

3.21.2019

NMB—VILLAGE CENTER DISTRICT & MARIJUANA BYLAWS

VILLAGE CENTER ZONING DISTRICT

Proposed changes are presented in italics underlined font
Proposed deletions are presented in strikethrough font
Comments are provided in a comment box for informational purposes only
and are not intended to become part of the Protective Bylaws

Comment: Delete the text of existing "Section 2 – Definitions" and replace with text of a new "Section 2 – Zoning Districts" in order to establish two zoning districts, the Village Center Residential District and the Rural Residential District as further set forth below. This includes the adoption of a new zoning map (attached) that delineates the boundaries between the Village Center Residential District and the Rural Residential District. (Existing Section 2 – Definitions is moved to a new Section 12 – Definitions)

SECTION 2: ZONING DISTRICTS

2.1 Types of Districts

2.1.1 For the purpose of this bylaw, the Town of New Marlborough is hereby divided into two districts as follows:

Rural Residential District (RRD)

Village Center Residential District (VCRD)

2.2 The Zoning Map

2.2.1 The location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of New Marlborough, Massachusetts" with date of adoption, bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matters thereon, is hereby made a part of this chapter.

2.3 Interpretation of District Boundary Lines

- 2.3.1 Street. For the purpose of interpretation of district boundaries as shown on the Official Zoning Map, where a street constitutes a zone boundary, the centerline of that street is the boundary.
- 2.3.2 Water Bodies. Boundaries indicated as following shorelines of lakes or ponds shall be construed to follow such shorelines.
- 2.3.3 Other Boundaries. Boundaries which appear to run parallel to the features indicated above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- 2.3.4 Split Lots. Where a district boundary line divides a lot that was in single ownership on the effective date of this ordinance, the following rules shall apply:
- 2.3.4.1 The Board of Selectmen may permit, as a special permit, the extension of regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
- 2.3.4.2 The Board of Selectmen may authorize an access road from the less restricted portion of the lot through the more restricted portion of the lot upon the grant of a special permit.
- 2.3.5 Interpretation. In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Zoning Board of Appeals.

SECTION 2: DEFINITIONS

- 2.1 **MAXIMUM GROSS FLOOR AREA (GFA):** The sum of all enclosed or covered areas capable of being used or finished for habitable space of each floor of the building, measured to the exterior faces of the enclosing walls, columns, or posts. A space shall be considered "capable of being used or finished for habitable space" if it meets Massachusetts Building Code occupiable ceiling height requirements. (ATM 5.4.15) (AG 11.4.15)
- 2.2 **ACCESSORY DWELLING:** A detached freestanding building located along with the principal dwelling unit on the lot shall be allowed as an accessory dwelling.

- 2.3 — ~~**AGRICULTURAL USE:** Any use of land for the purpose of raising agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This use does not include kennels, commercial stables or facilities for the commercial raising of swine or fur bearing animals.~~
- 2.4 — ~~**BUILDING:** A roofed or walled structure used or intended for supporting or sheltering any use occupancy.~~
- 2.5 — ~~**CUSTOMARY HOME OCCUPATION:** Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at the home and requiring no more off-street parking facilities that would ordinarily be used by the household, such as dress making, preserving or home cooking, photography, the giving of private music and dance lessons or a one chair beauty parlor. Customary home occupation does not include gift shop, antique shop, art gallery or similar retail establishment.~~
- 2.6 — ~~**DWELLING UNIT:** One or more rooms constituting a separate independent housekeeping unit establishment with cooking, living, sanitary and sleeping facilities for the use of no more than one family.~~
- 2.7 — ~~**DWELLING, SINGLE FAMILY:** A detached residential building designed for or occupied by one (1) family only, but not including mobile homes and trailers whether placed on foundations or not.~~
- 2.8 — ~~**DWELLING, MULTI-FAMILY:** A residential building containing two (2) or more dwelling units.~~
- 2.9 — ~~**FAMILY:** An individual or any number of individuals related by blood, marriage or other legal arrangement such as adoption, guardianship, foster care or up to six (6) unrelated individuals living in a single dwelling unit.~~
- 2.10 — ~~**FRONTAGE:** That boundary of a lot, which lies along a road.~~
- 2.11 — ~~**LOT:** An area of land in one ownership with definite boundaries, used or available for the use as the site of one or more buildings.~~
- 2.12 — ~~**MUNICIPAL USE:** Any Town of New Marlborough use of land in accordance with the General Laws governing municipal powers and functions including participation in regional uses.~~
- 2.13 — ~~**ROAD:** a. A public way or way which the Clerk of the Town certifies is maintained and used as a public way, or b. A way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or c. A way in existence~~

