

# Town of Newport Zoning Ordinance

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# Town of Newport Zoning Ordinance

## ARTICLE I – GENERAL PROVISIONS

### 1.1. Purpose

This Ordinance is adopted to protect the public health, safety, and welfare of the Town of Newport, New York. More specifically, this Ordinance is intended to:

- Encourage and facilitate the most appropriate use of land throughout the Town to maintain the desired community character.
- Promote orderly economic development and protect the economic stability of existing land uses.
- Conserve the value of property and encourage the most appropriate use of the land throughout the town.
- Designate, regulate, and restrict the location of buildings, structures, and land.
- Regulate and limit the height, number of stories, and size of buildings and other structures.

### 1.2. Title

This Ordinance shall be known as the “Town of Newport Zoning Ordinance.”

### 1.3. Authority

This Ordinance is adopted pursuant to authority conferred by Article 16, Section 261 of the Town Law of the State of New York, being Chapter 634 of the Laws of 1932 as amended.

The provisions of this Ordinance apply to all land, buildings, structures, and uses thereof located within the Town of Newport, unless an exemption is provided by the terms of this Code. The provisions of this Code are the minimum requirements adopted for the promotion of the public health, safety, and welfare of the Town.

#### 1.3.1. Permits Required

No building, structure, mobile home, sign, pool, pond, or fence except operational farm accessory buildings shall be erected, or added to, or replaced or structurally altered, or moved on site, nor shall any excavation or such begin, until a permit therefore has been issued by the Codes Officer. All applications for such permits shall be in accordance with Article 10 of these regulations.

#### 1.3.2. Certificate of Compliance Required

No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a Certificate of Compliance or Certificate of Occupancy shall have been issued by the Codes Officer, stating that the buildings or proposed use thereof complies with the provisions of this ordinance including any permit issued.

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No use shall be changed or extended without a review and approval of the certificate of compliance by the Codes Officer.

The Codes Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having interest.

### **1.3.3. Completion of Existing Buildings and Structures**

Nothing herein shall require any change in construction plans, construction or planned use of any building or structure under construction at the time of enactment of this ordinance, provided such building shall be completed within 1 year from the date of this ordinance or any amendment thereof; and provided further that a permit has been lawfully granted for said construction.

### **1.4. Enforcement**

This ordinance shall be enforced by the Codes Officer or other designated official appointed by the Town Board.

Upon determination that a violation of this ordinance exists, the Codes Officer shall send written notice to the last known owner of record of the property, as determined by the assessment records, informing said owner of the violation of specific provisions of this ordinance and stating that action is to be taken by said owner to resolve such violation per the determination of the Codes Officer so long as it does not exceed 30 days; or proceeding to compel compliance with the ordinance will be instituted.

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## ARTICLE II – DEFINITIONS

### 2.1. General

For the purpose of this ordinance, certain terms or words used herein shall be interpreted or defined as follows:

- The word lot includes the words “plot or parcel.”
- Words used in the present tense include the future tense meaning; words used in the singular number include the plural meaning and the plural the singular. The word “person” also means “corporation” or “company.”
- The word “used” or occupied” when referring to any land or building shall also mean “built” or “arranged” or “designed to be used or occupied.”
- The word “shall” is mandatory and not optional, and shall includes “will.”

### 2.2. Related Regulations

These regulations are intended to complement other local, state, and federal regulations that affect land use. However, where conditions, standards, or requirements imposed by any provision of these regulations are either more restrictive or less restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements, as determined by the Codes Officer, shall govern.

State and Local Regulations that are specifically expected to be applicable in coordination with these regulations and referenced herein include:

1. New York State Uniform Fire Prevention and Building Code (“Uniform Code”) and the State Energy Conservation Construction Code (“Energy Code”).
2. New York General Municipal Law Sections 239-L, M, N (“GML – 239”).
3. New York State Agriculture and Markets Laws and Regulations (“AML”).
4. New York State Agriculture and Markets Law 25-AA (Agricultural Districts).
5. New York State Public Health Law, Section 1120, Part 74 Approval of Realty Subdivisions (“Realty Subdivision”).
6. 6 NYCRR Part 617 State Environmental Quality Review (“SEQR”).
7. New York State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges under Environmental Conservation Law.

### 2.3. Definitions

**ACCESSORY BUILDING:** A building subordinate to the principal building on a lot and used for purposes customarily incidental to those of the main building. Includes any addition to a

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building or mobile home which includes awnings, carports, porches, storage cabinets, and similar appurtenant structures.

**ACCESSORY USE:** A use customarily incidental to the principal use or building and located on the same lot as such use or building.

**AGRICULTURAL:** The use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, silviculture and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

**ALTER, ALTERATIONS:** A change or rearrangement of the structural parts, when referring to a building; also, an enlargement, either in height or in sides or ends or the moving from one position to another.

**APARTMENT HOUSE:** See Dwelling, Multiple Family.

**AREA, BUILDING:** The total areas taken on the horizontal plane at the main grade level of the principal building and all the accessory buildings, excluding uncovered porches, terraces, and steps.

**AREA OF LOT OR SITE:** The total area within the property lines of a site. Lot area does not include that area within a public road ROW.

**BAKERY:** A retail outlet that sells pastries, sweets, bread, and baked goods; may have on-premises dining. Includes confectionery.

**BASEMENT:** A space of full story height partly below grade and having at least half of its clear floor-to-ceiling height above the average grade of the adjoining ground.

**BED AND BREAKFAST:** A private residence that provides up to four guest rooms for nightly rent. The home must be a residence, occupied by the owner, while providing bed and breakfast for a short stay, and have adequate off-street parking.

**BOARDING HOUSE:** Any dwelling in which more than three persons either individually or as families are housed or lodged, except those engaged in farm work, for hire with or without meals.

**BROADCASTING STUDIO:** A building that houses operations for creation and production of radio, television, or other media programming, exclusive of any transmission towers.



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**BUILDING:** Any roofed structure intended for the shelter, enclosure, or housing of persons, property, or animals. When a building is divided into separate parts extending from the ground up, each part so divided is deemed a separate building.

**BUILDING, FRONT LINE OF:** The line of the wall of the building nearest to the front line of the lot, including covered sun porches or parlors whether or not enclosed, but not including steps.

**BUILDING, FLOOR AREA:** The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including basement area devoted to residential use and the area of bays, dormers, roofed porches, and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**BUILDING, HEIGHT OF:** The vertical distance measured from the grade level at the foundation to the highest point of the roof.

**BUILDING, PRINCIPAL:** A building in which is conducted the main or principal use of the lot on which said building is located.

**BUSINESS OR COMMERCIAL:** Pertaining or relating to the sale, exchange, or trade of goods or services where such action is the principal use to which the building or land is devoted. Also means an accessory use of a building or land to an extent which is un-proportionate to the principal use.

**CAMP:** A structure, small building (No Minimum Sq Ft), travel trailer, mobile home, or tent, used specifically for seasonal purposes.

**CAMPGROUND:** A tract of land that is planned and improved for the placement of five or more travel trailers, or five or more tents which are used as temporary living quarters, and which will comply with all existing State, County, and local regulations covering the same.

**CELLAR:** That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building. (See also BASEMENT).

**CLUB:** An organization catering exclusively to members and their guests, or premises and buildings for social, recreational, or athletic purposes and not open to the general public, which are not operated primarily for gain.

**CODES OFFICER, CODES ENFORCEMENT OFFICER:** A person appointed by the Newport Town Board responsible for enforcement of the Zoning Ordinance.

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**COMMERCIAL AMUSEMENT ENTERPRISE:** Any place or activity, open for the enjoyment of the general public, and which is operated for financial gain. Commercial amusement enterprise includes, but is not limited to: amusement park, miniature golf, outdoor theater, go-kart track, batting cage, skating rink, bowling alley, driving range, and rock digging.

**COMMUNITY SEWER & WATER SYSTEM:** A private sewer and water system which serves an entire development but has its service facilities remote from individual housing units.

**CONCENTRATED ANIMAL FEEDING OPERATION (CAFO):** Small, medium, or large (as defined by the EPA) livestock and poultry operations that raise animals in a confined situation. See NYCRR 750-1.2 New York State Pollutant Discharge Elimination System (SPDES).

**DAY CARE CENTER:** A “child day care center,” “group family day care home,” or “family day care home,” as defined by the Social Services Law Sec. 390 subsection (1) (c-e) of the State of New York, and which is duly licensed or registered by the state. Such facilities provide for the care of three (3) or more unrelated children for three (3) or more hours per day.

**DWELLING, SINGLE-FAMILY:** A building designed for year-round occupancy by one family. Same as One-Family Dwelling.

**DWELLING, TWO-FAMILY:** A building designed for year-round occupancy by two families.

**DWELLING, MULTIPLE-FAMILY:** A building designed for year-round occupancy by more than two families, including apartment houses and group houses, but excluding hotels and rooming houses.

**EASEMENT/RIGHT OF WAY:** A right of interest in land owned by another that allows its holder to make a specific limited use or enjoyment of it, such as crossing it, placing utility lines, or accessing a shortcut. It may arise by deed or prescription.

**EDUCATIONAL, RELIGIOUS, OR PHILANTHROPIC INSTITUTION:** Any nonprofit, organization chartered under Section 501(c)(3) of the Internal Revenue Code including preschool, elementary or secondary school, institution of higher education, an institution of vocational education, an active congregation devoted to worship, or community service organization.

**EMPLOYEE COUNT:** For the purposes of this ordinance, the number of employees shall be defined as the maximum number of employees of an establishment that would be working at any one time.

**ENFORCING AGENCY:** The authority, agency, or the political subdivision charged by law with the duty to enforce the provisions of this ordinance.

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**ENVIRONMENTAL ASSESSMENT FORM (EAF):** Standardized forms (long and short versions) used to assess and determine the potential environmental impacts of a project or activity and part of required State Environmental Quality Reviews (SEQR). (See Article 2.2)

**EVENT:** An activity which is a short-term expansion of said property uses or above and beyond said property uses for the entertainment and enjoyment of the public. The event could be charitable or non-charitable in nature.

**EXCAVATION BUSINESS:** A business for the purpose of modifying the landscape to meet user needs including installation of cellars, ponds, or septic systems or grading for lawns and driveways.

**FAMILY:** One or more persons occupying the premises and living as a single housekeeping unit as distinguished from group occupying a boarding house, lodging house, club, fraternity, or hotel.

**FARM:** Means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products, including “Farm Operation,” “Commercial Horse Boarding Operation,” “Timber Operation,” “Compost, Mulch or Other Biomass Crops,” and “Commercial Equine Operation” as defined in AML.

**FARM STAND:** A structure whose principal use is the seasonal display and sale of agricultural products primarily grown on the premises. A farm stand pulled by a truck or tractor may also include a movable wagon or platform that is placed in proximity to the roadway.

**FENCE:** A freestanding structure designed to restrict or prevent movement across a boundary. Fences are constructed for several purposes including:

- Agricultural fencing, to keep livestock in or predators out
- Privacy fencing, to provide privacy
- Temporary fencing, to provide safety and security, and to direct movement, wherever temporary access control is required, especially on buildings and construction sites
- Perimeter fencing, to prevent trespassing or theft and/or to keep children and pets from wandering away
- Decorative fencing, to enhance the appearance of a property, garden, or other landscaping
- Boundary fencing, to demarcate a piece of real property

**FINANCIAL SERVICES:** Establishments primarily engaged in such state regulated businesses as banking, savings, and loans, loan companies and investment companies.

**FISH AND GAME CLUB:** A property used for hunting and fishing activities by members.

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**FOUNDATION:** A permanent structure which is located under the main body of a residence or building which supports and prevents said structure from shifting, settling, or heaving.

**FRONTAGE:** The lot line of a plot or parcel of land which abuts the right-of-way of a public street or road.

**FUNERAL HOME:** See Mortuary.

**GARAGE:** A structure used for the non-commercial storage of motor vehicles as an accessory use.

**GARDEN CENTER:** A business that specializes in the sales of plants and other gardening products. This may include the sales of Christmas trees, pumpkins, and other seasonal items.

**GML – 239:** Herkimer/Oneida County Planning Board requirement for any permit activity occurring within 500 feet of a Municipal Boundary, County Highway, County or State Park, County or State-owned property, and any NYS Ag District. (See Article 2.2)

**GREENHOUSE:** Permanent or temporary structure used for commercial horticulture, aquaculture, or other agricultural production.

**GRADE, FINISHED:** The complete surface of lawns, walks, or roads or the average elevation of the surface of the ground where it abuts the structure. Also called Final Grade.

**GUN CLUB:** A club which includes the legal discharge of firearms.

**HAZARDOUS CHEMICALS:** Solid, liquid, or gaseous substances which pose a potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed, including but not limited to hazardous substances designated by the U.S. Environmental Protection Agency under Section 311 of the Clean Water Act (40 CFR 116).

**HAZARDOUS WASTE:** Chemicals or substances which are physical hazards or health hazards as defined and classified in the State Uniform Fire Prevention and Building Code, Parts 1220 to 1227 of Title 19 of the New York Codes, Rules and Regulations (NYCRR), or in Title 40 of the Code of Federal Regulations (CFR), Part 261.

**HOME OCCUPATION:** Any personal or professional service customarily conducted entirely within a dwelling or accessory building, which use is clearly incidental and secondary to the use of the dwelling purposes and does not change the residential character thereof. Uses with more

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than one person outside the family residence employed, any exterior storage of materials used for the operation, more than one client parking space required, or any stock-in-trade displayed or maintained on the premise is a Home Based Business, not a Home Occupation.

- Home occupation includes artist, baby-sitting, barber, beautician, cooking, drafting, dressmaking, electrical repair, radio and television repair, furniture refinishing, laundering, photography, upholstery, and other trades and businesses of similar nature.
- The use of a home as the administrative office for a business where the sole use is as a mailing address, phone, computer, and paperwork location is allowed as a home occupation.
- Home occupation shall not include animal hospital, commercial stable or kennel, convalescent home, repair of motor vehicles, mortuary, music or dancing instruction to groups, or any use otherwise defined in these regulations.

**HOME BASED BUSINESS:** Any non-residential use of a property in any zone. The primary purpose of Home Based Business is to promote business development within the town, while maintaining the health, welfare, nature and characteristic of the zone and placing a great emphasis on the consideration of the immediate neighbors of the proposed Home Based Business.

- Home Based Business can include day care center, furniture refinishing, upholstery, small contractor, excavation business, light trucking, and other trades and businesses of similar nature.
- Home Based Business sizes are defined as follows:

	<b>SMALL</b>	<b>MEDIUM</b>	<b>LARGE</b>
Number of employees allowed:	2	5	>5
Number of light duty (pickup truck) commercial vehicles allowed:	2	3	>3
Number of heavy duty (GVW of 26,000 lbs. or more) commercial vehicles allowed:	0	1	>1
Number of commercial trailers allowed:	1	3	>3
Number of client/customer visitor space allowed:	1	2	>2

**HOSPITAL:** See Medical Services.

**HOSPITAL, ANIMAL:** An establishment for temporary occupancy by sick or injured animals for the purpose of medical treatment.

**ICE CREAM PARLOR:** A retail outlet that mainly specializes in the sale of but not limited to ice cream.

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**INDUSTRIAL:** The use of buildings or land or both for the purpose of manufacturing or producing, in whole or part, any type of products or goods, for subsequent sale, trade, exchange, or shipment. Includes but is not limited to a dry-cleaning plant.

**JUNK:** The outdoor storage or deposit of any of the following shall constitute junk:

- Two or more junk vehicles.
- One or more junk mobile homes.
- Two or more abandoned or inoperable appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, televisions, computers, and computer peripherals.
- Two or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge, chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.
- Ordinary household or store trash and discarded materials no longer intended or in condition for ordinary use, and any and all tangible personal property no longer intended or in condition for ordinary and customary use.
- Toxic chemicals, hazardous materials, and radioactive materials at levels that could be injurious to human, animal, and biological life, exempting New York State licensed applicators.

**JUNK MOBILE HOME:** Any enclosed dwelling built upon a chassis, motor vehicle, or trailer used or designed to be used for either permanent or temporary living, business, and/or sleeping purposes including motor homes, truck campers, camping trailers, campers, travel trailers, pop-up trailers, tent trailers, and overnight trailers, which is no longer suitable for human habitation or business use.

