoning Ordinances nor change the zoning districts. The Board of Adjustment is established to provide for the satisfactory resolution of unusual conditions and extenuating circumstances.

The Board of Adjustment is the appeal mechanism over decisions by the building inspector in matters of interpretation of the Zoning Ordinance.

10.3 RULES OF PROCEDURE

All applications for review or action by the ZBA must be submitted in writing. Applications for variance or administrative action shall be on forms prepared by the ZBA and available from the Town Office. The Board may adopt and modify further rules of procedures so long as these are not inconsistent with this Ordinance or the RSA's.

After acceptance of an application as proper and within the jurisdiction of the ZBA applicant will be notified in writing of the date the ZBA will consider the matter and any responsibilities of the applicant.

The applicant shall pay, at the time the application is filed, an application fee in an amount set from time to time by the New Castle Board of Selectmen to cover internal costs. In addition, the applicant is responsible for required legal notices and may be responsible for other outside costs incurred by the Town.

10.4 HEARINGS AND NOTICES

Requirements for Notices and Hearings are specified primarily by the RSAs and vary from time to time. Applicants may informally inquire of the Chair of the ZBA or at any regular meeting of the ZBA as to current requirements.

10.5 CRITERIA FOR VARIANCES AND SPECIAL EXCEPTIONS

The authority of the ZBA to act and the criteria it is to follow are all determined by the relevant ordinances and RSAs. The ZBA will be guided by prior court decisions. The following are listed as guides:

VARIANCE: A variance is an authorization, which may be granted by the ZBA, upon appeal, in specific cases, from the terms of the zoning ordinance if the following five conditions are met:

1. The variance will not be contrary to the public interest;

2. The spirit of the ordinance is observed;
 3. Substantial justice is done;
 4. The values of surrounding properties are not diminished; and
-
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application to the property; and
 - ii) The proposed use is a reasonable one.
 - B. If the criteria in subparagraph A, are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of “unnecessary hardship” set forth in subparagraph 5, shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

APPEAL FROM AN ADMINISTRATIVE DECISION: If an applicant has been denied a building permit or is affected by some other decision regarding the administration of the New Castle Zoning Ordinance, and the applicant believes the decision was made in error under the provisions of the ordinance, the decision may be appealed to the Board of Adjustment. The appeal will be granted if the applicant can show to the satisfaction of the ZBA that the decision was made in error.

SPECIAL EXCEPTION: Certain exceptions of the zoning ordinance provide that a particular use of property in a particular zone will be permitted by special exception if specified conditions are met. The necessary conditions for each special exception are specified in the Ordinance. A request for special exception will be granted if the applicant shows that the special exception criteria stated in the ordinance are met.

10.6 FINDINGS OF FACT

In general, for Special Exceptions the ZBA is charged with determining the facts of a situation and concluding if the action applied for meets the specifications of an ordinance. The ZBA will summarize the facts and must grant or deny the special exception based on whether or not all the criteria are met.

10.7 LIMITATIONS ON VARIANCES AND SPECIAL EXCEPTIONS

Proceedings of the ZBA will elicit relevant facts in arriving at decisions which will be recorded in the minutes of the meeting and available for applicants and interested parties. Decisions of the Board shall be in writing and copies given to applicant, the Town Clerk, the Planning Board, the Building Inspector and abutters. As permitted by the RSA's or the relevant ordinance, the ZBA may attach conditions to variances granted, may modify wholly or in part any administrative action appealed.

11.0 Administration and Enforcement

11.1 ENFORCEMENT; FINES

1. Enforcement Authorization. If a violation of the Zoning Ordinance comes to the attention of the Selectmen, they shall have the authority to take whatever steps are necessary to enforce the law.
2. Penalty. Any person, firm or corporation violating any of the provisions of this Ordinance shall be fined not more than \$275.00 upon conviction for each day such violation shall exist.
3. A property owner who plans any building activity shall ascertain from the building inspector whether the activity requires a building permit. Any property owner or other individual who commences any building activity without obtaining all required municipal approvals, including a building permit (where required), shall be subject to a civil penalty not to exceed \$275.00 for each day the building activity has taken place without the required approvals having been obtained.

12.0 Amendments, Validity, Applicability

12.1 VALIDITY, SEVERABILITY

Should any section, clause or provision, of this Zoning Ordinance be held to be invalid or unconstitutional by any court or authority of competent jurisdiction, such holding shall not affect, impair or invalidate any other section or provision of this ordinance. To such end all sections and provisions of this ordinance are declared to be severable.

12.2 CONFLICTING PROVISIONS

Where any section of this Ordinance conflicts with another or with any other local regulation or ordinance, the requirement imposing the greater restriction or higher standard shall apply. In addition, the fact that a requirement under this ordinance is less restrictive than a federal or state regulation or statute does not relieve a landowner from compliance with the terms of such regulation or statute, unless specifically authorized by said regulation or schedule.

12.3 AMENDMENTS

This Ordinance may be amended by the New Castle Town Meeting for which amendments have been duly proposed for adoption in the manner prescribed by NH RSA Chapter 675, inclusive.

12.4 EFFECTIVE DATE

Unless otherwise noted, amendments to the established Zoning Ordinance shall take effect upon their adoption.