~~when the subdivision control law became effective in New Marlborough on March 8, 1965 having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the building erected or to be erected thereon.~~

- ~~2.14 — **SETBACK:** The area of a lot extending inward from a lot line (or, in the case of front setback, the road line), for the distance specified in the zoning regulations in which no building or structures may be placed.~~
- ~~2.15 — **SETBACK, FRONT:** An area extending across the full width of the lot and extending inward from the road line of the lot.~~
- ~~2.16 — **SETBACK, REAR:** An area extending inward from rear of the lot between the side lot lines.~~
- ~~2.17 — **SETBACK, SIDE:** An area extending along a side lot line from the frontline to the rear line.~~
- ~~2.18 — **STRUCTURE:** Any construction, erection, assemblage or other combination of material upon the land necessitating pilings, footings, or a foundation for attachment to the land, including swimming pools and recreational courts.~~

Comment: Amendments are proposed to the headings and text of existing Sections 3.2, 3.3 and 3.4 to reflect the establishment of two districts as further set forth below. Section 3.4 is renumbered to correct a previous numbering error.

SECTION 3: PERMITTED USES/USE REGULATIONS

- 3.1** No dwelling, structure or land or any part thereof shall be used for any purpose unless authorized:
 - 3.1.1 As a use by right
 - 3.1.2 Under special permit granted by the Board of Selectmen
 - 3.1.3 Under variance granted by the Board of Appeals
 - 3.1.4 Under applicable law at the time such use began, and provided such use has continued until the present time
- 3.2** *Rural Residential District and Village Center Residential District Town-Residential-District*

3.3 Use by Right: The following uses are allowed by right in both the Rural Residential District and Village Center Residential District:

3.3.1 Single Family Dwelling

3.3.1.2 Accessory Dwelling, existing on or before May 5, 2003, subject to the following conditions:

- A. The exterior appearance of the building shall not be altered except for the purpose of safety (stairs for fire escape), health (weather protection for the main entry such as enclosed entry or drip edge protection) or handicapped accessibility requirements (ADA compliance) or to meet building code requirements, nor shall the footprint of the building be enlarged.
- B. The minimum lot size requirement shall be two (2) acres and the minimum frontage requirement shall be 150 feet.
- C. One of the two units on the lot shall be occupied by the owner of the lot, and in the event of the sale of the property, the new owner shall occupy one of the two units as a primary residence.
- D. There shall be no more than one accessory dwelling per lot created under this bylaw.
- E. The maximum gross floor area (GFA) shall not exceed 1,200 square feet. (ATM 5.4.15) (AG 11.4.15)

3.3.1.3 Accessory Apartment

- A. Purpose.
 - 1. Add moderately priced rental units to the housing stock of the Town. (ATM 5.4.15) (AG 11.4.15)
 - 2. Provide homeowner(s) with a means of obtaining rental income, accommodation for caregiver(s), companionship, security and/or services, thereby enabling him/her to stay more comfortably in their homes.

3. Protect property values and the single-family residential character of neighborhoods by ensuring that accessory apartments are permitted by right only on owner occupied premises.

B. Accessory Apartments. An accessory apartment may be permitted by right, as an accessory use where the principal use of the lot is an owner occupied single-family dwelling.