**JUNK VEHICLE:** A motor vehicle, no longer intended or in condition for legal use on the public highways, racetracks, dirt roads, mines, airports, quarries, construction sites, or farms, or used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles. A vehicle is considered junked when it meets one or more of the following conditions:

- It is unlicensed, non-farm vehicle.
- It is abandoned, wrecked, stored, discarded, dismantled, or partly dismantled.
- It is not in any condition for legal use upon the public highways, racetracks, dirt roads, mines, airports, quarry construction sites, or farms.
- It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.
- With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more

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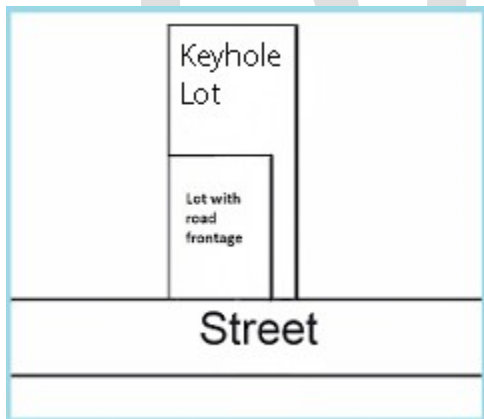
than six (6) months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a “junked motor vehicle.”

- The fact that a motor vehicle does not display a current license plate and registration shall be presumptive evidence that such motor vehicle is unlicensed.

**JUNK YARD:** A lot, land or structure, or part thereof, used for the collecting, storage and sale of waste paper, rags, scrap metal, or discarded material; or for the collecting, dismantling, storage and salvaging of machinery or vehicles, and for the sale of the parts thereof. Includes the area of any parcel of land or water used or intended to be used for the placement, storage, or deposit of junk.

**KENNEL:** A structure used for harboring more than three dogs that are more than six months old.

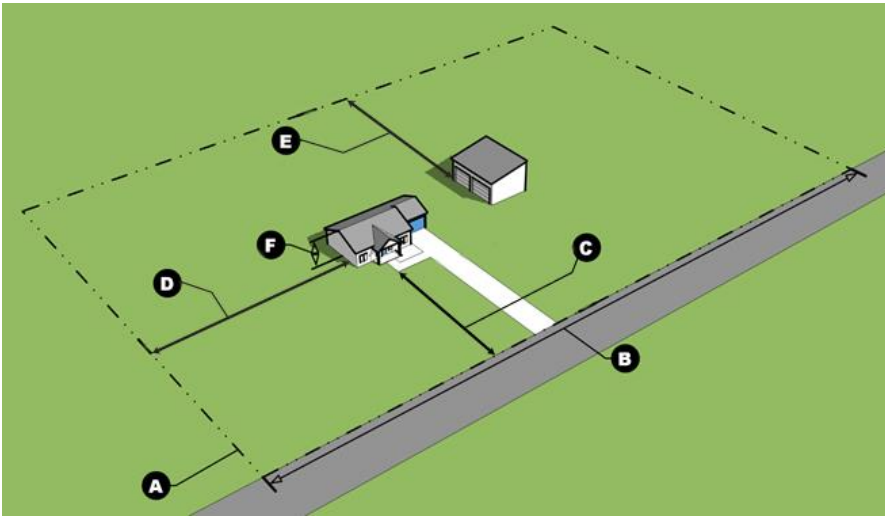
**KEYHOLE LOT:** A lot of (5 Acres Minimum) for uses defined in this ordinance but having limited road frontage. Also known as a “Flag Lot.”



**LIGHT MANUFACTURING:** Any use wherein the primary occupation is the processing, fabrication, converting, altering, assembling or other handling of materials or goods; the operation of which is conducted solely within a building or group of buildings; and which use creates no objectionable odors, fumes, dirt, vibration, glare, or noise beyond the site.

**LOT:** A portion, plot, or parcel of land considered as a unit, devoted to a certain use or occupied by a building(s) united for a common interest. Also, such open land existing and not subject to use at the time of adoption of this ordinance.

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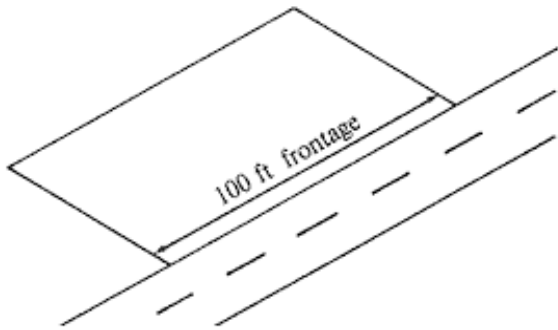


**Figure 2.3.1 - Illustration of Basic Lot Dimension Definitions**

- A. Lot lines
- B. Frontage
- C. Front Yard Setback
- D. Side Yard Setback
- E. Rear Yard Setback
- F. Building Height

**LOT, AREA:** The total area included within lot lines. No part of the area within a public right-of-way may be included in the computation of lot area the front lot line is the edge of the road right-of-way.

**LOT, FRONTAGE:** The dimension of the lot line of a parcel of land where it abuts the right-of-way of a public street or road (front lot line).



**LOT, FRONT YARD:** An open, unoccupied space on the same lot with the main building extending the full width of the lot and situated between the legal road right of way and the front line of the building projected to the side lines of the lot.

**LOT, REAR YARD:** An open, unoccupied space on the same lot with the main building, open and unoccupied except for accessory building, if any, extending the full width of the lot and located between the rear line of the main building and the rear line of the lot.

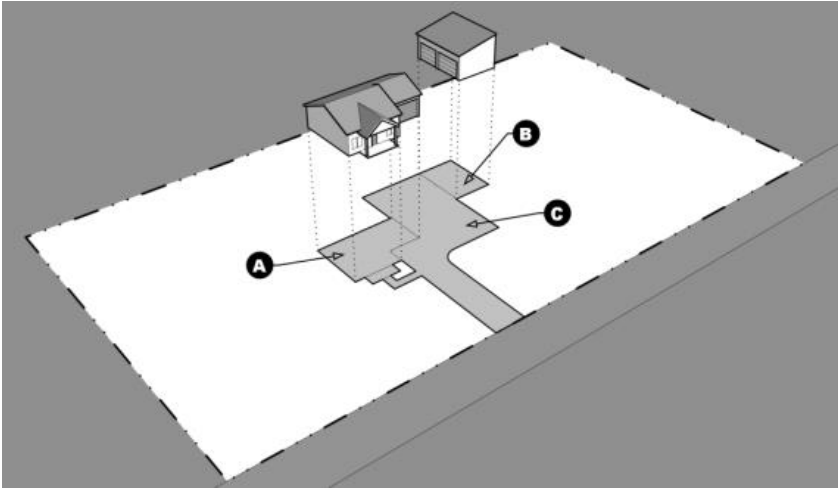
**LOT, SIDE YARD:** An open unoccupied space on the same lot with the main building, located between the side-lines of the main buildings and the adjacent lot side-lines, and extending from the front yard to the rear yard.



## Town of Newport Zoning Ordinance

**LOT, CORNER:** A parcel of land at the junction of and fronting on two or more intersecting streets, or roads so as to form an interior angle of 135 degrees or less.

**LOT COVERAGE:** The lot coverage includes the total ground coverage of all buildings, pavement, and accessory structures including but not limited to gazebos, decks, patios, walks, pools, and telecommunications or energy equipment.



**LOT, DEPTH OF:** The mean horizontal distance between the front and rear lot lines, measures in the direction of the side lines of the lot frontage.

**LOT, LINES:** Any line or lines dividing one lot from another lot or from a street.

**LOT, THROUGH:** A parcel of land fronting on two or more streets or roads that is not a corner lot.

**LOT, WIDTH OF:** The width of the lot measured at right angles to the lot depth at the front yard specified for the zone.

**LOT, UNDERSIZED:** Any legally recorded lot whose area and/or width and/or depth and/or highway frontage is/are less than the minimum requirements specified herein for the zone in which said lot is located. Same as Non-conforming lot.

**MANUFACTURING:** Any process whereby the nature, size, or shape of articles, minerals, or raw or processed materials is changed, or where such articles, minerals, or raw materials are assembled. Includes printing or publishing plant.

**MEDICAL SERVICES:** Establishments primarily engaged the diagnosis and medical or surgical care of human sickness or injuries. Includes clinics and medical offices.

## Town of Newport Zoning Ordinance

**MINE:** Any area excavated for the purpose of mining takes place; including all haulage-ways and all equipment above, on or below the surface of the ground used in connection with such excavation.

**MINING:** The extraction of more than one hundred (100) cubic yards of overburden or minerals from the earth but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit. The term “mining” shall include the extraction or removal of minerals from their original location and/or the washing, cleaning, crushing, screening, stockpiling, or loading of the minerals. Includes Commercial Quarrying.

- Includes the digging or drilling of a well for the purposes of exploring for, developing, or producing natural gas, petroleum or other subsurface hydrocarbons.

**MOBILE HOME, SINGLE-WIDE:** A factory finished mobile dwelling unit designed and built on a frame according to HUD standards. The finished unit shall include wheels which are used to tow the home over the highway. The structure shall continue to be classified as a mobile home even if a pitched roof is added after it leaves the factory. Any unit manufactured after January 15, 1974, must bear a HUD seal.

**MOBILE HOME LOT:** A parcel of land for the placement of a single mobile home and the exclusive use of its occupants.

**HOME PARK (OR COURT):** A parcel of land which has been planned and improved for the placement of two or more mobile homes for non-transient use.

**MOBILE HOME STAND:** The part of an individual lot which has been reserved for the placement of the mobile home, appurtenant structures or additions.

**MODULAR, DOUBLE-WIDE, OR SECTIONAL:** A factory-built home, made of sections that comply with requirements of the International Building Code combined with NYS Enhancements. Each section or module is built with construction materials and techniques compatible to a stick-built house. Sections or modules are transported to the building site, then fastened together. Considered the same as single-family dwelling.

**MOTEL:** A building or group of buildings, whether detached or in connected units, used as individual sleeping units designed primarily for travelers.

**MORTUARY:** Funeral home, undertaker business, or other place where dead bodies are kept before burial or cremation.

## Town of Newport Zoning Ordinance

**NON-COMMERCIAL VEHICLE:** Any vehicle that is used primarily for personal use, rather than primarily used in the conduct of a business.

**NON-CONFORMING BUILDING:** A building or structure which does not conform with the regulations prescribed for in the zone where it is located. However, said unit lawfully existed at the time of enactment or amendment of this ordinance.

**NON-CONFORMING LOT:** Any lot which does not conform with the minimum area or dimensions required in the zone in which it is situated or with the characteristics normally required of lots in the zone where located.

**NON-CONFORMING USE:** A building, structure, or use of land lawfully existing at the time of enactment of this ordinance, and which does not conform to the regulations of the zone in which it is situated.

**NURSING HOME, CONVALESCENT HOME, OR HOME FOR THE AGED:** A building used for accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished, or for accommodation and care of persons of advanced age.

**NURSERY:** Facilities for the use of growing and selling plants, such as vegetables, flowers, young trees, shrubs, etc.

**OUTDOOR RECREATION:** A lot, tract, or development site designated for private use for active and/or passive recreation; includes golf courses, playgrounds, sports fields, swimming areas, and hiking trails.

**PARKING SPACE:** The area required for parking one automobile, normally regarded as being an area 9 feet wide and 20 feet long, exclusive of driveways and passageways thereto, and held to be a minimum by this ordinance.

**PERSON:** Any individual, firm, trust, partnership, public or private association, or corporation.

**PERSONAL SERVICES:** Any use wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. For the purpose of this ordinance, personal services shall include, but are not limited to, barber shop, beauty parlor, hairdresser, shoe repair, laundry, laundromat, launderette, dry cleaner, photographic studio, and businesses providing similar services of a personal nature. Personal services do not include offices of physicians, dentists, and veterinarians, or dry-cleaning plants.

**PLAT:** Any map, plan or chart, indicating the location and boundaries of individual properties.

## Town of Newport Zoning Ordinance

**PLOT:** A parcel of land consisting of one or more lots or portions thereof which is described by reference to a recorded plat; considered the same as “LOT.”

**POND:** A small body of still water formed naturally or by hollowing or embanking. Maximum embankment height over six feet and impounding capacity more than one million gallons must obtain NYS/DEC construction permits. For pond permitting requirements, see Herkimer County Soil and Water Conservation.

**PORTABLE TEMPORARY STORAGE CONTAINER:** Any container, storage unit, or other portable structure that can be or is used for the storage of any kind, and which is not an accessory building or shed complying with all building codes and land use requirements. A portable temporary storage container shall also include any enclosed trailer, or junk vehicle, when used for the storage of property.

**PRIVY:** Refers to a non-waterborne system facility or structure provided for the storage or disposal of human excreta without water carriage.

**PROFESSIONAL OR BUSINESS OFFICE:** Any establishment used for management or administrative offices for public, private, or government agencies or to provide services of a professional or technical nature. For the purpose of this ordinance, professional offices shall include, but are not limited to, administrative offices, agencies, sales offices, legal services, real estate, architecture/engineering, physicians, dentists, and veterinarians. Includes Municipal Building.

**PROJECT SITE:** Refers to the total area developed by a project, or disturbed during such development.

**PUBLIC SEWER & WATER SYSTEM:** Refers to a system which serves an entire development but has its service facilities remote from individual housing units, usually in the form of a municipally operated utility system.

**PUBLIC STREET OR ROAD:** A public way which affords principle means of access to abutting properties.

**PUBLIC PARK:** A lot, tract, or development site designated and used by the public for active and/or passive recreation; includes playgrounds sports fields, and public swimming pool facilities.

## Town of Newport Zoning Ordinance

**PUBLIC UTILITY STATION:** Includes substations, switchyards, regulating stations, and other transmission and distribution facilities not located within the public ROW or similar linear easement and not meeting the definition of Tower. Offices, operations, storage, and other non-distribution facilities of cable, gas, electricity, water, sewage, and telephone (including cellular telephone facilities), service companies shall be considered to be Business Office or other use applicable to comparable non-public utility operation.

**RESTAURANT/DRIVE-IN:** Any establishment, however designated, at which food is sold for consumption on or off the premises to patrons seated within an enclosed building. Includes diners. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall be considered an accessory use and not a restaurant.

**RETAIL STORE, SHOP:** A business that purchases products/goods at wholesale to then provides these said products/goods for resale to the public at a profit. Includes non-motorized recreational vehicle sales and service (bicycles, kayaks, canoes, floats).

**RIGHT-OF-WAY:** The area, either public or private, over which the right of passage exists.

**ROOMING HOUSE:** (See Boarding House)

**SAWMILL:** Any sawmill used for milling timber into useable lumber.

**SAWMILL, COMMERCIAL:** An operation for the purpose of purchasing timber/logs for processing into lumber/building materials and then selling said lumber/building materials to the public. Includes processing of firewood for sale or as a service.

	<b>SMALL</b>	<b>MEDIUM</b>	<b>LARGE</b>
Number of employees allowed:	2	5	>5
Number of light duty (pickup truck) commercial vehicles allowed:	2	3	>3
Number of heavy duty (GVW of 26,000 lbs. or more) commercial vehicles allowed:	0	1	>1
Number of commercial trailers allowed:	1	3	>3
Number of client/customer visitor space allowed:	1	2	>2

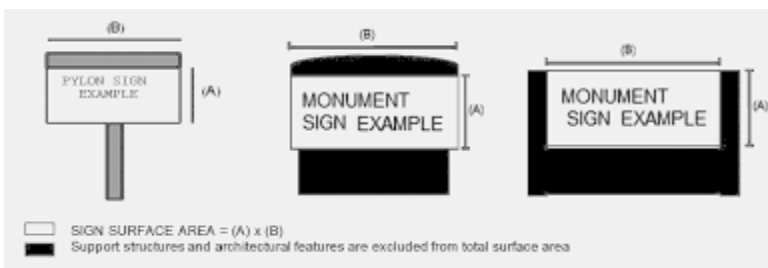
## Town of Newport Zoning Ordinance

**SERVICE BUILDING:** A structure housing a toilet, lavatory and/or such other facilities as may be required by this ordinance. Allowed as an accessory use at a campground.

