

1 **SECTION 1.00. – GENERAL PROVISION**

2 **Sec. 1.05. Applicability.**

3 There are three possible applications of this Regulation to the development or change of a non-residential or
4 multi-family site. The following criteria specify the level of review necessary:

5 (A) *Not Applicable.* Upon receipt of a written letter of acknowledgment from the Code Enforcement Officer,
6 this Regulation is not applicable for the following:

- 7 (1) Temporary Events which require no permanent alterations to the site and which function safely
8 within the approved configuration of the site, as determined by the Code Enforcement Officer;
- 9 (2) Special Events approved by the Town Council;
- 10 (3) Home Occupations;
- 11 (4) Change of use, from one non-residential use to another non-residential use, which involves no more
12 than 2,000 square feet of gross floor space.
- 13 (5) Re-roofing of a building located within the downtown commercial overlay district.
- 14 (6) Replacement of doors or windows aesthetically in kind on buildings located within the downtown
15 commercial overlay district.
- 16 (7) A renovation affecting 50-percent or less of a building's exterior for those portions of the building
17 observable from Route 108, Exeter Road, Main Street or South Main Street on lots located within
18 the Downtown commercial overlay district.
- 19 (8) **Expansion of an existing multi-family site structure by 2 units or less within a 5-year period,**
20 **provided the property is conforming to zoning standards and there is no expansion of the principle**
21 **structure.**
- 22
- 23 (9) **Conversion of a non-residential unit to a single-family residential unit, provided the conversion is**
24 **not subject to subdivision review.**
- 25 (10) **Conversion of a non-residential unit to a duplex provided the conversion is not subject to**
26 **subdivision review.**
- 27 (11) **Conversion of a multi-family residential use to a single-family or duplex residential use provided**
28 **such conversion does not require subdivision review.**

29 (B) *Minor Review.* A Minor Review by the Planning Board shall be required for the following:

- 30 (1) Change of use of a non-residential site, for which no change in floor area is proposed, and which
31 either maintains or decreases the intensity of use on the site with respect to parking demand and
32 traffic generation or for a site with more than 2,000 square feet but less than 5,000 square feet of
33 gross floor area;
- 34 (2) Expansion of non-residential floor space by 2,000 square feet but less than 5,000 square feet with
35 no change of use;

- 1 (3) Change of use of an existing non-residential building which will be accompanied by a renovation of
2 the facade of the building which, in the opinion of the Planning Board, will enhance its aesthetic
3 contribution to the heritage and visual qualities of the village;
- 4 (4) A renovation to a building's exterior by more than 50-percent for those portions of the building
5 observable from Route 108, Exeter Road, Main Street or South Main Street on lots located within
6 the Downtown commercial overlay district.
7
- 8 (5) Waiver requests, pursuant to Sec. 5.01 Waivers and Substitutions, from Sec. 3.21 Architectural and
9 aesthetic review, for exterior building renovations on lots located within the Downtown commercial
10 overlay district.
11
- 12 (6) Site improvement alterations without new development, re-development, expansion or change of
13 use; or
- 14 (7) Establishment of a bed and breakfast.
- 15 (C) *Major Review*. A Major Review by the Planning Board shall be required for the following:
- 16 (1) Establishment of non-residential uses where no non-residential use currently exists;
- 17 (2) Establishment of multi-family use where no multi-family use currently exists;
- 18 (3) Development or redevelopment of a lot located within the downtown commercial overlay district.
- 19 (3) Any other development, re-development, change of use or expansion of a multi-family or non-
20 residential site, and not addressed in the § 1.05(A) or (B).

21 **Sec. 1.07. General guidance.**

22 The following advice is offered to assist the applicant, especially if the applicant is unfamiliar with land
23 development processes.

- 24 (A) All applicants will need to hire professionals to prepare part or all of the application. A NH Licensed Land
25 Surveyor and/or licensed Professional Engineer are required. In some cases, other specialists will be
26 needed, possibly including an attorney, a soil scientist, or others. While such assistance does cost money,
27 their skills and abilities are essential to ensure that the Town and applicant have sound information on
28 which to base their decisions.
- 29 (B) The **Planning** Board is concerned about processing all applications fairly and quickly. To accomplish this,
30 the applicant shares certain responsibilities. The applicant must be properly prepared. This includes
31 reading these Regulations to understand the issues that must be addressed, and includes dealing with
32 all the significant issues up front. Incomplete submittals or failure to properly address issues will result
33 in unnecessary delays in obtaining a final decision from the Board.
- 34 (C) The application process is similar for all applications, although the amount of work and time to obtain
35 an approval vary widely.
- 36 (1) All applications follow this basic process:
- 37 • *Preparation*. The applicant prepares the application, usually done by hired professionals. This
38 may involve some discussion with the **Planning** Board through preliminary conceptual
39 consultation or design review meetings.

