

# TOWN OF



## ZONING ORDINANCE

**(including Flood Hazard Areas)**

Planning Commission Public Hearing  
Tuesday, May 25, 2021 – 6:00 PM

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## **ARTICLE I: ENACTMENT, OBJECTIVES, PURPOSE AND SCOPE**

### **Section 101: Enactment**

In accordance with the Vermont Planning and Development Act, 24 VSA 117, hereinafter referred to as the "Act", there are hereby established Zoning Regulations for Town of Castleton which shall be known and cited as the "Zoning Ordinance of the Town of Castleton".

### **Section 102: Objectives and Intent**

The objective of the Zoning Regulation is to establish standards and policies concerning development of land which further the goals of the Castleton Plan.

It is intended that standards and policies established by the Zoning Regulations reflect and express a sense of community values toward Castleton's environment including the value of appearance and congenial arrangement for the conduct of farming, trade, industry, residence and other uses of land necessary to the community's well-being in so far as such values are related to the objectives of the adopted Town Plan.

It is the intent of these Zoning Regulations to provide for orderly community growth and to further the purposes established in the Act, Section 4302.

### **Section 103: Purpose and Scope**

The purpose of this Regulation is for the promotion of the health, safety, or general welfare of the community by establishing regulations and conditions governing the erection and use of buildings, other structures and use of land and natural resources.

## **ARTICLE II: ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP**

### **Section 201: Establishment of Zoning Districts**

The Town of Castleton hereby establishes the following Zoning Districts:

See Article III for uses permitted in each district; see Article IV for dimensional requirement of each district.

R 20	Residential 20,000 sq. ft.	CC	College Campus
R 40	Residential 40,000 sq. ft.	IND	Industrial

RR2A	Rural Residential 2 Acres	RC	Recreation Commercial
RR5A	Rural Residential 5 Acres	VC	Village Commercial
WSPA	Water Source Protection Area*		
FHO and RCO	Flood Hazard Area and River Corridor **		

\*Overlay District

\*\*Overlay district, See Article XV

A. R-20 Residential 20,000 District, Minimum Lot Size:  
Residential - 20,000; Non-Residential - 2 Acres

1. Purpose: To provide residential opportunities on existing lots with municipal sewer within the village.
2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J

B. R-40 Residential 40,000 District, Minimum Lot Size:  
Residential - 40,000; Non-Residential - 2 Acres

1. Purpose: To permit an opportunity for residential uses around the lake and in selected portions of the community close to the village and necessary services.
2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J

C. RR - 2A Rural Residential 2 Acre District, Minimum Lot Size: Two Acres

1. Purpose: To provide residential opportunities in the major portions of the community to the extent there are not substantial conflicts with natural resources.

2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
  3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J
- D. RR - 5A Rural Residential 5 Acre District - Minimum Lot Size: Five Acres
1. Purpose: To provide for larger lots in environmentally sensitive portions of the community.
  2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A
  3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J
- E. VC - Village Commercial District: With municipal sewer - 20,000 square feet; without municipal sewer - one acre
1. Purpose: To support the role of the village as the focus of social and economic activities in the community and to provide for residential, commercial and other compatible development that serves the needs of the community. Such development should occur at densities and uses that will maintain the traditional, social and physical character of the village and that will not exceed the capability of the lands, waters, services and facilities.
  2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
  3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J.
- F. RC - Recreation Commercial District:

1. Purpose: To combine residential use with compatible commercial establishments in a traditional lake area setting in order to provide pleasant living conditions and to promote convenient shopping and services.
2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J

G. IND - Industrial District: Minimum Lot Size - 20 Acres

1. Purpose: To provide opportunity for industry within the community in order to assist the tax base and provide employment for community residents.
2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A. section 201.I
3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J

H. CC - College Campus District:

1. Purpose: To provide opportunity for continuing higher education and the support services including housing, athletics and extracurricular activities.
2. Flood Hazard Areas: There may be some land within this district that is within the Flood Hazard Overlay District. Please check the Official Zoning Map and see Attachment A.
3. Water Source Protection Areas: There may be some land within this district that is within the Water Sources Protection Overlay District. Please check the Official Zoning Map and see Section 201.J

I. FH - Flood Hazard - an Overlay District



Minimum lot size: underlying district requirements

1. Description: All lands shown on the official Zoning Map as flood hazard areas are based on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.; the area is also generally shown on the Official Zoning Map as an overlay. See also Attachment A: Flood Hazard Area Regulations.

J. WSP -Water Source Protection – an Overlay District

Minimum lot size: underlying district requirements

1. Description: Lands that provide the water sources and storage for wells providing public water supply for human consumption within the Town of Castleton. For zoning purposes, the boundaries of the Water Source Protection Overlay District are located on the official Zoning District Map as an overlay. See also Section 414.

## **Section 202: Zoning Map**

The location and boundaries of Zoning Districts are established as shown on the Official Zoning Map; a copy is appended. The Official Zoning Map is hereby made a part of these regulations, together with all future amendments. No changes of any nature shall be made in the Official Zoning Map except through statutory procedures for the amendment of this regulation [24 VSA 117 Sections 4441 and 4442.

Regardless of the existence of copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map shall be that located in the Town Clerk's office and it shall be the final authority as to the current zoning status of land and water areas.

## **Section 203: Interpretation of Zoning District Boundaries**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center of streets, highways or alleys shall be construed as following the center lines of the rights-of-way of such streets, highways or alleys, unless specifically stated to the contrary.
- B. Boundaries indicated as following railroad lines shall be construed as following the center lines of the rights-of-way of such railroad lines; unless specifically stated to the contrary.
- C. Boundaries indicated as following transportation or power line rights-of-way shall be construed as following the center lines of such rights-of-way; unless specifically stated to the contrary.
- D. Boundaries indicated as following property lines shall be construed as following such lines as they exist on the effective date of these regulations.
- E. Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.
- F. Boundaries indicated as approximately following Town limits shall be construed as following Town limits.
- G. Boundaries indicated as following shore lines shall be construed as following such shore lines; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.
- H. Boundaries indicated as being parallel to or extensions of lines or features described in subsections A-G shall be construed as parallel to or extensions of such lines or features. Distances not specifically indicated shall be determined by the scale of the map.
- I. Boundaries indicated as lines perpendicular to lines or features described in subsections A-G shall be construed to proceed at right angles from such lines or features. Distances not specifically indicated shall be determined by the scale of the map.
- J. Boundaries indicated as following existing contour lines, at the time of adoption of the Ordinance, shall be construed to follow the line of the elevation indicated as determined on the ground.
- K. The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature which references a district boundary line, after the

effective date of these regulations, shall not affect the location of such boundary line.

- L. Where physical features existing on the ground are at a variance with those shown on the Official Zoning Map, or any conflict within any of the provisions hereof, or in any circumstances not covered by subsections A-K above, the Development Review Board shall, upon appeal, interpret the district boundaries.
- M. When the Administrative Officer cannot definitively determine the location of a district boundary, the Development Review Board shall, upon appeal, interpret the location of the district boundary with reference to the Official Zoning Map and the purposes set forth in all relevant provisions of the Ordinance.
- N. Where a boundary line between districts divides a lot or parcel of land, the Development Review Board may permit the extension of the regulations for either portion of the lot not to exceed one hundred (100) feet beyond the District line into the remaining portion of the lot.
- P. The Administrative Officer shall determine the relationship of a proposed development to the area of Water Source Protection Area, using the overlay map. Where interpretation is needed as to the exact location of the boundary, the Development Review Board shall, upon appeal, make the necessary interpretation.

#### **Section 204: Application of Regulations**

- A. The Regulations within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure and/or land, except as hereinafter provided.
- B. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the Regulations herein specified for the zone in which it is located. Also see Article VII.
- C. No building or other structure shall hereafter be erected or altered contrary to the provisions and intent of this Regulation.
- D. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose

of complying with this Regulation, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

- E. No lot existing at the time of passage of this Regulation shall be reduced in dimension or area below the minimum requirements set forth herein. Lots created after the effective date of this Regulation shall meet at least the minimum requirements established by the Regulation.
- F. Lot area on one side of a public highway shall not be added to lot area on the other side of such highway in calculating minimum lot area.
- G. Other uses not listed here (Article III - Table of Uses) may be permitted if the finding by the DRB shows that such use is clearly of the same general character as those permitted in the area, and which will not be detrimental to the other uses within the district or to the adjoining land uses, or the natural and human environment, and so long as such use is not prohibited under Article IV of these Regulations.

### **ARTICLE III: TABLE OF USES**

P = PERMITTED USE

C = CONDITIONAL USE

S=PERMITTED WITH SITE PLAN REVIEW

ALL USES ARE SUBJECT TO THE REQUIREMENTS OF ARTICLE V-A  
 CONDITIONAL USES ARE SUBJECT TO ARTICLE IV, AS APPLICABLE  
 (See Comment)    \*= requires Town Sewer

<b>USES</b>	<b>R-20</b>	<b>R-40</b>	<b>RR-2A</b>	<b>RR-5A</b>	<b>CC</b>	<b>RC</b>	<b>VC</b>	<b>IND</b>	<b>COMMENT</b>
Accessory Use	P	P	P	P	C	P	P	C	
Agriculture	P	P	P	P	P	P	P	P	
Appliance									
Retail Sales & Service			C*			S	S		
Wholesale Sales & Service						S	S	C	
Associations, Clubs & Lodges			C	C		C	C		
Automobiles									
Painting and Repair							C	S	
Parts and Supplies			C*				S	S	
Sales, Used Vehicles			C*				S		
Sales and Service			C*				S		
Service Stations							C		
Bank			C*			C	S		
Bed and Breakfast	S	S	S	S		S	S		
Beer & Wine Distributors							C	S	
Building Materials Sales/Storage			C*				C	S	
Church, Temples, Etc.			S				S		
Communication Towers			C	C			C		See Section 414
Convenience Store/Small Grocery (no gas)			C*			S	S		
Cottage Industry	S	S	S	S		S	S		See Section 403
Day Care Facility > seven	S	S	S	S	S	S	S		
Electrical Supplies, Wholesale & Retail			C*			C	S	S	
Fabric Retail Sales			C*			C	S		
Fire Station	C	C	C	C	C	C	C	C	

<b>USES</b>	<b>R-20</b>	<b>R-40</b>	<b>RR-2A</b>	<b>RR-5A</b>	<b>CC</b>	<b>RC</b>	<b>VC</b>	<b>IND</b>	<b>COMMENT</b>
Flooring-Retail / Sales / Installation (carpet/tile/linoleum)			C*			C	S	S	
Forestry	P	P	P	P	P	P	P	P	
Funeral Home		C	C				C		See Section 405
<b>Furniture and Home Furnishings</b>									
Retail Sales, New and Used			C*			C	S		
Upholstering			C*				S		
Wholesale & Storage			C*				C	S	
Garden Center - Retail			C				S	S	See Section 405
Gift Shops, Antique Stores, Crafts			C*			S	S		
Glass Sales & Repair			C*				S		
Golf Course			C			C			
Home Occupation	P	P	P	P		P	P		See Section 403
Kennels			C	C			C		See Section 406
Landscaping Contractor			S	S			S		
Lumber Yard			C*				C	S	
Manufacturing, Light			C*			C		C	See Section 407
Mobile Home Park			C*						
Motels			C			C	C		
Municipal Offices	P	P	P	P		P	P		
Music Instruments-Retail Sales & Service			C*				S		
Nursing Homes		C	C						See Section 408
Office Building			C				S		
Office Equipment-Retail Sales & Service			C*				S		
Other Retail Sales & Services			C*				S		
Parks, Municipally owned	C	C	C	C		C	C		
Pet Shops			C*				S		
Planned Unit Development (PUD)		C	C	C		C	C		See Section 417
<b>Plumbing Fixtures-Supplies</b>									
Display - Retail			C*				S		
Display - Wholesale			C*				S	S	
Plumbing Service			C*				S		
Pool Equipment Sales			C*				S		

<b>USES</b>	<b>R-20</b>	<b>R-40</b>	<b>RR-2A</b>	<b>RR-5A</b>	<b>CC</b>	<b>RC</b>	<b>VC</b>	<b>IND</b>	<b>COMMENT</b>
Post Office			C*				C		
Professional Office			C				S		
Professional Residence-Office	S	S	S			S	S		
Propane Distributor								C	
Quarry, Removal of Sand, Gravel, or Topsoil			C	C				C	See Section 404
Real Estate Office			C*				S		
Recreation Areas, Private (Indoor/Outdoor)		C	C	C	C	C	C		See Section 409
Recycling Station			C				C	C	Municipal only
<b>Residential</b>									
Accessory Building	P	P	P	P	P	P	P		See Section 1016
Accessory Apartment	P	P	P	P		P	P		
Group home			C	C					See Section 410
One Family	P	P	P	P		P	P		
Two-family	P	P	P	P		P	P		
Multiple family			C			C	C		
Restaurant			C*			C	C		
Retail Sales & Services			C*				S		
Schools			C		C				See Section 411
Self-Storage Facility							C	C	
Solar Energy Panels	C	C	C	C	C	C	C	C	See Section 414
Solid Waste Drop-off			C				C	C	Municipal only
Sporting Goods & Camping-Retail Sales			C*			S	S		
Stone Contractors & Sales			C*				C	S	
Trailer Camp			C			C			
Trailer Sales-Renting & Leasing			C*				C	S	
Truck - Supplies and Parts Storage			C*				C	S	
Truck - Painting, Repair, Sales, Rent, Lease							C	S	
Trucking							C	S	
Veterinary Hospitals			C	C			C		See Section 412
Warehouse							C	S	
Welding Shop							C	S	
Wind Generator		C	C	C	C	C	C	C	See Section 414
Wood Manufacturing								S	
Wood Working Shop							C	S	

#### **ARTICLE IV: USES PERMITTED SUBJECT TO CONDITIONS**

A zoning permit shall be issued by the Administrative Officer for any use or structure which requires conditional use approval only after the Development Review Board grants such approval. In considering its action, the Board shall make findings upon both general and specific standards set forth in these regulations. Except as specifically provided herein, no Board may amend, alter, invalidate or affect any plan or by-law of any municipality or the implementation or enforcement thereof, or allow any use not permitted by any Zoning Regulations or other by-laws.

In addition to any specific conditions of Sections 403 through 415~~7~~, the Development Review Board shall determine that the proposed conditional use shall not result in an undue adverse effect on any of the following:

- A. The capacity of existing or planned community facilities;
- B. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of the municipal plan;
- C. Traffic on roads and highways;
- D. Use of renewable energy resources; and
- E. Bylaws and ordinances in effect.

In granting conditional use approval, the Board may attach such reasonable conditions in addition to those outlined, as it deems necessary. The Board shall act to approve or disapprove any such requested conditional use within 45 days after the date of the final public hearing held under this section, and failure to so act within such period shall be deemed approval and effective on the 46<sup>th</sup> day.

Upon the failure of any interested person to appeal to the Development Review Board under Section 4464 of the Act, or to appeal to Environmental Court under Section 4471 of the Act, all interested persons affected shall be bound by such decision or act of such officer, such provisions, or such decisions of the Board, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision of the Board in any proceeding, including without limitation, any proceeding brought to enforce this chapter.

The conditions for lot size and setbacks apply unless Article V is more restrictive.



## **Section 401: Applications for Conditional Use**

All uses requiring Conditional Use approval, except one and two family dwellings, are also subject to the following:

- A. In addition to the information required in Section 1102C the owner and/or applicant shall submit seven (7) sets of a site plan and supporting data to the Administrative Officer which shall include the following information presented in drawn form and accompanied by written text.
  - 1. Name and address of the owner of record of this and adjoining lands; name and address of applicant - if different than owner; name and address of person or firm preparing the plan; description of the property giving location; scale of map, north point, and date.
  - 2. Survey of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use and deed restrictions, zoning classification, existing surface waters (brooks, ponds, etc.), if any, and the location of proposed structures with distance from lot lines indicated.
  - 3. Site plan showing proposed structure(s), locations and land use areas; streets, access points, driveways, traffic circulation, parking and loading spaces and pedestrian walks; utilities, both existing and proposed, including placement of poles; and including water wells, and sewage treatment facilities; landscaping plans, including site grading, planting design, screening or fencing, detailed specifications of planting and landscaping materials to be used; existing and proposed above ground equipment such as propane tanks, transformers, solar panels.
  - 4. Construction sequence and anticipated time schedule for the completion of each phase for buildings, parking spaces and landscaped areas of the entire development.
  - 5. The location and size of proposed signs.
  - 6. Certification that the applicant has notified all adjoining property owners of the application.
  - 7. Any of the above information can be waived at the discretion of the Development Review Board.

A request for a waiver shall be submitted to the Development Review Board and shall specify which portions are requested for waiver. The applicant shall include a preliminary site plan providing sufficient information upon which the Development Review Board can make a decision. The Development Review Board may request additional information.

A request for a waiver shall not be considered as submission for purposes of timing requirements relating to action on applications.

- B. The Administrator shall check to see if all required information has been submitted and the fees paid and shall submit the completed application to the Development Review Board. Incomplete applications shall be returned to the applicant.

#### **Section 402: Conditions Relating to Siting of Conditional Uses**

All Conditional Uses shall be simultaneously reviewed under the requirements of Article VIII - Site Plan Review.

#### **Section 403: Cottage Industry**

- A. No more than fifty (50) percent of the floor area of a residential dwelling may be used for a cottage industry. In any accessory structure, an area may be used that does not exceed fifty (50) percent of the floor area of the residential dwelling. This is in place of, and not in addition to the use of the residential structure.
- B. The use does not change the character of the area and, the dwelling, accessory buildings, and the lot shall maintain a residential appearance at all times.
- C. The cottage industry is clearly secondary to the use of the site for residential purposes.
- D. The use is conducted within a portion of the dwelling or a building accessory thereto by the bona fide year-round resident of the dwelling.
- E. No more than two (2) employees, in addition to the principal owner(s), shall be permitted.
- F. The use shall not generate traffic, parking, noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.

- G. Storage of equipment related to the cottage industry shall be within an enclosed structure or properly screened from adjacent residential uses.

#### **Section 404: Earth Resources Extraction**

- A. There shall be a minimum lot area of five (5) acres.
- B. A performance bond for all activities except mining and quarrying shall be secured from the applicant sufficient to ensure that upon completion of the extraction operations the abandoned site will be left in a safe, attractive, and useful condition in the interest of public safety and general welfare. The owner shall submit a plan of proposed improvements to accomplish this end.
- C. All surface drainage affected by excavation operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street, or private property. All provisions to control natural drainage shall require the approval of the Development Review Board.
- D. No excavation, blasting, or stock piling of materials shall be located within two hundred (200) feet of any street or other property line. The property line restriction may be waived by adjacent property owners if written agreement is obtained.
- E. No noise which represents a significant increase in noise levels in the vicinity of the development so as to be incompatible with the reasonable use of the surrounding area shall be permitted.
- F. No vibration shall be permitted which shall exceed a peak particle velocity of 0.5 inches per second at the property line.
- G. No emission shall be permitted which may cause any damage to health, to animals, vegetation, or other forms of property which can cause excessive soiling, at any point on the property of others.
- H. No power-activated sorting or processing machinery or equipment shall be located within two hundred (200) feet of any street or other property line. The property line restriction may be waived by adjacent property owners if written agreement is obtained.

- I. Stripping of top soil for sale or for use on other premises, except as may be incidental to a construction project, or sand or gravel operation on the same premises, shall be prohibited.
- J. The creation of pits or steep slopes shall not be permitted unless provisions are made to refill each pit, or cut the sides of steep slopes in a manner which will ensure public safety and prevent erosion. Earth slopes greater than 2 horizontal/1 vertical shall not be allowed to remain. Excavation and open pit extraction sites shall be graded, fertilized, mulched and reseeded so as to establish a firm cover of grass or other vegetation to prevent erosion. Such work shall be inspected and approved by the Administrative Officer prior to the release of any bond.
- K. The facility shall operate only from 6 AM to 7 PM Monday through Saturday unless other hours determined by Development Review Board at time of permit.
- L. A sand or gravel pit on a farm shall be termed accessory to an agricultural use and shall not be subject to provisions (B) and (I) of this Section, if all of the following requirements are met:
  - 1) Provisions (C), (D), (E), (F) and (G) are complied with.
  - 2) The excavation area is confined to one-half acre or less.
  - 3) No trucks whose primary function is commercially hauling sand, gravel, or soil are kept on the premises.
  - 4) The sand or gravel pit is not a primary source of income for the owner.
  - 5) No power-activated sorting or processing machinery or equipment is located on the premises.
- M. Load must be covered when off-site or loaded so as not to spill while en route.
- N. The development shall not conflict with deer yards, historic sites or fragile areas.