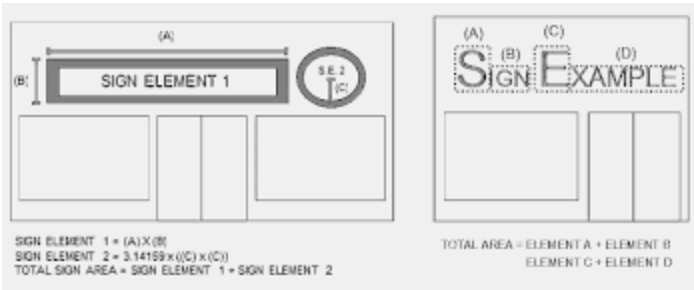
**SHOPPING CENTER:** A complex with a collection of retail, office, and service establishments which is planned and developed as a unit.

**SIGN:** Any inscribed surface, pattern of artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any business, activity, object for sale or lease, person, or place, or to bear any kind of message. The meaning of "sign" shall not include any sign erected by the federal, state, county, town, government or any department or agency thereof, any poster placed temporarily to advertise a civic event, or an event sponsored by a house of worship, school, library, museum, social club, or society, or any patriotic flag or banner not used for commercial advertising purposes. The meaning of "sign" shall also not include any placard less than 3 square feet that is used simply to mark property boundaries, give directions regarding roads or trails, exclude hunting, fishing, or other activities, warn of any hazard or condition, denote the name and address of the occupants of the premises on which the sign is located, or advertise the availability of the premises or some portion thereof for sale or lease.

**SIGN AREA:** The total area of all faces or surfaces of a sign anywhere upon which writing or any illustrative, emblematic, or other artistic or expressive matter appears, or, in cases where writing or illustrative, emblematic, or other artistic or expressive matter is not set against any face or surface, the total area within a single continuous rectangular, perimeter enclosing the extreme limits of such writing or illustrative, emblematic, or other artistic or expressive matter. The sign area of a sign having more than one face or surface on which writing or illustrative, emblematic, or other artistic or expressive matter appears shall be the total area of all such faces or surfaces; but if a sign consists of two such faces or surfaces placed back-to-back, the sign area of the side having the greater sign area shall constitute the total sign area. The sign area of a group of connected or related signs shall be the sum of the sign areas of the signs belonging to it.



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**SIGN, FLASHING:** A “flashing sign” is any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color when such sign is in use. For the purpose of this ordinance, any revolving sign shall be considered a “flashing sign.”

**SIGN, TEMPORARY:** Any for sale or for rent sign, or any sign announcing an event which is removed within thirty (30) days of its placement.

**SLAUGHTERHOUSE, COMMERCIAL:** A place where animals are butchered for the market; an abattoir.

**SPECIAL USE:** A use, which is deemed allowable within a given zone, but which is potentially incompatible with other uses and is therefore subject to special standards and conditions set forth for such use subject to approval by the Planning Board.

**SMALL WIRELESS FACILITY (5G):** Equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a Communications Network and that meets both of the following qualifications: (1) each Antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and (2) all other wireless equipment associated with the Antenna, including the Provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume.

**SOLAR ENERGY SYSTEMS AND FACILITIES:** A system of components and subsystems required to convert solar energy into electric energy and/or heat suitable for use. Components include, but are not limited to, Solar Panels and Solar Energy Equipment. Solar Energy Systems are classified as follows for the purpose of these regulations:

**a. Roof-Mounted Solar Energy System**

A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite consumption. This type of system shall comply with the requirements of section 7.11.2 Roof and Building Mounted Solar Energy Systems. Solar Energy Systems located on the roof that generate more than 110% of the electricity expected to be consumed on the site over a 12-month period shall be subject to

## Town of Newport Zoning Ordinance

requirements of both section 7.11.4 Solar Energy Facility and section 7.11.2. Roof and Building Mounted Solar Energy Systems.

**b. Building-Mounted Solar Energy System**

A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public. This type of system shall comply with the requirements of section 7.11.2. Roof and Building Mounted Solar Energy Systems.

**c. Building-Integrated Solar Energy System**

A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption. This type of system shall comply with the requirements of section 7.11.2. Roof and Building Mounted Solar Energy Systems.

**d. Ground-Mounted Solar Energy System**

A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption. Ground-Mounted Solar Energy Systems up to 2,000 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months shall be considered accessory structures under these regulations and shall comply with the requirements of section 7.11.3. Ground Mounted Solar Energy Systems.

**e. Solar Energy Facility**

Any Solar Energy System that does not clearly fall within one of the categories above shall be considered a Solar Energy Facility and shall be considered a primary use subject to the requirements of section 7.11.4. Solar Energy Facility.

**STABLE, PRIVATE:** Accessory building in which horses are kept for private use and not for hire or sale.

**STABLE, RIDING/RIDING CLUB:** Business for the purpose of providing horse riding training and services. Includes Stable used to keep horses for remuneration, hire or sale.

**STORY:** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.



## Town of Newport Zoning Ordinance

**STORY, HALF:** That part of a building between a pitched roof and the uppermost full story and having a floor area at least half as large as the floor below. Space with less than five feet clear headroom shall not be considered as floor area.

**STRUCTURE:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**STRUCTURAL ALTERATION:** Any change in the supporting members of a building, or any substantial change in the roof.

**TOWER:** A building or structure typically higher than its diameter and high relative to its surroundings that may stand apart. Includes radio tower, transmitting or receiving antenna, cell tower, water tower, 5G, and similar structures.

**TRAVEL TRAILER:** A mobile unit designed for camping, recreational travel, or vacation use only, which is equipped with a chassis and provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment.

**TRAVEL TRAILER CAMP, OR PARK:** (See Campground)

**UNIT:** A house, apartment, mobile home, cabin, camp, or cottage designed for single family use.

**VEHICLE FILLING STATION:** Any area of land including structures thereon, used or designed to be used to supply motor vehicles with gasoline, electricity, oil, or other fuel.

**VEHICLE REPAIR SHOP:** Any area for automotive, farm equipment, or other motor vehicle servicing, lubricating, and repair, including frame or body repairs or alterations or painting, but not including salvaging of such vehicles

**VEHICLE SALES AND RENTAL:** Any area for motor vehicle sales or rental including accessory services such as repair. Motor vehicles include two or more DMV licensed on-road vehicles, boat, farm implements, and motorized recreational vehicles.

**WASTE MATERIAL:** Material residue from production processes. Includes construction debris, manure, slab wood from cutup logs, old silage, old hay and etc. Does not include household wastes, petroleum wastes, used tires, or other hazardous materials.

**WIND POWER GENERATING FACILITY, LARGE:** A wind conversion facility consisting of wind turbines, towers, and associated control or conversion electronics which has a rated capacity of more than 100 kW, and where electrical power is transferred to a transmission system for distribution to customers rather than for use on the site.

## Town of Newport Zoning Ordinance

**WIND POWER GENERATING FACILITY, SMALL:** A wind conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce on-site consumption of utility power.

**ZONE:** Areas for which use regulations apply.

**ZONING PERMIT:** A written document issued by the Zoning Officer allowing a person to construct, operate and maintain such development under the provisions of this ordinance.

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# Town of Newport Zoning Ordinance

## ARTICLE III - ZONES AND BOUNDARIES

### 3.1. Establishment of Zones

For the purpose of this ordinance, the Town of Newport is divided into the following types or classes of current or future Zones: (Note: Residential Zones have a depth of 500 feet from highway centerline unless otherwise indicated).

- R-1 Residential Zone – As shown on official map
- R-2 Residential Zone - As shown on official map
- R-M Mobile Home Zone - As shown on official map
- A Agricultural Zone - As shown on official map
- B-1 Business Zone - As shown on official map
- B-2 Special Business Zone - As shown on official map
- B-P Planned Business Zone - As shown on official map
- R-P Residential Planned Zone - As shown on official map

Said Zones are bounded and defined as shown on a map entitled “Zoning Map of the Town of Newport, Herkimer County, New York,” hereinafter called the “Zoning Map,” adopted by the Town Board and certified by the Town Clerk which accompanies and which, with all explanatory matter thereon is hereby made a part of this ordinance.

The official zoning map, this ordinance, and associated application forms are available on the Town of Newport website.

### 3.2. Interpretation of Zone Boundaries

The following rules shall apply to determine the boundaries of the Zones shown on the zoning map:

- Where Zone boundaries follow streets or highways, the centerlines of such streets and highways shall be considered the Zone boundaries.
- Where Zone boundaries intersect lot lines, such lot lines can be considered the Zone boundaries.
- Where Zone boundaries on the zoning map follow natural routes such as streams, etc., the center of such natural routes shall be considered to be the Zone boundaries.
- Where Zone boundaries are indicated as parallel to streets or highways they shall be construed as being parallel thereto and at such distances therefrom as indicated in figures on the appropriate map, or, if no such figures appear, then by measurement of the map scale.
- Where a Zone boundary line divides a lot in one ownership at the time of adoption of said Zone line, the regulations for the less restricted portion of such lot shall extend a maximum of

## Town of Newport Zoning Ordinance

50 feet into the more restricted portion provided the lot has frontage on a street in the less restricted Zone.

- The R1 Zone is classified as the most restricted Zone in the Town of Newport followed by R2, RM, A, B1, and B2 in this sequence with a B2 Zone being the least restricted.
- In case of dispute as to the exact location of a Zone boundary, the decision of the ZBA is final.

### 3.3. Application of Regulations

Except as otherwise provided elsewhere in this ordinance:

- No building or structure shall be erected, constructed, reconstructed, or altered, and no land or building or part thereof shall be used, for any purpose or in any manner except as permitted for the zone in which such building or land is located.
- No building or structure shall be erected, constructed, reconstructed, or altered, nor shall any open space surrounding any building be encroached upon or reduced in any way, except in accordance with the yard, lot area and building location. regulations of this ordinance for the zone in which such building is or shall be located; or where such open space or land is located.
- No yard or other open space surrounding any building located in conformance with this regulation shall be considered as providing the requisite yard or open space area for another building. Likewise, no yard or open space on one lot shall be considered as providing a required yard or open space for a separately owned building on any other lot.
- These regulations do not apply to agricultural uses specifically regulated and allowed under New York State Agriculture and Markets Laws and Regulations.

# Town of Newport Zoning Ordinance

## ARTICLE IV - USE REGULATIONS

### 4.1. R-1 Residential Zone

In the R-1 Residential Zone, the following uses are permitted, subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
<b>R-1 Residential</b>										
Single Family Dwelling	P	2	250	20	2 1/2	35	50	50	50	
Home Occupation	P	Same as principle use								R1-1
Bed and Breakfast	P	2	250	20	2 1/2	35	50	50	50	
Educational, Religious, or Philanthropic Institutions	P	3	350	25	2 1/2	35	100	100	100	
Fire Station and Municipal Buildings	P	2	250	20	2 1/2	35	50	50	50	
Medical Services	P	3	350	25	2 1/2	35	100	100	100	
Nursing or convalescent home	P	3	350	25	2 1/2	35	100	100	100	
Outdoor Recreation	P	10	350	NA	2 1/2	35	50	50	50	
Public Park	P	3	350	NA	2 1/2	35	100	100	100	
Accessory Uses	P	Same as principle use								
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4		N/A	10	10	
Key Hole Lot, Dwelling	S	5	30	20	2 1/2	35	50	50	50	
Home Based Business, Small	P	2	250	20	2 1/2	35	100	100	100	R1-1
Solar Energy System Roof and Building Mounted	P	Same as principle use			See Article 7.11.1 & 2		N/A	10	10	
Solar Energy System Ground Mounted	S	By Special Use Permit See Article 7.11.3								
Small Wireless/5G	S	By Special Use Permit								

## Town of Newport Zoning Ordinance

Note R1-1: Specifically excluded is the parking of more than one commercial vehicle on a residential lot.

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## Town of Newport Zoning Ordinance

### 4.2. R-2 Residential Zone

In the R-2 Residential Zone, the following uses are permitted, subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes	
<b>R-2 Residential</b>											
All Uses as permitted in the R-1 Residential Zone											
Multiple Dwelling of 2, 3, or 4 units	P	2 Min. acre, 1 acre Per Unit	250	20	2 1/2	35	50	50	50		
Home Based Business, Small	P	2	250	20	2 1/2	35	100	100	100		
Accessory Uses	P	Same as principle use									
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4		N/A	10	10		
Ice cream parlors	S	By Special Use Permit									
Garden Center	S	By Special Use Permit									
Nursery	S	By Special Use Permit									
Personal Services	S	By Special Use Permit									
Professional or Business Office	S	By Special Use Permit									
Restaurant	S	By Special Use Permit									
Retail Store	S	By Special Use Permit									R2-1
Riding Stable	S	By Special Use Permit									
Home Based Business, Medium	S	2	By Special Use Permit								
Small Wireless/5G	S	By Special Use Permit									

Note R2-1: Vehicle Filling Station allowed as an accessory use.

## Town of Newport Zoning Ordinance

### 4.3. R-M Mobile Home Residential Zone

In the R-M Mobile Home Residential Zone the following uses are permitted, subject to all regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
<b>R-M Mobile Home Residential</b>										
Single Family dwelling	P	1	150	20	2 1/2	35	50	30	30	
Home Occupation	P	Same as principle use								
Mobile Home	P	1	150	20	1	15	50	30	30	
Public Park	P	1	150	N/A	1	15	50	30	30	
Accessory Uses	P	Same as principle use								
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4		N/A	10	10	
Solar Energy System Roof and Building Mounted	P	Same as principle use			See Article 7.11.1 & 2		N/A	10	10	
All Special Uses as permitted in the R-1 and R-2 Residential Zones by Special Use Permit										
Home-Based Business, Small	P	1	150	20	2 1/2	35	50	30	30	



## Town of Newport Zoning Ordinance

### 4.4. A - Agricultural Zone

In the A-Agricultural Zone the following uses are permitted subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
<b>A Agricultural</b>										
All uses as permitted in the R-1 and R-2 Residential Zones										
Agriculture, Greenhouse, and Farm Stand	P	2	250	N/A	NA	NA	50	50	50	A-2
Agriculture, CAFO	S	Per EPA Guidelines for Size and Permitting								
Home Occupation	P	Same as principle use								
Bed and Breakfast	P	2	250	20	2 1/2	35	50	50	50	
Boarding house	P	2	250	20	2 1/2	35	50	50	50	
Camp	P	2	Easement	20	2 1/2	35	300	50	50	
Dog Kennel	P	5	Easement	N/A	2	30	100	100	100	
Fish and Game Club	S	By Special Use Permit								
Gun Club	S	By Special Use Permit								
Outdoor Recreation	P	2	250	20	2	30	50	50	50	
Public Park	P	2	250	20	2	30	50	50	50	
Commercial Sawmill, Small	P	5	150	20	2 1/2	35	100	100	100	
Accessory Uses	P	Same as principle use								
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Section 5.4		N/A	10	10	
Agriculture Mobile Home	P	N/A	N/A	N/A	N/A	N/A	50	50	50	A-1
Campground	S	By Special Use Permit								
Commercial Sawmill, Medium and Large	S	By Special Use Permit								
Public Utility Station	S	By Special Use Permit								
Broadcasting Studio	S	By Special Use Permit								

## Town of Newport Zoning Ordinance

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
Commercial Slaughterhouse	S		By Special Use Permit							
Solar Energy Facility	S			By Special Use Permit						A-2 & A-3
Tower	S		By Special Use Permit, Also Sections 5.2 and 5.3							
Windmill Farm	S		By Special Use Permit							
Home Based Business, Large	S		By Special Use Permit			50	100	100		

Note A-1: One mobile home may be located upon a farm, for occupancy by a person primarily engaged as hired help for the farm operation. The mobile home shall not be located on a separate lot and shall comply with other set back and yard requirements of this ordinance for a one family dwelling. Such mobile home shall be removed if unused for a period of six consecutive months.

Note A-2: Solar Energy Facilities must be at least 500' from non-participating occupied residences.