- 1 • **Technical Review. Prior to filing for Major Site Plan Review, the applicant must submit all**
2 **application materials to the Technical Review Committee for their review to ensure**
3 **compliance with the standards herein.**
- 4 • *Application Acceptance.* **Subsequent to the Technical Review Committee process,** upon
5 submittal of the application materials to the Town, the application is placed on the next
6 available Planning Board agenda for consideration. By State law, there is a minimum lead-time
7 of 15 days.
- 8 • *Public Hearing.* All applications will have a public hearing. This is the official opportunity for
9 the public to ask questions about the application, to raise issues, offer suggestions, or
10 indicate their support or opposition. The Hearing may be interspersed with periods of
11 deliberation by the Board, and may be continued to future dates.
- 12 • *Decision.* In the end, the Board must decide whether to approve or deny the application. In
13 the majority of cases, the Board approves the application with conditions, which means that
14 there are additional administrative or technical requirements, which must be satisfied to
15 obtain the full approval.
- 16 (2) *Timing.* Perhaps the most commonly asked question about an application to a planning board is
17 "how long will it take?" There is no standard answer. At a minimum, there must be a meeting with
18 the Board, and this alone requires at least 15 days lead-time. Simple applications are often
19 approved at a single meeting, while more complex applications may take two or three months to
20 complete. However, this general answer is all based on the assumptions that the applicant is
21 properly prepared, and that no unusual circumstances arise. Without the applicant's consent,
22 however, it is very unlikely that an application process can take longer than six months.

23 (Amd. of 11-18-1997)

24 **SECTION 2.00. APPLICATION PROCESS**

Sec. 2.01. Preliminary conceptual consultation.

This meeting shall be directed at a review of the basic concept of the proposal and suggestions that might be of assistance in resolving problems with meeting requirements during final consideration. The **Planning** Board and applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the Master Plan. The presentation to the Board of new surveys, engineering plans or similar materials shall not be allowed under this process, so the Chairman must be careful to keep these discussions at a general level. Typically, maps from the Master Plan, tax maps, county soil survey maps and the like are acceptable levels of generality upon which to base these discussions. Such consultation shall not bind either the applicant or the Board, and statements made by Board members shall not be the basis for disqualifying said members or invalidating any action taken. Such discussion may occur without the necessity of giving formal public notice, but such discussions may occur only at formal meetings of the Board. Preliminary conceptual consultation meetings are strictly optional to the applicant.

Sec. 2.02. Design review.

The **Planning** Board and applicant may engage in non-binding discussions beyond conceptual and general discussions, addressing more specific design, planning and engineering details, provided that the design review may

proceed only after formal public notice is provided. Statements made by Board members shall not be the basis for disqualifying said members of invalidating any action taken. The applicant shall pay appropriate public notice fees as specified in § 2.05(B), and shall provide all required materials and information required for public notice per § 2.09 and § 2.10. Design Review meetings are strictly optional to the applicant, but such meetings can be helpful in identifying and resolving problems in an application prior to major design investments by the applicant.

1 **Sec. 2.03. Minor review.**

2 The application for a Minor Review shall be made to the **Planning** Board, and shall follow the process specified
3 in § 2.05 through § 2.18 of this Regulation. Approved Minor Review plans shall **be reviewed for compliance,**
4 **pursuant to §5.03, and signed by the Director of Planning and Community Development Director.** ~~not be recorded~~
5 ~~at the Rockingham County Registry of Deeds.~~ The following shall be provided to the Board:

6 (A) Completed application, which shall contain the following:

- 7 (1) Correctly completed application form, signed by the property owner(s).
- 8 (2) Abutters list, with correct abutters, dated within five days of submittal, and signed by preparer,
9 with accompanying adhesive mailing labels.
- 10 (3) Payment of fees for administration and public notice.
- 11 (4) One copy of a boundary survey which meets the requirements of § 4.10(A)(1) and (2). The abutters
12 shall be revised by the applicant if abutters are not shown on the plan, or if they have changed
13 since the survey was originally prepared.
- 14 (5) Three copies of a Site Sketch, which complies with the following standards:
 - 15 (a) Drawn roughly to scale at 1" equals 20'. A tape measure should be used to measure
16 important distances, and these measurements should be labeled on the site sketch.
 - 17 (b) Shows key elements of the site, including buildings, setback lines, parking spaces, driveways,
18 traffic aisles, pedestrian, bicycle and wheelchair facilities, drainage facilities, surface waters,
19 wells, septic systems, and other relevant information.
 - 20 (c) Clearly depicts the changes proposed, including changes to site improvements.
- 21 (6) Documentation that the following applications and correspondence have been submitted:
 - 22 (a) Letters to the appropriate Town officials regarding local permits and reviews for issues
23 including but not limited to driveways, water and sewer systems, and safety review.
 - 24 (b) Copies of applications for State permits including but not limited to wetlands, septic,
25 driveway, site specific, and underground storage tank.
- 26 (7) List uses on the site, along with data about the amount of each activity (floor area, seating capacity,
27 etc.).
- 28 (8) The following additional information shall be required for an application regarding a
29 telecommunications facility:
 - 30 (a) Written proof that a proposed use/facility complies with FCC regulations on radio frequency
31 (RF) exposure guidelines, and FAA regulations on tower lighting.
 - 32 (b) Written proof that an evaluation has taken place, as well as the results of such evaluation,
33 satisfying the requirements of the National Environmental Policy Act (NEPA) further