#### **Section 405: Funeral Homes/Garden Center - Retail**

- A. There shall be a minimum lot area of two (2) acres.
- B. Structures, including accessory buildings, shall not occupy more than thirty percent (30%) of the area of the lot.
- C. There shall be minimum yards of twenty-five (25) feet on all sides of the building(s) with a minimum setback of one hundred (100) feet from all adjacent residential property.
- D. Where possible, entrances and exits to the parking lot shall be on non-residential streets.
- E. Off-street parking shall be provided in accordance with Article VI and shall be located a minimum distance of twenty five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.
- F. All driveways, entrances and exits shall be located a minimum of seventy-five (75) feet from any street intersections.

#### **Section 406: Kennels**

- A. The minimum lot size shall be five (5) acres.
- B. The minimum setback of dog runs and structures housing the animals shall be two hundred (200) feet from any adjacent residential property line.
- C. Animal excrement, waste and remains shall be disposed of in a proper and sanitary manner.
- D. Outdoor kennels must be screened from view from neighboring residential properties by evergreen landscaping material or opaque fencing six (6) feet in height.
- E. Any outdoor lighting must be shaded to avoid shining on any adjacent properties or roadways.

#### **Section 407: Light Manufacturing**

- A. Wastewater: Wastewater must be disposed of in a safe, non-polluting

manner, as evidenced either by connection or authorization to connect to public sewer lines or a State issued discharge permit.

- B. Access: Access for emergency vehicles to any permanent or occupied structure must be provided either by frontage on public roads or waters; or by frontage on a maintained private road built to the standards adopted by the Town for development roads (Vt. Dept. of Highways Document A-76), or (with the approval of the Development Review Board) by an improved, all-weather, unobstructed easement, or right-of-way at least fifty (50) feet wide.
- C. Water: There must be an adequate water supply to service the use intended, as evidenced by connection or authorization to connect to a public water supply system, or proof that the rate of flow from any private well or water source is sufficient to service the use intended.
- D. Traffic: Expected traffic flow to and from the site must not be beyond the capacity of local roads. Evidence of compliance may consist of certification from the Select Board that local roads in the vicinity of the use are either presently adequate or projected to be upgraded to handle the amount and weights of the vehicles expected at the site, or by an access permit from the State of Vermont Agency of Transportation.
- E. Intersection of Access Road with Local Roads: The design of the intersection of the access road to the site with local roads must conform with the criteria contained in the Standards for Development Roads issued by the Vermont Agency of Transportation.
- F. Slopes and Erosion: In areas of steep slopes, the following standards shall apply:
  - 1. Twelve (12) to less than fifteen (15) percent slope: No more than forty (40), percent of such areas shall be developed and/or re-graded or stripped of vegetation.
  - 2. Fifteen (15) to thirty (30) percent slope: No more than thirty (30) percent of such areas shall be developed and/or re-graded or stripped of vegetation.
  - 3. Slopes in excess of thirty (30) percent: No more than fifteen (15) percent of such areas may be developed and/or re-graded or stripped of vegetation.

Hills totally contained within a lot, whose development will not cause erosion effects on neighboring lots are exempt from this provision, except that if a hill is within fifty (50) feet of a neighboring property, a registered professional engineer must certify that erosion effects will not be experienced by neighboring properties and no such effects must be subsequently experienced by neighboring properties.

- G. Noise: No noise shall be permitted which represents a significant increase in noise levels in the vicinity of the development so as to be incompatible with the reasonable use of the surrounding area.
- H. Vibration: No vibration shall be permitted which shall exceed a peak particle velocity of 0.5 inches per second at the property line.
- I. Smoke, Dust, Fly Ash, Fumes, Vapors, Gases, and other Forms of Air Pollution: No emission shall be permitted which may cause any damage to health, animals, vegetation, or other forms of property which can cause excessive soiling at any point on the property of others.
- J. Odors: No emission of detectable objectionable odors beyond the property line of the Lot where such originates shall be discharged, caused, allowed, or permitted.
- K. Fire, Explosive, or Safety Hazard: No fire, explosive, or safety hazard shall be permitted which significantly endangers the operations, people around the operations, other property owners, degrades adjoining property, or which results in a significantly increased burden on municipal facilities.
- L. Glare, Lights, and Reflections: Except for public street lights and traffic signals:
  - 1. Any operation or activity producing glare or utilizing exterior lighting shall be conducted so that direct or indirect light from the source shall not cause illumination in excess of 0.5 foot-candles when measured at adjacent residential boundaries. All fixtures shall be of a directed illumination type which shall focus all light toward the ground or against the structure to be established.
  - 2. No flickering or flashing lights may be used.
  - 3. Lights shall be established so as not to be distractive to drivers of vehicles on roads in the vicinity of the use.

- M. All uses which are located on a parcel or lot containing the boundary of the Industrial District with another zoning district within the Town shall establish and maintain a twenty (20) foot wide landscaped buffer area located entirely on the parcel within the Industrial District to be developed, such buffer shall serve to insulate said parcel from the adjoining zoning district.

#### **Section 408: Nursing Homes**

- A. For nursing homes for ten (10) or less patients, there shall be a minimum lot area of one (1) acre; for nursing homes with more than ten (10) patients, there shall be a minimum lot area of two (2) acres.
- B. The total lot coverage of all buildings shall not exceed thirty percent (30%) of the area of the lot.
- C. There shall be a minimum front, side, and rear yards of twenty five (25) feet.
- D. The maximum number of persons permitted on any one lot shall not exceed thirty (30). This does not include visitors or staff members, except those that reside at the facility.
- E. In addition to the requirements set forth above for yards, there shall be provided two hundred (200) square feet of usable open space per person, not including parking and driveways.
- F. Off-street parking shall be located a minimum distance of twenty-five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.

#### **Section 409: Recreation Areas, Private**

- A. The total lot coverage of all structures shall not exceed twenty percent (20%) of the area of the lot.
- B. There shall be minimum front, side, and rear yard setbacks of twenty-five (25) feet.
- C. In addition to the yard requirements above, every building shall be set back a minimum distance of one hundred (100) feet from any adjacent residential property line.



- D. No building shall be erected to a height in excess of two (2) stories.
- E. Off-street parking shall be provided in accordance with Article VI and shall be located a minimum distance of twenty-five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.
- F. Reasonable hours of operation shall be determined according to particular recreational uses.

#### **Section 410: Residential - Group Home**

- A. There shall be a minimum lot area of forty-thousand (40,000) square feet.
- B. The total lot coverage of all buildings shall not exceed thirty percent (30%) of the area of the lot.
- C. There shall be minimum front, side, and rear yards of twenty five (25) feet.
- D. The maximum number of persons permitted on any one lot shall not exceed twenty (20). This does not include staff members, except those that reside at the facility.
- E. In addition to the requirements set forth above for yards, there shall be provided four hundred (400) square feet of usable open space per person.
- F. Off-street parking shall be provided in accordance with Article VI and shall be located a minimum distance of twenty-five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.

#### **Section 411: Schools**

- A. Use of land shall be limited to accredited educational facilities including buildings for classrooms, administration, maintenance, gymnasiums, athletic fields, and playgrounds.
- B. The minimum lot area shall not be less than three (3) acres for nursery, pre-kindergarten or kindergarten, four (4) acres for any elementary school, ten (10) acres for any Junior High school, and fifteen (15) acres for any Senior High School.

- C. Off-street parking shall be provided in accordance with Article VI and shall be located a minimum distance of twenty-five (25) feet from any adjacent residential property, and shall be surrounded by a planting screen or suitable fence.
- D. The maximum building coverage for any or all buildings shall not exceed thirty (30%) percent of the lot area.
- E. There shall be a minimum front, side, and rear yards of fifty (50) feet.

#### **Section 412: Veterinary Hospital - Non Boarding**

- A. Animal excrement, waste, and remains shall be disposed of in a proper and sanitary manner.
- B. Any outdoor lighting must be shaded to avoid shining on any adjacent properties or roadways.
- C. If the veterinary hospital boards animals, then all regulations in Section 406 "Kennels" shall apply.

#### **Section 413: WSP -Water Source Protection Area**

Purpose: To protect drinking water supplies in the Town of Castleton. For further information about this section, please refer to the Water Source Protection Plan, Castleton VT.

- A. Performance Criteria for all development within the Water Source Protection Overlay District:
  - 1. Maximum impervious lot coverage by building and paving: 25%
  - 2. The development or use must not cause an excessive increase in quantity or rate or rechanneling of water runoff onto neighboring properties.
  - 3. The natural water course shall be maintained with appropriate grading, culverts, or other technology.
  - 4. No development within 100 feet from the mean high water mark of rivers and streams shall be permitted, except for uses and

structures that do not have the potential to threaten the stability of the stream bank.

5. Excavation shall not jeopardize or contaminate the water supply.
6. Use of pesticides, herbicides, and commercial fertilizer use shall be prohibited within 200 feet of any public water supply well.
7. All pesticide, herbicide and fertilizer use, and manure storage and spreading shall conform to applicable State and Federal regulations.

B. Limitations: The following uses are not permitted in the Water Source Protection Overlay District.

1. Disposal of solid waste. Only brush and stumps are acceptable if generated from clearing of land and buried on the same site.
2. Subsurface storage of petroleum and other hazardous materials.
3. Above ground storage of petroleum and other hazardous materials over 1100 gallons.
4. Disposal of liquids or leachable wastes, except from single or multi-family residential subsurface disposal systems or spreading animal manure using Best Management Practices or approved commercial or industrial systems which discharge only human waste.
5. Industrial uses which discharge contact type process waters on site without treatment. Non-contact cooling water is permitted.
6. Storage of road salt or salted sand.
7. Dumping of snow containing de-icing chemicals brought from outside the Water Source Protection Overlay District.
8. Commercial animal feedlots.
9. New mining, quarrying, sand and gravel operations, or topsoil removal.
10. All on-site handling, disposal, storage, processing, or recycling of hazardous or toxic materials.

11. Automotive service and repair shops, fuel sales, junk yards and salvage yards.
12. Dry cleaning facilities.

#### **Section 414: Technological Structures**

Construction of technological structures shall be subject to public hearing and determined on a case by case basis by the Development Review Board. Such structures may include, but shall not be limited to, communication towers, solar panels and wind generators.

#### **Section 415: Mobile Home Parks**

The following regulations shall apply in respect to all mobile home parks, including the enlargement of an existing mobile home park:

- A. A mobile home park shall have an area of not less than fifteen (15) acres.
- B. Each mobile home lot shall be at least 22,500 square feet in area, and at least sixty (60) feet wide by at least one hundred and twenty (120) feet in depth, and shall front onto an access driveway.
- C. The width of all access driveways in a mobile home park shall be determined by the maximum daily volume of traffic each access driveway is expected to accommodate as follows:

VEHICLES/DAY	ACCESS DRIVEWAY WIDTH
0-50	20 Feet
51-100	24 Feet

All access driveways shall have a minimum depth of twelve (12) inches of gravel.

- D. Graveled or paved surface for parking at least 18' x 22' shall be provided on each mobile home lot.
- E. Mobile home parks shall provide at least sixty (60) percent of the total area for recreation, open space and infrastructure requirements, i.e. water, sewer, roads, electricity and other services.

- F. Each lot shall have a minimum three (3) foot wide hard surface walkway from street right way line to mobile home entrance.
- G. Each mobile home lot shall have an attachment for water supply. The water supply source must be approved by the State Department of Health.
- H. Each mobile home lot shall have an attachment for municipal sewage disposal.
- I. No mobile home lot, office or service building shall be closer to a public street right of way than eighty (80) feet, nor closer to a property line than fifty (50) feet.
- J. A strip of land at least one hundred (100) feet in width shall be maintained as a landscaped area abutting all mobile home park property lines.
- K. No mobile home shall be parked on a lot closer than thirty (30) feet to a lot line.
- L. No additions shall be made to a mobile home except a canopy and/or porch open on three (3) sides, or an addition made by the mobile home manufacturer.

#### **SECTION 416: Camp, Cabin, Seasonal (Secondary) Residence**

Setback from any property line for such uses shall be a minimum of 100 feet if the structure does not have a permitted and functioning potable water supply and wastewater disposal system. The DRB may require additional setback distance due to terrain or view issues.

#### **SECTION 417: Planned Unit Development**

The purpose of the Planned Unit Development (PUD) is to enable and encourage flexibility and development of land in such a manner as to promote the most efficient and appropriate use of the site while preserving the rural character of the town and avoiding fragmentation of important resources such as farmland, wildlife habitat, wetlands and other natural features.

This is accomplished by allowing creative site design, building placement, street layout, architecture, and provision of streets and utilities, which otherwise may not conform to the Bylaws.

A PUD may only be permitted on a parcel of not less than five acres in the R-40, RR-2A, RR-5A, RC, and the VC Zoning Districts and after review of Performance Standards for the PUD and Conditional Use Review by the DRB. All submission requirements by the applicant and public hearing process necessary for PUD shall apply.

Allowed uses include single family, two family and multiple-family dwelling units. Other accessory uses are permitted whether used in common by residents of the PUD, or individually or by other means. This may include shared garages, community buildings, natural or man-made water features, tennis courts, golf, or other similar facilities. Permitted recreation uses may be made available for public use. The DRB shall first review and approve any such public use to ensure conformance with the PUDs purpose and regulations.

**All zoning requirements for the district shall be met except that the following may be modified or waived: density of dwellings, building height, lot area, lot width/depth minimum, lot coverage and setbacks.**

Where the development may affect the character of the adjacent properties, the DRB may require special landscaping, natural buffer setbacks, and areas which must be kept free of buildings. The overall density of dwellings may exceed the density for the district in which it is located. All designated open space shall be protected from any additional residential development and shall be preserved according to conditions imposed by the DRB. An approved PUD shall not be further subdivided to create an additional PUD.

There shall be a homeowner's association, co-operative, or other entity governed by an agreement with conditions, covenants, and regulations. This agreement shall provide additional legal means to assure continuation and maintenance of all open space.

#### **PERFORMANCE STANDARDS FOR PLANNED UNIT DEVELOPMENTS:**

The following performance standards are applicable to all development for Planned Unit Developments and will be reviewed by the DRB during Site Plan and Conditional Use Review.

## **Lighting**

All exterior lighting shall be installed in such a manner as to direct light downward and away from adjacent lots and public traveled ways. Exterior lighting shall not create a nuisance to other property owners or tenants, or create a hazard to drivers of motor vehicles and bicycles.

## **Parking and Access**

Vehicular parking and site access shall be designed in a way to ensure safety and accommodate all modes of transportation, including pedestrian and bicycle. The DRB may require pedestrian, bicycle and public transit infrastructure be provided by the applicant and may waive requirements of Article VI: Parking and Loading. Whenever a proposed application involves access to a State of Vermont Highway, the application shall include a letter of intent from Vtrans confirming that the Agency has reviewed the application and is prepared to issue an access permit under governing statute.

## **Noise**

Noise from the proposed development shall not create a nuisance for surrounding property owners and shall conform to any adopted local noise ordinance.

## **Vibration**

No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at, or at any point beyond the lot line.

## **Dust, Fumes, Vapors, Gases, and Odors**

Emission of dust, dirt, fly ash, fumes, vapors, or gases which could be injurious to human health, animals, or vegetation; detrimental to the enjoyment of adjoining or nearby properties; or which could soil or stain property, at any point beyond the lot line of the development creating that emission shall be prohibited. In addition, no land use or establishment shall produce harmful, offensive, or noxious odors beyond their lot. The location and vertical height of all exhaust fans, vents, chimneys, or any other sources discharging or emitting smoke, fumes, gases, vapors, or odors shall be shown on the site plan. Any atmospheric

emissions of gaseous or particulate matter shall conform to all current provisions of the Air Pollution Control Regulations of the Vermont Agency of Natural Resources.

### **Screening and Landscaping**

Landscaping, screening, or protection by natural features may be used to minimize adverse effects on surrounding areas. Landscaped buffers shall be established along public travel ways and property lines. At street and driveway intersections, trees and shrubs shall be set back a sufficient distance from such intersections so that they do not present a traffic visibility hazard. Large parking areas shall include landscaping within the parking area, not just along the periphery.

Open storage areas, exposed machinery, dumpsters, garbage totes, and loading areas shall be visually screened from roads and surrounding properties.



## **ARTICLE V: LOT SIZE, SETBACKS, YARDS**

The following requirements apply to all uses shown as Permitted (P) and Permitted with Site Plan Review (S) in Article III, Table of Uses. Conditional Uses shall meet the requirements of Article IV unless more restrictive requirements are imposed by Article V.

DISTRICT	MIN. LOT SIZE	SETBACKS			MIN. LOT FRONTAGE	MIN. LOT DEPTH	MAX. BLD. HEIGHT (1)	MAX. LOT COVERAGE
		Front	Side	Rear				
RURAL RESIDENTIAL -RR - 2A	Two (2) Acres	50'	30'	50'	150'	200'	38'	10%
RURAL RESIDENTIAL - RR - 5A	Five(5) Acres	70'	50'	70'	200'	200'	38'	10%
RESIDENTIAL 40,000 - R-40	<u>40,000 sq. ft.</u> Non-Res. 2 acres (3)	50'	30'	50'	150'	200'	38'	<u>15%</u> 10%
RESIDENTIAL 20,000 - R-20	<u>20,000 sq. ft.</u> Non-Res. 2 acres (3)	40'	15'	40'	100'	150'	38'	<u>20%</u> 15%
VILLAGE COMMERCIAL	20,000 sq. ft. (2)	40'	15'	40'	100'	150'	38'	20%
RECREATION COMMERCIAL	varies (3) (2)	50'	30'	50'	100/150 Ft.	150/200 Ft.	38'	15%

INDUSTRIAL (20 acres)	20,000 sq.ft.	40'*	15*	40'*	100'	150'	38'	25%
COLLEGE CAMPUS	20,000 sq.ft.	40'	15'	40'	100'	150'	38'	10%
ACCESSORY BUILDING		40'	10'	20'			29'	
Flood Hazard REQUIREMENTS AS IN UNDERLYING DISTRICT								

(1) See Article IX for definition

(2) If no municipal sewer minimum lot size is one acre (Refer to Section 1102)

(3) Residential Use (Refer to Section 1102): with municipal sewer - 20,000 sq. ft.; without sewer – 1 acre

Non-Residential Use: with municipal – 1 acre; without municipal sewer - 2 acres

' = feet

\* = 100 feet if bordering residential zone

## **ARTICLE VI: PARKING AND LOADING**

### **Section 601: Off-Street Parking Space General Requirements**

- A. The dimension of a parking space shall be at least 9 feet x 20 feet, except that it may be reduced to 8 feet 6 inches x 20 feet when such parking spaces shall be used solely by apartment residents or business employees who use such spaces on a non-transient basis (car parked for at least 3 hours in the same space).
- B. Parking spaces will not be permitted directly in front of entrances or exits to buildings. These areas shall be designated as loading areas (passenger or other).
- C. All parking areas must meet Americans with Disabilities Act requirements.
- D. Driveways serving multi-family residential uses and all non-residential uses shall be so arranged that vehicles are not required to back onto a public road on entering or leaving.
- E. In residential districts, required parking may not be located in the front setback, unless on a driveway on a permitted curb-cut. Pavement shall not replace lawns or planted areas in the front setback, exclusive of driveways.
- F. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Shielded fixtures shall be used.
- G. All open off-street parking areas containing more than four (4) parking spaces and all off-street loading areas shall be screened on each side by a wall, fence, or densely planted hedge not less than three (3) feet nor more than five (5) feet in height, adjoining or fronting on any property in a residential district.
- H. Parking areas shall be located on the same lot as the principle use except as otherwise provided.
- I. Parking spaces for any number of separate uses may be combined in one parking lot. Pooled or group parking facilities must meet the provisions of Section 604.
- J. Parking and loading areas, access drives, entrances, and exits shall be

paved or covered with crushed rock except that for residential uses gravel may be substituted for crushed rock. Permanent bumper guards or wheel bumpers shall be required in those locations of the parking and loading area where a matter of safety is involved. Provision shall be made to prevent vehicles from overhanging any sidewalk area.