Note A-3: The total combined acreage for all Solar Energy Facilities in the Town of Newport may not exceed 750 acres.

## Town of Newport Zoning Ordinance

### 4.5. B-1 Business Zone

In the B-1 Business Zone the following uses are permitted, subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
<b>B-1 Business</b>										
Bakery	P	1	150	30	2	35	25	25	50	
Campground	P	6	250	50	2	35	50	50	50	
Commercial Amusement	P	4	250	50	2	35	50	50	50	
Financial Services	P	1	150	25	2	35	25	10	25	
Industrial, Light Manufacturing	P	1	150	30	2	35	25	25	50	
Mortuary	P	1	150	30	2	35	25	25	50	
Motel	P	2	250	30	2	35	40	10	25	
Multiple family dwelling	P	2 Min., 1 Per Unit	250	20	2 1/2	35	50	50	50	B1-1
Municipal Building	P	1	150	25	2	35	40	10	25	
Personal Services	P	1	150	25	2	35	25	10	25	
Professional or Business Office	P	1	150	25	2	35	40	10	25	
Restaurant	P	2	250	30	2	35	40	10	25	
Retail Store	P	1	150	30	2	35	25	25	50	
Vehicle Filling Station and or Repair Shop	P	2	250	30	2	35	25	25	50	
Vehicle Sales or Rental	P	1	150	30	2	35	25	25	50	
Accessory Uses	P	Same as principle use								
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4		N/A	10	10	
Solar Energy System Roof and Building Mounted	P	Same as principle use			See Article 7.11.1 & 2		N/A	10	10	
Solar Energy System Ground Mounted	S	By Special Use Permit See Article 7.11.3								

## Town of Newport Zoning Ordinance

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
Fish and Game/Gun Club	S		By Special Use Permit							
Public Utility Station	S		By Special Use Permit							

Note B1-1: Home Occupation allowed as an accessory use.

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## Town of Newport Zoning Ordinance

### 4.6. B-2 Special Business Zone

In the B-2 Special Business Zone, the following uses are permitted, subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes	
<b>B-2 Business</b>											
All Uses as permitted in the B-1 Business Zone											
Accessory Uses	P	Same as principle use									
Accessory Buildings (Rear Yard Only)	P	Same as principle use			See Article 5.4	N/A	10	10			
Manufacturing	S		By Special Use Permit								
Mining	S		By Special Use Permit								Article 7.8

Note B2-1: Does not include outdoor storage of vehicles or equipment not in operating condition.

## Town of Newport Zoning Ordinance

### 4.7. B-P - Planned Business Zone

Any Planned Business Zone shall have a highway frontage of 400 feet and comprise a minimum at least 5 acres. Application for the creation of a B-P Zone is described in Article 10.5.

In the B-P Planned Business Zone the following uses are permitted, subject to regulations set forth in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes
<b>B-P Planned Business</b>										
Financial Services	S	1		30	By Special Use Permit		50	50	50	
Industrial	S	1		30	By Special Use Permit		50	50	50	
Light manufacturing	S	1		30	By Special Use Permit		50	50	50	
Motel	S	1		30	By Special Use Permit		50	50	50	
Professional or Business Office	S	1		30	By Special Use Permit		50	50	50	
Restaurant	S	1		30	By Special Use Permit		50	50	50	
Retail Store	S	1		30	By Special Use Permit		50	50	50	
Shopping center	S	1		30	By Special Use Permit		50	50	50	
Vehicle Filling Station and or Repair Shop	S	1		30	By Special Use Permit		50	50	50	
Non-Residential Uses not prohibited in Article 7.11	S	1		30	By Special Use Permit		50	50	50	
Accessory Uses	P	Same as principle use								
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4	N/A	10	10		
Solar Energy System Roof or Building Mounted	P	Same as principle use			See Article 7.11.1 & 2	N/A	10	10		
Solar Energy System Ground Mounted	S	Same as principle use			By Special Use Permit See Article 7.11.3					

## Town of Newport Zoning Ordinance

### 4.8. R-P Planned Residential Zone

Any Planned Residential Zone shall comprise a minimum at least 10 acres with sufficient highway access as determined during plan review. Application for establishment of a Planned Residential Zone is described in Article 10.5.

In the R-P Planned Residential Zone the following uses are permitted, subject to regulations set forth elsewhere in this ordinance:

Use	Permitted (P) or Special Use Permit (S)	Min. Lot Size (Acres)	Min. Road Frontage (Feet)	Maximum Lot Coverage (Percent)	Max. Bldg. Height (Stories)	Max. Bldg. Height (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Notes	
<b>R-P Planned Residential</b>											
Single Family dwelling	Permitted Use Once Parcels Approved during R-P Zoning			15	2 1/2	35	50	50	50		
Two Family dwelling	Permitted Use Once Parcels Approved during R-P Zoning			15	2 1/2	35	50	50	50		
Multiple Family dwelling	Permitted Use Once Parcels Approved during R-P Zoning			20	4	45	50	50	50		
Outdoor Recreation	Permitted Use Once Parcels Approved during R-P Zoning										
Public Park	Permitted Use Once Parcels Approved during R-P Zoning										
Home Occupation	P	Same as principle use									
Accessory Uses	P	Same as principle use									
Accessory Buildings (rear Yard Only)	P	Same as principle use			See Article 5.4		N/A	10	10		
Solar Energy System Roof or Building Mounted	P	Same as principle use			See 7.11.1 & 2		N/A	10	10		
Solar Energy System Ground Mounted	S	By Special Use Permit See 7.11.3									
Home Based Business, Small	S	1	By Special Use Permit								

# Town of Newport Zoning Ordinance

## ARTICLE V - AREA AND HEIGHT REGULATIONS

### 5.1. Lots, Yards and Building Regulations

Regulations governing lot area and lot width; front, side and rear yards; building coverage and building height are as specified in each zone and in the additional regulations of Article V, and supplementary regulations of Article VII.

### 5.2. Area Regulations

Area regulations are set as follows:

#### 5.2.1. Lots of Less Than Required Dimensions:

Any lot with an area or a width less than required in the Zone in which said lot is located may be used for any permitted principal use in the Zone, provided that all other regulations prescribed for the Zone shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of this ordinance and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirements. In the event that compliance with the yard and coverage requirements of the Zone would result in a residential structure of less width than 24 feet, the ZBA shall determine and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

#### 5.2.2. Reduction of Lot Area:

The minimum yards and open spaces, including lot area per family, required by this ordinance shall not be encroached upon or considered as yard or open space requirements for any other building, nor shall any lot be reduced below the Zone requirements of this ordinance.

Two permanent dwellings on one lot, other than group housing, shall be prohibited unless lot area and yard requirements of the Zone are met for each dwelling, including required street frontage. Except for accessory buildings to house farm help.

#### 5.2.3. Corner Lot:

On a corner lot in any Zone where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on each such street. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application for a permit. The ZBA shall determine the yards and building width of a corner lot facing an intersecting street, and of record at the time of the passage of this ordinance, if the yard requirements would result in a residential structure less than 24 feet wide.

#### 5.2.4. Visibility at Street Corners:

On a corner lot in any Zone where a front yard is required, no fence, hedge, wall or other structure or planting more than three feet in height shall be erected, placed or maintained



## Town of Newport Zoning Ordinance

so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines.

### **5.2.5. Front Yard Exceptions:**

The minimum front yard of all principal buildings and structures hereafter constructed within a Residential Zone shall conform with zone regulations; and in addition, shall not be less than the average front yard of all principal buildings in the block for a distance of 300 feet on each side of such building. A vacant lot within the 300-foot distance shall be considered as having the minimum front yard required in the Zone for the purpose of computing the average front yard.

### **5.2.6. Transition Yard Requirements:**

Where two Zones abut on the same street between two intersecting streets, and the front yard requirements of one Zone are less than those of the other Zone, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the Zone boundary line in the less restricted Zone a front yard equal in depth to the average of the required depth in the two Zones.

Where the side or rear yard of a lot in a Residential Zone abuts a side or rear yard of a lot in a Business or Manufacturing Zone, there shall be provided along such abutting line or lines in the Business or Manufacturing Zone a side or rear yard equal in depth to that required in the more restricted Zone, and in addition, a planting screen at least 10 feet wide may be required by the Town Board in an easement in any Business Zone.

### **5.2.7. Projecting Architectural Features, Terraces, Porches, Fire Escapes:**

The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves, and other architectural features, provided, however, that such features shall not project more than two feet into any required yard.

A paved terrace shall not be considered as part of a building in the determination of yard sizes or lot coverage, provided that such terrace is unroofed and without walls, parapets, or other form of enclosure exceeding 6 feet in height.

In determining the percentage of building coverage of the size of yards for the purpose of this ordinance, enclosed porches, or roofed porches, shall be considered a part of the building.

An open fire escape may extend into any required yard not more than 6 feet provided that such fire escape shall not be closer than four feet at any point to any lot line.

## Town of Newport Zoning Ordinance

Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed 6 feet.

### **5.2.8. Walls, Fences, and Hedges.**

The yard requirements of this ordinance shall not prohibit any necessary retaining wall, nor any fence, wall or hedge permitted by Town Ordinance, provided that in any Residence Zone such fence, wall or Hedge shall be no closer to any street right-of-way line than two feet, and shall comply with visibility at street corners as provided in this Article. A fence in any front yard shall not exceed 48 inches in height from ground level.

The use of Razor Wire fencing is prohibited in the Town.

Any border line barbed wire (Refer to Town Law # 309) or electric fence containing 4 or more strands shall not be erected unless to contain livestock. Any single strand fence must be flagged every 10 feet.

### **5.2.9. Towers:**

The yard area requirements for towers will be based on the tower height. The radius of the tower area will be equal or larger than the height of the tower plus 10%.

## **5.3. Height Regulations**

### **5.3.1. Chimneys, Spires, Towers, Agricultural silo etc.**

The height limitations listed in this ordinance shall not apply to belfries, church spires, cupolas, penthouses, silos, and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks, and necessary mechanical appurtenances usually carried above the roof level; nor to flag poles, monuments, transmission towers and cables, radio and television antennae or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended. The applicant must go to the ZBA, on a case by case basis, and ask for an “interpretation” as to the height that will be permitted for their specific needs. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.

### **5.3.2. Through Lots**

On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

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### 5.4. Accessory Buildings and Structures: Type, Height and Location

#### 5.4.1. Type:

On any lot intended or used primarily for residential purposes, accessory buildings such as private garage, storage building, or shed for use in connection with a proposed or existing dwelling, is permitted.

On any lot where the principle use is agriculture, accessory buildings are allowed to support the agricultural use.

#### 5.4.2. Height:

Maximum height of the eaves of accessory buildings shall not exceed sixteen feet in height. Barns used for agricultural purposes are exempt.

#### 5.4.3. Location:

Accessory buildings which are not attached to a principal building may be erected not closer to a principal building than 10 feet.

#### 5.4.4. Size:

Maximum size of a non-agricultural accessory building shall not exceed that of the primary structure on a lot.

#### 5.4.5. Attached Accessory Building:

When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this ordinance applicable to the principal building.

# Town of Newport Zoning Ordinance

## ARTICLE VI - Events

### 6.1. Event Classification

Events in the Town of Newport shall be permitted for non-profit or profitable organizations to raise funds by permit only.

An Event term is limited to 5 days or less with a maximum of 4 events per property or promoter, per year, except for Class 3 events which are limited to 2 events per year. Each and every event requires a permit to be issued from the Town of Newport at least 30 days prior to the day of the scheduled event.

Events will be categorized by various characteristics to include size of the event and potential impact on the surrounding neighborhood. A permit application fee, security deposit, and insurance may be applicable as described in this section. Application for an Event Permit is described in Article 11.4.

#### 6.1.1. Size:

- **Small** – Attendance up to 150-500 per day
- **Medium** – Attendance between 500 and 1500 per day
- **Large** – Attendance greater than 1500 per day
- **Mass Gathering** - Any event that has an attendance of more than 5000 people defers to the State of New York and requires a mass gathering permit.

#### 6.1.2. Classification:

The classification of an event will be based on the potential environmental impact resulting from the event. Factors to be considered include:

1. A substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems.
2. The removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.
3. The impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to SEQR 617.14(g).
4. The creation of a material conflict with a community's current plans or goals as officially approved or adopted.
5. The impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.
6. A major change in the use of either the quantity or type of energy.

## Town of Newport Zoning Ordinance

7. The creation of a hazard to human health.
8. A substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.
9. Changes in two or more of the above elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.

Based on the above factors three classification levels are identified. Meeting any of the above factors will require the promoter to provide any planned mitigation of the factor for review by the town. The three classification levels are as follows:

- **Class 1** - No impact (doesn't meet any of above criteria)
- **Class 2** - Little impact (meeting 1 factor above, SEQR environmental assessment form required but simple mitigation measure(s) substantially eliminate impact potential)
- **Class 3** – Potential significant impact (meeting 1 or more factors above, SEQR environmental assessment form required, and review required to determine if mitigation measures will be sufficient)

### 6.1.3. Zone Restrictions

Events are Permitted (P), subject to Special Use Permit (S), or not permitted (blank) in the various zones as follows:

Event Type	R-1	R-2	RM	A	B-1	B-2	B-P	R-P
<b>Small Class 1</b>	P	P	P	P	P	P	*	*
<b>Small Class 2</b>		P	S	P	P	P	*	*
<b>Small Class 3</b>				S	S	S	*	*
<b>Medium Class 1</b>		P		P	P	P	*	*
<b>Medium Class 2</b>		P		P	P	P	*	*
<b>Medium Class 3</b>				S	S	S	*	*
<b>Large Class 1</b>				S	P	P	*	*
<b>Large Class 2</b>				S	S	S	*	*
<b>Large Class 3</b>				S	S	S	*	*

\* B-P and R-P events are allowed based upon the strictest adjacent zone within 500 feet of the proposed event location, if none then the same as B-2 zone.

# Town of Newport Zoning Ordinance

## 6.1.4. Application Fee

An application fee will be based on the size of the event. The application fee scale is:

- **Small** – \$50
- **Medium** – \$100
- **Large** – \$500

## 6.1.5. Security Deposit

A security deposit will be required based on the classification of the event. The security deposit is refundable based on the applicant's reasonable compliance with the conditions established in this Ordinance and to ensure the health, safety and welfare of event attendees and the public. The security deposit is scaled as follows:

- **Class 1** – None
- **Class 2** – \$500
- **Class 3** – \$15,000

## 6.1.6. Insurance

No permit shall be issued unless the applicant furnishes the Clerk of the Town of Newport with a comprehensive liability policy insuring the Town against liability for damage to persons or property to save the Town harmless from any and all liability or cause of action which might arise by reason of the granting of the permit. The Town of Newport must be named as an additional insured. This insurance policy shall be in effect during the event, during the set up and take down. In addition, a Certificate of Insurance is required to be submitted to the Town. Failure to keep the insurance in effect will result in the automatic revocation of the permit. The limits of liability insurance are:

- **Class 1** – \$1,000,000
- **Class 2** – \$2,000,000
- **Class 3** – \$3,000,000

## 6.2. Exempted Organizations

- The Town.
- Those properties owned entirely by educational institutions (chartered by the New York State Board of Regents and/or licensed by the New York State Department of Social Services); museums; non-profit emergency medical service organizations; fire departments and fire Zones; or non-profit civic, fraternal, historical (chartered by the New York State Board of Regents), veteran or patriotic organizations are exempted from the fees associated with this ordinance.

## 6.3. Enforcement and Compliance with Permit

The Newport Town Codes Officer is authorized to enforce the provisions of the event permit. If the Codes Officer determines that any of the items as a condition of the permit are not adhered to

## Town of Newport Zoning Ordinance

prior to the completion of the event, then the permit will be revoked, and the event will be deemed to be non-compliant with these regulations subject to penalties described in Article 13.5.

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# Town of Newport Zoning Ordinance

## ARTICLE VII - SUPPLEMENTARY REGULATIONS

### 7.1. Access to Improved Street

- A lot to be used for building purposes shall have direct frontage on an improved street.
- The required road frontage for a permitted use must be continuous.