C. Accessory Apartment, shall be subject to the following conditions:

1. An accessory apartment shall only be constructed within an existing principal building or structure or an existing attached accessory building or structure.
2. Only one (1) accessory apartment shall be permitted on a lot.
3. The maximum gross floor area of an accessory apartment constructed within a principal building or structure shall not exceed forty percent (40%) of the maximum gross floor area of the principal building or structure. The maximum gross floor area of an accessory apartment shall not be less than 300 square feet. The principal dwelling unit shall not be reduced to less than 300 square feet.
4. To qualify as an accessory apartment, the owner of the lot must occupy either the accessory apartment or the principal dwelling unit.
5. The principal or accessory structure or building that will contain an accessory apartment shall not be enlarged or extended in connection with the construction or modification of an accessory apartment, except to comply with building, safety or health codes as outlined in Section 3.3.1.2.A of these By-laws.

6. All parking for the occupant(s) of an accessory apartment shall be off-street in accordance with Section 7.3.1.4 of these By-laws.

7. An accessory apartment shall meet all applicable standards of the State Building Code (780 CMR) and the State Environmental Code, Title V (310 CMR 15.00) and subsequent revisions thereof.

3.3.2 Any lawful residential, municipal or non-profit recreational purpose.

3.3.3 Any religious or non-municipal educational purpose subject to Section 6.1.

3.3.4 Any agricultural use except commercial piggeries, fur farming, slaughterhouse or greenhouses.

3.3.5 The following commercial purposes, but no others:

3.3.5.1 The display and sale of natural products, the major portion of which are raised in the Town

3.3.5.2 The use of a room or rooms in a dwelling or accessory building by a resident occupant for the practice of a recognized profession or by a resident carpenter, painter, plumber, electrician or other artisan in connection with his trade, including display and sale of products produced on the premises, or by a resident engaged in the customary home occupation, provided that there is no evidence of business other than a permitted sign.

3.3.5.3 Renting of rooms and furnishing of board by an owner in his residence provided no independent kitchen facilities are maintained.

3.3.6 Buildings or structures related to the above uses.

3.4 Uses by Special Permit Only: The following uses may only be allowed by special permit in both the Rural Residential District and Village Center Residential District:

3.4.1 The following uses are permitted if approved, after a public hearing thereon, by permit from the Board of Selectmen who shall determine that the use will not be injurious, noxious or offensive, and that such use is consistent with the intent of the by-law.

- 3.4.1.1 Commercial Greenhouses
- 3.4.1.2 Gallery
- 3.4.1.3 Sawmill
- 3.4.1.4 Antique, craft or gift shop
- 3.4.1.5 Summer camp, golf course, boat livery, riding stable
- 3.4.1.6 Ski tow
- 3.4.1.7 Restaurant
- 3.4.1.8 Facility for generating power from wind, sun or water
- 3.4.1.9 Enclosed veterinary hospital
- 3.4.1.10 Municipal and public service buildings, structures and use
- 3.4.1.11 Display and sale of natural products, the major portion of which are raised outside of Town
- 3.4.1.12 Scrap and salvage yard
- 3.4.1.13 Sales and service of vehicles
- 3.4.1.14 Accessory Dwelling either new construction or modification of an existing freestanding building constructed after May 5, 2003.

3.4.2 Multifamily dwelling, subject to the following requirements:

- 3.4.2.1 Construction plans elevations, and the location of the building(s) on the lot must be submitted to the Planning, Board of Health, Conservation Commission and the Building Inspector for their recommendations to the Board of Selectmen. The recommendations shall be submitted within thirty (30) days of the date the plans are submitted.
- 3.4.2.2 Design plans shall contain provisions for not more than six (6) dwelling units. No building shall exceed thirty-five (35) feet in height. Such plans shall also contain provisions for adequate water and sewage disposal facilities.

- 3.4.2.3 Lot shall contain a minimum of one (1) acre for the first dwelling unit and three (3) acres for each additional unit. The lot shall contain a minimum of one hundred fifty (150) feet of frontage for the first unit and one hundred (100) feet of frontage for each additional unit.
- 3.4.2.4 Dwelling units, parking areas and playgrounds shall not be less than one hundred (100) feet from all property lines.