- K. Adjacent areas shall be properly protected against headlight glare from parking and loading areas by means of a fence, wall, berm or hedge having a maintained height of not less than three (3) feet, nor more than five (5) feet based on topography.

## **Section 602: Parking Space Requirements**

Residential	Two (2) spaces per dwelling unit
Multi-family dwellings	One (1) per dwelling unit plus one half (½) per bedroom
Home Occupation	Two (2) spaces in addition to the requirements for the dwelling
Resident professional person	4 plus residential requirement
Place of assembly	One (1) space for every four (4) seats
Club (golf, tennis, swimming, or other sport)	To be determined on a case by case basis by the Development Review Board
Clinics, convalescent hospitals, sanitariums, homes for the aged or children	1 per 5 beds plus 1 per staff
Medical, dental offices	To be determined on a case by case basis by the Development Review Board
Offices, banks, unless otherwise specified herein	1 per 200 square feet of usable floor area
Retail	1 per 200 square feet of usable floor area
Restaurants	1 per 3 persons (seated and taverns standee capacity)
Business, Office, Laboratory	2 per 3 employees
Commercial recreation	To be determined on a case by case basis by Development Review Board.
Auto service station	1 per employee
Drive-in Establishment	1 per employee, plus 5 reservoir spaces per operating window or staff

Light Manufacturing	Two (2) spaces per three (3) employees
Funeral Home	10 parking spaces plus 1 space for every 2 employees
Wholesale Warehouse	One (1) per employee (for maximum per shift)
Commercial (not otherwise listed above)	1 per 300 square feet of usable floor area
Other Uses	For those uses not defined above the Development Review Board shall use the parking standards published by the Institute of Traffic Engineers, current edition or its best reasonable judgment.

### **Section 603: Non-Residential Loading Areas**

- A. One (1) off-street loading space not smaller than fifteen (15) feet wide by twenty-five (25) feet long by fifteen (15) feet high (if covered) shall be provided.
- B. One (1) additional loading space shall be provided for each twenty thousand (20,000) square feet of floor area, or part thereof, for any floor area exceeding twenty thousand (20,000) square feet.
- C. Loading surfaces shall be paved or covered with crushed rock.
- D. Loading facilities shall be located in the rear or side yards and not encroach on required buffer areas.

### **Section 604: Pooled or Group Parking Facilities**

- A. For nonresidential uses, two (2) or more distinct and separate establishments may decide to pool or group their parking facilities subject to these conditions:
  - 1. The number of curb cuts will be reduced;
  - 2. The spaces are located behind buildings and/or well screened from the road and, where necessary, other properties;
  - 3. Vehicular circulation is improved; and
  - 4. The appearance of the particular area is enhanced.
- B. The minimum number of parking spaces for such pooled or grouped parking facilities shall be not less than ninety (90%) percent of the number

of parking spaces otherwise required.

- C. Evidence of a suitable pooling agreement.
- D. Pooled parking space shall be provided within five hundred (500) feet from the main entrance of the building, measured along a street or way which gives access thereto.

## **ARTICLE VII: NONCONFORMING USES/NONCONFORMING STRUCTURES**

### **Section 701: Construction Approved Prior to Regulations**

Nothing contained in these Regulations shall require any change in a non-complying structure or a nonconforming use which existed, or was substantially completed by, prior to the adoption of this bylaw and conforms to the regulation then in effect.

### **Section 702: Scope**

Any lawful use of land or a building existing at the date of passage of these Regulations and located in a district in which it would not be permitted as a new use under the provisions of these Regulations, is hereby declared to be a nonconforming use, and not in violation of these Regulations at the date of adoption of these Regulations; provided, however, a nonconforming use shall be subject to the provisions of Sections 703-705 below.

### **Section 703: Change of Nonconforming Use**

A nonconforming use may be changed to another nonconforming use only with the approval of the Development Review Board and then only to a use which, in the opinion of the Board, is of a lesser, or no more objectionable than the current use and providing that no structural changes are made in the building. Whenever a nonconforming use has been changed to a conforming use, it shall not revert to a nonconforming use.

### **Section 704: Extension of a Nonconforming Use**

With the approval of the Development Review Board a nonconforming use may be extended throughout the existing building, provided no structural alterations or changes are made therein, except those required by law or ordinance or as may be required for safety or necessary to secure or insure the continued advantageous use of the building during its lifetime.

### **Section 705: Enlargement of a Nonconforming Use**

Shall not be moved, enlarged, altered, extended, reconstructed, or restored except on approval of the Development Review Board after a Public Hearing or Public Notice according to all these standards:

- A. All provisions of these Regulations, except type of use, are complied with

- B. No adverse effect on traffic in the vicinity
- C. No adverse effect upon surrounding property
- D. An increase in gross area not more than 50 percent of the total ground area covered by the building on the date of adoption or amendment which made it nonconforming.
- E. The use, if located in the Flood Plain District, meets the requirements of Attachment A.

#### **Section 706: Restoration of a Nonconforming Structure**

*(See definition in Article IX)*

Any nonconforming structure, which has been destroyed or damaged by fire, explosion, act of God, or by vandalism or public enemy, such structure may be restored as existed before such damage.

#### **Section 707: Discontinuance of Nonconforming Use**

*(See definition in Article IX)*

Any nonconforming use shall not be restored for other than a conforming use after damage from any cause, unless the nonconforming use is reinstated within 18 months of such damage; if the restoration of such building is not completed within 18 months, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged part of the building.

#### **Section 708: Maintenance of a Noncomplying Structure**

A non-complying structure may be normally maintained and repaired provided that such action does not increase the degree of non-compliance.

#### **Section 709: Expansion of a Nonconforming Structure with Conforming Use**

The following provisions shall apply to all structures existing on the effective date of these Regulations which do not conform to the requirement set forth in these Regulations and to all structures that in the future do not conform by reason of any subsequent amendment to these Regulations.

It is the Town's intention, in applying the following standards, to allow the Development Review Board latitude in their review and approval of permit



applications before them involving changes and/or additions to existing non-conforming structures with conforming uses.

Nonconforming structures with conforming use may be continued indefinitely, but:

- A. Shall not be moved, enlarged, altered, extended, torn down and replaced, reconstructed or restored except upon approval of the Development Review Board following a public hearing after public notice if the Board finds and concludes that:
  - 1. there will be no significant adverse effect on traffic in the vicinity;
  - 2. notwithstanding the provisions of Article VII, Section 709 A 3 below, the proposed nonconforming structure with conforming use will not have any side setback being less than the existing nonconforming distance. However, in the event such existing, non-conforming side setback distance is 15 feet or less, no side setback for the proposed non-conforming structure that is intended to be outside of the footprint of the existing structure, shall be less than 15 feet. Structures may be moved laterally toward the center of a lot provided the sum total of the side setbacks is not decreased;
  - 3. the additional area (square feet) of the proposed nonconforming structure with conforming use does not encroach on proscribed setback areas of the lot as set out in Article V, by more than 50% of the existing footprint. The maximum lot coverage percentages particular to the Zoning District as set out in Article V, specifically apply;
  - 4. for lots adjacent to and bordering on Lake Bomoseen, Glen Lake, Loves Marsh, Pine Pond, Lilly Pond or the Castleton River only, the proposed nonconforming structure with conforming use shall not result in any closer approach to the shoreline frontage, than the statutory setback, as set out in Article V; and
  - 5. no previous application for the lot in question has been approved by the Development Review Board under this Section 709, paragraph A.
- B. This section shall allow, upon approval of the Development Review Board, the addition of a second story above, and/or a basement or basement-walk in/out under a proposed non-conforming structure that is a conforming

use. No more than a maximum of two (2) stories above any basement or basement-walk in/out may be allowed.

- C. Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure provided that such action does not increase the degree of nonconformity.
- D. The Development Review Board may impose conditions regarding the design and screening of the proposed nonconforming structure with conforming use to mitigate any impacts on neighboring properties.

## **ARTICLE VIII: SITE PLAN APPROVAL**

### **Section 801: Scope**

A zoning permit shall be issued by the Administrative Officer only for the permitted uses under Article III.

See Section 1003 when a dwelling or accessory use will include a home occupation.

All other land development or use shall be governed by the process described in the following sub-sections.

### **Section 802: Submission of Site Plan and Supporting Data**

- A. The owner and/or applicant shall submit seven (7) sets of the site plan and supporting data to the Administrative Officer which shall include the following information presented in drawn form and accompanied by written text.
  - 1. Name and address of the owner of record of this and adjoining lands; name and address of applicant - if different than owner; name and address of person or firm preparing the plan; description of the property giving location; scale of map, north point, and date.
  - 2. Survey of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use and deed restrictions, zoning classification, existing surface waters (i.e. brooks, ponds), if any, and the location of proposed structures with indicated distances from lot lines.
  - 3. Site plan showing proposed structure(s), locations and land use areas; streets, access points, driveways, traffic circulation, parking and loading spaces and pedestrian walks; utilities both existing and proposed, including placement of poles; water wells and sewage treatment facilities; landscaping plans, including site grading, planting design, screening or fencing, detailed specifications of planting and landscaping materials to be used; existing and proposed above ground equipment such as propane tanks and transformers.
  - 4. Construction sequence and anticipated time schedule for the completion of each phase for buildings, parking spaces and

landscaped areas of the entire development.

5. Written certification that the applicant has notified all adjoining property owners;
6. Any of the above information can be waived at the discretion of the Development Review Board.

A request for a waiver shall be submitted to the Development Review Board and shall specify which portions of Sections 801 A1-5 are requested for waiver. The applicant shall include a preliminary site plan providing sufficient information upon which the Development Review Board can make a decision. The Development Review Board may request additional information.

A request for a waiver shall not be considered as submission of a site plan in relation to Section 810.

- B. The Administrator shall check to see if all required information has been submitted and the fee paid and, if so, shall submit the completed application to the Development Review Board. Incomplete applications shall be returned to the applicant.

### **Section 803: Landscaping Requirements**

- A. In determining the amount of planting to be required, the Development Review Board shall take into account:
  1. Existing trees, shrubs, evergreens and other vegetation to be preserved on the site.
  2. Visibility of incompatible or unsightly areas from roads and/or adjoining properties.
  3. The need to effectively screen all parking areas from roads and adjacent properties.
  4. Proximity of lots used for residential purposes.
- B. Specific Landscaping Requirements.
  1. All new parking lots may be required to be screened by a strip not less than 15 feet in width with suitable plantings, screening or landform.

2. All plantings, when initially installed, are to be of a size and shape approved by the Development Review Board. If the Development Review Board determines that the landscaping plan is appropriate, but that it will take several years for the plantings to accomplish the screening or buffering goals, the Development Review Board may require that fencing be installed during the interim.
3. If the Development Review Board determines that plantings are not appropriate, it may require suitable fencing.
4. The remainder of the required yard space shall be landscaped and maintained in good appearance.
5. Where new commercial uses are located adjacent to residential buildings, there shall, to the extent practicable, be plantings or attractive solid fencing to screen out all outdoor lighting from the view of the ground floor of the adjacent residential buildings.
6. All landscaping shall be completed and maintained in accordance with the site plan as approved by the Development Review Board. Any dead or diseased planting shall be replaced as soon as seasonally possible.

#### **Section 804: Parking and Loading Facility Requirements**

The Development Review Board may require the paving of parking and loading facilities.

#### **Section 805: Pedestrian Circulation Requirements**

- A. The Development Review Board may require pedestrian walkways to facilitate pedestrian movements.
- B. In all districts, the Development Review Board may require provision for pedestrian trails and walkways along waterways or other natural features to connect with similar present or anticipated trails on adjacent properties.

#### **Section 806: Access Requirements**

- A. The Development Review Board may require service roads connecting to public roads, with provision for connection to similar service roads on adjacent property where it feels that limiting the number of intersections to the public road is in the interest of the health and safety of the

community.

- B. All roads, regardless of whether they are to be taken over by the Town, shall be constructed and maintained to allow year round access by emergency vehicles.

### **Section 807: Site Plan Review Procedure**

The Development Review Board shall review the site plan map and supporting data taking into consideration the following:

- A. Maximum safety of pedestrian and vehicular circulation between the site and the street network including location, number and width of access points, curve radii at access points, acceleration or deceleration lanes on adjacent public streets, sight distance improvements, shared access with adjoining properties, and location of sidewalks and/or other walkways. Particular consideration shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to emergency access.
- B. Adequacy of parking and loading facilities. Adequacy of on-site circulation, parking, and loading facilities, with particular attention to safety including aisle widths to accommodate emergency vehicles, traffic movement patterns and location of parking areas to prevent conflicts with entering and exiting traffic onto a public street, location of loading docks and number and size of parking spaces.

Particular consideration shall be given to the effect of noise, glare, or odors on adjoining properties. Refuse and service areas shall be included. Provisions for snow removal shall also be made.

- C. Adequacy of landscaping and screening with regard to achieving maximum compatibility and protection to adjacent property. Particular consideration shall be given to the preservation of existing vegetation, visibility of unsightly or incompatible areas from the road and adjoining properties, and the adequacy of landscaping materials to meet seasonal conditions, soil conditions, and light on the site.
- D. Protection of renewable energy resources. Particular consideration shall be given to the appropriate siting of buildings in order to maximize access for solar gain to the property and adjacent properties.
- E. Handicapped accessibility.

**Section 808: Bond**

The applicant may be required to provide a suitable performance bond or other form of security to guarantee the performance and completion of all planting required pursuant to this section.

**Section 809: Amendments**

Amendments to approved site plans may be made after submitting a revised application for review and approval by the Development Review Board.

**Section 810: Time for Action**

The Development Review Board shall act to approve, approve with conditions or disapprove any site plan within forty-five (45) days of the public hearing adjournment. Failure to so act within such period shall be deemed approval.

## **ARTICLE IX: DEFINITIONS**

Except where specifically defined herein, all words used in these Regulations shall carry their customary meaning. Words used in the present tense include the future, and the singular includes the plural; the word "lot" includes "plot"; the word "building" includes "structure"; the word "shall" is mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company or organization. Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Development Review Board.

### **ACCESSORY BUILDING OR USE**

A building or use incidental, subordinate, and reasonably necessary to the conduct of the principal building or use and located on the same lot as the principal building or use. *(See Article III, Table of Uses, for applications) \**

### **ACCESSORY DWELLING UNIT**

An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

### **ACT**

The Vermont Municipal and Regional Planning and Development Act (VSA Title 24, Chapter 117), as amended from time to time.

### **ADMINISTRATIVE OFFICER**

Refers to the Town's Zoning Administrator or the person appointed to administer the zoning regulations.

**AFFORDABLE HOUSING:** means either of the following:

- Housing that is owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, is not more than 30 percent of the household's gross annual income, or
- Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and



the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income. 24 V.S.A. § 4303(1) (A).

#### AGRICULTURAL USE

Land which is used for raising livestock, or agricultural or forest products, including general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry, dairying, apiary, truck gardening, keeping of poultry, farm structures and the storage of agricultural equipment; and, as an accessory use, the sale of agricultural products.

#### ALTERATION

Structural changes, rearrangement, change of location or addition to a building, other than repairs and modification in building equipment.

#### APEX

A point on an alluvial fan or similar land form below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

#### AUTOMOBILE SERVICE STATION

Any premises where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tune-ups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include premises where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body fender work are conducted. A retail store with gasoline pumps as a secondary use, often referred to as a mini-mart, is also considered an auto service station.

#### AUTOMOTIVE REPAIR SHOP

Any lot or area of land, including the building or buildings thereon, which is used for the purpose of making major or minor repairs to motor vehicles, including painting, body work, and the sale of automotive parts, and provided that all motor vehicles located on the premises are for repair or rebuilding and not for salvage.

#### BASEMENT

The foundation or lowest part of a building wholly or partly below the surface of the ground.

#### BASEMENT - WALK IN/OUT

Foundation or lowest part of the building wholly or partly below the surface of the ground constructed to allow exterior ingress and egress to the basement.

#### BED AND BREAKFAST

A housekeeping unit in which the resident owner shall live on the premises and provide short term lodging (on a less than weekly basis) to paying guests. It shall contain no more than six (6) guest rooms with one parking space required for each guest room.

#### BUILDING

A structure designed, built or occupied as a shelter or roofed enclosure for persons, animals, or property.

#### BUILDING FRONT LINE

Line parallel to the front line transecting that point in the building face which is closest to the front lot line excluding steps.

#### BUILDING HEIGHT

The vertical distance measured from the proposed finished grade at the front of the building to the highest point of the roof. For a building set into a hill or slope, with a walk-in/out basement, building height will be the vertical distance measured from the proposed basement floor to the highest point of the roof. Building height provisions shall not apply to agriculture structures.

#### BUSINESS SERVICE

Any business activity which renders service to other commercial or industrial enterprises but limited to financial institutions, clerical services, consulting and similar services, but not including manufacturing, repairing, processing or fabrication of any article, substance or commodity.

#### CAMP, CABIN, SEASONAL (SECONDARY) RESIDENCE

A detached building for seasonal residential use, containing one HOUSEKEEPING unit, for use by one family or group of affiliated persons, including but not limited to a residential use limited by law or permits, to less than continuous, full time occupancy.

#### CAMPGROUND

Any lot of land containing more than three (3) campsites occupied for vacation or recreational purposes by camping units, such as: tents, yurts, tepees, lean-tos, camping cabins, and recreational vehicles including motor homes, folding camping trailers, conventional travel trailers, fifth wheel travel trailers, truck campers, van campers, and conversion vehicles designed and used for travel, recreation and camping. There shall be no distinction made between non-commercial (no charge, no service) and commercial operations. Note: A mobile home or Park Model recreational vehicle that is used as a residence at a campground is regulated as a building or structure.

#### CAMPSITE

An area in a campground that is designed to accommodate a camping unit, for which design flows will be calculated. Design flows may be different for campsites in campgrounds that are open more than seven (7) months per year. A campsite may rely on water faucets, central toilet facilities, and/or a dumping station or may have individual potable water supply and sewerage connections.

#### CLINIC

Any establishment where human patients are examined and treated by doctors or dentists but not hospitalized overnight.

#### CLUB, PRIVATE

Any establishment operated for social, recreational, or educational purposes, open only to members and their guests, and not operated primarily for profit. Private club shall not include a fraternity or sorority house.

#### COTTAGE INDUSTRY

An activity, carried out in a dwelling or accessory structure, such as home offices, repair services (not including motor vehicles), business and personal services, and goods produced or manufactured on site and which meets the conditions of Section 403.

#### COVERAGE

See lot coverage.

#### CUL DE SAC

A dead end road, street, or right of way with a vehicular turn around at the end that complies with the Town of Castleton Subdivision Regulations.

#### DAY CARE FACILITY

A state registered or licensed facility serving seven or more children or elders.

#### ESSENTIAL SERVICES

The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies or public buildings and generating or processing plants, transportation facilities, underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate services by such public health or safety or general welfare.

#### FAMILY

One or more persons living, sleeping, cooking and eating on the same premises

as a single housekeeping unit.

#### FENCES

The provisions of these regulations shall not apply to fences (six feet in height or less) provided they do not obstruct or interfere with traffic visibility or violate Title 24 V.S.A., Section 3817.

#### FOOTPRINT AREA

The total ground area covered by a building, to include a covered porch, covered deck, or covered entryway, determined by measuring the outermost, outside portion of the building.

#### FRONT LOT LINE

The line separating the lot from the street or road right of way. If a lot abuts more than one street or road, each line is a front lot line.