### 7.2. Lots in Two Zones

Where a Zone boundary line divides a lot in one ownership at the time of adoption of said Zone line, the regulations for the less restricted portion of such lot shall extend a maximum of 50 feet into the more restricted portion provided the lot has frontage on a street in the less restricted Zone.

The R1 Zone is classified as the most restricted Zone in the Town of Newport followed by R2, RM, A, B1, and B2 in this sequence with a B2 Zone being the least restricted.

### 7.3. Exchange of existing mobile home

A single wide mobile may be replaced with another single wide mobile, doublewide, sectional, or modular home, providing the following criteria are met:

- The minimum yard setbacks must comply with those listed in zone regulations or conform to an existing variance
- The floor area of the replacement unit shall meet requirements of Paragraph 7.7

### 7.4. Home Based Businesses

Outside storage of equipment, supplies and materials must be screened, fenced with solid fence or under cover as established in the Special Use Permit.

A Special Use Permit for Home Based Business is transferable to a new owner only if the new owner operates the Business under the conditions of the Special Use Permit.

### 7.5. Performance Standards

The uses permitted for Planned Business Zone, Special Use, and Home-Based Businesses are subject to the additional regulations set forth below:

- Performance Standards: No land or building in any Zone shall be used or occupied in such a manner as to create any dangerous, injurious, noxious, or other hazard due to odor, fire, noise, explosion, vibration, smoke, dust, dirt or other disturbance. The determination of potentially dangerous or objectionable elements shall be made at locations as follows:
  - At the point of origin for fire an explosion hazards, for radioactivity and electrical disturbances, and for smoke and other forms of air pollution
  - At the property line for noise, vibration, glare, odors and other hazards or nuisances



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### 7.6. Mining, Excavation and Grading

The Town Board recognizes that sand, gravel, rock, and mineral resources within its area are necessary and beneficial to the economy and welfare of the Town. To provide utilization of these resources in a manner compatible with nearby residential areas and to ensure restoration of commercial excavation areas in such a manner as to conform with the Town Development Plan the following regulations are hereby established:

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of topsoil, earth, sand, gravel, clay or other natural mineral deposits, or the quarrying of any kind of rock formation (mining) hereafter is subject to the following conditions:

- On any area of less than five acres, a permit shall be required from the ZBA for resale, excavation or grading, subject to compliance of this section
- On any area of five acres or more, an application shall be made to the Town Board for amendment of the Zoning Ordinance; and for a permit for commercial excavation subject to compliance with the following paragraph.

Before issuing a permit for such use, the Town Board shall find that such excavation or quarrying will not endanger the stability of adjacent land or structures nor constitute a detriment to public welfare, convenience or safety by reason of excessive dust, noise, traffic, or other condition. The Town Board may specify any reasonable requirements to safeguard the public health, safety and welfare in granting such permit, including the following:

- The slope of material in such topsoil, sand, gravel, clay, and other earth shall not exceed the normal angle of repose of such material
- The top and the base of such slope shall not be nearer than 100 feet to any property line nor nearer than 100 feet to the right-of-way line of any street or highway
- A plan for restoration and rehabilitation of a commercial earth excavation area or borrow pit shall accompany the application for a permit and shall assure conformance with the public health, safety and welfare. The Town Board, upon approval of such plan, shall require a performance bond to assure rehabilitation of commercial excavation sites in conformance therewith
- A plan for safeguarding the public health, safety and welfare in commercial rock or mineral excavation areas shall accompany the application for a permit and shall be approved by the Town Board

### 7.7. Dump, Junk Yard or Automobile Salvage Yard

The Town Board hereby declares that a clean, wholesome, attractive environment is important to the health and safety of the inhabitants of the Town and that the safeguarding of their material

## Town of Newport Zoning Ordinance

rights against unwarranted invasion is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its citizens.

No junk shall be visible from a highway or from a neighboring residence within 500 ft. No fluids from junk shall be drained or dumped on public or private property. No junk shall be buried or burned except in compliance with the New York State Solid Waste Disposal Law. Disposal and storage of junk shall comply with New York State and Herkimer County laws, rules and regulations.

No automobile salvage yard shall be operated or established hereafter in any area of the Town.

No dump shall be operated or established hereafter and no garbage, refuse, or other waste material shall be dumped or deposited in any area of the Town. This requirement shall not apply to a private dump on a farm for waste material produced on said premises. The farm private dump (that meets DEC Requirements) must be 300 feet from any highway, 200 feet from any stream or property line and be 500 feet from an existing dwelling on or off the farm property.

Winter storage of manure is not considered a dump and must be in accordance with DEC regulations, 200 feet from stream or well. The manure must be removed by 1 June.

### 7.8. Signs

Signs require permits and shall comply with the following regulations:

- General sign requirements:
  - Signs shall be located in the front yard or attached to a building.
  - All signs must be permanently attached to posts anchored in the ground, a structural base, or attached to a building compliant with the building code.
  - No sign shall be placed so as to impede the visibility of motorists or pedestrians.
  - No sign shall project into or over the public right-of-way nor above the roofline.
  - Except for approved sandwich board signs, no signs or sign structures shall be built or placed on the sidewalk, curb or area between sidewalk and curb, or public right-of-way.
  - Freestanding signs shall be installed a minimum of five feet from the side lot line.
  - All signs other than directional must refer to a use on the same parcel where the sign is located
  - Two off-premises directional signs not over 4 square feet in area and showing only the name of and direction to a legal, conforming use may be placed at a highway location, if the sign complies with county, state and local highway regulations.
  - All exterior signs shall be designed to withstand a minimum wind load of 80 miles per hour.

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- All electrical service for sign lighting shall be provided with underground or hidden devices. All such devices, as well as signage using electrical devices, must comply with the State Electrical Code.
- Requirements for signs in R-1 and R-2 Residential, R-M Mobile Home Residential, and A-Agriculture Zones:
  - One face of a nameplate, identification or professional sign not to exceed 16 square feet of sign area, showing the name or permitted home occupation of the premises.
  - One face of a sign not to exceed 6 square feet of sign area pertaining to the sale, lease or rental of the land or building including real estate signs.
  - Seasonal farm products signs not exceeding 32 square feet in area may be displayed on the Property, but only when such products are on sale. The maximum height for any freestanding sign and supporting structure is not to exceed 8 feet. Height is measured from the average grade at the base of the sign to the top of the highest point of the sign.
- Requirements for signs in B-1 and B-2 Zones:
  - In any Business Zone, a business sign or signs directing attention to a business or profession conducted, or a commodity, service or entertainment offered or sold on the premises shall be permitted. The maximum area for one face of a sign shall not exceed 32 sq. ft. in area.
  - In the case of a shopping center or other group of related buildings in addition to the general sign each individual unit may display an identification sign affixed flat against the wall of the building which shall not exceed 1 sq. ft. of sign for each foot of building frontage
  - The maximum height for any freestanding sign and supporting structure is not to exceed 20 feet. Height is measured from the average grade at the base of the sign to the top of the highest point of the sign.
  - If illuminated, the source of light shall not be visible from a public street or road or from an adjacent property. The light from any illuminated sign shall be shaded, shielded, or directed so that the light intensity or brightness will not be disruptive or create a distraction.
  - No sign shall have or contain blinking, flashing, fluttering or intermittent lights or other devices that create a change in color, brightness, direction or intensity of lighting. This provision does not apply to electronic variable message signs.
  - Electronic variable message signs (CEVMS) shall be spaced so that the message from only one sign at a time is identifiable to a motorist. These signs shall have a maximum daytime brightness of 5,000 candelas per square meter (cd/m<sup>2</sup>) and a maximum nighttime brightness of 280 cd/m<sup>2</sup>. The display on a EVMS may not update more than one time every six seconds.
  - Non-illuminated real estate signs, of a temporary nature, not over 24 sq. ft. in aggregate area, advertising the sale, rental, or lease of the premises on which they are located, are permitted.
- Requirements for temporary signs:

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- One face of a temporary sign not to exceed 6 sq. feet of sign area during and pertaining to construction, repairs or alterations on the property. Temporary signs are allowed for a period of 30 days
- Institutional or religious announcement sign not to exceed 16 sq. feet in area.

### 7.9. **Septic Systems**

All new septic systems must be designed in accordance with Health Dept and/or NYS DEC standards, inspected, and approved by a licensed engineer. Replacement of a septic system is considered a new system. All new and replacement septic systems require a permit. “Alternative” type systems require approval of NYS Health Dept. All system larger than 1000 gpd require DEC approval and a DEC SPDES permit.

### 7.10. **On-Site Wind and Communications Structures**

All wind, geothermal, or other on-site power or heating systems that are integrated into a structure’s electrical, heating, or plumbing systems for residential and business require a permit from the codes officer and must meet state and local building codes and require an electrical inspection. They must have a clearly marked disconnect switch for emergency responders.

### 7.11. **Solar Energy Systems and Facilities**

All Solar Energy Systems shall be designed to protect public safety and provide minimal impact on the character of the town. Projects shall meet all the special use review criteria to the satisfaction of the town in addition to the following requirements.

#### 7.11.1. **General Requirements**

- A Building permit shall be required for the installation of all Solar Energy Systems.
- Prior to the issuance of the building permit or final approval by the Planning Board, construction and/or site plan documents must be signed and stamped by a NYS Licensed Professional Engineer or NYS Registered Architect.
- Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.
- Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).
- All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Uniform Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

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- For Solar Energy Systems subject to site plan review, the Town shall impose, and may update as appropriate, a schedule of fees to recover expenses associated with engineering, environmental, or legal services determined to be reasonably necessary in the processing of an application under this law.

### **7.11.2. Permitting Requirements for Roof or Building Mounted Solar Energy Systems**

All Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

- Roof-Mounted Solar Energy Systems
  - Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements (exceptions may be approved by the Codes Officer):
    - Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
    - Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
    - Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
    - Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
  - Glare. All Solar Panels shall have anti-reflective coating(s).
  - Height. All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zone.
- Building-Integrated Solar Energy Systems
  - Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.
- Screening and Visibility.
  - All Roof or Building-Mounted Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
  - Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate Solar Access.

### **7.11.3. Permitting Requirements for Ground-Mounted Solar Energy Systems**

All Ground-Mounted Solar Energy Systems are permitted through the issuance of a special use permit in all zoning districts as accessory structures and shall be subject to site plan approval. Ground-Mounted Solar Energy Systems shall adhere to the standards

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and requirements established for Roof or Building-Mounted Systems in Section 7.11.2, in addition to (or in some cases amended by) the following requirements:

A. Application & Site Plan Review Requirements. Applications for Ground-Mounted Solar Energy Systems, including materials for site plan review, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
2. Zoning designation for the parcel(s) of land comprising the System Area.
3. Property lines and physical features, including roads, for the project site.
4. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.
5. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.
6. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.
7. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of the building permit.

B. Standards. Ground-Mounted Systems shall adhere to the following standards.

1. Ground-Mounted Solar Energy Systems are not allowed on residential lots less than one acre.
2. Height. Ground-Mounted Solar Energy Systems should be less than 12 feet in residential zones and height less than 15 feet for all remaining zones.
3. Ground-Mounted Solar Energy Systems to be used strictly for agricultural purposes in accordance with NYS Agriculture & Markets Law may have some of the requirements of this article waived by the Planning Board.
4. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earthtone color.
5. The design, construction, operation and maintenance shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists.

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6. Screening/Visibility. Ground-Mounted Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
7. Environmental Resources
  - i. Tree-cutting. Removal of existing trees larger than 10 inches in diameter should be minimized to the extent possible.
  - ii. To the extent practicable, Ground-Mounted Solar Energy System Owners shall utilize and maintain native perennial vegetation to provide foraging habitat for pollinators in all appropriate areas within the System Area.
  - iii. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.

### **7.11.4. Permitting Requirements for Solar Energy Facilities**

All Solar Energy Facilities are permitted through the issuance of a special use permit within the Agricultural zone, and are subject to the site plan and special use permit application requirements established for Ground-Mounted Solar Energy Systems in Section 7.11.3, in addition to (or in some cases amended by) the following requirements:

#### **A. General:**

1. All Solar Energy Facilities shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), current NFPA standards, and the Town Code.
2. If the owner or operator of the Solar Energy Facility (hereafter called “Operator”) changes or the owner of the property (hereafter called “Owner”) changes, the site plan approval shall remain in effect, provided that the successor owner and or operator assumes in writing all of the obligations of the permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy Facility shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.
3. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 36 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final site plan – as may have been amended and approved – as required by the Planning Board, within 36 months, the applicant may request to extend the time to complete construction for 12 months. Approval of a request to extend the time to complete construction shall not be unreasonably withheld by the Town. If the owner and/or operator fails to perform substantial construction within 48 months, the approvals shall expire.

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4. The site plan approval shall remain in effect for the anticipated duration of the Solar Energy Facility, as defined in the application. Such date shall be the basis for the decommissioning plan and surety. Extension of the operation of the Solar Energy Facility beyond such date shall be subject to re-application.
5. Modifications to an existing Solar Energy Facility that increases the Facility area by more than 5% of the original area of the Solar Energy Facility (exclusive of moving any fencing) shall be subject to reapplication under these regulations.

### B. Pre-Application:

1. Pre-Application Meeting at least 90 days prior to the submission of an application, the Applicant shall conduct a pre-application meeting with the Planning Board to ensure all parties have clear expectations regarding any Town requirements applicable to the proposed Solar Energy System. A written request for this purpose shall be sent to the Town Supervisor. Submission and review of the application shall not be delayed based on the failure of the Town Supervisor to respond in a timely manner to a properly filed meeting request.
2. At the pre-application meeting, the Applicant must provide (1) a brief description of the proposed facility and its environmental setting, (2) a map of the proposed facility showing project components, (3) the proposed facility's anticipated impacts, (4) a designated contact person with telephone number, email address, and mailing address from whom information will be available going-forward basis, and (5) an anticipated application submission date.

### C. Applications:

1. Be reviewed by the Codes Officer for completeness. Applicants shall be advised within 60 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Provide the name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
3. Provide the name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
4. Provide all other information normally required by the Town for a Site Plan review including a completed SEQR Full Environmental Assessment Form, existing and proposed site plans, equipment schedules, SWPPP, construction schedule, and information required under this section such as screening, Maintenance & Operation Plan, Emergency Response Plan, and Decommissioning Plan.
5. Design documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer, NYS Registered Architect, and/or NYS Registered Landscape Architect as appropriate.



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### D. Community Engagement Plan.

1. Applications for a Solar Energy Facility shall include a Community Engagement Plan detailing the applicant's proposed plans and strategies for ensuring adequate public awareness and encouraging community participation. Applicants are highly encouraged to discuss the contents and details proposed in this plan with the Planning Board prior to the submission of a formal application.

### E. Special Use Permit Standards

1. There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law. Setbacks apply to the perimeter fence location and/or any equipment located outside a fence.
2. The solar facility shall have a 100-foot rear and side yard setback to allow for screening and emergency access to the perimeter of the facility. This setback can be reduced to 50-feet by the Planning Board where sufficient screening is provided to obstruct views of the facility, but in no case is a setback of less than 500 feet allowed to a residential home of a non-participating property.
3. Fencing, underground collection lines, access roads, and landscaping may occur within the setback.
4. Agricultural Resources: Solar Energy Facilities for which the Facility Area includes Active Agricultural Lands shall adhere to the following requirements:
  - i. Solar Energy Facility components, equipment, and associated impervious surfaces shall occupy no more than 50% of the Active Agricultural Lands within the Facility Area.
    1. A Solar Energy Facility may exceed the 50% Active Agricultural Land threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farm Operation. Exceedance beyond the 50% threshold will only be allowed based on the Planning Board's determination that the land is being used for a Farm Operation.
    2. To the maximum extent practicable, Solar Energy Facilities located on Active Agricultural Lands shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets' "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."
5. The system shall not exceed a height of 15 feet. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes or on-site parking.
6. Adequate access shall be provided around or through the facility for maintenance and emergency response. The main access path shall comply with requirements for Fire Apparatus Access Roads including turnaround area outside of the

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perimeter fence. Secondary access path shall minimize the extent of impervious materials and soil compaction.