~~(3.4.2.4.1)~~ 3.4.3 Conversion of a single family dwelling into a multifamily dwelling of two (2) or more units, without meeting the requirements of 4.1, if in the Rural Residential district, or 4.2, if in the Village Center Residential district, as to lot area, frontage and as to distance from property boundary line may be permitted by the Board of Selectmen provided that:

~~(3.4.2.5)~~ 3.4.3.1 The single-family dwelling has not been enlarged within seven (7) years of the proposed conversion.

~~(3.4.2.6)~~ 3.4.3.2 The lot area has not been reduced below the minimum within seven (7) years of the proposed conversion.

~~(3.4.2.7)~~ 3.4.3.3 Any fire escapes or outside stairways leading to a second story shall be located on any wall not facing a road and shall not occupy any part of the rear or side setback.

~~(3.4.2.8)~~ 3.4.3.4 No exterior addition to the original dwelling shall thereafter be made other than fire escapes and outside stairways.

~~(3.4.2.9)~~ 3.4.3.5 No dwelling shall be converted unless in connection therewith it is placed in reasonable state of repair.

~~(3.4.2.8.1)~~ 3.4.4 Accessory dwelling on a lot with less than two (2) acres or less than 150 feet of frontage, subject to the conditions set forth in Section 3.3.1.2 and Section 7.3.1.1

~~(3.4.3)~~ 3.4.5 Any other use determined by the Board of Selectmen to be similar in character to one or more uses specifically authorized herein, provided the Board finds that the proposed use is in harmony with the general purpose and intent of this by-law and not offensive or detrimental to the neighborhood.

~~(3.4.4)~~ 3.4.6 The Board of Selectmen may impose additional safeguards and requirements for any use under this section as in their judgment are necessary for the protection of the public health, safety and welfare.

~~(3.4.5)~~ 3.4.7 Every use permitted by right or authorized by special permit under the provisions of this by-law shall be subject to the State Building Code, State Sanitary Code and the Town's Board of Health Regulations and any other applicable statutes, bylaws and regulation, including Parking and Sign Regulations.

3.5 Nonconforming Structures, Uses and Lots

3.5.1 These procedures shall not apply to structures or uses lawfully in existence or lawfully begun at the time of the adoption of this by-law as provided in Section 6, Chapter 40A (MGL).

3.5.2 Any pre-existing nonconforming structures or uses may be rebuilt or reestablished within two (2) years if damaged or destroyed by fire or other catastrophe.

3.5.3 Pre-existing nonconforming structures or uses may be extended, altered or changed to another nonconforming use by Special Permit from the Board of Selectmen provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

3.5.4 A nonconforming use of land or structure which has been abandoned or not used for a period of two (2) years or more shall not be reestablished, except by Special Permit and any future use of such premises shall be in conformance with these instructions.

3.5.5 Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this By-Law to the extent and as provided in Section 6, Chapter 40A (MGL).

Comment: Minor change proposed to existing Section 4.1 to reflect the establishment of two districts and set the dimensional standards for land located in the Rural Residential District – which remain unchanged. Add a new Section 4.2 and 4.3 to establish new dimensional standards for land located in the Village Center Residential District. Renumber existing Section 4.2 as new Section 4.4.

SECTION 4: LOT SIZE AND FRONTAGE

4.1 *In the Rural Residential District*, no dwelling or accessory building shall be erected or placed on a lot having less than one (1) acre in area or having less than one hundred and fifty (150) feet in frontage or be placed closer than forty (40) feet to the street line or twenty five (25) feet from side or rear lot line. No more than one (1) dwelling shall be erected or placed on any such lot.