In no case, may the shoreline boundary of a lot adjacent to and bordering on Lake Bomoseen, Glen Lake, Loves Marsh, Lilly Pond, Pine Pond or the Castleton River; be considered a 'side' for purposes of Article V: Lot Size, Setbacks, Yards, hereof; and, for "Accessory Building" in Article V, any such shoreline setback is established at 40 feet.

#### GARAGE, YARD OR SIMILAR SALES

The sale of personal property on the premises of a dwelling unit for a period not exceeding three (3) consecutive days and not more than nine (9) days in a calendar year. A sale or sales of a longer duration shall be deemed a commercial use.

#### GROUP HOME

Any residential facility operating under a license or registration granted or recognized by a state agency, that serves more than eight unrelated persons, who have a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs. See also Residential One Family

#### HANDICAPPED ACCESSIBLE ACCOMMODATIONS

The Development Review Board may exempt reasonable handicapped accessibility accommodations from the footprint, setbacks, or total lot coverage restrictions.

#### HISTORIC SITE

An area deemed worthy of preservation for historical reasons. The area may be

so classified by federal, state or local authority.

#### HISTORIC STRUCTURE

Any structure that is:

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

#### HOME OCCUPATION

Any use conducted entirely within a primary residence and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the residence for living purposes and does not change the residential character thereof. Section 1003 applies.

#### HOTEL

A building (other than a motel, rooming house, or bed and breakfast), used to provide overnight accommodations, with or without meals, to the public for compensation.

#### HOUSEKEEPING UNIT (FORMERLY DWELLING UNIT)

Building or part thereof used as living quarters for one family.

#### JUNK YARD (REF. 24 VSA #2241)

The terms "junk", "junk motor vehicles" and "junk yard" shall be as defined in 24 VSA #2241. Any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping three (3) or more

unlicensed motor vehicles which are visible from any portion of a public highway or adjoining property.

#### KENNEL

An establishment housing dogs, cats, or other household pets and where grooming, breeding, boarding, training, or selling of animals is conducted as a business.

#### LOADING SPACE

Space logically and conveniently located for-pickups and deliveries, scaled to the delivery vehicles expected to be used. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking.

#### LOT

Land occupied or to be occupied by a building and its accessory buildings, together with the required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which land is situated, and having frontage on a street, or other means of access as may be determined by the Planning Commission to be adequate as a condition of the issuance of a Zoning Permit.

#### LOT COVERAGE

For residential, commercial, industrial, institutional and multi-family uses, the percentage of the area of a lot which is covered by structures and other improvements. Unroofed decks and porches, lawns, planting areas, walkways, and pedestrian amenities shall not be considered improvements for the purposes of calculating lot coverage. Driveways and related parking areas are also to be excluded when calculating lot coverage.

#### LOT DEPTH

The mean distance between the front and rear lot lines, measured at right angles to the front lot lines.

#### LOT FRONTAGE

The boundary of a lot along a public street.

#### LOT, MINIMUM AREA OF

The horizontally projected area of a lot computed exclusive of any portion of the right way of any public thoroughfare.

#### LOT OF RECORD

Any lot which individually, or as a part of a subdivision has been recorded in the

office of the Clerk of the Town of Castleton.

#### LOW INCOME HOUSING

Housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy for households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

#### MANUFACTURING

The processing and fabrication of any article, substance or commodity.

#### MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. A manufactured home does not include a trailer (See Article IX, Definitions, for trailers).

#### MANUFACTURING, LIGHT

A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

#### MOBILE HOME

A structure or type of manufactured home that is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation, includes plumbing, heating, cooling, and electrical systems, and is:

- transportable in one or more sections; and
- at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or
- any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. 10 V.S.A. § 6201(1).

#### MOBILE HOME PARK

Any parcel of land under single or common ownership or control which contains,

or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes.

#### MODERATE INCOME HOUSING

Housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

#### MODULAR (OR PREFABRICATED) HOUSING

A dwelling unit constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation; or a factory-built structure which is manufactured or constructed to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles.

#### MOTEL

A building or group of buildings intended to provide sleeping accommodations, with or without meals, having a private outside entrance for each room or suite of rooms and are rented primarily to transients.

#### NON-CONFORMING LOTS OR PARCELS

Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer. 24 VSA 4303 (13).

#### NON-CONFORMING STRUCTURE

A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer. 24 VSA 4303 (14).



#### NON-CONFORMING USE

Use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer. 24 VSA 4303 (15)

#### NURSING OR REST OR CONVALESCENT HOME

A place, other than a hospital which maintains and operates facilities, for profit or otherwise, accommodating two or more persons unrelated to the home operator, who are suffering from illness, disease, injury or deformity and require in house nursing care.

#### OFFICE

A place where a particular kind of business is performed such as real estate, government or insurance.

#### OFFICIAL ZONING MAP

The one true copy of the Town Zoning Map is located in the office of the Town Clerk.

#### OPEN LAND RECREATION

Any use, which by its very nature, requires that large land areas be maintained in their natural or nearly natural state.

#### OPEN SPACE

Those areas within a lot or parcel of land that are not paved, roofed or occupied by structures and are equally accessible to all users of the property or development. Examples of outdoor areas that will not be considered open space are private yards, streets and drives, parking lots, tennis courts, swimming pools, and paved pedestrian malls. Meadowlands, woodlands and other natural areas, playgrounds, golf courses, and recreation fields will be considered open space.

#### PARKING SPACE

A defined space, which is at least 20 feet long and nine (9) feet wide, used for the parking of one motor vehicle, with practical access to the road or right of way, and graveled (or paved) sufficiently to provide year round use.

#### PERMITTED USE

A use which shall be permitted upon approval of the Administrative Officer after ascertaining that such use conforms with all Regulations herein.

#### PERSONAL SERVICES

Includes barber, hairdresser, beauty parlor, shoe repair, shoe shine, laundry,

laundromat, dry cleaner, photographic studio, and business providing similar services of a personal nature.

#### PROFESSIONAL RESIDENCE-OFFICE

Residence in which the occupant has a professional office of an architect, accountant, chiropractor, dentist, doctor of medicine, landscape architect, land surveyor, lawyer, optometrist, osteopath, physiotherapist, consultant, podiatrist, engineer, or psychologist, which does not change the residential character thereof. Section 1003 applies.

#### PROFESSIONAL SERVICES

Includes but is not limited to doctor, dentist, lawyer, engineer, certified public accountant, real estate appraiser, architect, chiropractor, and similar professions.

#### RECREATION, PRIVATE

Recreation uses privately owned and operated, including picnic grounds, archery ranges, hiking and riding trails, hunting and fishing areas, wildlife sanctuaries, nature preserves, swimming areas and boat launching sites, golf driving range, golf pitch and putt course, par three golf courses, hunting preserves, skating rinks, swimming pools, parks, beaches, tennis courts, indoor bowling alley, theater, table tennis and pool hall, gymnasium, health club, hobby workshop, archery range, riding stables.

#### RECYCLING COLLECTION POINT

A use incidental to the principal use that serves as a drop-off point for temporary storage of recoverable resources. No processing of such items is allowed. This facility would generally be located in a shopping center parking lot or in other public/quasi-public areas such as churches and schools. In Castleton the only allowed facility is located at the transfer station. This does not refer to bottle redemption.

#### RELIGIOUS INSTITUTION

Includes but is not limited to church, temple, school, seminary and retreat house, parish home, and convent.

#### RESIDENTIAL, ONE FAMILY

A building designed and/or used exclusively for residential purposes for one (1) family and containing not more than one (1) HOUSEKEEPING unit.

Detached building used as living quarters by one family.

A state licensed or registered residential care home or group home serving not more than eight persons who are developmentally disabled or physically

handicapped, shall be considered by right to constitute a permitted single family residential use except that no such home shall be so considered if it locates within 1,000 feet of another such home.

A state registered or licensed day care facility serving six or fewer children shall be considered by right to constitute a permitted single-family residential use of property.

There shall be no legal restrictions hindering use of such structure to less than continuous and full time. The Development for this use shall include a fully functional (and permitted) potable water supply and wastewater disposal system.

#### RESIDENTIAL, TWO FAMILY

A building or portion thereof designed or used for occupancy by two (2) families living independently of each other and doing their own cooking in the building. Building used as a living quarters by two families, living independently of each other.

There shall be no legal restrictions hindering use of such structure to less than continuous and full time. The Development for this use shall include a fully functional (and permitted) potable water supply and wastewater disposal system.

#### RESIDENTIAL, MULTIPLE FAMILY

A building or portion thereof used for occupancy by three (3) or more families living independently of each other, and doing their own cooking in the building, including but not limited to apartments, group houses, and row houses. A fraternity and/or sorority house shall be considered a multiple family residence.

#### RESTAURANT

An establishment where meals can be bought and consumed either on or off the property.

#### RETAIL STORE

Includes shop and store for the sale of retail goods; personal service shop and department store; and shall exclude any gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

#### ROOMING AND BOARDING HOUSE

A building, residential in character, where more than two persons for a fixed period of time are supplied with, and charged for meals or sleeping accommodations or both.

## SCHOOL

Includes parochial, private, public and nursery school, college, university and accessory uses; and shall exclude commercially operated school of beauty culture, business, dancing, driving, music, daycare and similar establishments.

## SELF-SERVICE STORAGE FACILITY

A building or group of buildings consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods.

## SETBACK

The distance from a front lot line, side lot line, or rear lot line to a building or other structure, measured to its nearest wall, porch or deck whether enclosed or unenclosed, but not to steps or normal roof overhang.

## SIGN

Any device, structure, building or part thereof, for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public.

## SIGN, ADVERTISING OR BILLBOARD

Sign which directs attention to a business, industry, profession, service, commodity, or entertainment conducted, sold or offered somewhere other than the lot upon which the advertising sign or billboard is located.

## SITE PLAN

A plan, to scale, showing uses and structures proposed for a parcel of land as required by these regulations. It includes lot lines, streets, building sites, open space, buildings, major landscape features, and proposed utility lines, if any.

## STREET

A thoroughfare, road, highway or public way open and available to public use. "Street" shall mean the entire width of the right of way.

## STREET LINE

The line dividing the street and a lot. Where the width of a street is not established or cannot be determined, the street line shall be considered to be 25' on either side of the center of the traveled portion of the street, except along Vermont numbered Route 30 and Route 4A where the street line shall be 33' and 49', respectively, from the centerline unless otherwise established.

## STRUCTURE

An assembly of materials for occupancy or use including, but not limited to, buildings, billboards, signs, mobile homes, trailers, carports, porches, decks, and other building features. This does not include sidewalks, drives, and patios,

water impoundments, communication towers, walls or fence, except a wall or fence on an operating farm or a small shed typically used for storage and not exceeding 120 (one hundred twenty) square feet.

#### SUBSTANTIAL DAMAGE

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

#### TOWN BOARD

The Select Board of the Town of Castleton.

#### TRAILER

Includes any camping trailer, travel trailer, pickup coach or motor home and/or any other vehicle used as sleeping or camping or living quarters mounted on wheels; or a camper body usually mounted on a truck and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, or boats; or is used as a temporary office.

#### USE

The specific purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or intended.

#### ZONING PERMIT

Shall mean the same thing as building or use permit.

## **ARTICLE X: GENERAL REGULATIONS**

### **Section 1001: Existing Small Lots**

Any lot in individual, separate and non-affiliated ownership from surrounding properties in existence on the effective date of these Regulations may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than one-eighth (1/8) acre in area with a minimum width or depth dimension of forty (40) feet.

### **Section 1002: Required Frontage on, or access to, Public Roads or Waters**

Land development may be permitted only on lots which either have frontage on a public road or public waters or, with approval of the Development Review Board, access to such a road or waters by a permanent easement or right-of-way.

All such access, except legally pre-existing access, must be at least twenty (20) feet in width.

### **Section 1003: Protection of Home Occupations**

Residents may use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character of those areas as long as:

- A. The dwelling and the lot maintain a residential appearance at all times;
- B. The home occupation is clearly secondary to the use of the site for residential purposes. No more than 300 sq. ft. or 20% of the floor area of the dwelling, (whichever is greater) shall be used for the home occupation.
- C. The home occupation is operated by a person who is a legal resident on the site of the dwelling. In the case of seasonal residents, the home occupation may be operated only at those times when the seasonal resident is occupying the dwelling on the site.
- D. No more than two additional persons, who are not family members residing presently on the site, may be employed in the business.
- E. Home occupations include such activities as home offices, professional office-residence, repair services, business and personal services offered

from the home, and retail sales of goods produced on-site.

- F. The use shall not generate traffic, parking, noise, vibration, glare, fumes, odors or electrical interference beyond what normally occurs in the applicable zoning district.
- G. Exterior displays or signs, other than those normally permitted in the district, or exterior storage of materials are not permitted. Obnoxious or excessive noise, smoke, vibration, dust, glare, odors, electrical interference, or heat that is detectable at the boundaries of the lot are not generated.

All home occupations will be required to obtain a zoning permit. An application will be filed with the Administrative Officer who shall determine if the above general standards can be met, and, if so, will issue the permit.

#### **Section 1004: Yard Setbacks**

Notwithstanding the provision for front setbacks elsewhere in these Regulations, on roads with less than 50-foot right-of-way, the front setback requirements shall be measured from the center line of the existing roadway and 25 feet shall be added to that front setback requirement.

#### **Section 1005: Equal Treatment of Housing**

Nothing herein shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing, from the municipality, except upon the same terms and conditions as conventional housing is excluded.

Nothing herein shall have the effect of excluding from the municipality housing to meet the needs of the population as determined in Section 4382(c) of Chapter 117 of Title 24 of the Vermont Statutes Annotated.

Nothing herein shall be construed to prevent the establishment of mobile home parks in accordance with Chapter 153 of Title 10 of the Vermont Statutes Annotated.

Mobile homes are permitted in approved mobile home parks subject to the requirements of this section and state law. Mobile home parks where permitted as a conditional use in the specific zoning district are subject to review under Section 416 of these bylaws. New mobile home parks and any addition or alteration to an existing mobile home park, requires conditional use approval by the Development Review Board.

#### **Section 1006: Residential – Accessory Dwelling Unit**

A. An accessory dwelling unit may be located in or appurtenant to an owner occupied single family residence. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

1. The property has sufficient wastewater capacity.
2. The unit does not exceed 30 percent of the total habitable floor area of the single family dwelling.
3. Applicable setback, coverage, and parking requirements are specified in the bylaws are met.

B. If the single family dwelling is no longer owner occupied, the continued use of the accessory apartment requires application to the Zoning Administrator as a two family dwelling.

### **Section 1008: Lots in More Than One Zoning District**

Where a district boundary line divides a lot or parcel of land, the Development Review Board may permit the extension of the regulations for either portion of the lot not to exceed 100 feet beyond the district line into the remaining portion of the lot.

### **Section 1009: Reduction of Lot Area**

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these Regulations shall be smaller than prescribed for the district in which the lot is located.

The provisions of this section shall not apply when part of a lot is taken for a public purpose.

### **Section 1010: Required Area or Yards**

Space required under these regulations to satisfy area, yard or other open space requirements in relation to one building shall not be counted as a part of a required open space for any other building.

### **Section 1011: Temporary Structures**

Temporary permits may be issued by the Administrative Officer for a period not



exceeding one year, for temporary structures incidental to construction projects, provided such permits are conditioned upon agreement by the owner to remove the structure upon expiration of the permit. Such permits may be renewed upon application for an additional period not exceeding one year.

### **Section 1012: Special Permit Standards for Campgrounds**

In addition to meeting the State Of Vermont potable water supply and wastewater system permitting standards, the following permitting standards shall apply:

- A. Each individual campsite shall be at least 2,500 square feet in size, with a minimum width of 25 feet. Each campsite shall be dry, clean and well drained during normal weather conditions.
- B. Potable water shall be available at faucets or from approved water supply risers or both. No water supply riser shall be located within 10 feet of a sewer connection. A faucet shall be provided within 400 feet of any dependent campsite. Common drinking vessels at such faucets are not allowed. Dependent campsites are all campsites that do not have individual water and sewer connections and all campsites used for camping units without interior plumbing.
- C. If water from a piped system is not available, water may be obtained from a spring or a well that is developed and protected in a manner approved by applicable local and state officials.
- D. When showers or baths are provided, all plumbing shall conform to the Vermont Plumbing Rules.
- E. At least one dumping station shall be provided per campground, unless all campsites have individual sewer connections or the campground consists entirely of tent sites (which excludes all use by camping units with interior plumbing). Each dumping station shall serve no more than 100 dependent campsites, and shall be supplied with piped water under pressure for flushing and cleaning of the concrete apron after each use.
- F. All dependent campsites shall be within 400 feet of a toilet facility. These may be either water carried toilets, vault type privies, composting toilets, or incinerating toilets. One toilet or privy seat shall be provided to serve each group of 10 or fewer dependent campsites.

### **Section 1013: Trailers/Motorhomes/Trailer Camps**

- A. It shall be unlawful for any person to park a camping trailer, travel trailer,

pick up coach, or motor home on any public or private property, except in accordance with these Regulations as follows:

1. In an approved trailer camp.
  2. In an approved camping trailer sales lot.
  3. The owner of a trailer may park it on his own property, in the rear or side yards, providing that the trailer is parked behind the front face of the principal building and no closer than six (6) feet to any lot line. A trailer so parked shall not be used as living quarters and shall not be hooked up to any utilities.
- B. No person or persons shall construct or operate a trailer camp without a permit from the Development Review Board. The application shall be accompanied with a site plan and drawing prepared by a professional engineer, showing the property lines and area of the park, a contour map, a layout of the roads, walkways, trailer lots, parking areas, garbage collection stations, electrical distribution, water lines, sanitary sewer facilities, storm sewer drainage facilities, and any other utilities.
- C. The following regulations shall apply in respect to all trailer camps:
1. A trailer camp shall have an area of not less than three (3) acres.
  2. Trailer camps shall provide for individual trailers, access driveways and parking.
  3. Each trailer lot shall be at least 22,500 square feet in area, and at least sixty (60) feet wide by at least one hundred twenty (120) feet in depth, and shall front onto an access driveway.
  4. All access driveways within a trailer camp must be at least twenty (20) feet in width and have a minimum depth of twelve (12) inches of gravel.
  5. Each trailer lot shall have a water supply approved by the State Health Department.
  6. Each trailer lot shall have provision for public toilets and sewage disposal. The method of sewage disposal must be in compliance with the State Department of Health regulations, and local health ordinances.

7. No trailer lot or service building shall be closer to a public street right way line than eighty (80) feet, nor closer to a property line than fifty (50) feet.
8. A strip of land at least one hundred (100) feet in width shall be maintained as a landscaped area abutting all trailer camp property lines.
9. No trailer shall be parked on a lot closer than thirty (30) feet to a lot line.
10. The trailer camp shall be closed to the public between November 1st and March 31st over winter, unless winterized water and sewage facilities are provided as approved by the State Department of Health.

#### **Section 1014: Height of Structures**

No structure shall exceed a height applicable to the district. This limit shall not apply to spires, cupolas, chimneys, ventilators, tanks, or similar parts of building, occupying in the aggregate not more than 10 (ten) percent of the area of such building.

This limit shall not apply to television aerials, communication towers or to windmills with blades less than 20 (twenty) feet in diameter or to rooftop solar collectors less than 10 (ten) feet high which are mounted on complying structures.

#### **Section 1015: Building Coverage, Porches, Carports and Garages**

In determining the percentage of building coverage of a lot or the size of yards, porches or carports open at the sides but roofed, and all principal and accessory buildings shall be included.

#### **Section 1016: Accessory Buildings in Residential Districts**

Each residential use in a residential district may have not more than three detached outbuildings, garages, carports, storage sheds, greenhouses or similar accessory use buildings on a lot.

All other uses in a residential district may have no more than one accessory use building.

### **Section 1017: Permitted Hours of Construction**

The operation of heavy equipment or noise generating construction activity shall occur only between 6 AM and 7 PM.

### **Section 1018: Open Storage**

No more than one unregistered or unlicensed vehicle, or open storage is permitted in any District and such storage shall not be in the front yard.