7. Adequate access shall be provided around to all adjoining lands and farm fields.
8. The project design shall take care to avoid development of sensitive natural resources. Information shall be submitted regarding the environmental and cultural resources (as identified through the NYS DEC Mapping system and by the Town of Newport) on the subject property and surrounding properties.
9. Regrading the site shall be minimized to the extent possible. Specific stormwater management and erosion control measures shall be included to address associated site disturbance and increase in impervious surface.
10. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible
11. Solar Energy Systems smaller than 5 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, topography, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
12. Solar Energy Systems larger than 5 acres shall be required to:
  1. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
  2. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
  3. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 1 evergreen tree, at least 6 feet high at time of planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the Solar Energy System.

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4. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. This minimum screening requirement may be reduced if adjoining properties are participating properties.

### 13. Fencing:

1. All mechanical and electrical equipment shall be enclosed by a fence, and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. This security fencing shall be black vinyl coated chain link unless otherwise approved by the Planning Board. Animal friendly design is allowed.

### 14. Lighting:

1. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.

### 15. Signage:

1. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
2. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations

### 16. Components:

1. All Solar Panels shall have anti-reflective coating(s) and proof of such submitted.
2. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permits.
3. For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, in an Agricultural Zone buildings can be made to look like agricultural structures such as barns.

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4. A one- or three-line electrical diagram is required detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices. States.
5. Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium).
6. If a Battery Energy Storage System is included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

### 18. Noise

1. The Information on any noise producing equipment (as determined by the Town based on application materials) shall be submitted. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single family homes.

### 19. Emergency Response Plan

1. The applicant shall submit an emergency response plan addressing procedures for fire response and emergency medical response at the project site, acceptable to the Fire Department of jurisdiction.
2. Maintenance and Operation Plan
3. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and emergency responders.
4. The applicant shall submit a maintenance and operation plan specific to the facility addressing drainage, grounds maintenance, use of herbicides/pesticides is not allowed, maintenance of visual screening and replacement of dead plants, component maintenance and replacement, snow removal.
5. The maintenance plan shall address all owned and leased land associated with the project including required setbacks, buffers, and screening.
6. The maintenance plan shall address how electrical components are maintained in good working condition and evaluated for potential fire-causing failure.

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7. The Solar Energy System shall be subject to an annual review by the Town Codes department to confirm compliance with Site Plan and Permit conditions, review Maintenance and Operation documentation, and verify insurance and decommissioning arrangements are in order. Failure to conduct such review or identify lapse in coverage does not absolve the Energy System operator from meeting such conditions as required. Normal review/inspection fees apply.

### 20. Solar Easements

1. The property owner shall be responsible for negotiating with other property owners in the vicinity to establish any solar easement required by the facility, and for recording any such solar easement(s). The issuance of a site plan approval does not constitute Solar Access rights, and the Town shall not be responsible for ensuring impermissible obstruction to Solar Access as a result of uses or development performed in accordance with Town Code

### 21. Decommissioning

1. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity) for a period of 4 months shall be removed at the Owner and Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law. The Operator shall provide documentation to the Town Codes department on a quarterly basis reporting the average weekly generation history.
2. A decommissioning plan prepared by a licensed engineer, acceptable to the town will be required. The Town of Newport Website has an example decommissioning plan available for use .
3. Where located in Agricultural Zone, once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines.
4. The owner of the solar facilities shall provide a performance guarantee for the removal of the solar facilities as described in Section 4.8 of these regulations. The performance guarantee shall be issued by a company rated AAA, bonds with a 10-year automatic renewal for a total of 30 years with 2% annual escalation, and be non-cancelable prior to the end date of operation as approved by the town.
5. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

### 22. Host Community Agreement

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1. A host community agreement acceptable to the town will be required to offset the loss of property tax revenues and anticipated property development.
2. The host community agreement shall include payment of \$5,000 per MW of maximum power to be generated, rounded up. Such fee shall apply initially and at the time of any extension of operating time beyond that approved by the Town.
3. The host community agreement shall include a surety to ensure SWPPP compliance and safeguard potential damage to public roads and infrastructure during construction.
4. This agreement will need to be finalized before the Planning Board's final decision on the Site Plan Review.
5. This agreement will require confirmation of any PILOT agreement with Herkimer County prior to finalization.
6. All completed solar projects will be assigned an assessment amount.

### 23. Insurance

1. The owner of the solar facilities shall agree to secure and maintain for the duration of the permit, public liability insurance as follows:
  - (1) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Newport and its officers, councils, employees, attorneys, agents and consultants as additional named insured.
  - (2) Umbrella coverage: \$10,000,000.
  - (3) Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".
  - (4) Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Newport with at least thirty (30) days prior written notice in advance of cancellation.
  - (5) Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Marcy at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
  - (6) Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Marcy a copy of each of the policies or certificates representing the insurance in the required amounts.

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(7) Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Newport shall not be deemed to comply with this Law.

(8) Indemnification: Any application for a Solar Energy System within the Town of Newport shall contain an indemnification provision. The provision shall require the Applicant and Owner and Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the town of Newport and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said Solar Energy System, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Newport or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Newport.

### **7.11.5. Enforcement**

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

### **7.11.6. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

## **7.12. Swimming Pools**

Above and in ground permanent pools are allowed in any Zone under the following conditions:

- Pools shall be a minimum of 50 feet back from the front property line and 10 feet from the side and rear property line.
- Full surround fencing a minimum of 4 feet in height is required with self-closing latching gate.

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- A permit is required for any pool installation.

### 7.13. On Site Storage

No open storage of junk is permitted on a residential lot unless completely screened from view from the adjoining properties and public roads.

Portable Temporary Storage Containers required review and permit as accessory use if placed on a property for more than 90 days.

### 7.14. Wetlands

Activities in wetland are regulated by NYS DEC and/or USA Corps of Engineers (COE). Refer to the DEC website for a listing of regulated activities and to the “Environmental Mapper” to check if there may be wetland areas in the vicinity of a project site. The limits of delineated areas are not precise. The potential present of a nearby wetland typical warrants a field check and delineation by a specialist.

NYS DEC regulated wetlands are 12.4 acres or larger, with a 100 ft no-disturbance buffer. Any regulated activity inside the buffer limits requires a wetland disturbance permit, and potentially mitigation measures.

USE COE regulated wetlands have no minimum size, have no buffer requirement, and must be connected to the waters of the US. Activities inside the wetland limits require a wetland disturbance permit, and potentially mitigation measures. Small isolated wetlands not connected to the waters of the US may not be regulated. A USA COE field determination should be conducted.

### 7.15. Floodplains

FEMA has prepared mapping of floodplains along major creeks and rivers, showing the approximate limits of areas subject to flooding together with water surface elevations. Refer to the FEMA website for these maps.

The FEMA mapping designates a “floodway” and a “floodplain.” Filling within the “floodway” is prohibited. Filling within the “floodplain” may be allowable. A building constructed within the “floodplain” must have its first-floor elevation a specific height above the 100-year floodplain elevation and must be certified by a surveyor. See the Codes Enforcement Officer for details.

Any activity within a stream channel requires a DEC stream bank disturbance permit and/or a USA COE permit.



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### 7.16. Storm Water Management

Non-residential projects involving an increase of 4,000 square feet or more of impermeable surfaces must provide storm water management facilities that restrict post-developed peak rates of stormwater runoff to less than or equal to pre-developed (existing) rates of runoff.

Non-residential projects disturbing more than one acre must obtain a NYS DEC SPDES General Permit for Stormwater Discharges from Construction Activity and prepare a Stormwater Pollution Prevention Plan (SWPPP). The contents of a SWPPP are described in “NY Standards for Erosion and Sediment Control Devices” in conjunction with the “NYS Stormwater Management Design Manual.” The SWPPP must address:

- soil erosion and sediment control on the site,
- water quality of stormwater runoff, and
- the restriction of post-developed peak rates of stormwater runoff to less than or equal to pre-developed (existing) rates of runoff for various storm events.

### 7.17. Ponds

The Town requires a permit for ponds.

The Herkimer County Soil & Water Conservation District offers a pond site investigation/evaluation service for a small fee. The SWCD does not regulate ponds, nor have design standards for them.

“Wet ponds” utilized on a site as part of a SWPPP’s (Stormwater Pollution Protection Plan) stormwater management facility may be required by NYS DEC under their “SPDES General Permit for Stormwater Discharges from Construction Activity” to restrict post-developed peak rates of stormwater runoff to less than or equal to pre-developed (existing) rates of runoff for various storm events. Design of these facilities must conform with the guidelines outlined in the document “NYS Stormwater Management Design Manual” and be prepared by a qualified professional. These facilities are part of the permitting for the overall project that they serve.

A NYS DEC “Dam Safety Permit” is required for water impoundment structures involving:

- 1) a height (from toe of structure to highest point) of more than 6 feet,
- 2) a maximum impounding volume of more than one million gallons, or
- 3) a maximum height more than 15 feet and a maximum impounding volume of more than three million gallons.

Design of these structures must conform with the guidelines outlined in the document “Guidelines for Design of Dams.”

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In addition, if the pond will disturb the bed or banks of a protected/regulated stream, a DEC “Stream Protection Permit” will be required.

### 7.18. Road Standards

Any new road conveyed to the Town to be owned and maintained by the Town must meet the following minimum standards:

- Right-of-way width: 60 feet
- Residential (only serving a local development):
  - Width: 24 feet
  - Pavement: 1” DOT Type 7 top course, 2.5” DOT Type 3 binder course, 12” DOT type 2 subbase course.
- Commercial or connector: per Herkimer County Road standards.
- Drainage facilities: Designed to convey 50 year storm.

### 7.19. Small Cell Wireless

Any installation of a small cell wireless facility shall require either a building permit or special permit from the Planning Board in all zones.

#### 7.19.1. Installation or collocation on existing structure

- Installation on residential structures is prohibited.
- Installation of a small cell facility on an existing tower, utility pole, or streetlight, or building requires a building permit

#### 7.19.2. Installation or collocation on new pole or structure

- Installation of a small cell facility on new poles or structures on private property requires a special use permit.
- Installation of a small cell facility within a public right-of-way requires submission of written approval of agency of jurisdiction.
- The owner of the tower, pole, or building to which a small cell facility is proposed to be attached must disclose, in writing, the existence of all negotiations, ventures, discussions, contracts, proposals or other active communications said owner has, or has had, within the preceding one year with any person, corporation, partnership or other entity regarding additional co-location of such facilities within the town.

#### 7.19.3. General requirements

- Small cell wireless facilities shall be installed in a manner to avoid interference with the use of streets and sidewalks, avoid interference with traffic control devices, lighting or other facilities lawfully located in the ROWs, avoid visual and physical obstruction hazardous to vehicular and pedestrian traffic, avoid disruption of

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- commercial enterprises, avoid creating a hazard to nearby residents, and generally minimize impacts to the general character of the neighborhoods where installed.
- Modifications of small cell facility including to accessory equipment or base station require amended permit or special permit.
  - The owner of the tower, pole, or building to which a small cell facility is proposed to be attached, or private property, or agency with jurisdiction of public ROW, must disclose, in writing, the existence of all negotiations, ventures, discussions, contracts, proposals or other active communications said owner has, or has had, within the preceding one year with any person, corporation, partnership or other entity regarding additional co-location of such facilities within the town. The purpose and intent of this provision to obtain disclosure of the physical nature and aspects of the potential facilities, including but not limited to visual effects, to be co-located at a site in order to allow for consideration of potential cumulative physical and environmental impacts.
  - New poles for small cell facilities in along roads or ROWs with existing overhead utilities shall be a maximum of 35 feet tall and generally conform with the style of adjacent poles. New poles are not permitted in a corridor where there are existing poles that can be feasibly used or modified for use.
  - New poles for small cell facilities in corridors without existing overhead utilities shall be on decorative poles of a minimum height as approved by the Planning Board. structures is prohibited.
  - Every Permit shall include as a condition the Applicant's agreement to pay such lawful franchise fees, business license taxes, administrative fees, and consent fees as are permitted under applicable state and federal law.

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### ARTICLE VIII - OFF-STREET PARKING AND LOADING

#### 8.1. Automobile Parking Facilities

Where one or more motor or other vehicle recurrently parks by reason of the use and occupancy of any premises, there shall be provided on or in convenient connection therewith adequate garage or vehicular parking spaces for the number in the proportion to the size of the vehicles which so park, the minimum space to be not less than 9 feet x 20 feet per automobile, in addition to driveway and backing and turning space. The recurrent parking of any such vehicle on the right-of-way of a highway or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of the failure to provide adequate and suitable garage or parking space on or in convenient connection with such premises.

Parking requirements for certain uses are specified in Table 8.1.1. For uses not specified, the Codes Officer shall establish the parking requirements based on information provided by the applicant, subject to appeal to the ZBA.

For any building having more than one use, parking shall be required for each use. Handicapped accessible parking spaces shall be provided in accordance with ADA guidelines.

<b>TABLE 8.1.1 - OFF-STREET PARKING</b>	
<b>USE</b>	<b>MINIMUM SPACES REQUIRED</b>
Dwellings	2 spaces for each dwelling unit. Parking other than in a garage shall be limited to the driveway
Apartments	2 spaces for each dwelling unit. Parking other than in a garage shall be limited to the driveway
Motel, hotel, Rooming house, Bed & Breakfast	1 space for each guest room + 2 spaces per 50 rental units
Administrative, professional, business, governmental or utility office	1 space for each 400 square feet of floor space.
Mortuary	1 space per 4 seats + 1 space per 2 employees, + 1 space for each vehicle used in business, plus space for all employees and resident personnel.
Church, theater or other place of assembly	1 space for each 4 seating spaces in main assembly room.
Private school	2 spaces for each classroom
College	1 space for each 5 students + 1 space for each faculty/staff member.

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Medical Services	1 space for each 2 beds + 2 spaces for each exam room + 1 space for each employee.
Nursing or convalescent home	1 space for each 4 beds + 1 space for each employee
Retail Store	1 space for each 200 square feet of floor space devoted to customer use.
Shopping center	1 space per 200 square feet of retail area
Club or restaurant	1 space for each three customer seats + 1 space per two employees.
Bowling alley	5 spaces for each alley.
Wholesale, storage or freight terminal	1 space per employee
Industrial or manufacturing use	1 space per employee, plus allowance for visitors
Home occupation	1 space for each client or patient at any one time.

### 8.2. Off-Street Loading

Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered and shall be so arrange(d) as not to interfere with pedestrian or motor traffic on the public street or highway.

# Town of Newport Zoning Ordinance

## ARTICLE IX - NON-CONFORMING USES

### 9.1. Continuation

The lawful uses of any land or building existing at the time of adoption of this ordinance may be continued although such use does not conform with the provisions of this ordinance. Any such building may be reconstructed or structurally altered, and the non-conforming use thereby changed, provided the following conditions prevail:

#### Non-Conforming Use of Buildings and Mobile Homes

- Reconstruction or Alteration. A non-conforming building may be reconstructed or altered during its life not to exceed 50 percent of its fair value, unless such alteration of the building results thereby in its change from a non-conforming to a conforming use as defined by this Ordinance. This restriction, however, shall not apply to farm buildings
- Restoration. A building, non-conforming as to use, which has been damaged by fire or other causes to the extent of 75 percent of its fair value shall not be repaired or reconstructed except in conformance with the regulations of the Zone in which such building is located or for the same non-conformance use
- Discontinuance. Whenever a non-conforming use has been discontinued for a period of 18 months, any future use of such building shall be in conformance with the regulation for the Zone in which it is located. This restriction, however, shall not apply to farm buildings
- Changes. A non-conforming use may not be changed to another non-conforming use under the provisions of this Section
- Mobile Homes. Mobile homes may be replaced, or added to, subject to the provisions of Article IX, Section 33 - Zoning Permit

#### Non-Conforming Use of Land

- The non-conforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of the adoption of this ordinance
- A non-conforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by non-conforming use at the time of adoption of this ordinance
- A non-conforming use of land shall not be changed to another non-conforming use.
- If a non-conforming use of land is discontinued for a period of 18 months it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the Zone in which the land is located
- The Discontinued land use restrictions shall not apply to farmland. Any farm active prior to incorporation of this Zoning Ordinance may cease and restart farm operation at the discretion of the property owner as long as there is a minimum 10 acres of land. Acquiring land of multiple property owners to meet the 10-acre minimum to establish a farm in a non-agricultural Zone is not allowed

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## ARTICLE X – APPLICATION AND REVIEW PROCESS

### 10.1. Application Process Overview

In general, all proposed building or land development, event or other use of land (proposed action) applications go through the following process, but some steps do not apply to all proposed actions:

1. **Determine applicable reviews and approvals** – by Codes Officer
2. **Confirm completeness of application** - It is the responsibility of the applicant to submit a complete application for the required review(s) since the reviewing body may not accept an incomplete application delaying the review.
3. **Accept application & refer proposed action as required** – by Reviewing Body
4. **Provide notice & perform technical review of proposed action** – by Reviewing Body
5. **Make decision on proposed action based on review criteria** – by Reviewing Body
6. **Issue permit and Certificate of Completion/Occupancy** – by Codes Office

Applicants can review this Ordinance to identify the likely reviews and approvals to be required, but it is recommended that they review their proposed development or event activity with the Codes Officer to determine what reviews and/or permits will be required and confirm the information needed for a complete application.