4.2 *In the Village Center Residential District, no dwelling or accessory building shall be erected or placed on a lot having less than one (1) acre in area or having less than seventy-five (75) feet in frontage or be placed closer than twenty (20) feet to the street line or twenty (20) feet from side or rear lot line. No more than one (1) dwelling shall be erected or placed on any such lot.*

4.3 *The maximum front setback for lots located in the Village Center Residential District shall be the average of the front setbacks of all principal buildings on the same side of the street within 100 yards on either side of the subject lot.*

4.3.1 *Vacant lots shall not be included in the front setback average.*

4.3.2 *If no principal buildings exist on the same side of the street within 100 yards on either side of the subject lot then the maximum front setback shall be thirty-five (35) feet.*

4.3.3 *The front setback is not to be less than twenty (20) feet.*

~~(4.2)~~ 4.4 Nothing in this By-law, however, shall prohibit the construction, alteration or enlargement of a single family dwelling or other permissible building on a lot which contains a lesser area or frontage if the lot was separately owned and was so recorded in the Southern Berkshire Registry of Deeds at the time of the adoption or amendment of this By-law.

Comments: Add new Section 12 – Definitions – formerly existing Section 2

SECTION 12: DEFINITIONS

12.1 **MAXIMUM GROSS FLOOR AREA (GFA):** *The sum of all enclosed or covered areas capable of being used or finished for habitable space of each floor of the building, measured to the exterior faces of the enclosing walls, columns, or posts. A space shall be considered “capable of being used or finished for habitable space” if it*

meets Massachusetts Building Code occupiable ceiling height requirements.
(ATM 5.4.15) (AG 11.4.15)

12.2 ACCESSORY DWELLING: A detached freestanding building located along with the principle dwelling unit on the lot shall be allowed as an accessory dwelling.

12.3 AGRICULTURAL USE: Any use of land for the purpose of raising agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This use does not include kennels, commercial stables or facilities for the commercial raising of swine or fur bearing animals.

12.4 BUILDING: A roofed or walled structure used or intended for supporting or sheltering any use occupancy.

12.5 CUSTOMARY HOME OCCUPATION: Self-employed resident occupants in their private homes working at an occupation which is limited to the home, carried forth at the home and requiring no more off-street parking facilities that would ordinarily be used by the household, such as dress making, preserving or home cooking, photography, the giving of private music and dance lessons or a one chair beauty parlor. Customary home occupation does not include gift shop, antique shop, art gallery or similar retail establishment.

12.6 DWELLING UNIT: One or more rooms constituting a separate independent housekeeping unit establishment with cooking, living, sanitary and sleeping facilities for the use of no more than one family.

12.7 DWELLING, SINGLE FAMILY: A detached residential building designed for or occupied by one (1) family only, but not including mobile homes and trailers whether placed on foundations or not.

12.8 DWELLING, MULTI-FAMILY: A residential building containing two (2) or more dwelling units.

12.9 FAMILY: An individual or any number of individuals related by blood, marriage or other legal arrangement such as adoption, guardianship, foster care or up to six (6) unrelated individuals living in a single dwelling unit.

12.10 FRONTAGE: That boundary of a lot, which lies along a road.

12.11 LOT: An area of land in one ownership with definite boundaries, used or available for the use as the site of one or more buildings.

12.12 **MUNICIPAL USE:** Any Town of New Marlborough use of land in accordance with the General Laws governing municipal powers and functions including participation in regional uses.

12.13 **ROAD:** a. A public way or way which the Clerk of the Town certifies is maintained and used as a public way, or b. A way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or c. A way in existence when the subdivision control law became effective in New Marlborough on March 8, 1965 having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the building erected or to be erected thereon.

12.14 **SETBACK:** The area of a lot extending inward from a lot line (or, in the case of front setback, the road line), for the distance specified in the zoning regulations in which no building or structures may be placed.

12.15 **SETBACK, FRONT:** An area extending across the full width of the lot and extending inward from the road line of the lot.

12.16 **SETBACK, REAR:** An area extending inward from rear of the lot between the side lot lines.

12.17 **SETBACK, SIDE:** An area extending along a side lot line from the frontline to the rear line.

12.18 **STRUCTURE:** Any construction, erection, assemblage or other combination of material upon the land necessitating pilings, footings, or a foundation for attachment to the land, including swimming pools and recreational courts.