In any residential district only the following are allowed and they must be permanently screened from view:

- A. Vans and trucks of more than twelve ton carrying capacity that are used for commercial purposes;
- B. Cars used for the purposes of competitive racing;
- C. Items used for commercial purposes i.e. "junkyards", "antiques".

Any open storage on land adjacent to a residential district must be permanently screened from view, even if in the side or rear yard.

Nothing in this section shall prohibit open storage related to agricultural uses in any District.

### **Section 1019: Pools**

A zoning permit shall be required for pools greater than 5000 gallons capacity. A private in ground outdoor swimming pool is required to have a wall or fence at least four feet (4') high, with a lockable gate, which extends around the entire pool.

### **Section 1020: Satellite Dishes - Accessory**

Satellite dish antennas with diameter measuring less than one meter may be installed in a manner consistent with typical television antennas.

### **Section 1021: Exemptions from Zoning Permits**

Except in the Special Flood Hazard Area, [See Attachment A] no zoning permit

is required nor are setbacks applicable for the following:

- A. Fences, hedges, or walls along a property line which do not interfere with corner visibility. Fences, hedges, walls, trees or shrubs shall not be placed in a highway right of way. Fences and walls with height in excess of six (6) feet shall require a zoning permit and be subject to site review, but are still exempt from setback requirements. Fences which are on operating farms or licensed junk yards shall be exempt from this ordinance.
- B. Decks and unroofed porches not over three (3) feet above the level of the floor of the ground story to the extent that:
  - 1. A deck or unroofed porch's depth from a dwelling structure's sidewall does not exceed ten (10) feet;
  - 2. A deck or unroofed porch shall not be closer than ten (10) feet to a property line, and;
  - 3. The total square footage of previously constructed and proposed decks will not exceed 300 square feet.
- C. Docks
- D. Doghouses, tree-houses and similar structures may be located in any yard except the front yard.
- E. Sheds with a floor area of not more than 120 (one hundred twenty) square feet and height of not more than ten (10) feet may be located within any yard except the front yard.
- F. Any sign erected by the State of Vermont or the Town of Castleton for directional information or traffic control purposes.
- G. Essential services in any district except flood hazard areas where they shall be treated as conditional uses.

## **Section 1022: Structures with restrictions on duration of Occupancy**

Any structure affected by a covenant, restriction, condition, bylaw or state or local law or regulation which limits the occupancy or use of such structure to less than continuous and full time use shall be the subject of a memorandum

to be recorded in the Castleton Land Records. As a minimum, the memorandum shall contain the location of the structure and the specific bylaw, restriction condition, covenant, law or regulation imposing such restriction.

The specific wording of the memorandum shall be proposed by the applicant, reviewed by the Zoning Administrator and made part of any permit.

The applicant shall be responsible for filing the memorandum, and shall shall provide proof of such filing to the Zoning Office, within 15 days of the issuance of the permit; otherwise the permit shall be void.

## **ARTICLE XI: ADMINISTRATION AND ENFORCEMENT**

### **Section 1101: Administrative Officer**

An Administrative Officer shall be recommended for a three year term by the Planning Commission with the approval of the Select Board to administer the Zoning Regulations. An Administrative Officer may be removed for cause at any time by the Select Board after consultation with the planning commission.

An acting Administrative Officer may be appointed by the Planning Commission, with the approval of the Select Board, who shall have the same duties and responsibilities as the Administrative Officer when that individual is absent.

The Administrative Officer shall literally administer this Regulation and shall not have the power to permit any land development which is not in conformance with this regulation. In so doing shall inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of these Regulations.

An interested person may appeal any decision or act taken, by the Administrative Officer, by filing a notice of appeal with the secretary of the Development Review Board or with the clerk of the Town if no such secretary has been elected. Such notice of appeal must be filed within fifteen (15) days of the date of such decision or act, and a copy of the notice shall be filed with such officer.

The Administrative Officer should inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources, in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

The issuance of a zoning permit does not relieve the applicant's responsibility from obtaining any other required State or Federal permits or approvals as necessary.

### **Section 1102: Zoning Permits**

- A. Hereafter the division of a parcel into two or more parcels, the construction, exterior reconstruction, conversion, structural alteration, relocation or enlargement of any building(s) or other structure(s), or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land shall commence only in compliance with all regulations in this bylaw for the district in

which such building or land is located.

No land development or zoning permit shall be granted by the Administrative Officer that has not been issued the necessary State and local wastewater and water supply permits.

No land development shall be commenced in the Town of Castleton without a permit issued by the Administrative Officer. A permit may not be required for interior or exterior changes that do not change the permitted use or footprint of a structure.

No zoning permit shall be issued by the Administrative Officer except in conformance with these zoning regulations. Zoning permits for Permitted Uses per Article III and related accessory uses shall be granted by the Administrative Officer. Any other zoning permit shall not be granted except by order of the Development Review Board.

- B. All applications shall be submitted to the Administrative Officer on forms furnished by him/her and shall be accompanied by one copy of a sketch plan, drawn to scale, showing the dimensions of the lot to be built on, location of the building and accessory buildings to be erected, a surveyor's plot plan of the property, if available, and such other information as may be necessary to determine and provide for the enforcement of this Regulation.
- C. An application for any permit shall be accepted by the Administrative Officer only if it is accompanied by payment in cash, check or money order made out to the Town of Castleton for the amount of the specified fee. Fees shall be established and reviewed by the Select Board from time to time.

The applicant is responsible for obtaining any necessary State and local wastewater and water supply permits and any required by order of the Development Review Board, submitting a copy of each to the Administrative Officer.

- D. Upon receipt of all required documentation as defined in paragraphs B and C above, the Administrative Officer shall within 30 days either issue or deny a zoning permit. If denied, the Administrative Officer shall so notify the applicant in writing, stating the reasons for the denial.

If the Administrative Officer fails to act within the thirty (30) day period a permit shall be deemed issued on the next business day.



Each zoning permit issued or denied under this section shall contain a statement of the period of time within which an appeal may be taken.

- E. Within three days following the issuance of a Zoning Permit, the Administrative Officer shall:
  - 1. Deliver a copy of the permit to the listers of the municipality.
  - 2. Post a copy of the permit in at least one public place in the municipality until the expiration of fifteen (15) days from the date of issuance of the permit;

### **Section 1103: Effective Date**

If a zoning permit is issued, it shall not take effect until the expiration of a fifteen (15) day appeal period. In the event that notice of appeal is properly filed, such permit shall not take effect until the final adjudication of said appeal.

No site work or building shall occur until the effective date of the permit.

### **Section 1104: Completion**

- A. All activities as authorized by the issuance of the permit shall be commenced within twelve (12) months and completed within two (2) years of the date of issue or the permit shall become null and void, and reapplication and reissuance of another zoning permit shall be required to complete the activities, as initiated under the original permit, except as hereinafter provided.
- B. If a project requires additional State and local permits, and such permits have been applied for, and are delayed by circumstances beyond the control of the permit holder, the Administrative Officer may extend the time limit for starting the project until not more than twelve (12) months after final approval by State or local authorities, by endorsement on all copies of the permit.
- C. Variances and Conditional Use approvals will expire two (2) years from their date of issuance unless the actions authorized by the Variance or Conditional Use approval have been completed. This time period may be extended for one (1) year only by the Administrative Officer if it is demonstrated that the delays were beyond the control of the applicant, and that conditions affecting and addressed by the approvals have not changed.

**Section 1105: Enforcement**

The Administrative Officer shall enforce the provisions of this Regulation in conformity with Sections 4451 and 4452 of Chapter 117 of Title 24 of the Vermont Statutes Annotated, annotated, which permits the Administrative Officer to institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate a violation.

No action shall be brought unless the alleged offender has had at least seven days' notice by certified mail.

**Section 1106: Exclusivity of Remedy**

The exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act with respect to any one or more of the provisions of this regulation shall be the appeal to the Development Review Board. (See 24 VSA 117, Section 4472 for exact language). Also see Section 1215.

## **ARTICLE XII: DEVELOPMENT REVIEW BOARD**

### **Section 1201: Creation of Development Review Board**

There shall be a Development Review Board for the Town of Castleton.

### **Section 1202: Appointment and Term of the Board**

#### **A. Members.**

The Development Review Board may consist of the members of the planning commission or may include one or more members of the planning commission. The board shall consist of not fewer than five nor more than nine persons. The Select Board may appoint alternates to the Development Review Board for a same term as the other members. Alternates shall serve on the Development Review Board in situations when one or more members of the board are disqualified or are otherwise unable to serve.

#### **B. Appointment**

Members of such Board shall be appointed and any vacancy filled by the Select Board. The term of each member shall be for three years and staggered so that a majority of the board should not terminate at the same time. Vacancies shall be filled by the legislative body for the unexpired terms and upon the expiration of such terms. Any member of the Development Review Board may be removed for cause by the Select Board upon written charges and after public hearing.

#### **C. Appropriations**

The Town may make such appropriations in its annual budget as are sufficient to afford the Development Review Board the technical and material assistance necessary to the fulfillment of its duties as outlined herein.

### **Section 1203: Officers of the Board**

The Development Review Board shall annually elect its own officers [Chair, Vice Chair, Secretary and Assistant Secretary]. The officers of the Board may administer oaths and compel the attendance of witnesses and the production of material pertinent to any issue under appeal.

## **Section 1204: Meetings**

Meetings of the Board shall be held at the call of the Chair and at such times as the Board may determine. All meetings of the board, except for deliberative and executive sessions, shall be open to the public.

## **Section 1205: Rules of Procedure**

The Development Review Board shall adopt rules of procedure, subject to applicable state statutes, and shall adopt rules of ethics with respect to conflicts of interest.

The Board, in connection with any proceeding, may examine or cause to be examined any property, maps, books or records bearing upon the matters concerned in such proceeding. The Board may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information. The Board may administer oaths or take acknowledgment in respect of such matters. Any of the preceding powers may be delegated by the Board to a specifically authorized agent or representative.

## **Section 1206: General Powers and Duties of the Board**

### **A. General Powers.**

The Development Review Board is a body with limited powers.

Except as specifically provided herein and in accordance with the provisions of 24 VSA, Chapter 117, the Development Review Board may not amend, alter, invalidate or affect any plan or bylaw of the Town or the implementation or enforcement thereof, or allow any use not permitted by the Zoning Regulations or any other bylaw.

### **B. General Duties.**

The Development Review Board shall be charged with the proper interpretation of the Zoning Regulations and their consequent application within the town and with the administration of the procedures allocated to it by this Zoning Regulation including the following:

1. To hear and rule on appeals of any order, requirement, decision or determination made by the Administrative Officer in the administration and enforcement of the Zoning Regulations.
2. To hear and grant or deny a request for a variance in the application

of provisions of the Zoning Regulations in accordance with Sections 1204, 1205 and 1206.

3. To approve a request for a conditional use within any zoning district.
4. To approve the repair, relocation, replacement, or enlargement of a nonconforming structure within the Flood Hazard District.
5. To undertake the following review functions shall be performed by the Development Review Board:
  - a. planned unit developments
  - b. review of requests for waivers
  - c. site plan review
  - d. review of proposed subdivisions
  - e. wireless telecommunications facilities
  - f. Right-of-way or easement for land development without frontage
6. To hear, review and decide, after due public notice and hearing, all matters referred to it or upon which it is required to pass according to this or any other regulation.

#### C. APPLICATIONS

Unless the matter is an appeal from the decision of the administrative officer, the matter shall come before the panel by referral from the administrative officer. Any such referral decision shall be appealable as a decision of the administrative officer.

#### D. COMBINED REVIEW

If more than one type of review is required for a project, the reviews, to the extent feasible, shall be conducted concurrently.

#### E. EXPENDITURES FOR SERVICE.

The Development Review Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. All members may be compensated for the performance of their duties and may be reimbursed by their municipality for necessary and

reasonable expenses.

## **Section 1207: Specific Powers of the Board to Grant Variances**

### **A. Requirements**

On an appeal where a variance from the provisions of the Zoning Regulation constitutes the relief requested by the appellant, the Development Review Board may grant such variances, and render a decision in favor of the appellant, if all the following facts are established by the Board and are specified in its written decision:

1. That there are unique physical circumstances, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances generally created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located.
2. That as a result of such physical problems, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. That such unnecessary hardship has not been created by the appellant.
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, and
5. That such variance if authorized represents the minimum that will afford relief, and provide the least modification possible of the Zoning Regulations and of the comprehensive plan.

- B. In rendering a decision in favor of an appellant under this section, the Development Review Board may attach such conditions to the variance as it considers necessary and appropriate under the circumstances to implement the various purposes of these Regulations and the town plan then in effect.

## Section 1208: Waivers

- A. Requests for waivers of dimensional requirements are considered by the Development Review Board.
- B. Waivers will be granted to allow for minor additions to a ~~principle~~ ~~accessory~~ structure that would not be counter to the purpose of this Bylaw or the Town Plan, but which might not meet the standards for the granting of a variance.
- C. A waiver may be granted only to reduce dimensional requirements **(including building height)** as provided below, and compliance with all other requirements of this Bylaw is required. The Development Review Board may grant a waiver provided all of the following conditions are satisfied:
  - 1. The proposal is for an addition to an existing principle or accessory structure, and said addition does not increase the footprint of the structure by more than 200 square feet.
  - 2. The addition is the minimum size that is necessary for it to serve its intended function.
  - 3. The addition is specifically intended to improve access for disabled persons, or to improve fire safety, or for a porch, deck, entryway, stairway, or other minor addition to an existing building, or for energy conservation and renewable energy structures.
  - 4. No side setback shall be reduced to less than 15 feet, and no rear setback shall be reduced to less than 25 feet.
  - 5. The maximum lot coverage may not be exceeded for the zoning district.
  - 6. Any waiver for building height shall not be for more than 10 feet above the district maximum.
- D. The Development Review Board may impose conditions regarding the design and screening of the addition to mitigate any impacts on neighboring properties.

- E. Appeals to requests for waivers shall follow the same appeal process for denial of a conditional use.

### **Section 1209: Variances - Renewable Energy Resource Structure**

- A. On an appeal where a variance from the provisions of a zoning regulation is requested for a structure that is primarily a renewable energy resource structure, the Board may grant such variances, and render a decision in favor of the appellant if all of the following facts are found and the finding is specified in its decision.
  - 1. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the regulations; and
  - 2. That the hardship was not created by the appellant; and
  - 3. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
  - 4. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.
- B. In rendering a decision in favor of an appellant under this section, the Development Review Board may attach such conditions to the variance as it considers necessary and appropriate under the circumstances to implement the various purposes of these Regulations and the town plan then in effect.

### **Section 1210: Hearing and Notice Requirements; Development Review**

- A. Notice procedures
  - 1. For conditional use review, variances, administrative officer appeals, and final plat review for subdivisions a public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by:
    - a. the publication of the date, place, and purpose of the hearing



in a newspaper of general circulation in the municipality affected;

- b. the posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), which shall include posting within the public right-of-way most nearly adjacent to the property for which an application is made; and
  - c. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way.
- 2. For all other types of development review, including site plan review, public notice for hearings shall be given not less than seven days prior to the date of the public hearing, and shall include at a minimum:
  - a. the posting of the date, place, and purpose of the hearing in three or more public places within the municipality in conformance with the time and location requirements of 1 V.S.A. § 312(c)(2); and
- 3. The applicant may be required to bear the cost of the public warning and the cost and responsibility of notification of adjoining landowners.

## B. Decisions

- 1. The development review panel shall render a decision on all development review applications not more than 45 days from the close of evidence at the public hearing, and failure to so act within this period shall be deemed approval. The board shall close the evidence promptly after the applicant and all interested persons have submitted information. Decisions shall be issued in writing and shall include a statement of the factual bases on which the development review panel has made its conclusions and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided in conformance with this subsection.

2. In rendering a decision in favor of the applicant, the panel may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this chapter and the pertinent bylaws and the municipal plan then in effect. A bond, escrow account, or other surety in a form acceptable to the legislative body of the municipality may be required to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.
3. Any decision shall be sent by certified mail within the period set forth in subdivision (1) of this subsection to the applicant and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the administrative officer and the clerk of the municipality as a part of the public records of the municipality.
4. Conditions may require that no zoning permit, except for any permits that may be required for infrastructure construction, may be issued for an approved development unless the streets and other required public improvements have been satisfactorily installed in accordance with the approval decision and pertinent bylaws. In lieu of the completion of the required public improvements, the development review panel may require from the owner for the benefit of the municipality a performance bond issued either by a bonding or surety company approved by the legislative body or by the owner with security acceptable to the legislative body, in an amount sufficient to cover the full cost of those new streets and required improvements on or in those streets or highways and their maintenance for a period of two years after completion as is estimated by the development review panel or such municipal departments or officials as the panel may designate. This bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required within the period fixed in the subdivision bylaws for that completion, and for the maintenance of those improvements for a period of two years after completion.
5. The performance bond required by this subsection shall run for a term to be fixed by the development review panel, but in no case for a longer term than three years. However, with the consent of the owner, the term of that bond may be extended for an additional

period not to exceed three years. If any required improvements have not been installed or maintained as provided within the term of the performance bond, the bond shall be forfeited to the municipality and upon receipt of the proceeds of the bond, the municipality shall install or maintain such improvements as are covered by the performance bond.

- C. Administrative review. In addition to the delegation of powers authorized under this chapter, any bylaws adopted under this chapter may establish procedures under which the administrative officer may review and approve new development and amendments to previously approved development that would otherwise require review by a development review panel. If administrative review is authorized, the bylaws shall clearly specify the thresholds and conditions under which the administrative officer classifies and application as eligible for administrative review. The threshold and conditions shall be structured such that no new development shall be approved that results in a substantial impact under any of the standards set forth in the bylaws. No amendment issued as an administrative review shall have the effect of substantively altering any of the findings of fact of the most recent approval.

Any decision by an administrative officer under this subsection may be appealed to the Development Review Board.

### **Section 1211: Minutes and Findings**

The Board shall keep minutes of its proceedings, indicating the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the clerk of the municipality as a public record.

All findings and actions of the Board shall be in writing and shall include the reasons for the action taken irrespective of its nature. Findings shall be detailed and in specific terms, discussing the reason for the decisions, beyond such generalities as "in the interest of public health, safety and general welfare." In every instance, a statement of the facts upon which such action is based shall appear in the decision.

## **Section 1212: Quorum and Votes**

For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of the members of the Board and any action thereof shall be taken by the concurrence of a majority of the members of the Board.

## **Section 1213: Appeals to the Board, Applications**

The exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act with respect to any one or more of the provisions of this regulation shall be the appeal to the Development Review Board.

### **A. Time for Filing**

If the appeal is made with respect to any decision or action of the Administrative Officer, such notice of appeal must be filed within fifteen (15) days of the date of such decision or action and a copy of the notice of appeal shall be filed with such officer.

### **B. An appeal may be rejected by the Board without a hearing if the Board considers that the issues raised were decided in an earlier appeal or that the facts are the same or substantially the same facts.**

A decision shall be made within ten (10) days of the filing of the notice and include findings of fact (see Section 1212). For the purposes of Section 1215, this decision shall constitute a decision of the Board.

### **C. Interested Persons**

In any hearing, there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth in 24 VSA 4465 are met.

The Board shall keep a written record of the name, address, and participation of each of these persons.

For the purpose of these regulations, an interested person means any one of the following:

1. A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it,

affected by a bylaw who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

2. The Town of Castleton or any municipality which adjoins the Town.
3. A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this chapter, who can demonstrate a direct physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
4. Any ten persons owning real property or voters within the Town of Castleton, or a number of property owners equal to at least one percent of the registered voters of the municipality, whichever is greater, who, by signed petition to the development review panel of a municipality, the plan, or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the development review panel must designate one person to serve as the principal contact regarding all matters related to the appeal.
5. Any department and administrative subdivision of this state owning property or any interest in property within the Town of Castleton, and the agency of commerce and community development of this state.

#### D. Notice of Appeal

Any notice of appeal shall be filed in writing with the Secretary of the Board on forms provided by her/him which shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is made, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed appropriate under the circumstances.

#### E. Hearing on Appeals

The Development Review Board shall set a date and place for a public hearing of an appeal under these Regulations, which shall be within sixty (60) days of the filing of the notice of such appeal in accordance with Section 1214D.