Application submission and review depends upon whether the proposed action is:

- Permitted under these regulations,
- Requires Special Use Permit, or
- Requires a Variance to these regulations

The Codes Officer shall make the determination of the review required, in consultation with other town officials as appropriate. The Codes Officer shall make the determination of the most similar use for any proposed use not specified in these regulations in order to determine the required review.

Application for any and all events shall be made to the Codes Officer. The Codes Officer will determine the Classification level of the event based on the application provided and the criteria established in Article 6. Permitted events will follow the process in section 10.2 below and Special Use events will follow the process in section 10.3 below.

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## 10.2. Permitted Uses

Permitted Uses are those so indicated in the zone sections or event section of these regulations.

### 10.2.1. Confirm completeness of application

It is the responsibility of the applicant to submit a complete application for the required review(s) since the Codes Officer may not accept an incomplete application.

Applications for building permits (including site development permit, sign permits, and other general permits) shall be submitted to the Codes Officer and include two copies of:

1. A completed Building Permit Application (available on town website)
2. A layout or plot plan showing the actual dimensions of the lot to be built upon,
3. The exact size and location of the building and accessory buildings to be erected,
4. Construction plans suitable for review per the Building Code,
5. Application Fee

Applications for event permits shall include two copies of:

1. A completed Event Permit Application (available on town website)
2. A layout or plot plan showing the actual dimensions of the lot to be used and adjacent properties and streets,
3. A map showing how the property will be used for the event,
4. Application Fee

### 10.2.2. Perform Technical Review and Make Decision

The Codes Officer will review the application materials to confirm compliance with this Ordinance, and applicable local, state, and federal regulations. The Codes Officer may request the applicant to provide other pertinent information to evaluate the application.

### 10.2.3. Building Permit Criteria

In issuing a Building Permit, the Codes Officer shall confirm that the application is complete and complies with the requirements of this Ordinance, other applicable federal, state, and local laws, and conditions of approval by the ZBA or Planning Board.

When the project meets the applicable requirements, the Codes Officer may issue a permit and will return one copy of the application indicating approval and any conditions thereof. The permit authorizes the applicant to undertake construction.

- A building permit shall be valid for one year from the date of issuance. Renewal permits may be issued upon reapplication.



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In the event a permit is denied, the Codes Officer shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

### 10.2.4. Event Permit Criteria

In issuing an Event Permit, the Codes Officer shall confirm that the application is complete and may require such changes in said preliminary Event plans as are found to be necessary to meet the requirements of this ordinance. Additional requirements may be made as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect characteristics of the community.

When the event is deemed to meet the applicable requirements, the Codes Officer may issue a permit and will return one copy of the application indicating approval and any conditions thereof. The permit authorizes the applicant to hold the event.

- An event permit shall be valid for the period noted on the approval. The event permit shall not be issued until the appropriate Security Deposit and Certificate of Insurance have been received.

In the event a permit to hold an event at the time and place requested is denied, the Codes Officer shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

The permit holder shall conduct the event in such a manner as to minimize the inconvenience or discomfort to adjoining property owners attributable to the event and shall abate noise to the extent practical. The Town shall have the right to revoke any permit granted should the Codes Officer determine that

- conduct of the proposed event poses a danger to the health, safety or wellbeing of citizens and/or presents an unreasonable risk of damage or loss to public property or nearby private property, or
- any of the items as a condition of the permit are not adhered to prior to the completion of the event.

The granting of an event permit shall in no way be considered an endorsement or any expression of support, of disagreement or of any position or opinion of the Town whatsoever with respect to the activities, policies, opinions, positions, precepts or other aspects of the persons or group organizing, sponsoring, holding or participating in such event, and no persons associated in any way with said event is authorized to or shall make any public statements or representations on behalf of the Town concerning the same.

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### 10.2.5. Certificate Criteria

In granting a Certificate of Compliance or Certificate of Occupancy, the Codes Officer shall confirm that the project has substantially met the requirements of the permit with provisions for addressing any minor outstanding items.

Upon completion of any construction, the applicant notifies the Codes Officer to request a final inspection and Certificate of Completion or Certificate of Occupancy. The Certificate authorizes the applicant to begin using the property for the approved use.

- The certificate of compliance/occupancy must be approved within 10 days of project completion.

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## 10.3. Special Use Permits

Special Use Permits are required for those uses as indicated in the zone sections or event section of these regulations.

### 10.3.1. Confirm completeness of application

It is the responsibility of the applicant to submit a complete application for the required review(s) since the reviewing body may not accept an incomplete application delaying the review. All applications shall be in writing submitted to the Codes Officer.

Applications for Special Use permits (including site development permit, sign permits, and other general permits) shall be submitted to the Planning Board and include three copies of:

1. A completed Special Use Permit Application (available on town website), including the additional information listed on the application.
2. A layout or plot plan showing the actual dimensions of the lot to be built upon.
3. The exact size and location of the building and accessory buildings to be erected.
4. Completed Part 1 SEQR EAF – short version or long version as applicable.
5. An Agricultural Data Sheet (if applicable).
6. Application Fee.
7. Any other pertinent information as determined by the Planning Board.

In the case of a Special Use Permit for a commercial operation, event, or solar energy system, the following additional information will be required at the discretion of the Town:

8. Vicinity map showing proposed project location with respect to 2 street intersections.
9. A complete set of plans with a professional engineer's stamp and signature and associated technical reports for traffic, utilities, stormwater, wetlands, and other subjects as applicable.
10. A site plan to scale showing property boundaries, location of all existing and proposed buildings or structures, location of all existing watercourses, intermittent streams, wetland areas, flood zones, rock out-crops, wooded areas and any other significant existing features, all existing and proposed public and private roads, drives and walkways, location of all parking and loading areas, with access and egress drives thereto, and location any outdoor storage and solid waste containers.
11. The proposed use, height and design of all proposed buildings and structures.
12. Existing topography and proposed final grades, including detailed information relative to methods to be used to retain, stabilize, and/or refurbish re-graded areas and the proposed plan for maintaining land stability and tree protection during construction.
13. Stormwater management and erosion control measures.

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14. Description of method of water supply and location of facility.
15. Description of method of sewage disposal and location of facility.
16. Location, height, and details of all signs, outdoor lighting, power and communication facilities, fencing, screening, and landscaping.
17. Description of any smoke, noise, vibration, dust, odors, heat, and glare which the proposal will produce.
18. Applications for events shall include an Emergency Medical Service (EMS) Plan.
19. Applications for events shall include a Security Plan.
20. Applications for events shall include a Site Plan of the event area to an appropriate scale showing the location of all areas of assemblage, concession areas, parking areas, stage area, and security offices. The plan must show that the proposed event is adequately buffered, as determined by the Town permit enforcement office and/or Town Board from all residential area within 500 feet.
21. Applications for solar farms shall include visual simulations showing before and after conditions from nearby public streets and residences. Applications for solar farms shall include a decommissioning plan prepared by a licensed engineer, for the cost of decommissioning and removal of the solar farm upon termination of use, including an estimate of the associated costs not including salvage. Bonding may be required and shall be assessed on a case-by-case basis depending on the size of the installation.
22. Applications for solar farms shall include an emergency response plan addressing procedures for fire response and emergency medical response at the project site, acceptable to the Fire Department of jurisdiction.
23. Applications for solar farms shall include a maintenance and operation plan specific to the facility addressing drainage, grounds maintenance, use of herbicides/pesticides, maintenance of visual screening and replacement of dead plants, electrical component maintenance/replacement, and snow removal.
24. Any other pertinent information as determined by the Planning Board upon review of the application, comments by other agencies, or questions from the public.

### **10.3.2. Accept Application and Refer as Required**

The Planning Board will review the application materials to determine the application is complete, before starting the review. Additional copies of the application materials may be required for Involved or Interested Agencies as part of the SEQR review.

Any applications for property within 500 feet of a County Road, Municipal Property, County Property Line NYS State Highway or NYS Certified Ag District is subject to GML-239 and the Planning Board shall refer the application to the Herkimer County Planning Board for comment.

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The Planning Board shall make a preliminary determination of the action type (Type I, Type II, or Unlisted) under State Environmental Quality Review per 6 NYCRR Part 617 of New York State Environmental Conservation Law (SEQR). A determination of Type II status ends the review. A determination of Type I status requires the completion of a Long Form EAF if not already provided.

The Planning Board shall then determine if they should be lead agency for the review. Other involved and interested agencies shall be notified of the preliminary determination and concurrence obtained on lead agency within the timeframes of the SEQR process.

If the Planning Board determines they are appropriate to be lead agency, they shall use the EAF (parts 1 and 2) to identify any additional information that will be required to assess and mitigate the potential environmental impacts of the action. Should engineering studies be required, the applicant may be required to advance into an escrow account an amount of funds equal to the costs which the Planning Board anticipates incurring in the environmental review. Any unspent funds from this account shall be returned to the applicant 5 business days after final action is taken upon the application or the application is withdrawn.

Should the Planning Board or another reviewing agency make a Positive Declaration and determine that the project may have a significant environmental impact, preparation of a Draft Environmental Impact Statement will be required by the applicant.

### **10.3.3. Provide Notice and Perform Technical Review**

The Planning Board shall hold a public hearing at which each application shall be heard. Such hearing shall be held as promptly as possible after the receipt of an application. The Planning Board shall fix a reasonable time for the public hearing and shall give public notice at least 10 days before the public hearing as follows:

- Publish the notice in the official paper once a week for 10 days in a newspaper of general circulation,
- Publish the notice on the town website.
- Mail or deliver notices to the parties involved and adjoining property owners of record on the latest completed assessment roll with 1,000 foot radius from the boundary of the proposed project site.
- Provide a copy of the notice and application to the Town Clerk for reference by the Town Board or interested members of the public.

The applicant shall post a copy of the hearing notice on the project site in a location visible to the public.

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The Planning Board performs a review of the project, options, and potential mitigation measures with the input of interested and involved agencies, technical consultants, other town officials, and the community. This review shall be with respect to this Ordinance and other applicable regulations and best practices.

### 10.3.4. Special Use Review Criteria

All Special Uses possess characteristics of such unique and special form that each specific use shall be considered an individual case and require additional standards under the requirements of this ordinance.

The Planning Board can approve the application, deny it, or approve it with conditions based upon the technical review. In making its determination, the Planning Board shall take into consideration the spirit and requirements of this Ordinance. The Planning Board in granting special use permits shall have the authority to impose appropriate conditions and safeguards which in their judgement shall determine that:

1. The proposed use is not detrimental to public health, safety and general welfare
2. The site, building(s), and use meet the purposes of the zone in which the use will be located and is consistent with the requirements of this Ordinance.
3. The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (including hours of operation, noise, odor, dust, and other external impacts).
4. The proposed use is planned to operate in a manner that will minimize adverse impacts on surrounding uses and future development of the area.
5. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities.
6. Neighborhood character and surrounding property values are reasonably safeguarded
7. The proposed use will not cause undue traffic congestion or create a traffic hazard and has adequate off-street parking.
8. The proposed use is appropriate to the surrounding natural environment, both on an aesthetic and health and safety basis.
9. The proposed development plan provides suitable functional and aesthetic arrangement of the uses on the site.
10. Adequate design of grades, paving, gutters, drainage, and treatment of turf to handle storm drainage and prevent erosion and dust, is provided
11. Proper design and arrangement of signs and lighting devices with respect to traffic control and adjacent neighborhoods, is provided
12. Adequate screen planting, fencing or walls are provided to shield adjacent residential districts from business structures and uses.

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The Planning Board shall not take final action upon any application subject to GML-239 until a recommendation has been received from the County or 30 days has passed from the County's receipt of the referral.

The Planning Board shall not take final action upon any application until it has completed the SEQR review process.

In the event a Special Use Permit is denied, the Planning Board shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

### **10.3.5. Special Use Permit Sunset**

If a permit application on the proposed development is not submitted within time limits, or if such work is not completed within the period of time specified as a condition of the Special Use Permit, the application shall become null and void and all rights there under shall lapse, unless the Planning Board for good cause authorizes an extension of either period. Such extension may be authorized by resolution without a public hearing.

All conditions of the Special Use Permit that do not have deadline dates, including those to be performed precedent to the issuance of any permit, shall run with the land and shall not lapse or be waived as a result of any subsequent change in the tenancy or ownership of any certificate of occupancy issued for any use or structure in such development.

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## 10.4. Variances

Variances are requests for exception to the requirements of these regulations, as an appeal for relief from a denied application.

### 10.4.1. Confirm completeness of application

It is the responsibility of the applicant to submit a complete application for the required review(s) since the reviewing body may not accept an incomplete application delaying the review. All applications shall be in writing.

Applications for Variances shall be submitted to the ZBA and include three copies of:

1. A completed Variance Application (available on town website)
2. A denied permit,
3. Completed Part 1 SEQR EAF – short version,
4. An Agricultural Data Sheet (if applicable),
5. Application Fee.

### 10.4.2. Accept Application and Refer as Required

The ZBA will review the application materials to determine the application is complete, before starting the review. Additional copies of the application materials may be required for Involved or Interested Agencies as part of the SEQR review.

Any applications for property within 500 feet of a County Road, Municipal Property, County Property Line NYS State Highway or NYS Certified Ag District is subject to GML-239 and the ZBA shall refer the application to the Herkimer County Planning Board for comment.

The ZBA shall make a preliminary determination of the action type (Type I, Type II, or Unlisted) under State Environmental Quality Review per 6 NYCRR Part 617 of New York State Environmental Conservation Law (SEQR). A determination of Type II status ends the review. A determination of Type I status requires the completion of a Long Form EAF if not already provided.

The ZBA shall then determine if they should be lead agency for the review. Other involved and interested agencies shall be notified of the preliminary determination and concurrence obtained on lead agency within the timeframes of the SEQR process.

If the ZBA determines they are appropriate to be lead agency, they shall use the EAF (parts 1 and 2) to identify any additional information that will be required to assess and mitigate the potential environmental impacts of the action. Should engineering studies be required, the applicant may be required to advance into an escrow account an amount of funds equal to the costs which the ZBA anticipates incurring in the environmental review. Any unspent



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funds from this account shall be returned to the applicant 5 business days after final action is taken upon the application or the application is withdrawn.

Should the ZBA or another reviewing agency make a Positive Declaration and determine that the project may have a significant environmental impact, preparation of a Draft Environmental Impact Statement will be required by the applicant.

### **10.4.3. Provide Notice and Perform Technical Review**

The ZBA shall hold a public hearing at which each application shall be heard. Such hearing shall be held as promptly as possible after the receipt of an application. The Planning Board shall fix a reasonable time for the public hearing and shall give public notice at least 10 days before the public hearing as follows:

- Publish the notice in the official paper once a week for 10 days in a newspaper of general circulation,
- Publish the notice on the town website.
- Mail or deliver notices to the parties involved and adjoining property owners of record on the latest completed assessment roll with 1,000 foot radius from the boundary of the proposed project site.

The ZBA performs a review of the project, options, and potential mitigation measures with the input of interested and involved agencies, technical consultants, other town officials, and the community. This review shall be with respect to this Ordinance and other applicable regulations and best practices.