- 1 referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental
2 Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or
3 EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and
4 the Town's site review process, shall become part of the application requirements.
- 5 (c) Provide an inventory of existing towers that are within the jurisdiction of the Town and those
6 within two miles of the border thereof, including specific information about the location,
7 height, design of each towers, as well as economic and technological feasibility for co-
8 locations on the inventoried towers.
- 9 If the applicant is proposing to build a new tower, the applicant shall submit written evidence
10 demonstrating that no existing permitted tower or structure can accommodate the
11 applicant's proposed antenna. This evidence shall consist of one or more of the following:
- 12 [1] Substantial evidence that no existing permitted towers or structures are located
13 within the geographic area required to meet the applicant's engineering
14 requirements, provided that a description of the geographic area required is also
15 submitted.
- 16 [2] Substantial evidence that existing permitted towers are not of sufficient height
17 to meet the applicant's engineering requirements, and why.
- 18 [3] Substantial evidence that the existing permitted towers or structures do not have
19 sufficient structural strength to support applicant's proposed antenna and
20 related equipment.
- 21 [4] Substantial evidence that applicant's proposed antenna would cause
22 electromagnetic interference with the antenna on the existing permitted towers
23 or structures, or the antenna on the existing towers or structures would cause
24 interference with the applicant's proposed antenna.
- 25 [5] Substantial evidence that the fees, costs, or contractual provisions required by
26 the owner in order to share the existing permitted tower or structure are
27 unreasonable. Costs exceeding new tower development are presumed to be
28 unreasonable.
- 29 [6] Substantial evidence that the applicant can demonstrate other limiting factors
30 that render existing permitted towers and structures unsuitable.
- 31 (d) The applicant proposing to build a new tower shall submit an agreement with the Town that
32 allows for the maximum allowance of co-location upon the new structure. Such statement
33 shall become a Condition to any Approval. This statement shall, at a minimum, require the
34 applicant to supply available co-location for reasonable fees and costs to other
35 telecommunications providers. Failure to provide such an agreement is evidence of the
36 applicant's unwillingness to cooperate with the orderly and well-planned development of
37 the Town and is grounds for denial.
- 38 (e) The applicant shall submit the engineering information detailing the size and coverage
39 required for the facility location. The Planning Board may have this information reviewed by
40 a consultant for verification of any claims made by the applicant regarding technological
41 limitations and feasibility for alternative locations. Cost for this review shall be borne by the
42 applicant in accordance with NH RSA 676:4(g).

- 1 (f) Each applicant for a tower, monopole, or alternative structure shall submit a design certified
2 by a New Hampshire Licensed engineer that the structure has been engineered to
3 accommodate the maximum number and type of all compatible telecommunication media
4 antenna.
- 5 (B) The **Planning** Board will generally use the Checklist for Application Completeness, Minor Review
6 Application, provided in § 6.00, to ensure completeness prior to accepting the application. The applicant
7 is encouraged to use this checklist to ensure that the application is complete prior to submittal.
- 8 (C) Time and budget permitting, the **Planning** Board will generally have a written review of the application
9 prepared by a professional planner. Where possible, this written review should be prepared and
10 available one week prior to the meeting at which application acceptance will be considered. The review
11 will address both application completeness and compliance with applicable laws, regulations and
12 ordinances. Additional reviews may be prepared in the case of applications, which take more than one
13 meeting. Applicants may pick up a copy of the written review at the Town Offices as soon as it is available
14 to the Board.
- 15 (D) **The Planning** Board members should visit the site prior to the meeting to familiarize themselves with
16 the site. The Board may, by motion, require a site visit prior to application approval.

17 **Sec. 2.04. Major review.**

18 The application for a Major Review shall be made to the **Planning** Board, and shall follow the process specified
19 in § 2.05 through § 2.18 of this Regulation. Approved Major Review plans shall be **reviewed for compliance, pursuant**
20 **to §5.03, and signed by the Director of Planning and Community Development Director.** ~~signed and recorded at~~
21 ~~the Rockingham County Registry of Deeds.~~ The following shall be provided to the Board:

- 22 (A) Completed application, which shall contain the following:
- 23 (1) Correctly completed application form, signed by the owner.
- 24 (2) Abutters list, with correct abutters, dated within five days of submittal, and signed by preparer,
25 with accompanying adhesive mailing labels.
- 26 (3) Payment of fees for administration and public notice.
- 27 (4) Three paper copies of all plans, complying with all requirements of § 4.00.
- 28 (5) Documentation that the following applications and correspondence have been submitted:
- 29 (a) Letters to the appropriate Town officials regarding local permits and reviews for issues
30 including but not limited to driveways, water and sewer systems, and safety review.
- 31 (b) Copies of applications for State permits including but not limited to wetlands, septic,
32 driveway, site specific, and underground storage tank.
- 33 (6) The following additional information shall be required for an application regarding a
34 telecommunications facility:
- 35 (a) Written proof that a proposed use/facility complies with FCC regulations on radio frequency
36 (RF) exposure guidelines, and FAA regulations on tower lighting.
- 37 (b) Written proof that an evaluation has taken place, as well as the results of such evaluation,
38 satisfying the requirements of the National Environmental Policy Act (NEPA) further
39 referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental

- 1 Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or
2 EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and
3 the Town's site review process, shall become part of the application requirements.
- 4 (c) Provide an inventory of existing towers that are within the jurisdiction of the Town and those
5 within two miles of the border thereof, including specific information about the location,
6 height, design of each towers, as well as economic and technological feasibility for co-
7 locations on the inventoried towers.
- 8 If the applicant is proposing to build a new tower, the applicant shall submit written evidence
9 demonstrating that no existing permitted tower or structure can accommodate the
10 applicant's proposed antenna. This evidence shall consist of one or more of the following:
- 11 [1] Substantial evidence that no existing permitted towers or structures are located
12 within the geographic area required to meet the applicant's engineering
13 requirements, provided that a description of the geographic area required is also
14 submitted.
- 15 [2] Substantial evidence that existing permitted towers are not of sufficient height
16 to meet the applicant's engineering requirements, and why.
- 17 [3] Substantial evidence that the existing permitted towers or structures do not have
18 sufficient structural strength to support applicant's proposed antenna and
19 related equipment.
- 20 [4] Substantial evidence that applicant's proposed antenna would cause
21 electromagnetic interference with the antenna on the existing permitted towers
22 or structures, or the antenna on the existing towers or structures would cause
23 interference with the applicant's proposed antenna.
- 24 [5] Substantial evidence that the fees, costs, or contractual provisions required by
25 the owner in order to share the existing permitted tower or structure are
26 unreasonable. Costs exceeding new tower development are presumed to be
27 unreasonable.
- 28 [6] Substantial evidence that the applicant can demonstrate other limiting factors
29 that render existing permitted towers and structures unsuitable.
- 30 (d) The applicant proposing to build a new tower shall submit an agreement with the Town that
31 allows for the maximum allowance of co-location upon the new structure. Such statement
32 shall become a Condition to any Approval. This statement shall, at a minimum, require the
33 applicant to supply available co-location for reasonable fees and costs to other
34 telecommunications providers. Failure to provide such an agreement is evidence of the
35 applicant's unwillingness to cooperate with the orderly and well-planned development of
36 the Town and is grounds for denial.
- 37 (e) The applicant shall submit the engineering information detailing the size and coverage
38 required for the facility location. The Planning Board may have this information reviewed by
39 a consultant for verification of any claims made by the applicant regarding technological
40 limitations and feasibility for alternative locations. Cost for this review shall be borne by the
41 applicant in accordance with NH RSA 676:4(g).

- 1 (f) Each applicant for a tower, monopole, or alternative structure shall submit a design certified
2 by a New Hampshire Licensed engineer that the structure has been engineered to
3 accommodate the maximum number and type of all compatible telecommunication media
4 antenna.
- 5 (B) The **Planning** Board will generally use the Checklist for Application Completeness; Major Review
6 Application, provided in § 6.00, to ensure completeness prior to accepting the application. The applicant
7 is encouraged to use this checklist to ensure that the application is complete prior to submittal.
- 8 (C) Time and budget permitting, the **Planning** Board will generally have written reviews of the application
9 prepared by a professional planner and a Professional (Civil) Engineer. Where possible, these written
10 reviews should be prepared and available one week prior to the meeting at which application acceptance
11 will be considered. The reviews will address both application completeness and compliance with
12 applicable laws, regulations and ordinances. Additional reviews may be prepared in the case of
13 applications which take more than one meeting. Applicants may pick up copies of the written reviews at
14 the Town Offices as soon as they are available to the Board.
- 15 (D) **The Planning** Board members should visit the site prior to the meeting to familiarize themselves with
16 the site. The Board may, by motion, require a site visit prior to application approval.

17 **Sec. 2.05. Fees.**

18 In accordance with RSA 676:4,I(g) and RSA 674:44,V, the applicant shall pay the following fees to compensate
19 the Town for its expenses in processing, noticing and reviewing each application:

- 20 (A) Administration:
- 21 (1) Minor Review: \$200.00
- 22 (2) Major Review, one or more of the following shall apply:
- 23 (a) Residential Development:
- 24 (1) Base Fee: \$300.00;
- 25 (2) Per square foot of building floor area: \$0.10
- 26 (b) Commercial or Industrial Development:
- 27 (1) Base Fee: \$300.00; and
- 28 (2) Per square foot of floor space:
- 29 (i) 0—10,000 sq. ft.: \$ 0.05
- 30 (ii) 10,001+ sq. ft.: \$0.10
- 31 (c) Mixed-Use Residential Development:
- 32 (1) Base Fee: \$300.00;
- 33 (2) Per square foot of building floor area: \$0.15.
- 34 (d) Development Without Buildings:
- 35 (1) Base Fee: \$300.00; and
- 36 (2) Per square foot of land disturbance: \$0.02.

- 1 (B) Public Notice:
2 Per newspaper notice: \$250.00
3 Per abutter or other party notified: \$7.00
4 (C) Recording. The applicant shall reimburse the Town the cost of recording at the Rockingham County
5 Registry of Deeds, with specific amounts as set by the Register of Deeds.
6 (D) Other costs incurred by the **Planning** Board in reviewing the application, as limited in § 5.02, shall be
7 passed through to the applicant by the Board unless specifically waived.
8 (Amd. of 10-1999; Amd. of 12-2003; Ord. of 12-13-2022)

9 **Sec. 2.06. Technical Review Committee.**

10 The Technical Review Committee (“TRC”) is hereby established to provide opportunity for Town staff, and
11 representatives from Town boards, as appropriate, to review applications and provide comments directly to
12 applicants and to the Planning Board. The purpose of the TRC meeting is to assist an applicant in preparing a
13 development proposal for the purpose of identifying issues with the focus on rendering the proposed
14 development application technically conforming to the regulations contained herein. The TRC shall consist of
15 representatives from the Department of Planning and Community Development, Code Enforcement, Department
16 of Public Works, Engineering Department, Department of Environmental Services, Police Department, Fire
17 Department, Town consultants, when appropriate, and from other Town boards and commissions, as appropriate.
18 All TRC members shall have a designated alternate available in their absence. The Planning Board may appoint a
19 representative(s) to the TRC at its discretion. The Chair of the TRC shall be the Director of Planning and Community
20 Development.