The Board shall give public notice of the hearing, and shall mail to the appellant a copy of such notice at least fifteen (15) days prior to the hearing date. Copies shall also be sent to adjoining property owners if known, although failure to comply with this provision shall not invalidate any action taken.

Any interested person as defined in 1214 C may appear and be heard in person or be represented by an agent or attorney at such hearing. Any hearing held under this section may be adjourned by the Board from time to time, provided however, that the date and place of the adjourned hearing shall be announced at that time.

All hearings held under this section shall be open to the public and the rules of evidence applicable at such hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 VSA Section 10.

F. Decisions on Appeals.

The Development Review Board shall render its decisions on each appeal, which shall include written findings of fact, within forty-five (45) days after completing the final hearing and, within that period, send to the appellant, by certified mail, a copy of the decision.

Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy thereof shall be filed with the Administrative Officer and the clerk of the municipality as a part of the public records.

If the Board does not render its decision within this period, it shall be deemed to have rendered a decision in favor of the appellant and granted the relief requested on the 46th day.

**Section 1214: Appeals from Decisions of the Board**

An interested person may appeal a decision of the Development Review Board to the Environmental Court in accordance with 24 VSA 4471.

## **ARTICLE XIII: PLANNING COMMISSION**

### **Section 1301: Continuation of the Planning Commission**

There shall be a Planning Commission for the Town of Castleton.

### **Section 1302: General Review of the Zoning Regulation**

The Planning Commission shall carry on a continuous review of the zoning regulation and initiate proposals for amendment as required.

As part of the accomplishment of its duties the Planning Commission shall maintain complete records of its proceedings, studies and recommendations, as well as keep the Select Board informed on the current status of the Zoning Regulations and their effectiveness within the Town.

### **Section 1303: Review of Zoning Amendments**

The Planning Commission shall receive and evaluate proposals for amendment of the Zoning Regulations, hold public hearings on such amendments after due public notice as required in Section 1403, and make recommendations to the Select Board with respect to such amendments and required to do a report.

### **Section 1304: Advisory Counsel to Other Agencies**

Upon request, the Planning Commission shall serve as guide and counsel to the Selectmen of the Town, the Administrative Officer, the Development Review Board, and other public offices in matters relative to the Zoning Regulations.

### **Section 1305: General Rules of Procedure**

No meeting or hearing in any way affecting the zoning ordinance may be held by the Planning Commission without the attendance of a majority of the Commission members; neither may any official action be taken with respect to the Zoning Regulations without the concurrence of a majority of the Commission members.

## **ARTICLE XIV: OTHER PROVISIONS**

### **Section 1401: Penalties for Violation**

Any person who violates these Zoning Regulations shall be fined not more than one hundred dollars (\$100) per day for each offense after seven days warning notice by certified mail in accordance with the provisions of Section 4451 of the Act. In default of payment of the fine, such person shall pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense.

### **Section 1402: Interpretation of Regulation**

The provisions of these regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except as provided to the contrary in the Act or these regulations, it is not intended by these regulations to repeal, annul or in any way impair any regulations or permits previously adopted or issued, provided, however, that where these regulations impose a greater restriction upon the use of a structure or land than are required by any other statute, ordinance, rule, regulations, permit, easement or agreement, the provisions of these regulations shall control.

### **Section 1403: Notice of Hearing**

Any public notice required for public hearing under this Zoning Regulation shall be given by the publication of the date, place and purpose of such hearing in a newspaper of general circulation in the town, and the posting of a notice containing the same information in one or more public places within the town not less than fifteen (15) days prior to the date of the public hearing.

Where such hearing is called in reference to any amendment of this Zoning Regulation or any other matter relating to written material, such public notice shall include either the full text or a brief summary describing the principal provisions and a reference to a place within the town where copies of the proposed material may be examined.

### **Section 1404: Fees**

Fees may be established by the Select Board in amounts necessary to cover all costs of the Administrative Officer, the Development Review Board and the Planning Commission for such items as processing applications, including costs of material, administrative time, and reasonable overhead such as postage, telephone, etc.



The Development Review Board may require the applicant to pay for an outside expert opinion if necessary to adjudicate the applicant's case.

#### **Section 1405: Warning of Disclaimer of Liability**

These regulations shall not create liability on the part of the Town of Castleton or any local official or employee thereof for any flood damages that result from reliance on this Regulation or any administrative decisions lawfully made there under.

#### **Section 1406: Severability**

If any provision of this regulation is held invalid, the invalidity does not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application.

#### **Section 1407: Effective Date**

This Regulation shall take effect upon approval in accordance with the voting and other procedures contained in Section 4404 of 24 VSA 117.

#### **Section 1408: Precedence of Regulation**

The provisions of this regulation shall take precedence over any conflicting and less restrictive local laws.

This regulation shall take effect in accordance with the voting and other procedures contained in Section 4404 of the Act.

The Zoning Ordinance of the Town of Castleton enacted August 24, 1971, and subsequent amendments, (June 15, 1973; April 1, 1975; July 31, 1978; November 14, 1979; and May 13, 1985), is hereby repealed, as of the effective date of this Ordinance adopted by the Planning Commission for submission to the Board of Selectmen.

Adopted by the Board of Selectmen July 30, 1987

Effective Date August 20, 1987

Amended by the Select Board June 23, November 10 & December 1, 1997

## **ARTICLE XV: FLOOD HAZARD AREA (FHO) AND RIVER CORRIDOR (RCO) OVERLAY DISTRICTS**

### **Section 1500: Statutory Authorization and Effect**

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 and §4414, there is hereby established regulations for areas at risk of flood damage in the Town of Castleton, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

### **Section 1501: Statement of Purpose**

It is the purpose of Article XV to:

- (a) Implement the goals, policies, and recommendations in the Castleton Town Plan;
- (b) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation and erosion;
- (c) Make the Town of Castleton, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds, as may be available.
- (d) Ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or the stream corridor,
- (e) Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Castleton, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

### **Section 1502: Other Provisions**

Precedence of Bylaw

- (a) The provisions of this flood hazard regulation shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. **Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.**

## Validity and Severability

- (b) If any portion of Article XV is held unconstitutional or invalid by a competent court, the remainder of the flood hazard regulation shall not be affected.

## Warning of Disclaimer of Liability

- (c) The flood hazard regulation does not imply that land outside of the areas covered by the flood hazard regulation will be free from flood or erosion damages. The flood hazard regulation shall not create liability on the part of the Town of Castleton, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

## Section 1503: Abbreviations and Definitions

### (a) Abbreviations

The following abbreviations shall be the shortened form of the word or phrase indicated, the definitions of which may also be included in Section III below:

<b>Ac.</b>	- <b>Acre/acreage</b>
<b>AMP</b>	- <b>Appropriate Municipal Panel</b>
<b>AO</b>	- <b>Administrative Officer</b>
<b>ANR</b>	- <b>Vermont Agency of Natural Resources</b>
<b>BFE</b>	- <b>Base flood elevation</b>
<b>CFR</b>	- <b>Code of Federal Regulations</b>
<b>DRB</b>	- <b>Development Review Board</b>
<b>FEMA</b>	- <b>Federal Emergency Management Agency</b>
<b>FIRM</b>	- <b>Flood Insurance Rate Map</b>
<b>FHA</b>	- <b>Flood Hazard Area</b>
<b>FHBM</b>	- <b>Flood Hazard Boundary Map</b>
<b>FHO</b>	- <b>Flood Hazard Area Overlay District</b>
<b>Ft.</b>	- <b>Feet/foot</b>
<b>LOMA</b>	- <b>Letter of Map Amendment</b>
<b>LOMC</b>	- <b>Letter of Map Change</b>
<b>LOMR</b>	- <b>Letter of Map Revision</b>
<b>NA</b>	- <b>Not applicable</b>
<b>NAI</b>	- <b>No adverse impact</b>
<b>NFIP</b>	- <b>National Flood Insurance Program</b>
<b>RAPs</b>	- <b>Required Agricultural Practices</b>
<b>RCO</b>	- <b>River Corridor Overlay District</b>
<b>SF</b>	- <b>Square feet</b>
<b>VSA</b>	- <b>Vermont Statutes Annotated</b>
<b>ZA</b>	- <b>Zoning Administrator</b>

## (b) Construction of Language

Except where specifically defined herein, all words used in this Section shall have their common meanings. The word "shall" means the action is mandatory; and "occupied" and "used," in the context of structures and vehicles, shall be considered as though followed by "or intended, arranged, or designed to be occupied or used."

## (c) Definitions

**"Accessory dwelling"** means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. See 24 V.S.A. § 4412(1)(E) for more information.

**"Accessory structure"** means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use or structure on a lot, 2) located on the same lot as the principal structure or use, 3) clearly and customarily related to the principal structure or use, and 4) only used for vehicle parking, storage, or primarily building access. Examples include, garages, garden and tool sheds, and playhouses, but do not include "accessory dwellings."

**"Area of special flood hazard"** is synonymous in meaning with the term "special flood hazard area" for the purposes of this bylaw.

**"Associated transportation and utility networks"** means those transportation and utility networks connected to a bridge, culvert, or utility for the purpose of crossing a river or stream and do not include transportation or utility networks within the river corridor that merely run parallel to a river or stream<sup>1</sup>.

**"Base flood"** means the flood having a one percent chance of being equaled or exceeded in any given year (commonly referred to as the "100-year flood").

**"Base Flood Elevation" (BFE)** is the elevation of the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

**"Basement"** means any area of a building having its floor elevation below ground level on all sides, including crawlspaces.

**"BFE"** see "Base Flood Elevation."

**"Channel"** means an area that contains continuously or periodic flowing water that is

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<sup>1</sup> These do not include state transportation networks or power generation and transmission utility networks subject to the Public Utility Commission jurisdiction, as those are exempt from municipal regulation and are regulated under the State Flood Hazard Area & River Corridor Rule; <http://dec.vermont.gov/sites/dec/files/documents/wsmd-fla-and-rc-rule-adopted-2014-10-24.pdf>

confined by banks and a streambed.

**“Compensatory storage”** means a volume not previously used for flood storage and which shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the base flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream, or creek.

**“Common plan of development”** means where a structure will be refurbished or constructed under one approved plan or permit, but in separate stages, phases, or in combination with other construction activities. Such work may be planned unit by unit and may take place at different times, on different schedules.

**“Construction trailer”** means a vehicle which is: (1) built on a single chassis; (2) 500 square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable; and (4) designed for use as a temporary office facility used to support management of a construction project, and not as a permanent structure.

**“Critical facilities”** means facilities that are vital to public health and safety, including police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities.<sup>2</sup>

**“Designated center”** means a downtown, village center, new town center, growth center, or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.

**“Development”** means any human-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials<sup>3</sup>.

**“Encroachment”** means activities or construction including fill, substantial improvements, and other development that may cause an increase in flood levels.

**“Equilibrium condition”** means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

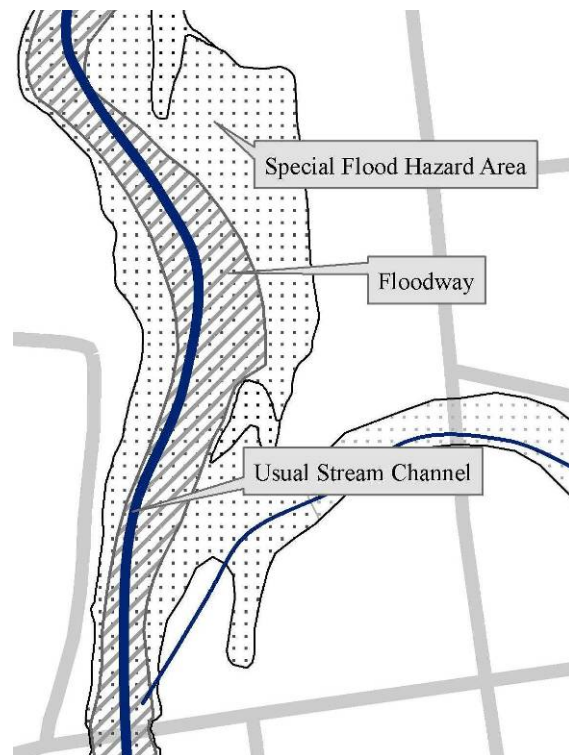
**“Fill”** means any placed material that changes the natural grade, increases the elevation, redirects the movement of flood water, or diminishes the flood storage capacity at the site. Temporary storage of material for less than 180 days is not considered fill.

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<sup>2</sup> A community may opt to expand the definition to include other structures as essential to the health and welfare of the population and that are especially important during and after a disaster. For example, the type and location of a business may raise its status to a critical facility, such as a grocery store or gas station.

<sup>3</sup> Note this definition is required by the National Flood Insurance Program and differs from “land development” defined in 24 V.S.A. Chapter 117.

**“Flood”** means (a) a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; (b) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.



**“Flood fringe”** means the portion of the flood hazard area that is outside of the floodway but still inundated by the base flood (the flood having a one percent chance of being equaled or exceeded in any given year).

**“Flood hazard”** means those hazards related to damage from flood-related inundation or erosion.

**“Flood hazard area”** shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1. “Area of special flood hazard” is synonymous with the term “special flood hazard area.”

**“Flood Insurance Rate Map” (FIRM)** means an official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. In some communities the hazard boundaries are available in paper, pdf, or Geographic Information System formats as a Digital Flood Insurance Rate Map (DFIRM).

**“Flood Insurance Study”** means an examination, evaluation, and determination of flood hazards and, if appropriate, the corresponding water surface elevations or an examination, evaluation, and determination of mudslide (i.e., mudflow) and /or flood-related erosion hazards.

**“Floodplain or flood-prone area”** means any land area susceptible to being inundated by water from any source (see definition of “flood”).

**“Floodproofing”** means any combination of structural and non-structural additions,

changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**“Floodway”** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that flood hazard areas and floodways may be shown on a separate map panels.

**“Fluvial erosion”** means the erosion or scouring of riverbeds and banks during high flow conditions of a river. Fluvial erosion is most likely to occur within the river corridor.

**“Functionally dependent use”** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

**“Grading”** means the movement or replacement of topsoil or other material originating on the site and within the hazard area. Grading results in minor or no changes in topographic elevations. If new material is brought from outside the hazard area and such new material is not offset with an equal or greater removal of material from the portion of the site within the hazard area, the new material shall be considered “fill” and shall not be considered grading.

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

**“Infill development”** means construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other development in an area that was not previously developed but is surrounded by existing development.

**“Letter of Map Change (LOMC)”** is a letter issued by FEMA officially removing a structure or lot from the flood hazard area based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area. A LOMC can include a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), Letter of Map Revision based on Fill (LOMR-F), or a Letter of Map Revision for a Floodway (LOMR-FW).

**“Lowest floor”** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building’s lowest floor provided that such enclosure is not built so as to render the structure in

violation of the applicable non-elevation design requirements of 44 C.F.R. § 60.3.

**"National Flood Insurance Program"** means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60. The National Flood Insurance Program aims to reduce the impact of flooding on private and public structures. It does so by providing affordable insurance to property owners in communities that adopt and enforce floodplain management regulations. These efforts help mitigate the effects of flooding on new and improved structures.

**"Natural and beneficial floodplain functions"** means the functions associated with the natural or relatively undisturbed floodplain that includes moderating flooding, retaining flood waters, and reducing erosion, sedimentation and flood related damage. Ancillary beneficial functions include support of ecosystem services such as wildlife habitat, water quality, and recharge of ground water.

**"New construction"** means structures for which the *start of construction* commenced on or after the effective date of this bylaw and includes any subsequent improvements to such structures.

**"Nonconforming structure"** means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer. Structures that were in violation of the regulations in effect at the time of their creation, and remain so, remain violations and are not nonconforming structures.

**"Nonconforming use"** means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

**"Non-residential"** includes: businesses, churches, schools, nursing homes, pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, industrial structures, and warehouses.

**"Person"** means an individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.

**"Public water access"** means a public access to a water of the State and, except for toilet facilities, shall not include structures as defined in this bylaw.

**"Recreational vehicle"** means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

**"Redevelopment"** means construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other development in a previously developed area. The term includes substantial improvements



and repairs to substantially damaged buildings.

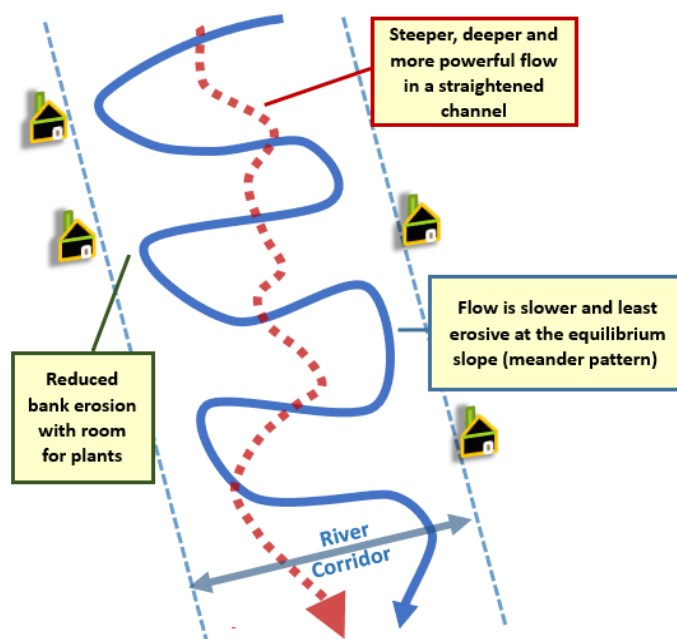
**“Replacement structure”** means a new building placed in the same footprint as the pre-existing building and does not include a change in use.

**“River”** means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

**“River corridor”** means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the Vermont Agency of Natural Resources in accordance with river corridor protection procedures. (10 V.S.A. § 1422).

**“Special flood hazard area”** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. For purposes of this bylaw, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area.” This area is usually labeled Zone A, AO, AH, AE, or A1-30 in the most current flood insurance studies and on the maps published by FEMA. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: [msc.fema.gov](http://msc.fema.gov). Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of special flood hazard areas that are determined by detailed methods. Please note, where floodways have been determined they may be shown on separate map panels from the Flood Insurance Rate Maps.

**“Start of construction”** for purposes of floodplain management, determines the effective map or bylaw that regulated development in the special flood hazard area. The “start of construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or



any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**“Storage”** means the aggregation of materials, items, or objects whether natural or human-made; that is kept as a stockpile, collection, or inventory; where individual materials from the stockpile, collection or inventory may change, but where the general footprint of the stored materials continues to be used for the same purpose; whether set upon the land or within a container, structure, or facility; and that would not otherwise be in compliance with these development standards.

**“Structure”** means a walled and roofed building, as well as a manufactured home, including gas or liquid storage tanks.

**“Substantial damage”** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

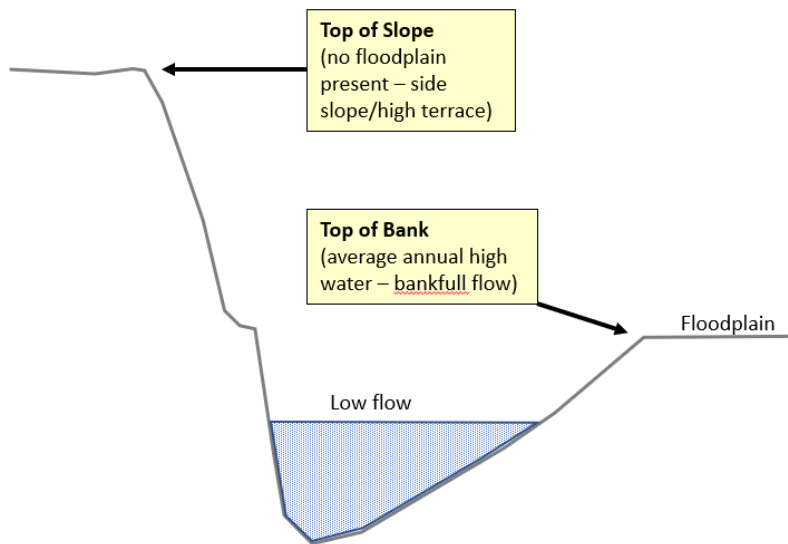
**“Substantial improvement”**<sup>4</sup> means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.”