### **10.4.4. Area Variance Review Criteria**

Applicants are not entitled to approval of a variance and the ZBA can approve the application, deny it, or approve it with conditions based upon the technical review.

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall specifically consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.
3. Whether the requested area variance is substantial.
4. Whether the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or Zone; and
5. Whether the need for the variance was self-created.

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The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate. The ZBA shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions that are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Ordinance, and shall be imposed for the purpose of minimizing the adverse impact such variance may have on the neighborhood or community

The ZBA shall not take final action upon any application subject to GML-239 until a recommendation has been received from the County or 30 days has passed from the County's receipt of the referral.

The ZBA shall not take final action upon any application until it has completed the SEQOR review process.

In the event a Variance is denied, the ZBA shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

### **10.4.5. Use Variance Review Criteria**

Applicants are not entitled to approval of a variance and the ZBA can approve the application, deny it, or approve it with conditions based upon the technical review. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant.

No such use variance shall be granted by the ZBA without the applicant showing that the applicable land use management regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the ZBA that for each and every permitted use under this Ordinance for the particular Zone where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the Zone or neighborhood.
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. That the alleged hardship is not self-created.

A use variance may be granted by the ZBA only upon demonstration by the applicant of all four (4) of the above criteria.

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The ZBA in granting use variances shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and shall also preserve and protect the character of the neighborhood and the health, safety, and welfare of the community. The ZBA, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.

The ZBA shall not take final action upon any application subject to GML-239 until a recommendation has been received from the County or 30 days has passed from the County's receipt of the referral.

The ZBA shall not take final action upon any application until it has completed the SEQR review process.

In the event a Variance is denied, the ZBA shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

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## 10.5. Zoning Change Applications

Zoning Map changes are required for designated Planned Business and Planned Residential districts, and as may be requested by applicants for specific properties.

### 10.5.1. Confirm completeness of application

It is the responsibility of the applicant to submit a complete application for the required review(s) since the reviewing body may not accept an incomplete application delaying the review. All applications shall be in writing.

Applications for Zoning changes shall be submitted to the Town Board and include four copies of:

1. A completed Zoning Permit Application (available on town website).
2. Vicinity map designating the parcels for which the map change is desired and all other parcels within 1,000 feet.
3. A description of the proposed use of the property(s) and reason for the zoning map change.
4. Preliminary development plans such as to describe the nature of development envisioned and information on topography, waterways, and existing development as may be required for an understanding of the current environmental conditions.
5. Completed Part 1 SEQR EAF – full version.
6. An Agricultural Data Sheet (if applicable).
7. Application Fee.
8. Any other pertinent information as determined by the Town Board required to evaluate the application.

### 10.5.2. Accept Application and Refer as Required

The Town Board is not required to entertain a Zoning change and may decline to accept such application without cause.

The Town Board will review the application materials to determine the application is complete, before starting the review. Additional copies of the application materials may be required for Involved or Interested Agencies as part of the SEQR review.

The Town Board shall refer all proposed zoning changes to the Planning Board for recommendation. The Planning Board shall recommend approval, denial, or conditions for approval of the proposed zoning change and shall report its recommendation to the Town Board within 60 days of receipt of said application.

Any applications for property within 500 feet of a County Road, Municipal Property, County Property Line NYS State Highway or NYS Certified Ag District is subject to GML-

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239 and the Town Board shall refer the application to the Herkimer County Planning Board for comment.

The Town Board shall make a preliminary determination of the action type (Type I, Type II, or Unlisted) under State Environmental Quality Review per 6 NYCRR Part 617 of New York State Environmental Conservation Law (SEQR). A determination of Type II status ends the review. A determination of Type I status requires the completion of a Long Form EAF if not already provided.

The Town Board shall then determine if they should be lead agency for the review. Other involved and interested agencies shall be notified of the preliminary determination and concurrence obtained on lead agency within the timeframes of the SEQR process.

If the Town Board determines they are appropriate to be lead agency, they shall use the EAF (parts 1 and 2) to identify any additional information that will be required to assess and mitigate the potential environmental impacts of the action. Should engineering studies be required, the applicant may be required to advance into an escrow account an amount of funds equal to the costs which the Town Board anticipates incurring in the environmental review. Any unspent funds from this account shall be returned to the applicant 5 business days after final action is taken upon the application or the application is withdrawn.

Should the Town Board or another reviewing agency make a Positive Declaration and determine that the project may have a significant environmental impact, preparation of a Draft Environmental Impact Statement will be required by the applicant.

### **10.5.3. Provide Notice and Perform Technical Review**

The Town Board shall hold a public hearing on the proposed zoning change within 60 days of receipt of the Planning Board's report. The Town Board shall fix a reasonable time for the public hearing and shall give public notice at least 10 days before the public hearing as follows:

- Publish the notice in the official paper once a week for 10 days in a newspaper of general circulation,
- Publish the notice on the town website.
- Mail or deliver notices to the affected property owners of record on the latest completed assessment roll. This includes owners within the proposed map change area and those within a 1,000 foot radius from the boundaries of such area (unless there are more than 20 such properties and the Town Board by resolution determines that notice in writing to each property owner is not feasible).

## Town of Newport Zoning Ordinance

### 10.5.4. Protest Petition

If a protest against a proposed amendment, supplement or change is presented to the Town Board, duly signed and acknowledged by the owners of 20 percent or more of the area of the land included in such proposed change, or by the owners of 20 percent or more of the land immediately adjacent extending 500 feet there from, or by the owners of 20 percent or more of the land directly opposite thereto extending 500 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of three-fourths (3/4) of the Town Board.

### 10.5.5. Zoning Change Criteria

Applicants are not entitled to approval of a map change and the Town Board can approve the application, deny it, or approve it with conditions based upon the technical review.

The Town Board has wide discretion in determining whether or not to grant a zoning change and may consider the degree to which the proposed change meets the following criteria:

1. The proposed change is beneficial to public health, safety and general welfare.
2. The proposed change is compatible with adjacent uses in terms of scale, site design, and operating characteristics.
3. The proposed change is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar public infrastructure.
4. The proposed change is appropriate to the surrounding natural environment, both on an aesthetic and health and safety basis.
5. Development consistent with proposed change can feasible be planned with suitable functional and aesthetic arrangement of uses on the site.

The Town Board shall not take final action upon any application subject to GML-239 until a recommendation has been received from the County or 30 days has passed from the County's receipt of the referral.

The Town Board shall not take final action upon any application until it has completed the SEQR review process.

In the event the Planning Board recommends approval or disapproval of a proposed zoning map change or recommends conditions which the applicant is unwilling to accept, an affirmative vote of not less than three-fourths (3/4) of the members of the Town Board shall be required to act contrary to the Planning Board's recommendation.

In the event a Zoning change application is denied, the Town Board shall promptly provide the applicant with written notice of such denial and shall include in such written notice the reasons for such denial.

## Town of Newport Zoning Ordinance

The Town Board may amend the Zoning Ordinance after a public hearing so as to establish or change the boundaries of Zoning Districts. Such action shall have effect only of establishing the applicable Zoning District for affected parcels and shall not constitute or imply approval of specific projects therein. Approval or permit for a specific project shall be subject to the applicable requirements of this Ordinance and review by Planning Board and/or Codes Officer.

### **10.5.6. Zoning Change Sunset**

In the event that application for a specific project within a Planned Business District or Planned Residential District is not submitted within one year from the date of the zoning change approval, such approval shall be deemed automatically revoked and void and the zoning shall revert to the prior district(s). The Town Board may extend the zoning approval for an additional period of six months if evidence is presented of intention to proceed prior to the expiration. Such extension may be authorized by resolution without a public hearing.

### **10.6. Record of Decisions**

Every decision of the Lead Agency (Town Board, Planning Board, or ZBA) shall be by resolution. Each resolution shall contain a full record of the findings of the particular case. Each such resolution shall be filed, together with all documents, in the office of the Town Clerk by case number under one of the following headings:

- Interpretations
- Area Variances
- Use Variances
- Special Use Permits
- Zoning Map Changes and Amendments

The Lead Agency shall notify, within five (5) business days, the applicant, Codes Officer, and Town Clerk of each approved application under the provisions of this ordinance along with any conditions imposed.

Upon receipt of such notification, the Codes Officer may proceed with issuance of permit and certificate per Article 10.2.

### **10.7. Fees and Costs:**

The Town shall impose on any applicant for any non-residential variance or special use permit the actual costs incurred by the ZBA or Planning Board for engineering advice, review or testing which are reasonably necessary for the Boards to fully evaluate any such application.

## Town of Newport Zoning Ordinance

A late application fee of \$25 will be assessed for starting a project prior to submitting the application required under this Ordinance.

See Article 13.5 for further penalties.

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# Town of Newport Zoning Ordinance

## ARTICLE XI – REVIEW AND DECISION MAKING BODIES

### 11.1. Town Board

The Town Board is the governing body of the Town empowered by State law to regulate planning and zoning activities that affect the development and conservation of land within the Town of Newport for the purpose of promoting the health, safety, morals, or the general welfare of the community.

#### **Powers and Duties**

The Town Board shall have all the power and duties prescribed by law and by this zoning ordinance, which are specified as follows:

- Adopt and Modify this Code
- Delegate Authority to Town Decision-Making Bodies
- Adopt and Modify Schedule of Development-Related Fees
- Adopt and Modify Schedule of Civil Penalties
- Other Actions: The Town Board is authorized to take any other action not assigned or delegated to the Code Enforcement Officer, Planning Board, Zoning Board of Appeals, or other advisory or decision-making authority as the Town Board deems desirable and necessary to implement provisions of this Ordinance, and as authorized by State law.

### 11.2. Code Enforcement Officer

A Code Enforcement Officer (Codes Officer) shall be appointed by the Town Board to administer permits and certificates of compliance under this Ordinance.

#### **Powers and Duties**

The Code Enforcement Officer shall have all the power and duties prescribed by law and by this zoning ordinance, which are specified as follows:

- Enforce the requirements of this ordinance in accordance with Articles 1.5 and 10.2.
- Make a record of non-conforming uses and buildings existing at the time of the adoption of this ordinance and give written notice of non-conformity and of this ordinance to each owner and occupant of a non-conforming premises by service upon him personally or by certified mail addressed to him at his last known address.
- Issue a building permit and when appropriate certificate of compliance with the provisions of this ordinance and refuse to issue the same in the event of a non-compliance, giving prompt written notice of such refusal and the reason therefore to the owner of the premises. Advise the owner of the variance process.
- Keep the Town Board advised of all matters other than routine duties, pertinent to the enforcement of this ordinance, and keep all records necessary and appropriate to his office and

## Town of Newport Zoning Ordinance

to file them in the office of the Town Clerk, including records of all permits and certificates of compliance issued or withheld.

- Submit a report each month to the Town Board enumerating the applications received, inspections made and stating the action taken.

### 11.3. Zoning Board of Appeals (ZBA)

A Zoning Board of Appeals (ZBA) is hereby established, it shall consist of 5 members and an Alternate each to serve for a term of 5 years. The term of office of the members of the ZBA and the manner of their appointment shall be in accordance with the provisions of the Town Law. Vacancies occurring in ZBA shall be filled for such un-expired period only.

- The Town Board shall, by resolution, designate the chairperson of the ZBA and term. In the absence of a chairperson, the members of the ZBA may designate a member to serve as acting chairperson on an interim basis.
- Members of the Town Board are ineligible to serve on the ZBA.
- Alternate members may serve when regular members are absent or recused; once an alternate member participates on a specific application they shall continue until decision on said application.
- Members of the ZBA may be removed for cause by the Town Board following a public hearing.
- Except as otherwise specified in this Code, all motions and resolutions of the ZBA shall be carried by majority vote of the board as fully constituted, regardless of vacancies or absences (i.e., three votes out of five members constitutes a majority).
- The ZBA shall conduct meetings and record minutes of its proceedings in accordance with the provisions of Town Law.

### Powers and Duties

The ZBA shall have all the power and duties prescribed by law and by this zoning ordinance, which are specified as follows:

- Provide Interpretations:
  - Decide any question involving the interpretation of any provision of this ordinance and hear appeals regarding interpretations by the Codes Office.
- Grant Variances in accordance with Article 10.4:
  - Area Variances
  - Use Variances

### 11.4. Planning Board

A Planning Board is hereby established, it shall consist of 5 members and an Alternate each to serve for a term of 5 years. The term of office of the members of the Planning Board and the

## Town of Newport Zoning Ordinance

manner of their appointment shall be in accordance with the provisions of the Town Law. Vacancies occurring in Planning Board shall be filled for such un-expired period only.

- The Town Board shall, by resolution, designate the chairperson of the Planning Board and term. In the absence of a chairperson, the members of the Planning Board may designate a member to serve as acting chairperson on an interim basis.
- Members of the Town Board are ineligible to serve on the Planning Board.
- Alternate members may serve when regular members are absent or recused; once an alternate member participates on a specific application they shall continue until decision on said application.
- Members of the Planning Board may be removed for cause by the Town Board following a public hearing.
- Except as otherwise specified in this Code, all motions and resolutions of the Planning Board shall be carried by majority vote of the board as fully constituted, regardless of vacancies or absences (i.e., three votes out of five members constitutes a majority).
- The Planning Board shall conduct meetings and record minutes of its proceedings in accordance with the provisions of Town Law.

### **Powers and Duties**

The Planning Board shall have all the power and duties prescribed by law and by this zoning ordinance, which are specified as follows:

- Recommendations:
  - Provide recommendations to the Town Board on proposed changes to the zoning ordinance and zoning map.
  - Perform periodic review of these regulations and comprehensive planning for the town and provide recommendations to the Town Board.
  - Provide recommendations on other matters referred by the Town Board.
- Grant Special Use Permits in accordance with Article 10.3.

# Town of Newport Zoning Ordinance

## **ARTICLE XII - AMENDMENTS**

### **12.1. Amendments and Referral to Planning Board**

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this ordinance, including any map or maps. Every such proposed amendment or change, whether initiated by the Town Board, or by petition, shall follow the process outlines in Article 10.5.

## **ARTICLE XIII - MISCELLANEOUS**

### **13.1. Interpretation**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive, or that imposing the higher standard shall govern.

The Codes Officer shall provide the interpretation of these regulations for any application. This interpretation can be appealed to the ZBA whose decision is final.

### **13.2. Validity of this Ordinance**

The validity of this ordinance shall be assured by due process and any invalidity of any section shall not invalidate any other provisions of any other section of this ordinance.

### **13.3. Periodic Review of Zoning Ordinance**

From time to time, at intervals of not more than 5 years, the Planning Board shall reexamine the provisions of this ordinance and the location of Zone boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or the general welfare; however, the provisions of this ordinance shall remain in effect until a new or amended ordinance is passed by the Town Board.

### **13.4. Misrepresentation**

Any permit or approval granted under this Law, which is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstance known, by or on behalf of an applicant, shall be void.

## Town of Newport Zoning Ordinance

### **13.5. Violations and Penalties**

A violation of this ordinance is an offense punishable by a fine not exceeding \$350.00 dollars or by imprisonment for a period not exceeding 10 days or by both such fine and imprisonment. Each week of continued violation shall constitute a separate additional violation.

Any person, who shall organize, promote, conduct, operate, or cause to be held an event within the Town of Newport or any person who shall license, rent, lease, or otherwise permit the use of real property or any part thereof for any event without having a written permit in accordance with the provisions of the law shall be deemed to have violated this application, which violation shall be fines not less than \$750 for the first time offense, not less than \$1500 for the second offense, and not less than \$3500 and loss of rights for a period of six months for the third and subsequent offenses.

In addition to the penalties above described, the Town Board may also maintain an action or proceeding in the name of the Town of Newport in a court of contempt jurisdiction to compel compliance with or to restrain by injunction the violation of this law. The Town Board shall be entitled to use one or more means concurrently for the enforcement of any violation of this law.

### **13.6. Effective Date**

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Town Board.

### **13.7. Repeal of Former Ordinance**

The ordinance entitled Town of Newport Zoning Ordinance adopted on January 26, 2017, together with all changes and amendments thereto, is hereby repealed.

# Town of Newport Zoning Ordinance

## Zoning Map

(Provided for convenience, see Town Website for official version)