- 21 (A) Prior to the filing of a major site plan application for Planning Board review, excluding preliminary
22 conceptual consultation (§2.01) and design review applications (§2.02), an application must be submitted
23 to the TRC for review. For minor site plan applications, TRC review is at the discretion of the applicant.
24 (B) In order to be eligible for TRC review, an applicant must submit a development proposal in conformance
25 with standards of §2.04 herein.
26 (C) In the instance that the expertise of an outside consultant is required by the Town during the TRC review
27 process as a result of the complexities of a proposed development project, an applicant shall reimburse
28 the Town, pursuant to § 5.02 herein.
29 (D) ~~When deemed necessary by the chair of the TRC additional meetings of the TRC may be scheduled to~~
30 ~~ensure all aspects of the proposed project are properly analyzed. Upon filing for TRC review, the TRC will~~
31 ~~have 45 days to complete their review of the proposed development unless both the applicant and the~~
32 ~~TRC Chair agree to extend the review period.~~
33 (E) Upon completion of the TRC’s review of an application, a report of its findings shall be submitted to the
34 Planning Board for their consideration during the Board’s review of the application.

35 **Sec. 2.067. Complete application.**

36 The applicant must provide a complete application in order for the **Planning** Board to have authority to
37 approve the application, per RSA 676:4, I(b). Specific requirements are listed in § 2.03, ~~and § 2.04, § 2.06 and Chapter~~
38 ~~32 – Zoning of the Municipal Code of the Town of Newmarket, New Hampshire. In addition to the information that~~
39 ~~the applicant provides, an application shall not be considered complete without a written review from the Code~~

1 ~~Enforcement Officer detailing compliance issues with the Zoning Ordinance.~~ Applications, which appear complete
2 **or substantially complete as determined by the Director of Planning and Community Development,** shall be
3 scheduled on the next available Board agenda for consideration.

4 **Sec. 2.0~~7~~8. Submittal of application materials.**

5 All materials to be submitted to the **Planning** Board for consideration shall be submitted prior to the meeting
6 so that Board members, the public, and staff may have sufficient opportunity to review the application without
7 unnecessarily rushing the review and/or delaying the proceedings of the meeting. The following shall apply:

8 (A) *Application Acceptance.* In accordance with RSA 676:4,I(b), all materials required to constitute a
9 complete application shall be submitted to the Board at least 21 days prior to the meeting at which it
10 will be considered for application acceptance.

11 (B) *Other Public Hearings.* New materials shall be submitted to the Board at least 14 days prior to a meeting
12 when a new public notice is required.

13 (C) *Continued Meetings.* When consideration of an application is continued and new information is required,
14 the Board should specify the deadline for filing this new information in the motion to continue the
15 meeting. Lacking such direction by the Board, all submittals should be provided not less than one day
16 prior to the meeting.

17 (Amend. of 1-24-2017)

18 **Sec. 2.0~~8~~9. Application for other permits/approvals.**

19 The **Planning** Board shall not grant a final approval to an application until all other government permits and
20 approvals are obtained. The only exception to this requirement shall be when State or Federal permits require prior
21 local approval. Applicants are advised to apply early for these other approvals to avoid unnecessary delays in
22 obtaining final Town approval.

23 **Sec. 2.0~~9~~10. Public notice.**

24 Per RSA 676:4,I(d), public notice shall be required for all applications. The public notice shall identify the
25 property owner, the location, and a general description of the proposal.

26 (A) Public notice shall be required for the following:

- 27 (1) Design review meetings;
- 28 (2) Meetings at which an application is considered for acceptance; and
- 29 (3) Meetings at which a public hearing is conducted.

30 (B) Public notice shall be mailed to the applicant, the applicant's authorized representative, any professional
31 (surveyor, engineer, architect, soil scientist) whose stamp and signature appear on any of the plans or
32 other materials submitted as part of the application package, and each abutter at least 10 days prior to
33 the meeting for which the notice is required. Such notification shall be mailed by certified mail.

34 (1) Using the Abutters List form provided in § 6.00 of this Regulation, the applicant shall prepare a list
35 of abutters using Town records no sooner than 5 days prior to the submittal of the application; and

36 (2) The applicant shall provide an adhesive mailing label for each party on the abutters list, including
37 the applicant and authorized representative. The labels shall be no larger than 1" by 2.75" in size.

- 1 (C) Public notice shall be posted at the Town Offices at least 10 days prior to the meeting.
2 (D) Public notice shall be published in a newspaper of general circulation. This notice shall be sent to the
3 newspaper at least 10 days prior to the meeting.
4 (E) Continuation of a meeting or public hearing shall not require new public notice provided that, at the
5 prior meeting or hearing, the **Planning** Board shall state the location, date, and time at which the
6 continued session shall resume per RSA 676:4,1(d). The deadline for the applicant's submittal of new or
7 updated materials should also be specified.

8 **Sec. 2.1~~0~~1. Regional notice.**

9 In accordance with RSA 36:54-58, applications which might have a regional impact shall require additional
10 public notices and additional posting time.

- 11 (A) Determination of potential regional impact shall be found only for applications which qualify for Major
12 Review and which also meet any of the following criteria:
13 (1) Any portion of the property is located within 500 feet of the border of the Town of Newmarket;
14 (2) The application involves 10,000 square feet or more of new non-residential floor space;
15 (3) The proposal involves 20 or more residential units;
16 (4) The proposal involves property located on the shore of Great Bay or the Lamprey River; or
17 (5) Other as the **Planning** Board may reasonably determine.
18 (B) Notice shall be sent by certified mail 14 days in advance of the scheduled public hearing to the Strafford
19 Regional Planning Commission and/or the Rockingham Planning Commission, and to each town
20 reasonably likely to be affected, with each governmental entity to be considered an abutter for purposes
21 of listing on the Abutters List, offering testimony, and computing public notice fees.