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<sup>4</sup> For further guidance, see *FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference*: <https://www.fema.gov/media-library/assets/documents/18562>

**“Top of bank”** means the point along a streambank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

**“Top of slope”** means a break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut, channel meet floodplains that have been abandoned or are undergoing abandonment.



**“Violation”** means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 C.F.R. § 60.3 is presumed to be in violation until such time as that documentation is provided.

**“Watercourse”** means any perennial stream and shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

**“Wet-floodproofing”** means permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding by allowing water to enter the structure in accordance with Technical Bulletin 7 published by FEMA.  
<https://www.fema.gov/media-library/assets/documents/3503>

## Section 1504. Administration

### (a) Administrative Officer & Appropriate Municipal Panel

- (1) Administrative Officer (AO)
  - i. The Administrative Officer (AO) will administer Article XI of this ordinance pursuant to 24 V.S.A. § 4448 and **Article XI. Administration and Enforcement.**
- (2) Appropriate Municipal Panel (AMP)
  - i. The Appropriate Municipal Panel (AMP) for this bylaw shall be the Development Review Board (DRB). See **Article XI. Administration and Enforcement.**

### (b) Application Administration Requirements

- (1) Application Submission Requirements

All Applications for development shall include:

- i. **Site Plan.** A site plan that depicts the proposed development, all water bodies, all (Flood Hazard Area and River Corridor Overlay Districts) boundaries, the shortest horizontal distance from the proposed development to the top of bank of any river, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
- ii. **Project Review Sheet.** A Vermont Agency of Natural Resources Project Review Sheet.
- iii. **Supplemental Application Requirements.** Some applications may require additional information based on the location and type of the development. The following information shall be developed and provided with an application, as required below:
  - a) **Base Flood Elevation (BFE).** BFE information is required for:
    - i) Replacement, substantially improved, or substantially damaged structures located within any Flood Hazard Overlay District, including Zone A, where no BFEs have been provided;
    - ii) Projects requiring elevation or dry-floodproofing above BFE;
    - iii) Additions to existing historic structures; and
    - iv) Any accessory structure proposed to be built in accordance with Section 1508 and having building utility systems that will need to be protected from flood waters through elevation above the BFE.
  - b) **Floodway Data.** The following information is required for development located in the floodway. All floodway data shall be certified by a registered professional engineer. All submitted proposals shall include electronic input/output files and mapping showing cross-section locations.
    - i) Hydraulic calculations demonstrating no rise in BFE or velocity for proposed new or expanded encroachments within the Floodway District.
    - ii) In accordance with 44 C.F.R. § 60.3(c)(10), where BFE data has been provided by FEMA, but no floodway areas have been designated, the applicant shall provide a floodway delineation that demonstrates that the proposed development, when combined with all existing and anticipated future development, will not increase the water surface elevation of the base flood by more than one foot at any point within the community.
  - c) **Compensatory Flood Storage.** The following information is required for applications that require compensatory flood storage pursuant to Section 1508:

- i) Designs shall provide equivalent storage volumes during peak flows up to and including the base flood discharge. This No Adverse Impact (NAI) volumetric analysis and supporting data shall be certified by a registered professional engineer.
  - ii) If it appears that the design may create an undue adverse impact to adjacent landowners or structures, a hydraulic analysis may be required to verify that a proposed development will not increase flood elevations or velocities of floodwaters. Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer.
- d) **River Corridor Assessment.** The following information is required for applications proposing development within the river corridor:
- 1. Information clearly demonstrating how the proposed development meets the infill or shadowing requirements in Section 1507; or
  - 2. A narrative and supporting technical information from a qualified consultant that demonstrates how the proposal meets the River Corridor Performance Standard in Section 1507 or
  - 3. Evidence of an approved major or minor map update issued by ANR in accordance with the process outlined in the DEC Flood Hazard Area & River Corridor Protection Procedure, finding the proposed development is not located within the river corridor. Please note that ANR may require the applicant to provide technical data from a qualified consultant to justify a map update.
- e) **Waivers.** Upon written request from the applicant, the DRB may waive specific application requirements when the data or information is not needed to comply with Sections c) and d) above. A determination to waive the compensatory storage requirement shall include written concurrence from the ANR regional floodplain manager, that project will have only a minimal effect on floodwater storage.

## (2) Referrals

- i. Upon receipt of a complete application for new construction or a substantial improvement, the AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and DRB shall consider all comments from ANR.
- ii. Any application for a proposed conditional use or a request for a variance from these regulations shall be referred to the DRB in accordance with 24 V.S.A. § 4460.
- iii. If the applicant is seeking a permit for the alteration or relocation of a

watercourse, copies of the application shall also be submitted to the adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

- (3) Public Notice  
See **Article XI. Administration and Enforcement.**

- (4) Permits  
See **Article XI. Administration and Enforcement.**

- (5) Variances

See **Section 1207. Variances.**

If the proposed development is located within any Flood Hazard Overlay District, the proposal shall comply with 44 C.F.R. § 60.6.

- i. Any variance issued in the Flood Hazard Area shall not increase flood heights and shall inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the BFE increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

- (6) Appeals of a Permit Decision

- i. Appeals from any decision or act of the AO in connection with these regulations shall be made according to Article XII Appeals. Additional provisions applicable to appeal of a substantial improvement or substantial damage determination made by the AO can be found in sub-paragraph C.III.B.4 [Substantial Improvement and Substantial Damage Determinations, Post Flood Procedures], below .

- (7) Administrative Responsibilities, Records

The AO shall properly file and maintain a record of:

- i. All permits issued for development under the jurisdiction of this bylaw:
  - a. A FEMA Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new,

- replacement, substantially improved, substantially damaged or flood-proofed buildings (not including accessory buildings) in the Flood Hazard Area;
- b. All floodproofing and other certifications required under this regulation;
  - c. All decisions of the AO and DRB (including those for substantial improvement, substantial damage, variances, and violations) and all supporting findings of fact, conclusions, and conditions.
  - d. Whenever the DRB does not grant a conditional use permit or a variance request on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective DRB at a later time unless in accordance with 24 V.S.A. § 4470.
- i. The applicant shall clearly demonstrate that: Circumstances affecting the property that is the subject of the application have substantially changed, New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis shall be filed with the AO within the time period for an appeal. However, such a request does not extend the period within which an appeal shall be taken. Appeals from any decision or act of the DRB in connection with this bylaw shall be made to the Vermont Superior Court, Environmental Division as provided for in 24 V.S.A. § 4471.
  - ii. Substantial Improvement and Substantial Damage Determinations, Post Flood Procedures
    - a. When a proposal for the renovation, rehabilitation, restoration, or repair of a structure located within any Flood Hazard Area Overlay District is reviewed, the AO shall make a substantial improvement determination.
    - b. In the event of damage to a structure located within any Flood Hazard Area Overlay District from flooding or other causes (such as, but not limited to, fire, wind or snow), the AO shall make a substantial damage determination based on the damage sustained by the structure regardless of intended repair at that time.
    - c. Substantial improvement or substantial damage determinations shall be made in accordance with current FEMA guidelines<sup>5</sup> or procedure established by the DRB in accordance with 24 V.S.A. § 1972 and 24 V.S.A. § 4461 and shall be used to determine the appropriate development standards for repair and rebuilding.
    - d. A substantial improvement or substantial damage determination can be appealed by an applicant or property owner to the DRB in accordance with this bylaw. In the consideration of an appeal of the AO's determination, the DRB shall consider additional documentation provided by the applicant which may include:

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<sup>5</sup> FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference: <https://www.fema.gov/media-library/assets/documents/18562>

1. A recent building appraisal (within the past calendar year, or as determined to still be applicable) completed by a licensed and qualified real estate appraiser that documents the structure's market value (excluding land value) prior to the damage or improvement; or
2. A project/repair cost estimate provided by a qualified contractor, professional engineer or licensed architect. The material and labor cost estimate shall include a detailed accounting of the proposed improvements, additions, reconstruction or rehabilitation work, repairs or associated construction and development; or
3. In the case of substantial damage, an estimate of structure damage provided or reviewed by a local official from FEMA's *Substantial Damage Estimator* software.

### **Section 1505: Certificate of Occupancy**

- (a) In accordance with 24 V.S.A. § 4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within the areas affected by this bylaw, until a certificate of occupancy is issued by the AO stating that the proposed use of the structure or land conforms to the requirements of this bylaw.
- (b) A certificate of occupancy is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw.
- (c) Upon receipt of the application for a certificate of occupancy, the AO shall review the permit conditions and inspect the premises to ensure that:
  - i. any required state and federal permits that have been received, and
  - ii. all work has been completed in conformance with the zoning permit and associated approvals.
- (d) If the AO fails to grant or deny the certificate of occupancy within 29 days of the submission of the application, the certificate shall be deemed issued on the 30<sup>th</sup> day. If a certificate of occupancy cannot be issued, notice will be sent to the owner and copied to the lender.

All required as-built documentation has been submitted to the AO, e.g. updated FEMA Elevation Certificate, dry floodproofing certificate, as-built volumetric analysis, or as-built floodway encroachment analysis.

### **Section 1506. Enforcement**

See **Article XI Administration and Enforcement**

No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared to be in violation of local flood hazard area regulations. If any appeals have been resolved, but the violation remains, the AO shall submit a declaration to the Administrator of the National Flood Insurance



Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended. New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.

	<b>Activity</b>	<b>Hazard Zone</b>	
		<b>Flood Hazard Area Overlay</b>	<b>River Corridor Overlay</b>
	<b>P</b> Permitted <b>C</b> Conditional Use Review <b>X</b> Prohibited <b>A</b> Exempted		
	New Structures	C	X
	Storage	X	X
	Improvements to Existing Structures	C	C
	Small Accessory Structures	P	C
	At Grade Parking	C	C
	Replacement water supply or septic systems	C	C
	Fill as needed to elevate existing structures	C	C
	Fill	X	X
	Grading	C	C
	Road maintenance	A	A
	Road improvements	C	C
	Bridges and culverts	C	C
	Channel management	C	C
	Recreational vehicles	C	C
	Open space, recreation	A	A
	Forestry	A	A
	Agriculture	A	A

## **Section 1507: River Corridor Overlay (RCO) District**

### **(a) Statement of Purpose for Managing River Corridors**

Protection of the river corridor provides rivers and streams with the lateral space necessary to maintain or reestablish floodplain access and minimize erosion hazards through natural, physical processes. It is the intent of this bylaw to allow for wise use of property within river corridors that minimizes potential damage to existing structures and development from flood-related erosion, to discourage encroachments in undeveloped river corridors and to reasonably promote and encourage infill and redevelopment of designated centers that are within river corridors.

(b) RCO District General Provisions

(1) Establishment of RCO Districts

The RCO is an overlay district. All other requirements of the underlying district or another overlay district such as the Flood Hazard Area Overlay District, shall apply in addition to the provisions herein, unless it is otherwise so indicated. If there is a conflict with another such district, the stricter provision shall apply.

(2) RCO District Boundaries

- i. Article XV of this ordinance shall apply to the Statewide River Corridors in the Town of Castleton, Vermont, as published by the Agency of Natural Resources (ANR) including refinements to that data based on field-based assessments which are hereby adopted by reference.
- ii. On perennial streams with a watershed size greater than half a square mile for which River Corridors are not mapped<sup>6</sup>, the standards in Section 1508 f) [Development Standards] shall apply to the area measured as 50 feet from the top of the stream bank or slope.
- iii. Requests to update a river corridor map shall be in accordance with the procedure laid out in the ANR *Flood Hazard Area and River Corridor Protection Procedure*<sup>7</sup>.

(3) Jurisdictional Determination and Interpretation

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the RCO, the location of the boundary on the property shall be determined by the Administrative Officer (AO). If the applicant disagrees with the determination made by the AO or the river corridor as mapped, the applicant has the option to either:

- i. Hire a licensed land surveyor or registered professional engineer to stake out the RCO boundary on the property; or
- ii. Request a letter of determination from ANR which shall constitute proof of the location of the river corridor boundary.<sup>8</sup> When ANR receives a request for a letter of determination, ANR evaluates the site and

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<sup>6</sup> A GIS map layer is available from DEC Rivers Program indicating the small stream segments that require a 50-foot setback.

<sup>7</sup> [http://dec.vermont.gov/sites/dec/files/documents/DEC\\_FHARCP\\_Procedure.pdf](http://dec.vermont.gov/sites/dec/files/documents/DEC_FHARCP_Procedure.pdf)

<sup>8</sup> In support of a letter of determination request, applicants must provide a description of the physical characteristics that bring the river corridor delineation into question (e.g. the presence of bedrock or other features that may confine lateral river channel adjustment).

existing data to see if a change to the river corridor delineation is justified, necessitating a river corridor map update<sup>9</sup>. An ANR letter of determination will either confirm the existing river corridor delineation or will result in an update to the river corridor delineation for the area in question. If a map update is justified, an updated map will be provided with the letter of determination.

## **Section 1508: Development Review in River Corridor Overlay District**

### **(a) Exempted Activities**

The following activities do not require a permit under this section of the bylaw:

- (1) The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged.
- (2) Any changes, maintenance, repairs, or renovations to a structure that will not result in a change to the footprint of the structure or a change in use.
- (3) Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.
- (4) Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.
- (5) Construction or repair of stream crossing structures (bridges and culverts), associated transportation and utility networks<sup>10</sup>, dams, dry hydrants, and other functionally dependent uses that must be placed in or over rivers and streams that are not located in a flood hazard area and that have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.
- (6) Activities exempt from municipal regulation and requiring a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29) <sup>11</sup>:
  - i. State-owned and operated institutions and facilities.
  - ii. Forestry operations or silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
  - iii. Agricultural activities conducted in accordance with the Vermont Agency of Agriculture, Food and Market's Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the

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<sup>9</sup> River Corridor map updates are further explained in the Flood Hazard Area & River Corridor Protection Procedure: [http://dec.vermont.gov/sites/dec/files/documents/DEC\\_FHARCP\\_Procedure.pdf](http://dec.vermont.gov/sites/dec/files/documents/DEC_FHARCP_Procedure.pdf)

<sup>10</sup> New transportation or utility development that runs parallel to the river is not exempt and shall meet the Development Standards in Section IV.

<sup>11</sup> State-owned and -operated institutions and facilities, Forestry, Required Agricultural Practices, and Public Utility Commission jurisdictional facilities located in a Flood Hazard Area or River Corridor are regulated under the State Flood Hazard Area & River Corridor Rule, 10 V.S.A. § 754.

farmer shall notify the AO in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks.

- iv. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.
- v. Telecommunications facilities regulated under 30 V.S.A. § 248a.
- vi. Planting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).
- vii. Subdivision of land that does not involve or authorize development.

(b) Permits

Except as provided in Section 1508 (a) [Exempted Activities], a permit is required from the AO for all development that is located within the River Corridor. Development that requires conditional use approval or a variance from the Development Review Board (DRB) under this bylaw must have such approvals prior to the issuance of a permit by the AO. Any development that is also subject to municipal jurisdiction in the designated flood hazard areas shall meet the criteria in Section 808 (or other section where flood hazard area standards are located).

- (1) All permits shall require that a permittee have all other necessary permits from state and federal agencies before work may begin.

(c) Prohibited Development in the RCO District

The following are prohibited in the RCO District:

- (1) New structures, fill, development, and accessory dwellings<sup>12</sup> that do not meet the standards in Section 1508 (f) [Development Standards];
- (2) Any other development that is not exempt, permitted, or listed as a conditional use which would cause or contribute to fluvial erosion hazards.

(d) Administrative Review; Permitted Development

The following development activities in the RCO District meeting the Development Standards in Section 1508 (f), require an administrative review from the AO and may receive a permit from the AO without review by the DRB:

- (1) Small accessory structures not larger than 500 square feet.
- (2) Improvements to existing utilities that are along an existing right of way and serve a building.
- (3) Replacement on-site septic systems.
- (4) An attached deck or patio to an existing structure that is 200 square feet or less and is located no less than 100 feet from the top of bank.<sup>13</sup>

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<sup>12</sup> Depending on community settlement patterns, and to ease bylaw administration, some communities may consider simply prohibiting new structures within the river corridor (as opposed to allowing infill and redevelopment).

<sup>13</sup> An attached deck or patio does not include enclosed or three-season porches.

- (5) River or floodplain restoration projects that do not involve fill, structures, utilities, or other improvements, and which have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.<sup>14</sup>

(e) Conditional Use Review

In accordance with 24 V.S.A. § 4414, conditional use review and approval by the DRB is required prior to the issuance of a permit by the AO for any activity<sup>15</sup> in the RCO District that is not exempt or eligible for administrative review.

(f) Development Standards

The criteria below are the minimum standards for development in the RCO District. Where more than one district is involved, the most restrictive standard shall take precedence.

- (1) Development within designated centers shall be allowed within the river corridor if the applicant can demonstrate that the proposed development will not be any closer to the river than pre-existing adjacent development.
- (2) Development outside of designated centers shall meet the following criteria:
  - i. In-Fill Between Existing Development: Development must be located no closer to the channel than the adjacent existing primary structures,

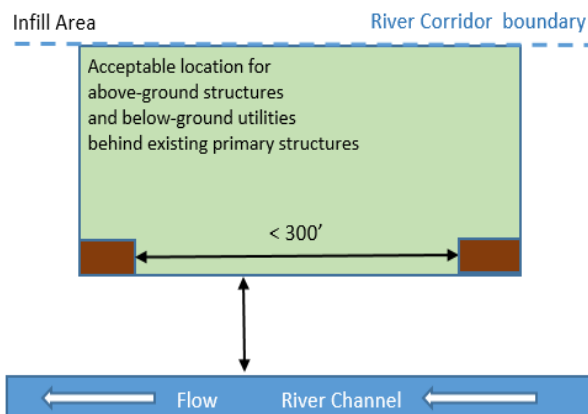


Figure 1: In-fill Development Standard

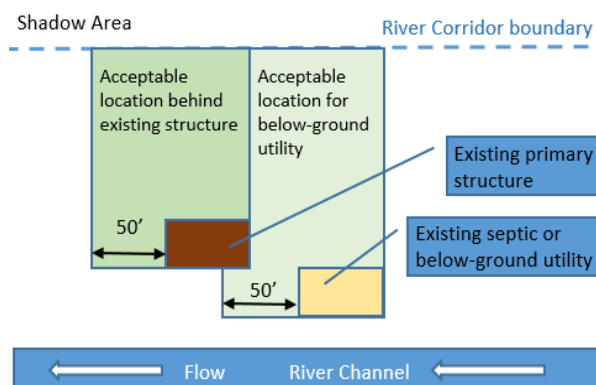


Figure 2: Shadow Area Development Standard

<sup>14</sup> Applicants should be made aware that any restoration project involving work within the stream channel may require a Stream Alteration Permit under 10 V.S.A. Chapter 41 and the rules adopted thereunder.

<sup>15</sup> This includes public water accesses and unimproved paths that provide access to the water for the general public and promote the public trust uses of the water. Permits for such accesses and paths must include a condition prohibiting the permittee from actively managing the section of river to solely protect the public water access from lateral river channel adjustment.

If there are pre-existing investments such as infrastructure or habitable structures in close proximity to the access, it may be appropriate to provide streambank armoring in compliance with the Vermont Stream Alteration Rules; <http://dec.vermont.gov/watershed/rivers/river-management#rules>

- within a gap that is no more than 300 feet (see Figure 1), or
- ii. Down River Shadow: An addition to an existing habitable structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system (see Figure 2).

(3) River Corridor Performance Standard<sup>16</sup>

- i. Proposals that do not meet the infill or shadowing criteria in Section 1507 (f) [Development Standards] A or B must demonstrate and the DRB must find that the proposed development will:
- ii. not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion;
- iii. not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and
- iv. not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.
- v. Proposals that meet the infill or shadowing criteria in section f.[Development Standards] A or B, are presumed to meet the River Corridor Performance Standard. However, The DRB has the option to require an applicant to demonstrate that a proposal meets the River Corridor Performance Standard if there is a concern that the proposed development is at particular risk from fluvial erosion or may increase fluvial erosion, based on location or past flood damage.
- vi. The DRB may request or consider additional information to determine if the proposal meets the River Corridor Performance Standard, including:
  - a. a description of why the shadowing and infill criteria cannot be met;
  - b. data and analysis from a consultant qualified in the evaluation of river dynamics and erosion hazards; or
  - c. Comments provided by the DEC Regional Floodplain Manager on whether the proposal meets the River Corridor Performance Standard.

(g) Permit Conditions

Permits for public water accesses and unimproved paths that provide access to the

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<sup>16</sup> Depending on community settlement patterns and development plans, some communities may consider removing the river corridor performance standard to create a more restrictive bylaw that is easier to administer.

water for the general public and promote the public trust uses of the water shall include a condition prohibiting the permittee from actively managing the section of river to solely protect the public water access from lateral river channel adjustment.

## **Section 1509: Flood Hazard Area Overlay (FHO) District**

### **(a) Statement of Purpose for Managing Inundation Hazards**

- (1) To allow for the wise use of floodplain lands in a way that minimizes potential damage to existing structures and development located within this hazard zone.
- (2) Provide an adequate means of protecting the beneficial functions of undeveloped floodplains and development that is already located within floodplains.
- (3) Avoid encroachments in flood hazard areas that may result in cumulative degradation of natural floodplain function leading to increased flood elevations, velocities, and river instability.
- (4) To protect infill and redevelopment from inundation hazards.
- (5) To discourage new encroachments on undeveloped property within the FHO that provide for floodwater and sediment storage.

### **(b) Lands to Which this Bylaw Applies**

#### **(1) Special Flood Hazard Areas**

This bylaw shall apply to the Special Flood Hazard Areas (SFHAs, hereafter referred to as “flood hazard areas” or “FHAs”) in the Town of Castleton, Vermont as described below. Flood Hazard Areas are identified in and on the most current flood insurance studies and maps<sup>17</sup> published by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources (ANR) pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of this bylaw.

#### **Establishment of the FHO District**

The FHO is an overlay district. All other requirements of the underlying district or another overlay district such as the River Corridor Overlay District, shall apply in addition to the provisions herein, unless it is otherwise so indicated. If there is a conflict with another such district, the stricter provision shall apply. The flood hazard area, as delineated by FEMA, may contain two parts; the floodway where limited development may be permitted and the remaining part of the flood hazard area (outside of the floodway) called the flood fringe. Within

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<sup>17</sup> Where Flood Insurance Rate Maps have not been published, this includes Special Flood Hazard Areas identified on Flood Hazard Boundary Maps produced by the Federal Insurance Administration.

the flood hazard area, the inundation risk and type of damages may differ according to the type of flooding that occurs. Therefore, the identified FHO district is separated into different sub-districts to provide protection based upon flooding type:

- i. The floodway - The floodway is depicted on the Flood Insurance Rate Maps/Flood Boundary and Floodway Maps for this community<sup>18</sup>.
- ii. The flood fringe - identified as the area of the FEMA Special Flood Hazard Area (labeled as Zone A, AE, A1-30, AH, AO) outside of the floodway on the most current NFIP maps.
- iii. Unless one of these sub-districts is specifically named, reference to the FHO District Includes both. Unless one of these zones is specifically named, reference to the Flood Hazard Area Includes both sub-zones.

## (2) Base Flood Elevations and Floodway Limits

- i. Where available, base flood elevations and floodway limits provided by the NFIP and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce this bylaw.
- ii. The floodway, as adopted by this community, shall consist of the channel of a river or other watercourse and the adjacent land areas that shall be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.
- iii. In the FHO District where base flood elevations and/or floodway limits have not been provided by the NFIP in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data, as specified in Section 1504 [Administration]. Where available, the applicant shall use data provided by FEMA, or state or federal agencies to administer this bylaw.

## (3) Jurisdictional Determination and Interpretation

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

- i. If uncertainty exists with respect to the boundaries of the FHO District, the location of the boundary shall be determined by the Administrative Officer (AO). The AO may require additional topographic or base flood elevation information if necessary to make such determination. If available, the AO shall use a FEMA Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) in making a determination. Once issued, the LOMA or LOMR shall constitute proof of the FHO boundary and whether the proposed development is within the FHO.<sup>19</sup>
- ii. A FEMA Letter of Map Revision based on Fill (LOMR-F) that has been

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<sup>18</sup> Please note that the floodway may be shown on a separate map panel entitled "Flood Boundary and Floodway Map" for maps made in 1986 or earlier. Maps can be accessed online at <https://msc.fema.gov>

<sup>19</sup> <https://www.fema.gov/letter-map-amendment-letter-map-revision-based-fill-process>



issued after the effective date of this bylaw shall not be used to remove lands from the jurisdiction of this bylaw.

- iii. When the AO deems a property is within the FHO District, an applicant seeking to challenge such determination shall have 15 days from the date of receiving the AO's determination to notify the AO of his or her intent to seek proof of the boundary. Upon timely filing of such notification letter by the applicant, the application for the zoning permit shall not be considered complete until the AO has received a LOMA or LOMR issued by FEMA or any other evidence identified in such notice.

#### (c) Development Classifications and Permit Requirements in the FHO District

##### (1) Exempted Activities

The following activities do not require a permit under this section of this bylaw:

- i. The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged. Please be aware that for damaged structures where FEMA mitigation funds may be used, the damaged structure may be required to remain in place until funds are granted.
- ii. Routine maintenance of existing buildings in the usual course of business required or undertaken to conserve the original condition, while compensating for normal wear and tear. Routine maintenance includes actions necessary for retaining or restoring a piece of equipment, machine, or system to the specified operable condition to achieve its maximum useful life and does not include expansions or improvements to development.
- iii. Interior improvements to existing buildings that cost less than 500 dollars.
- iv. Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.
- v. Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.
- vi. Streambank armoring and stabilization, retaining walls, and abutment work that do not reduce the cross-sectional flow area of the river or stream channel and have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.
- vii. The following activities are exempt from municipal regulation, but may require a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29):
  - a. State-owned and -operated institutions and facilities.
  - b. Forestry operations and silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
  - c) Agricultural activities conducted in accordance with the Vermont Agency

of Agriculture Food and Market's Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the farmer shall notify the AO in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks.

- d) Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.
  - e) Telecommunications facilities regulated under 30 V.S.A. § 248a;
- viii Planting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).
- ix. Subdivision of land that does not involve or authorize development.

## (2) Permits

Except as provided in Section 1509 (c) 1 [Exempted Activities], a permit is required from the AO for all development that is located within the FHO District. Development that requires conditional use approval or a variance from the Development Review Board (DRB) under this bylaw must have such approvals prior to the issuance of a permit by the AO.

- i. All permits shall require that a permittee have all other necessary permits from state and federal agencies before work may begin.

## (3) Administrative Review; Permitted Development

The following development activities in the FHO District meeting the Development Standards in Section (d), require an administrative review from the AO and may receive a permit from the AO without review by the DRB:

### (A) Within the entire FHO District:

- i. Above grade development located on ground, which has not been elevated by the placement of fill, that is one foot above base flood elevation and documented with field-surveyed topographic information certified by a registered professional engineer or licensed land surveyor.
- ii. Open fencing and signs elevated on poles or posts that create minimal resistance to the movement of floodwater.
- iii. At-grade parking or other at-grade/below grade development that will not create an obstruction to flood flows.
- iv. Municipal transportation infrastructure improvements designed and constructed by the Vermont Agency of Transportation that have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.
- v. River and floodplain restoration projects, including dam removal, that restore natural and beneficial floodplain functions and include written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.

(B) Within the Flood Fringe Sub-district:

- i. Improvements or repairs from damage to structures that do not expand the existing footprint and do not meet the definition of “substantial improvement” or “substantial damage”.
- ii. Accessory structures not greater than 500 square feet.
- iii. Development related to on-site septic or water supply systems.
- iv. Building utilities.
- v. Recreational vehicles or travel trailers.
- vi. New fill for existing associated transportation and utility networks or to accommodate a replacement on-site septic system, if it can be demonstrated that no other practicable alternative is available.

(4) Prohibited Development

Except as provided in Section 1508 (c) 1[Exempted Activity], the following is prohibited:

(A) Within the entire FHO District:

- i. Fully enclosed areas below grade on all sides, including below grade crawlspaces and basements.
- ii. New critical facilities.

(B) Within the Floodway Sub-district:

- i. New accessory structures.
- ii. New encroachments, except for minor improvements<sup>20</sup> to existing structures or relating to bridges, culverts, roads, stabilization projects, public utilities, river and/or floodplain restoration projects, or health and safety measures.
- iii. Changes to existing structures where the footprint of the structure is proposed to expand laterally into the floodway greater than 500 square feet.
- iv. Storage of materials or junk yards.

(5) Conditional Use Review

In accordance with 24 V.S.A. § 4414, conditional use review and approval by the DRB is required prior to the issuance of a permit by the AO for any activity in the FHO District that is not exempt or eligible for administrative review.

(6) Non-Conforming Structures and Uses

- i. A nonconforming structure in the FHO District that has been substantially

- damaged or destroyed may be reconstructed in its original location only if it is rebuilt to comply with all requirements of the National Flood Insurance Program and this bylaw;
- ii. Nonconforming structures and uses shall be considered abandoned where the structures or uses are discontinued for more than 18 months. An abandoned structure shall not be permitted for re-occupancy unless brought into compliance with this bylaw. An abandoned use shall not be permitted unless brought into compliance with this bylaw.

#### (d) Development Standards

The criteria below are the minimum standards for development in the FHO District. If the floodway or flood fringe is not specified, the standard applies to the entire (FHO District/Flood Hazard Area). Where more than one district is involved, the most restrictive standard shall take precedence.

##### (1) Floodway Sub-district

Within the floodway sub-district, the following standards apply:

- i. New encroachments are prohibited within the floodway, except for the following, which also shall comply with Section 1509 (d)(1)(ii), below:
  - a. changes to existing structures where the footprint is proposed to expand horizontally into the floodway less than 500 square feet;
  - b. new encroachments relating to bridges, culverts, roads, stabilization projects, public utilities, functionally dependent uses, and river or floodplain restoration projects;
  - c. new encroachments relating to health and safety measures, such as replacement of pre-existing on-site septic and water supply systems, if no other practicable alternative is available;
- ii. For all proposed new encroachments and above-grade development, a hydraulic analysis is required to be provided for review. The analysis should be performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
  - a. Not result in any increase in flood levels during the occurrence of the base flood;
  - b. Not increase base flood velocities; and
  - c. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- iii. For development that is either below grade or will not result in any change in grade, the hydrologic & hydraulic analyses may be waived, where the applicant will provide pre- and post-development elevations demonstrating that there will be no change in grade, and that the development will be adequately protected from scour.
- iv. For any new encroachment that is proposed within the floodway sub-district where a hydraulic analysis is required, the applicant may

provide a FEMA Conditional Letter of Map Revision (CLOMR)<sup>21</sup>, in lieu of a hydraulic analysis, to demonstrate that the proposed activity will not have an adverse impact.

(2) No Adverse Impact (NAI) Standard within the Flood Fringe

Within the flood fringe, the following standards apply:

Compensatory Flood Storage

New development or redevelopment shall not decrease flood storage capacity. Therefore, except as noted in subsection (d) (2) [Compensatory Flood Storage Requirement Exceptions] below, development that displaces floodwater storage in the flood fringe shall provide compensatory storage to offset the impacts of the proposal. This is required when the development will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows up to and including the base flood discharge.

- i. Volumetric analyses<sup>22</sup> and supporting data, demonstrating compensatory storage to offset the impacts of the proposal, shall be provided by the applicant and certified by a registered professional engineer.
- ii. An applicant may submit a hydraulic analysis that demonstrates that a project will not increase flood elevations and velocities on floodwaters in lieu of a NAI volumetric analysis.
- iii. Compensatory flood storage designs shall not materially impact adjacent landowners or structures.
- iv. If the design may create an undue adverse impact to adjacent landowners or structures, a hydraulic analysis shall be required to verify that a proposed development will not increase base flood elevations and velocities.

Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer

Compensatory Flood Storage Requirement Exceptions

- v. The NAI compensatory storage requirement may be waived for proposed designs that have no more than a minimal effect on floodwater storage and will not result in diverting floodwaters onto an adjacent property or structure. Examples of designs that have a minimal effect on floodwater storage include an open foundation design; utility work that is largely or completely located below grade; minor above ground improvements such as fences or poles that

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<sup>21</sup> <https://www.fema.gov/conditional-letter-map-revision>

<sup>22</sup> For more information on volumetric analysis, please refer to ANR's Compensatory Flood Storage guide at <http://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/state-permits>

minimally displace or divert floodwaters; and development that will not result in any change to the pre-development ground elevations. A determination to waive the NAI compensatory storage requirement shall include written concurrence from the ANR regional floodplain manager, that the project will have only a minimal effect on floodwater storage.

- vi. For remediation of properties with contaminated soils, such as Brownfields sites, the NAI compensatory storage requirement may be waived, if hydraulic analysis demonstrates that the remediation will not increase flood elevations and velocities. Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer.
- vii. The NAI compensatory storage requirement may be waived for a replacement structure if:
  - (a) There is no increase in the structure's footprint, or
  - (b) An open foundation design is used. Examples include using compliant flood vents or openings, or elevating the structure on post, piers, or pilings with no structural foundation walls below the design flood elevation.
- viii. The NAI compensatory storage requirement may be waived for associated transportation and utility networks<sup>23</sup> and replacement on-site septic system proposals, if the applicant demonstrates that the placement of fill cannot be mitigated.

(3) The FHO District (Zones A1-30, AE, AH, AO)

Within the FHO District, the following standards apply:

- (A) All development, except development that is exempt under Section 1509(c) 1, shall be:
- i. Reasonably safe from flooding.
  - ii. Designed (or modified) and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure.
  - iii. Constructed with materials resistant to flood damage.
  - iv. Constructed by methods and practices that minimize flood damage.
  - v. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - vi. Adequately drained to reduce exposure to flood hazards.
  - vii. Required to elevate or floodproof any fuel storage tanks to at least two feet above the base flood elevation. This can be achieved by:
  - viii. Elevating the fuel storage tank a minimum of two feet above the BFE and

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<sup>23</sup> These do not include state transportation networks or power generation and transmission utility networks subject to the Public Utility Commission jurisdiction, as those are exempt from municipal regulation and are regulated under the State Flood Hazard Area & River Corridor Rule; <http://dec.vermont.gov/sites/dec/files/documents/wsmd-fha-and-rc-rule-adopted-2014-10-24.pdf>

- securely anchoring the tank to prevent flotation. The tank shall be located on the land-ward or downstream side of the building and all inlets, fill openings, line connections, and vents shall be elevated to two feet above the BFE. Any structure or platform used to elevate the tank shall be designed to withstand anticipated flood loads and forces;
- ix. In places where elevation of the fuel storage tank is not possible due to the location of existing fuel hookup/fuel lines into an existing building:
  - x. The tank shall be securely anchored to prevent flotation while protecting it from flood forces and debris. Any structure or platform used to anchor and protect the tank shall be designed to withstand anticipated flood forces and debris. The tank vent pipe/valve shall be located at a minimum two feet above the BFE; or
  - xi. Storage tanks may be placed underground, if securely anchored and certified by a qualified professional and are protected from flood forces such as scour, erosion, velocity flow, and buoyancy (uplift) force.
- (B) For any new structure, replacement structure, substantially improved structure, or structure that has experienced substantial damage, outdoor utilities (electrical, heating, ventilation, plumbing, and air conditioning equipment) and other service facilities (such as sewer, gas, and water systems), shall be located on the landward or downstream side of the building and/or behind structural elements, and located and constructed to minimize or eliminate flood damage.
- (C) In Zones AE and A1 – A30 *where floodway limits have not been determined*, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than one foot at any point within the community. The demonstration shall be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
- (D) For new, replacement or substantially improved structures, or for structures that have incurred substantial damage, fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.
- (E) Recreational vehicles, equipment and boat trailers, portable toilets, construction trailers, and other travel trailers shall:
- i. Be currently registered, licensed and ready for highway use; or
  - ii. Be on site for fewer than 180 consecutive days; or
  - iii. Meet the requirements for structures in Section 1509 (d) [Development Standards], as appropriate.
- (F) Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- (G) Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (H) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (I) The flood carrying capacity within any altered or relocated portion of any watercourse shall be maintained, any alteration or relocation shall not result in any decrease of stream stability.
- (J) Bridges, culverts and channel management activities, which by their nature shall be placed in or over the watercourse, shall have a Stream Alteration permit from the Agency of Natural Resources, if required.
- (K) Subdivisions and Planned Unit Developments shall be accessible by dry land access outside of any FHO District
- (L) Structural Standards
  - i. New structures, existing structures to be substantially improved or replaced, or that have incurred substantial damage shall be located such that the lowest floor is at least two feet above base flood elevation. This shall be documented in the proposed and as-built condition with a FEMA Elevation Certificate.
  - ii. New non-residential structures, and non-residential structures to be substantially improved, replaced, or that have incurred substantial damage shall:
    - 1. Meet the standards of Section 1509 (L) i., above; or
    - 2. Have the lowest floor, including basement, together with attendant utility and sanitary facilities, designed so that two feet above the base flood elevation the structure is dry floodproofed, meaning watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
    - 3. A permit for dry floodproofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications, and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection;
    - 4. Dry floodproofing measures used to meet the above floodproofing standard shall work without the use of human intervention at the time of flooding. Exceptions to this standard are when the facility is adequately staffed at all hours with people trained and able to deploy the facility's floodproofing measures, or if the structure is located in a floodplain that has a National Weather Service flood forecast stream gauge that provides adequate advanced warning of potential flooding for the deployment of the floodproofing system.



5. New structures, or existing structures to be substantially improved or replaced, or that have incurred substantial damage in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least two feet above the depth number specified on the community's FIRM, or at least three feet if no depth number is specified.<sup>24</sup>
6. Critical facilities that are to be replaced, substantially improved, or meet the definition of substantial damage shall be constructed so that the lowest floor, including basement, shall be elevated or dry-floodproofed at least one foot above the elevation of the 0.2% annual flood height (500-year floodplain), or three feet above base flood elevation, whichever is higher. A critical facility shall have at least one access road connected to land outside the 0.2% annual chance floodplain that is capable of accommodating emergency services vehicles. The top of the access road shall be no lower than six inches below the elevation of the 0.2% annual chance flood event.
7. For historic structures that would meet the definition of substantial improvement or substantial damage if not for their historic structure designation, the improved or repaired building shall meet the following mitigation performance standards for areas below the base flood elevation:
  - a. Any future damage to enclosures below the lowest floor shall not result in damage to the foundation, utility connections, or elevated portions of the building or nearby structures;
  - b. Utility connections (e.g., electricity, water, sewer, natural gas) shall be protected from inundation and scour or be easily repaired;
  - c. The building foundation shall be structurally sound and reinforced to withstand a base flood event;
  - d. The structure's historic designation shall not be precluded;
  - e. The likelihood of flood waters entering the structure during the base flood is reduced; and
  - f. There shall be no expansion of uses below base flood elevation except for parking, storage, building access, or, in the case of non-residential buildings, where the space is dry floodproofed.
8. Fully enclosed areas that are above grade, below the lowest floor, below BFE, and subject to flooding, shall:
  - a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and
  - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs shall be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total

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<sup>24</sup> Section 809 (d) (3) (L) iii is not required unless the community has AO zones on the community's Flood Insurance Rate Map.

net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above adjacent grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and

- c. Include a signed non-conversion agreement from the owner of the structure with the permit application stating that the enclosed area below the BFE will not be converted to another use not listed above in (L) vi (a), above and that the community would have the ability to inspect the exterior and interior of the enclosed area in compliance with the standards laid out in the non-conversion agreement.
9. A small accessory structure of 500 square feet or less need not be elevated to the base flood elevation, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in (L) vi., above.