22 **Sec. 2.1~~1~~2. Application acceptance.**

23 Before an application is reviewed by the **Planning** Board, it must be accepted by a formal vote of the Board.
24 The applicant shall attend this meeting to ensure that questions can be answered and issues clarified as necessary.
25 Per RSA 676:4,1(b), the Board shall vote to accept the application only upon determination that the application is
26 complete per this Regulation. Upon acceptance, review of the application may proceed. If an application is not
27 accepted, the Board may proceed with Design Review discussions per § 2.02. The Design Review meeting may be
28 continued to another date and time for Application Acceptance without further public notice.

29 **Sec. 2.1~~2~~3. Applicant's presentation.**

30 Following application acceptance, the applicant shall make a brief, general presentation to the **Planning** Board
31 and audience. This presentation should include a brief description of the proposed project and a general description
32 of the design, layout, and so forth, to ensure general familiarity with the application. The applicant should also
33 identify specific issues that they would like to discuss in more detail during deliberation. The applicant is solely
34 responsible for bringing any audiovisual materials or equipment needed. The Chairman shall have sole authority to
35 limit the time taken for this presentation to keep the meeting moving, and applicants should plan on 10 minutes or
36 less for most applications.

1 **Sec. 2.1~~34~~. Public hearing.**

2 The **Planning** Board shall open a public hearing following application acceptance and the applicant's
3 presentation. The purpose shall be to solicit public input, comments, questions and concerns. The Chairman may
4 temporarily suspend public comment during the public hearing so that the Board may deliberate, vote on waivers,
5 and so forth. Before acting on intermediate issues such as waivers, the Board should solicit public input specific to
6 the action beforehand to ensure that the Board has received all relevant information. The public hearing may be
7 continued if additional meetings are necessary, provided that the Board follows the continuation procedures
8 specified in § 2.09(E). Only when all pertinent, new public input is complete shall the Chairman close the public
9 hearing. The applicant shall be responsible for attending the public hearing, including all continuations, to ensure
10 that questions can be answered and issues clarified as needed.

11 **Sec. 2.1~~45~~. Deliberation.**

12 The **Planning** Board shall deliberate as necessary to make its decisions. The deliberation does not necessarily
13 follow the public hearing, and will likely be interspersed with the public hearing. This is the appropriate forum for
14 the applicant and Board to discuss specific issues.

15 **Sec. 2.1~~56~~. Decision.**

16 Pursuant to RSA 676:4,I(c), the **Planning** Board shall issue a decision within ~~90~~ **65** days of application
17 acceptance, subject to time extensions as per RSA 676:4,I(f). Applications, which are not accepted, require no
18 decision. The Board must approve, conditionally approve, or disapprove the application as follows:

19
20 **(A) Prior to Decision. The Planning Board will take no final action on a major site plan application until it**
21 **has received a report evaluating the development proposal from the Technical Review Committee**
22 **unless the Planning Board, provided that the Planning Board is not in conflict RSA 676:4,I(c).**

23 **(B) *Approval.*** The **Planning** Board shall grant approval to an application when the application fully complies
24 with the standards and processes of this Regulation and other applicable laws.

25 **(C) *Conditional Approval.*** The **Planning** Board may grant conditional approval to an application when minor
26 additional action by the applicant will bring the application into full compliance for approval. This may
27 include payment of fees, minor changes in design, and other matters, subject to the requirements of RSA
28 676:4,I(i):

29 (1) Minor plan changes, whether or not imposed by the Board as a result of a public hearing,
30 compliance with which is administrative and which does not involve discretionary judgment; or

31 (2) Conditions which are in themselves administrative and which involve no discretionary judgment
32 on the part of the Board; or

33 (3) Conditions with regard to the applicant's possession of permits and approvals granted by other
34 governmental units.

35 **(D) *Disapproval.*** The **Planning** Board shall disapprove an application when it fails to comply with the standards
36 and/or procedures of this Regulation, for failure to meet reasonable deadlines established by the Board,
37 or for failure to pay fees.

38 (1) If the Board includes the phrase "without prejudice" in the motion to disapprove, it signifies that
39 the application was denied solely for procedural reasons, and that it may be re-submitted to the

1 Board at a later date without design changes, but shall be subject to the codes in effect at the time
2 of the new application. Applications disapproved without this stipulation shall not be considered
3 again by the Board unless the applicant demonstrates that there have been design changes or
4 changes in regulations affecting the application.

5 (2) Conditional Approvals shall be valid for a period of not more than **12 months** ~~six months~~. If the
6 conditions of the approval have not been satisfied within this time, the conditional approval shall
7 automatically lapse. The Planning Board may grant a single six-month extension to accommodate
8 unusual circumstances, but the applicant is required to provide a written request for extension to
9 the Board before the expiration date. The Board shall consider the request at its next regular
10 meeting, and such action shall not require a public hearing.

11 **Sec. 2.1~~6~~7. Notice of decision.**

12 As required by RSA 676:3, within 72 hours of the meeting the **Planning** Board shall issue a Notice of Decision
13 which states the final decision reached by the Board regarding the application.

14 (A) In the case of a conditional approval, the Notice of Decision shall state all conditions to be met for final
15 approval.

16 (1) In the event that the conditions are satisfied, the Board shall issue a supplemental Notice of
17 Decision stating that the application is approved since all conditions have been satisfied, and shall
18 sign and record the plat(s) if applicable.

19 (2) In the event that the conditions are not satisfied, the Board shall issue a supplemental Notice of
20 Decision stating that the application is denied for failure to comply with the conditions of approval
21 in a timely manner.

22 (B) In the case of a disapproval, the Notice of Decision shall state the reasons for denial as required by RSA
23 676:4, I(h) and RSA 676:3, I.

24 **Sec. 2.1~~7~~8. Appeals.**

25 Any person aggrieved by any decision made in the course of applications pursuant to this chapter may appeal
26 as follows:

27 (A) Decisions by the Planning Board based solely upon interpretation of the Zoning Ordinance may be
28 appealed to the Zoning Board of Adjustment or Rockingham County Superior Court, as determined by
29 the provisions of RSA 676:5, III. Appeals to the ZBA must be filed within 20 days after the filing of the
30 Notice of Decision in the Town Offices. Appeals made to Superior Court must be filed as specified in §
31 2.17(B).

32 (B) All other decisions by the Planning Board may be appealed to Rockingham County Superior Court per the
33 provisions of RSA 677:15. The appeal shall be presented to the Court within 30 days after the filing of the
34 Notice of Decision in the Town Offices.

35 (C) The time limit for appeals begins on the day on which the Planning Board decision is filed and first
36 becomes available for public inspection. Per § 2.16, this should occur within 72 hours of the Board's
37 decision.

38 **Sec. 2.1~~8~~9. Revocation of approval.**

39 The Board may act to revoke an approval per the requirements of RSA 676:4-a.

1 **SECTION 5.00. ADMINISTRATION**

2 **Sec. 5.01. Waivers or substitutions.**

3 The **Planning** Board may waive any portion of this regulation in accordance with RSA 674:44,III(e). However,
4 due to the probable violation of the purpose and intent of this regulation it is unlikely that waivers for any portion
5 of §§ 1.00, 2.00, 5.00, or 6.00 will be granted.

6 (A) *Waivers.* The Board may grant a waiver of any section of this Regulation in accordance with the following:

- 7 (1) The applicant shall provide a written request for each waiver. The request shall specify the section
8 to be waived, the extent of the waiver, and the justification. Where multiple waivers are being
9 requested, a separate request shall be provided for each.
- 10 (2) In evaluating the request, the Board may grant the waiver if it finds that, in the opinion of the
11 Board, granting of the waiver:
- 12 (a) Shall not be detrimental to the public health, safety or general welfare;
- 13 (b) Shall not be injurious to other parties; and
- 14 (c) Shall be consistent with the purpose and intent of this Regulation.
- 15 (3) The Board may condition any waiver granted to secure the objectives of this Regulation.

16 (B) *Substitutions.* In the event that an alternative Design Standard (§ 3.00) is provided, the Board may permit
17 substitution for the Town design standard. Such substitution shall be permitted when, in the Board's
18 opinion, the alternative standard is independently and scientifically derived, is generally accepted by the
19 planning community, and would better accomplish the purpose and intent of this Regulation for this
20 case. The request for a substitution shall be made in writing, and a complete copy of the alternative
21 design standard shall be provided to the Town for its records (i.e., provide applicable books, articles,
22 etc.). Substitution shall require a formal motion of the Board, and the minutes of the meeting should
23 indicate the Board's reasoning for future reference. No waiver is required for design standard
24 substitutions.

25 (Amd. of 11-18-1997)

26 **Sec. 5.02. Technical assistance.**

27 In the event that the **Planning Board or Technical Review Committee** requires technical assistance and/or
28 special studies to adequately and properly evaluate an application or perform subsequent inspections, it may secure
29 such professional assistance. This may include technical assistance, special studies, legal review of aspects of the
30 application, which are unique or specific to this case (but excluding general legal advice), and other such assistance.
31 The applicant shall reimburse the Town for the cost of such assistance, but the individual or company engaged shall
32 work for, and report directly to the Town. Though not always the case, the standard practice for the Board at the
33 time of writing is to have a hired planner, and a consulting professional engineer if needed, review all applications
34 submitted.

35 **Sec. 5.03. Signing and amendments to Recording approved plans.**

36 **Prior to the signing of an approved plan, the Director of Planning and Community Development, or designee,**
37 **shall review the plan for compliance with the Planning Board decision. Any revisions to an approved site plan shall**

1 **be submitted to the Department of Planning and Community Development for review. In the event the proposed**
2 **revisions are deemed substantial or not consistent with ~~the intent of~~ the Planning Board's original approval, a**
3 **revised site plan application must be filed with the Planning Board for review and approval. ~~Upon stamping and~~**
4 **~~signing an approved final Major Review plan, the Town shall deliver the signed Mylar copy to the Rockingham County~~**
5 **~~Registry of Deeds to ensure that there is no tampering with the plans prior to recording, and to ensure that there is~~**
6 **~~no delay in recording the plan such that the delay would extend the protection period under RSA 674:39. A signed~~**
7 **~~paper copy of Major Review plans, or a signed Minor Review site sketch, shall be retained in the Town files only.~~**

8 **Sec. 5.04. Financial securities.**

9 Financial securities may be required by the Planning Board where circumstances dictate, but in general are not
10 required for Site Plan Review applications. When required, the applicant shall be required to provide financial
11 securities for site improvements in accordance with the following:

- 12 (A) *Use.* Suitable financial securities shall be provided to ensure that the applicant will complete all work,
13 except street work and utility installation, in accordance with the plans. In lieu of the completion of street
14 work and utility installation, the planning board may require suitable financial security to ensure that the
15 applicant will complete all street work and utility installations in accordance with the plans. The
16 securities, if called by the Town, may be used to stabilize the site, ensure site safety, minimize any
17 adverse impacts on the neighborhood and Town, complete the work, and prepare the as-built plans. In
18 the event that the security is called by the Town, the Planning Board may schedule and hold a public
19 hearing to consider revocation of the approval per the process of RSA 676:4-a. The Board may request
20 suspension of any building permit, withholding or revocation of the Certificate of Occupancy, and/or
21 other appropriate actions until the matter is resolved.
- 22 (B) *Amount.* The amount shall not exceed the sum of: 50% of the cost of all work, excluding the building and
23 site work covered by other financial securities held by other governmental entities (such as for State
24 driveway permits); plus 100% of the cost of all work to be completed after the issuance of the Certificate
25 of Occupancy.
- 26 (C) *Form of Security and Associated Agreements.* The form of financial security, and all associated
27 agreements or stipulations shall be negotiated with the Town Manager. At a minimum, the Town shall
28 accept cash, a joint passbook account, and an irrevocable letter of credit. The Town shall have full access
29 to these securities in the case that the Town must utilize them to secure the purposes of this section.
- 30 (D) *Other Requirements.* The entire amount of the financial security shall be provided up front, and if
31 requested by the applicant, there shall be a provision for reducing the amount of the security as work is
32 completed. The Town shall retain sufficient security at all times to ensure that it can fulfill its purposes.
33 The Town retains the right to apply reasonable cost escalation factors to protect against inflation. The
34 Town retains the right to specify time deadlines for the completion of any or all improvements. The Town
35 retains the right to require a Site Improvement Agreement to document the exact conditions and
36 stipulations of the financial security.

37 (Amd. of 11-18-1997)

38 **Sec. 5.05. Approval required.**

39 Prior to land clearing, site preparation, construction or any other such activity may begin on a site, and before
40 any municipal permit for such activity may be issued, approval under this Regulation is required. All activity on the
41 site shall be in accordance with the approval.

1 **Sec. 5.06. Certificate of Occupancy.**

2 Every approval pursuant to this Regulation is granted subject to the issuance of a Certificate of Occupancy
3 (“CO”) upon completion of building construction and site work. Issuance of the CO shall be the responsibility of the
4 Code Enforcement Officer.

- 5 (A) Use of a newly developed site prior to the issuance of the CO shall be prohibited. Where the use of a site
6 is being changed or expanded, continuation of the existing use of the site shall be permitted as
7 reasonable until the CO is issued for the changed or expanded use.
- 8 (B) The CO may be issued with the condition that certain site improvements be completed at a specified
9 later date where weather or other reasons outside the applicant's control would cause obvious
10 problems. Where the CO is conditioned on subsequent work, the Town may require the applicant to
11 provide financial securities per § 5.04.
- 12 (C) Inspections. Municipal water, sewer and storm water inspections shall be required as specified by the
13 Public Works Director **and Environmental Services Director**. A final site inspection by the Code
14 Enforcement Officer shall be required prior to the issuance of the CO, ~~and where an as-built plan is~~
15 ~~required per the approval, this plan shall be provided prior to the final site inspection.~~

16 **Sec. 5.07. As-built plans.**

17 ~~1. The Board may require~~ **For the purpose of ensuring compliance with an approved site plan and** to accurately
18 document the location of **site improvements and** underground utilities, an as-built ~~S~~ **site P**-plan ~~is required for all~~
19 **major and minor site plan approvals. well as minor site plan approvals in the event new underground drainage**
20 ~~systems, utilities, or both are installed, to ensure that a site is developed in accordance with the approved plans~~
21 ~~and to accurately document the location of underground utilities.~~ All ~~such~~ as-built plans **for major site plan**
22 **approvals** shall meet the current standards as set forth by the N.H. Joint Board of Licensure and the N.H. Land
23 Surveyors Association **and must depict, at a minimum, all on-site utilities, structures, curb cuts, monumentation,**
24 **driveways, and storm water facilities. Minor site plan approvals shall provide at a minimum a sketch of the**
25 **locations of installed underground utilities in addition to photographic evidence of their installation.**

- 26 (A) ~~With respect to ensuring compliance, the Board shall require such plans where the extent and/or~~
27 ~~complexity of site construction or the proximity of the site cause reasonable concern about compliance.~~
28 **Such For the purpose of determining compliance with an approved site plan,** as-built ~~s~~-plans shall be
29 ~~provided to~~ **filed with** the Code Enforcement Officer **and Director of Planning and Community**
30 **Development** prior to the issuance of a Certificate of Occupancy.
- 31 (B) With respect to documentation of underground drainage systems and utilities, all sites which connect to
32 municipal or community utilities, including water, sewer, and stormwater drainage, shall provide as built
33 plans for all buried water, sewer, storm water drainage, electricity, telephone, and other underground
34 pipes, lines and other such items. The as-built plans shall document the location of such pipes and lines
35 from their origin to their connection with municipal, community, or utility company systems.
- 36 (C) All major site plan approvals shall provide as-built data in the form

37 **Sec. 5.08. Enforcement.**

38 The Code Enforcement Officer, or other duly appointed designee of the Town Manager, shall be responsible
39 for enforcement.

40 **Sec. 5.09. Compliance with other codes.**

41 The Site Plan Review Regulations in no way relieve an applicant from compliance with the Zoning Ordinance,
42 the Subdivision Regulations, or any other code adopted by the Town or any other governmental unit. In the event
43 that the requirements of this Regulation are in conflict with the other codes, the more stringent shall apply. This is
44 also required by RSA 676:14.

45 **Sec. 5.10. Saving clause.**

46 If any clause, portion or section of this Regulation is found invalid by a court of competent jurisdiction, this
47 finding shall not invalidate the remainder of this Regulation.

48